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From the Globe.

DEPARTMENT OF WAR, October 22d, 1833.

SIR:—I have received and submitted to the President your letter of the 1 instant, and I am instructed to communicate his views upon the considerations therein presented, so far as these can be supposed to have a bearing upon the present action of the Executive. Under ordinary circumstances, it would not probably be necessary again to revert to the duties of the President, and to the obligations imposed upon him by the Creek treaty, and by the injuries inflicted, in violation of it, upon the Indians. But the President is so anxious, that the citizens of Alabama should see in his course only the dictates of an imperative duty, and that the persons living upon these lands should yield quiet possession, whenever necessary, and thus prevent a resort to any other mode of proceeding, that I have been directed, while announcing to you that his views have not been changed, to present the reasons which have induced the decision he has made.

In my letter to you of September 5th, I did myself the honor to state, at some length, the obligations of the Executive, connected with the removal of intruders from the district, ceded in 1832, by the Creek Indians. I adverted to the act of Congress of March 3d, 1807, rendering penal the unauthorized settlement of the public lands, and directing the removal of all persons engaged therein, by a military force; to the provisions of the Creek treaty, requiring the eviction of intruders, and the statements and reports of the Indians themselves, of public officers, and of private citizens, proving that wanton and unjustifiable outrages had been committed upon the former; and having thus shewn the necessity for the interference of the Executive, the authority expressly conferred upon him by law, and the obligation imposed on him by the treaty, I flattered myself your Excellency would have seen in the instructions, which have been issued, the execution only of a plain duty, and its execution tempered with as much forbearance, on account of the condition of the settlers, as was compatible with the public faith. And although I have been disappointed in this expectation, I must yet ask your indulgence, for briefly adverting to the topics presented by you.

I understand your Excellency does "not question the constitutionality" of the act of Congress of March 3d, 1807, but that you "doubt the correctness of the construction." And by "the correctness of the construction," I perceive you consider, that the provisions of this act do not apply "to restrain persons from settling the public lands, who had no object in view beyond their cultivation," and of course, that they do not extend to the settlers upon the Creek lands, who interpose no claim of title. You think the sole object of the act was, to prevent persons, claiming title to the public lands, from obtaining and retaining possession of them.

That the latter was one of the objects, may be safely admitted. That it was the only one, is disproved by the phraseology of the act, as well as by the uniform practice of the government in its administration. That act declares, "that if any person, &c. shall take possession of, or make a settlement on any lands, &c." its provisions shall apply to him. These terms are too broad to admit any exclusion, on the ground that the intruders prefer no claim to the land. Indeed it may be said, that such a construction would render the whole act inoperative. For the claim of individuals can only be known by their own declarations. And therefore, if an intruder, making no claim, is sure of peaceable possession, and one making claim, is as sure of forcible eviction, it is morally certain, that the latter would quietly seat himself upon the land, and retain possession indefinitely, or until his right could be determined by the institution of a suit against him for possession. And in addition to this consideration, the phraseology of the act itself is decisive of this branch of the question. "Such offender or offenders," says the law, "shall forfeit all his or their right, title or claim *if any he hath or they have.*" Now if the act apply to those only, who enter upon or hold public land by virtue of a right, title or claim, this conditional expression was wholly unnecessary. If, therefore, the law extend only to those, who urge a claim, the expression, "if any he or they hath or have," becomes unnecessary, as the *right, title* or claim is essential to its operation. As these words are used, they evidently imply that some of the intruders upon the public lands may have claims, and others may not.

And besides, the title of the Act is as broad as the evil it was intended to prevent. It is "*to prevent settlements being made on lands ceded to the United States, till authorized by law.*" Settlements, of all descriptions, which would tend to obstruct the policy of the Government in its disposal of the public domain.

But there is another view, which appears to me decisive of this point.—This Act embraces two classes of cases: one of persons, who may have taken possession before, and another of those, who may take possession after its passage. The latter are allowed no indulgence. Committing the offence, with a full knowledge of the law, they become obnoxious to its penalties. But the former are permitted to remain as tenants at will upon certain conditions, and in a mode prescribed by the Act. And among other things it is provided, "That such permission shall not be granted to any such applicant, unless he shall previously sign a declaration, stating that he does not lay any claim to such tract or tracts of land, and that he does not occupy the same by virtue of any claim or pretended claim, derived or pretended to be derived from any other person or persons."

