THE YAZOO LAND FRAUDS

by

Richard D. Younger, B.S., L.L.B.

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PREFACE

The Yazoo frauds have been described as one of the blackest scandals in American history but their historical importance does not stem from that fact alone. They created momentous and perplexing problems which plagued the nation during its early years and gave rise to a legal struggle which resulted in one of the foremost constitutional pronouncements of Chief Justice Marshall.

It has been the purpose of this thesis to attempt a study of the many questions which were raised by the Yazoo frauds as well as the steps taken toward their settlement. Particular emphasis has been placed upon the decision in Fletcher vs. Peck and its significance because in this case, through the medium of the Yazoo controversy, the Supreme Court was established as the final judge of constitutional questions over all state courts.

CHAPTER I

CONFLICTING CLAIMS TO THE YAZOO TERRITORY

Few events in the early history of the United States have aroused more widespread hostility and bitterness than the Yazoo fraud. Certainly no other event agitated cabinets, members of Congress and courts over so long a period of time. This sale was only one among many such land speculations of the period but because of a unique sequence of events, it rose from its origins in the corrupt deals completed in the cloakrooms of the Georgia Legislature to assume a prominent place in the national political picture. The frauds raised grave questions of law and equity which were to be decided among the turmoils of partisan politics. Over a twenty-year period many of the most prominent men in the nation played a part in settling what came to be known as the "Yazoo Question." More than once it threatened to split the political party in power. Candidates for public office were defeated or elected because of their stand upon the issue. Generations of Georgians took it upon themselves to avenge the Yazoo land grab.

At the close of the Revolution, title to the western lands claimed by the State of Georgia was not well established. Georgia asserted its right to the territory bounded on the north by a line running west from the source of the Savannah River to the Mississippi River, on the west by the

Mississippi River, on the south by the 31st parallel, and on the east by the Chattahoochee River.[1] However, this area was not without other claimants. South Carolina claimed as being within the limits of her original charter that portion of the land lying between the North Carolina border and a line running due west from the mouth of the Tugaloo River to the Mississippi River.[2] That state also laid claim to all lands between a line drawn west from the head of the Altamaha River to the Mississippi River and a line from the head of the St. Mary River to the Mississippi. The United States claimed the entire area by virtue of the Royal Proclamation of 1763 which severed the western lands from Georgia and reserved them to the English Crown.[3] The federal government also contended that the Province of West Florida had been extended in 1764 to include all territory south of a line drawn from the mouth of the Yazoo River east to the Chattahoochee.[4] Thus, according to the contentions of the United States, title to the western lands was not vested in Georgia at the close of the Revolution but passed directly to the federal government under the terms of the Treaty of Paris of 1783.

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[1] William B. Stevens, A History of Georgia, II, 461.

[2] Roscoe R. Hill (ed.), Journals of the Continental Congress, XXXIII, 469.

[3] American State Papers, Public Lands, I, 37.

[4] Ibid., 66. See also, Cecil Johnson, British West Florida, 6.

The territory south of the Yazoo line was also claimed by Spain as a result of its conquest of West Florida from the British. By the terms of the treaty of 1783 negotiated between England and Spain in Paris, the Floridas were ceded to Spain but boundaries were left undefined.[5] Contending that West Florida had been extended by the British north of the original boundary of the 31st parallel to 32° 30', the Spanish claimed this additional territory also. The Spanish claim was further complicated by the provisional treaty between England and the United States which provided for a northern boundary of 31° for West Florida in case the province remained in Spanish hands. In the event Britain was able to regain possession, the boundary was to be 32° 30'.[6] In the face of these conflicting assertions, Georgia cited the commission of Governor James Wright, dated January 20, 1764, which returned the western lands to the Georgia government and denied the extension of West Florida.[7]

The fact that Georgia's title to the lands was in dispute was not the only difficulty standing in the way of their exploitation. Possession was in the hands of powerful Indian tribes, the Chicasaws, Choctaws, Cherokees and Creeks. Both the United States and Spain vied with each

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[5] Johnson, p. 219.

[6] Hunter Miller (ed.), Treaties and Other International Acts of the United States, II, 101.

[7] American State Papers, Public Lands, I, 66.

other for their support. The federal government claimed a protectorate over the Indian tribes, a policy which determined in a large measure the attitude of President Washington toward the subsequent Georgia land sales.

The first of the claimants to drop from the picture was South Carolina. In the Beaufort Convention signed April 28, 1787, the land dispute between South Carolina and Georgia was settled in the latter's favor. South Carolina agreed not to claim any lands east, southeast or west of the Georgia-South Carolina boundary. All right, title and claim of South Carolina to the western territory was thus relinquished to Georgia.[8]

Several times after the Beaufort Convention, the Congress of the Confederation urged Georgia to cede its western claims to the United States. Following this suggestion, but not without reservations, on February 1, 1788, the Georgia legislature passed an act for the cession of a strip of its western territory 140 miles wide immediately north of the 31st parallel. This was to be done only upon condition that the United States guarantee all remaining territorial rights of the state as set forth in the treaty of 1783 between the United States and Great Britain and the convention of 1787 with South Carolina.[9] Georgia's cession offer was rejected

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[8] Journals of the Continental Congress, XXXIII, 472.

[9] Ibid., XXXIV, 320.

by the Continental Congress which considered such a special guarantee of territorial rights to be contrary to the spirit and meaning of the Articles of Confederation.[10] When the Constitution of the United States went into effect, Georgia still retained its claim to western lands.

The inauguration of President Washington found Georgia as the poorest and most thinly populated of all the states. Its treasury was practically empty, its currency badly depreciated and its most valuable asset, the public domain, was the subject of conflicting claims. It is little wonder that under such circumstances the state was tempted to realize as much money as it could, as quickly as possible, lest it lose all in a legal test of its title. As early as February 1785, Georgia had authorized the organization of a western county to be known as Bourbon. It was to be restricted to lands already relinquished by the Indians but because of the intervention of Spanish claimants the act was repealed a short time later.[11]

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[10] Journals of the Continental Congress, XXXIV, 325.

[11] American State Papers, Public Lands, I, 100.

CHAPTER II

THE FIRST GEORGIA LAND SALE

Not long after the repeal of the act, a group of persons organized themselves into the "Combined Society" for the avowed purpose of influencing the Georgia legislature to make large grants of land from the public domain.[1] The object of the group was to profit from speculation in western lands but they were unable to execute their plans. Thereafter, Georgia was rife with the spirit of speculation and it was not long before the newly organized South Carolina Yazoo Company made application in November of 1789 to the Georgia legislature for the purchase of land. Listed as original members of this company were Alexander Moultrie, Clay Snipes and Isaac Huger, all of South Carolina, and Major Thomas Washington, alias Thomas Walsh, a notorious swindler who was eventually hanged for forgery.[2] Applications were also received at the same time from two other land companies, the Virginia Yazoo Company headed by Patrick Henry and the Tennessee Company led by Zachariah Cox.[3] While these applications were under consideration by a special committee of both House and Senate, a fourth company appeared on the scene under the name of the

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[1] Stevens, II, 463.

[2] American State Papers, Indian Affairs, I, 114.

[3] Ibid.

Georgia Company. It was composed of leading citizens of Georgia who wished to prevent Carolians and Virginians from obtaining large tracts of their state lands. They offered a higher price for the territory but a motion to include this new company in the sale was defeated as was an amendment to increase the price demanded for the land grants.[4]

The first Yazoo Act passed both houses of the legislature and was signed by Governor Talfair December 21, 1789. It provided for the reservation of five million acres as a preemption for the South Carolina Yazoo Company, for which $66,964 was to be paid the state within two years. Seven million acres were reserved to the Virginia Yazoo Company at the purchase price of $93,741 and three and a half million acres for the Tennessee Company at $46,875, all payments to be made within two years.[5]

The most active of the three companies which received grants under the first Yazoo Act was the South Carolina Company directed by Alexander Moultrie, recent Governor of South Carolina. Moultrie took immediate steps to realize a profit from the land sale and because much of the territory was wilderness, his first plans called for recruiting

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[4] Charles H. Haskins, "The Yazoo Land Companies," American Historical Association Papers, V (1891), 400.

[5] American State Papers, Indian Affairs, I, 114.

and initiating a colony to create a market for the resale of the land. Toward this end, it was necessary to obtain both the sanction of the Spanish who also claimed the area and the support of the southern Indian tribes. It was thus with the intention of obtaining the services of some person who could enlist the aid of Spain on behalf of the colony that Moultrie wrote one Benjamin Farrar, a planter in the Natchez district. In this letter of January 24, 1790, the South Carolinian sought to impress Farrar with the certainty with which members of the company regarded the success of their colonization schemes, writing that all three land companies would shortly be "powerfully settled" in their respective areas. Members of the companies were referred to as "powerful influential characters in Virginia, North Carolina, Kentucky and over a vast extent of the continent."[6] Attempting to secure Farrar's intervention with the Spanish authorities on behalf of the project, Moultrie described in glowing terms the rewards which would accrue to members of the South Carolina Company of which Farrar was to be one. Writing of relations with Spain, Moultrie hinted at a separation of the colony from the United States, saying, "Instead of being encroachers or intruders or molesters of their peace and happiness, we shall prove a useful barrier to them and our friends of the upper country."[7]

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[6] Arthur P. Whitaker, "The South Carolina Yazoo Company," Mississippi Valley Historical Review, XVI (1930), 387.

[7] Ibid., 386.

