

all rights order, Alabama.

August 20, 1834.

Sir,

The Department was informed in my letter of the 2d Inst. from Columbus, that a Council of the Chiefs would be held at Anokabatchow on the 7th and succeeding days, and the purpose for which that arrangement was made. They were not all assembled and ready to do business till the 11th, when I informed them, that they had been assembled at the request of their principal Chiefs, who had negotiated the Treaty, in order that they, and, through them, their people, might be made acquainted with the determination of the Government to perform what had been promised in the Treaty in the most liberal and equitable manner. I told them that the President, having been informed both by themselves and the white people, that the Treaty had not been fully executed by those to whom that duty had been entrusted, and that many frauds had been practised on the Indians in the sale of their reservations, - had sent me to enquire, on the spot, into the truth of the rumors that had been set afloat on this subject. I then went through the Treaty as far as it relates to the Locations, Locations and rules of the Nations, explaining to them in the order contained in the paper herewith inclosed, that I should make inquiries into the manner in which it had been executed in those particulars, and report the result to the President.

By showing the same order in the remarks now to be made, they will be the more distinct & comprehensible.

1. The Indians appear to be satisfied with the manner in which the ninety principal Chiefs were allowed to select their reservations, and also with their locations.

2. 1. A number of applications will be made by the Indians who allege that they were heads of families at the date of the treaty, and who, from a variety of circumstances, are not now to be found on the census, and have not been, of course, allowed to select reservations. These circumstances were inevitable, and the matter of surprise is, that they were not more numerous, than they will probably prove to be on investigation. Much care will be taken to verify the claim of each applicant to a place on the census, and in every case, where it is practicable, the testimony of respectable and disinterested white persons will be sought after and taken.

2. 2. The acting agents were instructed by the Department to verify the census primarily to the point action on the subject of locations; but the tenor of the instructions shows that this verification was intended to purge it of those who were not heads of families at the date of the treaty, and to that end, I believe, the examinations of the census was exclusively confined. It is more to be wished, however, that many, who were not heads of families, should be included, than that one should be omitted, who was. There is, however, no doubt but that many yet hold their places on the census, and have had reservations assigned them, who were not entitled. Since the passing of the pre-emption law, many persons have become interested to show this, who would otherwise have remained silent. Considering that the Government has twice acted on the census, first by the Census-taker proper, and again by the Creator, by which means a list was prepared, which has been recognized as authentic, so far as to assign lands to all such as were left thereon, that many of those persons

have told their case; that the official records
of the American People had been examined many un-
successful complaints from Members, then a complaint
from a Representative of Indiana; that our people are
now stimulated by the hope of obtaining free emigration
to attack the census act, that before this motion is
on them, there kind of sense has remained silent;
and finally, that the Congress which had now with
the completed and in need to commit, and had captured
the Congress already existing, I have determined to leave
all who in upon the census act, such that
will direct by the Department.

^{See} §. 1. With regard to the measure of taking the cen-
sensus, the Congress of the first of the year to be ready
in ^{the} district. The United States are to allow the heads
of families to select. This means that they were to have
a choice in preference, - to pick out the best sections,
including their improvements when it could be done. The
country had no power to place them on lands not de-
clared by themselves, and especially on such as had not in-
cluded their improvements. The treaty absolutely gives
them the land section including their improvements. The
treaty is their title. The act of the States are not authori-
ty to contradict their title in any part of the limit of
area. The location - if it can be called, about the treaty
stand to the Indians - was a measure of the Govern-
ment made necessary for the information of the office
estimated with the help of the public lands. This
policy was to make a list of the legal divisions
on which Indians improvements, and of the legal divi-
sions selected; that is, chosen by the Indians for
his reservation, and report that list, that the Register

might know the unimproved land within his district. But the Indians complain, and it is believed, not without cause, that their selection or choice was unheeded, in many instances, and that they were "floated" from their improvements, and lands were selected by themselves, and sometimes far distant from their improvements, designated as the lands appropriated by them. Furthermore, they say, that many of respectable standing in society, who, singly, or in companies, intended to speculate in the purchase of reservations, imposed upon Col. Abbott, by recommending to his confidence as agents, men who were their secret partners in the intended speculations in part of which, they say, that all those agents are now either attached to the companies, or are purchasing land say or apparently on, their own account; and that those husbands, in the discharge of their official duties, would "float" in Indian, who it was found would not sell, away from his improvements, and assign his place either to one who would sell, or to one in some distant part of the nation, who being unacquainted with the land, and disappointed with it on account of its remoteness from his old neighborhood, would readily dispose of it for a moderate price. Be this matter as it may, as to the motives of the Agents located, it is certain that some Indians have not been allowed to select the half section involving their improvements, in cases too where there was nothing to prevent its being done. As the treaty absolutely vests the Indian with the negotiable title in their very spot, no act of the Government or its officers, will be permitted, in a tribunal of that kind, to deprive him of the rights then vested. The Indian improvements just in possession