This proviso contains the only distinction, which is to be found in this Act, between intruders who settle without claims, and those who decline the relinquishment of claims. This distinction is, by the provisions of the Act, rendered tangible and practical. For all persons found on the land are liable to be removed, and if they are desirous of avoiding the consequence, they must come forward and sign a declaration of relinquishment. But here the distinction ceases. It was intended, no doubt, to prevent unnecessary hardships to persons who, in removing upon land, however they may have interfered with the rights and policy of the Government, still had violated no law. For the future, all are trespassers and all offenders. The indulgence, in favor of the settler without claim, terminates with this provision. Now if such settler were not included in the general provisions of the law, why is there a special exemption, operating upon those who had previously obtained possession. And upon the construction contended for, placing even these in a worse condition than they would have been, had there been no clause for their relief.—For if, as your Excellency insists, the law did not extend to them, they would have been at liberty to remain, without interference, until the land was sold and the purchaser obtained possession by suit or otherwise. But their condition, upon signing the declaration, is worse than this. For they not only engage to give quiet possession to the purchaser, but "remove altogether from the land," whenever "required under the authority of the U. States." Even then, if this provision extended to the settlers upon the Creek land, if they had held possession, upon and ever since the passage of this Act, and had complied with all its injunctions, still they would not have the slightest right to remain, as they have "*been required to remove under the authority of the United States.*"

And this distinction is continued, and in the same words in the three Acts of Congress, which suspended, each for one year, the Act of March 3d, 1807. These Acts were passed on the 25th of March, 1816, on the 3d of March, 1817, and on the 20th of April, 1818. They were temporary and have long since expired.

Your Excellency advances the opinion, that this Act was passed to prevent the Yazoo purchasers and other fraudulent claimants of large tracts of land from obtaining possession of them.

I have to remark, that this belief, for it is only a belief, of the reasons which led to the passage of this Act, certainly cannot, by any fair rule of construction, limit its operation to the few cases stated by you. But you consider this view as confirmed by the fact, "that as often as the settlers, upon whom the Act was to operate, are mentioned, their claims are adverted to, and the severest penalty denounced against them, is the forfeiture of their claims."

I imagine there is a misapprehension upon this subject, which a more critical examination of the Act will remove—Its object was doubtless to prevent all unauthorized settlements upon the public lands, whether made without or under color of title. If the former, the intruder was liable to be removed, and was subjected to a pecuniary penalty and to imprisonment. If the latter, in addition to eviction, to a penalty and to imprisonment, he forfeited all claim to the land, and his right passed to the United States. And the provisions of the Act are varied, so as to meet these different cases.

These provisions are:

If a person shall take possession of public land;

If a person shall make a settlement on public land;

If a person shall cause public land to be occupied, taken possession of, or settled;

If a person shall survey, or attempt to survey, or cause to be surveyed, any public land;

If a person shall designate any boundaries thereon, by marking trees or otherwise.

In each of these cases, the provisions of the law apply; and if they do not extend to all intrusions, with whatever motive, upon the lands of the U. States, words have lost their meaning, and the Government, during successive administrations, have misunderstood their own duties, and the legal consequences which follow the act of intrusion.

The power of Congress to pass laws upon this subject is derived from that clause of the Constitution, which gives them authority to "make all needful rules and regulations, respecting the Territory and other property belonging to the United States." And indeed, without such a power, it is difficult to conceive how any government could fulfil some of its most important functions. As early as 1785, this matter engaged the attention of the Old Congress, and the settlers north of the Ohio were removed by their order by a military force; General Knox, in his report to that body, says, that "in his opinion, the United States are more liable to be disappointed in their just expectations of the great national advantages resulting from a wise administration of the Western Territory, by the evils of usurpation and intrusion, than by any cause whatever."—A sentiment, entirely at variance with the idea, that removals from the public land should be confined to those intruders, who enter, or shall hold under color of title. Mr. Crawford too, is equally explicit. He says, in a letter to General Clarke of July 5, 1815—"The premature occupancy of the public lands can be viewed only as an invasion of the sovereign rights of the United States, and must be repressed by the most prompt and energetic measures." And the proclamation of Mr. Madison, of December 12, 1815 directs the removal of all persons, "who have unlawfully taken possession of, or made any settlement on the public lands," "and to effect the said object, he authorizes the employment of such military force as may become necessary, in pursuance of the provisions of the Act of Congress aforesaid," meaning the Act of March 3d, 1807.

