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CONGRESS.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, November 28.

Debate on the bill for authorising the erection of a Dam or Causeway from Mason's Island to the Western shore of the Potomac.

Mr. Nelson said it was with diffidence he again troubled the House after the lengthy discussion which had taken place. But doubts having been originated as to the authority of Congress to pass the bill in question, he felt compelled to remove those doubts as far as lay in his power. As the House had decided the expediency of the measure by a large majority, if upon an investigation it should be demonstrated that Congress possessed ample power to pass the bill, he trusted the same majority would still be found in favor of it. He would proceed to examine the power which Congress possessed to pass the bill, and he trusted that he should be able to satisfy a majority of the House, that they had sufficient power. Previous to the compact between Virginia and Maryland which had been so much talked of, Maryland claimed the sole jurisdiction of the Potomac river, and Virginia claimed Cape Henry and Cape Charles, also the jurisdiction of the Pocomok as her property. In order to prevent any duties from being imposed upon their vessels at either of those places, the two states entered into a compact by which Maryland agreed that the navigation of the Potomac should be free to the people of Virginia, and Virginia contracted not to impose duties on the vessels of Maryland coming by Cape Henry or navigating the Pocomoke. By this compact, the Potomac became the joint property of Maryland and Virginia as to the free navigation, but all the islands were under the jurisdiction of Maryland. This being the situation each of these states by a law ceded to Congress any part of their territory not exceeding ten miles square which they might choose to accept.—Congress chose to accept of part from one and part from the other, and among the rest, this joint property, the river Potomac.—There was no exception made in the act of cession as to the water courses, and it would be needless to inform the members, that a grant of land necessarily carried with it a grant of the waters thereon, unless an exception was made.

But it had been said, that this being joint property, neither of the states had the power to grant it to Congress, and they had not done it jointly. To this he would answer that each state had granted to Congress, all their right at different times, and Congress having accepted of it, the whole had vested in them.—If two persons, to wit, A and B are possessed of joint property, and A grants the whole to C, the moiety passed thereby. After this if B grants the whole to C also, his part passes by the grant and C becomes proprietor of the whole. This was exactly similar to the present case. But he would ask gentlemen if the jurisdiction of the Potomac was not in Congress, in the body of what county was it? If not in Alexandria or Washington counties it could be in no county. Suppose then a crime should be committed on the river, in the body of what county should the indictment state the crime to have been committed? It could not be in the county of Fairfax or Montgomery, because the parts of those counties adjacent to the river had been ceded to Congress. Then if the doctrine contended for by gentlemen was correct, no offence could be committed on the Potomac as far as the limits of the District extend, and it would become a sanctuary for crimes. He trusted this was not the case, but that the river was by the cessions granted to Congress, and was in Washington and Alexandria counties. He considered the argument of his colleague, (Mr. Nicholson) that Virginia had no property in the river which she could cede of no avail—because if that was the case, Maryland owned the whole and Maryland had ceded it to congress. He hoped the committee would be granted leave to sit again.

Mr. J. Randolph. The gentleman asks in the body of what county is the river Potomac passing through the district of Columbia. Will he take it for an answer that its jurisdiction is within the bodies of the same counties it was in before the acceptance of the territory on each side.

In addition to the observations made on passing joint property with exclusive property, suppose England and France to hold Malta in joint possession, and that they cede to Germany for her acquiescence in that measure, some of the exclusive property held by each within the German empire, will they say that their joint property in Malta passed by the treaty?

Mr. Clarke was unwilling to trouble the House at that late hour with any remarks, and would have entirely forborne, was not the question, on which we were about to decide, and which had become extremely important, susceptible of a position which it had not assumed. It had been stated, and generally agreed to, and he supposed was correct, that the state of Maryland previous to her compact with Virginia rightfully claimed the whole river Potomac to the high water mark on the western bank. Virginia owned the capes. This collision of interest produced in the year 1786 an adjustment of their interfering interests, and it was expressly stipulated that the river Potomac should remain a *high way*, free for the navigation of each state. In the year 1790, the legislature of Virginia passed a law making a cession to the United States of a territory ten miles square, or any less quantity, that should be accepted for the seat of the general government, to be located and laid off within *her limits*; thus by the terms of her cession confining it to her territory. Maryland, nearly at the same period, made a similar cession. Out of these two cessions is the present Columbian territory made. It is contended by the gentleman from Maryland (Mr. Nelson) that the two states uniting in the cession makes the grant compleat, and the right in the United States predominant and exclusive. He acknowledges at the same time, this correct principle, that they could grant no greater right than they possessed. This doctrine I hold incontrovertible, that the alinee can have no greater or better title than the alienor; otherwise the derivative would be superior to the original title, a principle not to be admitted.

