

DEPARTMENT OF LAW

UNIVERSITY OF PENNSYLVANIA LAW REVIEW AND AMERICAN LAW REGISTER

FOUNDED 1852

Vol. { 56 O. S. 47 N. S. }	JANUARY, 1908	NUMBER 1
-------------------------------	---------------	----------

JAMES WILSON AND THE SO-CALLED YAZOO FRAUDS.

In the month of November, 1906, there came together in the city of Philadelphia a great number of persons from all parts of the United States. They came to do honour to the memory of James Wilson,¹ a man who, endowed with unusual gifts of mind and character, had been enabled to do a great work for his chosen country. An ardent friend of the people; instrumental in securing the passage of the Declaration of Independence, of which he was a signer; the greatest constitutional lawyer who took part in the debates of 1787, when the Federal Constitution took its form; he made possible by his logic and his eloquence the ratification of that Constitution by the State of Pennsylvania. He illuminated its more obscure phrases by the light of his trained and brilliant mind, and by his clear and forcible oratory brought

¹ Mr. Wilson died at the home of his friend, Justice Iredell, in Edenton, N. C. It was desired by many persons that his last resting place should be in the place where his life work was done. In fulfillment of this desire, in November, 1906, in the presence of a large number of representative persons, gathered there from all parts of the United States, his body was reverently reinterred in a tomb directly beneath the walls of Christ Church, Philadelphia.

the benefits which were to come from it home to the minds of the less informed masses. The heavy burdens of the time he accepted with patriotism, bore heroically, and dying left behind him the record of a great life work greatly done. So in this later time men met together to do him honour. But there were those who looked on curiously, wondering why the memory of a man they chanced to know little about should be thus greatly honoured. Some of these were men of the sort who are always industriously seeking the petty among the characteristics of great men; who note the few times that George Washington lost his temper in those long years of stupendous endurance; who magnify the foibles of Jefferson, to the obscuring of his genius; who rejoice in the puerile, which they find mentally measurable, and ignore the great, for which they have no adequate mental measure. To such men, unlearned in the true history of their country, having but a text-book knowledge of the men who made her great, the idea that James Wilson was one of that country's greatest men came as a surprise. All over the land and at all times and periods men had known the virtues, revered the wisdom, and praised the character of James Wilson. But they had been men of letters rather than journalists; scholars, whose quiet commendation reached their own class rather than the world at large; professors in colleges; students of the Constitution; statesmen and historians. It was to no stranger that men of this class came to pay the homage of their respect; they had long known the debt they owed to him and they rejoiced that they were called upon publicly to pay it. But there were those who did not understand all this, or who wished to bring upon themselves a certain notoriety, and to these an opportunity seemed to present itself. James Wilson had died poor; that argued that he must have died obscure. James Wilson had been buried in the quiet country town where he had died; that argued that he was not respected; James Wilson's name was not familiar to them, and that was proof that he was unknown. So they sought—not for the record of a quiet

virtue that might have long lived unknown, but at last come to recognition; not for great thoughts flowering unnoticed for a time, but quietly bearing fruit for future times; not for the records of good deeds done in days long past, but just being written into history—but for some deed of shame which would excuse their ignorance and confuse the foolish souls who had believed in so much goodness. They needed not to search long before they found what seemed the record of an evil deed, and that deed done in the days in which James Wilson lived, and among the names connected with that deed—names honoured for generations—was that of James Wilson. On December 16, 1906, an anonymous writer for the *Independent* announced in the columns of that paper, under the heading "Beatification of a Briber," that James Wilson was a "corruptionist and bribe-giver, the leader of the 'land sharks' of 1795." While specific charges were made, no authorities which might substantiate the statements were given.²

In March, 1804, Mr. Rodney, in a speech on those Georgia claims, which had reference to these transactions in land to which the writer in the *Independent* appears to have reference, said: "We can with great ease hop and skip over truth and perch upon assertion and call it truth." To hop and skip over truth, and, perching upon assertion, call it truth, is an action not especially characteristic of any one age or period. If it was done, as Mr. Rodney would seem to imply, in the early days of the republic, we have not learned in these later days to be less agile when confronted with truths upon which we do not wish to take our stand. The perch upon assertion is indeed a favorite position of those whose footing upon truth is of an unstable, and necessarily uncomfortable, nature; giving them a commanding and exalted position—so long as they remain thereon unmolested. A striking exemplification of this tendency to leave the stable ground of truth for the swaying branches of assertion is given by the writer of the anonymous article in the

² *The Independent*, New York, December 16, 1906.

Independent. The burden of proof to establish the verity of the statements so publicly put forth was upon those who formulated them. The editor of the *Independent* being communicated with, he courteously responded, and, while withholding the name, furnished a list of authorities on which the writer of the article claimed to have based his statements. These authorities, and many more, have been consulted, with the result that the anonymous writer appears to be left still precariously swaying upon the bare branches of assertion, while the firm ground of truth affords him no foothold. In the search for the truth about James Wilson, however, the truth about the whole matter presented itself in a new light, and it appears that, if the matter shall ever come to be sifted with care and skill by some one competent to the task, taking time to make a full and impartial investigation, it may be found that those who, in an attempt to throw dishonour upon an honoured name, have revived an interest in some almost forgotten facts, have done a service to their country—unexpected to them, it is true, possibly to be regretted by them, as leaving one less recorded evil in the world—but a very real service, none the less.

