

The Creek Controversy.

EXECUTIVE DEPARTMENT,

Tuscaloosa, 22d Oct. 1833.

I have received today by express from you, P. T. Harris, one of the circuit court judges of this state, sundry documents establishing the facts that all attempts by the civil officers to investigate the circumstances in relation to the killing of Owen, have proved unavailing, and that the process of the court has been set at defiance by the commanding officer at fort Mitchell. I transmit copies of the whole of these despatches, for the consideration of the President, and respectfully request that you will advise me of his determination on the subject, at an early period. I have the honor to be, with great respect, your obedient servant,

JOHN GAYLE.

Hon. Lewis Cass,
Secretary of War, Washington City.

Russel Court House, Oct. 17, 1833.

Sir—Your Excellency, as one magistrate of the state of Alabama, I enclose copies of a correspondence between the solicitor general of this circuit and commanding officer at fort Mitchell, a copy of the sheriff of this county, the affidavits of two gentlemen by the names of Condon and Cohen, (both of whom reside at or near fort Mitchell,) wherein it is agreed which issued for the arrest of Maj. McIntosh, for contempt of the court, with the sheriff's return thereto, and the bill of indictment against David Manning and others for the murder of H. C. Owen. By an examination of the letter of Maj. McIntosh, it is obvious that the officers who were present at the killing of Owen, were at fort Mitchell when that letter was written; and that the persons for whom subpoenas issued, were secreted at the time the sheriff was performing his search within the fort for them, as established by Bartoo's and Conch's affidavits. From all the papers herewith sent, you will perceive that the process of the court is set at defiance, and that without some assistance, we shall have to resort to the military authority which has been established at fort Mitchell—

You can readily imagine, if the officer commanding refuse to give up the soldiers as witnesses, that we cannot expect them to be surrendered to the military process of the court, when that process is intended to bring them before the civil tribunal to answer to the violation of law. He has already determined that the officer who shot Hardeman Owen—a young lawless execution of justice. That it is now necessary that there should be several changes in the mode of trial, so as to protect the civil rights of the accused. In your excellency's opinion of this— but not mere opinion, but the opinion of the officer, and your judgment, see that there is too much reason to believe that the apprehensions of the sheriff are too well founded. You will also perceive, that the *process civilis* is entirely insufficient to afford adequate protection to the court and its officers. It only remains therefore for your excellency to apply the proper remedy, and place at the disposal of the sheriff a sufficient force to command respect to the laws. Until this be done, or the United States troops removed, it will be vain to attempt to enforce the criminal laws in any case where they may be resisted. In closing this communication, I will only add, that the authorities received every aid in his power from Col. Pickett, who has been diligent in ferreting out the testimony, and active in his exertions to bring to justice those who have been charged with the murder of Owen. I am, with great respect, your obedient servant,

P. T. HARRIS.

Copy of a letter from Col. Pickett to Major McIntosh.

Russel Court House, Oct. 17, 1833.

Sir—I am advised, through the medium of the "Globe," at Washington city, the official paper of the administration, and from other high and respectable sources, that the commanding officer at fort Mitchell has been instructed to afford to our civil authorities all proper facilities for putting the case of the killing of Hardeman Owen, in a train for legal investigation. The circuit court of Alabama, for the county of Russell, is now in session, and a bill of indictment against the perpetrator or perpetrators of that act will this day be prepared.—In pursuance of those instructions, I have thought proper, from a sense of duty, to ask at your hands the aid requested; and to facilitate this object, that the detachment of soldiers who were present at the killing of Owen, be delivered over to the sheriff of this county. The reason why this is deemed necessary, is owing to the difficulty of ascertaining the name or names of the person who committed the act, as no one was present, it appears, but the use of soldiers—or this may be supposed with if you will be good enough to furnish the state with the name or names in question, and with the witnesses who will prove the fact.

Respectfully, your obedient servant,
W. D. PICKETT.Fort Mitchell, Ala. Oct. 15, 1833.
Sir—in reply to your communication

of yesterday, informing me that you have been advised, through the medium of the "Globe," at Washington City, the official paper of the administration, and from other high and respectable sources, that the commanding officer at fort Mitchell has been instructed to afford to our civil authorities all proper facilities for putting the case of the killing of Hardeman Owen, in a train for legal investigation—I have to inform you, but I have received no instructions relative to the case above cited, and I apprehend I will not, from the single fact that the soldier who shot Hardeman Owen was in the lawful execution of his duty. I must, therefore, decline your invitation to deliver to the sheriff of this county the detachment of soldiers who were present at the time that Owen was killed. Had any officer or soldier of my command, unlawfully used violence, or committed any offence against the persons or property of any citizen of the United States, such as is punishable by the known laws of the land no one would have been more ready or willing upon legal application duly made, to use their utmost endeavors to deliver such accused person or persons to the civil magistrate.

I am, sir, very respectfully,
Your obedient servant,

J. S. McINTOSH.

Maj. Bat. 5th Infantry Comp.

To W. D. Pickett, Esq.

Solicitor 8th Judicial District.

The State of Alabama, Circuit Court,

Russell County, Oct. term, 1833.