of such place, gains no title thereby, nor the same
chases from him; and as the right of those located
is to be subject to the final action of the Department
by express reservation in the letter of instructions to the
locating agents of October 14, 1833, the Department will
have it in its own power to dispossess the present holder,
and replace the rightful owner. I shall therefore care-
fully investigate all such cases.

3. 2. From the facts in which it became necessary to
make some of the locations, or from some other cause,
the Indians say, that the people of the towns were not con-
sulted as to the districts of country in which they chose
to have their lands; that land in the pine flats, wholly
unfit for cultivation were assigned to them; and more-
over that the twentieth Indian does not get land
where his land lies. These two latter facts are confirmed
by Mr. Collins, one of the Deputy Locators with whom I have
conversed; and they are such, that would seem to demand
redress. It is not enough for the Indian to be told the lo-
cal subdivisions, which has been assigned to him, - the very
land must be shown him, or he will never be able to
find it. The chiefs acknowledge that the country does not
afford a half section of land fit for cultivation for each
head of a family, nor perhaps, to many half sections, each
containing a reasonable portion of black land; but a long
or there is tillable public land for sale, it would seem
that this treaty repudiates the idea of assigning to the
Indians whole bodies of untilled pine barrens. Mr.
Collins said, that the following was the manner of making
these locations. The subdivisions including Indian improve-
ments were first designated, and then the mark and
the census were taken, and to each name on the census
was assigned a half section on the map, the agent not he-
ing examined the Country. It would be difficult

to find authority for this, either in the treaty or instructions. The idea to give up the lands in the treaty, that the Indians are to select their reservations, and that particularly Swett upon in the instructions, that lands "utterly unfit for agricultural purposes" is not to be assigned to them, are wholly disregarded in this manner of designating the reservations, and the treaty remains, to these purposes, altogether unperformed. I, therefore, cannot hesitate to suggest - what we think it may give - that the sales of the lands in this quarter be brought under all the corrections demanded by justice be made.

4. No list of those who were orphaned at the date of the treaty, has, as yet, been made, and unless it be soon done, it will be impracticable. Without such a list, it will not be possible for the President to execute the trust reposed in him for the division, retention or sale of those sections for the children intended to be benefited.

5. Of the 29 sections mentioned in the 6th article of the treaty, 15 were assigned, in Council, to the Upper, and 14 to the Lower Towns, which division, the Chiefs informed me, was regarded as equalized by taking into the account the sections given to Marshall, the interpreter, who is of the Lower Towns. Before the survey, 5 of them were assigned to the Western Creeks, but the particular sections have never yet been designated, and it will be necessary, that there should be a general Council held for this and other purposes connected with the disposition of those sections. I beg leave to refer, the Department for a more full explanation of the present condition of the 15 sections allotted to the Upper Towns, to an extract from the journal which I have kept of my transactions here, and to a copy of the act of the Council at Kichichew on the 2d of July 1834, and annexed paper, all of which are herewith enclosed.

From these papers, the Department will see, that attempts are being made by the speculators to ram their hands into their own hands, and I trust that the President will spare no pains for one of them, till he knows that the Indians have had the full value of them. I consider the act of the Council at Kichichee to be void for its informality, and because it does not express the trust for which the assignment was made to the Chiefs therein mentioned. Agents are to issue for these districts to those persons, being Creeks, to whom the tribe shall assign them. The enclosed paper does not show that the tribe, or even that the agents, were represented in the Council. I respectfully suggest that the President, ought not to issue any grant for these districts, without an act of the tribe, done in the presence of the sub-agent, and with his advice. This precaution the President can take without being considered to have unduly interfered with their affairs; because should the circumstances which entitled, him a right to know the circumstances which form the basis thereof.

