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## MR. ELLIOT TO HIS CONSTITUENTS.

### LETTER V.

There were several other questions of considerable consequence on which I differed from the majority of the republican party in Congress; but in all of them a number of the most respectable republicans, and in two or three of them all the members from the five New-England states, with one or two exceptions, united with me in opinion. In this review I shall only notice, and that briefly, the motion to enquire into the official conduct of Judge Chase, the resolution for abolishing the loan offices, the motion to extinguish the States Balances, and Mr. Randolph's Resolutions respectiong the Georgia claims. I was opposed to an inquisitorial investigation of the conduct of a public officer, upon the mere demand of a member in his place, without any specific accusation; but I submitted without a murmur to the decision of the majority, and voted for the impeachment, in the first instance after the evidence was reported. I voted, in the first instance, in favour of discontinuing the offices of commissioners of loans; but upon a farther examination, I began to fear that the measure might with propriety be construed into a violation of public faith, and altered my vote. Most of the republican members from Massachusetts, like myself, altered their votes upon deliberate investigation, and the resolution was rejected by a small majority. Upon the motion to extinguish the state balances the members from the New-England states were united with the single exception of my colleague, Mr. Ohn, to whose integrity and ability I shall always bear my feeble testimony; and the same was the case on the subject of the Georgia Claims, except that one member from Massachusetts did not vote upon the question. These questions were considered as involving the interests of the eastern states to the amount of several millions of dollars; those states being creditors to a large amount as it respected the state balances; and numbering among their citizens most of the honest claimants whom the United States had stipulated with Georgia, upon the cession of the Georgia Mississippi Territory, to compensate in a certain ratio for their claims upon that state. These subjects like all others of a local and complicated nature, have never been thoroughly investigated by the people at large; but as they have now become of national importance, I shall render my constituents an acceptable service by detailing to them the information I possess upon the subject.—This letter will be devoted to a general view of the subject of the state balances and the succeeding one to that of the Georgia Claims.

The State Balances, as they are called, result from circumstances immediately connected with our national independence.—Innumerable were the difficulties which presented themselves in our councils during the revolutionary war; and the smiles of providence alone could have enabled our fathers to surmount them. From peculiar circumstances, certain states contributed more, and others less, than their equitable proportion, towards the support of the common cause; and certain principles were prescribed by Congress for an ultimate equalization & settlement between the states. The resolution under consideration proposed the extinguishment of the balances, due from several of the individual states to the United States, as appears by a report of the Commissioners appointed to adjust and finally to settle the demands of the several states for services rendered and supplies furnished the United States in the late revolutionary war with Great Britain. This report was made on the 5th December, 1793. The whole amount of the balances due from the debtor states, and now proposed to be extinguished is $ 3,517,582. New-Hampshire, Massachusetts, Rhode-Island, Connecticut, New-Jersey, South-Carolina and Georgia are creditor states; New-York, Delaware and North-Carolina debtor states to a large amount; the other states but little interested in the question. The commissioners were men of integrity and talents, and their report met with a general acquiescence at the time when it was made. The state of New-York has actually paid a large sum towards her balance: and some of the other debtor states have expressly recognized the settlement. It is now proposed to extinguish the balances by a mere act of power, and Congress are almost equally divided on the question. Were it not that so large a number of representatives consider the states they represent as interested, and were it not that some men possess a wonderful faculty of making any question whatever a party one, this equal division of the national legislature on a subject so simple, would appear to a candid observer unaccountable. I cannot better illustrate the nature and merits of the settlement, and the irresistible strength of the arguments against the extinguishment, than by subjoining an extract from the able speech of Gen. Varnum, of Massachusetts, upon the resolution in question.

"The ordnance which passed the old Congress in 1787, authorising the settlement of the accounts of the several states, against the United States, for services rendered and supplies furnished during the war, makes as ample and liberal provision for an allowance of all the accounts exhibited, as could possibly be expected, or even asked, by any of the parties to the settlement: it was founded on the principles of mutual compromise, and by the unanimous consent of all the states. By the conditions of the settlement agreed upon by that ordinance, the public faith of each state was solemnly pledged to all the other states, and the public faith of the United States was solemnly pledged to each individual state, that the settlement and proportion of the debt allotted to each state, by the commissioners thus mutually agreed upon and chosen by all the states, should be final and conclusive. Soon after the establisement of the present government in the year 1789, a law was passed by Congress for facilitating the settlement and for filling vacancies in the board agreeable to the principles of the ordinance of 1787, and so far as I have discovered by a recurrence to the journals, this law passed without any opposition. In 1790 Congress again assumed the consideration of the subject, and passed a law which recognized all the principles of the ordinance of 1787, and provided that a distribution of the whole expense should be made among the several states according to the first census under the present constitution.—This law was also passed by the almost unanimous consent of the House, and in the Senate where the state sovereignties are more immediately represented, it appears by the journals, to have passed without opposition. Thus, sir, from the first agreement of 1787 to the final close of the settlement, all the states were unanimous in the mode prescribed for settlement, and stood most solemnly bound to each other to abide by it: and the public faith of the nation was, by the several acts of Congress on the subject, most solemnly pledged to carry it into effect.