Let it be distinctly recollected, that prior to the cession Virginia had purchased a right out of the soil of her sister state, distinct from the land, an incorporeal hereditament, a franchise which she had the right of exercising unconnected with the use of the soil—so that while Maryland owned the land, Virginia owned the right of way. She never passed this right by the terms of her cession, or by any other act. Maryland could not, having already parted from it. No strength of argument can be derived from the terms of the constitution; for if Virginia never parted with her right, the United States could never have acquired it. I trust I have shewn that Virginia purchased a right in the navigation of the Potomac, which she never parted from, and of course retains to this moment. We therefore cannot constitutionally legislate on this subject.

Let it not be said, that the object is improvement and not obstruction. Is not building the wall from Mason's island to the Virginia shore an obstruction, and the improvement at best problematical? But this is begging the question—On a fair admission of my construction, I contend, and have endeavoured to prove, that we, possessing no jurisdiction over the river, it cannot be touched by any legislative act of ours in any point whatever. For if it be touched in one way, it may be in another, and may finally end in whatever arrangement Congress may think expedient to make.

TUESDAY, December 11.

The House went into a committee of the whole by a vote of 54 ayes against 30 noes.

Gen. Varnum in the chair.

Mr. *Macon* [Speaker] gave it as his opinion that it would be improper at this time to take up the subject, especially as there was a motion on the table to recede the territory of the district back to the jurisdiction of the states out of which it had been carved; if it is intended to recede the territory, it would certainly be better to recede with as few incumbrances or alterations as possible; indeed the striking propriety of the business taking the course he had just mentioned, had led him to expect that the present bill would not be again agitated until the question of recession had been investigated and decided. He would therefore move that the committee rise and report progress.

Mr. Smilie voted against going into a committee of the whole, on the ground mentioned by the Speaker. If it be the intention of the legislature to recede this territory there certainly was no necessity of discussing the propriety of erecting a causeway; if it be not the intention, when this is manifest it will be time enough to consider the bill before them. From what he had observed on the part of the inhabitants of the district of Columbia, there seemed to be a disposition, if not a determination, to give Congress as much trouble in legislating for them as they had for all the rest of the union. During the present session this single ten mile square had occupied as much of the time of the House, as the whole of the United States, whose general and important business was daily caused to be suspended for the local concerns of this place. From observing this to be the settled course of proceeding he was convinced that Congress must do one of two things, either recede them to their respective states, or put them in a situation capable of managing their own affairs in their own way. The daily pay of the members amounted to a considerable sum, and the length of time consumed on every trifling application for want of some member able to explain the true situation of a district occasioned by its unrepresented state on this floor, were evils much to be lamented, if they could not be remedied. He thought members could hardly justify the waste of their time intended to be devoted to the public, whatever they might think of the expense it occasioned. He hoped the committee would agree to rise.

Mr. Lewis did not think it fair to anticipate the opinion of the House on the question of recession, which he considered would be the effect of the committee's rising. If however the committee shall determine that they would not at this time discuss the present bill, he had no objection to enter on the consideration of the other subject.

Mr. Nelson thought this the proper time to discuss this question even in preference to that of recession. It appears from the petition of the inhabitants of George-town, that the channel of the river, on which the salvation of that town depends, is filling up daily, that the mass of mud would soon encrease to such a degree as totally to ruin the navigation to that port. If even it should be agreed by Congress to recede the territory to the states of Virginia and Maryland, which he wished and hoped in God would not be the case, it would be late in the session and in all probability at a time when neither of those state legislatures will be in session. Supposing both states were willing to accept the recession, which he believed would not be found to be the case, the petitioners could not apply to the Virginia legislature until next December, as their session began in that month, nor to Maryland until next November. A twelve months delay might defeat the object altogether, for the petitioners assert that it requires immediate exertions to prevent the channel filling up altogether.