As for the Indians who occupied the Yazoo territory, the head of the South Carolina Company sought to obtain their support through the half breed leader of the Creeks, Alexander McGillivray. This unique Indian leader had been born and reared in the Creek Nation, but educated at Charleston and Savannah,[8] and thus equipped, he was not to be as easily duped as Moultrie might have thought. In a letter of February 19, 1790, Moultrie offered McGillivray in exchange for his assistance 295,000 acres. All that was asked of the Creek Chief as a prerequisite to receive this land was that he influence the Choctaw and Creek tribes not to oppose the proposed settlement. As an additional lure, Moultrie expressed the opinion that the Indians would benefit greatly as a result of increased trade with the settlers and told McGillivray the day may come when "their next generations may shine in the councils of America."[9]

As its agent for the colonization attempt, the South Carolina Yazoo Company chose James O'Fallon, physician, Revolutionary soldier and brother-in-law of George Rogers Clark. In instructions dated March 9, 1790, sighed by Moultrie, O'Fallon was ordered to establish a colony at the mouth of the Yazoo River. In pursuance of this, he was to conciliate the Indians and establish amicable relations with

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[8] John W. Caughey, McGillivray of the Creeks, ix.

[9] Whitaker, "The South Carolina Yazoo Company," p. 393.

the Spanish Government at New Orleans.[10] O'Fallon left for Kentucky where he planned to recruit a group of settlers and adventurers while at the same time making contact with the Spanish authorities.

While the South Carolina Company was bending every effort to push its colonial scheme, Secretary of War Knox notified President Washington, April 28, 1790, of the sale of western lands by the State of Georgia, informing him that subsequent attempts to settle the territory granted, might result in disputes between the United States and the Southern Indian Nations.[11] Two days later, the President discussed a proposed proclamation regarding the threatened encroachment upon the Indian lands with the Secretary of the Treasury, Alexander Hamilton and then turned the pronouncement over to Secretary of State Jefferson for his opinion.[12] Jefferson complied with the President's request in an opinion dated May 3, 1790, in which he noted that by the terms of the Georgia grants Indian rights were not acquired by the Yazoo purchasers. The grantees were only given the privilege of perfecting their title under the authority of the state government. He pointed out further that there are only two

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[10] John C. Parish, "The Intrigues of Dr. James O'Fallon," Mississippi Valley Historical Review, XVII (1931), 239.

[11] John C. Fitzpatrick (ed.), The Diaries of George Washington, IV, 123.

[12] Ibid., 125.

means by which native title may be acquired, by war and by treaty. Since both of these means were ceded to the general government under the Constitution, Jefferson concluded that Georgia could convey only what she had the exclusive right to acquire but not the means of acquiring.[13] In spite of Georgia's inability to grant to its purchasers the power to extinguish Indian rights to the land, Jefferson did not approve of a presidential proclamation on the matter at this time. He informed the President that he had been reliably informed that a party in Georgia opposed the land sales. His advice was to work through this group to secure the repeal of the legislative acts.[14] He also suggested that the United States send a representative to the Indian tribes to inform them of the central government's opposition to the Georgia land policy.

In the meantime, O'Fallon had arrived in Kentucky as the representative of the South Carolina Yazoo Company and had lost no time in securing the support of James Wilkinson for his plans. Contact was established with the Spanish and O'Fallon outdid himself in expressing his devotion to their cause. Writing to Governor Esteban Rodriguez Miro, Spanish Governor at New Orleans, May 24, 1790, he referred to his "natural disposition to contribute to the glory and

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[13] Paul L. Ford (ed.), The Writings of Thomas Jefferson, VI, 55.

[14] Ibid., 57.

prosperity of the Crown which you serve," as one of the principal reasons for communicating with the Governor. O'Fallon confided further, that he had long thought of establishing a state, which though nominally free and independent, would actually be "a slave of Spain."[15] Continuing in this vein, O'Fallon said he believed all land west of the mountains would eventually separate from the United States and seek the protection of the Spanish. To make such predictions come to pass, O'Fallon requested only that the Governor of Louisiana secretly cooperate in the establishment of the projected colony.[16] The Georgia land agent repeated these predictions of Spanish greatness in a second letter to Miro dated July 16, 1790, emphasizing that only a sign of Spanish friendship was needed to draw all western settlements from the American Union.[17] However, unknown to O'Fallon, the Spanish Governor did not have to rely solely upon the fanciful phrases of the Yazoo Company representative; he was constantly informed in detail of the South Carolina Company's plans by Wilkinson, who was in the pay of the Spanish.[18]

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[15] Charles Gayarre, History of Louisiana, II, 288.

[16] Ibid., 290.

[17] Whitaker, "The South Carolina Yazoo Company," 386.

[18] Parish, 240.

During this period, the Creek leader, Alexander McGillivray found himself courted by the Spanish and American governments as well as the head of the South Carolina Company. The Chief had rejected the overtures made by Moultrie in January 1790 to deal him in on the profits of the land speculation in return for Indian support. Writing on May 8, 1790, to William Panton, English Indian trader, McGillivray indicated that he not only would not accept the Moultrie offer but would oppose with force any attempt to settle the land. He explained his position by pointing out that the Georgia grants included hunting grounds belonging to the Creeks, Cherokees and Chickasaws.[19]

As had been recommended by Thomas Jefferson, the President sent Colonel Marinus Willett as his special envoy to the Creek Nation for the purpose of urging McGillivray to come to New York and negotiate a treaty of peace and friendship with the United States.[20] The Creek Chief was much impressed with the proposition offered by Colonel Willett and wrote Governor Miro on June 2, 1790 that he was weary of war and would not hesitate to accompany Commissioner Willett to New York.[21] Before a Spanish representative could reach him to persuade him otherwise, McGillivray left on the long

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[19] Caughey, 259.

[20] Fitzpatrick, The Diaries of George Washington, IV, 95. See also, Albert J. Pickett, History of Alabama, 399.

[21] Caughey, 290.

journey to New York accompanied by an entourage of twenty-six chiefs and warriors. The party camped outside the capital and after many delays caused by the various festivities and the illness of the Creek Chief, a treaty was concluded August 7, 1790. Under its terms, McGillivray took the oath of allegiance to the United States and was placed on a monthly salary of $100. All parts of the Creek Nation lying within the boundaries of the United States were to recognize the sovereignty of the federal government over them. A boundary line between the United States and the Indian lands was agreed upon and to counter the efforts of the Yazoo companies it was stipulated in the agreement that all Indian traders without a license from the federal government would be excluded from Creek towns.[22]

One of President Washington's principal objectives in concluding this agreement with the Creeks was to defeat the designs of the Georgia land companies which threatened to embroil the nation in war with both the Indians and Spain. There can be little doubt that this same thought was in the mind of the wily Creek Chief, for after having signed the treaty, he remarked, "I signed the death sentence of the Company of the Yazoo."[23] In this statement, the Indian leader was not far from wrong, for shortly thereafter, on

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[22] American State Papers, Indian Affairs, I, 81-82.

[23] Caughey, 46.

August 26, 1790, President Washington issued a proclamation setting forth the laws and treaties of the United States which protected the rights of the Indians, and ordered that they be observed by all persons, or "they will answer the contrary at their peril."[24]

On September 25, 1790, James O'Fallon wrote President Washington asking for governmental permission to arrange for trade between the Indians and the South Carolina Yazoo Company.[25] Such authority was not granted but O'Fallon continued through the winter of 1790 to make extensive preparations for an expedition to the Yazoo country and he secured the consent of George Rogers Clark to command the troops being raised. On receipt of information regarding these activities, the President referred the matter to Secretary of War Knox for his advice in the matter. The Secretary called attention to the possibility of war with Spain if the projected colonization of the South Carolina Company was attempted. He concluded that the United States Government must prevent, with armed force if necessary, the proposed invasion of the Indian lands.[26]

As the threatening affairs on the frontier reached a culmination, President Washington's next action was to warn

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[24] James D. Richardson (ed.), Messages and Papers of the Presidents, I, 80.

[25] American State Papers, Indian Affairs, I, 115.

[26] Ibid., I, 112.

the people of the west regarding O'Fallon's activities. In a proclamation issued March 19, 1791, the President referred to James O'Fallon by name, as being engaged in the levying of an army to act contrary to the laws and treaties of the United States. All persons associated with him were warned that they were in danger of prosecution.[27] Two days later the United States Attorney for the District of Kentucky was ordered by Thomas Jefferson to proceed against O'Fallon in accordance with the law.[28] Secretary Knox notified Major General Arthur St. Clair of Jefferson's action, informing the General if this did not stop their plans, the War Department was considering the use of troops.[29]

As a result of the steps taken by the federal government, the progress of O'Fallon's plans ceased abruptly and he was forced to abandon the project to settle Yazoo lands. Bowing to the inevitable, Alexander Moultrie wrote President Washington, October 1, 1791, informing him that his company had changed its plans about colonizing.[30] The President's answer commended Moultrie for his good sense in changing plans and reiterated that not to have done so would have been in direct violation of the laws and proclamations of the United States.[31]

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[27] Richardson, I, 101.

[28] Ford, V, 305.

[29] American State Papers, Indian Affairs, I, 171.

[30] John C. Fitzpatrick, The Writings of George Washington, XXXI, 411.

[31] Ibid., 411.

While the President was thus engaged in halting the progress of the South Carolina Yazoo Company, the Virginia Yazoo Company and the Tennessee Company also went ahead with plans to settle the land purchased from Georgia. Washington was informed by Juno Lewis on April 9, 1791, that Patrick Henry was interested in the Virginia Company and that he had said when asked about the Indian rights to the land, if Congress refused to protect the settlers, the group would "have recourse to their own means to protect the settlement."[32] However, Patrick Henry and his fellow members of the Virginia Yazoo Company did not have to go to such lengths to realize a profit on their land speculation. In a letter written April 24, 1791, to President Washington, Thomas Jefferson indicated that Patrick Henry and the others in his company were quite willing to allow the Yazoo deal to fall through. They had collected large amounts of paper money to be tendered in payment for the land, but now as a result of Hamilton's funding system, they had gained as much as they would have by investing in land.[33]

The continued efforts of Zachariah Cox and the Tennessee Company to establish a settlement at the Muscle Shoals had alarmed the Indians. Writing to Governor Miro in June 1791, McGillivray told of having received authentic information

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[32] Fitzpatrick, The Diaries of George Washington, IV, 157.

