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THE MADISONIAN.

FOR THE COUNTRY.

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DEBATE IN THE SENATE.

PROSPECTIVE PRE-EMPTION BILL.

Wednesday, January 6, 1841.

The order of the day being the bill to establish a permanent prospective pre-emption system in favor of settlers on the public lands who shall inhabit and cultivate the same and raise a log cabin thereon; and the question being on the amendment offered by Mr. Prentiss, of Vermont, as a substitute for the whole bill, as follows:

"Strike out all after the enactfng clause, and insert the following: That every actual settler on any of the public lands to which the Indian title has been extinguished, except such as are hereinafter reserved, being the head of a family, or over twenty-one years of age, who was in possession and a house-keeper, by personal residence thereon, at the time of the passing of this act, and for four months next preceding, shall be entitled to a pre-emption in the purchase of the land so settled upon, not exceeding one quarter section, at the minimum price now established by law."

Mr. TAPPAN, of Ohio, first offered, by consent, the following amendment:

"*And provided further*, That no person, being the owner of land in any State or Territory, who shall quit or abandon his residence on his own land to reside on public land in the same State or Territory, shall acquire any right of pre-emption under this act."

Mr. NORVELL expressed himself as opposed to the amendment, and demanded that the question on it be taken by yeas and nays.

Mr. BENTON made a few remarks inaudible to the Reporter, but believed to have been in favor of the amendment.

Mr. LINN approved the object of the amendment, and thought he should vote for it; but believed there would be great practical difficulty in carrying it out.—He stated that when a section of new land was attached to the State of Missouri, on its northern border, men who held large property in the more settled portion of the State abandoned it, and went to settle in this new district, that they might obtain pre-emptions. Such had never been the intention of the law. Its beneficent object was to secure a home to the poor man who had none, and not to hold out encouragements to the wealthy to remove upon the public lands. The difficulty would be in carrying out the amendments, and Mr. L. wished for no law that could not be carried out. Whatever gentlemen might say, one thing was certain—it was impossible to restrain the people of the West from going on the public lands.—Gentlemen might as well attempt to stop the course of the rivers or the winds. The law, in fact, was a dead letter, and must so remain, whether pre-emption laws were passed or not. It was not, to be sure, a matter of entire indifference, for there were some settlers who did not wish to violate any law of the land; but, whether such laws were passed or not, there were those who would enter on the public domain. The whole force of the United States, were it ten times greater than it is, could never prevent it. Why not, then, pass a general pre-emption law, and provide for the case as it existed? The laws restraining settlement could not be enforced. They never had been and Mr. L. thanked God that they had not. But, if Congress should refuse a pre-emption law, what would be the practical result? The neighbors who had made their settlement would come together with their rifles on the day of public sale, and the speculator, who was there for the purpose of buying their farms over their heads, would receive a very intelligible intimation that his absence would be more agreeable than his company; and such "notice to quit" was in every case very promptly obeyed. He thought, therefore, that the amendment would be inoperative. A man might be even required to swear that he had not removed from a settled home to come on the public land, but in how many various shapes would such an oath be evaded? Still, if the mover would so modify the amendment as to require the oath as a security, Mr. L. was ready to vote for it.

Mr. FULTON, of Arkansas, said that he was a representative of the log cabin interest, and it was their policy to improve every foot of the public land as fast as possible. When the object of the bill was to enable the hardy pioneer to get his little farm at some two or three cents an acre lower than if he purchased it at the public sale, could it possibly be an object with the Senate to prevent him? And, supposing a man had made one improvement, was that any reason he should be prevented from making another? He might have earned one home for himself, was that any reason he might not wish to obtain another for his son?

The question being put on Mr. Tappan's amendment, it was adopted by yeas and nays, as follows: Yeas 26, nays 18.

The question then recurring on the substitute for the bill proposed by Mr. Prentiss, of Vermont—

Mr. SEVIER demanded the yeas and nays; which were ordered.

Mr. PRENTISS then went into a brief explanation of the amendment, which, from the feebleness of his voice, was but partially heard by the Reporter. He was understood as objecting to the bill before the Senate as being both prospective and as applying to lands surveyed and unsurveyed. As it held out an invitation, not only to our own citizens, but to aliens from every land, to come and settle without any condition, its effect would be to make the public lands an object of general scramble. When former pre-emption bills passed, they always required the lands to have been first surveyed, and never before had it been proposed to make them prospective in their operation. The evils that must follow were inconceivable. The bill went, in fact, to supersede the whole land system. It was a totally new and untried experiment; such a one as the Government never had sanctioned, and he hoped never would. The whole pre-emption policy was of very doubtful expediency, even when made retrospective in its operation. But this bill proposed an entire new, and, in Mr. P.'s apprehension, a dangerous scheme, and one utterly opposed to the true interests of the country. Mr. P. had moved a substitute by way of test of the intentions of the Senate.

