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RETROCESSION ACT OF 1846.

Mr. Carter presented the following

LETTER FROM HANNIS TAYLOR TO HON. THOMAS H. CARTER, UNITED STATES SENATOR, RENDERING AN OPINION AS TO THE CONSTITUTIONALITY OF THE ACT OF RETROCESSION OF 1846.

January 17, 1910.—Referred to the Committee on the District of Columbia and with accompanying illustrations ordered to be printed.

THE OPINION OF HANNIS TAYLOR AS TO THE CONSTITUTIONALITY OF THE ACT OF RETROCESSION OF 1846.

My Dear Senator: You have requested me to make a careful examination of every question of fact and law necessarily involved in the constitutionality of the act of July 9, 1846 (9 Stat., 35), entitled "An act to retrocede the county of Alexandria, in the District of Columbia to the State of Virginia." I will preface my conclusions, which are arranged under four heads, with a few observations as to the history of the original cession that will hardly be controverted by any one. The contemporaneous evidence puts the fact beyond all question that the final definition of a district 10 miles square as the seat of our Federal Government was in a special sense the personal work of President Washington, whose task involved the acquisition of the title to the tract from three sources—the State of Virginia, the State of Maryland, and the 19 local proprietors who owned that part of the heart of the present city which underlies the Capitol, the White House, and the Treasury. Washington's task was to induce the three parties who held the title to cede to the Federal Government, without any direct pecuniary consideration, the entire area under a quadrilateral contract in which that Government was the grantee and beneficiary, and Virginia, Maryland, and the 19 local proprietors the grantors. The real consideration moving to such grantors was the incidental benefits to accrue to them from their joint cession which, in the language of the act of July 16, 1790, "is hereby accepted for *the permanent seat* of the Government of the United States." That covenant represented the only consideration moving directly from the Federal Government, while the three grantors were bound to each other by the mutual considerations moving from the one to the other under interdependent grants. Maryland, the last to grant, expressed the idea of the mutual benefits to be derived from a common enterprise when her legislature declared that "it appears to this general assembly highly just and expedient that all the lands within the said city *should contribute, in due proportion, in the means which have already greatly enhanced the value of the whole.*" Under that quadrilateral

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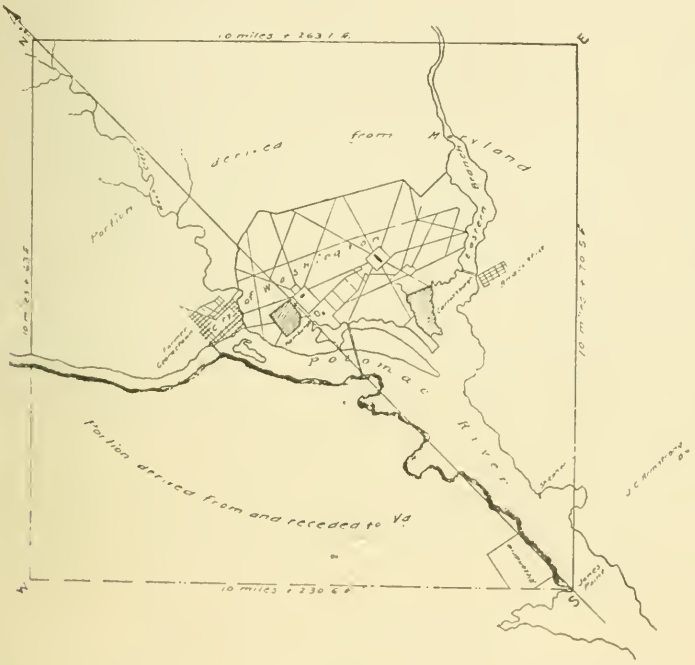
contract, supported by the foregoing considerations, the Federal Government entered into possession with a perfect title, after the final cession made by Maryland, December 19, 1791. No one perhaps will deny that after the title to the entire area had thus passed from the three grantors into the corporate person of the nation neither the State of Virginia nor the State of Maryland could have, either in law or in equity, any claim to the common heritage superior to that of any other State. Under such conditions the Federal Government remained in peaceful possession of the entire area 10 miles square and governed the same under the Constitution for a period of fifty-five years. During that time the original boundaries as designed by Washington were marked by massive stone monuments, which still abide unimpaired. By the act of retrocession of July 9, 1846, the district was dismembered by a conveyance to Virginia of nearly one-half of the entire area for no pecuniary or property consideration whatever. What was the real motive of the retrocession it is at this time difficult to ascertain. From a legal standpoint the fact that the portion reconveyed to Virginia had originally been contributed by her is of no significance whatever. Therefore, before argument begins, the mind wonders upon what constitutional principle such retrocession could have been made. Two distinct parts of the Constitution are involved: First, that part of section 8, Article I, which provides that Congress shall have power "To exercise exclusive legislation in all cases whatever, over such District (not exceeding 10 miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States;" second, that part of section 10, Article I, which provides that "No State shall pass any bill of attainder, *ex post facto* law, or *law impairing the obligation of contracts.*" During the memorable Senate debate led by Senator Haywood, of North Carolina, who, as chairman of the District Committee, bitterly assailed the constitutionality of the act of retrocession; the meaning and effect of section 8, Article I, was fully explored. I can not doubt the soundness of the conclusion then reached by many leading statesmen of that day to the effect that, considered in reference to that part of the Constitution alone, the act of retrocession is null and void. What I can not understand is the fact that in any debate, however hastily conducted, the deeper and more obvious argument based on the contract clause of the Constitution (Article I, section 10) should have been entirely overlooked. And yet the record shows that such was the fact. It never occurred to any one in 1846, or since that time, to look to the sources of the title in the quadrilateral contract upon which the ownership of the area, 10 miles square, really depends. What is said herein as to that branch of the subject is my personal contribution to the controversy.

The Continental Congress, after passing its last act on October 10, 1788, expired, leaving to the new Congress that assembled at New York on March 4, 1789, the task of selecting a permanent seat of government under the mandate contained in section 8, Article I, of the Constitution. The discussion began on May 15 with Virginia's offer of an area 10 miles square, which was followed by like offers from Maryland, New Jersey, and Pennsylvania. On September 3 Mr. Goodhue said, in debate, that "the eastern and northern Members had made up their minds on the subject, and were of opinion that on the eastern banks of the Susquehanna Congress should fix its permanent residence," introducing at the same time a resolution

to that effect. On September 7 Mr. Lee moved to amend Mr. Goodhue's resolution by substituting the "north bank of the River Potomac, in the State of Maryland," for "the east bank of the river Susquehanna, in the State of Pennsylvania." After prolonged discussion the act of July 16, 1790, was passed, and the site of the District finally located, partly in Prince George and Montgomery counties, in the State of Maryland, and partly in Fairfax County, in the State of Virginia, by proclamation of President George Washington, March 30, 1791, within the following bounds:

Beginning at Jones Point, being the upper cape of Hunting Creek, in Virginia, and at an angle in the outset of 45 degrees west of the north, and running in a direct line 10 miles for the first line; then beginning again at the same Jones Point, and running another direct line at a right angle with the first across the Potomac 10 miles for the second line; then from the terminations of the said first and second lines running two other direct lines of 10 miles each, the one crossing the Eastern Branch aforesaid and the other the Potomac, and meeting each other in a point.

Southwestern side, 10 miles 230.6 feet.
Northeastern side, 10 miles 263.1 feet.
Southeastern side, 10 miles 70.5 feet.
Northwestern side, 10 miles 63 feet.



From the foregoing diagram it appears that the "portion derived from and receded to Virginia" constitutes nearly one-half of the territory of the District as originally defined in the proclamation of March 30, 1791. If the act of July 9, 1846 (9 Stats., 35), entitled "*An act to retrocede the county of Alexandria, in the District of Columbia, to the State of Virginia,*" is unconstitutional and void, the laws of the United States should now be executed by the President throughout the "portion derived from and receded to Virginia."

I. ACT OF 1846 UNCONSTITUTIONAL BECAUSE IN CONFLICT WITH SECTION 8, ARTICLE 1, OF THE CONSTITUTION.

That section provides that "The Congress shall have power * * * to exercise exclusive legislation in all cases whatsoever over such District (not exceeding 10 miles square) as may by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States." After the power to select the seat of government had been once exercised by Congress, after the cessions had been made for that purpose by "particular States," after the area so ceded had been accepted by Congress under the act of July 16, 1790, declaring "the same is hereby accepted for *the permanent seat of the Government of the United States,*" the power of Congress over the subject-matter was exhausted. Or, if it was not exhausted, it could not again be exercised, because no power remained to transfer the District as originally created and accepted or any portion of it to any State. In other words, after a district 10 miles square had once been established and accepted as a permanent seat of government, Congress possessed no power to acquire another territory for another seat of government without violating the constitutional limitation which confined it to the 10 miles square. The Congress, an agent of limited authority, was expressly authorized to receive cessions from States of a limited amount of territory to be held as a permanent seat of government, but it was not authorized, expressly or impliedly, to give any part of such cessions away to anyone. Such was the constitutional difficulty which the Hon. R. M. T. Hunter attempted to overcome when the bill in question was up for debate in the House of Representatives, May 8, 1846. (See Cong. Globe, vol. 15, No. 2, Appendix, pp. 894–898.)

When the bill passed to the Senate the chairman of the Committee on the District of Columbia, Senator Haywood, of North Carolina earnestly opposed it. In the proceedings of June 17, 1846, the following appears:

"RETROCESSION OF ALEXANDRIA.

"Mr. Haywood, from the Committee on the District of Columbia, reported the bill for the retrocession of the city and county of Alexandria with a recommendation that it be rejected." (Cong. Globe, vol. 15, No. 3, pp. 985–986.)