After the forming of the present Federal Government a large number of companies were formed to develop the western lands. Many of them came to be known by the title of "Yazoo" land companies, taking their name, apparently, from a river of the region which formed one of the boundaries of the land claimed by the State of Georgia, lying west and south of the boundaries of the present State. In the Act of 1803, it is spelled "Yassous," and the name seems to have been used as a convenient term for most of the companies, not only the Georgia, but the South Carolina, the Virginia, and the Tennessee companies. Historians of the United States, writing of the years between 1789 and 1814, have had occasion to refer more or less extensively to certain very large transactions by some of these companies, which some of them came to call the "Yazoo frauds." They usually mentioned them only in passing, and a comparison

of the details given leaves us free to suppose that the later writers did not, as a general thing, refer to original documents or the printed archives of the United States, wherein the matters referred to are set out in full, but instead relied upon the researches of previous writers upon the subject. As even those previous researches into the histories of the land companies were of a very limited nature, if one may judge by results, it came to pass that certain things, and certain things only, were said upon the subject, and that all these things bore a very striking family resemblance. The gossip of the time, the statements of interested persons, the political polemics of the orators of the day, were incorporated into the printed pages of history, and this being done, the fact that fraud had been committed was assumed, and the "Yazoo frauds" passed into history. One or two writers of monographs explored the ground more carefully, especially Mr. Haskins,³ and some of their statements, if incorporated into the history of the matter, might change very materially the status of these land companies. Much more remains to be done, however; there is no full and complete record extant, giving a history of these companies from the time of their first application for a grant to the Legislature of the State to the final end of the entire matter by the passage of the Act of Cession in 1804.

When the name of James Wilson was said to be connected with these "frauds," it was at once assumed that the connection must involve his name in the fraud associated with the case. An examination of the history of the land companies showed that James Wilson was, January 1, 1795, a subscriber to ten shares in the Georgia Land Company, for which he paid twenty-five thousand pounds.⁴ His name appears only as a subscriber among the other subscribers, not among the persons active in the company, whose names are appended to the agreement. These persons were active in

³ Haskins, "History of the Yazoo Land Companies," Papers of the American Historical Association, p. 36 (62).

⁴ American State Papers, "Public Lands," vol. i, p. 141.

securing the necessary legislative action; Mr. Wilson does not appear in any other way in any portion of the records; his name again appears in the lists of subscribers as they were reprinted in the records during the progress of the Georgia claims through Congress. The matter appears again and again; the debates of Congress from 1803 to 1814 contain speech after speech, resolution after resolution, bitter recrimination and partisan charge, detailed statement and discursive colloquy, but no mention of Mr. Wilson's name; no mention of any action taken by him in the matter in any way. The American State Papers contain the investigation made into the charges of bribery against the Legislature of Georgia; every affidavit is given in full. No slightest allusion to James Wilson either directly or by indirection is made anywhere, in any way. On no page of the public archives of his country stands on record one statement which any friend of James Wilson need desire to erase. The other men mentioned by the anonymous writer do appear; James Gunn, Wade Hampton, Zachariah Cox, were all active and influential in the matter. Must we then simply shift the burden of the sin to their shoulders, leaving the recorded evil as it stands? Were these men, more or less associated with the finest minds, the purest characters, of the time "corrupters" and "bribers"? At a superficial glance it seemed so, but as the story spread upon the public archives of the United States, the Annals of Congress, the biographies of the men of the day, is slowly unfolded, the conviction is forced upon the mind that not only was James Wilson unconnected with any evil, but that the evil itself had been so exaggerated, so colored by the violent passions and the prejudiced minds of the time, that even history has been led astray, and a stain left upon the annals of the early days of the country which should have been long since removed.

To write the whole story of this remarkable series of events would be to examine and perhaps to reshape a very long chapter in the early history of the country, extending

from 1789 to 1814. It is only desired here to give a brief view of the facts as they stand upon the records, and which as they stand seem to show clearly, and without need of assigning fraud or any other ulterior motive, the reasons which moved the foremost men of the time to enter upon these great enterprises. There were many of these undertakings, but the one to which our attention has been particularly called, as the one to which James Wilson subscribed, is known as the Georgia Land Company.

The State of Georgia had a vast territory not now included in the State limits and then called informally the western lands, uninhabited save for a few straggling settlers and the original red men. Her treasury was empty, and she had incurred heavy debts to those soldiers who had been employed in defending her frontiers against the Indian enemy,⁶ who were ever ready for an attack. "The people were unable to pay heavy taxes and were unwilling to pay any. The State currency was greatly depreciated, and the only hope of relief was in the sale of the Indian lands."⁶ The boundaries were uncertain, the title more uncertain still. In regard to the boundaries the custom seems to have been to claim as much as possible and get as much as might be. Title to the territory was claimed by England, Spain, Georgia, the United States, and by the scanty and scattered settlers who disputed it with the Indians.⁷ At the time most of the land companies were formed, almost any of the claimants might come to be the strongest by a slight turn of the wheel of fortune. The boundaries were extensive, the settlers feeble, the Indians aggressive and cruel. These latter had a much to be reprobated attachment to their pleasant lands and a singular dislike of those who were taking those lands from them. The peaceful settlers needed protection both from the white border ruffian and the red burner of the

⁶ Annals of Congress, 1803-4, p. 969.

⁶ Smith, "History of Georgia," p. 170.