Mr. CLAY, of Kentucky, now rose and addressed the Senate nearly as follows:

The amendment now offered by my friend from Vermont, by drawing a line between the legislation heretofore pursued with relation to pre-emptions, and the new, comprehensive, and interminable legislation proposed by the present bill, opens the whole question for discussion; and I avail myself of the opportunity thus afforded, to present to the Senate some of the general views I have taken of this subject, and I invite, in the outset, the serious, and, I would say, the solemn attention of the Senate to the bill before it. Before, however, I proceed to examine its provisions, allow me, in passing, to notice a most novel and surprising doctrine advanced yesterday by the Senator from New York, (Mr. Wright;) not that I purpose to discuss, at this time, the position he assumed, but that I may here enter my public protest against it, lest, should I remain silent, it might be thought by any that I yield my assent to it. The Senator's position is, that it is competent to a State, under the Constitution, to admit an unnaturalized foreigner to vote in our elections. I wage no war against foreigners. I respect them when their character entitles them to respect. I well know especially the value of the German yeomanry; a better set of husbandmen does not exist on the face of the earth; honest, industrious, economical, admirable judges of the soil, the best judges of land in all the country, devotedly attached to their families—that is the character of our German population as I have become acquainted with it in my own immediate neighborhood. I will not now stop to speak of the character of the gallant Irish, whose virtues, and I will add, whose defects of character (the virtues far overballancing the defects) are so well known throughout the world. I am not the enemy of foreigners, but the opinion expressed by the honorable Senator from New York, is one of immense practical importance; for if I am not greatly misinformed, President Van Buren owes the vote of one State of this Confederacy, I mean the State of Illinois, to the fact of unnaturalized foreigners voting at our late election, and casting their votes for him. I will not, however, enter on that subject, and I have adverted to it now, merely that no conclusion may be drawn from my silence that I approve or tolerate the doctrine advanced by the Senator from New York. I here publicly express an opinion decidedly opposite. I think that the exercise of the elective franchise always implies citizenship, though citizenship does not imply the right to the exercise of the elective franchise. I hold that a voter, whose voice may effect or change the entire policy of the country, may alter or subvert the Constitution and laws of the country, is a component part of the political power of the country. I hold that the power over the subject of naturalization has been confided by the Constitution exclusively to the General Government, and that no State can constitutionally exercise that power; and that, therefore, no State can confer those privileges and immunities, or grant those rights which proceed from naturalization. This is my opinion, and I advance it here merely as a *counter-projet* to that expressed by the Senator from New York. When a foreigner has once been naturalized, I regard him as a brother, as a member of our political community, and as entitled, with some few constitutional exceptions, to all the rights of native born citizens, and to the protection and defence of the Government at home and abroad; but until he has renounced his allegiance to his foreign Sovereign, and sworn fidelity to our country, I cannot and will not—and I was utterly amazed to hear the gentleman from New York express a different opinion—look upon him as incorporated in our society, and authorized, by the exercise of the elective franchise, to exert an influence in unsettling or changing our entire political policy, whilst as a subject of a foreign Power, he lies under all his original and native obligations. If the contrary doctrine be admitted to be a sound one, then, as has been shown by a calculation which I have seen, the Emperor of Russia, by a proper distribusion of 17,000 of his serfs among the States of this Union (if the States would have permitted them to vote) might have changed the glorious, the triumphant result of the vote of November last, and have continued those in power who, by the full, decided, and manly expression of the public will, have been declared unworthy to be the depositaries of it any longer.

But it is with another subject that I have risen now to deal—the fearful extension now proposed to be given to the Pre-emption System. We have now had a land system in operation for upwards of forty years. Is there any thing in the practical effect of this old and long-tried system which should induce us to repudiate it for a new, untried, and wild experiment? What have been its results? It commenced, about forty years ago, or a little more, in one of the great Western members of the Confederacy, (the State of Ohio,) the settlement of which took place as much as twenty years later than in the case of her sister and neighbor, Kentucky. And what is her population now? From the returns of the new census it is found to amount to a million and a half of souls—nearly double that of my own State, although Kentucky had preceded her by such a great length of time. And if we then go to Indiana, a still younger sister in the great family of States, we shall find that she exhibits a population of between six and seven hundred thousand nearly equal to that of a State which was her predecessor in the establishment of independent State sovereignty by thirty years. I will not go through the list. All the members or the Senate are doubtless familiar with the returns of the late census. All these great and astonishing results have taken place under that system which we are now asked to change. Is it wise—is it prudent—is it statesmanlike, to reject a plan from which have proceeded such glorious fruits, for an untried, and, as I believe, a most hazardous experiment?