In the debate which took place on June 30, Mr. Haywood said in part: "If there was any particular evil to be remedied by diminishing the extent of the 10 miles square, the committee had not been apprised of it; if any particular good to be attained, they were not apprised. When the retrocession was first suggested to the considera-

tion of the Senate, doubts were entertained by many how far it was competent for Congress to recede what the Constitution had for a particular purpose authorized them to accept. The States of Maryland and Virginia had ceded this territory to Congress, to be taken under its exclusive jurisdiction for the seat of government, and Congress, in the execution of that intention, solemnly declared by enactment its acceptance of the grant, and that this District should be perpetually the seat of government. Individual citizens of the District, a minority, if they chose to assume that they were so, had purchased property and become residents of the county under this pledge, and unless there were some evil to be remedied or decided advantage to be gained by the change, which would compensate those citizens, where was the propriety of violating that pledge?" Mr. Miller, who followed, said in part that "he was inclined to think that the subject was of more importance than he had at first view supposed. His first impressions were in favor of the bill, for he supposed that the whole matter depended upon the wishes of the people of Alexandria and Virginia. But, upon an examination of the subject, he found himself in great doubt as to whether Congress had the power to pass such an act; and even if they had the power he was perfectly convinced that it would not be good policy to do it." He then contended "that if Congress had the power to cede away any part of the District, they had power to cede the whole, and thereby entirely defeat the intention of the constitutional provision in regard to the seat of government." In the final debate, which took place on July 2, "Mr. Haywood opposed the bill, and in an eloquent manner contended for the sacred immunity of the Constitution and the wise arrangements of the sages of the Revolution. He also argued the constitutional question at considerable length and with characteristic ability." Thirteen Senators joined Mr. Haywood in opposition to the bill, which passed by a vote of 32 to 14. (Cong. Globe, vol. 15, No. 3, p. 1046.)

Section 8 of Article I of the Constitution, when taken as a whole, provides that "The Congress shall have power * * * to exercise exclusive legislation in all cases whatsoever over such District (not exceeding 10 miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings." The delegation of power thus made to Congress to acquire a seat of government for the United States, through a formal acceptance of cessions to be made by particular States, is a distinct subject-matter, entirely separate and apart from the succeeding delegation of power to govern "all places purchased by the consent of the legislature of the State in which the same shall be." Did the grant of *an express power* formally to accept cessions from particular States, which were to constitute and "become the seat of government of the United States," carry with it, as a necessary implication, the right to use the means necessary for the execution of the power? In other words, did the implied power to use such necessary means flow from the express power to accomplish the end? In construing that clause which provides that Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other

powers vested by the Constitution in the Government of the United States, or in any department or officer thereof," it was held at an early day that the clause in question "confers on Congress the choice of means and does not confine it to what is indispensably necessary." (United States *v.* Fisher, 2 Cranch, 358.) In McCulloch *v.* Maryland (4 Wheat., 316) it was said that "The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; * * * Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional." In commenting on that conclusion in the *Legal Tender Case* (12 Wall., 457) the Supreme Court said: "Suffice it to say in that case it was finally settled that in the gift by the Constitution to Congress of authority to enact laws 'necessary and proper' for the execution of all the powers created by it, the necessity spoken of is not to be understood as an absolute one. On the contrary, this court then held that the sound construction of the Constitution must allow to the National Legislature that discretion with respect to the means by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people." The express mandate was given by the Constitution to Congress to acquire a seat of government *by cessions from particular States, and in no other manner.* Congress was powerless to force any State to make a cession; it could not go beyond the limits of the States. It could only persuade; it could not command. Congress did not offer to the ceding States any money consideration whatever for their cessions. The means, and the only means, Congress saw fit to employ to accomplish a vitally important end was the promise, made in the act of July 16, 1790, that the seat of government to be located on the cessions should be "permanent." The act expressly declared that "the district so defined, limited, and located shall be deemed the district accepted by this act for the *permanent seat of government of the United States.*" When Mr. Madison moved, in the House of Representatives, to strike out the word "permanent" from this act, he was voted down; and thus we have a legislative interpretation, practically contemporaneous, to the effect that the Constitution intended to confer upon Congress the power to make the seat of government permanent. Contemporary interpretation of the Constitution, practiced and acquiesced in for years, conclusively fixes its construction. (Stuart *v.* Laird, 1 Cranch, 299; Martin *v.* Hunter, 1 Wheat., 304; Cohens *v.* Virginia, 6 Wheat., 264; Cooley *v.* Phila. Post Wowdens, 12 How., 299; Burrow Giles Lithographic Co. *v.* Sarony, 111 U. S., 53.) Thus it was settled at the outset, by a practically contemporaneous construction of the Constitution, that Congress, as a means of executing the express power and duty to secure a seat of government by cessions from particular States, which could not be compelled to cede anything, and to which no direct consideration was paid, was authorized to promise, as an inducement to the ceding States, that the seat of government to be fixed on the territory granted by them should be "permanent." Without the employment of such "necessary and proper" means, how could the express power have been executed at all? If that be true, then the power in question was exhausted by

its exercise under the act of July 16, 1790, *and the entire territory ceded and accepted by Congress under that act was forever dedicated as "the seat of the Government of the United States."* Such was the view of the 14 Senators who opposed the passage of the act of retrocession on July 2, 1846.

Some years ago when a movement was on foot to remove the capital to the valley of the Mississippi, the effect of the action of Congress under section 8, Article I, was fully discussed. I am informed that it was then universally admitted that by the selection of the present seat of government the power of Congress, under the section in question, had been exhausted, and that any future removal can only be accomplished through an amendment of the Constitution.

II.—ACT OF 1846 UNCONSTITUTIONAL BECAUSE IN CONFLICT WITH SECTION 10, ARTICLE 1, OF THE CONSTITUTION.

Conclusive as were the objections made in Congress to the constitutionality of the act in question, under section 8, Article I, of the Constitution, an objection more conclusive still, depending upon an entirely different section, escaped observation through the failure of busy statesmen to examine the terms of the original cessions through which the territory in question was derived. *The record shows that no examination whatever was made in that direction.* When the three cessions through which the territory of the District was derived are examined, it appears that there were three grantors, the State of Virginia, the State of Maryland, and a group composed of 19 local proprietors. The grantee was "the Congress and Government of the United States." Thus it was that four parties entered into a quadrilateral contract which passed, upon its execution, under the protection of section 10 of Article I of the Constitution, which provides that no State shall "pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts." That phase of the matter was in nowise considered during the debates of 1846.

THE VIRGINIA GRANT OF DECEMBER, 1789.

Section 2 of that act reads as follows: "Be it therefore enacted by the general assembly, That a tract of country, not exceeding ten miles square, or any lesser quantity to be located within the limits of this State and in any part thereof as Congress may by law direct, shall be and the same is *forever ceded and relinquished to the Congress and Government of the United States, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of the Government of the United States.*"

GRANTS FROM NINETEEN LOCAL PROPRIETORS.

On March 30, 1791, 19 local proprietors executed an agreement in which—

> We, the subscribers, in consideration of the great benefits we expect to derive from having the federal city laid off upon our lands, do hereby agree and bind ourselves, heirs, executors, and administrators, to convey, in trust, to the President of the United States, or commissioners, or such person or persons as he shall appoint, by good and sufficient deeds, in fee simple, the whole of our respective lands which he may think proper to include within the lines of the federal city, for the purposes and on the conditions following:
>
> The President shall have the sole power of directing the federal city to be laid off in what manner he pleases.

He may retain any number of squares he may think proper for public improvements, or other public uses; and the lots only which shall be laid off shall be a joint property between the trustees on behalf of the public and each present proprietor, and the same shall be fairly and equally divided between the public and the individuals, as soon as may be, the city shall be laid off.

For the streets the proprietors shall receive no compensation; but for the squares or lands in any form, which shall be taken for public buildings, or any kind of public improvements or uses, the proprietors whose lands shall be taken shall receive at the rate of £25 per acre, to be paid by the public.

On or about June 29, 1791, these 19 original proprietors of the greater part of the lands which now constitute the city of Washington, in execution of the agreement of March 30, 1791, conveyed them in trust, by deeds in a form appended later on. In each one of these trust deeds it is provided that the lands in question are conveyed—

To and for the special trust following, and no other; that is to say: That all the said lands hereby bargained and sold, or such part thereof as may be thought necessary or proper to be laid out, together with other lands within the said limits, for a federal city, with such streets, squares, parcels, and lots as the President of the United States for the time being shall approve; and that the said Thomas Beall of George and John M. Gantt, or the survivor of them, or the heirs of such survivor shall convey to the commissioners for the time being, appointed by virtue of the act of Congress entitled "An act for establishing the temporary and permanent seat of the Government of the United States," and their successors, for the use of the United States forever.

Thus it appears that the 19 local proprietors conveyed their lands to the United States forever, under the terms and conditions of section 2 of the act approved July 16, 1790, which provided expressly as follows: "That the President of the United States be authorized to appoint, and by supplying vacancies happening from refusals to act or other causes, to keep in appointment as long as may be necessary, three commissioners, who, or any two of whom, shall, under the direction of the President, survey, and by proper metes and bounds define and limit a district of territory, under the limitations above mentioned; *and the district so defined, limited, and located shall be deemed the district accepted by this act for the permanent seat of the Government of the United States.*" Acting under and by virtue of that section the President, by his proclamation of March 30, 1791, completed the acceptance and defined the boundaries of the said territory of 10 miles square. The terms of the proclamation are as follows:

Now, therefore, for the purpose of amending and completing the location of the whole of said territory of 10 miles square, in conformity with the said amendatory act of Congress, I do hereby declare and make known that the whole of the said territory shall be located and included within the four lines following; that is to say:

Beginning at Jones Point, being the upper cape of Hunting Creek, in Virginia, and at an angle in the outset of forty-five degrees west of the north, and running in a direct line 10 miles, for the first line; then beginning again at the same Jones Point, and running another direct line, at a right angle with the first, across the Potomac 10 miles, for the second line; thence from the termination of said first and second lines, running two other lines of 10 miles each, the one crossing the Eastern Branch aforesaid and the other the Potomac, and meeting each other in a point.