"Can the Legislature then relinquish these balances, without a violation of plighted public faith? And yet will they undertake to do it? Sir, it is a fundamental principle in the government of all civilized nations to pay the most sacred regard to plighted public faith. And sir, the friends of our government have derived much consolation from the idea, that the U. States would never suffer their national character to be stained by a violation of this important national principle. Yet, sir, from what has taken place, it has been believed, that the U. States would not be behind any nation on the earth in the preservation of this public virtue. But if the resolution on the table should be passed into a law, this valuable principle will receive a wound which may lead to fatal consequences. I must be permitted to doubt the power of Congress to extinguish these balances without the concurrence of all the states. The settlement having been made under a solemn agreement of all the states, where will you find a power vested in Congress to alienate the interest which any individual state has acquired in the balance in consequence of that agreement, and vest it in another state? No such power is expressed in the constitution, nor can I conceive it to be implied by any thing which is expressed in that instrument.

"If then Congress have no constitutional power to make the extinguishment, will not the transaction be considered an innovation on the rights of individual states, as well as a dereliction of the public faith.

"A gentleman from New-York has said that the extinguishment could not be a violation of public faith, because Congress had already given up a part of the debt.—It seems to me that the gentleman's conclusion does not naturally follow the premises which he has stated, for if it could, under any circumstances, be considered a dereliction of public faith to extinguish these balances, it cannot at this time be considered the less so, merely on the ground of the Legislature having heretofore fallen into an error on the subject.—The fact is, that Congress did, in 1799, pass a law, for remitting the balances, on condition that each debtor state would pay into the treasury of the United States, by a given period, the amount of the sums which had been assumed by the United States, of their respective state debts prior to the settlement.—But, Sir, at the time of passing that law, and ever since I have considered it in the same point of light as I do the resolution before you, and therefore cannot admit that as a circumstance in favour of the resolution. That provision has now expired, without being embraced by any of the debtor states, except in that which has been done by the state of New-York, in fortifying her ports and harbours. If the state of Delaware had thought proper to have complied with this liberal provision, she might have been discharged from a debt of 600,000 dolls. for $60.000, but it seems that she prefers a total extinction to a partial payment. If the balances should be extinguished on the principle that the settlement was unjust, which is the only ground taken in favour of their extinguishment, I am apprehensive that this is only to be a stepping stone to a more favourite object. I mean the extinguishment of the balances due to the creditor states on the settlement; for although these balances have been funded by the United States, it is well known, that the evidences of the debt in the possession of the creditor states are not transferable, so that Congress will have nothing to do to effect this part of the business, but to order payment to the creditor states on those balances to be stopped."

I shall conclude with observing that it is not probable that the debtor states will ever pay the full amount of their balances; nor is it probable that the creditor states will ever engage in a civil war to compel them to make payment. This situation of things furnishes, however, no argument in favour of the adoption of the monstrous principle, or rather perversion of all principle, that honest debts may be extinguished by a wanton act of power. Let the balances stand on record against the debtors until a sense of justice shall prevail over private interest, and induce them to make an honourable compromise with their creditors.

JAMES ELLIOT.

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*From the American Daily Advertiser.*

## LAW INTELLIGENCE.

John Vail and Benners Vail of North Carolina, } CIRCUIT COURT of the UNITED STATES, April session, 1805.
against
The Phœnix Insurance Company of Philadelphia. }

THIS cause was tried on Thursday last, before Judges *Washington* and *Peters*, and a special jury. It appeared in evidence that the plaintiffs who resided in Newbern, North-Carolina, on the 23d of May, 1804, wrote to their correspondent in Philadelphia, requesting him to effect insurance on nine puncheons of rum which they had shipped at Norfolk, on board the sloop Maria, Captain Duguid, "*who was at Norfolk on the 17th of April preceding, ready for sea & bound to Newbern*"—that the correspondent in Philadelphia received this letter on the 13th of May, and on the 14th of the same month, after he had applied to several other offices and the risk had either been declined or a high premium asked on account of the heavy gales and stormy weather which had prevailed on the Virginia coast from the middle of the latter end of April; the present defendents subscribed the Policy on which the action was founded—the Vice-President before he agreed to underwrite, observing that there had been very bad weather on the coast.

