27th Congress, 2d Session. Rep. No. 905. Ho. of Reps.

REVIVE ACT TO TRY LAND CLAIMS IN MISSOURI, LOUISIANA, MISSISSIPPI, ARKANSAS, AND ALABAMA.

[To accompany Senate bill No. 44.]

JULY 11, 1842.

Mr. MOORE, from the Committee on Private Land Claims, made the following

REPORT:

The Committee on Private Land Claims, to which was referred Senate bill (No. 44) making provisions to enable claimants to land within the States of Louisiana, Missouri, Arkansas, and parts of Mississippi and Alabama, to try the validity of these claims in the courts of the United States, report:

That they have had the same under consideration, and return it with amendments, and recommend its passage, as being, in the opinion of your committee, the most prompt and equitable mode of deciding a class of claims that have been encumbering the files and embarrassing the progress of business in Congress for many years. It is believed, too, to be the only constitutional means of settling some which involve intricate points of judicial investigation, under treaty stipulations, the laws of nations, the usages and customs of the French and Spanish colonial governments, and numerous acts of Congress—questions which belong solely, in the opinion of your committee, to the judicial department of the Government to decide.

The parts of the States of Mississippi and Alabama to which the provisions of the bill extend, and that part of the State of Louisiana east of the island of New Orleans, denominated West Florida, before coming into the possession of the United States, belonged successively to Great Britain and Spain.

In the treaty of cession from Great Britain to Spain, in 1783, provisions were inserted for the protection of the property of British subjects who would sell to subjects of Spain within eighteen months, and to those who chose to remain and become Spanish subjects; his Catholic Majesty subsequently promised protection. That part of the country was claimed by the United States as forming part of the province of Louisiana, ceded by the treaty of the 30th April, 1803; but the claim was resisted by Spain, who exercised jurisdiction over the country until 1810, when the inhabitants declared themselves independent. Possession was then taken, on the part of the United States, under a proclamation of President Madison, dated October 27, 1810, in which he gave to the inhabitants the full assurance that they would *be protected in the enjoyment of their liberty, property, and religion, and that it (the country) should not cease to be a subject of fair and friendly negotiation.* By a resolution passed on the 15th Janu

ary, 1811, Congress approved the course of the President, in which the assurance of protection to the inhabitants is repeated, with the further declaration, *that the occupation was temporary, and that*, in the hands of the United States, it should remain subject to future negotiations.

By the treaty of 22d February, 1819, Spain ceded East and West Florida to the United States, in which it is provided that all grants of land made before the 24th day of January, 1818, by his Catholic Majesty, or by his lawful authorities in said territories, ceded by his Majesty to the United States, *shall be ratified and confirmed to the persons in possession of the land.*

Under these stipulations. it might be supposed that recourse may be had to the judicial tribunals of the country to try the validity of claims in that section of country without the interference of Congress, and that a bona fide Spanish or British grant, coming under the conditions stipulated, would prevail under any subsequent title derived from the United States; but such is not the case. By its enactments, Congress has continued to hold out the claim to that part of the country as belonging originally to Louisiana; and, although settlement rights have been granted to those who inhabited and cultivated the soil, on or before the 15th of April, 1813, to the extent of 640 acres, and have authorized the confirmation of incomplete grants to the extent of 1,280 acres, where no survey was made under the Spanish authority prior to the 15th April, 1813, yet, the ratification of incomplete grants for a greater quantity of land in any one grant, made since the 20th of December, 1803, has not been formally authorized; and the Supreme Court held, in the case of Foster & Elam *vs.* Neilson, that "the question of boundary between the United States and Spain was a question for the political departments of the Governments; that the Legislative and Executive branches having decided the question, the courts of the United States are bound to regard the boundary determined by them as the true one;" and, in the case of Ganice *vs.* Lee, "that even if this stipulation (the clause in the treatey of 1819, quoted) applied to lands in the territory in question, yet the words used did not import a present confirmation by virtue of the treaty itself, but that they were words of contract. The ratification and confirmation which were promised must be the act of the Legislature; and, until such shall be passed, the court is not at liberty to disregard the existing laws on the subject."

And again, in the case of Wilcox *vs.* Jackson, the Supreme Court held that "a State has no power to declare any title less than a patent valid against a claim of the United States to the land, or against a title held under a patent granted by the United States."