And I do accordingly direct the commissioners named under the authority of the said first-mentioned act of Congress to proceed forthwith to have the said four lines run, and by proper metes and bounds defined and limited, and thereof to make due report, under their hands and seals; *and the territory so to be located, defined, and limited shall be the whole territory accepted by the said act of Congress as the district for the permanent seat of the Government of the United States.*

It thus appears that *three months before the 19 proprietors made their grants to the United States for a permanent seat of government*, under the act of Congress of July 16, 1790, the President had

definitely defined and accepted the territory of 10 miles square, *including therein the grant from Virginia*. It thus appears that *a vital condition precedent* to the grant from the 19 proprietors was embodied in the fact that Virginia had ceded and the United States had accepted already from her a section of territory, constituting nearly one-half of the total area embraced in "said territory of 10 miles square." The border lines of the lands of the several original owners of the site of the city of Washington, exclusive of Georgetown, were laid down on the land, as a preliminary engineering groundwork, by Major L'Enfant in designing the map of the federal city, and the plan of the city was subsequently mapped out over these lines. In consequence of disputes as to the meaning of portions of the deeds from the original proprietors, the trustees refused to convey the streets and reservations to the commissioners to lay out the city, but the Supreme Court of the United States decided that the fee simple was vested in the United States. See Van Ness and wife *v.* The Mayor, etc., of Washington, and the United States, 4 Pet., 232.

THE FINAL GRANT FROM MARYLAND.

Maryland, the last to convey, took no definitive or effective action prior to the passage of her act of December 19, 1791, entitled "*An act concerning the Territory of Columbia and the city of Washington.*" As early as December 23, 1788, Maryland expressed her good intentions in the following act under which no action was ever taken:

AN ACT To cede to Congress a district of 10 miles square in this State (Maryland) for the seat of the Government of the United States. Approved December 23, 1788.

Be it enacted by the general assembly of Maryland, That the Representatives of this State in the House of Representatives of the Congress of the United States, appointed to assemble at New York on the first Wednesday of March next, be, and they are hereby, authorized and required, on behalf of this State, to cede to the Congress of the United States any district in this State not exceeding 10 miles square, which the Congress may fix upon and accept for the seat of government of the United States.

As no conveyance could be made under this act except to "the Congress," as distinguished from the Government of the United States, and as no selection of a site had then been made there was no attempt to execute the power vested in the Representatives of Maryland in the National House of Representatives. Virginia made her grant, which was the first grant, December 3, 1789; the 19 local proprietors perfected their grants on or about the 29th of June, 1791; Maryland did not make her grant until December 19, 1791. In that grant, embodied in a very elaborate act of 13 sections, Maryland put the fact beyond all question that the prior grants made by Virginia and the 19 proprietors *were conditions precedent to her grant*. In the preamble the act recites the description of the boundaries of the District in these terms:

Beginning at Jones Point, being the upper point of Hunting Creek, in Virginia, and at an angle at the outset forty-five degrees west of north, and running a direct line ten miles for the first line; then beginning again at the same Jones Point and running another direct line at a right angle with the first across the Potomac ten miles for the second line; then from the terminations of the said first and second lines running two other direct lines ten miles each, the one across the Eastern Branch and the other Potomac, and meeting each other in a point, which has since been called the Territory of Columbia

After thus describing the prior grant from Virginia the Maryland act thus refers to the prior grant made by the 19 proprietors:

Whereas Notley Young, Daniel Carroll, of Duddington, and many others, proprietors of the greater part of the land hereinafter mentioned to have been laid out in a city, came into an agreement, and have conveyed their lands in trust to Thomas Beall, son of George, and John Mackall Gantt, whereby they have subjected their lands to be laid out as a city, given up part to the United States, and subjected other parts to be sold to raise money as a donation to be employed according to the act of Congress for establishing the temporary and permanent seat of the Government of the United States, under and upon the terms and conditions contained in each of the said deeds; and many of the proprietors of lots in Carrollsburg and Hamburg have also come into an agreement, subjecting their lots to be laid out anew, giving up one-half of the quantity thereof to be sold, and the money thence arising to be applied as a donation as aforesaid, and they to be reinstated in one-half of the quantity of their lots in the new location, or otherwise compensated in land in a different situation within the city, by agreement between the commissioners and them, and in case of disagreement, that then a just and full compensation shall be made in money; yet some of the proprietors in Carrollsburg and Hamburg, as well as some of the proprietors of other lands, have not, from imbecility and other causes, come into any agreement concerning their lands within the limits hereinafter mentioned, but a very great number of the landholders having agreed on the same terms, the President of the United States directed a city to be laid out comprehending all the lands

within a particular area defined by metes and bounds. With the predicate thus laid the general assembly of Maryland enacted—

That all that part of the said territory called Columbia which lies within the limits of this State shall be, and the same is hereby, acknowledged to be forever ceded and relinquished to the Congress and Government of the United States, and full and absolute right and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of Government of the United States.

Immediately preceding that enacting clause we find, in the conclusion of the preamble, the following declaration:

Whereas it appears to this general assembly highly just and expedient *that all the lands within the said city should contribute, in due proportion, in the means which have already greatly enhanced the value of the whole*; that an incontrovertible title ought to be made to the purchasers, under public sanction; that allowing foreigners to hold land within the said territory will greatly contribute to the improvement and population thereof, and that many temporary provisions will be necessary till Congress exercise the jurisdiction and government over the said territory; and

Whereas in the cession of this State, heretofore made, of territory for the Government of the United States, the lines of such cession could not be particularly designated; and it being expedient and proper that the same should be recognized in the acts of this State, etc.

Here we have an explicit declaration upon the part of Maryland *that the two States and the local proprietors were cocontributors in a common enterprise whose leading motive was the enhancement of the value of the total territory contributed by each to a common fund.* The declaration that "it appears to this general assembly highly just and expedient that all the lands within the said city should contribute, *in due proportion*, in the means which have already *greatly enhanced the value of the whole*," puts it beyond question that each contribution was the consideration for every other. It was a joint enterprise for the common good of all in which the end to be finally attained—the enhanced value of the territory of the District as a whole—depended upon the grant of each. In no other way could the title to the whole be perfected.

A QUADRILATERAL CONTRACT ENTERED INTO.

From the foregoing it clearly appears that the title to the territory of the District of Columbia, as defined in and accepted by the President's proclamation of March 30, 1791, rests upon a quadrilateral contract entered into, on the one hand, by the United States, and on the other, by Virginia, Maryland, and the 19 local proprietors. The United States through the act of Congress of July 10, 1790, passed under the constitutional mandate, agreed that "the District so defined, limited, and located, shall be deemed the District accepted by this act, for *the permanent seat of the Government* of the United States." Each of the three grantors, in consideration of that stipulation made for the benefit of each, through which alone the title to the whole could be made perfect, entered into the quadrilateral contract in question. It is elementary in the law of contracts that when two or more instruments are executed at the same time, or at different times, which relate to the same subject-matter, and one refers to the other, either tacitly or expressly, they will be taken together and construed as one instrument. As a well-known writer has expressed it, "So where two instruments are executed as parts of the same transaction and agreement, *whether at the same time or different times*, they will be taken and construed together." (Lawson on Contracts, p. 457, citing Stephens *v.* Baird, 9 Cow., 274; Makepeace *v.* Harvard College, 10 Pick., 302; Sibley *v.* Holden, 10 Pick., 250; Wallis *v.* Beauchamp, 15 Tex., 303; Strong *v.* Barnes, 11 Vt., 221; Norton *v.* Kearney, 10 Wis., 443.) In Fletcher *v.* Peck, 6 Cranch, 97, the precursor of the Dartmouth College case, it was said that "The suit was instituted on several covenants contained in a deed made by John Peck, the defendant in error, conveying to Robert Fletcher, the plaintiff in error, certain lands which were part of a large purchase made by James Gunn and others, in the year 1795, from the State of Georgia, *the contract for which was made in the form of a bill passed by the legislature of the State*." In this case the quadrilateral contract is made up (1) of the grant from Virginia, contained in her act of December 3, 1789; (2) of the act of Congress of July 16, 1790; (3) of the 19 trust deeds executed by the local proprietors on or about June 29, 1791; (4) of the grant from Maryland of December 19, 1791. These instruments are but links in a chain, each a part of an indivisible whole completed by the Maryland act of December 19, 1791, *which refers to each and describes the transaction as a whole*. Every instrument refers to every other, either directly or by necessary implication. The Maryland act, which completed the quadrilateral contract, expressly declares that the grant was made from that State because "it appears to this general assembly highly just and expedient that all the lands within the said city should contribute, *in due proportion, in the means which have already greatly enhanced the value of the whole*." The fact was thus put beyond all question that the chief consideration for this subscription contract, in aid of the Government of the United States, which paid nothing to the grantors, was *the perpetual application by it of the joint product of such subscriptions to the common object*, in the mode prescribed by the subscribers and guarantied by the recipient. There was perfect mutuality. "Mutuality of contract means that an obligation must rest on each party to do or permit to be done something