[33] Ford, V, 324.

the previous April that the Tennessee Company was about to attempt to erect a fort at the Muscle Shoals preparatory to the founding of a permanent settlement. Because this was in direct violation of the recently signed treaty, the Creek leader told of having sent a large party of warriors to "attack and destroy" any such settlement.[34] No Americans were found by McGillivray's braves, but lookouts were posted in the area as a precautionary measure. In October 1791, the President in a letter to the Attorney General called attention to the fact that agents of the Tennessee Company were advertising publicly for settlers offering them free land and other inducements.[35] Faced by the threat of Indian attacks and the determination of President Washington to use all resources at his command to prevent settlements upon the Indian lands, the Tennessee Company was obliged to abandon its plans for a fort at the Muscle Shoals.

Not only had the three Yazoo Companies been unsuccessful in their attempts to settle and sell their western lands but as the two year period for payment of the purchase price drew to a close, not one of them had been able to exercise its right of preemption. The three companies had collected large amounts of Georgia, South Carolina and Continental paper money which they tendered to the State Treasurer of

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34 Caughey, 291.

35 Fitzpatrick, The Writings of George Washington, XXXI, 386.

Georgia, but he refused to accept this in payment for the land, because a subsequent resolution of the legislature had instructed him to receive payments due the state only in specie.[36] The Yazoo purchasers contended that payment in specie was not provided for in the act granting the right of preemption and was not within the contemplation of the parties to the sale. Failing to obtain redress and denied any part in the later Yazoo sale of 1795, the South Carolina Yazoo Company filed a bill in equity against the State of Georgia and the grantees under the second Georgia land sale, calling upon the Supreme Court of the United States to exercise its original jurisdiction. The suit, Moultrie vs. Georgia, came before the court in August 1797, but was adjourned. By the time it again came up for argument, the eleventh amendment to the constitution had been adopted, depriving the Supreme Court of all jurisdiction in any suit instituted by citizens of another state.[37] Thus deprived of their equitable remedy in the courts, the companies which took part in the first Yazoo purchase had no other course but to await the time when the State of Georgia would cede its western lands to the United States and then apply for Congressional relief. The efforts of

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[36] American State Papers, Public Lands, I, 257.

[37] Hollingsworth vs. Virginia, 3 Dallas 377.

these earlier purchasers to obtain redress, suffered because in the public mind they were generally associated with the much hated sale of 1795.

CHAPTER III

THE SECOND GEORGIA LAND SALE

The inability of the three original Yazoo land companies to benefit as a result of their grants did not lessen speculative interest in the public lands of Georgia. Wade Hampton offered to refinance the purchase of the Tennessee Company, but could not obtain legislative approval.[1] Success finally crowned the untiring efforts of the speculators when proposals made in November 1794 for the purchase of land were reported favorably by a legistive committee. This joint committee of both houses of the Georgia legislature reported December 3, 1794, that it would be "right and proper" to sell portions of the public domain at the present session. The committee also expressed the view that it was best to sell to companies rather than to individuals and stated that offers already received were in its opinion, "liberal and right."[2] A minority of this committee presented an amendment to the report which stated that it was not in the best interest of the state to accept the offers but the amendment was defeated.[3]

Pursuant to the report of the legislative committee, those persons applying for land hastily organized themselves

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[1] American State Papers, Public Lands, I, 139.

[2] Stevens, II, 467.

[3] Ibid., 468.

into stock companies. Companies chartered to take part in the second Yazoo sale included the Georgia Company, headed by General James Gunn, United States Senator from Georgia; the Georgia Mississippi Company incorporated by Nicholas Long, Thomas Glascock and others; the Tennessee Company led by Zachariah Cox and the Upper Mississippi Company which included Wade Hampton of South Carolina.[4] Anxious to prevent a second land grab several prominent citizens of Georgia set up the Georgia Union Company. They offered $90,000 more than the others and agreed to reserve twice as much land for the citizens of Georgia. This new proposal was referred to a legislative committee which reported its advantages and disadvantages but the offer was rejected in the House by a vote of 12 to 14.[5] All amendments to modify this appropriation of the public lands were defeated and the second Yazoo Act passed both chambers and was sent to the Governor for his signature. Contrary to the expectations of most persons, Governor Matthews vetoed the bill. He gave as his reasons the fact that this was not the proper time to dispose of the western lands, that he believed the price to be inadequate, that an insufficient amount of land had been set aside for Georgia citizens, and that other prospective purchasers were not given sufficient notice of the sale.[6]

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[4] American State Papers, Public Lands, I, 149.

[5] Stevens, II, 469.

[6] American State Papers, Public Lands, I, 152.

Undaunted by the Governor's veto, a legislative committee was appointed to confer with him and work out a new bill acceptable to both. With few changes, this new act passed the House of Representatives January 2, 1795, and the Senate January 3, 1795, as a rider to a routine appropriation for the state troops.[7] This time Governor Matthews signed the bill, saying that his objections to it were legislative rather than constitutional.[8] The second Yazoo Act became law January 7, 1795, under the innocent sounding title, "An act supplementary to an act for appropriating the payment of the state troops."[9] As such, its provisions were far from innocent for it was this act which was destined to make all Georgia rise up in wrath and fury and demand its repeal. Grants of land were made to four companies. Senator Gunn's Georgia Company was to receive approximately seventeen million acres extending from the Mississippi River east to the Alabama and Coosa Rivers for a payment of $250,000.[10] The Georgia Mississippi Company was given the area between 32° 40' and 31° 18' from the Mississippi River east to the Tombigbee River for $155,000.[11] The Upper Mississippi Company was granted a strip of land twenty-five miles wide

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[7] Ibid., 144.

[8] Stevens, II, 470.

[9] American State Papers, Public Lands, I, 144.

[10] Ibid., 153.

[11] Ibid., 154.

along the Tennessee border stretching from the Mississippi River to the Tennessee River for the sum of $35,000.[12] The Tennessee Company, in exchange for $60,000 received four million acres along the banks of the Tennessee River.[13] Title to these lands was granted to the members of the various companies as tenants in common. One-fifth of the purchase price was due upon receipt of evidence of title from the state with the balance due before November 1, 1795. The bill provided for mortgages to the state to secure the unpaid balance. The grantees took title, subject to the rights of the Indians and they were to extinguish such rights at their own expense. A total of two million acres was reserved for the benefit of citizens of Georgia on the same terms.[14]

Not long after this second Yazoo Act was made public, charges of bribery and corruption were raised throughout the State of Georgia. Because of these charges, it is important to examine the conditions under which the Georgia legislature was persuaded to part with over twenty-five million acres of public land at one-half cent per acre. Original public records of this sale have been either lost

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[12] Ibid.

[13] Ibid., 155.

[14] Ibid., 152-155.

or destroyed,[15] but one is able to obtain a very clear picture of the situation which prevailed from the many affidavits secured by the Presidential Investigating Committee appointed in 1800.[16]

Senator James Gunn has been termed the "watchman" of the speculators in Washington.[17] It was he who informed them, before the fact became public, that negotiations were being entered into with Spain for the cession to the United States of all Spanish claims north of 31°. Such a cession would greatly enhance the value of Georgia's western lands so the friends of Gunn sought to obtain their grants while the Yazoo area was still encumbered by this claim. John Randolph of Roanoke, later the most bitter foe of the Yazooists, pointed to General Gunn's reelection to the Senate in November 1794, by the Georgia legislature as the signal to land hungry men of the North that the state was willing to dispose of its public domain.[18]

Whatever prearranged countersigns the group of speculators may have had, one need only glance at the results to determine just how successful their lobbying tactics were. Every vote for the act in both houses, was a corrupt

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[15] Haskins, p. 400.

[16] American State Papers, Public Lands, I, 111.

[17] Absalom Chapell, Miscellanies of Georgia, 71.

[18] Annals of Congress, 8th Cong., 2nd sess., 1103.

one, except that of one Robert Watkins.[19] Led by the swaggering Senator Gunn, the speculators descended upon the small town of Augusta and flagrantly used all possible methods to engineer the passage of the Yazoo Act. They did not hesitate to buy the necessary votes. There was no limit to the various things offered the legislators as bribes. As an example of the dishonesty which prevailed, a member of the Georgia Assembly, Representative Roburn, was given $600 cash for his vote but other members of the House received as much as $1,000 each.[20] Senator Thomas Wylly was offered eight or ten "likely negroes" if he would vote for the bill, while a fellow Senator, Clem Lanier, was told he could have 50,000 acres of land put in his name.[21] Senator Gunn himself offered one James Simms 50,000 acres of land for each Senator he could persuade to support the sale saying to him, "You now have an opportunity of making something handsome for yourself and family.[22] Judge Stith of the Georgia Superior Court received $13,000 from Gunn in return for his influence in securing the bill's passage.[23] Representative John Shepperd told of frequent conversations with William

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[19] Chapell, 91.

[20] Affidavit of Russell Jones, American State Papers, Public Lands, I, 144.

[21] Affidavit of Clem Lanier, Ibid., 145.

[22] Affidavit of James Simms, Ibid., 147.

[23] Avvidavit of Henry Caldwell, Ibid., 148.

Longstreet, a member of the legislature and leader of the Yazoo faction, in which he was urged to vote for the act in return for shares amounting to ten thousand acres of land. Because Shepperd would not enter into such a deal, Philip Clayton, State Treasurer, offered him seventy pounds sterling if he would go home and not return.[24] Clayton also asked one Robert Raines to persuade his brother-in-law, Senator Mitchell, to leave town for awhile. Raines was told he could have $500 plus any appointment that he desired from the legislature.[25]

Beside being distinguished by the brazen tactics which they employed, the crowd of speculators was marked by the large number of prominent men which they counted among their collaborators. Included among these were Justice James Wilson of the United States Supreme Court whose name was put down for 750,000 acres,[26] Nathaniel Pendleton, Judge of the Federal District Court in Georgia, Robert Goodloe Harper and Thomas P. Carnes, members of Congress,[27] and Wade Hampton of South Carolina.[28]

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[24] Affidavid of John Shepperd, Ibid., 146.