To the sheriff of said county, greeting:

You are hereby commanded, without delay, to take the body of major James McIntosh, if to be found in your county, and bring him forthwith before the Hon. the Judge of the circuit court for the county of Russell, now in session, to answer to said court for a contempt of the same.

Herein fail not, and have you the, and there this writ, with your endorsement thereon. Bevil Lucas, clerk of the circuit court for Russell county, this 15th October, 1833.

B. G. A. LUCAS, clerk.

Issued 15th October, 1833.

The State, Sheriff's Return—

vs. S. I went to the fort and

James McIntosh, called on the defendant. He swore I should not touch him. I am satisfied if I had made the attempt, it would have been at the risk of my life; that the defendant was commanding officer of the fort, and had sworn on yesterday he would not surrender up any one in the fort.

ED. CROWELL, Sheriff, R. C.

October 16, 1833.

I do hereby certify the within attach-

ment and endorsement is a true copy from the original on file in my office.

B. G. A. LUCAS, clerk.

The State of Alabama, Circuit Court,

Russell County, Oct. term, 1833.

Personally appeared Edmond Crowell,

sheriff of said county, in open court, when

had duty sworn, neoposey and sworn,

that on the 13th instant, he had placed

in his hands by order of said court, sub-

pouces for Frank Barger, James Emerson,

Jas. King, and David Manning,

officers and soldiers of the United States

army, under the command of Maj. Jas.

S. McIntosh, at fort Mitchell, in said

county; that he proceeded to the quarters

of the major and told him he had certain

process for the individuals above named,

and wished to serve these. His reply

was "I'll be damned if I give them up a

man." After he had put up his horse

and returned, the major, upon ascertaining

the papers were not to take the per-

sons, but merely subpoenas, affiant was

permitted to search the fort, but could

not find any one of them. That he suc-

ceeded in serving the subpoena on Lieut.

David Manning, out of the fort. He re-

plied, "I shall not go." That on the 15th

last a capias in the nature of an attach-

ment for contempt of court, against the

said Maj. McIntosh, was placed in my

hands by the clerk of said court; that he

again proceeded to the fort and the

place where the major was, and told him

he had a capias to take him to court.—

He replied, "you shall not touch me," at

the same time saying he had not treated

the court with contempt, and that said

court had no authority to take him.—

That the reason he did not attempt to

take his person when he had the capias

was, because it would have endangered

his life by so doing. That he is satisfied

any attempt he may make to serve pro-

cess on said soldiers, or upon the said

major, will be resisted and prove useless.

That the power of the county is insuffi-

cient to execute process on said persons

situated as they are, with arms, and pro-

tected by the fort.

ED. CROWELL, Sheriff, R. C.

Sworn to in open court, Oct. 17, 1833.

I do certify the foregoing to be a true

copy from the original on file in my office.

B. G. A. LUCAS, clerk.

The State of Alabama, Circuit Court,

Russell County, Oct. term, 1833.

This day came Ed. Coach in open

court, and maketh oath that he resides

at fort Mitchell; he know sergeant Fran-

cis Barger, Jas. King, and Jas. Emmer-

son; that they are soldiers in the fort,

and under the command of James S. McIntosh; that he has seen them in the fort, "Globe," at Washington City, the official paper of the administration, and from other high and respectable sources, that the commanding officer at fort Mitchell has been instructed to afford to our civil authorities all proper facilities for putting the case of the killing of Hardeman Owen, in a train for legal investigation—I have to inform you, but I have received no instructions relative to the case above cited, and I apprehend I will not, from the single fact that the soldier who shot Hardeman Owen was in the lawful execution of his duty. I must, therefore, decline your invitation to deliver to the sheriff of this county with process against them, they were absent from the said fort while all the other soldiers, he believes, were present.

Sworn to in open court, Oct. 16, 1833.

The State of Alabama, Circuit Court,

Russell County, Oct. term, 1833.

This day came Samuel C. Benton, in open court, and makes oath that he lives at the fort and knows Frank Barger, Jas. King, and James Emerson, soldiers of the United States army at said fort, under the command of Maj. James S. McIntosh, that he has seen them, or some one or two of them, there as late as the 13th instant, that they are there generally on duty and have been for some time past.

Sworn to in open court, Oct. 16, 1833.

I do certify the foregoing to be a true copy from the original on file in my office.—October 17, 1833.

B. G. A. LUBAS, clerk.

Among the papers communicated to the governor, and by him transmitted to the War Department, is a copy of an indictment found by the grand jury of Russell county, against Jas. Emerson, Jas. King, Frank Barger, and five others unknown, for the murder of Hardeman Owen, and against David Manning and Jeremiah Astill, for the moving to the commission of said crime; which indictment being a formal law paper we have not thought it necessary to publish.

The Tuscaloosa Intelligencer, in laying these proceedings before its readers, employs the following language.