What is the history of these pre-emption laws? They arose, I think, in the first instance in the case of what is called Symmes's Grant. John Cleves Symmes purchased from the Government a large tract of land between the Great and Little Miami rivers, in Ohio, including the spot where Cincinnati now stands. He was unable to pay for it, but finally made a compromise with the Government, and took a less amount of land. He had, in the mean time, sold out to numerous sub-purchasers, who, being innocent third parties, and having purchased in good faith, were supposed to have a fair title to pre-emption for the improvements they had made and the farms they had opened to cultivation. Congress, accordingly, granted to them a right to purchase from the Government the lands they held at the minimum price prescribed by law. Then came the cession of Louisiana, many of the occupants of which had settled on their farms while that Territory belonged to the Spanish and the French Governments, under grants freely made, while others had entered on their lands with confidence that, according to the established usages and customs of the country, donations of land would be obtained, totally unaware of the change of sovereignty which had passed upon the country without consulting them. The question then arose, what ought, in equity, to be done in their case? And the American Government came to the conclusion that all who had thus come into possession of their land were equitably entitled to the right of pre-emption, which was accordingly extended to them. Next came a third case—that of the Kohokia, Kaskaskia, and St. Vincent settlers in Illinois and Indiana. These inhabited French villages were settled in some cases more than a century ago, and were not drawn within the action of our land system till about 50 years since. These people, having settled under like circumstances to those in Louisiana, were held to have a claim equally equitable, and pre-emption was granted to them also. Thus the system stood till 1830, under Gen. Jackson's administration. Then, for the first time, was introduced an entirely new principle, and it is that which is contained in the substitute for this bill proposed by the Senator from Vermont. There is, however, a wide difference between what this bill proposes and the practice introduced under Gen. Jackson's administration.

The pre-emption laws, as altered in 1830, allowed a right of pre-emption to all settlers on the public lands from a specified day, who should assert their rights before the expiration of the law, the operation of which was limited to two years. This new principle continued to be periodically re-enacted till some seven or eight years ago, when it encountered a gallant resistance from a friend,* who I regret is not by my side, but who has passed from this place, and, according to public rumor, is destined to a more useful and higher sphere than even that of a seat in this body, august as it may be. Great frauds and abuses were detected in the execution of the pre-emption laws. Speculators freely used them. Floats especially were found to be fraught with iniquity. With the efficient aid of my friend, (Mr. Ewing,) we succeeded in arresting, for a time, these pre-emption laws. We succeeded in putting an end to special and unlawful privileges. We succeeded in restoring the principle of fair equality in the disposal of the public lands. But those interests, speculative and others, which are always awake, always watchful, always on the alert, to get up pre-emption laws, under the convenient and plausible guise of benefitting the poor, made a rally in 1838. We were then told that not less than thirty thousand settlers had entered the Territory of Iowa. The Senate was assured that these persons could not be removed from the public domain; that all the military force of the Union would be insufficient to remove them; and thus, under a species of moral duresse, you were induced to pass the law of 1838: and it has now been in operation for two years. But, not contented with all the victories heretofore achieved, not satisfied with pre-emption laws restricted in point of time, and limited as to the theatre on which they were to operate, gentlemen now come forward with a new and bolder, and more extensive demand. They have suddenly become converts to log cabin doctrine, [a laugh,] and, under a log cabin profession, they demand the passage of a new law, boundless in the space on which it is to operate, or restricted only by the limits of the public lands themselves, and illimitable as to time. Now with regard to the sincerity of these gentlemen in their profession of log cabin principles, (though I am very glad to see that they have profited by the very salutary lesson afforded them within two or three months past,) I like to test their profession by their votes. When my colleague (Mr. Crittenden) offered an amendment, the effect of which would be to confine the operation of their bill to real log cabin men, to the veritable poor who could make oath that their entire property was not worth more than $500, where did we find these new proselytes to log cabin doctrine? [A laugh.] Were they ready to go with us in thus restricting the bill? Were they prepared, by adopting this amendment, to shut out from the privileges of the bill the rich men—the "*barons*"—the owners of manors—the greedy speculator, and restrict it to the hardy settler who sought a home for himself and his children. No, sir, no; every man of them voted it down.

