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CONSIDERATIONS ON THE GEORGIA CLAIM TO THE MISSISSIPPI TERRITORY.

LETTER II.

Dear Sir,

In my last I gave a short sketch of the rise and establishment of West Florida, as a British province, the extension of its boundaries, together with an account of its surrender to Spain, and afterwards its cession of part of it to the United States.

I shall now proceed more particularly, to investigate the nature of the Georgia claims to that part of it above the 31st degree of north latitude, as far as to the mouth of the Yalsons, now called the Mississippi Territory; in order that you may be able to form some idea of what kind of title that state had to the territory in question. I am not in possession of the different acts of the legislature relative to the tract of country in question, nor do I conceive it very material; because I suppose when they were remonstrating to the national legislature upon the subject, every possible right or claim they could rely upon, was set forth. I shall therefore particularly confine myself to the report of the committee, and this remonstrance of the Georgia legislature, presented to congress in November 1800.

In this remonstrance, the claims of Georgia seem to be supported on five or six grounds, viz.

1st. The original charter of Georgia, referred to in the report.

2d. The definitive treaty of peace, in 1783.

3d. The grants made by a temporary council at Augusta, in 1779 and 1780.

4th. The act passed in Georgia in February, 1783, asserting her right, and establishing her boundaries.

5th. The act establishing a county, called Bourbon, and,

Lastly, a representation on the part of the United States, that Georgia was bounded by the 31st degree of north latitude.

1st. The original charter of Georgia, in 1732. This charter was, (I think I am justified in saying) ignorantly and absurdly extended to the South Seas, as well as that of Carolina originally, and its subdivisions afterwards. They were all granted under a total ignorance of the geography of America, or with a view of having future grounds of war, with France or Spain, at some distant day.—With respect to the extravagance of the thing, no sober minded man can suppose, that the English ever intended to establish a colony of such immense extent, across a continent of 3 or 4000 miles; the thing was utterly impracticable. The presumption therefore is, that this, as well as the others, were granted under a total ignorance of the true situation and extent of the continent. But if it can be supposed that they had really a knowledge of the true situation and extent of the territory included within those grants or charters, then it was a nugatory act, inconsistent with the law of nations; or a high handed assumption of power, for the purpose of feeding the flames of some future war. The French had taken possession of the river Mississippi, and established a province called Louisiana, and which they contended extended to the confines of the settlement of Georgia and Carolina to the east, and from the source of the Mississippi north, to the Gulf of Mexico on the south. They established actual settlements

on the island of New Orleans, on the east and west side of the Mississippi river, and as far as the river and town of Mobile to the east, where their descendants remain to this day.—And this right of the French to the country, as far as the river Mobile, was admitted by the British government itself; for by the 7th article of the treaty of peace in 1763, after describing the boundary line to be along the middle of the Mississippi down to the Iberville, "his most christian majesty expressly cedes and guarantees to his Britannic majesty, the river and port of Mobile, and every thing that he possesses, or ought to possess, on the left or east side of the Mississippi, except the town of New-Orleans, and the island on which it stands." Now it is apparent, that this extravagant charter of Georgia in 1732, must have cut through the French province of Louisiana, and the Spanish Mexican dominions, on the west side of the river Mississippi, as far as the bay of California, or near it, to have gone as far as the South Seas.—Upon the whole then, this extravagant charter was void *ipso facto*, by the law of nations, as far as it extended farther west than the east boundary of Louisiana, viz. Mobile river. Indeed it has been said, that the Rio Perdido, a small river between Mobile and Pensacola, was the true boundary between Louisiana and Florida. As the Spaniards always, till the treaty of 1763, possessed Pensacola, and the country as far as the Perdido, about twenty miles west of that town, and St. Augustine, which were the ancient seats of the Spanish government in East and West Florida, till that period; and in corroboration of the small river being the true boundary, the 20th article of the treaty of 1763, seems strong in point. By the 19th article, his Britannic majesty cedes the island of Cuba, and territories of the Havannah, to Spain; and by the 20th article, "his Catholic majesty cedes to Great-Britain, the Floridas, with fort St. Augustine and Bay of Pensacola, as well as all that Spain possesses on the continent of North-America, to the east and south east of the river Mississippi." Now, all that Spain possesses on the west of the Bay of Pensacola, was the country as far as the Rio Perdido, while French settlements were scattered all over the country, between this Rio Perdido, and the Mobile river.

2dly. The next ground of claim is the definitive treaty of 1783. This treaty fixes, to be sure, the westwardly and south-westwardly boundaries of the United States, which are thus defined: "along the middle of the Mississippi river, until it intersects the 31st degree of north latitude; south by a line due east from the termination of this line last mentioned, in latitude 31 degrees north of the equator, to the middle of the river Appalachicola, or Catahouche river; thence along the middle of that river to its junction with Flint river; then straight to the head of St. Mary's river, and thence along the middle of that river to the Atlantic ocean." I have taken these boundaries from the printed remonstrance of the state of Georgia in 1800; and I would ask any person interested in that claim, whether these boundaries were intended to be descriptive of the rights of the state of Georgia, or of any other particular state in the Union? They surely were not: They are only the conclusive part of the boundaries of the United States, beginning at the river St. Croix, and ending at the river St. Mary's. But supposing there was any thing in this treaty which could be construed to give Georgia any right, I would ask,

