

PARKER, GILL, AND BALDWIN.

PETITION AND REMONSTRANCE

OF

ASHLEY PARKER AND OTHERS, OF ALABAMA.

FEBRUARY 3, 1835.

Read, and laid upon the table.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The petition and remonstrance of Ashley Parker, Henry Gill, and Henry Baldwin, of the county of Montgomery, in the State of Alabama,

RESPECTFULLY SHOWETH :

That your petitioners, Ashley Parker and Henry Gill, settled on the northeast and southeast fractional quarters of fractional section number twenty-four, township number eighteen, range number eighteen east ; and that your petitioner, Henry Baldwin, settled on the northwest quarter of section number thirty, township number eighteen, range number nineteen east, and cultivated and improved the same ; all of which tracts of land, at the time of the settlement of your petitioners, were public lands, belonging to the United States, and are parts of a larger tract of land, known here by the name of the " Tallassee Fixico reserve."

Your petitioners further show, that after the passage and approval of the act of Congress of the 19th of June, 1834, entitled " An act to revive the act entitled An act to grant pre-emption rights to settlers," &c., your petitioners presented the evidence of their settlement and improvements to the register and receiver of the land office at Cahaba, which, in the judgment of said register and receiver, entitled your petitioners to the benefit of the provisions of said act. Upon the presentation of the evidence accompanying your petitioners' application to the register and receiver, these gentlemen, doubting whether the lands occupied by your petitioners were, in truth and in fact, public lands, forwarded the evidence presented by your petitioners to them, to the honorable Secretary of the Treasury, who, after an examination of the same, decided that the premises occupied by your petitioners were public lands. Your petitioners, accordingly, under the provisions of the said act, and with the approbation of said register and receiver, purchased of the United States the abovementioned tracts of land, paid to the said register and receiver the amount of the purchase moneys,

and received from said register and receiver certificates of said purchase ; all of which will more fully appear to your honorable bodies by a reference to the receipts of the said register and receiver, copies of which are herewith transmitted and marked A.

Your petitioners had well hoped that, having submitted the evidence of their settlement and improvements to the proper officers, and obtained from them a favorable adjudication, and having complied in every particular with the requisites of the laws of the United States, and purchased of the Government the tracts above mentioned, they would have been permitted peacefully to enjoy the premises thus fairly, justly, and lawfully obtained ; but so it is. May it please your honorable bodies, your petitioners are informed that a bill has been introduced into the House of Representatives, which, if enacted, will forever deprive your petitioners of any benefit on account of their settlement and cultivation, and of the right of property vested in them by their purchase from the United States under the act of Congress aforesaid.

Your petitioners do therefore solemnly protest and remonstrate against the bill which has been introduced, and which, if enacted, will, as your petitioners have already said, forever deprive your petitioners of the benefit of their settlement and improvements, and of the right of property vested in them by their purchase from the United States, and secured to them by the laws ; and, in support of this their solemn protest and remonstrance, they submit to your honorable bodies the following statement of facts and circumstances, connected with their claim, and the controversy which has been got up against them.

Immediately after information reached this part of the country of the passage of the act of the 19th of June, 1834, above adverted to, and before the provisions of the same were generally known to our citizens, or an opportunity had been offered for examining them, George Taylor, of Coosa county, Jesse Taylor, of Talledega, George Whitman, of Montgomery, Edward Sims, of Tuscaloosa, and Bennet S. Griffin, of Autauga, came to the premises above described, occupied by your petitioners, and commenced surveying the same, laid off the premises into building lots, gave public notice of a sale, and by auction disposed of the lots thus laid off to purchasers, received the notes of the vendees, payable in twelve months, and made to said vendees quit-claims to the lots thus sold. In this manner, the premises were sold from under the feet of your petitioners, notwithstanding the remonstrances of your petitioners to the contrary, and ample notice given by your petitioners of their occupancy, and of the right of pre-emption which had accrued to them by the provisions of the act. Upon inquiring into the premises, your petitioners were informed that the company composed of Messrs. George Taylor, of Coosa county, Jesse Taylor, of Talledega, George Whitman, of Montgomery, Edward Sims, of Tuscaloosa, and Bennet S. Griffin, of Autauga, claimed the lands occupied by your petitioners under a pretended purchase from George Taylor, of Coosa county ; and that said Taylor claimed to be owner of the same by virtue of a purchase made many years since of one Tallasse Fixico, an Indian of the Creek nation, who had once resided on the same.