[25] Affidavit of Robert Raines, Ibid., 149.

[26] Ibid., 141.

[27] Ibid., 147.

[28] Ibid., 197.

It took several months for the full significance of the Yazoo land grab and the news of its attendant corruption to reach the people of Georgia. In the meantime, President Washington saw in the sale another threat to relations between the United States and the southern Indian tribes. On February 17, 1795, he sent copies of the Georgia laws to Congress together with the comment, "These acts embrace an object of such magnitude and in their consequences may so deeply affect the peace and welfare of the United States."[29] The committee of the House to which the Presidential message was referred reported that only danger could come to the United States as a result of selling individuals land to which the Indian titles had not yet been extinguished.[30] A resolution was passed by the House recommending that the President use all constitutional and legal means to prevent the violation of Indian treaties by citizens of the United States.[31]

In the Senate, James Jackson of Georgia presented the act of the Georgia legislature together with a resolution approving in advance any treaty concluded by the President to secure from the Indians their rights to the territory sold by Georgia. In doing so, Senator Jackson either did not

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[29] Annals of Congress, 3rd Cong., 2nd sess., 826.

[30] American State Papers, Indian Affairs, I, 558.

[31] Annals of Congress, 3rd Cong., 2nd sess., 1251.

realize the full implications of the Yazoo Act or he did not expect the people of his state to rise up in indignation as they did for he showed no particular hostility to the land sale at this time.[32] In view of subsequent events, it is curious to find the first hint of Congressional opposition coming from a Representative of the North. In February 1795 Congressman Fisher Ames of Massachusetts wrote regarding the Georgia land sale, "The Georgia land speculation calls for vigor in Congress. Nearly fifty million acres of land sold by Georgia for a song threatens Indian, Spanish and Civil Wars. Energy at first may prevent all."[33] But even this warning made no mention of the methods by which the act had been passed.

The Senate committee which had been considering the Georgia law submitted a resolution requesting the President to direct the Attorney General to collect and report to the Senate all documents bearing upon title to the western claims of Georgia.[34] This resolution was passed by the Senate and agreed to by the House.[35] Pending the report of the Attorney General, Congress passed an act designed to further safeguard Indian lands from white occupation. This law of May

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[32] Ibid., 838.

[33] Seth Ames, Works of Fisher Ames, I, 168.

[34] Annals of Congress, 3rd Cong., 3nd sess., 844.

[35] Ibid., 1282.

16, 1796, established a boundary line between the United States and the Indian tribes of the South and provided a penalty for all persons entering the territory of the Indians without a passport. A fine of $100 was fixed for settling on Indian lands and the President was authorized to employ military force to remove such persons.[36]

A veritable storm of fury broke over Georgia when the people came to realize the magnitude of the land swindle. Denunciations echoed from public meetings held in all parts of the state. A majority of the counties through their grand juries pronounced against the Yazoo Act and tumultuous crowds hanged Senator Gunn in effigy.[37] As opposition to the land grants gained momentum, Senator Jackson resigned his Senate seat to lead the fight for its repeal. The first governmental body to meet after the sale was a constitutional convention provided for in the Georgia Constitutional convention provided for in the Georgia Constitution of 1789. As a result, the public turned to this body for redress and sent to it hundreds of petitions and memorials calling upon the convention to abrogate the Yazoo grants.[38] This constitutional convention was dominated largely by persons interested in the speculation schemes and no action

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[36] Statutes at Large of the United States, I, 469.

[37] Chapell, 98. See also, Albert J. Pickett, History of Alabama, 449.

[38] Ethel K. Ware, Constitutional History of Georgia, 75.

was taken upon the public protests except to preserve them for presentation to the next legislature.[39]

The constitutional convention had made only slight changes in the constitution when it was adjourned until 1798 because of the excitement which prevailed. Even the few alterations which were made were termed an accessory to the frauds by the anti-Yazoo group. It was charged that moving the date for the meeting of the legislature from the first Monday in November to the second Tuesday in January gave the speculators additional time in which to dispose of their purchase.[40]

Senator James Jackson campaigned for a seat in the state legislature and he led the anti-Yazoo faction to victory in the election of November 1795. The first action of the new leaders was to pass a bill repealing the Yazoo sale. This rescinding act set forth in a lengthy preamble the arguments for the unconstitutionality of the land grants. Foremost among these was that the legislature had overstepped the powers granted it under the constitution which stipulated that it was authorized to enact laws only "for the good of the state." As if in answer to the argument regarding the federal guarantee of the obligation of contracts, the rescinding act held it to be a fundamental

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[39] American State Papers, Public Lands, I, 157.

[40] Chapell, p. 123.

principle of law and equity that "there cannot be a wrong without a remedy."[41] The body of the law declared the "usurped act" null and void and annulled all titles emanating from it. Detailed instructions were included for disposing of the hated law. The two Houses of the legislature were directed to assemble, at which time the Yazoo Act was to be expunged from all records. It was then to be publically burned in order to remove "all trace of so unconstitutional, vile and fraudulent a transaction." All money deposited with the State Treasurer pursuant to the sale was to be returned and notice of the Rescinding Act was ordered published throughout the United States to prevent fraudulent resales.[42]

Complying with the terms of the Rescinding Act, all papers relating to the Yazoo transaction were burned before the capitol building in Louisville. This followed an impressive ceremony in the presence of the Governor and members of the legislature in which all evidence of the land sale was cut from the public records. Tradition has it that these papers were ignited by means of a sunglass so as to call upon the fire of heaven to consume them.[43] Although they had wiped the Yazoo Act from the books, the

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[41] American State Papers, Public Lands, I, 156-157.

[42] Ibid., 158.

[43] Pickett, 449.

people of Georgia did not easily forget either the corruption which had attended this sale or those persons who had engineered it. All men who had taken part in the transaction and even those only remotely connected with it were stamped alike with the name "Yazooist." This title alone was sufficient to make it impossible for a person to hold public office. The full implications of the term "Yazooist" as it was applied in rural Georgia in the quarter century following the frauds is well indicated by Judge Chapell who recalled from his earliest years hearing his elders speak of the attempted swindle. Referring to this epithet he said, "To the sons of ambition it was the deadly political sin of that era, and for it no length of time or depth of penitence or merit of subsequent demeanor could ever bring amnesty or oblivion."[44]

Members of the Yazoo companies had not been idle in the period between the sale and its recision. They knew well that the new legislature would nullify their purchase so they set about disposing of the land as rapidly as possible to purchasers who knew nothing of the impending recision. The Georgia Mississippi Company opened an office in Boston for this express purpose. In September 1795 it entered into a covenant with a group of purchasers for the sale of

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[44] Chapell, 98.

its share of the lands. Most of these purchasers were from New England and New York and knew very little of the unsettled conditions in Georgia. The sale was completed February 13, 1796, just one day after the passage of the Georgia rescinding act.[45] Title passed to the grantees by virtue of a deed which included only a special warranty and also contained a statement that the grantors did not assume responsibility for any warranty other than that stated.

The Georgia Company of General Gunn was also successful in disposing of its lands to northern buyers. Its entire grant was sold August 22, 1795, to James Greenleaf who in turn transferred a large part of the territory to Boston and New York purchasers. It was this territory sold to Greenleaf which included the area later to be involved in the suit of Fletcher vs. Peck.[46] South Carolina was the site of most of the resales of the Upper Mississippi Company. The entire share of this company was deeded to Wade Hampton and he subsequently sold the land in small tracts to various citizens of South Carolina.[47] Only a few members of the Yazoo companies withdrew their money from the Georgia Treasury as provided in the rescinding act.[48]

This resale of the western lands proved a turning point

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[45] American State Papers, Public Lands, I, 218.

[46] Ibid.

[47] Ibid., 233.

[48] Ibid., 150.

in the whole affair of the Georgia frauds. If the land companies had not been successful in disposing of their purchases, the Yazoo question would have ceased to exist. The State of Georgia would have been well within its legal rights to have rescinded its contract with the grantees on the ground of fraud. As long as title remained vested in the original party to the transaction it was subject to divestment but when the land companies conveyed to innocent purchasers for value, the State of Georgia could no longer elect to exercise its right of recision.

To the subsequent purchasers of the Yazoo lands the news of the Georgia rescinding act came as a heavy blow. It brought with it the threat of ruin to both speculator and good faith purchaser alike. Those who had taken deeds from the Georgia Mississippi Company organized themselves into the New England Mississippi Land Company to better defend their interests. They consulted Alexander Hamilton in this regard and in his written opinion received the first hint of the basis upon which the legal issue would eventually be decided. Hamilton informed his clients that regardless of the fraud involved in its consummation the land sale was protected from annulment by Georgia by virtue of the contract clause of the United States Constitution.[49]

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[49] Ibid., II, 882.

As Senator Gunn had predicted to his friends, Spain dropped its claim to the Yazoo territory. Under the terms of the Treaty of San Lorenzo negotiated by Thomas Pinckney, signed October 27, 1795, and ratified by the United States Senate, March 3, 1796, Spain ceded all claims north of the 31st parallel.[50]

In April 1796, Attorney General Charles Lee transmitted to Congress all documents relating to the Georgia claims together with an opinion regarding the state of the title to this land. The Lee report was referred to a committee of the Senate which on May 20, 1796, proposed resolutions that the President be authorized to treat with Georgia for the cession of its claims and that a temporary government be set up in the Yazoo area without prejudice to Georgia's rights.[51] These resolutions were in turn referred to a committee which reported in March of the next year that after a close study of the documents, Georgia's western claims were unsubstantiated. However, though it found title to the lands to be in the federal government, in the interests of harmony the committee recommended conciliation of Georgia's adverse claims.[52] Recommendations of this committee were included in the law of April 7, 1798, which authorized the President to appoint

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[50] American State Papers, Foreign Relations, I, 546-549.

[51] American State Papers, Public Lands, I, 71.