had Great Britain a power to give such a right? Here a very important question to the United States arises, upon the law of nations: That is, whether Great Britain had, or had not a right, to cede this portion of country to America, between the mouth of the river Yalsons, and the 31st degree of latitude. I have already mentioned that West Florida had been extended up as far as the river Yalsons, and that all the country between this last river, and the 31st degree, remained from 1763 to 1781, an integral part of West Florida. I have also mentioned, that in May, 1781, West Florida, such as it was in extent and jurisdiction, was surrendered by the British commander, to Spain, and to be held by his Catholic majesty, until finally disposed of by the two crowns; and that by the definitive treaty between England and Spain in 1783, it was confirmed to the latter. What right then had Great Britain, to cede or give up this part of her former dominions, to a third power, which she had so formally surrendered to Spain, by capitulation at Pensacola, in 1781. Let the advocates for the Georgia claim answer. Any man might as well attempt to sell or give away his right to a farm, which he had formally disposed of, and the purchaser or donee, claim a title under this second sale, or gift, as the state of Georgia can pretend to let up any shadow of right under or by virtue of this treaty. The truth really is, that the country had been previously ceded to Spain, and was not the property of Great Britain to give away to the United States. The treaty, therefore, in this particular, was nugatory and void in itself, and directly contrary to the law of nations. It is probable that all these facts were not in the knowledge of the commissioner, Mr. Oswald, when he made the treaty with the American commissioners, at Paris, in 1783; or in the knowledge of our commissioners; and that the king of Great Britain's first proclamation of 1763, might have been taken as the rule for fixing the boundaries of this part of the United States: Be this however as it may, there it not a candid man in the Union, after this fair and plain statement, who will attempt to say, that this right gave any additional right to Georgia. The insertion of this territory within the limits of the United States, certainly originated in error and mistake.

3d. As a third ground of claim, it is said, that grants were made in the year 1779 and 1780, by a temporary council at Augusta. Without examining into, or inquiring any thing about the powers of this temporary council, it is enough under this head to say, that if the state of Georgia had no right to the lands within the Mississippi territory, this temporary council had no right to pass grants for any part of it; every thing, therefore, must depend upon the right of Georgia. The base exercise of this power certainly could not give the State of Georgia any additional title.

4th. The fourth ground of claim is, that an act was passed by the Georgia legislature in February, 1783, asserting her claim, and fixing her boundaries, &c.—I his act to be sure, does declare that the southern boundary of Georgia, should be a line drawn from the Mississippi, in the latitude of 31 degrees, in a due east course to the river Catahouche; and in other respects according to the southern boundaries of the United States. Here then, for the first time, are the express boundaries & limits of Georgia, openly and avowedly declared to the world. Every thing before this, had been by construction and implication; this act

however, boldly and explicitly announces, what her limits should be. If however, it should be asked, on what ground this legislative declaration was founded, I believe, it would be difficult for the warmest advocate for the Georgia, claims to give a direct and explicit answer. We have already seen that the original charter did not give this right; but admitting for argument sake it did, the same power that cut and carved Georgia out of South Carolina, had in like manner created another province called West Florida, in 1764, and sliced off a part of its remote south western territory, to make the latter a convenient compact province, by extending its boundaries up to the Yalsons. As little right has been given by the treaty of Great Britain with the United States in 1783, first because it was not Great Britain's to give, and secondly, if it had then belonged to Great Britain to give, she ceded it to the United States, and not to Georgia—and of as little avail is the claim founded on the exercise of the right, by the temporary council of Georgia—Let us now advance a little farther, and see whether there are any other grounds upon which this declaratory act can be justified? It is said in the remonstrance, that the articles of confederation promulgated in 1778, (and finally ratified by the assent of Maryland, in 1781, guaranteed to the different American states, their sovereignty jurisdiction and territorial rights; which is all very true; and further, that Georgia entered into this confederation, with her claims of jurisdiction and right of territory: this no man can or will deny. But is there any thing in the articles of confederation, which ascertains or defines the limits of Georgia, or any other state in the Union? Surely not: It does guarantee the different states, such as they were, or had been in the actual possession of, at the time; but as to the express limits or bounds, that instrument is silent. It is believed, that Georgia never exercised previous thereto, any acts of sovereignty or jurisdiction, beyond the Altamaha or Ogechee rivers: It is believed they had no settlements at that time beyond them, or at least very few. The Creek Indians claimed the country to those rivers, and their right to the soil, has been but very lately extinguished, so that it is highly presumable that all the acts of sovereignty and jurisdiction that ever Georgia exercised before the act of confederation, must have been exercised between the Savannah and those rivers. The Mississippi territory lies at a distance of 700 miles to the west of the Ogechee, and the two numerous and populous nations of Creek and Choctaw Indians, spread over an extent of country upwards of 600 miles, lie between these two portions of country; so that it was utterly impracticable for Georgia to exercise any act of government over a portion of territory so far beyond her reach, separated by two such powerful tribes of hostile Indians.—Besides, at the very time this confederation was published to the world, West Florida was in possession of Great Britain, and the public officers of that province were in the full and actual possession and enjoyment of the jurisdiction thereof, and continued to exercise it several years after; so that unless West Florida could be considered as included within the confederation, no part of the Mississippi territory could be considered as guaranteed by it.

But, says the remonstrance, "the Mississippi Territory was long before that claimed by, and acknowledged to be the right of Georgia." By whom was the acknowledgment made? Not by Great-Britain, the

M. Cutler Jr
Adm. 10
Dear Sir a paper to
Johnston, M.D.