in consideration of the act or promise of the other; that is, neither party is bound unless both are bound." *Am. and Eng. Enc. of Law*, volume 7, page 114, and authorities. In Dartmouth College *v.* Woodward (4 Wheat., 656), this specially pertinent definition occurs: "1. What is a contract? It may be defined to be a transaction between two or more persons, and each reciprocally acquires a right to whatever is promised by the other. Under this definition, says Mr. Powell, it is obvious that every feoffment, gift, grant, agreement, promise, etc., may be included, because in all there is a mutual consent of the minds of the parties concerned in them, upon an agreement between them respecting some property or right that is the object of the stipulation. He adds, that the ingredients requisite to form a contract are parties, consent, and an obligation to be created or dissolved; these must all concur, because the regular effect of all contracts is on one side to acquire, and on the other to part with, some property or rights; or to abridge, or to restrain natural liberty, by binding the parties to do, or restrain them from doing something which before they might have done, or omitted. If a doubt could exist *that a grant is a contract*, the point was decided in the case of Fletcher *v.* Peck, in which it was laid down that a contract is either executory or executed; by the former, a party binds himself to do or not to do a particular thing; the latter is one in which the object of the contract is performed, and this differs in nothing from a grant; *but whether executed or executory they both contain obligations binding on the parties, and both are equally within the provisions of the Constitution of the United States, which forbids the state governments to pass laws impairing the obligation of contracts.*" One of the best digests (Coop., 1908, vol. 2, p. 1845), in commenting on the case in question, says: "The consideration for a subscription contract in aid of an eleemosynary institution *is the perpetual application of the fund arising on such subscriptions to its object, in the mode prescribed by the subscribers.*" (Dartmouth College *v.* Woodward, 4 Wheat., 518.) To the same effect, see Goesele *v.* Birmeler, 14 How., 589; Schwartz *v.* Duss, 187 U. S., 26. In the case last cited the principle was emphasized that after such a dedication to a common purpose by individual owners the consideration is sufficient, and no right to a partition or retrocession can be asserted by any subscriber or his heirs. It thus appears that in this case the three grantors—*by a joint contribution in which each subscribed in consideration of the grant of every other*—dedicated a definite area of territory particularly described and accepted by the United States as its permanent seat of Government to be held perpetually as such. As the quadrilateral contract thus entered into is, under the express terms of the Dartmouth College case, protected by the contract clause of the Constitution, the legislation of the State of Virginia under which the receded section is now held, taxed, and governed, is null and void, because by the force and effect of such legislation nearly one-half of the subject-matter of the contract is withdrawn from its operation. The Supreme Court will determine for itself the existence or nonexistence of the contract set up, and whether its obligation has been impaired by the state enactment. (Douglass *v.* Kentucky, 168 U. S., 502, and cases cited.) In this case there can be no question that the quadrilateral contract was executed between the States of Virginia, Maryland, the 19 proprietors, and the United States, and that such

quadrilateral contract passed under the protection of the contract clause of the Constitution, *before the District of Columbia came into existence*, for the simple and conclusive reason that the very existence of such District was the result of the complete execution of such contract. Therefore as the quadrilateral contract was executed between the United States and the States in question, *prior to the existence of the District*, section 10 of Article I, providing that "No State shall * * * pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts," operated upon it from the moment of its execution. That is no less true because such contract was executed between States. In Wolf *v.* New Orleans, 103 U. S., 367, it was held expressly that "The prohibition of the Constitution against the passage of laws impairing the obligation of contracts, applies to the contracts of the State, and to those of its agents acting under its authority, as well as to contracts between individuals. And that obligation so impaired, in the sense of the Constitution, when the means by which a contract at the time of its execution could be enforced; that is, by which the parties could be *obliged* to perform it, are rendered less efficacious by legislation operating directly upon those means." In speaking of its duty in that regard in Murray *v.* Charleston (96 U. S., 448) the Supreme Court said that "it is one of the highest duties of this court to take care that the prohibition shall neither be evaded nor frittered away. Complete effect must be given to it in all its spirit." The attempted act of recession of 1846 is null and void because in conflict with sections 8 and 10 of Article I of the Constitution; *the legislation of Virginia under which her sovereignty is now asserted is null and void because in conflict with section 10 of Article I of the Constitution.* The practical dilemma is this:

In 1846 two parties to a quadrilateral contract, protected by the contract clause of the Constitution—to wit, the United States and Virginia—attempted to annul it without the assent of the other two parties, *by withdrawing a large section of the consideration upon which the contract was made*. If that attempted recession upon the part of the United States and Virginia is valid, then the contract as a whole fails. *Neither party is bound unless all are bound.* If the United States and Virginia, as a matter of law, actually annuled the quadrilateral contract, then Maryland and the representatives of the 19 proprietors can justly and legally claim every foot of land embraced in the limits of the District as now defined. If the retrocession to Virginia is to stand, then the land underlying the Capitol, the White House, and the Treasury belongs either to Maryland or the local proprietors by whom it was granted. The nation can only be protected against that result by a judgment of the Supreme Court of the United States declaring the act of retrocession of 1846 to be null and void.

III. JURISDICTION OF THE SUPREME COURT OVER THE CONTROVERSY.

Fortunately there is no real danger in the foregoing *reductio ad horribile*. The title of the United States to all the territory within the District as originally defined is perfect by reason of the fact that the act of recession of 1846 is clearly unconstitutional and void; (1) because of the reasons set forth in the debates in Congress at the

time of its passage; (2) because of the reasons herein set forth for the first time. What, then, is the remedy? A complete answer is to be found in the opinion of the Supreme Court in the case of the United States *v.* Texas (143 U. S., 621-649), in which it was held: (1) That the Supreme Court can, under the Constitution, take cognizance of an original suit brought by the United States against a State to determine the boundary between one of the Territories and such State; (2) That the Supreme Court has jurisdiction to determine a disputed question of boundary between the United States and a State; (3) That a suit in equity begun in the Supreme Court is appropriate for determining a boundary between the United States and one of the States. In the course of its opinion the court said:

"In view of these cases, it can not, with propriety, be said that a question of boundary between a Territory of the United States and one of the States of the Union is of a *political* nature and not susceptible of judicial determination by a court having jurisdiction of such a controversy. The important question, therefore, is whether this court can, under the Constitution, take cognizance of an original suit brought by the United States against a State to determine the boundary between one of the Territories and such State. * * * We can not assume that the framers of the Constitution, while extending the judicial power of the United States to controversies between two or more States of the Union, and between a State of the Union and foreign states, intended to exempt a State altogether from suit by the General Government. They could not have overlooked the possibility that controversies capable of *judicial* solution might arise between the United States and some of the States, and that the permanence of the Union might be endangered if to some tribunal was not intrusted the power to determine them according to the recognized principles of law."

That case solves every problem that can possibly arise in an original suit between the United States and Virginia as to the boundaries of the District of Columbia. It also solves in advance another problem that will surely arise, sooner or later, between the United States and Maryland *if the recession of 1846 to Virginia is not annulled.* In that event Maryland has a perfect right to claim of the United States, by reason of the recession of the original quadrilateral agreement, the return of every foot of land ceded by her and now embraced within the present limits of the District. That right Maryland can enforce in an original suit against the United States in the Supreme Court, under the authority of United States *v.* Texas. That great case has also refuted most emphatically the strange contention made by Senator George F. Hoar in the report made by him to the Senate on April 11, 1902 (57th Cong., 1st sess., Rept. No. 1078), as to the constitutionality of the act of retrocession of 1846. In that report he said: "As to the suggestion that the retrocession was unconstitutional, it seems to us the answer is that from the nature of the case it is a *political* and not a *judicial question* and that it has been settled by the *political authorities* alone competent to decide it." Such a theory, always untenable, was completely wiped out by the judgment in the case in question, in which it was expressly decided that "it can not, with propriety, be said that a question of boundary between a Territory of the United States and one of the States of the Union is of a

political nature and not susceptible of judicial determination by a court having jurisdiction of such a controversy. * * * We can not assume that the framers of the Constitution, while extending the judicial power of the United States to controversies between two or more States of the Union, and between a State of the Union and foreign states, intended to exempt a State altogether from suit by the General Government."

The right to proceed under that case can not be affected, of course, by the decision in Phillips *v.* Bayne (92 U. S., 130), in which it was held that the validity of the retrocession to Virginia of Alexandria County can not be raised by a taxpayer in an action to recover for taxes alleged to have been assessed illegally. It was held therein that the validity of the retrocession can only be raised by the sovereignties interested acting on their own account. The doctrine of acquiescence can not be set up against the United States by one holding under an unconstitutional or void law. In Norton *v.* Shelby County (118 U. S., 425), the court said: "An unconstitutional act is not law: it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." Resting upon the case of Hildredth *v.* McIntire (1 J. J. Marsh, 206, Ky.), the Supreme Court held that, under our system of written constitutions, *de facto* conditions can not impart constitutional validity to acts or institutions. The case of U. S. *v.* Texas settled the fact that all controversies as to boundaries between the United States and States present questions purely judicial; they are justiciable by the Supreme Court alone. The idea, as restated by Senator Hoar, that such questions are political was extinguished by that judgment.

IV. DUTY OF THE PRESIDENT IN THE PREMISES.

The constitutional mandate that requires the President to "take care that the laws be faithfully executed" compels him to ascertain and determine the limits of the territory over which they are to be enforced. In his argument in United States *v.* Texas the Attorney-General of the United States stated the matter in this form: "The President in enforcing the laws must determine over what territory they are to be enforced." (Carr *v.* United States, 98 U. S., 436; Foster *v.* Neilson, 2 Pet., 306; Cherokee Nation *v.* Southern Kansas R. Co., 135 U. S., 656.) Upon a kindred principle of international law all conflicts as to boundaries with foreign states pertain, in the United States, to the executive department of the Government whose solutions of them will be accepted as final by the judiciary. (Garcia *v.* Lee, 12 Pet., 415; Williams *v.* Suffolk Ins. Co., 13 Pet., 415; U. S. *v.* Reynes, 9 How., 127; In re Cooper, 143 U. S., 472.) In determining all questions of boundary, whether foreign or domestic, the initiative in this country is vested in the Executive acting alone. While he may advise with Congress as to the steps he may take in ascertaining boundaries, while executing the laws within the same, the President can not surrender his exclusive power to ascertain what they are. As a practical illustration, if in this matter the President believes that Virginia is in unlawful possession of that portion of the District described in the act of 1846, it is his constitutional duty to "take care that the laws be faithfully executed" in that area, regardless of any contrary opinion the legislative department of the Government might entertain on the subject. He could hold no other view without abdi-

cating the independence of the executive power in the execution of the laws. It is, however, in my humble judgment a case in which there should be friendly consultation between the executive and legislative departments, because in the event of a recovery in the Supreme Court Congress would no doubt be called upon to pass such a bill of indemnity as would relieve Virginia of any accountability for revenues derived from the area in question during her *de facto* occupation. In the appendix hereto is embraced all the acts of government upon which the quadrilateral contract in question depends, and also the agreement and form of the deed from the local proprietors.