[52] Ibid., 79.

three commissioners to meet with representatives of Georgia to adjust conflicting claims to western lands. The act further provided for the establishment of a government for the area which was to be designated as the Mississippi Territory. It was, however, in no way to impair any right of the state of Georgia.[53]

Shortly after Congress provided for the appointment of commissioners to settle the Georgia claims, the Constitutional Convention of 1798 met in that state. To prevent a repetition of the recent frauds the revised Constitution contained an express prohibition upon the sale of public lands until counties had been laid out and all Indian rights extinguished. It also provided that all territory west of the Chattahoochee River could be sold to the United States.[54] Such a step was agreed to by the state legislature in December 1799, when it approved an act authorizing the appointment of commissioners to meet with agents of the federal government to settle the terms of a proposed cession.[55] President John Adams responded immediately by naming to represent the United States Timothy Pickering, Secretary of State, Oliver Wolcott, Secretary of the Treasury and Samuel Sitgraves of Pennsylvania.[56]

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[53] Statutes at Large of the United States, I, 549.

[54] Chapell, 128.

[55] Ibid., 129.

[56] American State Papers, Public Lands, I, 92.

As it became increasingly evident that an adjustment of the United States-Georgia claims would be reached at an early date, the Yazoo purchasers sought to have the federal government recognize the validity of their claims. They flooded members of Congress with petitions and memorials which urged their rights and insisted that they possessed good title to Georgia's western lands in spite of the rescinding act. This pressure upon Congress resulted in the passage of a supplementary act empowering the three United States commissioners to inquire into claims of individuals to the ceded land and to receive from them offers of compromise. These offers together with the opinion of the commission were to be laid before Congress.[57]

The men named by President Adams were replaced after the inauguration of Thomas Jefferson, who appointed three members of his cabinet to serve on the commission, James Madison, Albert Gallatin, and Levi Lincoln. After meeting with the representatives of Georgia, James Jackson, Abrah Baldwin and John Milledge, a cession agreement was signed April 26, 1802. Georgia ceded to the United States jurisdiction over all lands south of Tennessee and west of the Chattahoochee River in return for the sum of $1,250,000 to be paid from the net proceeds of the first land sales in the Mississippi Territory. In addition, the federal

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[57] Statutes at Large of the United States, II, 69.

government agreed to extinguish at its own expense Indian title to certain lands in Georgia. Georgia consented to the appropriation of up to five million acres of the ceded territory to be used to quiet claims to the area.[58]

It was this Cession Act of 1802 which placed within the sphere of the federal government the whole problem of the Yazoo claims. When it became known that Georgia had consented to the compromising of claims by the national government, purchasers from all sections of the country turned eagerly to Congress for relief. They kept their petitions and lobbyists before that body for the next thirty years.

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[58] American State Papers, Public Lands, I, 125.

CHAPTER IV

THE YAZOO FRAUDS ENTER THE NATIONAL SCENE

The Yazoo fraud question made its official debut as a national issue in the report of the three United States commissioners February 16, 1803. Claims of those who relied upon the Yazoo Act of 1789 as the basis for their title were dismissed with the conclusion that there was no evidence to warrant their contention that evidences of the public debt should have been accepted in payment of the purchase price.[1] The commission's report held that participants in the first Georgia land sale had no equitable claim to land or compensation from the United States. Turning to the claims of those persons who were grantees of purchasers under the Georgia sale of 1795, the commissioners stated their title "cannot be supported." The report pointed to the fact that all conveyances were made with only a special and not a general warranty. The deeds also contained the specific statement that the grantors did not assume responsibility for any warranty other than that stated. However, because they believed it in the interest of the future inhabitants of the territory and because many of the purchases had been made in good faith without actual knowledge of the action taken by Georgia, the commissioners advised Congress it was

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[1] American State Papers, Public Lands, I, 133.

"expedient to enter into a compromise."[2] The report also indicated that some form of settlement would be expedient in order to avoid the multiplicity of litigations which would probably arise if Congress refused all compensation. The commissioners turned down the offer submitted by the claimants to settle for twenty-five cents an acre for their grants or a total of $8,500,000. As the basis for a compromise they proposed that five million acres be appropriated for settlement of all claims. This land would be divided equitably among the four companies. As an alternative, it was suggested that $2,500,000 in interest bearing certificates or $5,000,000 in non-interest bearing certificates be distributed. These certificates would be paid out of land sales after payment had been made to Georgia.[3]

Recommendations of the three commissioners were incorporated in a law enacted March 3, 1803, providing for the disposal of United States lands south of the State of Tennessee. Five million acres were officially reserved for the reimbursement of persons claiming under any act or "pretended act" of the State of Georgia. The three cabinet members were authorized to receive propositions of compromise from the various claimants who were given until January 1, 1804, to present evidence of their title.[4] This date was later

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[2] Ibid., 134.

[3] Ibid., 135.

[4] Statutes at Large of the United States, II, 229.

extended by Congress to December 1, 1805.[5]

Offered no hope of benefiting under the compromise plan, members of the Yazoo companies of 1789 again placed their case before Congress. Alexander Moultrie on behalf of the South Carolina Yazoo Company sent a memorial to the House pleading the case of his company. He reiterated that the real intention of the parties to the 1789 sale was to have payment made in paper money. To further buttress his argument, Moultrie sent to the House the plaintiff's briefs in the case Moultrie vs. Georgia.[6] The House also received a lengthy appeal from the Virginia Yazoo Company pressing for consideration of its claims.[7] Both memorials were referred to a committee which reported that it was of the decided opinion that neither company had any claim whatever upon the United States.[8]

Meanwhile, Yazoo supporters in Congress sought to assure an agreeable compromise by proposing that the three man commission be empowered not only to receive claims but also to finally adjust and settle them. A resolution to this effect was submitted to the House by a committee which had studied the matter[9] and early in 1804 a bill was

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[5] American State Papers, Public Lands, I, 211.

[6] Ibid., 165.

[7] Ibid., 172.

[8] Ibid., 178.

[9] Ibid., 162.

introduced authorizing the commissioners to settle claims according to the best interests of the United States.

In answer to this move on behalf of the Yazoo claimants, John Randolph, Representative from Virginia, introduced eight resolutions on the question of the Georgia frauds. His purpose in presenting these resolutions was to place the subject in such a light "that every eye, however dim, might distinctly see its true merits."[10] These resolutions declared the Georgia legislature was empowered to sell land only for the public good. When the government abuses authority it is the inalienable right of the people to revoke it and abrogate acts which have betrayed them. The House has evidence that the sale was procured through corruption. The sale has been declared null and void by a subsequent legislature acting within its rights. A subsequent legislature has the right to repeal an act of a previous legislature if such repeal is not prohibited by the state or federal constitutions. The rescinding act was not prohibited by either constitution. Claims of persons under the grants are not recognized by any compact between the United States and Georgia, and finally, that no part of the five million acres reserved by act of Congress should be used to settle claims derived from the Georgia sale of 1795.[11] With these

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[10] Annals of Congress, 8th Cong., 1st sess., 1039.

[11] Ibid.

resolutions, Randolph stepped forward as the leader of the anti-Yazoo faction in Congress opposed to any form of settlement with beneficiaries of the Georgia sales.

John Randolph had gained first hand knowledge of the Yazoo sale when he visited friends in Georgia in the spring of 1796 and he came to share their indignation over the corrupt means which the speculators employed.[12] As a champion of state rights he sought to uphold the right of a state to repudiate its own acts when they were contrary to the public interest. Randolph's theory of government was not all that was at stake. He was battling with Madison for leadership of the Republican party and Madison was putting all of his influence behind the Yazoo compromise.[13] Whatever occasioned his stand upon the Yazoo issue, Randolph left no doubt in the minds of his fellow Congressmen that he meant to use every resource at his command to block any compromise bill.

Both the bill introduced by the Yazooists and Randolph's resolutions came before the House in March 1804. The Representative from Virginia spoke at length in opposition to the measure and in the debate which followed was supported by Thomas Mann Randolph, son-in-law of President Jefferson.[14]

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[12] Hugh H. Garland, The Life of John Randolph of Roanoke, 66.

[13] Henry Adams, History of the United States, II, 211.

[14] Annals of Congress, 8th Cong., 1st sess., 1138.

However, a showdown on the compromise question did not take place. Randolph was successful in having further consideration of both the bill and the resolutions postponed until the next session of Congress.[15]

Pending the next meeting of Congress, the New England Mississippi Land Company obtained the services of Gideon Granger, the Postmaster General, as its agent in securing the satisfaction of its claims. Randolph watched Granger as he lobbied on the floor of Congress for the passage of the compensation act. This conduct on the part of a member of the executive branch of the government infuriated the Virginian and he marked the Postmaster General for future attack.

The legislative battle on the Yazoo question was resumed in January 1805 when the Committee of Claims submitted a resolution to the House providing for the appointment of three commissioners to receive propositions of compromise and empowering them to finally settle and adjust all claims resulting from the Georgia land sales.[16] The House went into a committee of the whole to consider the question and adopted the resolutions. In order to nullify the effect of the proposal, Christopher Clark, Republican Representative from Virginia, moved that no part of the five million acres

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[15] Ibid., 1170.

[16] Ibid., 8th Cong., 2nd sess., 1021.

which had been reserved in the Mississippi Territory be used to satisfy claims arising under the Georgia act of 1795.[17] John Randolph took the floor in support of Clark's motion and described in strong language his indignation over any compromise with the Yazooists. He recited in detail the history of the transaction and expressed contempt for what he termed "the monstrous sacrifice on the altars of corruption."[18] Next, the Representative from Virginia turned the full force of his invective upon Granger. He alluded to the case of the Connecticut Western Reserve and declared the Postmaster General had also shared in that deal which had swindled the United States out of three or four million acres of land. Now, through his "unfortunate knack of buying bad titles," Granger was described as being deeply interested in the outcome of the bill to settle the Georgia claims. He was represented as one whose "gigantic grasp embraces with one hand the shores of Lake Erie and stretches with the other to the Bay of Mobile." Castigating the operations of the land speculators, Randolph pictured them as men "goaded by avarice, buying only to sell and selling only to buy." Referring to their lobbying activities, he stated that they "buy and sell corruption in the gross and a few million more or less is hardly felt in the account." As he grew bolder

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[17] Ibid., 1025.

