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BY GEORGE HOWARD,

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POLITICAL.



From the Southern Press.

MESSAGE

Of the President of the U. S., on the Texas Boundary Question.

To the Senate and House of Representatives:

I herewith transmit to the two Houses of Congress, a letter from his excellency the Governor of Texas, dated on the 14th day of June last, addressed to the late President of the United States, which, not having been answered by him, came into my hands on his death; and I also transmit a copy of the answer which I have felt it to be my duty to cause to be made to that communication.

Congress will perceive that the Governor of Texas officially states, that by authority of the Legislature of that State, he despatched a special Commission, with full power and instructions to extend the civil jurisdiction of the State over the unorganized counties of El Paso, Worth, Presidio, and Santa Fe, situated on its northwestern limits.

He proceeds to say, that the Commissioner had reported to him, in an official form, that the military officers employed in the service of the United States, stationed at Santa Fe, interposed adversely with the inhabitants, to the fulfillment of his object, in favor of the establishment of a separate State government east of the Rio Grande, and within the rightful limits of the State of Texas. These four counties which Texas proposes to establish and organize, as being within her own jurisdiction, extend over the whole of the territory east of the Rio Grande, which has, heretofore, been regarded as an essential and integral part of the Department of New Mexico, and actually governed and possessed by her people, until conquered and severed from the Republic of Mexico, by the American arms.

The Legislature of Texas has been called together by the Governor, for the purpose, as is understood, of maintaining her claim to the territory east of the Rio Grande, and of establishing over it her own jurisdiction and her own laws, by force.

These proceedings of Texas may well arrest the attention of all branches of the Government of the United States, and I rejoice that they occur while the Congress is yet in session. It is, I fear, far from being improbable that, in consequence of these proceedings of Texas a crisis may be brought on which shall summon the two Houses of Congress—and still more emphatically the Executive Government—to an immediate readiness for the performance of their respective duties.

By the Constitution of the United States, the President is constituted commander-in-chief of the army and navy, and of the militia of the several States, when called into the actual service of the United States. The Constitution declares, also, that he shall take care that the laws be faithfully executed, and that he shall, from time to time, give to the Congress information of the state of the Union.

Congress has power, by the Constitution, to provide for calling forth the militia to execute the laws of the Union; and suitable and appropriate acts of Congress have been passed, as well for providing for calling forth the militia, as for

placing other suitable and efficient means in the hands of the President, to enable him to discharge the constitutional functions of his office.

The second section of the act of the twenty-eighth of February, seventeen hundred and ninety-five, declares, that whenever the laws of the United States shall be opposed, or their execution obstructed, in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or the power vested in the marshals, the President may call forth the militia, so far as may be necessary to suppress such combinations, and to cause the laws to be duly executed.

By the act of March 3, 1807, it is provided that in all cases of obstruction to the laws, either of the United States or any individual State or territory, where it is lawful for the President to call forth the militia for the purpose of causing the laws to be duly executed, it shall be lawful for him to employ, for the same purposes, such part of the land or naval force of the United States as shall be judged necessary.

These several enactments are now in full force; so that if the laws of the United States are opposed or obstructed, in any State or territory, by combinations too powerful to be suppressed by the judicial or civil authorities, it becomes a case in which it is the duty of the President, either to call out the militia or to employ the military and naval force of the United States, or to do both, if in his judgment the exigency of the occasion shall so require, for the purpose of suppressing such combination.

The constitutional duty of the President is plain and peremptory; and the authority vested in him by law, for its performance, clear and ample.

Texas is a State authorized to maintain her own laws, so far as they are not repugnant to the Constitution, laws and treaties of the United States; to suppress insurrections against her authority, and to punish those who may commit treason against the State, according to the forms provided by her own constitution and her own laws.

But all this power is local, and confined entirely within the limits of Texas herself.—She can possibly confer no authority which can be lawfully exercised beyond her own boundaries.

All this is plain, and hardly needs argument or elucidation. If Texan militia, therefore, march into any one of the other States, or in any territory of the United States, there to execute or enforce any law of Texas, they become at that moment trespassers; they are no longer under the protection of any lawful authority, and are to be regarded merely as intruders; and if within such State or Territory they obstruct any law of the United States, either by power of arms or mere power of numbers, constituting such a combination as is too powerful to be suppressed by the civil authority, the President of the United States has no option left to him, but is bound to obey the solemn injunction of the Constitution, and exercise the high powers vested in him by that instrument and by the Acts of Congress.