You consider, Sir, that a recital of the several acts of Congress passed in relation to persons, who have occupied and cultivated the public lands, will confirm the opinion, still more conclusively, that that body did not intend to prevent their cultivation, and that this was not the evil sought to be remedied by the Act of March 3d, 1807."—And you then proceed to refer to five Acts of Congress, passed between 1800 and 1830, granting pre emption rights to actual settlers, as evidence of the intention of the National Legislature to encourage the settlement of the public lands, previously to their sale, and as fortifying the conclusion, that the Act of 1807, does not embrace this class of citizens.

I must confess, that the subject does not thus present itself to my mind.—Here is a general law, forbidding an Act and providing an adequate penalty. The Legislature, at various intervals, during its existence, for reasons satisfactory to them, relax its provisions by temporary Acts, and allow the settlers to remain upon the lands, and to purchase them, without competition, or giving them, in other words, what are called pre-emption rights.—These temporary Acts all expire at stated periods by their own limitation, and there is not one of them now in force. Do these exceptions terminate the general law, or narrow its construction? I conceive they can do neither. They are legislative interpositions which, having effected the object for which they were made, leave the general legislation of the country as it was previously.

Permit me to refer you to the following extracts from Mr. Crawford's instructions to Col. Hawkins of October 16, 1815, on this subject. You will perceive, one of the principal reasons he gives for the removal of intruders upon the public lands is, to prevent the existence of these pre-emption rights.

"Should force become necessary in the execution of your duties, it will be ready, and will be directed by General Gaines. I understand that the land, lately ceded to the United States, is rapidly settling by the whites. This must not be permitted. The effect of these settlements is to place the very worst part of our citizens in possession of the very best part of the public lands, upon pre-emption principles.—They settle upon all the choice spots, and form combinations to deter purchasers from bidding for all the lands so settled, and in that manner deprive the Government of the possibility of receiving more than two dollars per acre. The excess above that price goes into the pockets of this lawless set of men."

You are doubtless aware, sir, of the difficulties which, previously to the introduction of the present system of prompt payment for the public lands, attended their management and disposal. The history of that branch of our legislation is filled with petitions and applications from every part of the country, where the Government was the great land-holder, for relief, both as to time and price and mode of sale. Persons with an inceptive title, derived from the payment of one-fourth or a greater part of the purchase money, wanted the price reduced and the time of payment prolonged; and persons in possession, but without title, wanted the right of entering the land occupied by them, at the minimum price, without the competition induced by public sales. From time to time, these applications were successful, and some of the laws, passed for the relief of the last class of applicants, have been referred to by you. They certainly show the liberality of Congress, and insured to the settlers their tracts, upon the payment of the minimum price fixed by law; but they really appear to me no more to prove, that these penalties, without them, would not have attached, than they do, that without them a title could have been acquired in the mode, they prescribe.

I had the honor, in my previous letter, to state it was with regret the President found himself compelled to interfere for the removal of any of the citizens of Alabama. I have seen myself, and participated in too many of the difficulties of the settlers of a new country, not to look with interest upon their condition. And certainly, were it not for the obligations of the Creek treaty, the President knows no reason, why the persons occupying these lands should be removed, any more than the settlers upon other parts of the national domain. That there are many respectable citizens among them I have no doubt, and I lament, that any measures are necessary, which will expose these to losses and hardships. But the United States have purchased the right of the Indians, and stipulated among other things to protect them from intrusion. The mode of this protection is expressly pointed out in the treaty, and I may add, that without this provision, the negotiation would not have been successful. The Indians, at first, demanded that the country should be held as an Indian country, and that it should be exonerated from the operation of the laws of Alabama. And this demand they adhered to with great pertinacity. But they were told explicitly, that the government could not accede to this proposition. That the laws of the State had been extended over their lands, and that the United States could no longer exercise jurisdiction there. The difficulty was finally met and obviated by the existing provision, and its operation and mode of administration were fully pointed out to them No discretionary authority is vested in the President, permanently to exclude some and permit others to remain, and if there were, it is easy to see how almost insurmountable would be the obstacles to such a proceeding. Mixed as our own citizens and the Indians are upon the ceded territory, it would not be possible to designate all the individuals, who would commit or have committed injuries upon the latter.—The legal incompetence of the Indians in Alabama, in the essential point of evidence, their ignorance of our language and laws, their exposed and distressed condition, and I may add, without reflecting upon the many worthy citizens, living upon these lands, their exposure to the machinations and lawless violence of unprincipled men, would render it impracticable to afford them adequate protection by endeavoring to discover and remove those only, who injure them or their property. A discrimination would be impossible as experience has shewn.