It will be perceived that, unless Congress passes upon the matter, no legal means are provided to determine upon the validity of the claims. It is not likely, judging from the delay already experienced, any direct action by Congress will be had upon them; and, without some action, it will be a palpable disregard of right.

Claimants to lands lying in that part of the State of Louisiana, on the western border, which, before the treaty of 1819, was denominated the "neutral territory," and since as the "Rio Hondo" lands, labor under additional difficulties. As it relates to grants made previous to the 20th of December, 1803, by the Spanish authorities of Texas, the questions arise: Did that district of country belong to Texas? Was it under the jurisdiction of the Viceroy of Mexico; and, if so, had the sub-governor or com-

mandant of Nacogdoches (by whom these grants seem to have been made) the authority to make grants of lands?—All doubtful questions, more appropriately decided by the judicial tribunals.

Claims to lands within the other part of the State of Louisiana and the States of Missouri and Arkansas come under other provisions of law and treaties. The 2d article of the treaty of 30th April, 1803, stipulates that in the cession are included "all public lots and squares, vacant lands, &c., which are not private property." The 3d article of the same treaty declares that the inhabitants shall be incorporated in the union of the United States, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, "and in the mean time they shall be maintained in the free enjoyment of their liberty, property," &c.

The inhabitants, by this clause, were clearly entitled to all the rights and immunities of citizens. In any other of the States of the Union it would not be contended that Congress could deprive claimants of their property without a judicial investigation. Article 3d, section 2, and the 5th article of the amendments of the Constitution, which declares that "*no person shall be deprived of his property without due process of law, nor shall private property be taken for public use without just compensation*," would protect citizens from any such arbitrary proceedings; and the inhabitants of Louisiana, as ceded, are entitled to the same protection.

Claims for large tracts of land in Louisiana, Missouri, and Arkansas exist, some of which have been before Congress for more than twenty years. Some of them are of doubtful character; others have been recommended for confirmation, both by commissioners and committees, after full and fair investigations; yet, from various causes, no final action has taken place. By law they are reserved from sale. Being considered incomplete grants, recourse cannot be had to the judicial tribunals, for the reasons before stated. They thus remain an incubus upon the country in which they are situate.

This long delay of action has led the people to believe, in some cases, that the titles were bad, and would not be confirmed. They have, therefore, settled upon them as upon public lands. In other cases, where favorable reports have been made, it has been taken for granted that the claims would be confirmed, and the people have purchased from the claimants, settled upon, and made costly improvements thereon.

Good policy, and the immutable principles of justice and equity, lead to the conclusion that a remedy should be provided by Congress, to put an end to the uncertainty and vexations attendant on such a state of things. It has been the subject of frequent memorial by the Legislature of Louisiana.

Objections are raised to that part of the bill which provides that confirmation, under the act, shall not confirm title on the claimants to any portion of the land claimed that may have been sold, or otherwise disposed of, under color of any law; also, to the provisions reserving the school lands, and the right of pre-emption to settlers.

To these objections it may be answered, that, under the existing state of things, the claims, even if *bona fide*, are almost worthless; that it would be more unjust and impolitic to disturb purchasers and holders, in good faith, under existing laws; that, as it relates to school lands, it will *be for public use;* that, if settlers have intruded upon the land, it has been owing

to the inattention and neglect of the claimants themselves; that, if the claims prove to be illegal or bad, it will be but an act of justice to grant to the settlers the right of pre-emption; that, in so doing, it will be but to carry out a policy long since adopted and continued for many years; that, even if the claims prove to be legal, it will be no more unjust than the passage of acts of pre-emption and limitation; that the bill provides for giving to the claimant the like quantity of land elsewhere, which will be a *full and just compensation*, more, in many instances, than the claims are worth, under existing circumstances; that it will be optional with the claimants to litigate their claims or not; if they do, it will be an acceptance of the act with all its conditions; if not, they are placed in no worse condition than they now are; that the welfare, peace, and prosperity of the country require that some final decision should be had upon these claims; that, in providing a remedy, conditions, which the common welfare seem to demand, may be improved.

The bill, in the opinion of the committee, presents the most appropriate means of adjusting and putting an end to the claims.