IN SENATE OF THE UNITED STATES.

January 18, 1839.

Submitted, and ordered to be printed.

Mr. Sevier made the following

REPORT:

[To accompany Senate bill No. 214.]

The Committee on Private Land Claims, to whom was referred the petition of Gen. Matthew Arbuckle, of the United States army, report:

That the petitioner states, in his memorial, that, on the 17th day of February, in the year 1829, at Batesville, the land office for the then Lawrence land district in the then Territory of Arkansas, he purchased the following tracts of land, to wit: one tract, of eight hundred and forty-five acres and sixty-nine-hundredths of an acre, of Charles Kelly; one other tract, of three hundred and twenty-one acres and forty-hundredths of an acre, of John Ringold; one other tract, of two hundred and sixty acres and thirty-two-hundredths of an acre, of John McLaughlin; and one other tract, of four hundred and four acres and sixty-eight-hundredths of an acre, of William Hall. He further states, that each and all of the aforesaid tracts of land (having previously been subject to sale at *private* entry) were entered by Spanish claims, which had been regularly and legally confirmed by the superior court of Arkansas; a tribunal which had been specially authorized to adjudicate said claims by an act of Congress, approved the 26th day of May, 1824, entitled "An act enabling claimants to land in the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims." This act, by subsequent enactments, was continued in force until 1831. He further states, that the claims aforesaid were confirmed by the aforesaid court, at the December term, in the year 1827; a fact which the records of the court, accompanying the petitioner's memorial, show; and that he purchased the aforesaid tracts of land after they were located, in the year 1829; facts which the register's certificates and his deeds of transfer (which also accompany the petitioner's memorial) also show; and for the tracts of land purchased, as aforesaid, the petitioner states that he paid the *cost*, at the rate of something more than one dollar and twenty-five cents per acre.

The petitioner further states, that, at the time he made the aforesaid purchases, he also purchased of Robert Crittenden a Spanish claim, confirmed by the aforesaid court, for three hundred and forty acres and twenty-eight-hundredths of an acre, and *immediately* located the same, upon land subject to sale at *private* entry; facts which his transfer from

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that gentleman and his certificate of location, which accompany the petitioner's memorial, show. He further states that he also purchased of John C. Sumner nearly seven acres and thirteen-hundredths of an acre, which had been previously located by William G. Shannon, and of John Rodgers seventy-five acres and eighty-five-hundredths of an acre, which have been previously located by Townsend Wilkinson; and that, when these *last two* purchases were made, (to wit: of Sumner and Rodgers,) a bill of review had been filed by the United States district attorney, and was then pending; and that, on the final hearing upon said bill, these *two claims* were adjudged by the court invalid, on account of their fraudulent origin. The petitioner states that *all* the other purchases which he made, were made while on his way from Fort Gibson to Jefferson barracks, in Missouri, where he was going on public duty, and that he had but little time to examine into the titles to these several tracts of land, yet he used the best means in his power to ascertain if the titles were good or not, and that the result of his inquiry was, that he was assured and satisfied that they were good; and he concludes his petition by averring that he was a *bona fide, innocent purchaser, without notice or suspicion of fraud, and for a fair and valuable consideration;* and that, although these several claims, belonging to him, were afterwards, with many others, upon the discovery of the new testimony, unknown to the United States when they were confirmed, upon bills of review all set aside, yet he prays, for the reasons he sets forth, that his titles may be confirmed, &c.

Your committee have looked back to the origin of these Spanish claims, and find them founded upon treaty stipulations between the United States and the French republic, for the acquisition of Louisiana. They find that, by the provisions of the third article of that treaty, by which the sovereignty and territory of Louisiana were ceded by the French republic to the United States, the inhabitants of the ceded territory were, among other things, to be protected in the enjoyment of their *property*. This property, in part, consisted of lands which were held by the inhabitants by two descriptions of titles; one of these complete or perfect titles, and the other incomplete or imperfect titles, and depending upon the evidence of the grantees having fully complied with all the requisites or terms or conditions of the Governments of Spain or France, upon which the grants were made. To this latter description of claims only have the committee turned their attention, as those of this character only have ever required the action of Congress.

To ascertain the number of grants held by *incomplete titles*, and to provide for their investigation and final disposition, the United States, in discharge of their treaty obligation, have, at different times, pursued different modes. They have, in many instances, without the intervention of any intermediate power, investigated some of these claims, and have confirmed or rejected them, according to their merits. They have, in other instances, created boards of commissioners to receive evidence of the claimants of a compliance with the conditions of their grants; and upon this testimony, embodied in the report of the commissioners, they have confirmed or rejected the claims according to their merits; and in no instance, within the knowledge of the committee, has any claim, thus confirmed, ever been reviewed, reconsidered, or annulled, for fraud, or perjury, or any other cause. Such decisions against the United States have ever been considered *final* and *conclusive* in both law and equity.

