The Carroll Free Press.

"THE UNION OF THE STATES AND THE CONSTITUTION OF THE UNION."

VOLUME 25,---NUMBER 12. CARROLLTON, CARROLL COUNTY, OHIO, THURSDAY, MARCH 19, 1857. WHOLE NUMBER, 1,315

SPEECH
OF
HON. HIRAM GRISWOLD,

On the subject of the Canal Contracts, delivered in the Senate of Ohio, February 20, 1857.

MR. PRESIDENT:—The resolutions now before the Senate involve matters of much interest and importance, and demand our careful consideration. When the Senate adjourned last evening, on the motion of the Senator from Mahoning, (Mr. Taylor,) I suppose he intended when they should be reached in their order to-day, to give us his views in opposition to them; but as he does not seem disposed to avail himself of his privilege, I will beg the indulgence of this body while I state the reasons which compel me to give them my support; and I trust I shall not be deemed intrusive by Senators, if I shall trespass upon their time longer than I have been accustomed to do since I have had the honor of a seat on this floor. When I took my place among you, I put a curb on my lips, and Senators will bear me witness that I have held a tight rein upon it ever since, confining myself at all times, to the briefest expression of views, upon matters before us, consistent with a faithful discharge of my duties here. I therefore throw myself with confidence on your forbearance on this occasion.

It seems to me proper, Mr. President, that as the views of those of us who sustain these resolutions have been misrepresented, probably because they have been misunderstood, and our motives impeached! as opposite views have been industriously circulated, while ours have been left to vindicate their own claims to public confidence, I should occupy so much time in their discussion as may be necessary to state the reasons for the action which they contemplate.

These resolutions, Mr. President, propose to withhold all appropriations for keeping the Public Works of the State in repair, under the contracts made with the Board of Public Works, Nov. 15, 1855. But they also propose opening the Courts of the State to any contractor who may consider himself aggrieved, in which he may sue the state and obtain full compensation in damages, if the contracts were honestly, fairly and legally made. They further propose that inasmuch as the contractors have provided themselves with materials to prosecute the work, the Board of Public Works may if the contractors desire it, take those materials at their appraised value, in order that they shall sustain no loss by our terminating the contracts, and leaving their materials on their hands.

These contracts were made under the law of March 6, 1845, which authorized the Board, when, in their opinion, it would be for the public interest, to let, by contract, the keeping of the Public Works in repair. The law contains this provision: "The Board shall give due notice of the time and place of letting of said repairs, with the plans and specifications of said repairs, and the manner of doing the same and the Board shall let the same by sections, to the lowest responsible bidder, for any term of years not exceeding five, upon the condition that the bidder or bidders shall make, execute, and deliver to said Board a bond with security to be approved by said Board," &c. It is under the authority of the statute, and of this provision, that these contracts are claimed to have been made, the contracts all running for the full term of five years, and the questions involved in these resolutions before us, are these: Are these contracts binding in law and in good conscience on the State? or are they void because tainted with fraud, or because not made in accordance with law, or for both reasons combined? And if found to be void, the further question arises, what is the duty of the State in the premises? These questions I proceed to consider.

The Board divided the Public Works into eight sections.

Section 1 includes the Ohio canal from Cleveland to the Walhonding Aqueduct and embraces that Aqueduct and the Walhonding Canal.—This was let to A. Medbery & Co., for $27,000 per year. There were six lower bidders. The lowest was for $21,000, by Myron H. Mills The evidence before us satisfies me, in the language of one of the Board, (a namesake of mine, I am sorry to say,) "that his securities were ample, and his reputation as a business man all-sufficient."

Section 2 embraces the Ohio Canal south from section 2 to the foot of the lower lock at Lockville, including the Dresden side cut.—This was let to Doyle & Miller, for $22,980 per year. In this case there were four lower bidders, the lowest being $20,000, by the same Myron H. Mills. In this contract, besides Doyle & Miller, E. S. Hamlin, who acted as Attorney for the Board, and Samuel G. Foster and Lewis W. Sifford engineers in the employ of the State, were interested, but subsequently sold out to Doyle & Miller, for $4,000 each.