Sales of Reservations. From the paper here with enclosed, the Department will perceive the view I take of this subject, and the range of the investigation which will be made. If proof is at all acceptable. A purchaser who expects his contract for the approval of the President, places himself in the attitude of a plaintiff in Equity, asking for a specific performance. Any facts which would authorize the Court to refuse its active interference in behalf of such a vendor, and would induce it to leave him to his remedy at law to recover back any money advanced, or the like, would, in like manner, justify the President in withholding his approval of the

Contract. And in fact, in some cases, it would produce much hardship, for the President to give his approval, and thus give the Indian into a court of Law or Equity for that reason, demanded by the approval. precautions, which might have been afforded by the President's merely referring to a Ct. For example, in the case of cases mentioned in the enclosed paper - "Sales. I. 4." if the President were to approve, a court of Equity would appear, on the mere ground of inadequacy of price, to set aside the contract, and yet would not deem a specific performance at the behest of the purchaser. It is, therefore, better while the contract is in force to make the examinations, and to take possession, which it might be difficult to do at a later period. In the case where the money has been taken back by the purchaser after the execution of the contract, I shall require of the Indians, alleging that fact, to show it by satisfactory proof, after which the purchaser will be called on to account for the money. Should he refuse or fail to do it, the whole will be reported.

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Since my last, I have communicated to all the other agents, the regulations for the the presentation of permits in the order of the regulations, which the Department was informed had been adopted in Genl. Langford's office. They all think ^{them} I believe, calculated to effect the desired object. A practice prevails in Doctor McCaughey's office in the manner of sales, in which he differs, I believe, from all the other agents, and in which, though it seems to me manifestly wrong, he is nevertheless disposed to persist. It is this: If a person presents himself with a deed, purporting to be signed by one of the Indians on the Census for the sale of his land to such person, and witnessed by two witnesses, the Doctor enters the land on his book, as sold and

the name of the purchaser. Should another offer
towards buying the Indian in question be made, or
that certificate to him, the Doctor refers to make
the certificate without first certifying the person
who has presented the first sale.

When we consider that many Trade Patents,
devises may be employed to procure the Indians
signature; that when he has signed the deed, it
is easy to persuade him that he is bound to con-
firm it; that if the holder of the first deed
may delay presenting his contract for confirmation
six or a week, he may for months, and thus
the Indian might be kept from certifying his
own independent, or at the will of the holder of
the first deed; that there is no way of compelling
the Indian to appear before the certifying agent
& confirm the first contract, if he refuses to
do so; that if he should refuse to show the con-
tract certified to the first claimant, and the agent
should afterwards certify to the second, it
would be the same as protecting him to do so
all, and that the Indian ought to be allowed to get
the highest possible price for the land, it seems
to me clear that this practice ought to be prohibited,
and no regard had to any contract, the signed
by him, but such as the Indian is willing, and
after, to have an agreement. Besides there can
be, it is desirable, that uniformity should prevail
in the office, and I consider the practice of the

then against the effect. Until this practice, however, is changed, and purchases are artificial things, should it appear that any money was paid to the Indian by the holder of the first tract, the holder of the second, ought to be required to pay out of the purchase money, in measure of the Indian and artificial agents, the sum thus advanced.

+ Calculation of Recessioning. The idea here is, that there has been acted on, the land in the hands of our Indians; not so valuable as the same land formerly when it came into the hands of a white man. Indians, it is said, will not cultivate their lands, and ~~the~~ remain, therefore, wholly unproductive and unimproved, & valuable. So some will say, the proportion to the whole value of the land is in the proportion to the whole value of the purchase money. ^{This calculation is not correct, as the value of the land is not the same as the value of the purchase money.} ~~at this calculation, it is not correct.~~

For the calculation to give more than the value of the system of purchasing has led to much injustice on the artificial agents, and cannot have, in a great measure, existed, been artificial, when the calculation mentioned in the text, is carefully investigated. As this state of affairs, I cannot think it to myself, to omit to recommend, that the Recessioning, held and undoubtedly, agents to value the Recessioning, held and undoubtedly, that justice, the land, may be done the owner of the former, and supporting in the state, Recessioning.

I consider it clearly competent for the Recessioning, to have the same course, since the Recessioning is in the hands of the artificial agents, and that the Recessioning of

Note. In this letter was sent an extract from my journal of the 9, 10, 11, 12 of August, and this —

Note. The specific propositions made to them were — 1. That the Revenue should execute a power of attorney to the Secretary of War, authorizing him to sell to the Government, to individuals, or to companies, and pay the money, or a portion of it, to the respective owners of it, at the Agency next, &c. 2. That if all could not be persuaded to join in such a power of attorney, a few of the principal and most influential chiefs, should make such a power, thus declaring their resolutions to remove, whereby the others would be induced to follow them.

R. J. Ch.

To the Secretary of
War on the Creek Affair.
August 20, 1834.