[18] Ibid., 1025.

in his attacks upon Granger, Randolph intimated strongly that the Postmaster General had used bribery in his dealings with Congress and he referred to him as "this officer possessed of how many snug appointments and fat contracts," who "presents himself at your bar at once a party and an advocate."[19]

Randolph had already seriously split the Republican Party and his attacks upon the compromise proposed by Madison and Gallatin not only cast reflection upon these men but threw a shadow of corruption over the entire administration. As if to further emphasize this point, the Virginian concluded his speech with the observation that if Congress sanctioned the bill to compensate the Yazoo purchasers, he would "distain to prate about the petty larcenies of our predecessors."[20]

The breach in the Republican ranks was further widened as Representative John C. Jackson took up Randolph's challenge on behalf of his brother-in-law, Madison. Replying in kind, Jackson termed Randolph's influence in the House as equal to the rapacity of the speculators whom he attacked. He presented at considerable length the case for the compromise and emphasized the point that it was far better to settle now for five million acres rather than have the claimants recover fifty million acres later as the result of

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[19] Ibid., 131.

[20] Ibid., 133.

court actions. The land purchasers were pictured as public spirited citizens willing to accept a pittance for their lawful claims because they thought it in the best interests of the nation.[21]

Another strong speech in support of the good faith of New England investors was also made by a Republican, John Findley of Pennsylvania. He insisted that the people of the North had had no notice of either the fraud involved in the Georgia sales or of the sale's subsequent recision. He pointed out that the citizens of Massachusetts did not go to Georgia, but that the sellers came to Boston with patents and copies of the law in their hands. These innocent purchasers had a right to trust the validity of the title of the land companies. The respectability of those who resold the land was alone sufficient to induce confidence among the buyers, including as they did, a Justice of the United States Supreme Court and a United States Senator. Findley also called attention to the argument that one session of a legislature cannot declare invalid contracts made by a previous session because the Federal Constitution forbids any state from passing a law impairing the obligation of contracts.[22]

Again, Randolph sprang to the attack, branding as false any contention that the people of New England did not have

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[21] Ibid., 1064.

[22] Ibid., 1082.

notice of the corruption which accompanied the Georgia sale. He alleged that huge tracts of land had been given away to important men of New England so that others might be lured into buying. Claimants were denounced as "vile panderers of speculation," who had actually paid nothing for their pretended titles. Randolph declared that the North was responsible for the Yazoo frauds because the plot was originally hatched in Philadelphia, New York and maybe Boston.[23]

Charges leveled against him were answered by Postmaster General Granger in a letter to the Speaker of the House dated February 1, 1805. He declared untrue all insinuations that he was guilty of bribery and demanded a Congressional investigation that his name might be cleared.[24] The same day, Matthew Lyon of Kentucky rose in the House to defend the integrity of Granger and to explain that although he himself had secured a postal contract, he had gained little or no profit therefrom. Lyon proved a fair match for Randolph in the use of invective when he referred to the speeches of the Virginian as "the braying of a jackall," and the "fulminations of a madman."[25]

In spite of another violent tirade by Randolph, the resolution to give the three commissioners authority to

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[23] Ibid., 1103.

[24] Ibid., 1110.

[25] Ibid., 1122.

settle the Yazoo claims passed the House 63 to 58 on February 2, 1805. It was then referred to the Committee of Claims to report a bill.[26] Even though they were defeated in the vote upon the resolution, Randolph and his followers succeeded in delaying further consideration of the compromise issue until the next Congress. In the meantime, the Yazoo question continued to occupy a conspicuous position in political affairs. Gideon Granger toured New England organizing a group to oppose Randolph,[27] while opposition to the Yazoo compromise reached such a pitch in Virginia, it was said even President Jefferson would lose an election there if he was known to support it.[28]

When the new Congress convened, the Yazooists sought Senate backing for their compensation measure so as to avoid the vehement opposition of John Randolph. Senator John Quincy Adams was requested to present two petitions to the Senate on behalf of the claimants. He did so, although he thought the opposition would be equal to that encountered in the House. The petitions were referred to a special committee, but not before Senator James Jackson of Georgia delivered a "violent invective" against them.[29] A bill to establish a

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[26] Ibid., 1173.

[27] Henry Adams, John Randolph, 205.

[28] Charles Francis Adams, Memoirs of John Quincy Adams, I, 343.

[29] Ibid., 381.

commission to finally settle all claims resulting from the Georgia sale was drawn up by Adams[30] and passed by the Senate March 28, 1806, by a vote of 19 to 11.[31] The bill was sent to the House where it was greeted by a motion that it be rejected and another verbal blast from Randolph. Again he reviewed at length the whole story of the land grants, remarking in the course of his debate that the speculators seemed to have more friends in the other House.[32] This time the opponents to the compromise measure were successful and the motion to reject the bill carried 62 to 54.[33]

Efforts to obtain relief for the investors of New England were continued. Senator Adams supported their petitions because he believed that they had suffered an injustice[34] but all requests for relief were met by determined opposition from southern members of Congress. A request by Joseph Story that he be allowed to appear before the House on behalf of the New England Mississippi Land Company was denied,[35] despite the suggestion of George Cabot that although a Republican, Story was "well worth the civil attention of the most

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30 Ibid., 418.

31 Annals of Congress, 9th Cong., 1st sess., 208.

32 Ibid., 909.

33 Ibid., 920.

34 Charles F. Adams, Memoirs of John Quincy Adams, I, 513.

35 Annals of Congress, 10th Cong., 1st sess., 1601.

respected Federalists."[36] The legislature of Massachusetts passed a resolution directing the Governor of that state to petition Congress in favor of the claimants. This petition was referred to the Committee of Claims of the House, but never heard from again.[37]

Opponents of the Yazoo claimants not only blocked every effort to secure compensation, but succeeded in preventing the purchasers from entering upon the land to which they claimed title. By virtue of an act passed March 3, 1807, all persons claiming title to territory ceded to the United States were required to obtain governmental permission before occupying it. Offenders were to forfeit all right and title to the lands and the President was authorized to use military force if necessary to remove those violating the law.[38]

There can be little doubt but that this act was aimed directly at the Yazoo purchasers. Secretary Gallatin wrote in answer to President Jefferson's inquiry on this point, "The Law was certainly intended to operate particularly against this class of claimants. It is evident that they ought not to be exempted from the operation of the law."[39]

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[36] Henry Cabot Lodge (ed.), Life and Letters of George Cabot, 377.

[37] Statutes at Large of the United States, II, 445.

[38] Clarence Carter, The Territorial Papers of the United States, V, 527.

[39] Statutes at Large of the United States, II, 445.

The act of 1807 was relaxed somewhat and later, certain settlers were allowed to remain in the Mississippi Territory as tenants at will, but no such privilege was accorded persons claiming under the Georgia sale. In a letter written November 5, 1808, to Governor Robert Williams of the territory, Gallatin emphasized that this concession did not include "pretended Yazoo claimants," who he said "will be removed by force in April if they do not abandon the ground." The Secretary further warned Williams that care should be taken in all civil appointments to see that Yazooists were not given official positions.[40] Although they continued to petition Congress and to keep their agents in Washington, the main resort of those who had invested in Georgia lands was now to the courts.

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[40] Ibid., 660.

CHAPTER V

FLETCHER VS. PECK

Holders of deeds purchased from the various Georgia land companies gradually saw that attempts to obtain an adjustment of their claims through Congressional action were futile in the face of determined southern opposition. This coupled with the fact that they were now prevented from entering the land which they had purchased in order to try their titles led them to seek a judicial decision on the question. They were barred from bringing an action against the State of Georgia by the eleventh amendment and the courts of that state were forbidden to entertain such actions under the terms of the rescinding act. It was to circumvent just such obstacles as these that what has been termed a "feigned suit,"[1] devoid of any controversy, had already been instituted in the United States Court for the District of Massachusetts. John Peck of Boston had conveyed to Robert Fletcher of Amherst, New Hampshire, 15,000 acres of land which had been originally granted to the Georgia Land Company in the sale of 1795. Peck covenanted in his deed to Fletcher that the Georgia legislature had had the right to sell the land and that title had not been impaired as a

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[1] Chapell, 135.

result of any subsequent acts of the legislature. Almost immediately, in June 1803, Fletcher brought an action against Peck on this covenant assigning as breaches that the Georgia legislature had been unduly influenced by bribes and that it had subsequently annulled the grant.[2] The case was continued from June 1803 until October 1806 by consent of the parties but when it became evident that Congressional relief would not be forthcoming the case went to trial. The trial court decided all issues raised by the pleadings in the defendant's favor and held that the State of Georgia was seized of the disputed lands at the time of the sale.[3] Fletcher sued out a writ of error to the Supreme Court of the United States and the case came up for argument in March 1809.

When the Georgia frauds came before the Supreme Court, John Quincy Adams and Robert Goodloe Harper represented Peck while Luther Martin appeared for the plaintiff in error, Fletcher. Adams presented his argument but by his own admission the exposition was "dull and tedious almost beyond endurance." He seemed surprised that the court heard him through.[4] At the conclusion of Martin's discourse, the Justices were conscious of being used to settle a friendly controversy which had been deliberately arranged to obtain

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[2] Fletcher vs. Peck, 6 Cranch 87.

[3] Ibid.