Section 3, the residue of the Ohio Canal was let to Cooper, Shaddinger & Co., for $39 700 per year, that being the lowest bid. This contract it is not proposed to disturb.

Section 4, the Hocking Canal, was let to Dennis McCarty, for $9,650 per year In this case there were two lower bidders, the lowest being $7,499, by Henry Miller The evidence taken by the Committee satisfies me, in the language of the same member of the Board, to whom I have once referred, Dr. Griswold, "that his bid was entirely responsible," and his securities also. And there is this further remarkable circumstance connected with Sections 1, 2 and 4, that Cooper, Shaddinger & Co., bid lower for each of them than the persons to whom these contracts were awarded by the Board, a firm in which the Board had sufficient confidence to award a section at $37,700 per year.

Among the persons originally interested in this case, were Hamlin and Foster, of whom I have just spoken, but Hamlin sold out for $1,000 and Foster for $1,500. The contract was based upon no bid made by Mr. McCarty, as provided by law. He never made any such bid. His bid was $9,940. Hence the contract with him was a mere private contract.

Section 5 is the Muskingum Improvement. This was let to Chamberlain & Paul for $25,000 per year. Here there were three lower bids, the lowest being by E. E. Shedd, at $18,999 per year, His securities, too, seem to have been ample and both with reference to them and to the bidder himself, Dr, Griswold might well say (as the evidence shows he did say,) the "bid was considered entirely responsible."

There is also the farther objection to this contract, that it was not made upon any bid. Messrs. Chamberlain & Paul bid $27,100, but did *not* bid $25,000. Not as affecting the legal question, in any manner, but to gratify a reasonable curiosity, I may say that the law required that the repairs should not be let except "at a price less than the average price of keeping the same in repair for the last six years." Now it so happens that McCarty, in one instance, and Chamberlain & Paul, in the other, bid higher than this "average price,"—But, inasmuch as, for reasons I cannot comprehend, they must be accommodated at all events the work was given out to them on private contract.

Section 6 is the northern division of the Miami and Erie canal. This was let to Samuel M' Young & Co., for $32,000. J. W. Dickey & Co., bid $24,900, but they were bought off by the successful bidders for $4,000. There were also lower bids in the names of other persons, but they were made and controlled by Young & Co., and thus they obtained the contract at the price I have stated. The next is section 6, and includes all of the Miami and Erie canal not included in section 6 This is the largest section, and in every respect in which it can be viewed, and most important of them all. It may well be called the centre of that system of fraud which I am considering around which the others revolve in comparative insignificance, and like far off statellites, pale beneath the baneful light which it flashes upon our field of investigation, I believe that much that has seemed inexplicable, as I have passed along from section to section, is easy of solution as we approach this. They were a part of the machinery in the contemplated scheme of plunder, necessary to its perfection. They were intended as blinds, to divert attention from it to smaller matters, lest it should by its enormity, standing out alone, shock the public mind.

This section was awarded to Forrer, Burt & Co., for $118,000 per year. You will perceive, Mr. President, that it is a large section and thus afforded an opportunity for favoritism on a magnificent scale. You will also perceive that this opportunity did not pass unimproved. There were four lower bids. I shall only speak of one. That was by Cooper, Shadding & Co., of whom I have previously spoken. I have said the board evinced their confidence in this firm by awarding it a large and important section. Their securities were also ample, being worth, as sworn to by Mr. Hamlin, at least 1,000,000 dollars." Well sir, this firm, with such security, bid to make the repairs on this section for $1,000 per year.—The Board rejected the bid, and awarded it to Forrer, Burt & Co., for 118,000, being a difference of more than 45 per cent, and amounting to 37,000 per year, or 185,000 for five years. Now, sir, I propose to look into this contract, and the circumstances connected with it; so far as we have been able to get at them, in order that I may determine whether the State is under any obligation to fulfil it on her part. I must do this. I cannot avoid it if I would, unless, indeed, as is claimed by some, we have a power within the State, greater than the State, and which can put at defiance Courts, the Legislature and the people themselves.—If we have such a power, I too will prostrate myself before it and do it homage. But as I do not acknowledge the claim, I am willing, feeble as I am, to throw myself between it and the people, and if possible save them from further plunder.