Or, if any civil posse, armed or unarmed, enter into any Territory of the United States, under the protection of the laws thereof, with intent to seize individuals to be carried elsewhere for trial for alleged offences, and this posse be too powerful to be resisted by the local and civil authorities, such seizure or attempt to seize is to be prevented or resisted by the authority of the United States.

The grave and important question now arises, whether there be in the Territory of New Mexico any existing law of the United States, opposition to which, or the obstruction of which, would constitute a case calling for the interposition of the authority vested in the President.

The Constitution of the United States declares that "this Constitution and the laws of the United States, which shall be made in pursuance thereof, and all the treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land." If, therefore, New Mexico be a Territory of the United States, and if any treaty stipulation be in force therein, such treaty

stipulation is the supreme law of the land, and is to be maintained and upheld accordingly.

In the letter to the Governor of Texas, my reasons are given for believing that New Mexico is now a territory of the United States, with the same extent and the same boundaries which belonged to it, while in the actual possession of the Republic of Mexico, and before the late war. In the early part of that war, both California and New Mexico were conquered by the arms of the United States, and were in the military possession of the United States at the date of the treaty of peace.

By that treaty the title by conquest was confirmed, and these territories, provinces, or department, separated from Mexico forever; and by the same treaty certain important rights and securities were solemnly guaranteed to the inhabitants residing therein.

By the fifth article of the treaty it is declared, that—

"The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called the Rio Bravo del Norte, or opposite the mouth of its deepest branch if it should have more than one branch, emptying directly into the sea, from thence up the middle of that river, following the deepest channel where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence westwardly along the whole southern boundary of New Mexico, (which runs north of the town called *Passo*.) to its western termination; thence northward along the western line of New Mexico, until it intersects the first branch of the river Gila, or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same; thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California to the Pacific ocean."

The eighth article of the treaty is in the following terms:

"Mexicans now established in Territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

"Those who shall prefer to remain in the said territories may either retain the title and rights of Mexican citizens or acquire those of the citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said Territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

"In the said territories property of every kind, now belonging to Mexicans not established there, shall be inviolably respected.—The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy, with respect to it, guaranties equally ample as if the same belonged to citizens of the United States."

The ninth article of the treaty is in these words:

"The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free

exercise of their religion, without restriction."

It is plain, therefore, on the face of these treaty stipulations, that all Mexicans established in territories north or east of the line of demarkation already mentioned, come within the protection of the ninth article; and that the treaty, being a part of the supreme law of the land, does extend over all such Mexicans, and assures to them perfect security in the free enjoyment of their liberty and property, as well as in the free exercise of their religion; and this supreme law of the land being thus in actual force over this territory, is to be maintained until it shall be displaced or superseded by other legal provisions; and if it be obstructed or resisted by combinations too powerful to be suppressed by the civil authority, the case is one which comes within the provisions of the law, and which obliges the President to enforce those provisions. Neither the constitution, nor the laws, nor my oath of office, leave me any alternative, or any choice in my mode of action.

The Executive Government of the United States has no power or authority to determine what was the true line of boundary between Mexico and the United States before the treaty of Gaudalupe Hidalgo, nor has it any such power now, since the question has become a question between the State of Texas and the United States. So far as this boundary is doubtful, that doubt can only be removed by some act of Congress, to which the assent of the State of Texas may be necessary, or by some appropriate mode of legal adjudication; but in the meantime if disturbances or collisions arise or should be threatened, it is absolutely incumbent on the Executive Government, however painful the duty, to take care that the laws be faithfully maintained; and he can regard only the actual state of things as it existed at the date of the treaty, and is bound to protect all inhabitants who were then established, and who now remain north and east of the line of demarkation, in the full enjoyment of their liberty and property according to the provisions of the 9th article of the treaty; in other words, all must be now regarded as New Mexico which was possessed and occupied as New Mexico by citizens of Mexico at the date of the treaty, until a definite line of boundary shall be established by competent authority. This assertion of duty to protect the people of New Mexico from threatened violence or from seizure, to be carried into Texas for trial for alleged offences against Texan laws, does not at all include any claim of power on the part of the Executive to establish any civil or military government within that territory. That power belongs exclusively to the legislative department, and Congress is the sole judge of the time and manner of creating or authorizing any such governments.