It will be manifest to your honorable bodies, upon an examination of the subject, that the claim of the company, viz. of Mr. George Taylor, &c., is not well founded, either in justice or in law, and therefore your honorable bodies will hesitate long before you will, by act of Congress, con-

firm the same, more especially where the vested rights of settlers and occupants are to be immediately affected and destroyed. If Tallassee Fixico had no right to the lands in question, he could convey none to Mr. George Taylor; and if Mr. Taylor had nothing, of course the company holding under him can have no more.

By the treaty concluded at Fort Jackson, on the 9th day of August, 1814, between the United States and the Creek nation, a cession is made of all the lands lying in this vicinity, including the premises occupied by your petitioners, to the United States; which said cession is accompanied with this provision: "*Provided, nevertheless, That where any possession of any chief or warrior of the Creek nation, who shall have been friendly to the United States during the war, and taken an active part therein, shall be within the territory ceded by these articles to the United States, every such person shall be entitled to a reservation of land within the said territory, of one mile square, to include his improvement, as near the centre thereof as may be, which shall inure to the said chief or warrior, and his descendants, so long as he or they shall continue to occupy the same, who shall be protected by, and subject to, the laws of the United States; but upon the voluntary abandonment of the same by such possessor, or his descendants, the right of occupancy or possession of said lands shall devolve to the United States, and be identified with the right of property ceded hereby.*" (See Gordon's Digest, art. 2359, page 444.) We have proved, by the most indubitable testimony, and by persons acquainted with the facts, and the most respectable men in this part of the country, to the perfect satisfaction of the honorable Secretary of the Treasury, and also of the register and receiver at Cahaba, that Tallassee Fixico, a friendly Indian, in the year 1827, *abandoned* the place on which he resided at the date of the treaty, and removed to a place on the Coosa, a first-rate piece of land many miles above his former residence, and has also, under the late treaty, received of the United States a confirmation of title to the place on which he at present resides, and with which, if we are correctly informed, he is perfectly content. The lands then, were, according to the terms of the treaty, upon the *abandonment* by Tallassee Fixico, *public lands*, and the title to the same vested in the United States. Being public lands, your petitioners settled on them, erected houses, and otherwise improved and cultivated them; and according to the provisions of the act of Congress of the 19th June, 1834, your petitioners became entitled to a right of pre-emption of the same, and, with the approbation of the Secretary of the Treasury, and also of the register and receiver at Cahaba, have purchased the same of the United States. If Tallassee Fixico, in 1827, pretended to dispose of the premises in question to Mr. George Taylor, he committed a fraud on the rights of the United States, and could convey nothing.

But your petitioners further contend that the pretended purchase by Mr. Taylor was in open violation of law, and therefore he could take nothing by his purchase, even if Tallassee Fixico had a good right to sell. By sec. 1 of the act of Congress of March 3d, 1807, still in force, it is provided that "if any person shall take possession of, or make a settlement on, any lands ceded to the United States, which lands shall not have been previously sold or leased by the United States, or the claim to which by such person shall not have been previously confirmed by the United States; or if any person shall cause such lands to be thus occupied, taken possession of, or settled, or shall survey, or attempt to survey, or cause to be surveyed, any

such lands, or designate any boundaries thereon, by marking trees, or otherwise, until thereto duly authorized by law, such offender shall *forfeit his right*, if any he have, to such lands." (See Gordon's Digest, art. 2419, page 460.) This act of March 3d, 1807, remains in full force on the statute book, and is conclusive against the right to purchase on the part of Mr. Taylor, and, if your petitioners are not incorrect, operates a total forfeiture of all the claim both of Mr. G. Taylor and also of the company, who, claiming under him, have pretended to survey and dispose of the lands in controversy. Evidence of the sale by the company, made without authority from the United States, and contained in the deed from George Taylor and others to M. Simon, dated in July last, is herewith forwarded and marked B.