What are the suspicious features of this transaction? I have adverted to some of them. The difference between the contract price and the bid of Cooper, Shaddinger & Co., is sufficient as between individuals, to raise the legal presumption of fraud. In the language of the books, it would shock the conscience of the Chancelor. This presumption becomes more violent, if not entirely conclusive, when we remember that Cooper, Shaddinger & Co., were responsible bidders and offered sureties worth $1,000,000.

But there are others. It becomes important to the investigation of the case to ascertain who are the parties into whose lap the money of the people is poured with such profusion. It would seem proper that the bids should show who are to be interested in the contracts, but this proposition was voted down by Steedman and Griswold, against the vote of Blickensderfer. Then inquiry must be made of the known parties. They were Samuel Forrer, John S. G. Burt and John Howard, but Howard has subsequently sold his interest to Cooper, of the firm of Cooper, Shaddinger & Co. Forrer & Howard testify that they each had one sixth, and Burt the residue. They know no other person in the contract. Cooper says the same. Burt, then, was the owner of four-sixth or two thirds. But it turns out, on further inquiry, that Burt owns but the one-sixth, and three-sixths, or one-half the net proceeds, are to go to Hamlin, and I have endeavored to ascertain from the testimony how, when and for what consideration he obtained this valuable interest, worthy, by a fair calculation of chances, from $15,000 to $20,000 per year. It is true he acts as attorney for the company, clerk and disbursing agent, but all these services could be purchased of an honest and competent person for $2,000 a year. What, then, could induce Burt to pay this enormous sum for these services? Men do not usually bestow their money so lavishly. Hence the suspicion is a natural one, that Hamlin stands in the place of others whose relationship to those members of the Board who voted against disclosing the names of parties interested; is a little too intimate to be exposed to the vulgar gaze; and as neither Forrer, Howard nor Cooper can tell, Hamlin and Burt are examined on this point. Hamlin declines to answer because what information he has on the subject he learned as attorney. Burt is next examined by interrogatories—he being out of the State—and he answers, saying that it is a private matter with which the committee have nothing to do. So the matter stands.

There may be those who believe this an honest transaction. If there be such a man, I envy him. He must bathe thrice, daily, in the milk of human charity. If he has that faith and confidence in human nature which will prevent his seeing its dark features as exhibited here, it must be to him a source of happiness which we suspicious mortals in this age of selfishness and skepticism know not how to appreciate.

This will not do, Mr. President. It does not satisfy me: it will not satisfy the public.—Why, sir Forrer, Burt, Howard, and Cooper, were known and understood by everybody to be, or to have been, interested in the contract. There was no concealment and no cause for concealment of this fact. When did Hamlin become possessed of the important professional secret as to the other persons interested? Was it when he was first employed to use his influence with the Board as its attorney and adviser, to secure this contract for Burt and others? And was it a part of this secret that other persons, too, must be provided for—persons whose names, for reasons that can only be conjectured, must be kept concealed? Was it for their benefit as well as his, that one half of this contract was made over to him? These and other like questions unavoidably arise, and if I do these men injustice, they have only themselves to thank for it. Every one will come to this conclusion, that if there had been no other persons interested, Hamlin and Burt would have said so, and that if there are others, there can be none but a guilty reason for withholding their names.

There is one more section, Mr. President.—It is section 8, being the Western Reserve and Maumee Road. It is a small matter, the contract price being only $4,499 per year. But small as it is, it is of the same family as the others, and limps along rejoicing in its relationship, and crowned, like the others, with badges of fraud. There were three other lower bids; some of which were responsible, and James J. Parks, the contractor, bought off one of the lower ones for $2,000.

This closes my review of the different Sections. They stand thus:

Section 3 was fairly let, so far as we know.

The contracts for Sections 6 and 8 are void, because of fraud on the part of the contractors, in buying off lower bidders.

The contracts for Sections 4 and 5 are void, because they were not based upon any bid.

The contract for Section 7 is as clearly shown to be fraudulent as a contract can well, be, unless the fraud is admitted by the parties, and is therefore void.

And I contend, also that all these, and the contracts for Sections 1 and 2 are likewise void for the further reason that they were not awarded to the lowest responsible bidders.