Let us now pause a moment, and look a little at the distinctive provisions of this bill. Heretofore pre-emption bills have been retrospective only; this is in its operation both retrospective and prospective. Heretofore pre-emption bills have been limited as to time; this is unlimited in point of time so long as there remains a foot of land for it to operate on. Heretofore pre-emption bills were operative practically only with reference to some new land, recently surveyed and brought into the market: this bill is a proclamation to the whole universe, native or foreign, naturalized or unnaturalized, that the moment the Indian title is extinguished to any portion of the land held by the United States, they may all rush in and take just as much of it as they please, without even waiting for a survey; and that all the other surveyed public lands of the United States, amounting to about one hundred and twenty millions of acres, no matter how long they have been in market, and although they may be purchased at the moderate price of one dollar and a quarter per acre, are to be subject to the right of pre-emption. This, it is obvious, involves a complete change in our whole land system; a thorough, radical, entire change. It opens at once all the public lands, surveyed and unsurveyed, to the operation of a pre-emption law.

And here let me stop and look for an instant at what are said to be the sole advantages granted to the pre-emptor by this bill; a point on which there exists the greatest possible misconception, either on the part of other gentlemen or myself. The whole practical difference which this bill is to work in our receipts from the public domain is said to be some two or three cents per acre. Here is a message of the President of the United States, sent by him to Congress in December, 1837. It is, in many respects, a discreet and sensible paper, so far as it treats on the subject of the public lands. The President here praises the old land system as it deserves. He describes those who enter on the public domain, without title or pretence of title, as "*trespassers*," "intruders," and he recommends the passage of one more pre-emption law, and one only, and after that the adoption of stronger measures for the purpose (in his own language) "of preventing these *intrusions*." The Senator from Missouri (Mr. Benton) spoke to us yesterday of the President as being a capital pre-emptioner *now*, although when he was here as a Senator he was decidedly opposed to the whole system, and although when he came into office he talked about "*trespassers*" and "*intruders*" on the public lands, and recommended us to adopt measures to put a stop to these "intrusions" in future. It would seem that the President is an attentive listener to the advice of his friends, and always open to conviction. I must admit that he has exhibited not a little flexibility in yielding to the suggestions of some of those who have his ears. I will make my position more general. I think that both the Secretary of the Treasury and the President have shown remarkable ease in opening their ears to the counsels of gentlemen who are strong advocates for pre-emption laws and for the practical appropriation of the public domain to the benefit of a few. The Secretary has brought down the receipts from the public lands to three millions of dollars. They were three millions in 1838, and the very next year they rose to seven millions. The receipts from this source have been subject to great fluctuation; the past year a little above three millions. They are now sinking, and it seems that the more they sink the more he calls out for pre-emption laws! pre-emption laws! graduation laws! to save him from that impending ruin in the administration of the public domain which his system is about to inflict. What, sir, is it possible that any man—what shall I say?—that any man in his senses can be so supremely ridiculous as to suppose that, by reducing the price of the public lands from a dollar and a quarter to twenty-five cents, or, in some instances, to 50 cents, you will get more money for them? Yet that is the principle assumed by the Secretary of the Treasury, and it shows the opinion which operates in his mind, and in the minds of the friends of graduation and pre-emption laws. I will not attempt to describe the whole of the consequences of this law. One of its effects is to convert the existing cash system into a credit *system*. Do you not see it? What is the fact as to the pre-emption laws heretofore granted? They gave the pre-emptioner a credit of two years. The gentleman from Alabama (Mr. Clay) now limits his credit to one year; but, whether the term be one, two, or three years, it changes our land system from a sale for cash to a sale for credit. And thus the whole 120 millions of acres of the public domain will all pass under this newly revived credit *system*.

And who are they who propose this change? The very men who decry all credit, who clamor for hard money, who inveigh against banks, and denounce the credit system as the source of all our woes! and yet here, now under the name of a pre-emption law, they propose to revive the whole credit system! Can it be doubted that such will be the result of the bill? Will any man, who can get his land on a credit of one or two years, buy it for cash?—especially when he can dispose of his cash at a rate of 18 per cent. interest, as prevails in Illinois and some other new States?

This is a grave feature in this new experiment, and deserves the serious consideration of the Senate. To what will such a system lead? Have we had no experience on this subject? When you have parted with your land from year to year thus on credit, you will at length have accumulated a mass of debtors on whose behalf petition after petition will be presented here, and their inability to pay will be most pathetically set forth, till at last your compassion will be moved, and you will forgive these poor debtors the amount of their debt, and consent to take remuneration for their land in some other form of advantage to the public service.