Your petitioners desire to call the attention of your honorable bodies to the fact, that they are in possession both of the lands and of the receipts of the receiver at Cahaba, showing the purchase by your petitioners, under the act of the 19th of June, 1834; and that, in virtue of the certificate of the register and receiver, a full and complete title to the lands in controversy is, by the laws of Alabama, vested in your petitioners. By sec. 8 of an act of the General Assembly, passed in 1812, it is provided that "all certificates issued in pursuance of any act of Congress, by any of the boards of commissioners, *register of a land office*, or any other person duly authorized to issue such certificates, upon any warrant or order of survey, or to any donation or *pre-emption claimants*, for any lands in this Territory, shall be taken and received as *vesting a full, complete, and legal title*, in the person in whose favor the said certificate is granted, to the lands therein mentioned, and his, her, or their assigns, so far as to enable the holder of such certificate to maintain any action thereon; and the same shall be received in evidence as such in any court in this Territory."—See Aikin's Alabama Digest, p. 283, s. 142.

Your petitioners then state, and show to your honorable bodies, that the lands which were the subject of the sale by Tallassee Fixico to Mr. George Taylor, and the sale of which is sought to be confirmed by the bill introduced into the House of Representatives, against the passage of which your petitioners protest and remonstrate, belong, in truth and in fact, to your petitioners:

1st. Because your petitioners came to the Tallassee Fixico reserve some years since, and, finding the place on which they settled in a state of nature, and belonging to the United States, settled on it, have erected habitations, and have cultivated and improved the same.

2dly. Because, by the passage and approval of the act of the 19th of June, 1834, your petitioners, in consequence of their inhabitation, occupancy, and cultivation, were fully entitled to the right of pre-emption of the same.

3dly. Because, upon evidence of the facts, your petitioners were, by the register and receiver of the land office at Cahaba, in conformity to the opinion of the Secretary of the Treasury, permitted to purchase the lands so occupied and cultivated by them of the United States, and did so purchase them; and

4thly. Because, according to the laws of Alabama, the certificate of the register and receiver vests in your petitioners a perfect, full, and legal title to the lands in controversy.

Your petitioners also state, and show to your honorable bodies, and

charge, that the claims of the gentlemen who contest the right of your petitioners, and who are desirous of procuring the passage of the bill against which your petitioners protest and remonstrate, are not well founded :

1st. Because, upon the abandonment of the lands by Tallassee Fixico in 1827, the said lands, by treaty, which is the supreme law of the land, *devolved* upon the United States, and therefore said Tallassee Fixico had no right to dispose of the same.

2dly. Because said George Taylor bought of Tallassee Fixico in violation of positive law, and therefore took nothing by his purchase.

3dly. Because Tallassee Fixico has received of the United States, under the late treaty, a large body of valuable land on the Coosa river, in lieu of the land *abandoned* by him ; and therefore his sale operated a fraud upon the United States.

4thly. Because the gentlemen composing the company, viz. Messrs. George Taylor, &c., bought also in violation of positive law, and without the authority of the United States, and have surveyed and pretended to sell, without the least authority from the Government ; and therefore not only took nothing by their purchase, but have totally forfeited any pretended title they may presume they have derived from Tallassee Fixico, or from any other source.

Your honorable bodies cannot fail to perceive that the true question in this case is between *bona fide* settlers and residents on the public lands, and a company of gentlemen who are non-resident dealers in this species of property ; and that if the benevolent policy of the Government ; in the passage of the act of the 19th of June, 1834, is to be at all taken into consideration in this question, it must be unhesitatingly decided in favor of your petitioners. Your honorable bodies will also perceive that the gentlemen composing the company are not entitled to a very large amount of the favorable regard of the Government, as their claim has been urged without in the least consulting the United States, and with circumstances of great contumely towards your petitioners. Your petitioners have been compelled to see the lands on which they live sold at vendue from beneath their feet, notwithstanding the title was, by law, clearly vested in them, and notwithstanding the gentlemen composing the company must have been perfectly cognizant of the fact. Your petitioners have been injured without cause, and the Government has been heretofore treated with great indifference. The citizens, too, in this vicinity, have just cause of complaint against the company, for pretending to sell at public vendue lands to which they had no title, and for receiving payment for the same, the title being at the time in your petitioners. Your honorable bodies must also be satisfied, that if the bill against which your petitioners remonstrate should become a law, your petitioners will be deprived of a right vested in them by the law of the land, and be driven from premises which fully belong to them ; your petitioners having in good faith complied with the requisitions of the act of Congress, and having honestly purchased from the United States the lands on which they reside.