⁷ American State Papers, "Public Lands," vol. i, pp. 34-35, 99-102, 132-140; Annals of Congress, 1803-1814, Debates in Congress on the Georgia Claims.

settlement and the clearing. "No one could say what was the value of the Georgia title, for it depended on her power to dispossess the Indians, but however good the title might be, the State would have been fortunate to make it a free gift to any authority strong enough to deal with the Creeks and Cherokees alone."⁸

An empire stretched beyond the barriers then set by the wilderness and the savage; how should that empire be opened to the white man and to civilization? That problem had presented itself clearly to those who, during the debates of the Constitutional Convention, had planned for the future of America. Mr. Wilson himself had said in that convention, "When I consider the amazing extent of the country, the immense population which is to fill it, the influence the government we are to form will have, not only on the present generation of our people, and their multiplied posterity, but on the whole globe—I am lost in the magnitude of the object."⁹ To such men as Wilson it was not only the physical grandeur of the great spaces which were to be filled with an overflowing population, but the grandeur of the example that was to be set to the whole of humanity, of an independent, intelligent and happy race, living unhampered by the old forms of government, and growing up to the full stature of a free people. To such as he the opening up of a vast wilderness, filled only with the roaming, scattered bands of the aborigines, and the wild beasts of the forest; the throwing open to the sunshine of the dark and dismal spaces of swamp and fen, the opening of the great waterways for the passage of the hardy settler with his schoolhouse and his church, was the patriotic preliminary to the greater—the all-important—work of the building up of a new world which should be in itself so happy, so enlightened, so favored by its environment, so blessed by its institutions, that all men all over the world would be the better and the happier because of the example it would afford.

⁸ Adams, "History of the United States," vol. i, p. 303.

⁹ Elliott's Debates, vol. v, p. 239.

It was in a spirit such as this that men like "Washington, Franklin, Gallatin, Patrick Henry, Robert Morris and James Wilson"¹⁰ engaged in what has been called 'land speculation.' " It was land speculation to which they were not only invited, but urged by the government to which they were devoted. The Congresses of the several States, and the Congress of the United States, were all engaged in formulating plans by which they might dispose of the public lands to land companies and to private individuals. In 1790 Alexander Hamilton, "in obedience to an order of the House of Representatives," submitted a report in which he said, "In the formation of a plan for the disposition of the vacant lands of the United States, there appear to be two leading objects of consideration; one, the facility of advantageous sales, according to the probable course of purchases; the other the accommodation of individuals now inhabiting the western country, or who may hereafter emigrate thither. The former, as an operation of finance, claims primary attention; the latter is important, as it relates to the satisfaction of the inhabitants of the western country. It is desirable, and does not appear impracticable, to conciliate both. Purchasers may be contemplated in three classes: moneyed individuals and companies, who will buy to sell again; associations of persons, who intend to make settlements themselves; single persons, or families now resident in the western country, or who may emigrate thither hereafter. The two first will be frequently blended, and will always want considerable tracts. The last will generally purchase small quantities. Hence, a plan for the sale of the western lands, while it may have due regard to the last, should be calculated to obtain all the advantages which may be derived from the two first classes."¹¹ "Moneyed individuals and companies" were looked to in the first instance for relief from the burdens of debt which had been incurred by both the States and

¹⁰ Haskins, "Yazoo Land Companies," Papers of the American Historical Association, p. 36 (62).

¹¹ American State Papers, "Public Lands," vol. i, p. 8.

the nation, and for assistance in opening the unsettled lands to occupation and civilization.

With encouragement of such a nature from the government it is not to be wondered at that the thoughts of men turned toward the opportunities presented by the vast tracts of land waiting for opening and improvement. A number of companies were formed under various names, and efforts were made to secure legislation in their favor. Three of these companies, the Virginia Yazoo, the Tennessee Yazoo and South Carolina Yazoo companies, secured a grant of something over fifteen million acres of the western land from Georgia for about two hundred thousand dollars;¹² they claimed that they could, by the terms of their grant, pay for this land in the depreciated evidences of the public debt of the State; the State refused to accept the tender, and repudiated the contract. The company acquiesced in this repudiation of the contract by the State, it appears, for the reason that the currency rose in value and they could more profitably use it elsewhere.¹³ The Act was never repealed and no title deeds ever passed under it. But the question of claims was debated in Congress, and it was said that the claimants under the Act of 1795 were willing that those under the Act of 1789 should "share the equity of their claim."¹⁴ In this case the State was able to recede from what it considered a bad bargain by means of a disagreement as to the construction of the contract; it did not, therefore, feel itself driven to the desperate means by which it escaped from the next bargain it entered into with the land companies. But it seems to have here begun that course of the repudiation of its contracts which led to so much mischief later on. In 1794 the land was still unsold, the soldiers were clamorous for money, the treasury was still empty, and there was little hope of replenishing it unless Georgia could realize something from her rather uncertain

¹² American State Papers, "Public Lands," vol. i, p. 133.

¹³ Ford, "Writings of Jefferson," vol. v, p. 324.