It appeared further in evidence, that Captain Kinns, of the schooner Hiram, had arrived in Newbern from Norfolk, about the last of April or at furthest on the first of May, and had given intelligence there, that Captain Duguid had sailed the day before him; that Captains Kinns, on the 20th of April had seen Captain Duguid's sloop near the Horse Shoe Shoal standing to sea—immediately after which it began to blow very severely and continued till the 23d, during which time Captain Kinns did not venture out to sea, but remained at Old Point Comfort till the storm had subsided; that shortly after Captain Kinns's arrival at Newbern it was the general apprehension that the Maria was lost; that the plaintiffs applied to the Newbern Insurance Office, but they declined taking the risk, owing to the information they had received from Capt. Kinns, and which was then in general circulation; it did not appear, however, that either of the plaintiffs had seen Capt. Kinns till the 6th or 7th of May, nor was there any *positive proof* of their having heard the report before they wrote the letter of the 2d of May, which, by the post mark, did not leave Newbern till the 4th—the characters of the plaintiffs were proved by three witnesses to be *fair*. The defendants insisted that for want of a disclosure of material facts the policy was void, and they were discharged.

Mr. Hallowell, on behalf of the plaintiffs, went into a minute examination of the testimony; endeavored to show that whatever might have been the suspicions entertained by others in Newbern, knowledge of the circumstances detailed by Capt. Kinns was not *brought home to the Plaintiffs themselves*—and that as they were proved to *be honest men*, fraud could not be presumed against them, but must, in order to vacate this policy, *be positively proved*—that the plaintiffs' letter of the 2d of May was not couched in terms of anxiety or eagerness as if they feared that the least delay would frustrate their views, but was in the usual calm, sober strain of business, and therefore afforded no grounds of suspicion, but rather tended to show that they knew nothing more than they communicated therein.

Mr. Rawle, for the defendants, contended that the plaintiffs had concealed from the underwriters facts which were material to the risk, and therefore ought to have been disclosed—that from a view of the whole evidence taken together, they must have been acquainted with these facts before their letter of the 2d of May left Newbern; that if the assured did not communicate all *material* facts, when he applied for insurance, the contract was void, although there might be no *fraudulent* view, but mere error in judgment as to the necessity of such disclosure.

Mr. M. Levy replied to Mr. Rawle, combatted his arguments, and with great zeal and ability supported, illustrated and enforced the arguments of Mr. Hallowell.

Judge Washington delivered a most excellent charge to the jury—he observed that in cases of insurance it was *peculiarly necessary* that good faith, fair, open and candid conduct should be observed—it was the *essence* of the contract—that the very nature of the transaction, if considered on the principles of common sense, shewed it to be so: One man, unwilling or unable to encounter a *risk* himself, applies to another to encounter it for him, for a *stipulated premium*; in order to be enabled to decide whether he will take it *at all*, or upon *what terms*, he ought to know *precisely* what the *risk* is, and this he can only know from the information of *the applicant himself*, in whose breast all the circumstances attending it *are* or *are supposed to be* deposited—he is bound therefore to put the person applied to in possession *of every thing he knows himself*, or at least every thing *material to the risk*, or which if known, would either tend to increase the premium, or deter the underwriter from entering into the contract *at all*; these principles he observed, if applied to the present case, would furnish an easy solution of it; if the plaintiffs *knew* the facts stated by Captain Kinns before their letter left Newbern, they ought to have disclosed them, as they were certainly very *material*; and that it was of no consequence whether their not disclosing them arose from *fraud* or mere *mistake*, as in either case the policy was void: whether the plaintiffs knew them or not, he left to the jury to decide upon the evidence as a question *of fact*, but declared that *positive* proof of such knowledge was not *indispensable*; it was sufficient if the circumstances were of such *public notoriety*, that, according to the common course of events, they must be *presumed* to have known them. As to the evidence of what passed in Philadelphia between the plaintiffs' agent and the Vice-President of the Company, he considered that as of no consequence, and calculated only to draw off the attention of the Jury from the real point in controversy.

Judge Peters adverted to some part of the evidence which appeared to him *conclusive*, to shew that the plaintiffs had knowledge of the facts not disclosed, and were therefore not entitled to recover.

The Jury on Friday morning returned a verdict for the *defendants*.

It is well worthy of observation, that this suit, although commenced only in October last, was tried *in its regular course*, by a *Special*