I have already said, that the construction which would limit the act of March 3d, 1807, to the removal of intruders from the public lands, who claim the possessions they occupy, is disproved by the practice of the government in the administration of that law.

In support of this assertion, I have the honor to inclose the copy of a Proclamation issued by Mr. Madison in 1816, commanding the removal of all settlers upon the public lands in the several States and Territories, and of the instructions given by Mr. Crawford to carry this Proclamation into effect, by military authority, and by the forcible eviction of the intruders and the destruction of their dwellings. And this, as a measure of propriety or necessity in the ordinary administration of the laws, without the superadded obligations, now imposed upon the President by the stipulations of a solemn treaty, under which the United States hold the land in question.

I enclose a copy of the instructions, issued by Mr. Calhoun for the removal of intruders from a portion of the ceded country, west of the Mississippi. I am aware, that in the latter case, there was no State jurisdiction extending over the country, and I do not therefore refer to it as any practical test of the rights of the Government, where there may be conflictions of jurisdiction between the State authorities and those of the United States. Indeed this is rendered unnecessary by your admission of the constitutionality of the act of March 3d, 1807. But I refer to those latter instructions, as shewing that the distinction now advanced, between intruders claiming and not claiming title, has been heretofore unknown or disregarded. The settlers upon the tracts, ceded by the tribes referred to by Mr. Calhoun, could only be removed under this Act, as there is no other law, bearing upon the subject, where the Indian title has been extinguished; and those instructions are general, requiring all to be removed, without asking whether their object was to "prefer a claim to the land they occupied," or to "occupy these settlements until they should be offered for sale, and then to go into the market, upon equal terms with other persons."

Extracts from a letter of instructions of Mr. Gallatin, then Secretary of the Treasury, dated June 27, 1810, to the Secretary of War, are also transmitted, by which you will see, that in his application to this department for the employment of military force in the removal of intruders, he considers that "there are but two classes of persons, who, according to law, cannot be removed, viz. Those who have purchased lands from the United States; and Secondly, those, who having signed the requisite declarations, have received written permission to remain on the land." Thus expressly excluding the case put by your Excellency, when settlers occupy, without formally claiming the land they hold. It will not be contended that the persons on the Creek lands are purchasers, or have signed the declarations and received permission to remain. For indeed such a procedure would be wholly useless in these cases, even were this beneficial privilege, confined as it is to cases of intrusion, happening before the passage of the law, extended to them, as this declaration and permission render it necessary, "whenever from any other cause, he or they may be required, under the authority of the United States, so to do, to give quiet possession of such tract or tracts of land to the purchaser or purchasers, or to remove *altogether* from the land, as the case may be."

There are, in the archives of the Government, various other documents shewing the course, which has repeatedly been taken, whenever circumstances required the removal of intruders. It would swell to an unreasonable extent a communication already too long were I to refer to them in detail. Nor can it be necessary, for it may be safely asserted, that not the slightest reason appears in any of them to support the ground of exemption, now advanced, it is believed, for the first time by your Excellency.

If I am correct in these views, it follows that the Creek treaty, which only requires the Government to exercise a constitutional power upon its own lands, is itself within the pale of the constitutional rights of the treaty making authority. And as the United States, in these removals, perform only an acknowledged duty, it becomes unnecessary to examine the question, presented by your Excellency, whether a stipulation of this nature could be formed with the Creek tribe, under the circumstances in which they were placed in the State of Alabama. That the land is the property of the United States, at any rate, till the locations are made, seems not to be denied by you; and if it is, the operation of the Act of March 3d, 1807, upon it cannot be disputed, upon the principles I have endeavored to maintain. But you think that "after the Indians are placed in possession of their tracts, ninety of which are to contain six hundred and forty acres, & the others three hundred and twenty each, they will certainly cease to be public lands" I sincerely trust, there will be no occurrence, which will render the decision of this point necessary. And why should there be? Is there to be no end to intrusion? Are the settlers to follow the Indians upon the last remnant assigned to them, and there to obtain and retain possession? No contract, under the treaty, for the conveyance of these reservations, is of the least validity, till it has been sanctioned by the President of the United States. The object of this provision was to protect the Indians from the frauds, to which they would be exposed, and to insure them a just consideration for their property. After the conveyances are approved, the title vests in the grantee, and he is free to take possession of the land. I trust it will not be done before, and a difficulty thus created, which may so easily be avoided. The provisions of the treaty upon this subject appear to me now, as they have always done, perfectly within the constitutional power of the Government, and binding in good faith upon the United States. But it is unnecessary to anticipate cases, which may not occur. The locations are not yet made. And even after the Commissioners, to whom this duty is intrusted, have determined the tract to be assigned to each Indian, the matter will be referred to the President for final action. Nor will the rights of any individual Indian be complete 'till then. In the mean time, the title of the United States to the whole country is indisputable. I therefore deem it unnecessary to advert to the considerations you have presented, growing out of the existing relations between the Creek Indians, and the citizens and government of Alabama.