Yours, with great respect, HANNIS TAYLOR.

WASHINGTON, D. C., *January 12, 1910.*

Hon. THOMAS H. CARTER,
Washington, D. C.

APPENDIX.

[Embracing all the acts of government upon which the quadrilateral contract in question depends, and also the agreement and form of the deed from the local proprietors.]

No. 1.—VIRGINIA CESSION OF DECEMBER 3, 1789.

AN ACT For the cession of 10 miles square or any lesser quantity of territory within this State (Virginia) to the United States in Congress assembled, for the permanent seat of the General Government. Approved, December 3, 1789.

1. Whereas the equal and common benefits resulting from the administration of the General Government will be best diffused and its operations become more prompt and certain by establishing such a situation for the seat of said Government as will be most central and convenient to the citizens of the United States at large, having regard as well to population, extent of territory, and free navigation to the Atlantic Ocean, through the Chesapeake Bay, as to the most direct and ready communication with our fellow-citizens in the western frontiers; and whereas it appears to this assembly that a situation combining all the considerations and advantages before recited may be had on the banks of the river Potomac, above tide water, in a country rich and fertile in soil, healthy and salubrious in climate, and abounding in all the necessaries and conveniences of life, where, in a location of 10 miles square, if the wisdom of Congress shall so direct, the States of Pennsylvania, Maryland, and Virginia may participate in such location:

2. *Be it therefore enacted by the general assembly*, That a tract of country, not exceeding ten miles square, or any lesser quantity, to be located within the limits of this State, and in any part thereof as Congress may by law direct, shall be, and the same is, forever ceded and relinquished to the Congress and Government of the United States, in full and absolute right and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of the Government of the United States.

III. *Provided*, That nothing herein contained shall be herein construed to vest in the United States any right of property in the soil, or to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States.

IV. *And provided also*. That the jurisdiction of the laws of this Commonwealth over the persons and property of individuals residing within the limits of the cession aforesaid shall not cease or determine until Congress, having accepted the said cession, shall by law provide for the government thereof, under their jurisdiction, in the manner provided by the article of the Constitution before recited.

No. 2.—THE FIRST ACT OF CONGRESS OF JULY 16, 1790.

AN ACT For establishing the temporary and permanent seat of the Government of the United States.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That a district of territory, not exceeding ten miles square, to be located as hereafter directed on the river Potomac, at some place between the mouths of the Eastern Branch and the Connogochegue, be, and the same is hereby, accepted for the permanent seat of the Government of the United

States: *Provided nevertheless*, That the operation of the laws of the State within such district shall not be affected by this acceptance, until the time fixed for the removal of the Government thereto, and until Congress shall otherwise by law provide.

SEC. 2. *And be it further enacted*, That the President of the United States be authorized to appoint, and by supplying vacancies happening from refusals to act or other causes, to keep in appointment as long as may be necessary, three commissioners, who, or any two of whom, shall, under the direction of the President, survey, and by proper metes and bounds define and limit a district of territory, under the limitations above mentioned; and the district so defined, limited, and located shall be deemed the district accepted by this act for the permanent seat of the Government of the United States.

SEC. 3. *And be it (further) enacted*, That the said commissioners, or any two of them, shall have power to purchase or accept such quantity of land on the eastern side of the said river, within the said district, as the President shall deem proper for the use of the United States; and according to such plans as the President shall approve, the said commissioners, or any two of them, shall, prior to the first Monday in December, in the year one thousand eight hundred, provide suitable buildings for the accommodation of Congress and of the President and for the public offices of the Government of the United States.

SEC. 4. *And be it (further) enacted*, That for defraying the expense of such purchases and buildings, the President of the United States be authorized and requested to accept grants of money.

SEC. 5. *And be it (further) enacted*, That prior to the first Monday in December next, all offices attached to the seat of the Government of the United States, shall be removed to, and until the said first Monday in December, in the year one thousand eight hundred, shall remain at the city of Philadelphia, in the State of Pennsylvania, at which place the session of Congress next ensuing the present shall be held.

SEC. 6. *And be it (further) enacted*, That on the said first Monday in December, in the year one thousand eight hundred, the seat of the Government of the United States shall, by virtue of this act, be transferred to the district and place aforesaid. And all offices attached to the said seat of government, shall accordingly be removed thereto by their respective holders, and shall, after the said day, cease to be exercised elsewhere; and that the necessary expense of such removal shall be defrayed out of the duties on imposts and tonnage, of which a sufficient sum is hereby appropriated.

Approved, July 16, 1790. (1 Stats., 130.)

No. 3.—PRESIDENT'S PROCLAMATION OF JANUARY 24, 1791.

In pursuance of the act of 16th of July, 1790, three commissioners were appointed, who proceeded to locate the district of 10 miles square agreeably to the following proclamation of the President:

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas the general assembly of the State of Maryland, by an act passed on the 23d day of December, 1788, entitled "An act to cede to Congress a district of ten miles square in this State for the seat of Government of the United States," did enact that the representatives of the said State in the House of Representatives of the Congress of the United States, appointed to assemble at New York on the first Wednesday of March then next ensuing, should be, and they were thereby, authorized and required, on the behalf of the said State, to cede to the Congress of the United States any district in the said State not exceeding ten miles square, which the Congress might fix upon and accept for the seat of Government of the United States.

And the general assembly of the Commonwealth of Virginia, by an act passed on the 3d day of December, 1789, and entitled "An act for the cession of ten miles square or any lesser quantity of territory within this State, to the United States in Congress assembled, for the permanent seat of the General Government," did enact that a tract of country not exceeding ten square miles, or any lesser quantity, to be located within the limits of the said State, and in any part thereof, as Congress might by law direct, should be and the same was thereby forever ceded and relinquished to the Congress and Government of the United States, in full and absolute right, and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to

the tenor and effect of the eighth section of the first article of the Constitution of Government of the United States.

And the Congress of the United States, by their act passed the 16th day of July, 1790, and entitled "An act for establishing the temporary and permanent seat of the Government of the United States," authorized the President of the United States to appoint three commissioners to survey under his direction, and by proper metes and bounds to limit a district of territory not exceeding ten miles square on the river Potomac, at some place between the mouth of the Eastern Branch and Conococheague, which district, so to be located and limited, was accepted by the said act of Congress as the district for the permanent seat of the Government of the United States.

Now, therefore, in pursuance of the powers to me confided, and after duly examining and weighing the advantages and disadvantages of the several situations within the limits aforesaid, I do hereby declare and make known that the location of one part of the said district of ten miles square shall be found by running four lines of experiment in the following manner, that is to say: Running from the court-house of Alexandria, in Virginia, due southwest half a mile, and thence a due southeast course till it shall strike Hunting Creek, to fix the beginning of the said four lines of experiment.

Then beginning the first of the said four lines of experiment at the point on Hunting Creek where the said southeast course shall have struck the same, and running the said first line due northwest ten miles; thence the second into Maryland, due northeast ten miles; thence the third line due southeast ten miles; and thence the fourth line due southwest ten miles, to the beginning on Hunting Creek

And the said four lines of experiment being so run, I do hereby declare and make known that all that part within the said four lines of experiment which shall be within the State of Maryland and above the Eastern Branch, and all that part within the same four lines of experiment which shall be within the Commonwealth of Virginia, and above a line to be run from the point of land forming the Upper Cape of the mouth of the Eastern Branch due southwest, and no more, is now fixed upon, and directed to be surveyed, defined, limited, and located for a part of the said district accepted by the said act of Congress for the permanent seat of the Government of the United States; hereby expressly reserving the direction of the survey and location of the remaining part of the said district, to be made hereafter contiguous to such part or parts of the present location as is or shall be agreeably to law.

And I do accordingly direct the said commissioners, appointed agreeably to the tenor of the said act, to proceed forthwith to run the said lines of experiment, and, the same being run, to survey and, by proper metes and bounds, to define and limit the part within the same which is hereinbefore directed for immediate location and acceptance, and thereof to make due report to me under their hands and seals.

In testimony whereof I have caused the seal of the United States to be affixed to these presents, and signed the same with my hand. Done at the city of Philadelphia the 24th day of January, in the year of our Lord 1791, and of the Independence of the United States the fifteenth.

GEORGE WASHINGTON.

By the President:
THOMAS JEFFERSON.

No. 4.—THE AMENDATORY ACT OF MARCH 3, 1791.

AN ACT To amend "An act for establishing the temporary and permanent seat of the Government of the United States."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the act entitled "An act for establishing the temporary and permanent seat of the Government of the United States" as requires that the whole of the district of territory, not exceeding ten miles square, to be located on the river Potomac, for the permanent seat of the Government of the United States, shall be located above the mouth of the Eastern Branch, be, and is hereby, repealed, and that it shall be lawful for the President to make any part of the territory below the said limit, and above the mouth of Hunting Creek, a part of the said district, so as to include a convenient part of the Eastern Branch, and of the lands lying on the lower side thereof, and also the town of Alexandria, and the territory so to be included shall form a part of the district not exceeding ten miles square, for the permanent seat of the Government of the United States, in like manner and to all intents and purposes as if the same had been within the purview of the above-recited act: *Provided*, That nothing herein contained shall authorize the erection of the public buildings otherwise than on the Maryland side of the river Potomac, as required by the aforesaid act.

Approved March 3, 1791. (1 Stats., 214.)