[4] Charles Francis Adams, Memoirs of John Quincy Adams, I, 543.

a judicial decision upon the explosive Yazoo issue. Chief Justice John Marshall mentioned to Judge Cranch that the court was reluctant to decide the case because to them it appeared as though it had been "manifestly made up for the purpose of getting the court's judgement on all points."[5] Because of this feeling, the court did not decide the case on its merits but rather reversed the judgement of the lower court because of a defect in the pleadings.[6]

The Yazoo case again came before the Supreme Court in February 1810. Adams had accepted an appointment as Minister to Russia and Joseph Story had taken his place as counsel for Peck. While in Washington to appear in this case Story also went before the Committee of Claims of the House to urge compensation for the land claimants.[7] The basis of Fletcher's case as set forth in Luther Martin's address to the court was that Georgia had not had title to the Yazoo area because of the Royal Proclamation of 1763. Even if the state did have title, it was subject to the rights of the Indians and amounted to nothing more than a right of preemption. The federal government alone had the authority to extinguish Indian rights and therefore Martin concluded that Georgia's right of preemption was only a

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[5] Ibid., 546.

[6] 6 Cranch, 127.

[7] William Story (ed.), Life and Letters of Joseph Story, I, 196.

mere possibility which could not be sold or transferred.[8] On behalf of the defendant Story dwelt upon the validity of Georgia's land claims and traced in detail the history of its title. After establishing that title was vested in the state at the time of the sale, he argued that the legislature had full authority to dispose of the land and having once sold it was powerless to rescind the contract. Only the courts, Story asserted, could decide whether fraud had vitiated the sale. Pointing to the parties before the court as innocent purchasers for value without notice of any fraud he insisted their contract could not be impaired by the State of Georgia without violating the contract clause of the federal constitution.[9]

Chief Justice Marshall delivered the decision in Fletcher vs. Peck March 16, 1810. The first question to be answered by the court was whether the Georgia law of 1795 which purported to sell the Yazoo lands was repugnant to the state constitution. Marshall answered this in the negative, stating that such a question "ought seldom, if ever to be decided in the affirmative in a doubtful case." He went on to say that all doubts must be resolved in favor of the constitutionality of a law. To declare a statute unconstitutional the judge must "feel a clear and strong conviction

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[8] 6 Cranch, 124.

[9] Ibid., 123.

of their incompatibility." He found no such opposition in this case.[10]

The second question to be determined by the court was whether the law of 1795 was a nullity because members of the Georgia legislature had been unduly influenced. In his answer to this, Marshall was undecided as to just how far the validity of a law depends upon the motives of its framers and further to what extent these motives of its framers and further to what extent these motives are examinable in the courts. Even if he conceded for the moment that an act could be set aside on such grounds, the Chief Justice questioned to what extent the corruption must go to vitiate the law. Must it be direct or would interest or undue influence of any kind be sufficient? He also posed the question, whether the sentiment of the people would have any bearing upon the validity or nullity of a statute.[11] Marshall left these matters unanswered in view of the fact that the State of Georgia was not seeking to annul the contract. He stated that this important question cannot be collaterally brought before the court in a suit brought by one private individual against another. On this point Marshall defended the rights of a state when he declared, "It would be indecent in the extreme, upon a private contract between two individuals,

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[10] Ibid., 128.

[11] Ibid., 130.

to enter into an inquiry respecting the corruption of the sovereign power of a state."[12]

The Chief Justice next turned to the disputed point, whether the rescinding act passed by Georgia had abrogated any right or title granted by the act of 1795. Marshall stated that under this latter act the original grantees were vested with fee simple title pursuant to a law which the legislature was competent to pass. They conveyed this title for a valuable consideration and thus placed the subsequent purchasers in a position indistinguishable from the ordinary case where one buys real estate without notice of any secret fraud which may have led to the original sale. Under the rules of equity such fraud could not affect the rights of a bona fide purchaser. Despite this, Georgia as a party to the transaction had declared its own deed invalid. This was an action which Marshall believed could be justified only by "a train of reasoning not often heard in courts of justice."[13] He pointed out that proper tribunals have been established to decide such matters in the interest of safeguarding private property and human rights. This portion of his opinion Justice Marshall rested upon the broad principle of equity that an innocent purchaser should not suffer. In doing so, he indicated, "There are certain great principles

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[12] Ibid., 131.

[13] Ibid., 133.

of justice whose authority is universally acknowledged, that ought not to be entirely disregarded."[14]

In answer to the assertion that one legislature may repeal any act which a previous legislature was competent to pass, Marshall did not question the correctness of this principle as applied to general legislation but distinguished between the repeal of a law and the repeal of an act done under a law. When the latter is in the nature of a contract and absolute rights have vested by virtue of it, a recision of the act cannot divest those rights. "The past cannot be recalled by the most sovereign authority."[15]

The court next inquired whether the case came within the section of the constitution which prohibits states from passing laws impairing the obligation of contracts. Marshall first considered the question, is a grant a contract? He cited Blackstone as authority for the statement that an executed contract "differs in nothing from a grant." In an executed as well as an executory contract he found a continuing obligation by implying a promise on the part of the grantor not to reassert his rights to the land conveyed. Because a grant is an executed contract and because the constitution does not differentiate between executed and executory

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[14] Ibid.

[15] Ibid., 135.

contracts, Marshall held a grant must necessarily come within the purview of the contract clause.[16]

The Chief Justice now inquired whether a grant from a state is excluded from the contract provision of the constitution. He argued that the framers of the constitution intentionally placed restrictions on the state legislatures in the form of the prohibition against ex post facto laws, bills of attainder, and laws impairing the obligation of contracts. These limitations, Marshall maintained, constitute a bill of rights for each state. Private property could not be confiscated by means of either an ex post facto law or a bill of attainder and he could see no good reason why it should be allowed in the form of a law annulling the title to property.[17] By this reasoning Marshall concluded that the contract clause applies to public as well as private contracts. He then announced that it was the unanimous opinion of the court that because title to the lands had passed into the hands of innocent purchasers for value, who had had no notice of any fraud, Georgia was restrained from rescinding its grant. This decision was based upon "general principles which are common to our free institutions" as well as the provisions of the United States Constitution.[18]

The final question before the court concerned the

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[16] Ibid., 137.

[17] Ibid., 139.

[18] Ibid.

validity of Georgia's claim at the time of the sale. Marshall decided that the Royal Proclamation of 1763 had not altered the boundaries of Georgia but had merely suspended temporarily any settlement within the territory reserved to the Crown. He also held that Indian title to the lands was not such as to be contradictory to seizin in fee simple on the part of Georgia. He concluded that the state had good title and the power to make the grant.[19]

Justice William Johnson in a separate opinion came to the same conclusion as Marshall that a state could not revoke its own grant. However, he based his decision not upon the contract clause of the constitution but rather "on the reason and nature of things," a principle which he stated "will impose laws even on the deity."[20] He dissented as to the effect of the unextinguished Indian rights which he said made Georgia's title nothing more than a mere possibility and its grant only a covenant to convey or stand seized to a use.[21] In conclusion, Johnson stated categorically that he had been very reluctant to decide this case at all. To him it bore all evidences of being a collusive action brought solely to obtain the decision of the court upon the speculations of the parties. It was only because of his confidence in the "respectable gentlemen" representing the parties that

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[19] Ibid., 142-143.

[20] Ibid., 144.

[21] Ibid., 146.

he consented to put aside these doubts for he knew "they would never consent to impose a mere feigned case upon this court."[22]

The decision of John Marshall in Fletcher vs. Peck had a far more important effect upon constitutional law than it did upon the Yazoo controversy. It was not only the first case to involve the contract clause but it was the first decision of the Supreme Court in which an act of a state legislature was nullified.[23] The opinion tended to stabilize private property and contractual obligations. In this regard Marshall himself was personally interested as ownership of his Fairfax estate was at this time jeopardized by acts of the Virginia legislature. A suit affecting his title was pending in the Virginia courts. Because of this, Beveridge says, "No man in America could have followed with deeper anxiety the Yazoo controversy than did John Marshall."[24] This personal interest of the Chief Justice was also alluded to by Jefferson when he wrote Madison May 25, 1810, "His twistifications in the late Yazoo case show how dexterously he can reconcile law to his personal biases."[25]

Marshall's decision placed a limit upon the power of state legislatures when the contract provision of the

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[22] Ibid., 147-148.

[23] Joseph P. Cotton, The Constitutional Decisions of John Marshall, 228.

[24] Beveridge, III, 582.

[25] Ford, The Writings of Thomas Jefferson, IX, 276.

constitution, originally designed to protect private agreements, was extended to include those of a public nature. However, state authority was also strengthened because of his holding that federal courts cannot invalidate state laws on the ground of fraud in their passage where the state is not a party to the action. Fletcher vs. Peck provided the foundation for the relationship between states and corporations. It has been stated that this case and not the Dartmouth College Case forms the basis of the law of public contracts.[26] Justice Washington indicated this fact when he stated in his opinion in the Dartmouth College Case, "If a doubt exists that a grant is a contract, the point was decided in the case of Fletcher vs. Peck."[27]

The outcome of their case before the Supreme Court had little actual effect upon the status of the land purchasers, except probably to make a Congressional settlement more likely. While the words of Chief Justice Marshall established the law, they did not dispose of the Yazoo claims. The court decided the abstract rights of the parties but it still remained for Congress to compensate them. Marshall had refrained from any mention of the Congressional act of 1803 which appropriated five million acres to satisfy claims to the Mississippi Territory and he proposed no other method by which the claims could be extinguished.

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[26] Haskins, 434.

[27] Dartmouth College vs. Woodward, 4 Wheaton, 657.

CHAPTER VI

ADJUSTMENT OF THE YAZOO CLAIMS

Randolph brought the decision of the Supreme Court to the attention of the House on April 17, 1810. He stated he had been informed that the Committee on Claims had been discharged from further consideration of a memorial presented on behalf of the New England Mississippi Company. Randolph expressed fear that abandoning action upon the petition at this time would give the impression that the House acquiesed in the recent judicial decision. Because he did not wish to have any action or inaction on the part of the House construed as recognizing the validity of the Yazoo claims, he moved that the petition be referred to the Committee on Claims with instructions to report.[1] This motion was supported by George Troup of Georgia who spoke of Marshall's opinion as "a decision which the mind of every man attached to Republican principles must revolt at."[2] The motion was withdrawn because the session was drawing to a close and another substituted. It stated "That the claim of the New England Mississippi Company is unreasonable, unjust and ought not to be granted." By means of this motion Randolph hoped to make certain that the claimants could not

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[1] Annals of Congress, 11th Cong., 2nd sess., 1881.