¹⁴ Annals of Congress, 1803-4; p. 1162.

interest in those western lands. It was known they were for sale and five companies came forward to buy them. Four of these companies united and agreed to give Georgia five hundred thousand dollars in cash for her interest; the purchasers to take the titles as they were and to get rid of all difficulties and arrange matters with the general government and with Spain and the Indians. These companies were the Georgia, the Upper Mississippi Company, the Georgia Mississippi and the Tennessee Land Company.¹⁵ This offer was accepted, and the Act of 1795, hereafter referred to, was passed. "These companies were not all Georgians, but a company of Georgians offered seven hundred thousand dollars for the property on somewhat different conditions."¹⁶ This offer of the seven hundred thousand dollars (two hundred thousand more than that of the four companies) has been given as a complete proof that the Legislature was bribed to pass the Act in favor of the four companies. Mr. Haskins, who looked carefully into this matter, says, "Wereat was the man who proposed to buy at the same time the other companies bid." "His security was thought insufficient, and the whole plan was regarded as really a scheme on his part to pay down a fraction of a cent an acre for the chance to sell at a profit in the course of a year. The fact that each of his later proposals was made after the arrangements of the others were well advanced gives color to the suspicion that his real design was to force the other companies to buy him off."¹⁷

In December, 1794, an Act to grant these lands to the land companies mentioned passed the Legislature of Georgia, but Governor Matthews vetoed it on December 29th.¹⁸ A committee was appointed to confer with the Governor, and a second bill, framed to meet his objections against the first

¹⁵ American State Papers, "Public Lands," vol. i, pp. 133-134.

¹⁶ Smith, "History of Georgia," pp. 170-172.

¹⁷ Haskins, "Yazoo Land Companies," Papers of the American Historical Association, p. 23.

¹⁸ Stevens, "History of Georgia," vol. ii, pp. 467-470.

bill was passed and received his signature January 7, 1795.¹⁹

Speaking of this incident the recent writer who has attempted to revive the rancors of former days says, "The Governor, brave, ignorant, old George Matthews, 'the hero of Kanawha,' was persuaded by its lying caption to sign what he believed to be an Act to pay old soldiers their arrears and to strengthen the frontiers. No stigma ever attached to his name."²⁰ As the Governor carefully read the bill on its first appearance and vetoed it; as he subsequently gave, in a very elaborate message to the Legislature, his reasons for signing the second bill, showing a most intimate acquaintance with all its provisions; as he very bitterly resented in the same message the slanders which were hurled against him, and as he finally went to live practically in exile, almost broken-hearted because of the unfounded and unjust attacks upon him, the paragraph quoted is amusing in its pseudo pathos and mistaken inference. The Governor's message is in part as follows:

"It is a matter much to be regretted (considering the unfavorable light the Act for disposing of our western territory has been viewed in) that the spirit of party resentment and personal reflection should have run so high in many instances. The public mind has been inflamed by unfair representations, and our newspapers have teemed with personal abuse and invective. This I remark from having experienced the public slander. Endeavors have been made to calumniate my character by false reports, such as 'that the motives which induced me to give my assent to the second Act proceeded from private interest, regardless of the sacred duty I owed to the station I filled, and the rights and interests of my fellow-citizens.' Conscious of the purity of my intentions and supported by the justice and integrity of my actions, I have treated with silent contempt these base and malicious reports; and I now defy the blackest and most

¹⁹ Stevens, "History of Georgia," vol. ii, p. 473.

²⁰ *The Independent*, March 16, 1906.

persevering malice, aided by disappointed avarice, to produce one single evidence of my ever having been interested in the sale to the amount of one farthing.”²¹ This is the pathetic message of the man “against whom no stigma ever rested!” He was innocent, as were others; he was reviled, as were others, but because one of these others is honoured above his fellows by men who understand his character, the slanders are revived against him, while “brave, ignorant, old George Matthews” finds himself at last exonerated! In this same message he gives a long account of the causes which led him to give his approval to the second bill, saying at the end, “But when it appears that three of the most important objections I had made to the first law were removed, I think there is no man of cool, dispassionate reflection that would have refused his assent to it for any reasons short of a clear proof of corruption in its passage through the Legislature, and *no such information ever came to my knowledge.*”²²

January 26, 1795, the Governor issued his proclamation, granting the designated tract to these four companies.²³ The purchasers very naturally, having paid large sums of money for their purchases, proceeded to dispose of some of their holdings, considering the purchase completed by the solemn act of the Legislature. But in this same year conditions changed. The United States opened a land bureau for the sale of the northwestern lands,²⁴ which were to be sold for “two dollars an acre, or as much more as they would bring.” The title of the State became much stronger by reason of the settlement of claims against it through the treaty with Spain, concluded in October, 1795. In 1790 the proposal had been to sell the public lands of the United States, with a good title, free from dispute, for thirty cents an acre.²⁵ This is to be assumed as the highest price Alexander Hamil-

²¹ Stevens, “History of Georgia,” vol. ii, pp. 482-484.

²² Stevens, “History of Georgia,” vol. ii, p. 483.

²³ Stevens, “History of Georgia,” vol. ii, p. 477.

²⁴ Story, “Laws of the United States,” vol. i, p. 421.

²⁵ American State Papers, “Public Lands,” vol. i, p. 9.

ton, who formulated the proposal, believed he could obtain. The price of 1796 seemed very high in contrast. In fact, the sum realized was expected to be much reduced by reason of the expenses of the land office. Georgia sold her lands in 1795, without guaranteeing title and without expense to herself. The United States gave a good title and was under heavy expenses.