It is not correct, though it has been said and repeated by some gentlemen here, that the sole difference effected by the pre-emption law in the price you receive for the public lands is some two or three cents per acre. First, there is the difference of six cents which the President states; and how is this made out? The public land is sold either by auction or at private sale; but owing to correction, to violence, to combinations, and the open contempt of law, (a state of things which has grown with the multiplication of pre-emption laws,) the proceeds of the auction sales are now much less than formerly. I cannot believe with the Senator from Missouri, (Mr. Linn,) that the people of the United States are incompetent to protect their own property. I believe that it can be done by a steady, firm, and upright administration of the Government. I believe that the people of the United States are capable of protecting their rights against all who assail them, whether from within or from without. Assuredly, if the Government cannot protect what is its own, it must be very incompetent to protect us and ours. But, I ask, how is the six cents excess of sales over the minimum price, referred to by the President, made up? It is got by running an average over the total amount of sales, both by auction and by private entry. Now, the amount sold at auction is not one-fourth, no, I believe, not one-tenth, part of the whole. The Secretary takes the auction sales, where the lands brought from $5 to $20 an acre, and spreads that amount of excess over the whole remaining nine-tenths of the total amount sold by private entry, and then he makes an average, and draws the inference that the whole gain in selling the public lands in the established and customary method over what they bring under the pre-emption laws amounts to but six cents an acre! Is this fair? But even this amount of six cents, under a proper administration of the system, would cover the whole expense of survey and sale. But is that all? You are to add two years' interest on the minimum price, which, on a credit of two years, amounts to fifteen cents. If one year's credit only is given, it will be seven and a half cents, which, added to the six cents, makes thirteen and a half cents on every acre of the public domain, which would be gained by the continuance of the old system.

But more. This bill amounts to a virtual repeal of the auction. That system applies only to new lands recently brought into market. But of what avail is an auction if you proclaim to the whole world that they may get the land at the minimum price if they will only come and settle on it, and that before survey? The entire existing system is superseded by the introduction of this "wooden horse," with all the means of injury with which it is fraught.

I have now described, but not with all that force in which the circumstances of the case would warrant me, the difference between the old and long-established land system of this country and the new and fearful experiment now proposed. You must have seen that the change is to be thorough and radical. Now I put it to the Administration Senators in this body—to their candor—to their patriotism—to their sense of justice—is it right, on the close of the administration of a dismissed ministry, to introduce a new and totally different policy in regard to one of the greatest interests of the country? Is it right, is it fair, that the policy of the existing Administration now passing out of power shall be made to lap over on the new Administration without consulting them or paying the least regard to their judgment in the matter? The progress of the Administration of the American Government has developed in the practical operation of our system a new feature, and one of the most profound importance. A different political phenomenon takes place here from any thing which exists in Europe. In European constitutional Governments, when a ministry is dismissed or goes out of office, the King or the Queen, as the case may be, yields to the change of sentiment, and comes round with the nation. But here an Administration *may be dismissed and still remain for months in power*. What, in such a case, is it their duty to do? I will tell gentlemen what I would do in the like circumstances. I would institute no new measures of policy. I would simply keep the political machine in motion. I would grease the wheels and repair and preserve all its parts in a state of preparation for the performance of those high duties for which the whole was constructed; but I would attempt nothing new in the permanent policy of the country, foreign or domestic. By such a moderate course alone can the evils of the anomaly to which I have adverted be prevented. I would not ask gentlemen to deny themselves a fair exercise of the Executive patronage from now till the 4th of March next I do not ask them to do what was done when Mr. Adams was expelled from the Presidency—I should say, lost his election. What did they do then? The Senate refused to pass on important Executive nominations till after the 4th of March, and then several of them were withdrawn, and substitutes sent in by the new President. The Senate refused him the constitutional exercise of his official right from the time of his lost election till he went out of office. This I do not ask. I dare to say General Harrison, when he comes, will look at those whom he finds in office, and, if he finds that they are honest and capable and faithful, that they have not been noisy and forward politicians, nor brought their official influence in conflict with the freedom of elections; if any such there be, (a laugh.) I hope he will let them stand (though I fear there will be but few) as monuments of the liberality of Whig Administration, acting on patriotic principles. (Sensation and remarks of "That's fair." But if gentlemen expect that General Harrison, because they choose to rush on and make appointments, with a view to thwart his Administration, will, when he comes here, fear to do his duty, either they or I have mistaken the man. General Harrison means to be the *President* on the 4th of March next, which his fellow-citizens have elected him to be. And no premature bill, no stretching out of the policy of this into the next Administration, is going to restrain him from looking at those in office, and deciding for himself whether they possess the requisite qualifications for the discharge of their official duty.

But, to come back. I put it to gentlemen whether it is right and fair to make this great change in the land system of the country at such a time? Would you like us to do it if conditions were reversed?