[2] Ibid.

profit as a result of the court's decision. The resolution was defeated 46 to 54.[3]

At the next session of Congress Troup returned to his attack upon Marshall and the Supreme Court. On December 17, 1810, he introduced a resolution directing the Secretary of the Treasury to report to the House any information he had regarding settlement of the Mississippi Territory contrary to the act of 1807. His objective, he stated, was to obtain information concerning trespassers upon lands which the United States claimed and which the Supreme Court had decided were vested in persons claiming under the Georgia sale. Seeking to secure Congressional action in the matter, Troup warned the House that the time would come when the United States would have no alternative but to resist the court decision with military force. Troup's resolution was passed 50 to 45.[4]

Lobbyists for the Yazoo claimants were more successful in the Senate. On January 19, 1813, that body passed and sent to the House a bill to carry into effect the compromise proposed by the commissioners in 1803. Troup immediately moved its rejection by the House and proceeded to assail the decision in Fletcher vs. Peck. He related the details

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[3] Ibid., 1882.

[4] Annals of Congress, 11th Cong., 3rd sess., 414.

of the frauds stating that they grew out of "hideous corruption." The speculators had turned to the judiciary to complete their swindle, he continued, because Congress remained firm in refusing to recognize their claims. Troup then charged that two persons had combined to make up a fictitious case for the decision of the Supreme Court. Once before the court, they hunted up a maxim of the English law "that third purchasers without notice shall not be affected by the fraud of the original parties." It was this rule of law which the Georgian accused the Supreme Court of having wielded for the benefit of the speculators and to the ruin of the nation.[5] As his attack grew more impassioned, Troup denounced Marshall's opinion as "shocking to every free government, sapping the foundations of all your constitutions." To him, the court had proclaimed "that representatives of the people may corruptly barter their rights and those of their posterity, and the people are wholly without remedy of any kind whatsoever." He called upon Congress to condemn such an "abhorent doctrine" and he likened it to a decree which the devil would issue if he was bent upon the destruction of republican government. As a climax to his denunciation, Troup demanded to know "Why do the judges who passed this decision live and live unpunished?"[6] The motion to

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[5] Annals of Congress, 12th Cong., 2nd sess., 856.

[6] Ibid., 858.

reject the Senate bill was lost 55 to 59 and the measure was referred to the Committee on Public Lands.[7] The Committee reported the bill favorably February 15, 1813, but its opponents succeeded in tabling it by a vote of 60 to 50.[8]

Undiscouraged by these repeated failures, the New England Mississippi Company presented another memorial to the Senate in January 1814.[9] A measure to indemnify the Yazoo claimants was passed and sent to the House February 28th.[10] When the bill came up for a second reading, Troup again made a motion that the House reject it. Randolph had been defeated for election to the thirteenth Congress and as a result the burden of defeating a Yazoo compromise fell upon the Georgian. He accepted the challenge and as Randolph had done so often before he traced the history of the Georgia sale item by item. He declared the transaction to have been a "circle of fraud" and stated that the commissioners had recommended a settlement only because they had been besieged by a host of claimants.[11] Robert Wright, Republican of Maryland, replied to Troup and urged the passage of the bill. He emphasized that the validity of the claimants' title under the decision of the Supreme Court must be sustained.

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[7] Ibid., 860.

[8] Ibid., 1066.

[9] American State Papers, Public Lands, II, 877.

[10] Annals of Congress, 13th Cong., 2nd sess., 1697.

[11] Ibid., 1840-1842.

Referring to previous attacks upon the court he said he hoped never to see bayonets employed against it.[12] The motion to reject was defeated 59 to 92 and the Senate bill was referred to committee.[13]

After only six days the Senate bill was reported favorably to the House. The committee acknowledged that its opinion was based not upon "the strict legality of the title of these claimants," but rather upon considerations of equity and expediency. They believed it desirable to finally compromise the claims in the interests of the future settlement of the Mississippi Territory and the rights of bona fide purchasers.[14] The Yazooists were finally victorious when the measure passed the House March 26, 1814, by a vote of 84 to 76.[15] They gained their victory by virtue of a coalition of Federalists and Republicans which proved too powerful for the southerners to defeat.[16]

The indemnification act of 1814 allowed all persons, who had previously presented evidence of their claim, until January 1915 to deposit a release with the Secretary of State. It appointed the Secretaries of State and Treasury

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[12] Ibid., 1848.

[13] Ibid., 1855.

[14] Ibid., 1873-1875.

[15] Ibid., 1925.

[16] Fletcher Webster, ed., Private Correspondence of Daniel Webster, I, 244.

and the Attorney General as a board to pass upon the sufficiency of these releases and to determine the conflicting claims. When nine-tenths of the releases had been received the President was authorized to issue non-interest bearing stock certificates in the amount of five million dollars to be divided equitably among the various claimants. The statute provided the Georgia Company was to receive $2,250,000, the Georgia Mississippi Company $1,500,000, the Tennessee Company $600,000, and the Upper Mississippi Company $350,000. The sum of $250,000 was set aside for claimants under citizens rights. These stock certificates were made receivable in payment for public lands in the Mississippi Territory in the ratio of ninety-five dollars in certificates to five dollars in cash.[17]

The commissioners designated by the act were relieved on their own petition because of the pressure of other business and Congress authorized the President to name others in their stead.[18] President Madison appointed Francis Scott Key, John Law and Thomas Swann to serve on the commission. In a supplementary act Congress empowered the commissioners to settle all claims and their decision was made conclusive as between the parties in all cases coming under their jurisdiction.[19]

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[17] Statutes at Large of the United States, III, 116-118.

[18] Ibid., 192.

[19] Ibid., 235.

When the certificates issued under the Yazoo compromise were received at land offices, the State of Georgia protested that because of them there would be very little cash with which to pay that state the money due it under the cession agreement of 1803. To remedy this, Madison recommended to Congress that provision be made for payments to Georgia equal to the amount of stock paid into the treasury until the full $1,250,000 had been paid.[20] Congress acted upon the President's suggestion and passed such a measure March 3, 1817.[21]

The federal commissioners completed their arduous task of sifting the various claims and made their final report November 18, 1818. A total of $4,282,151 had been paid in certificates but not all claims presented were compensated in full.[22] The most important of those which were reduced was that of the New England Mississippi Company which asserted its right to the entire sum due those deriving title through the Georgia Mississippi Company. This latter company resisted the claim, contending that consideration for the land had not been fully paid. In purchasing the land from the Georgia Mississippi Company, the various members of the syndicate which later organized the New England Mississippi Company gave their personal notes as security for

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[20] James D. Richardson, I, 583.

[21] Annals of Congress, 14th Cong., 2nd sess., 1066.

[22] American State Papers, Finance, III, 281.

the purchase price. One William Wetmore gave his notes and received one-tenth of the stock issued by the New England Company. He sold this stock to a Mrs. Gilman and various others and after defaulting on his notes he went through bankruptcy.[23] The decision of the commissioners held that these unpaid notes constituted a lien upon the land and they deducted $130,424 from the amount due the New England Company and awarded it to the Georgia Mississippi Company. As between the members of the New England Company the commissioners held that those stock certificates issued by that company were invalid where issued on account of purchasers who defaulted on their notes.[24]

It was from this ruling that the case of Brown vs. Gilman arose. As a proprietor in the New England Company, Mrs. Gilman claimed her share of compensation received from the government notwithstanding the award of the commissioners. To establish this claim she brought suit in the Circuit Court of Massachusetts which decreed she was entitled to share in the indemnity. The question came before the Supreme Court in 1819 on appeal and Marshall sustained the decree of the lower court, in effect, reversing the ruling of the commissioners. He held that the Georgia Mississippi Company had not retained a vendor's lien upon the land. Such a lien

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[23] Brown et al vs. Gilman, 4 Wheat, 256-259.

[24] Ibid., 259.

is waived by any act of the parties indicating that it was not intended. The taking of notes as separate security for the purchase price in the absence of specific language to the contrary was just such an act. The result of this holding was to charge the sum deducted by the commissioners against all members of the New England Company and not only against the share of Mrs. Gilman.[25]

Directors of the New England Company again undertook a campaign for congressional relief. They petitioned the Senate citing the Supreme Court decision as proof that the commissioners had been mistaken as a matter of law. In addition they presented statements from two of the commissioners in which they admitted they had acted under a misapprehension of the law.[26] In 1823 and 1824 the Judiciary Committee of the Senate reported unfavorably on their requests for relief[27] but in 1834 a bill was introduced providing for compensation of the claim.[28] However, Congress failed to act in the matter.

The final effort of the New England Company to secure relief was an action against the United States begun in

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[25] Ibid., 290.

[26] "Claim of the New England Mississippi Land Company," Senate Document No. 205, 23rd Cong., 1st sess., (Ser. No. 240).

[27] American State Papers, Public Lands, III, 620 and 647.

[28] Congressional Globe, 23rd Cong., 1st sess., 261.

1864 in the Court of Claims. This also ended in failure with the decision that money held under the award of a tribunal clothed with jurisdiction has the same legal effect as money paid under a judgement and cannot be set aside in an action for assumpsit.[29] With this decision, the last of the Yazoo companies passed out of existence, its claims still partially unsatisfied.

Although the Georgia frauds played an important part in local and national politics for over a half century, their greatest significance lies in the fact that through them Marshall was given one more opportunity to affirm the supremacy of the national judiciary. He seized this occasion to assert the power of the Supreme Court to nullify state laws when in violation of the national Constitution and he established the basis for the law of public contracts. Thus in one of the most important constitutional decisions in American history Marshall announced fundamental principles for the future guidance of the states and the stabilizing of American business.

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[29] New England Mississippi Land Company vs. United States, I United States Court of Claims 135.

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