The duty of the Executive extends only to the execution of laws and the maintenance of treaties actually in force, and the protection of all the people of the United States in the enjoyment of the rights which those treaties and laws guarantee.

It is exceedingly desirable that no occasion should arise for the exercise of the powers thus vested in the President by the Constitution and the laws. With whatever mildness those powers might be executed, or however clear the case of necessity, yet consequences might nevertheless follow, of which no human sagacity can foresee either the evils or the end.

Having thus laid before Congress the communication of his Excellency the Governor of Texas, and the answer thereto, and having made such observations as I have thought the occasion called for respecting constitutional obligations which may arise in the further progress of things, and may devolve on me to be performed, I hope I shall not be regarded as stepping aside from the line of my duty, notwithstanding that I am aware that the subject is now before both Houses, if I express my deep and earnest conviction of the importance of an immediate decision, or arrangement, or settlement of the question of boundary between Texas and the territory of New Mexico. All considerations of justice, general expediency, and domestic tranquility call for this. It seems to be, in its character and by position, the first, or one of the first, of the questions

growing out of the acquisition of California and New Mexico, and now requiring decision.

No government can be established for New Mexico; either State or territory, until it shall be first ascertained what New Mexico is, and what are her limits and boundaries. These cannot be fixed or known, till the line of division between her and Texas shall be ascertained and established—and numerous and weighty reasons conspire, in my judgment, to show that this divisional line should be established by Congress, with the assent of the government of Texas. In the first place, this seems by far the most prompt mode of proceeding, by which the end can be accomplished. If judicial proceedings were resorted to, such proceedings would necessarily be slow, and years would pass by, in all probability, before the controversy could be ended. So great a delay, in this case, is to be avoided if possible. Such delay would be every way inconvenient, and might be the occasion of disturbances and collisions. For the same reason, I would, with the utmost deference to the wisdom of Congress, express a doubt of the expediency of the appointment of commissioners, and of an examination, estimate, and an award of indemnity to be made by them. This would be but a species of arbitration, which might last as long as a suit at law.

So far as I am able to comprehend the case, the general facts are now all known, and Congress is as capable of deciding on it, justly and properly now, as it probably would be after the report of the Commissioners. If the claim of title on the part of Texas appears to Congress to be well founded, in whole or in part, it is in the competency of Congress to offer her an indemnity for the surrender of that claim. In a case like this, surrounded as it is, by many cogent considerations, all calling for amicable adjustment; and immediate settlement, the Government of the United States would be justified, in my opinion, in allowing an indemnity to Texas, not unreasonable and extravagant, but fair, liberal, and awarded in a just spirit of accommodation.

I think no event would be hailed with more gratification by the people of the United States, than the amicable adjustment of questions of difficulty, which have now, for a long time, agitated the country, and occupied, to the exclusion of other subjects, the time and attention of Congress.

Having thus freely communicated the results of my own reflection, on the most advisable mode of adjusting the boundary question, I shall, nevertheless, cheerfully acquiesce in any other mode which the wisdom of Congress may devise.

And, in conclusion, I repeat my conviction, that every consideration of the public interest, manifests the necessity of a provision by Congress for the settlement of this boundary question, before the present session be brought to a close. The settlement of other questions connected with the same subject, within the same period, is greatly to be desired; but the adjustment of this appears, to me, to be in the highest degree important. In the train of such an adjustment, we may well hope that there will follow a return of harmony and good will, an increased attachment to the Union, and the general satisfaction of the country.

MILLARD FILLMORE.

Washington, August 6, 1850.

From the Portsmouth Pilot.

Small Notes.—By a recent act of the Pennsylvania Legislature, the circulation of bank notes under the denomination of \$5, is prohibited in that State after the 21st of August. It is said that they have begun to appreciate in value already as the brokers in Pittsburgh shave them at 4 cent. discount.

Navigating the Air.—Capt Taggart made another successful ascension with his self propelling balloon, on Monday afternoon, from Lowell, Mass., ascending to a great height. After floating in different directions for about two hours, he landed in Wilmington. He propels his balloon in the course desired by working a crank, which puts in motion the necessary paddles or fans.