

POLITICS OF THE DAY.

ON THE FUTURE SURPLUS.

FROM THE SOUTHERN WHIG, (GEORGIA,) DEC. 24.

Mr. JONES: I perceive that many of the States, and Georgia among the rest, protest against any further accumulation and distribution of the surplus revenue of the General Government. If this disclaimer refer to the taxes which that Government has a right to impose, it is just and proper; but if the proceeds of the public lands are included, the States are yielding a right which is not justified by any consideration of propriety or sound policy. I believe it a position not difficult to establish, that the proceeds of the public lands (*at least* that portion of them northwest of the Ohio river, ceded by the State of Virginia in the year '84, before the adoption of the Federal Constitution, to the States, then held together by the articles of confederation,) belong to the *respective* States, and not in their *federal* character. I believe, further, that the General Government is a *trustee* of this fund for the benefit of the *several* States, and if it were suable in a Court of Equity, it could be made not only to divide the present amount of money in hand, derived from the sales in that territory, but to account for all sums expended in behalf of the Federal Government. To sustain these views I offer the following evidence, and only request that the case be considered as pending in a Court of Justice, the States being plaintiffs, and the General Government the defendant.

1st. I submit the articles of confederation, adopted on the 9th day of July, 1778, and from them the following clauses, to wit: "Each State shall maintain its own delegates in a meeting of the States [Congress,] and while they act as members of the committee of the States," [in the recess of Congress.] Again, "all charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a *common Treasury*, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the *Legislatures* of the several States within the time agreed upon by the United States in Congress assembled." I quote these clauses for two purposes: 1st. to show that, under the articles of confederation, the States, in their individual capacity, supported the Federal Government, and that it had no other resources or means of support. 2d. (the use of which will be seen hereafter,) to show the *rate or measure* of the charges and expenses of each State.

I next present the articles of cession executed on the 1st of March, 1784, between the State of Virginia on the one part, and the Congress of the United States, under the articles of confederation, on the other.

1st. The State of Virginia authorized certain commissioners (which was done under their hands and seals,) "to convey, transfer, assign, and make over unto the United States in Congress assembled, **FOR THE BENEFIT OF SAID STATES, VIRGINIA INCLUSIVE**, all right, title, and claim, as well of soil as of jurisdiction, which the said commonwealth hath to the territory or tract of country within the limits of the Virginia charter, situate, lying, and being to the northwest of the river Ohio, to and for the **USES and purposes**, and on the *conditions* of the said recited act."

Now, 2d. One of the *uses and conditions* of the said recited act is in the following words, viz. "That all the lands within the territories so ceded to the United States, and not reserved for, or appointed to, any of the before-mentioned purposes, or disposed of in bounties to the officers and soldiers of the American Army, shall be considered as a **COMMON FUND** for the **USE and BENEFIT** of *such* of the *United States* as have become, or shall become, members of the *Confederation or Federal alliance* of the said States, **VIRGINIA INCLUSIVE**, according to their *usual respective proportions* of the **GENERAL CHARGE and EXPENDITURE**, and shall be *faithfully and bona fide* disposed of for that purpose, and for no other **USE or PURPOSE whatsoever**."

Can words be more explicit? I said the General Government was a **TRUSTEE** for the States. Here are the legal and technical words that not only imply but absolutely create a *trust*. I grant to the United States in Congress assembled for the *use and benefit* of said States, (myself included,) so said Virginia. Now, if it was intended for the United States in their confederated character, it was only necessary to stop at the words "United States," and the rest followed as a matter of course; but when Virginia takes the pains specially to include herself, and particularly specifies the *measure and manner* of division, we can be at no loss to arrive at her intention to distribute the "common fund," (once *all* her own,) among her sister States, especially if we bear in mind, as already cited, that each State had to furnish her quota of money to defray the "charges and expenses" of the Federal Government. The then Federal Government could have no funds, or, in the language of the Articles, no "Common Treasury," but in the way provided by that instrument. It was to be "supplied by the *several States*," and it may be boldly affirmed that no other method can be found in that compact.