But there are other considerations which admonish us against legislating on this subject at the present time. We have not yet officially received the results of the census for the last ten years; we cannot, therefore, see whether the new States have filled up as rapidly as we could wish. Let us first see what is the number of their population; so that we may judge whether any further stimulant is needed to quicken the rate at which their numbers increase. I know, indeed, that the result will show directly the contrary. From tables which I caused to be carefully constructed nine years ago, it is shown that the population of the new States increases at a rate vastly over that of the old. Take a single example. The population of Illinois doubles itself in six years! What, then, is the ground for the adoption of this new system? Does it consist in some notions of charity to the poor? I have formerly adverted to that subject. Where do gentlemen get their right to set up eleemosynary laws for the benefit of the poorer portions of the community? But if they have, what will be the operation of the system in this respect? It is pretended to be for the advantage of widows and orphans, (orphans over eighteen years, however.) Is any gentleman here ignorant of what will and must, of necessity, be the practical operation of such a law? Will a widow in Maine travel all the way to Missouri that she may receive the boon proposed to be given her by this law? Will not its benefits be confined to the widows of the locality? In terms, to be sure, it proposes to confer the pre-emption on all widows and minors. But will not the benefit, in fact, be limited to widows and minors residing in the States within which the lands lie? Surely. That, then, is the extent of your *charity*.

I am not very well, and I do not feel very much encouraged by past experience in opposition to this bill. My hope is elsewhere; though I would trust that honorable Senators would at least pause before they take such a leap.

There are other consequences on which I might dwell. We have heard that this bill and another allied to it are to increase the revenue: and I believe that one of them was, *pro forma*, sent to the Committee on Finance on that ground. The new plan is, to increase the resources of the now impoverished exchequer; but I have already shown that, for the present at least, the revenue will be diminished instead of increased by it; for the amount vested in the public lands under this law will be on a credit of one or two years, and cannot come into the Treasury till the end of that time. And as those disposed to make such investments will avail themselves of the credit, there will be sales to but an inconsiderable amount for cash, and a consequent diminution of the proceeds during the present year. Therefore, with an exhausted Treasury, with a vast national debt, ascertained and unascertained, besides a large amount, to be soon redeemed, of Treasury notes outstanding and running on interest, it is now proposed, instead of replenishing the empty coffers of Mr. Secretary Woodbury, by an imposition at once of duties on luxuries, to increase, instead of removing, the existing deficit in our pecuniary resources.

Our land system heretofore has been the admiration of the world for one of its best and noblest features, viz. the perfect *security* it gave as to the land titles of our new settlements. No man who had eyes to see the marks upon a corner tree, or upon a stone standing in a prairie, could possibly mistake the limits of his own tract; and no other man could have color of right to disturb him on the ground of his title. Security—absolute security in land titles—has been one of the highest blessings in the new States. But are you sure that this will continue to be the case under your new pre-emption law? Do but conceive how it will work. Imagine that a new district of rich and choice land had just been thrown open. The Indian title has been extinguished, but the fresh and fertile lands have not yet been surveyed. They are open, however, to the operation of this bill; and, in the course of a few weeks, may become worth from fifteen to twenty dollars per acre. You proclaim to all who come rushing in torrents upon the new acquisition, crowding, contending, scrambling for the fairest spots and best situations, that they shall have a pre-emption. What scenes of confusion, contention, heart-burning, ay, of bloodshed, must naturally ensue. When a nation, heretofore esteemed wise and prudent in the management of its public domain, proclaims to all the world that the first man who comes and seizes on it shall have it, who can calculate, who can conceive the confusion, disorder, and mischief which must ensue? Who can estimate the effects of the broad foundations that will be laid for uncertainty, controversy, and litigation in land titles?

Again, this bill must work a vast increase of the Executive power; for all disputed pre-emption rights which, according to the cautious policy of Virginia, were referred to the decision of the Judiciary by *caveat*, or ejectment, or bill in chancery, are now ultimately cast on the Executive of the United States; for the bill provides that they shall be settled "summarily" and definitely by the Register and Receiver of the land district in which the dispute arises, these officers to decide under instructions from the Commissioner of the General Land Office. So, the disputant is put under the Register and Receiver; the Register and Receiver are under the Commissioner; the Commissioner is under the Secretary of the Treasury, and the Secretary is under the President. Thus, you add immensely to the mass of Executive power, by drawing within its vortex all the deputed claims through all the land districts. And now, I ask, what right have you—and I put the inquiry more especially to that portion of the Senate who have been in the habit of esteeming it as their more peculiar province and duty to guard and defend the Constitution of the United States, (and who, perhaps, have sometimes pushed their zeal on that subject a little too far)—what right have you, and under what principle, or provision of the Constitution, especially after the clear and distinct separation in the Constitution of the Judicial from the other departments of the Government—what right have you to give to the Register and Receiver of one of your land districts this indisputable *judicial* power to decide a question of title to real estate "summarily," without appeal, and without the intervention of a jury? And then what a temptation do you not present to public officers so situated! Why, if I am rightly informed, there was not long since a single pre-emption right near the town of Chicago, the value of which was at one time estimated as high as $200,000; and the right to such a property is to be entrusted to a Register and Receiver absolutely and without appeal! Can there be greater danger of corruption, or, at least, of favoritism? The power is tremendous.