No. 5.—PRESIDENT'S PROCLAMATION OF MARCH 30, 1791.

Whereas, by proclamation bearing date the 24th day of January, of this present year, and in pursuance of certain acts of the States of Maryland and Virginia and the Congress of the United States, therein mentioned, certain lines of experiment were directed to be run in the neighborhood of Georgetown, in Maryland, for the purpose of locating a part of the territory of ten miles square, for the permanent seat of Government of the United States, and a certain part was directed to be located within the said lines of experiment on both sides of the Potomac, and above the limits of the Eastern Branch, prescribed by the said acts of Congress;

And Congress, by an amendatory act, passed on the 3d day of this present month of March, have given further authority to the President of the United States "*to make any part of the said territory below the said limit and above the mouth of Hunting Creek a part of said district, so as to include a convenient part of the Eastern Branch, and of the lands lying on the lower side thereof, and also the town of Alexandria:*"

Now, therefore, for the purpose of amending and completing the location of the whole of said territory of ten miles square, in conformity with the said amendatory act of Congress, I do hereby declare and make known that the whole of the said territory shall be located and included within the four lines following, that is to say:

Beginning at Jones's Point, being the upper cape of Hunting Creek, in Virginia, and at an angle in the outset of forty-five degrees west of the north, and running in a direct line ten miles, for the first line; then beginning again at the same Jones's Point, and running another direct line, at a right angle with the first, across the Potomac ten miles, for the second line; thence from the termination of said first and second lines, running two other lines of ten miles each, the one crossing the Eastern Branch aforesaid and the other the Potomac, and meeting each other in a point.

And I do accordingly direct the commissioners named under the authority of the said first-mentioned act of Congress to proceed forthwith to have the said four lines run, and by proper metes and bounds defined and limited, and thereof to make due report, under their hands and seals; and the territory so to be located, defined, and limited shall be the whole territory accepted by the said act of Congress as the district for the permanent seat of the Government of the United States.

In testimony whereof I have caused the seal of the United States to be affixed to these presents, and signed the same with my own hand. Done at Georgetown aforesaid the 30th day of March, in the year of our Lord 1791, and of the Independence of the United States the fifteenth.

[SEAL.] GEORGE WASHINGTON.

By the President:

THOMAS JEFFERSON.

No. 6.—AGREEMENT OF THE ORIGINAL PROPRIETORS OF MARCH 30, 1791.

On March 28, 1791, President Washington reached Georgetown, and on the 29th he rode over the proposed site of the Federal city, in company with the three commissioners and the two surveyors, Andrew Ellicott and Maj. Peter Charles L'Enfant.

On the evening of the same day a meeting was held for the purpose of effecting a friendly agreement between the proprietors of the lands constituting the site of the Federal city and the United States commissioners, and Washington's good counsel on that occasion had so favorable an effect that the general features were settled that very evening for the agreement, which was signed and executed by nineteen property holders the next day, and thereby the rights of and titles to property within this District and city may be said to have been decided on that evening.

This agreement, which was accepted by the commissioners and recorded in their books on April 12, 1791, was as follows:

"We, the subscribers, in consideration of the great benefits we expect to derive from having the Federal city laid off upon our lands, do hereby agree and bind ourselves, heirs, executors, and administrators, to convey, in trust, to the President of the United States, or commissioners, or such person or persons as he shall appoint, by good and sufficient deeds, in fee simple, the whole of our respective lands which he may think proper to include within the lines of the Federal city, for the purposes and on the conditions following:

"The President shall have the sole power of directing the Federal city to be laid off in what manner he pleases.

"He may retain any number of squares he may think proper for public improvements, or other public uses; and the lots only which shall be laid off shall be a joint property between the trustees on behalf of the public and each present proprietor, and the same shall be fairly and equally divided between the public and the individuals, as soon as may be, the city shall be laid off.

"For the streets the proprietors shall receive no compensation; but for the squares or lands in any form, which shall be taken for public buildings, or any kind of public improvements or uses, the proprietors whose lands shall be taken shall receive at the rate of 25 pounds per acre, to be paid by the public.

"The whole wood on the lands shall be the property of the proprietors, and should any be desired by the President to be reserved or left standing, the same shall be paid for by the public at a just and reasonable valuation, exclusive of the £25 per acre to be paid for the land on which the same shall remain.

"Each proprietor shall retain the full possession and use of his land until the same shall be sold and occupied by the purchase of the lots laid out thereon, and in all cases where the public arrangements as the streets, lots, etc., will admit of it, each proprietor shall possess his buildings and other improvements and graveyards, paying to the public only one-half the present estimated value of the land, on which the same shall be, or £12 10sh. per acre; but in cases where the arrangements of the streets, lots, squares, etc., will not admit of this, and it shall become necessary to remove such buildings, etc., the proprietors of the same shall be paid the reasonable value thereof by the public.

"Nothing herein contained shall affect the lots any of the parties to this agreement may hold in the towns of Hamburgh or Carrolsburg.

"In witness whereof we have hereunto set our hands and seals this 30th day of March, in the year of our Lord 1791.

"ROBERT PETER. [SEAL.]
"DAVID BURNES. [SEAL.]
"JAS. M. LINGAN. [SEAL.]
"URIAH FORREST. [SEAL.]
"BENJAMIN STODDERT. [SEAL.]
"NOTLEY YOUNG. [SEAL.]
"DANIEL CARROLL OF DUDDINGTON. [SEAL.]
"OVERTON CARR. [SEAL.]
"THOMAS BEALE OF GEORGE. [SEAL.]
"CHAS. BEATTY. [SEAL.]
"ANTHONY HOLMEAD. [SEAL.]
"WM. YOUNG. [SEAL.]
"EDWARD PIERCE. [SEAL.]
"ABRAHAM YOUNG. [SEAL.]
"JAS. PIERCE. [SEAL.]
"WM. PROUT. [SEAL.]
"ROBERT PETER, [SEAL.]
"As Attorney in Fact for Eliphas Douglass."
"BENJAMIN STODDERT, [SEAL.]
"For Jas. Warren, by written authority from W. Warren."
"WM. KING. [SEAL.]

Signed and sealed in presence of Mr. Thomas Beale, making an exception of the land he sold A. C. Young not yet conveyed.

"Witness to all subscribers, including Wm. Young.
"WM. BAILEY.
"WM. ROBERTSON.
"JOHN LUTER.
"SAM. DAVIDSON (witness to Abraham Young signing).
"BENJAMIN STODDERT (witness to Pierce's signing).
"JOSEPH E. ROWLES (for Jno. Warring).
"WM. DEAKING, Jr. (for Wm. Prout and Wm. King)."

No. 7.—FORM OF TRUST DEED USED BY THE NINETEEN ORIGINAL PROPRIETORS

On or about the 29th of June, 1791, nineteen original proprietors of the greater parts of the lands which now constitute the city of Washington conveyed them in trust, by deeds in the following form, viz:

[Copy of the deed in trust from an original proprietor of the ground on which the city of Washington is located to the trustees appointed by authority of the United States to receive the same.]

This indenture, made this 29th day of June, in the year of our Lord one thousand seven hundred and ninety-one, between (here is inserted the name of the grantor), of the State of Maryland, of the one part, and Thomas Beall, of George, and John M. Gantt, of the State of Maryland, of the other part, witnesseth: That the said ——— ——— (the grantor), for and in consideration of the sum of five shillings, to him in hand paid by the same Thomas Beall, of George, and John M. Gantt, before the sealing and de-

livery of these presents, the receipt whereof he doth hereby acknowledge, and thereof doth acquit the said Thomas Beall, of George, and John M. Gantt, their executors and administrators; and also, for and in consideration of the uses and trust hereinafter mentioned, to be performed by the said Thomas Beall, of George, and John M. Gantt, and the survivor of them, and the heirs of such survivor, according to the true intent and meaning thereof, hath granted, bargained, sold, aliened, released, and confirmed, and by these presents doth grant, bargain, sell, alien, release, and confirm unto the said Thomas Beall, of George, and John M. Gantt, and the survivor of them, and the heirs of such survivor, all the lands of him, the said (grantor) lying and being within the following limits, boundaries, and lines, to wit: Beginning on the east side of Rock Creek, at a stone standing in the middle of the main road leading from Georgetown to Bladensburg; thence along the middle of the said road to a stone standing on the east side of the Reedy Branch of Goose Creek; thence southeasterly, making an angle of 61 degrees and twenty minutes with the meridian, to a stone standing in the road leading from Bladensburg to the Eastern Branch ferry; thence south, to a stone eighty poles north of the east-and-west line already drawn from the mouth of Goose Creek, to the Eastern Branch; then east, parallel to the said east-and-west line, to the Eastern Branch; thence by and with the waters of the Eastern Branch, Potomac River, and Rock Creek to the beginning, with their appurtenances, except all and every lot and lots of which the said ——— ——— (the grantor) is seized or to which he is entitled in Carrollsburg or Hamburg; to have and to hold the hereby bargained and sold lands with their appurtenances to the said Thomas Beall of George and John M. Gantt, and the survivor of them, and the heirs of such survivor forever: To and for the special trust following, and no other: that is to say: That all the said lands hereby bargained and sold, or such part thereof as may be thought necessary or proper to be laid out, together with other lands within the said limits, for a Federal city, with such streets, squares, parcels, and lots as the President of the United States for the time being shall approve; and that the said Thomas Beall, of George, and John M. Gantt, or the survivor of them, or the heirs of such survivor shall convey to the commissioners for the time being, appointed by virtue of the act of Congress entitled "An act for establishing the temporary and permanent seat of the Government of the United States," and their successors, for the use of the United States forever, all the said streets and such of the said squares, parcels, and lots as the President shall deem proper, for the use of the United States; and that as to the residue of the said lots, into which the said lands hereby bargained and sold shall have been laid off and divided, that a fair and equal division of them shall be made. And if no other mode of division shall be agreed on by consent of the said ——— ——— (the grantor) and the commissioners for the time being, then such residue of the said lots shall be divided, every other lot alternate to the said ——— ——— (the grantor), and it shall, in that event, be determined by lot, whether the said ——— ——— (the grantor) shall begin with the lot of the lowest number laid out on the said lands or the following number.