This, Mr President, brings me to a consideration of the power of the Board to let the repairs to other than 'the lowest responsible bidder.' It is claimed by the Board that the word "lowest" occupies a subordinate place in the section in which it is used, and that they were not bound to award the contracts to the "lowest responsible bidder," but that they might, if their discretion, select "those propositions which combined all the elements of responsibility, experience, capacity and fitness for the trust, and undoubted pecuniary ability." It is not contended that these words are found in the section, but it is said their spirit is there like pervading essence, controlling and modifying what would otherwise have exactly an opposing meaning.

In my judgement the provision means this: The repairs shall be let to the lowest bidder who will furnish the bond required, such a bond as shall be deemed ample by the Board, and that this being done, he becomes "the lowest responsible bidder," in the sense in which the term is used in the law. His responsibility is secured, and made manifest, by the giving of an acceptable bond. This is the evidence and test of responsibility, and from among those whose responsibility is thus established, the Board should select the "lowest."

But if I were to concede that the word "responsible" has the latitudinous meaning contended for, still the argument would be with me. The law does not say 'the lowest and most responsible bidder,' but it says 'the lowest responsible bidder.' It presupposes several responsible bidders; all the bids of such, it directs the Board to receive. In this case it did do so. It registered them. It was informed by the bidders who their sureties were.—Now my position is that the Board should have awarded the contracts to the lowest among these. In other words, that the law requires they should be awarded 'to the lowest among the responsible bidders,' or the lowest of the responsible bidders. Any other construction obliterates the word 'lowest' from the section, I claim that it is the controlling word there, to which others must give way, if necessary; though I see no such necessity, for I see no difficulty in harmonizing the whole section with this view of it. I see no occasion to interpolate the words 'experience, capacity and fitness,' unless it be to interfere with this construction of the sentence, and to sustain a favorite theory under which the frauds I complain of have been perpetrated.

Again: How can you determine a man's responsibility to perform a canal contract? I mean on the ground assumed by the Board.—Clearly thus: if he has been engaged in such business, by ascertaining how he managed it. This being determined by reliable testimony, the question is settled. He is responsible or he is not. All who approve themselves worthy, by this test, are "responsible bidders.' But the Board say no, there is another test, comparison. We will apply that, and make our selections accordingly, without any regard to the amount of the bid. Need I inquire whether this is a compliance with the law, or whether it violates it?

The truth is, that taking the view of the subject contended for by the Board, they have no guide at all. The whole matter is left to their discretion, as much as though no directions were given in the law to control it, and a discretion which, in this case, has been most unwisely exercised. It is perfectly evident to my mind that the Legislature meant to limit it, as it well might; that the responsibility provided for was a pecuniary responsibility, which can be measured with reasonable certainty, and which in this case was to be determined by the character of the bondsmen the bidder should furnish. This construction not only makes all parts of the section harmonize, and assigns to every member of its appropriate function, but gives to the word 'responsibility' the signification which lexicographers and encyclopediasts give, and which the Legislature unquestionably intended—pecuniary accountability.

Mr. President, I hold that this is a matter with regard to which the State has a right to change her policy, without any reference to the character of the contracts, or the conduct of the contractors, or of the Board of Public Works. Cannot the State sell the Public Works? The sticklers for the validity of these contracts are among the strongest advocates for their sale. But if they are sold, must the State continue to pay these contractors for keeping them in repair? That is her contract. Suppose that by the revolutions of commerce, or from any other cause, some portion of the Works should become of no service to any portion of the State, could she not abandon that portion? Or has she tied herself to these contractors so that she must keep them in repair, though they shall not pay one cent in tolls to the State? It seems to me I have only to ask these questions, to receive for answer that these contractors have no such vested interest in these contracts, but that the State might to-day brush them out of existence, and return to her former system of repairs, without assigning any reason, and without a breach of faith. Of course she would be under an obligation to protect the contractors from any loss by this change, and this she proposes to do by these resolutions.