Mr. President, I have said much more than I intended. Both your comfort and my own require that I should here stop; and I will stop with repeating my most anxious entreaty to those honorable gentlemen whom in political sentiment I have the misfortune to oppose, that they will pause before they sanction an untried experiment of such enormous magnitude. I ask them to wait for the results of the late census; to compare the population of the new and the old States, and the relative rate at which both are increasing; and before they part with a land system which is at this hour the pride and ornament of the legislation of the Congress of the United States, and which has brought to the nation such rich and invaluable fruit, to pause—to pause!—and if they will not abandon the plan, that they will at least consent to embark on these new experiments with greater light to guide their course than that which they now have.

*Understood to be the Hon. John Dovis.

Twenty-Sixth Congress.

SECOND SESSION.

IN SENATE.

Tuesday, Jan. 12, 1841.

Memorials and petitions were presented by Messrs. Norvell, Pierce, Ruggles, Wall, Hubbard, and Benton.

REPORTS FROM COMMITTEES.

By Mr. PHELPS, from the Committee on Indian Affairs: A bill for the relief of Gary Hinant.

Also, from the same committee, an adverse report on the claim of Wm. Dickerson.

By Mr. SEVIER, from the Committee on Indian Affairs: A bill for the relief of Sarah M. Charlton and others.

By Mr. LINN, from the Committee of Private Land Claims: A bill for the relief of Jaques Bon and Alexander Coleman.

By Mr. CLAY, of Alabama, from the Committee on Public Lands: A bill to regulate the land offices in the State of Indiana, and for other purposes, with an amendment.

By Mr. YOUNG, from the Committee on Roads and Canals: Asking to be discharged from the consideration of the following memorials:

From the Directors of the Mount Carmel Railroad Company; from the Legislature of Louisiana; and from the citizens of Allegany in relation to the navigation of Allegany river

By Mr. HUBBARD, from the Committee of Claims: An adverse report on the petition of Royal Hopkins.

BILLS INTRODUCED.

The following bills were introduced, on leave, twice read, and appropriately referred:

By Mr. CLAY, of Alabama: A bill for the relief of the Eagle Railroad and Lumber Company.

By Mr. YOUNG: A bill for the continuation of the Cumberland road through the States of Ohio, Indiana and Illinois.

Mr. TAPPAN moved to amend the 9th joint rule of the two Houses as follows, which was ordered to be printed:

"That before any committee of either House of Congress shall report a bill in favor of any private claim, it shall be the duty of the chairman of such committee to call upon the proper department, with the business of which said claim is connected, for all such facts and evidence as may be in possession of such department, or any officer thereof, touching such claims; the answer to which shall be reported with said bill."

The following bills were severally considered as in Committee of the Whole, and ordered to be engrossed:

A bill confirming to George Tucker, his heirs or assigns, a certain tract of land in Alabama.

A bill to authorize the Legislature of the State of Arkansas to sell the lands heretofore appropriated for the use of schools in that State.

A bill for the relief of Francis Laventure, Ebenezer Childs, and Linus Thompson.

A bill to perfect the titles to lands south of the Arkansas river, held under New Madrid locations and pre-emption rights, under the act of 1814.

A bill for the relief of Daniel Steenrod.

A bill for the relief of James M. Morgan.

A bill for the relief of Francis Gehon.

A bill for the relief of James H. Relfe.

A bill for the relief of Jubal B. Hancock.

A bill in addition to an act to promote the progress of the useful arts.

A bill for the relief of Charles M. Keller and Henry Stone.

A bill for the relief of Thomas Haskins and Ralph Haskins.

A bill for the relief of Joseph Bogy.

A bill for the relief of Thomas B. Copes.

A bill for the relief of John C. Reynolds.

A joint resolution to authorize the Secretary of the Treasury to extend further indulgence to certain deposite banks.

SPECIAL ORDER.

The Senate then proceeded to the discussion of the special order, the bill relating to the permanent and prospective pre-emption system, when

Mr. CALHOUN rose and addressed the Senate at length in favor of his substitute for the amendment of Mr. Crittenden.

Mr. CRITTENDEN followed, and was replied to by Mr. BENTON, when, at a late hour, the Senate adjourned.

HOUSE OF REPRESENTATIVES.

Tuesday, January 12, 1841.

Mr. ADAMS had leave to present a petition of Redman Burke and George Wix, complaining that they have been discharged from work on the public buildings in Washington; which was referred to the Committee on the Public Buildings.

Mr. GREEN asked the consent of the House to introduce the following resolution:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency and necessity of laying such duties, for the purposes of revenue, upon wines and silks, and such other articles of luxury imported into the United States, as will meet the necessary expenditures of the Government, and pay off the debt already incurred by the issue of Treasury notes, and all such other debts as may be owing by the Government of the United States, and that said committee report by bill or otherwise.