But there is a view of this question which is perfectly conclusive. Suppose the States had remained under the articles of confederation, and had never adopted the present Federal Constitution, what would have become of the proceeds of the public lands thus ceded by Virginia? What would the old Congress, having no powers to raise revenue, and no right to use or retain money but in a way specially provided in the charter of their authority, have done with the money arising from the sales? How could it have evaded this unequivocal clause in the contract made with Virginia, to wit: "the lands thus ceded shall be considered as a common fund, for the *use and benefit* of such of the United States as have become, or shall become, members of the confederation or federal alliance of the said States, *Virginia inclusive*, according to their *usual respective proportions* of the general charge and expenditure, and shall be *faithfully and bona fide* disposed of for that purpose, and for no other *use or purpose whatsoever*?" Does not every one perceive that the Federal Government would have been compelled, if it acted faithfully, to pay over to the States their respective shares of the proceeds of the lands as they were "disposed of for the use and benefit of said States, Virginia inclusive?" It is no good objection to say the States would have had to pay it back to the Federal Government; that might or might not have been the case; there might have been a surplus then as there is now. The Federal Government was largely indebted to some of the States, and that, at least, had to be exhausted in the way of supplies from the creditor State, before her dividend of the land proceeds could be touched. But apart from these considerations, it was the "terms of the bond," and it was obliged to be complied with.

This view of the subject is obliged to settle the case, unless the change of Government, or, in other words, the adoption of the Federal Constitution, has conferred upon the present Government a title to these lands and their proceeds, paramount to the one above shown to exist in the States. If so, let it be shown. It is incumbent upon the defendant to produce his grant. Let him show the instrument by which the right has passed out of the States, and vested in himself. We might safely conclude the cause here, under the utmost confidence that no deed can be shown which revokes the articles of cession made by Virginia, the title under which the States rightfully claim, but plaintiffs can show that they have been extremely mindful of this interest, for in the Constitution agreed to in September, '89, nearly six years after the Virginia cession which changed the Government, or rather abrogated the articles of confederation, they expressly provide these saving clauses, to wit: "All debts contracted, and *engagements* entered into before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the Confederation."—6th Art. Again, in the 4th article, it is declared "that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and *nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State*." Nothing can be plainer; and to show that this is not a strained construction of the instruments from which it is attempted to deduce the right of the States to the public lands northwest of the river Ohio, let us see what President Jackson has said in his *veto* of Mr. Clay's Land bill, one among the few of his State papers that he has not recalled or explained away, one that has the singular merit of being uncontradicted by any other. His remarks were made in reference to that provision in the bill which designed to give 12½ per cent. out of the nett proceeds to the new States, and are as follows: "What more need be said to demonstrate its objectionable character, than that it is an indirect and undisguised violation of

the pledge given by Congress to the States, before a single cession was made; that it abrogates the conditions upon which some of the States come into the Union; and that it sets at naught *the terms of cession* spread upon the face of every grant under which the title to that portion of the public lands is held by the Federal Government?" Again, he says, alluding to the deeds of cession: "the Constitution of the United States did not delegate to Congress the power to abrogate these compacts. On the contrary, by declaring that nothing in it 'shall be construed to prejudice any claims of the United States, or of any particular State,' it virtually provides that those compacts shall remain untouched by the legislative power, which shall only make all 'needful rules and regulations' for carrying them into effect."

Now, however, things are changed, because he wants to reduce the surplus revenue he recommends in his late message to diminish the price of the public lands, and to dispose of them only to actual settlers. This will be a fraud upon the States, and ought to be resisted, as well as all attempts to give any portion of the lands or their proceeds, over and above their rightful share, to any of the new States. Congress has already violated the Virginia compact by the vast cessions of land for various purposes, made to the new States, as well as a donation to them of large sums of money arising from their sale. An immediate stop should be put to such a *faithless* disposition of that "common fund," so generously reserved by Virginia for the "*use and benefit*" of the whole of her sister States. I candidly admit that the States should lay no claims to any other lands, or their proceeds, than those derived from the sales northwest of the Ohio river; for, although other States, and particularly Georgia, have made similar cessions, and almost in exact terms, yet, as they were made subsequent to the adoption of the Federal Constitution, I think the question, by reason thereof, is very materially varied. If, however, we can get what justly belongs to us, it will be enough for all useful purposes. The vast amounts which have accrued for the last forty years, since the adoption of the Federal Constitution, in which the Government had ample power to raise means for its support, independent of the land fund, will greatly lessen the qualms of conscience which some seem to have about taking any part of the surplus revenue, and protesting that such another dose must not be put before them. Surely, since that time there can be no excuse either to use or withhold the land revenue from the States. For my part, I believe we have not obtained our own by many millions; and although, in the distribution now about to be made, there is part of it that does not rightfully belong to the States, because it is revenue from other sources than that of land sales, yet there is enough behind, which we ought to have, that will compensate for the gratuity, if it be so considered, ten times over. Let us come to a fair settlement, and we may and ought to refund whatever is received over and above a fair division of the proceeds of the public lands, under the solemn compact of the State of Virginia. This is our right. In this there is no degradation, no servile dependence on that Government, and, poisoning ourselves upon our just rights, we should exact their strict observance.

A. S. CLAYTON.