The sum which had seemed large, in view of the poor title Georgia could give and the small and uncertain payments she had hitherto been able to obtain for the lands, began to look like a bad bargain. "Disappointed avarice," to use the language of Governor Matthews, who it may be assumed was referring to the members of the defeated companies, before referred to, was ready for its revenge, for a possible relief to its disappointment, for if the Act could be rescinded they might yet succeed in their designs. Senator Jackson, of Georgia, resigned his seat in the Senate and conducted a campaign which has been sufficiently characterized by the phrases used by Governor Matthews. Charges of bribery and corruption were freely and violently made; there can be no doubt that they were sincerely believed by the masses. The Legislature convened, a rescinding Act was passed February 13, 1796, and thereupon ensued the theatrical scene of the burning of the offending Act. The picturesque features of the scene not being sufficient for the excited fancy of the reporters, they later added that the fire used was obtained "from heaven" by means of a burning glass. A reason for this seemingly sentimental conduct is given later by Mr. Lyons in a speech before Congress in 1803. In speaking of this matter he said, "The Legislature of Georgia, in or about the year 1795, offered these lands for sale, and did actually by an act of their Legislature, dated seventh of January, 1795, and by Executive acts founded thereon, sell and convey by deed their claim and title to about forty million acres of that territory, for which they received the compensation agreed on. The succeeding Legislature, it seems, did not like the bargain their predecessors had made. They thought

they did not get price enough for the land, or they thought if they did, they put too much money in their own pockets. They, after declaring the sale null and void on account of its being effected by fraud, bribery and corruption, endeavored to erase and destroy every evidence of the transaction. The proceedings of the Legislature of Georgia on this subject carry on the very face of them a doubt of their ability to do away with the title given in 1795, when they endeavor to perplex the holders of it by the destruction of the records." ²⁶

In the light of this nearly contemporary recital the facts of the case begin to take on a different hue. The sensational procedure of erasing the legislation from the statute book, the burning of the record, the violence of the passions aroused in order that all this might be done and yet take on the appearance of legality, all are shown as parts of a concerted action, by force of which the State could attempt to annul a contract and rescind a bargain her legislators desired to retreat from.

At the time of the sale the people of Georgia knew the actual condition of the lands. Some years later, when the claims to this land were being debated before Congress, the country was described by various speakers as being one of the most beautiful and delightful on the globe. But as to the facts on this aspect of the question we have the testimony of Mr. Lyons, who came from that section of the country and knew whereof he spoke. Eight years after the sale of 1795 he gives a vivid description of that country which we are asked to believe was a sort of earthly paradise which the State of Georgia had parted with for a mess of pottage. He speaks of it as "a country which is now, and has long been, a harbor for bands of the most desperate robbers and murderers that ever infested any part of North America; who almost weekly rob or murder some of my neighbors on their return to their homes from market." ²⁷ The pioneer

²⁶ Annals of Congress, 1803-4, pp. 1155-1156.

²⁷ Annals of Congress, 1803-4, pp. 1156-1157.

who would pay a high price for lands so situated must have had a most adventurous heart!

Congress had watched the proceedings in Georgia with interest. The Indian title to the land had never been extinguished, and the President, February 17, 1795, sent a message to Congress calling attention to the Acts of 1794 and 1795, saying that these Acts embraced "an object of such magnitude and their consequences may so deeply affect the peace and welfare of the United States, that I have thought it necessary to lay them before Congress." A committee was appointed, and a series of resolutions were passed having reference to the infraction of treaties with the Indian tribes, which, with its consequences of renewed warfare with the Indians, and all the horrors of border warfare, was the danger assumed by the Congress to have been meant by the President.²⁸

"The primary object and the whole intention to be collected from them (the resolutions) was to prevent the settlement of the country by individuals either by waging war against the Indians, or extinguishing the Indian title; and to prevent a sale by Georgia, except to the United States, of their remaining undisposed of territory; for Georgia still had a large tract of land after the passage of the Act of 1795."²⁹

These fears and the belief that the country should belong to the nation kept the matter before the mind of Congress, and April 7, 1798, the President was empowered to appoint a commission³⁰ to settle land claims with Georgia. He appointed the commissioners December 31, 1799,³¹ and on May 10, 1800, another Act was passed granting further powers to the commissioners.³² Articles of agreement and cession were entered into by the commissioners of the United

²⁸ *Annals of Congress*, 1804-5, pp. 1066-68.

²⁹ *Annals of Congress*, 1804-5, p. 1068.

³⁰ Story, "Laws of the United States," vol. i, p. 778.

³¹ *American State Papers*, "Public Lands," vol. i, p. 92.

³² Story, "Laws of the United States," vol. i, p. 778.

States and Georgia, April 24, 1802, and reported to Congress by President Jefferson, April 26, 1802.³³ March 3, 1803, the Act of Cession was finally passed by which Georgia ceded to the United States all her claims in the western lands. In this cession was included the land which had been granted by Georgia to the four companies in 1795.³⁴ February 22, 1803, a commission appointed in pursuance of a clause in the Act of 1803 made their report to the House of Representatives on the claims "made by settlers and other persons" to the lands thus ceded.³⁵ In this report the several titles to the lands were fully set forth, as were the Act of January 7, 1795; the agreement between the four companies and the State, dated January 10, 1795, and the proceedings of the Legislature which repealed the Act of 1795. The proceedings before the State Legislature of Georgia are transcribed in full in the report of the commissioners to Congress, and contain the affidavits upon which the charges of bribery rest. They are all thus spread upon the pages of the public records of the United States.³⁶ They contain all that could be brought before the Legislature by the utmost exertion of political energy. What men thought of them a few years later may best be shown in the words of Mr. Root, a member of Congress in 1803-4.

"It is further insisted, that the grant of 1795 was fraudulent—of course, that it is void *ab initio*. The abominable fraud, the gross and odious corruption, which is said to have been practiced by and upon the members of the granting Legislature of 1795, have been depicted in the most artful and detestible colors. But if I were to admit for a moment that the motives of a Legislature can be questioned in order to nullify their acts, I should extremely doubt whether that abominable corruption did even exist to the extent alleged. Where, let me ask, is the proof of its existence? I can find

³³ American State Papers, "Public Lands," vol. i, pp. 125, 126.