"It is difficult to speak of such military insolence and maintain one's equanimity of temper. If the state tamely allows the commanding officer of a little band of soldiers thus to abet murder and defy law within our borders, she is infelicitously disgraced. If our civil tribunals are thus to be snared at by men who assume consequence because they have spaniels on their soldiers and guns in their hands, it is to be hoped that no 4th of July orator will insult us more than by telling us that we live in a land of liberty and law, that life, liberty, and property are protected by our admirable institutions; and that the military is rendered wholly subordinate to the civil power. If we are at the mercy of a Deputy Marshal of the United States, and in his hands of death, and those of his soldiers cannot be inquired into, let us acknowledge our condition at once.—What will those papers that have shown a disposition to justify every act of the most remote agent of the Federal Government, now say to this open defiance of our laws and our courts? Will they tell us that we ought to pocket this iniquity and submit to the state, and humble ourselves before Major McIntosh?

THE SURPLUS REVENUE.

It is conjectured that the revenue accrued during the present year will leave a balance in the Treasury on the first day of January next, in cash and bonds given for debt, after paying all the expenses of the government, of *ten or twelve millions of dollars*; and the revenue of 1834 will also, no doubt, greatly exceed the expenditures of the year, there will be a large fund to be disposed of in some way or other, at the approaching session of Congress. Perhaps such an amount never in the history of taxation has been presented as that of a free people industrious and economical, taxing themselves to raise twelve millions of dollars, which are not required for any purpose of government; and the question will present itself, what shall be done with this money? The decision of this question will lead to a legislative scramble such as we have never before seen, and happy will it be for the country, if corruption and violation of what little remains of the constitution do not triumph. A grand struggle between the friends of strict construction, and of federalism, will be the danger of being for ever saddled with a system of imposts not designed to raise revenue at the least cost to the people, but at the greatest cost; for no one who understands the subject can fail to see, that if revenue were collected from commodities not coming into competition with them, and especially upon the raw materials of their trade, without any abatement of their monopoly prices.

How the matter can be settled to the satisfaction of all parties, it is difficult to surmise. The friends of free

trade will have every disposition to let the manufacturers have the full benefit of the compromise, so far as it can be done without endangering the ultimate establishment of their great principle of *an equal rate of ad valorem duties*.

Should all the duties be abolished except upon protected articles, the discriminating principle would stand forth in too bold relief, and the country would be in danger of being for ever saddled with a system of imposts

not designed to raise revenue at the least cost to the people, but at the greatest cost; for no one who understands the subject can fail to see, that if revenue were collected from commodities not coming into competition with them, and especially upon the raw materials of their trade, without any abatement of their monopoly prices.

The subject is certainly one beset with many difficulties, and it will require a wise head to devise a plan which shall be generally acceptable.

—Philadelphia Examiner.

A gentleman having had a valuable watch stolen from his person, advertised that he would give the thief fifty dollars for its restoration and that no questions should be asked. A short time after a man called on him and informed him that on payment of the fifty dollars the watch should be restored. The money was handed to the stranger and the watch to the rightful owner, who remarked that although that he was under obligation to ask no questions yet he had a curiosity to know the manner in which he obtained the watch, and would make that enquiry, leaving his answer or refusal at his own option. The man readily enquired of him whether he did not recollect that on a certain night a man put his hand on his shoulder, saying, "how are you," and instantly asked pardon for his abrupt salutation as he was mistaken in the person he supposed he was addressing, at the same time putting him on the shoulders in the manner he did at the time he referred to. The man recollects the circumstance and the stranger said at that time he took his watch. The man was

much gratified at the recovery of his watch and so much annoyed by the manner in which it was stolen, that he stepped into a shop of his acquaintance to tell the story. While recapitulating the circumstances he attempted to pull out his watch, when lo it was gone again, the rogue having stolen it the second time, while telling the master he stole it the first.—*N. E. Daily Advertiser.*

SHOWER OF METEORS.

The night of the 11th of November, at Cumana, says M. de Humboldt, was cool, and extremely beautiful. Towards the morning, from half after two, the most extraordinary luminous meteors were seen towards the east. Mr. Bonpland, who had risen to enjoy the freshness of the air in the gallery, perceived them first. Thousands of bodies (fire balls) and falling stars, succeeded each other during four hours. Their direction was very regularly from north to south. They filled a space in the sky extending from the true east 30 degrees toward the north and the south. In an amplitude of 60 degrees the meteors were seen to rise above the horizon E. N. E., describes arcs, more or less extended, and fall towards the south, after having followed the direction of the meridian.

Some of them attained a height of 40 degrees, and all exceeded 25 or 30 degrees. There was very little wind, and no trace of clouds was to be seen. Mr. Bonpland relates, that from the beginning of the phenomenon, there was not a space in

the firmament equal in extent to three diameters of the moon, that was not filled at every instant with bodies and falling stars, the first were fewer in number. They all left luminous traces of from five to ten degrees in length, the phosphorescence of which lasted seven or eight seconds. Many of the falling stars had very distinct nucleus, as large as the disk of Jupiter, from which darted sparks of vivid light. The bodies seemed to burst as by explosion; but the largest disappeared without scintillation, leaving behind them phosphorescent bands, exceeding in breadth fifteen or twenty minutes. The light of these meteors was white. This phenomenon, which was witnessed with alarm by almost all