And all the said lots which may in any manner be divided or assigned to the said ——— ——— (the grantor) shall, thereupon, together with any part of the bargained and sold lands, if any, which shall not have been laid out in the said city, be conveyed by the said Thomas Beall of George and John M. Gantt, or the survivor of them, or the heirs of such survivor, to him, the said ——— ——— (the grantor), his heirs and assigns. And that the said other lots shall and may be sold at such time or times, in such manner, and on such terms and conditions as the President of the United States for the time being shall direct; and that the said Thomas Beall of George and John M. Gantt, or the survivor of them, or the heirs of such survivor, will, on the order and direction of the President, convey all the said lots so sold and ordered to be conveyed to the respective purchasers in fee simple, according to the terms and conditions of such purchases; and the produce of the sale of the said lots when sold as aforesaid shall in the first place be applied to the payment in money to the said ——— ——— (the grantor), his executors, administrators, or assigns, for all the part of the land hereby bargained and sold which shall have been laid off into lots, squares, or parcels, and appropriated as aforesaid to the use of the United States, at the rate of twenty-five pounds per acre, not accounting the said streets as part thereof.

And the said twenty-five pounds per acre, being so paid, or in any other manner satisfied, that then the produce of the same sale, or what thereof may remain as aforesaid, in money or securities of any kind, shall be paid, assigned, transferred, and delivered over to the President of the United States, for the time being, as a grant of money, and to be applied for the purposes and according to the act of Congress aforesaid. But the said conveyance to the said ——— ——— (the grantor), his heirs or assigns, as well as the conveyance to the purchasers, shall be on, and subject to such terms and conditions as shall be thought reasonable, by the President, for the time being, for regulating the materials and manner of the buildings and improvements on the lots, generally, in the said city, or in particular streets, or parts thereof, for common convenience, safety, and order: *Provided*, Such terms and conditions be declared before

the sales of any of the said lots, under the direction of the President. And in trust further, and on the agreement that the said ——— ——— (the grantor), his heirs or assigns, shall and may continue his possession and occupation of the said lands hereby bargained and sold, at his and their will and pleasure, until they shall be occupied under the said appropriations for the use of the United States as aforesaid, or by purchasers; and when any lots or parcels shall be occupied under purchase or appropriations as aforesaid, then, and not until then, shall the said ——— ——— (the grantor) relinquish his occupation thereof. And in trust also, as to the trees, timber, and wood, on the premises, that he the said ——— ——— (the grantor), his heirs or assigns, may freely cut down, take, and carry away, and use the same as his and their property, except such of the trees and wood growing as the President or commissioners aforesaid may judge proper, and give notice, shall be left for ornaments, for which the just and reasonable value shall be paid to the said ——— ——— (the grantor), his executors, administrators, or assigns, exclusive of the twenty-five pounds per acre for the land.

And in case the arrangements of the streets, lots, and the like will conveniently admit of it, he the said ——— ——— (the grantor), his heirs or assigns, if he so desire it, shall possess and retain his buildings and graveyard, if any, on the hereby bargained and sold land, paying to the President at the rate of twelve pounds ten shillings per acre for the lands so retained, because of such buildings and graveyards, to be applied as aforesaid, and the same shall thereupon be conveyed to the said ——— ——— (the grantor), his heirs or assigns, with his lots. But if the arrangements of the streets, lots, and the like will not conveniently admit of such retention, and it shall become necessary to remove such buildings, then the said ——— ——— (the grantor), his executors, administrators, or assigns, shall be paid the reasonable value thereof in the same manner as squares or other ground appropriated for the use of the United States are to be paid for. And because it may so happen that by deaths or removals of the said Thomas Beall, of George, and John M. Gantt, and from other causes, difficulties may occur in fully perfecting the said trusts, by executing all the said conveyances, if no eventual provision is made, it is therefore agreed and covenanted between all the said parties, that the said Thomas Beall, of George, and John M. Gantt, or either of them, or the heirs of any of them, lawfully may, and that they, at any time, at the request of the President of the United States for the time being, will convey all or any of the said lands hereby bargained and sold, which shall not then have been conveyed in execution of the trusts aforesaid, to such person or persons as he shall appoint, in fee simple, subject to the trusts then remaining to be executed, and to the end that some may be perfected.

And it is further granted and agreed between all the said parties, and each of the said parties doth for himself, respectively, and his heirs, covenant and grant to and with the others of them, that he and they shall and will, if required by the President of the United States for the time being, join in and execute any further deed or deeds for carrying into effect the trusts, purposes, and true intent of this present deed. In witness whereof the parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

Signed by the grantor.

——— ——— [SEAL.]

Signed, sealed, and delivered in the presence of—

——— ———.

All the residue of the lands lying within the bounds of the city were, by an act of the legislature of Maryland, passed on or about the 19th of December, 1791, vested in the same trustees, and subjected to the same trusts.

No. 8.—MARYLAND CESSION OF DECEMBER 19, 1791.

AN ACT Concerning the Territory of Columbia and the city of Washington.

[Passed December 19, 1791.]

Whereas the President of the United States, by virtue of several acts of Congress, and acts of the assemblies of Maryland and Virginia, by his proclamation, dated at Georgetown on the thirtieth day of March, seventeen hundred and ninety-one, did declare and make known that the whole of the territory of ten miles square, for the permanent seat of government of the United States, shall be located and included within the four lines following, that is to say: Beginning at Jones Point, being the upper point of Hunting Creek, in Virginia, and at an angle at the outset forty-five degrees west of north, and running a direct line ten miles for the first line; then beginning again at the same Jones Point and running another direct line at a right angle with the first across the Potomac ten miles for the second line; then from the terminations of the said first and second lines running two other direct lines ten miles each,

the one across the Eastern Branch and the other Potomac, and meeting each other in a point, which has since been called the Territory of Columbia; and,

Whereas Notley Young, Daniel Carroll, of Duddington, and many others, proprietors of the greater part of the land hereinafter mentioned to have been laid out in a city, came into an agreement, and have conveyed their lands in trust to Thomas Beall, son of George, and John Mackall Gantt, whereby they have subjected their lands to be laid out as a city, given up part to the United States, and subjected other parts to be sold to raise money as a donation to be employed according to the act of Congress for establishing the temporary and permanent seat of the Government of the United States, under and upon the terms and conditions contained in each of the said deeds; and many of the proprietors of lots in Carrollsburg and Hamburg have also come into an agreement, subjecting their lots to be laid out anew, giving up one-half of the quantity thereof to be sold, and the money thence arising to be applied as a donation as aforesaid, and they to be reinstated in one-half of the quantity of their lots in the new location, or otherwise compensated in land in a different situation within the city, by agreement between the Commissioners and them, and in case of disagreement, that then a just and full compensation shall be made in money; yet some of the proprietors in Carrollsburg and Hamburg, as well as some of the proprietors of other lands, have not, from imbecility and other causes, come into any agreement concerning their lands within the limits hereinafter mentioned, but a very great number of the landholders having agreed on the same terms, the President of the United States directed a city to be laid out comprehending all the lands beginning on the east side of Rock Creek, at a stone standing in the middle of the road leading from Georgetown to Bladensburgh; thence along the middle of the said road to a stone standing on the east side of the Reedy Branch of Goose Creek; thence southeasterly, making an angle of sixty-one degrees and twenty minutes with the meridian, to a stone standing in the road leading from Bladensburgh to the Eastern Branch ferry; then south to a stone ninety poles north of the east and west line already drawn from the mouth of Goose Creek to the Eastern Branch; then east, parallel to the said east and west line, to the Eastern Branch; then with the waters of the Eastern Branch, Potomac River, and Rock Creek to the beginning, which has since been called the City of Washington; and

Whereas it appears to this general assembly highly just and expedient that all the lands within the said city should contribute, in due proportion, in the means which have already greatly enhanced the value of the whole; that an incontrovertible title ought to be made to the purchasers, under public sanction; that allowing foreigners to hold land within the said territory will greatly contribute to the improvement and population thereof; and that many temporary provisions will be necessary till Congress exercise the jurisdiction and government over the said territory; and

Whereas in the cession of this State, heretofore made, of territory for the Government of the United States, the lines of such cession could not be particularly designated; and it being expedient and proper that the same should be recognized in the acts of this State—

2. *Be it enacted by the General Assembly of Maryland*, That all that part of the said territory called Columbia which lies within the limits of this State shall be, and the same is hereby, acknowledged to be forever ceded and relinquished to the Congress and Government of the United States, and full and absolute right and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of Government of the United States: *Provided*, That nothing herein contained shall be so construed to vest in the United States any right of property in the soil as to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States: *And provided also*, That the jurisdiction of the laws of this State over the persons and property of individuals residing within the limits of the cession aforesaid shall not cease or determine until Congress shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the article of the Constitution before recited.