³⁴ Story, "Laws of the United States," vol. ii, p. 893.

³⁵ American State Papers, "Public Lands," vol. i, pp. 132-150.

³⁶ American State Papers, "Public Lands," vol. i, pp. 132-150.

it nowhere except in *ex parte* affidavits, taken before no one knows whom, and sworn to by persons equally strangers to us. Being voluntary affidavits, the deponents felt perfectly secure from the pains and penalties of wilful and corrupt perjury. If those legislators were so base and impure, why have they not been arraigned to answer for their crimes? We have heard of no prosecution against them for the bribery and corruption. Instead of jails, gibbets and infamy, they have been rewarded by the continued confidence, not only of the people, but of the Legislature. Several of the members who stand charged with bribery have since been elected by the people to seats in both branches of the Legislature. Several others have since been appointed by the Legislature to seats on the Bench of Justice, and one other has since been appointed by a legislative act a trustee of the University of Georgia." In February, 1805,³⁷ Mr. Root said :

"Sir, the honours and preferments retained by and conferred on so many of those persons charged with the bribery, leads me to believe that there were causes unknown to me which led to the uneasiness on the part of the people of Georgia, with regard to the sale of 1795, and led to the attempt to resuming the right to the lands in 1796."³⁸

"No men stood higher in Georgia than the men who composed these companies and the members of the Legislature who made the sale, and no men were in higher repute than some of these in an aftertime," says Mr. Smith in his "History of Georgia." Mr. Stevens, who wrote in 1859, and who, like the other historians mentioned, believed the popular report of the proceedings, although that belief came into conflict with the facts which he reports, says:

"Many of the persons thus branded were subsequently received into public favor—one having been since the Act elected President of the Senate; four, members of the Senate; four more, members of the House; two, elevated to the

³⁷ American State Papers, "Public Lands," vol. i, pp. 132-150.

³⁸ Annals of Congress, 1804-5, pp. 1095-1096.

Bench, as Judges; one, made a justice of the peace; and one, appointed a trustee of the University of Georgia." ⁸⁹

It should be needless to state that in all this matter not the faintest hint of any connection with the transaction at any time, in any way, legitimate business or illegitimate bribery, is shown of Mr. Wilson. His name does not once occur in the affidavits above mentioned. In all these public records or proceedings he is simply out of connection with all this slander, and whatever truth may have been mixed with the slander. Twice it may be assumed he is mentioned in the debates of Congress, but only by indirection and in the midst of violent partisan recriminations. The gossip of the time did undoubtedly use his name. If gossip is to be crystallized into history Wilson and Washington will go down together; the columns of the Philadelphia papers of the time need only be cited to establish how evil were their characters, how infamous their actions, how foolish their policies.

While it is not necessary in order to vindicate Mr. Wilson's character to show that the charges against the four companies are largely, perhaps entirely, groundless, it is due to those whose names have been connected with the charges of bribery to repeat the clear and impartial statement in regard to the inadequacy of the price paid for the lands made by Mr. Holland. After stating that he had formerly been greatly prejudiced against the Act of 1795 and the transactions connected therewith, he stated that he had had occasion to examine the matter more closely, and that this examination into the facts had caused him to reconsider his decision; he believed that many of the members might have acted from impure motives, but not to the extent alleged.

"There are many causes, however," he said, "if we will take the trouble to examine them, which will in a great measure account for the extraordinary acts of both these Legislatures, and if their acts can be accounted for without attributing fraud to the one and tyranny to the other, that

⁸⁹ Stevens, "History of Georgia," vol. ii, p. 490.

portion of charity which we are bound to extend to all mankind will impose upon us the most favorable construction. In order to understand these transactions it will be necessary to inquire into the estimated value of land, in the State of Georgia, to which the Indian claim had been extinguished and also the estimated value of lands in question to which the Indian claim had not been extinguished for years antecedent to the disposal of them by the Act of 1795; and, also, inquire whether any external causes subsequent to the Act of 1795 produced a different conception relative to the value of these lands. A knowledge of these subjects may be useful, and enable us to judge more correctly and more favorably on the motives of either Legislature. The people of the State of Georgia, as well as the Legislature of the State, for years previous to the passing of the Act of 1795, had set a low value upon their vacant lands—lands lying contiguous to the settlements to which the Indian title had been extinguished—lands lying this side of the Oconee. I am credibly informed, and if my information is incorrect, let the gentleman from that State correct me, lands had been sold in 1792-93-94 for a cent an acre; sold for a sum only contemplated to indemnify the State for the expense incidental to making titles. And as to the lands in question, their estimated value will be best known by adverting to their legislative acts; their Legislature for years had been attempting to sell these lands; in 1787 a large portion of them was offered to the United States for \$171,428; and in 1799 about twenty-five million of acres was actually sold for a little more than \$200,000 to two companies, one called the South Carolina, the other the Virginia Yazoo Land Company; and in this case the land was sold on a credit, and the terms of the sale not well understood; the purchasers contended that the payments could be made in paper bills; but the State insisted for specie; this not being complied with, the titles were not completed by the subsequent Legislature. In 1795, the quantity of land was estimated at thirty million acres; the terms were cash; and the sum, five hundred thousand