I have thus stated the reasons why I believe these contracts are void. The conclusions to which I have arrived have been forced upon me, against my wishes and my inclinations.—They are the deliberate, dispassionate convictions of my judgement, which I cannot resist. Truth, only, has been my guide, and following it, I have been led to this point, and now the question is, what shall be the next step?—What shall the State do? My answer is simple, It follows as a natural consequence from the positions I have already taken. She should at once sever her connection with those who have conspired to defraud her.

But I may be told that there may not be actual fraud in all the cases, and that possibly some of the successful bidders may not have known there were lower bidders. I answer this objection by saying, that when one deals with a special agent, it is his duty to ascertain the extent of the agent's authority, and if he does not, and the agent exceed his authority, he must abide the consequences. (Smith's Merc. Law. p. 107.

Public officers are regarded, in law, as special agents. The reason is, their powers are defined in the law which confers them, and every person dealing with them is therefore supposed to know as he certainly may know, the extent of those powers. He deals with them, therefore, as with a special agent, at his peril. On this point Judge Story says: 'This rule seems indispensible, in order to guard the public against losses and injuries arising from the frauds or mistakes or rashness and indiscretion of the agents of Government. And there is no hardship in requiring from private persons, dealing with public officers, the duty of inquiring as to their real or apparent power and authority to bind the Government.' *Story on Agency, p. 395*)

My advice, then, is to make no more appropriations under these contracts, but refuse to recognize them as valid and binding on the State. But I am told this will violate the constitutional provision against impairing the obligation of the contracts, and that is repudiation. I cannot see the matter in that light.—If I have a contract with you, Mr. President, and the Legislature were to declare by law that that contract should thereafter be void and of no effect, that would be interfering with a contract and the law would be void. Carrying out the theory of the inviolability of contracts, it is held that a charter is a contract, which the legislature may not interfere with. Bearing this in mind, a certain paper of this city sought to take certain Senators between wind and water, threatening that if we interfered with these contracts, the Democracy would try their hand at bank and railroad charters. Of course no senator will be influenced by any consideration of fear, but I could not but admire the tact and craft of the editor, nevertheless in thus attempting to interfere with the rightful course of legislation.

When a State has received money or labor from a person under a law providing payment therefor, and repeals the law and refuses to make payment, that is repudiation. We propose to do neither. We neither interfere with contracts, in the constitutional sense of the term, nor do we repudiate. We propose to pay the contractors every cent they have earned. Not only so-we propose to pay them every dollar they could make, if, on a trial of the case, for which we make provision, the contracts shall be found to be of a character that would entitle the contractors to relief, as against an individual. Surely the State, in her sovereign capacity, should have an equal right with the humblest citizen in it, to protect herself against fraud and imposition, or even errors and mistakes. If, in the case I put, of my contract with you, Mr. President, I believe you have practiced a fraud on me in procuring it, or are not faithfully performing it, I may refuse to perform on my part; but if I am mistaken in my belief, I must respond in damages in such sums as a jury may award against me. And this is the repudiation about which so much clamor has been made.

Again the note is changed, and we are told that this is a judicial question, and we are assuming judicial powers; and these words are jingled through the streets and in the Senate chamber, till we almost imagine that we are about to be arrested for contempt of Court!—But we are no more exercising judicial powers than in all cases where we are required to vote for or against an appropriation of money. In all such cases we must determine for ourselves, whether a person asking for an appropriation is entitled to it or not, and if he claims under a contract, we must pass upon its validity. It is a responsibility cast upon us from the necessity of the case, and we cannot avoid it if we would.

This differs from cases coming before us every day, only in its magnitude and importance, and in the usual favor we propose to extend to the parties interested. Some poor man who has nothing but his poverty or his honesty to enlist an interest in his behalf, presents his claim for allowance, We examine it: if valid, we allow it; if not well founded, we reject it. We may err, but the doors of the court are closed against them. And I confess that abstract justice is on the side of those who would treat these men as we do others. But I have made a compromise with my conscience, and if I have done wrong I am sorry for it. These pretended victims of our legislative injustice, and their friends have made such a clamor that one cat hardly sleep at night, and for the sake of peace I have consented that these contractors shall have the right to sue the state, conceded to them a special favor, while to the poor wretch who is not able to subsidize public sentiment, no such favor is accorded.