But your Excellency introduces another view, which it is proper I should examine. You say, "But, Sir, there is another view of this subject, which will expose, in a light still more glaring the utter incompatibility of this treaty with the jurisdictive rights of the State of Alabama." You then proceed, "As before observed, the right of extending the laws over the country, from which the people are ordered to be expelled is admitted to the fullest extent. This necessarily implies the right of employing the means, that are indispensable to its exercise. What are those means? As enumerated in the Constitution of the State, and the laws made in pursuance thereof they are, that the State shall be laid off into counties, and convenient circuits, that the circuit court shall be held in each county at least twice in every year, that the counties shall be devided into small districts, in each of which there shall be appointed two justices of the peace and two Constables, that there shall be in each Circuit a Judge of the Circuit Court, who shall reside in his Circuit, that there shall be for each county a Judge of the County Court, that there shall be also in each county a Sheriff, Clerks of the Circuit and County Courts, a Coroner, Notaries Public, Commissioners of Roads and Revenue, &c., and that there shall be summoned previous to every Circuit Court, a competent number of Grand and Petit Jurors, and a like number of Petit Jurors for the County Courts. All these ministers of our laws are required to reside in the counties to which they belong. These are the ordinary means, by which our State Government is put in operation and effect given to our laws. And yet the late instruction to the Marshal absolutely prohibit the use of any of them."

The right of the State of Alabama to extend its jurisdiction over the district in question is fully admitted. The President does not claim, on behalf of the United States, any right of jurisdiction, except such as is every where vested by the Constitution in the General Government. The ownership of the land, and the authority to legislate over it, for the ordinary purposes of life, embrace powers entirely distinct in themselves, and which in this case must be exercised by different tribunals. The United States constitute a great landholder, possessing under the Constitution the right to "make all needful rules and regulations, concerning their territory and other property." They have made a regulation, by which intruders upon their lands shall be removed, under the orders of the President, by a military force. In doing this, they do no more than an ordinary individual, who repels the forcible intruder, who comes to take possession of his house and land. Such an individual, by the act of expulsion, exercises an authority, acknowledged to be in him. But he exercises no act of jurisdiction He performs none of those functions of supreme authority included in the very term itself, and essential to the prerogative of dictating what the law shall be. In like manner, the United States, while removing the settlers beyond the boundary of their possessions, assume no other control over him, and leave him to the ordinary operation of the State laws.

It cannot be denied, but that the removal of the settlers from the ceded country will be attended with much inconvenience, and I sincerely wish the necessity of the measure could be obviated. And so far as this can be done, by a vigorous prosecution of the business of location, no means in the power of this Department will be spared to effect it. And its execution will leave the settlers in the same condition as all other persons are placed, who occupy public land, where there are no treaty stipulations requiring their eviction.—But, while I acknowledge and lament this inconvenience, I cannot admit that the arguments derived from it can outweigh the positive requisitions of a solemn covenant, under which the United States acquired, and by virtue of which they hold, the district in question; and which formed one of the principal inducements, operating upon the Indians to make the cession.

If I understand the views of your Excellency, in the extract above quoted, they are these: that because the State of Alabama has the right to extend her jurisdiction over territory ceded by the Indians, her citizens have a right, as a necessary consequence, to take possession of and occupy it. For if they have no such right, then there is no "unconstitutional interference in the local and internal affairs" of the citizens of Alabama.

It is not necessary to inquire whether the Legislature of Alabama could, by an express act of legislation, authorise its citizens to occupy the public land. No such authority has been given, and of course all the right which these persons enjoy, they derive from the operation of general principles.

I have already stated, that the ownership of the lands and the exercise of jurisdiction are distinct subjects, having no necessary, and in this case no actual connexion. Instead of the