dollars, which was paid, and the titles executed, subject to many claims derived from Spain and Great Britain, and subject to the Indian title and to the claim of the United States, as well as the claim of Spain to a part of this territory, and also subject to the sale previously made by the State in 1799 to the Virginia and South Carolina companies. It was under these circumstances and conflicting claims to the lands in question that the Legislature in 1795 sold this land. Sir, I shall not justify the conduct of any member that composed this Legislature, and I admit that all those members that were partners, or took any consideration for their votes, acted imprudently, and probably corruptly. But it is possible that even Thomas Rayburn, who appears in the most unfavorable point of light, having taken, it is said, \$600 for his share of the land, or for his vote (for there is no legal proof) might believe that the State was not defrauded; he might believe that \$500,000 that the company was giving for the claim of Georgia for the lands in question was more than the claim was worth. The price for which unappropriated lands had been sold, the price the State had offered to take, and the price for which Georgia had previously sold it for, authorized this belief; and that this was his belief, may be inferred by his taking \$600 for seventy-five thousand acres, being one-quarter per cent. less per acre than the State had sold it for; for it seems admitted that he had his choice to retain his share or receive the money; his choosing a less sum than the public sold it for is an evidence of the value he set upon it, and a confirmation that he thought the land well sold. . . . What was the property disposed of? Was it a country which was needed for the cultivation of her citizens? No, sir; Georgia had independent of this more vacant lands than fell to her share, or than she could cultivate for generations to come. It was a tract of country remote from her citizens, claimed, as I have before stated, by Spain, by the United States, and possessed by powerful nations of Indians, over which Georgia had no control. It was of no use to Georgia only as an estate for

sale, and she had nothing to sell but a mere nominal title, derived from a dubious construction of her original charter, and for this Georgia received, when in great need of money, \$500,000—a much greater sum than it had been previously proposed for or expected to bring. We have now seen the causes which produced this sale under the Act of 1795; let us examine what probably produced the Act of 1796. The deprecated Act passed January, 1795; in the same year an office was opened for the sale of the public lands of the United States; these lands were to be sold for two dollars per acre, and as much more as they would bring. The vast disproportion in the price of these lands, and the price which the Legislature of 1795 of the State of Georgia had sold their lands, could not well be accounted for by the people of Georgia other than fraud. Fraud was suggested—a single suggestion in a case of this kind is sufficient. Nothing is so disgusting as for our agents, especially in a legislative capacity, to sacrifice from mercenary motives our interests, and be guilty of a breach of trust. Suspicions will now be admitted as full proof; the torrent went on; the belief became general that by fraud the Legislature of 1795 had bartered off in the most fraudulent manner millions of acres of the realized property of the State. Under this ideal impression, occasioned in a great degree by the causes I have mentioned, the people of Georgia were misled, and under this impulse the Legislature of 1796 proceeded. . . . I have mentioned these circumstances to show what it was that made the act of Georgia of 1795 so obnoxious to the people of that State, and I am strongly induced to believe that had it not been for the price that the general government set upon her lands in 1795, we should have heard but little concerning the corruption of the Legislature of the State of Georgia in 1795, nor ever have heard of the rescinding act of 1796.”⁴⁰

It was beyond the power of the persons concerned in the drama of development taking place in 1795-6 to take this

⁴⁰ *Annals of Congress*, 1804-5, pp. 1139-1142.

just and impartial view of the matter. The Act was rescinded, the companies deprived of the land for which they had paid, and which, in many cases, they had resold, and many of the participants were financially ruined, although the State placed the purchase money which had been deposited, in the treasury to be drawn against by the members of the several companies, and a portion of this money was actually withdrawn.

It may be interesting to follow the history of the claim to its final settlement in 1814. Under the Act of Cession, which, as we have seen was passed in 1803,⁴¹ the United States agreed to set aside a large quantity of land for the purpose of satisfying claims in the territory, and thereupon arose a controversy which continued until 1814, in regard to the status of the "Yazoo claimants." The claimants for the ceded land were numerous. As has been noted, the rights of actual settlers within the territory had been confirmed both as to Great Britain and Spain, by the Spanish treaty of October 17, 1795.⁴² There remained as chief claims, British grants to persons not actually settled on the date of the treaty, British and Spanish incomplete grants; claimants who had settled without any evidence of title; a company of military adventurers, mostly from Connecticut, and lastly, the claimants under the Acts of Georgia of 1789 (never repealed) and 1795. Most of the claimants under the latter Act were persons or companies who claimed as innocent purchasers from the prior claimants, and who declared they could not be affected by any fraud, if fraud there were in the prior proceedings. Many of these were New England companies, or individuals. John Randolph, the chief opponent of these claimants in Congress, belonged to that class of politicians who believe that devotion to their section involves hatred to all that lies beyond its borders. He had an especial hatred of the New England Yankee, or as Haskins says, "his chief political motive appears to have been hatred of Madi-

⁴¹ Story, "Laws of the United States," vol. ii, p. 893.