3. *And be it enacted*, That all the lands belonging to minors, persons absent out of the State, married women, or persons non compos mentis, or the lands the property of this State, within the limits of Carrollsburg and Hamburg, shall be and are hereby subjected to the terms and conditions hereinbefore recited, as to the lots where the proprietors thereof have agreed concerning the same; and all the other lands, belonging as aforesaid, within the limits of the said city of Washington, shall be, and are hereby, subjected to the same terms and conditions as the said Notley Young, Daniel Carroll of Duddington, and others, have, by their said agreements and deeds, subjected their lands to, and where no conveyances have been made, the legal estate and trust are hereby invested in the said Thomas Beall, son of George, and John Mackall Gantt, in the same

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manner as if each proprietor had been competent to make, and had made a legal conveyance of his or her land, according to the form of those already mentioned, with proper acknowledgments of the execution thereof, and where necessary, of release of dower, and in every case where the proprietor is an infant, a married woman, insane, absent out of the State, or shall not attend on three months' advertisement of notice in the Maryland Journal and Baltimore Advertiser, the Maryland Herald, and in the Georgetown and Alexandria papers, so that allotment can not take place by agreement, the commissioners aforesaid, or any two of them, may allot or assign the portion or share of such proprietor as near the old situation as may be, in Carrollsburg and Hamburg, and to the full value of what the party might claim under the terms before recited; and as to the other lands within the said city, the commissioners aforesaid, or any two of them, shall make such allotment and assignment, within the lands belonging to the same person, in alternate lots, determined by lot or ballot, whether the party shall begin with the lowest number: *Provided*, That in the cases of coverture and infancy, if the husband, guardian, or next friend will agree with the commissioners, or any two of them, then an effectual division may be made by consent; and in case of contrary claims, if the claimants will not jointly agree, the commissioners may proceed as if the proprietor was absent; and all persons to whom allotments and assignments of lands shall be made by the commissioners, or any two of them, on consent and agreement, or pursuant to this act without consent, shall hold the same in their former estate and interest, and in lieu of their former quantity, and subject in every respect to all such limitations, conditions, and incumbrances as their former estate and interest, and in lieu of their former quantity, and subject in every respect to all such limitations, conditions, incumbrances as their former estates and interests were subject to, and as if the same had been actually reconveyed pursuant to the said deed in trust.

4. *And be it enacted*, That where the proprietor or proprietors, possessor or possessors, of any lands within the limits of the city of Washington, or within the limits of Carrollsburg or Hamburg, who have not already, or who shall not, within three months of this act, execute deeds in trust to the aforesaid Thomas Beall and John M. Gantt, of all their land within the limits of the said city of Washington, and on the terms and conditions mentioned in the deeds already executed by Notley Young and others, and execute deeds in trust to the said Thomas Beall and John M. Gantt of all their lots in the towns of Carrollsburg and Hamburg on the same terms and conditions contained in the deeds already executed by the greater part of the proprietors of lots in the said towns, the said commissioners, or any two of them, shall and may, at any time or times thereafter, issue a process, directed to the sheriff of Prince Georges County, commanding him, in the name of the State, to summon five good, substantial freeholders, who are not of kin to any proprietor or proprietors of the lands aforesaid, and who are not proprietors themselves, to meet on a certain day, and at a certain place within the limits of the said city, to inquire of the value of the estate of such proprietor or proprietors, possessor or possessors, on which day and place the said sheriff shall attend, with the freeholders by him summoned, which freeholders shall take the following oath, or affirmation, on the land to be by them valued, to wit: "I, A. B., do solemnly swear (or affirm) that I will, to the best of my judgment, value the lands of C. D. now to be valued so as to do equal right and justice to the said C. D. and to the public, taking into consideration all circumstances," and shall then proceed to value the said lands; and such valuation, under their hands and seals and under the hand and seal of the said sheriff, shall be annexed to the said process and returned by the sheriff to the clerk appointed by virtue of this act, who shall make record of the same, and the said lands shall, on the payment of such valuation, be and is hereby vested in the said commissioners in trust, to be disposed of by them or otherwise employed to the use of the said city of Washington; and the sheriff aforesaid and freeholders aforesaid shall be allowed the same fees for their trouble as are allowed to a sheriff and juryman in executing a writ of inquiry; and in all cases where the proprietor or possessor is tenant in right of dower or by the courtesy the freeholders aforesaid shall ascertain the annual value of the lands and the gross value of such estate therein, and upon paying such gross value or securing to the possessor the payment of the annual valuation, at the option of the proprietor or possessor, the commissioners shall be and are hereby vested with the whole estate of such tenant, in manner and for the uses and purposes aforesaid.

5. *And be it enacted*, That all the squares, lots, and parcels of land within the said city which have been or shall be appropriated for the use of the United States, and all the lots and parcels which have been or shall be sold to raise money as a donation as aforesaid shall remain and be to the purchasers, according to the terms and conditions of their respective purchase; and purchases and leases from private persons claiming to be proprietors, and having, or those under whom they claim having, been in the possession of the lands purchased or leased, in their own right, five whole years next before the passing of this act, shall be good and effectual for the estate, and on the

terms and conditions of such purchases and leases, respectively, without impeachment, and against any contrary title now existing; but if any person hath made a conveyance, or shall make a conveyance or lease, of any lands within the said city, not having right and title to do so, the person who might be entitled to recover the land under a contrary title now existing may, either by way of ejectment against the tenant or in an action for money had and received for his use against the bargainer or lessor, his heirs, executors, administrators, or devisees, as the case may require, recover all money received by him for the squares, pieces, or parcels appropriated for the use of the United States, as well as for lots or parcels sold and rents received by the person not having title as aforesaid, with interest from the time of receipt; and, on such recovery in ejectment, where the land is in lease, the tenant shall thereafter hold under, and pay the rent reserved to, the person making title to and recovering the land; but the possession bona fide acquired in none of the said cases shall be changed.

6. *And be it enacted*, That any foreigner may, by deed or will hereafter to be made, take and hold lands within that part of the said territory which lies within this State in the same manner as if he were a citizen of this State; and the same lands may be conveyed by him and transmitted to and inherited by his heirs or relations as if he and they were citizens of this State; provided that no foreigner shall, in virtue hereof, be entitled to any further or other privilege of a citizen.

7. *And be it enacted*, That the said commissioners, or any two of them, may appoint a clerk for recording deeds of land within the said territory, who shall provide a proper book for the purpose, and therein record, in a strong, legible hand, all deeds duly acknowledged, of lands in the said territory delivered to him to be recorded, and in the same book make due entries of all divisions and allotments of lands and lots made by the commissioners in pursuance of this act, and certificates granted by them of sales, and the purchase money having been paid, with a proper alphabet in the same book of the deeds and entries aforesaid, and the same book shall carefully preserve and deliver over to the commissioners aforesaid, or their successors, or such person or persons as Congress shall hereafter appoint, which clerk shall continue such during good behavior, and shall be removable only on a conviction of misbehavior in a court of law; but before he acts as such he shall take an oath or affirmation well and truly to execute his office, and he shall be entitled to the same fees as are or may be allowed to the clerks of the county courts for searches, copying, and recording.

8. *And be it enacted*, That acknowledgments of deeds made before a person in the manner and certified as the laws of this State direct, or made before and certified by either of the commissioners shall be effectual; and that no deed hereafter to be made, of or for lands within that part of the said territory which lies within this State, shall operate as a legal conveyance, nor shall any lease for more than seven years be effectual, unless the deed shall have been acknowledged as aforesaid, and delivered to the said clerk to be recorded within six calendar months from the date thereof.

9. *And be it enacted*, That the commissioners aforesaid, or some two of them, shall direct an entry to be made in the said record book of every allotment and assignment to the respective proprietors in pursuance of this act.

10. And for the encouragement of master builders to undertake the building and finishing houses within the said city by securing to them a just and effectual remedy for their advances and earnings, *Be it enacted*, That for all sums due and owing on written contracts for the building any house in the said city, or the brickwork or carpenters' or joiners' work thereon, the undertaker or workmen employed by the person for whose use the house shall be built shall have a lien on the house and the ground on which the same is erected, as well as for the materials found by him: *Provided*, The said written contract shall have been acknowledged before one of the commissioners, a justice of the peace, or an alderman of the corporation of Georgetown and recorded in the office of the clerk for recording deeds, herein created, within six calendar months from the time of acknowledgment as aforesaid, and if within two years after the last of the work is done he proceeds in equity he shall have as upon a mortgage, or if he proceeds at law within the same time he may have execution against the house and land, in whose hands soever the same may be; but this remedy shall be considered as additional only, nor shall, as to the land, take place of any legal incumbrance made prior to the commencement of such claim.

11. *And be it enacted*, That the treasurer of the western shore be empowered and required to pay the seventy-two thousand dollars agreed to be advanced to the President by resolutions of the last sessions of assembly, in sums as the same may come to his hands on the appointed funds, without waiting for the day appointed for the payment thereof.

12. *And be it enacted*, That the commissioners aforesaid for the time being, or any two of them, shall from time to time, until Congress shall exercise the jurisdiction and government within the said territory, have power to license the building of wharves

in the waters of the Potomac and the Eastern Branch, adjoining the said city, of the materials, in the manner and of the extent they may judge durable, convenient, and agreeing with the general order; but no license shall be granted to one to build a wharf before the land of another, nor shall any wharf be built in the waters without license as aforesaid; and if any wharf shall be built without such license, or different therefrom, the same is hereby declared a common nuisance. They may also, from time to time, make regulations for the discharge and laying of ballast from ships or vessels lying in the Potomac River above the lower line of the said territory and Georgetown, and from ships and vessels lying in the Eastern Branch. They may also, from time to time, make regulations for landing and laying materials for building the said city, for disposing and laying earth which may be dug out of the wells, cellars, and foundations and for ascertaining the thickness of the walls of houses, and to enforce the observance of all such regulations by appointing penalties for the breach of any one of them not exceeding ten pounds current money, which may be recovered in the name of the said commissioners, by warrant, before a justice of the peace, as in case of small debts, and disposed of as a donation for the purpose of the said act of Congress. And the said commissioners, or any two of them, may grant licenses for retailing distilled spirits within the limits of the said city, and suspend or declare the same void. And if any person shall retail or sell any distilled spirits, mixed or unmixed, in less than ten gallons to the same person, or at the same time actually delivered, he or she shall forfeit for every such sale three pounds, to be recovered and applied as aforesaid.

13. *And be it enacted*, That an act of assembly of this State to condemn lands, if necessary, for the public buildings of the United States be, and is hereby, repealed.

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