Your petitioners do therefore remonstrate and protest against the bill introduced into the House of Representatives :

1st. Because it would be a violation of the great and sacred principles of Magna Charta and the Bill of Rights, by disseising your petitioners of

their freehold, and disfranchising them of their liberties, without the process or due operation of law.

2d. Because it would violate the constitution of the United States, as it would operate summarily to eject and oust your petitioners without the benefit and inestimable privilege of the trial by jury.

3d. Because it would violate the constitution of the United States, as it would impair the obligation and sanctity of a contract between your petitioners and the United States.

4th. Because it would be a violation of the constitution of the United States, as it would have an *ex post facto* operation on parties to a contract already executed.

5th. Because it would be a violation of the great and republican principle of State rights, as it would operate to set aside a law of the State of Alabama, constitutionally enacted in furtherance of the administration of justice among her own citizens, and on a subject within her exclusive jurisdiction.

6th. Because it would violate the public faith pledged to your petitioners by the act of the 19th June, 1834.

7th. Because it would be against public law, as it would operate a rescission of a contract fairly entered into and executed between the Government and your petitioners, without fault on the part of your petitioners.

8th. Because it would be depriving your petitioners of rights already and fully vested in them, both by the laws of the United States, and those of the State of Alabama.

9th. Because it would operate to legalize and sanction a fraud committed on the United States.

10th. Because it would operate to legalize and sanction a fraud attempted to be perpetrated on the citizens of this vicinity in July last, when lands vested by law in your petitioners were pretended to be sold by non-residents, without title, in derogation of the authority of the United States, and of the just title of your petitioners.

11th. Because it would be attended with great hardship and cruelty towards your petitioners, in compelling them to abandon their improvements and their habitations, and leaving them to the tender mercies of the gentlemen composing the company—a situation in which your petitioners feel no great anxiety to be placed.

12th. Because it would be causing the United States to become a volunteer in a controversy in which they have no interest, unless it be the protection of your petitioners: the striking and melancholy feature of which officiousness would be an interference against the very right of the case, and in opposition to the eternal and immutable principles of justice.

Your petitioners therefore pray that the bill introduced into the House of Representatives may not pass; and your petitioners, as in duty bound, will ever pray.

STONE & CHESTNEY,
Attorneys for petitioners.

ASHLEY PARKER,
HENRY GILL,
HENRY BALDWIN.

WETUMPKA, January 6, 1835.

STATE OF ALABAMA, *Montgomery county*:

Personally appeared the above petitioners, and made oath that the facts and circumstances mentioned in the above petition, as of their own knowledge, are true, and those otherwise mentioned they believe to be true.

A. PARKER,
H. GILL.

Sworn to and signed this 7th day of January, 1835, before me,
E. POND, J. P.

A.

Copies of the receipts of the Register and Receiver of the Land Office at Cahaba.

Pre-emption Act, 1834.

No. 19,798. RECEIVER'S OFFICE, *Cahaba, November 6, 1834.*

Received from Ashley Parker and Henry Gill, of Montgomery county, the sum of one hundred and thirty-five dollars, being in full for northeast fractional quarter east Coosa, section number twenty-four, township number eighteen, range number eighteen, containing 108 acres, at the rate of one dollar and twenty-five cents per acre.

Cash \$135.

W. G. MITCHELL, *Receiver.*

Pre-emption Act, 1834.

No. 19,797. RECEIVER'S OFFICE, *Cahaba, November 6, 1834.*

Received from Ashley Parker and Henry Gill, of Montgomery county, the sum of two hundred dollars, being in full for southeast quarter fractional section number twenty-four, township number eighteen, range number eighteen, containing 160 acres, at the rate of one dollar and twenty-five cents per acre.

Cash \$200.

W. G. MITCHELL, *Receiver.*

Pre-emption Act, 1834.

No. 19,796. RECEIVER'S OFFICE, *Cahaba, November 6, 1834.*

Received from Henry Baldwin, of Montgomery county, the sum of one hundred and ninety-nine dollars and nine cents, being in full for northwest quarter section number thirty, township number eighteen, range number nineteen, containing 159 27½-100 acres, at the rate of one dollar and twenty-five cents per acre.

Cash \$199 09.

W. G. MITCHELL, *Receiver.*