⁴² American State Papers, "Public Lands," vol. i, p. 132.

son and the Northern Democrats." For twelve years his deep hatred and bitter invective were displayed in the House whenever the subject of the Georgia lands came up. He was answered time after time, by such men as have been quoted—men who were calm in their argument, and who produced facts to support their cause. Randolph repeated his charges over and over again, but introduced no new evidence to refute that which had been offered in rebuttal.⁴⁸

While these debates were going on in Congress the case of *Fletcher v. Peck*,⁴⁴ came before the Supreme Court of the United States for decision. By several conveyances the title of the Georgia Company to a portion of the land conveyed in the Act of 1795 was vested in a person by the name of Peck. On the fourteenth of May, 1803, Peck bargained and sold his title to Fletcher, covenanting among other things that the title of the premises so conveyed by the State of Georgia in the Act of 1795 to his predecessor in title had been "in no way constitutionally or legally impaired by virtue of any subsequent Act of any Legislature of the said State of Georgia." Fletcher sued Peck and the third count of his declaration set forth that the covenant had been broken because of the rescinding Act of 1796. If the rescinding Act was valid there had been a breach of the covenant. Marshall decided that a State could not repudiate its own grant; that the Act of 1796 in which Georgia had attempted to do so was null and void, and consequently that the plaintiff had failed to show a breach of the defendant's covenant. When the case was argued the land which was the subject of the controversy was not in possession of either party, and the decision did not put either party in possession. It did, however, affect the question before Congress. It amounted to a decision by the Supreme Court that those who claimed title under the Georgia Company should have their proportionate part of the proceeds from the sale of the lands set apart to satisfy claimants by the Act of 1803.

⁴⁴ See Annals of Congress, Debates on the Georgia Claims, generally.

⁴⁸ Cranch. United States Reports, 87.

March 14, 1814, an Act of the United States gave to these claimants their long contested rights.⁴⁵ The third section provided that "the respective companies hereinafter enumerated" should receive "certificates of stock, not bearing interest, and expressing on their face that the same are payable out of the first moneys in the Treasury of the United States, arising from the sale of public lands in the Mississippi territory, after the money due to the State of Georgia and the expenses of surveying such lands have been satisfied." The next paragraph mentions the Upper Mississippi Company and the share to be paid to it; the next the Tennessee Company and its due share; the next the Georgia Mississippi Company and its share, and last the Georgia Company, to which was awarded "a sum not exceeding in the whole two millions two hundred and fifty thousand dollars." Thus ended in a national act of justice the long drama which had been played upon the public stage for nearly fifteen years. The Supreme Court of the United States, and the Congress, had both upheld the rights of the claimants under the original purchasers; but the dramatic incidents; the violent speeches; the charges against the Legislature, were remembered; parts of the history of the event were chronicled by writers of state and national history, but many of the real facts of the case faded out of public memory, and the few later writers of monographs, perhaps because they told the facts more calmly and less picturesquely, failed to attract attention once more to the subject.

It has been impossible, within the limits of this paper, to do more than state the main facts of this intricate yet very interesting bit of history. It might have been an easy task to simply state that Mr. Wilson's name was never connected with the alleged frauds in any authentic public record. It would scarcely have been worth while, however. Mr. Wilson's fame is so well established, all who have studied his works or investigated his character have come from the study or examination with so high a veneration, so deep a

⁴⁵ United States Statutes at Large, vol. iii, p. 116.

respect, for both the mental and moral qualities of the man that their praise, so measured to their own minds, in view of the worth of their object, seems almost subject to the reproach of exaggeration. His fame is safe; it rests upon his work, his life, his thought, and these are open to the view of all men; there is nothing concealed, nothing mysterious. We can well afford to ask simply that anyone who would judge James Wilson capable of any action dishonorable in itself or disadvantageous to his country, will take the trouble to examine the record of his life, and make themselves acquainted with his thoughts. No other or further reply will be necessary.

But in regard to these transactions of the Georgia Company it is a different matter. They have become obscured by time; they have not been treated with that fullness and fairness that so important an episode merited. From 1789 to 1814, in one way or another, the matter was before the country. The final action of both Court and Congress did justice to those who had been injured. But in their manner of dealing with the subject few historians have done it justice. None, save Mr. Smith in his history of Georgia, have attempted to free the men who took part in it from the obloquy which has covered them; to free the Legislature of Georgia from the reproach that has hung over it, blotting the record of that State with a story of shame. It has not seemed to be a matter of importance hitherto, but if men can be found who are willing to scan the pages of history in order to discover if on those pages there can be found the record of an ancient sin, and without stopping to inquire as to the truth or error of that record, are to use it for the slaying of the reputations of honored men, then there is a cause for examination; then there is a reason for renewing the quest for truth that stopped too soon in the old days. Too long there has been left an unverified slander on the Legislature of Georgia. Too long have honorable men like Matthews and Pendleton and Morris rested under a dishonorable imputation. A partially investigated truth, obscurely

reported, accepted without due investigation, has no place upon the pages of any history. Such a half truth has often worse effects than the palpable error which can be traced and refuted. Unless written with an absolute devotion to truth, history will fail to fulfil its object and sink to the level of a feeble fiction. It is for the interest of those upon whom the slander and obloquy did really fall that the true story of the transaction should be told. It is not from the pages of history, however, that any stain is thrown upon the name of James Wilson. To do this it was necessary to scour the pages of the irresponsible and fleeting literature of the time; to read into the records that which was not found there. James Wilson, as has been said, was interested in these companies; after all that has been said such interest does not seem unpatriotic or dishonest. He invested his money; he lost all that he had invested; he died absolutely without worldly wealth, poorer than when he came to America in the days of his youth. But as then he had been rich in intellect, in learning, in energy, so he died; richer in intellect, for he had used that intellect for the benefit of his adopted country; richer in learning, for his learning had been given to great uses; richer still in that character into which his energy had been transfused; a character too deep, too broad, too generous, too widely known, too deeply loved, for any breath of slander, however virulent, to injure.

M. C. Klingelsmith.