In other instances, the United States have authorized the claimants, in their district courts where the lands lie, to institute proceedings to try the validity of their claims. Such was the act of Congress, approved May 26, 1824, entitled "An act enabling claimants to land within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims." (See 7th vol. Laws of the U. S., page 300.) Under the provisions of this act, the superior court of the Territory of Arkansas was authorized and required to exercise jurisdiction in all cases of unsettled claims to land, arising under the treaty aforesaid, not exceeding a denominated quantity of acres or arpens. And by other provisions of that act, the right of appeal from their final decision to the Supreme Court of the United States was granted to either party, for the term of *one year* from the rendition of the judgment or final decree. And said act further provides that, if no appeal be taken from the judgment or decree of said court within one year, the same shall be *final and conclusive between the parties.* The provisions of this act, as to the time of filing petitions and prosecuting the claims to a final decree, were, from time to time, extended, until all the claims were confirmed which the petitioner prays for confirmation as assignee of those under whom he holds. A portion of the committee are unwilling to let the occasion pass without briefly calling the attention of the Senate to some of the provisions of the act which are deemed inequitable, hard, and unjust. By the provisions of this act, (after having a decision upon their claims postponed for upwards of twenty years,) the claimants were bound to pay all costs to marshal, clerk, district attorney, witnesses, and jurors, together with every other incidental expense, whether they succeeded in establishing their claims or not; and in the event of the United States having disposed of the particular tract of land claimed by the party, he was compelled to take other land in lieu of it, subject to entry at private sale; which provision reduced the value of all such claims to one dollar and twenty-five cents per acre. This is the kind of land purchased by the petitioner. But, to return—the claims under which the petitioner holds were confirmed in December, 1827, and the time allowed by law for an appeal had expired without any appeal having been taken; and in 1829, they were all located upon land subject to sale at private entry, and after it was supposed the decree of confirmation, in the language of the act, was *final* and *conclusive*, your petitioner made his purchases. But after this, it was clearly ascertained that these claims had been forged, and had been sustained by perjury. And to render null and void these confirmations, seems to have been a matter of some difficulty with the United States how to get round the restriction to an appeal to one year, which year had expired, and to upset decisions which they themselves had said by their act should be *final* and *conclusive.* But they found a remedy, which has proved effectual. Setting out with the hypothesis that fraud vitiated every thing, and reached every body, the innocent as well as guilty, an act was passed, which was approved on the 8th of May, 1830, entitled "An act *for further extending the powers* of the judges of the superior court of the Territory of Arkansas, under the act of the 26th of May, 1824, and for other purposes."

This *extension* of the *powers* of the judges was "to proceed, by bills of review, filed or to be filed in said court, on the part of the United States, for the purpose of revising all or any of the decrees of said court, in cases wherein it shall appear to said court, or be alleged in such bills of review,

that the jurisdiction of said court was assumed in any case on any forged warrant, concession, grant, order of survey, or other evidence of title; and in every case wherein it shall appear to said court, on the prosecution of any such bill of review, that such warrant, concession, order of survey, or other evidence of title is a forgery, it shall be lawful, and said court is hereby authorized, to proceed, by further order and decree, to reverse and annul any prior decree or adjudication upon such claim, and thereupon such prior decree or adjudication shall be deemed and held, in all places whatever, to be null and void, to all intents and purposes; and said court shall proceed on such bills of review, by such rules of practice and regulations as they may adopt for the execution of the powers vested or confirmed in them by this act."—(See 9th vol. Laws U. S., page 63.) When this act became the law of the land, bills of review were filed in the superior court of Arkansas, by the district attorney of the United States, in all the cases, regardless of the time of their confirmation, which were known by the name of the Bowie claims. The court took jurisdiction, and a brief history of one of the cases, precisely analogous to those under which the petitioner claims, will be given to the Senate, as they are in possession of the proceedings in the case, not only in the superior court of the Territory, but also in the Supreme Court of the United States.

In 1827, Bernardo Samperyac, by his attorney, brought his claim before the court for confirmation, which was resisted by the district attorney on the grounds that the grant was fraudulent and forged. Upon the trial, it was held that the grant was good, and a decree of confirmation passed accordingly, on the 19th December, 1827. The time allowed by law for an appeal is one year, and if no appeal be taken within that time, the decree is final and *conclusive* between the parties. That period was permitted to elapse without any appeal being taken. Joseph Stuart, a citizens of Arkansas, purchased the claim thus confirmed, on the 22d of October, 1828. On the 15th of April, 1830, the district attorney of the United States filed a bill of review in the case of Samperyac, re-alleging fraud and forgery, and setting forth the *discovery of new testimony*, &c. Stuart, the intermediate purchaser, was permitted to come in and answer, and he set forth the former decree, the fact that the period for an appeal had elapsed, and that he was an innocent purchaser, without notice of fraud and forgery. The court entertained the bill, the forgery was clearly proved, the former decree was reversed, and Stuart lost his land, and this decision was affirmed by the Supreme Court of the United States. It is not competent to Congress to consider whether the adjudications of the courts are correct or otherwise, although it frequently happens that, where a decree has been made, upon strict rules, against a citizen, in favor of the Government, under circumstances which imposed equitable or moral obligations to afford relief, such relief is extended. The committee suppose that the petitioner has made out such a case. They entertain no doubt but that the purchase was made upon the faith of the confirmation, connected with the fact that the time allowed by law for an appeal had expired, and that if no appeal should be taken within the time specified, that the decree was to be *final and conclusive between the parties.* Is it right for the Government (even if they had the power, which is questioned by a portion of the committee) to take advantage of their own laches or neglect, and, by the extraordinary process of conferring upon the courts extraordinary powers, reaching back to all time, to deprive, by the instrumentality of bills of review, the *bona fide*

innocent purchasers of those claims, when they had neither knowledge nor suspicion that they were forged or fraudulent, and when they had every right to believe that the decisions on those cases were *final* and *conclusive*? Who but an astute lawyer would ever suppose that the words "*final and conclusive*" did not mean *final and conclusive* in every form, mood, and tense—in both law and equity? The committee think General Arbuckle entitled to relief, in all the cases but two, which were purchased while the bill of review was pending, and report a bill for that purpose.