Mr. TURNEY called for the reading of the resolution. It was read accordingly.

Mr. PICKENS was proceeding to make some remarks; when

Mr. HUBBARD objected to the introduction of the resolution; and there the matter ended.

Mr. CAMPBELL, of S. C., asked leave to introduce a resolution directing the Speaker to issue a *subpœna duces tecum* to Samuel Hart, clerk of the court in Philadelphia, to appear before the House with the election returns of member of Congress for the 3d district of Pennsylvania, in 1838.

Many members objected to the introduction of the resolution, and it was returned to Mr. Campbell.

Mr. SERGEANT, from the Committee on the Judiciary, to which were referred four bills from the Senate, viz: for the relief of Walter Loomis and Abel Gay; for the relief of Clements, Bryan & Co.; for the relief of John More; and for the relief of John Carter, moved to be discharged from the consideration of the said bills, and to refer the three first named to the Committee of Claims, and the last to the Committee for the District of Columbia; which was agreed to.

Mr. Sergeant also reported the Senate bill further to amend the act providing for taking the Sixth Census, with a small amendment, which was adopted; and the bill was then read the third time, and passed.

IMPRISONMENT FOR DEBT.

Mr. SERGEANT reported the bill from the Senate supplementary to the act to abolish imprisonment for debt in certain cases, without amendment.

Mr. S. explained the provisions of the bill, and the urgent necessity that existed for immediate action upon it. And he asked that it might now be put to its third reading.

Mr. ADAMS moved to amend the bill by striking out the words "or shall hereafter be," and gave his reasons for proposing the amendment, contending that the act, as it now stood, transferred to the States the power which, under the Constitution of the United States, belonged to Congress.

The amendment was discussed briefly by Messrs. Monroe, Thompson, of Mississippi, Fillmore, Curtis, Vanderpoel, Barnard, and Pope.

Mr. EVERETT inquired if it was intended that the effect of the bill should be retrospective? If that was to be the effect, he thought that the bill itself ought not to pass.

Mr. HABERSHAM objected, he said, to the whole bill, as well as to the bill passed at the last session of Congress; for he believed the operation was partial. He moved, therefore, to recommit the bill to the Committee on the Judiciary, with the following instructions:

"To report a bill to abolish imprisonment for debt under process issuing from the Courts of the United States in all cases except where the judgment shall be against an officer of the United States for a defalcation in his office."

Mr. PECK sustained briefly the motion to recommit.

Mr. SERGEANT explained his views in relation to the constitutional point as between the United States and the several States, and earnestly opposed the amendment.

Mr. BRIGGS here rose, and reminded the House that Mr. Naylor, who was entitled to the floor in continuation of his argument, had yielded to his colleague, (Mr. Sergeant,) under the supposition that the bill would be disposed of in a few moments—

When several voices called for the "previous question."

Mr. VANDERPOEL said he would move the previous question if the gentleman from Massachusetts (Mr. Briggs) would give way.

And Mr. BRIGGS having yielded the floor—

Mr. VANDERPOEL moved the previous question.

And there was a second.

The SPEAKER said that the previous question would cut off the motion to recommit, and would bring the House to a vote, first on the amendment, and then on the third reading of the bill.

And the House ordered that the main question should be now put.

Mr. ADAMS asked for the yeas and nays on his amendment, which were ordered, and, being taken, were yeas 31, nays 110.

So the amendment was rejected.

And the bill (having been ordered to a third reading at this time) was read a third time and passed.

It is in the following words.

A BILL supplementary to an act to abolish imprisonment for debt in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to abolish imprisonment for debt in certain cases," approved February twenty-eight, eighteen hundred and thirty-nine, shall be so construed as to abolish imprisonment for debt, on process issuing out of any court of the United States, in all cases whatever where, by the laws of any State in which the said Court shall be held, the imprisonment for debt has been, *or shall hereafter be, abolished*.

Mr. SERGEANT, from the Committee on the Judiciary, reported three bills from the Senate, viz.

To confirm to the State of Indiana, the land selected by her for that portion of the Wabash and Erie canal which lies between the mouth of Tippecanoe river and Terre Haute, and for other purposes.

To prevent the counterfeiting of any foreign copper, gold, silver, or other coin, and to prevent the bringing into the United States or uttering any counterfeit foreign copper, gold, silver, or other coin.

To amend an act entitled An act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes.

These bills were then committed to the Committee of the Whole on the state of the Union

Mr. CAMPBELL, of South Carolina, again asked leave to move a resolution, which was read at the Clerk's table, and is as follows:

Resolved, That the Speaker of this