Again, if the question of recession must be first decided, he saw that it would be an everlasting obstacle to the consideration of the propriety of the measure contemplated by the bill. Suppose a number of gentlemen opposed to the consideration of the question on recession should join with those opposed to the erection of a causeway, the subject will never be called up, neither at this or any future session.—When a petition is presented from George-town to be allowed the object of their present prayer it is in the power of any gentleman inclined to vote against that measure, to lay on the table a motion for recession, and the two will sleep side by side on your table till the rising of Congress. The same argument for this course of proceeding will have as much weight at any future period as at the present time. Hence he inferred that now was the proper season for investigation, and the sooner a decision was obtained the better. He did not think the subject of recession ought to have been introduced on the present occasion, as it did not necessarily connect itself with an improvement of the navigation of the Potomac.

Mr. Macon had stated his reasons for making the motion, and the gentleman from Maryland (Mr. Nelson) had replied that the main question would be eternally suspended, if his (Mr. Macon's) arguments were allowed to prevail; this did not appear to follow from the premises. If there is a majority in favour of the causeway, and the minority attempt to defeat the will of the majority by introducing the question of recession, nothing is more easy than to remove that or any other obstruction thrown in their way. The majority may call up the motion made by my colleague (Mr. Stanford) to recede the jurisdiction to Maryland and Virginia this day if they please—and when they have it before them, it is an easy matter to reject it, and proceed to their favourite measure of daming up the western half of the river.

Mr. Nelson. Mr. Speaker tells us it is easy for a majority to reject any thing they disapprove; true, but when a motion has obtained access to your table, it would be deemed ill manners for any gentleman but the individual who introduced it, to call it up to the attention of the House with a view to turn it out of doors. Politeness or common civility will permit every gentleman to carry on the business he introduces here in his own way; it was for this reason that he had said it never would be called up, but stand an eternal obstacle in the way of the required improvement.

Mr. Sloan reminded the committee of an old saying, the time present only is in our power, the future we know not of. The time present then is the time to redress the grievances of the suffering part of this community, and as the citizens of Georgetown were really embarrassed, and their apprehensions excited of greater danger, he hoped the committee would proceed with the business.

Mr. Stanford seldom troubled the House with any motion. But the one alluded to by his colleague (Mr. Speaker) he had brought forward from a sense of duty: the reiterated applications of the inhabitants of this district for legislative provisions he had always listened to with attention, and he had no objection to proceeding in the discussion of the present bill, convinced that it would only serve to shew the necessity of receding the territory. From all that had hitherto been done, it was apparent that they could not attempt to accommodate one part of the district without drawing forth petitions against the same, from another part; counter petitions were constantly coming in; he was willing to hear every thing, but he did not believe the House could agree to any thing; and it was not to be wondered at when the inhabitants could not agree among themselves, or if the House agreed at this time relative to the objects of the bridge company and the causeway petitioners, it would be, he suspected, to do nothing in either case; all this tended to evince the propriety of adopting the resolution he had laid on the table to recede the territory to the states of Virginia and Maryland, who would then have competent powers to gratify both parties, if they deemed it expedient, of which he was convinced they were better judges than this or any future Congress were ever likely to be.

The question on the committee rising was taken and lost, only 43 members voting in the affirmative.

Mr. Macon then proposed to amend the bill in such a way as to provide for regulating the ferries that might be established across the eastern part of the stream to the causeway, and applying the fund arising from the same for the purpose of keeping the causeway in repair.