But, sir, this is the limit to which I will go. Here I take my stand, and am not to be moved from it. I take my stand in opposition to the exercise of irresponsible power and to political corruption. The people demand it, their interests require it, and justice will sanction it, I am not to be moved from my position, no matter how bitter the opposition I may array against me. Something of that opposition I have seen already. Not to speak merely of personal matters, I may remark that one of your "model papers" that "reflect public sentiment" reminds us of our violated oaths, and informs us that though we may assume to pass upon the questions involved in these resolutions, we have not sufficient capacity, intelligence or integrity to pass upon the same questions in a jury box where they are properly tryable. This last assertion may be true; still we are here, clothed with authority, and being here, must dispose of these questions.

Is it not strange, wonderfully strange, that we should be the objects of vituperation and abuse for the course we propose to pursue?—Just look at it. In the discharge of our duties as representatives of the people and the guardians of their interests, we learn that a set of cormorants have fastened upon the public treasury, and by means of fraud, in some instances, and in violation of law, are fattening upon the hard earnings of our over taxed constituents. The amount thus abstracted from the treasury is $64,331 each year, making in 5 years $321,905. We seek to stop this drain upon the resources of the people, and at once the flood-gates are opened upon us, and we are assailed with violence and contumely as though we were the guilty ones, robbing the treasury.

Excuse me if I manifest undue warmth in this connection. I know the tones of my voice grate harshly on the ears of some Senators—especially when the vehicle of unwelcome truths—they have told me so on several occasions. But while dwelling upon this theme, I wish I could make them reach the ears of every voter in the State of Ohio. If I could I would roll back upon their heads a tide of indignation, which would make our assailants ashamed of the part they are acting, or I have misconceived the force of truth and argument, and the sense of right and justice embosomed in the hearts of the people of the State of Ohio.

Mr. President, I wish those who really and honestly fear we are occupying untenable ground in this matter would observe this, that every man in the legislature, and out of it, admits that something must be done. Public sentiment comes thundering upon our ears so loudly that it will be heard, and must be heeded. The evidences of fraud cluster around these transactions so thickly that it were political suicide for any man to attempt to sustain them. Hence those who object most strongly to our plan are compelled to propose another. Several have been proposed. I do not propose to consider them. I simply say that every one proposes to interfere with these contracts, and to some extent, to violate, or to use their favorite phrase, 're udiate' them.—They all partake of the same principle and profess to aim at the same object. The argument in favor of our course is that it is simple, thorough, radical, and relieves the State, at once, from all connection with those who, all believe, have practiced fraud upon her. Hence we believe ours is the better way. We are not in it without precedent in this matter.—New York has passed through similar scenes. In 1851, the Legislature of that State passed a law for the enlargement of her canals, and authorized the Canal Board to let them out by Sections, upon contracts, and not limiting them to the lowest bidder. Charges of fraud were made against the commissioners, because of their action in awarding the contracts The Legislature, in 1852, investigated the charges, declared them to be unfounded, affirmed the contracts, and made additional provisions for making payments upon them. But the odor of fraud still hung around them, and the people continued to clamor, till by the legislature in 1853, the affirmatory act was repealed, and by that of 1854 the original act authorizing the making of the contracts, By these repealing acts of the legislature, contracts amounting to more than 8,000,000 were blotted out of existence.

Many of these contracts contained fortunes, and though there are lawyers in New York of some legal knowledge, of whom the contractors could take advice, we do not learn that the New York canal was tied up by an injunction, a calamity which some fear may befal our canals, if we pass these resolutions. No doubt there was excitement there, as here. The newspapers speculated wisely, politicians were frightened, and conservatism was shocked, and contractors grumbled, still the sun continued to rise and set as usual New York prospered, the honor of the State was vindicated, and in 1856 it gave a glorious majority for Colonel Fremont.

Equally strong are the incentives to duty with us. I cannot imagine a case in which the Legislature could be more loudly called upon to protect the people, rebuke fraud and assert and maintain the duty of public agents, to confine themselves in the discharge of their duties within the provisions and restrictions of law.—Unless this result follows an investigation and exposure of fraud, of what benefit is the investigation? Frauds have been practiced in the