Mr. *Lewis* did not conceive it useful to travel over the ground assumed on a former occasion, but would confine himself to state to the committee some information he had acquired since, in respect to the damage the eastern branch or the port of Alexandria was likely to sustain, as had been alleged. Before the year 1784, the channel on the western side was so shallow, that vessels only of very ordinary burthen could pass, while on the Maryland side vessels of great draft of water could easily pass up to George-town. The uncommon hard winter of 1783-4, was followed in the spring by the greatest torrents ever known in the Potomac, the bodies of ice were of immense magnitude, and many of them lodged upon the island, and under the rocks of its bed, prising with a force beyond all credibility, it tore the rocks asunder, and pressed them over into the new channel, occasioning a rise of 30 or 40 feet on the George-town shore. On the Virginia side the torrent also forced itself, and deepened that channel, while it left a vast quantity of mud, rocks and sand, in the eastern channel, which has been constantly accumulating since that period. The situation of the present bar is at the meeting of the two arms of the river below the island, and does not permit the passage of vessels over it drawing more than 12 feet water. The consequence of this alteration in the bed of the river below the island has been to narrow the mouth of the eastern branch; but it had no effect upon the harbor of Alexandria. This will serve to explain what may be the effect of opening the old channel in the way proposed; it may operate to widen the mouth of the eastern branch harbor, but it cannot injure Alexandria.

With regard to the objection stated by his colleague (Mr. Plater) in relation to the power given to the corporation of George-town to tax the additions to that town, he could assure the committee that almost every person in George-town had signed the petition, and as no objection had been made by any person concerned, though the bill had been a long time before the committee, he considered it a tacit acknowledgement on the part of those who had not signed the petition, that they wished the measure might be adopted and carried into execution.

He felt particularly solicitous for the erection of this dam, as it regards the interests of the citizens in the western parts of the states of Virginia, Maryland, and Pennsylvania. For if no steps are taken to improve the navigation below George town, the navigation will soon become so shallow as not to permit sea vessels to come to George-town to carry off the produce which may descend by the Potomac and its improved canals. The destruction of George-town will follow the loss of the navigation, and the western farmers will lose a choice of two rival markets.

While he was up he would add a few words with respect to the right which Congress have to legislate on this subject. He differed entirely from those of his colleagues who held that Congress had no jurisdiction over the river Potomac, because it never was ceded by Virginia. The state of Virginia ceded to her dividing line, and it was immaterial whether that dividing line was high water mark on her shore, or the middle of the channel; for as Maryland has ceded all she had, she cedes up to the Virginia line wherever that may be. For he held it to be sound law that you could not convey a body of territory without conveying all its appurtenances, unless expressly reserved, and neither state had made a reservation of any right, or a part of any right. Suppose A. and B. should hold two adjoining tracts of land, and A. should sell to C. all the tract he held, and B. should also sell to C. all his adjoining tract, would not the whole of the property of A. and B. thereon, of what nature soever it might be, vest solely and exclusively in C. and if a road passed along the line of A. upon the land of B. or part on each of their lands, would it be contended that C. could not keep it in repair, or improve it for his own and his neighbours accommodation without obtaining the consent from A. and B. every time an improvement was required. This statement he considered as a full reply to all that had been urged on this head, and he concluded with repeating his former wish, that the bill might be speedily passed into a law.

Mr. *Clarke.*—When this bill was under consideration some days past I endeavored to shew, and hope with satisfaction, that Congress had not the power of legislating on this subject: The ground I then assumed was, that Virginia had by contract with the state of Maryland, before the cession to the United States, acquired the right of high way on the river Potomac, which she has never granted. It is now unnecessary to enquire into the reasons of this policy; it is sufficient to our present purpose to say it is the fact.

In retracing this subject I find my arguments very much strengthened by examining the articles of agreement between the states of Maryland and Virginia, and this circumstance is the only inducement for my troubling the committee again. The sixth article of the agreement declares that the river Potomac shall be considered as a common high way for the purpose of navigation and commerce to the citizens of Virginia and Maryland, and of the United States, and to those in amity with them. The eighth article declares that all laws and regulations, which may be necessary for preserving and keeping open the channel and navigation of the river, shall be made with the mutual consent and approbation of both states. If a doubt remained heretofore, it appears to me this must remove it, and time will be spent in vain to illustrate the subject.

My colleague (Mr. Lewis) supposes, that as the two states have ceded the territory, that all that either or both possessed, passed by the grant; but let it be recollected, this was a several and not a joint conveyance, and nothing more passed than is embraced by the terms of the grant; and Virginia has expressly limited it to her territory, and cautiously avoids yielding any right she had acquired from the state of Mary-