National Intelligencer.

& WASHINGTON ADVERTISER.

VOL. IX. WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. NO. 1378.

FIVE DOLLARS PER ANNUM, WEDNESDAY, AUGUST 9, 1809. *PAID IN ADVANCE.*

THE *National Intelligencer* is conducted by SAMUEL H. SMITH, and JOSEPH GALES, Jun. and printed at the Office of the *former*, to whom subscribers and correspondents are requested to address themselves.

The annual price, payable in advance, is *Five Dollars.*

ADVERTISEMENTS, not exceeding one square in breadth, are inserted the first time at *fifty cents*, and for every subsequent insertion *twenty-five cents*. If inserted less than three times a *Dollar* is charged. If inserted but once a week, an addition of one fourth part is made. Other advertisements charged in the same ratio.

CONGRESS.

HOUSE OF REPRESENTATIVES.

DEBATE

On the petition of Edward Livingston, praying to be restored to the possession of THE BATTURE *opposite the suburbs of St. Mary's, New-Orleans.*

(Continued.)

MONDAY, JUNE 19.

MR. GHOLSON said he thought it would better become the character of this assembly to discuss every subject with calmness and deliberation, and on its own merits, than to endeavor to influence the decision by an appeal to the passions. It was important that such a course should be pursued, whether with reference to a great political principle or to the interest of the individual whose rights were said to have been wantonly prostrated at the Executive will. I (said Mr. G.) have been early taught, and the doctrine has grown with my years, that the right of property is not one of the least consideration in a free constitution. It is of a nature so sacredly inviolable that, when clearly ascertained, I would never encroach upon it by any means but through the regular constituted authority. It would have been under this impression that, had I been a member of the legislature when the law of 1807 was introduced into the statute book, I should have been opposed to it. But receiving all the sanctions of a law, and as such containing a rule of conduct in certain specified cases, what was the Executive to do? Was he to set at defiance the law of the land? A doctrine like this can never be contended for. It seems, however, that to satisfy gentlemen the President should have refused to carry this law into execution, which I acknowledge does usurp judicial authority.—[Mr. Randolph said that his ground was that the President had not executed the law. If a law were ever so unconstitutional, the President having signed it, it would become his duty to carry it into effect. But he denied that he had carried it into effect.] Upon that point, continued Mr. Gholson, my colleague and I are at issue. I rise not to discuss the merits of the claim, which I have no disposition to do. I rise to defend the late President of the United States, to endeavor, to the extent of my feeble powers, to place this question in a proper point of view. If the President of the United States has gone beyond the letter of the law, which itself tends to encroach on the rights of the citizen, I would be the last person to justify him in thus trespassing on the dearest rights of a freeman. But it is very easy to shew that he has not exceeded the express provisions of the law in question.

The act of 1807 contains two clauses having a bearing on the subject; the first ascertaining the *character* of the persons to be ousted, and the second providing the *means* of ousting them. The President is authorised to exercise this power, either where property was previously in possession, in which case he is to give notice, or where it was subsequently entered on, in which case he is not required to give notice. It is easy to shew that this is one of the cases contemplated by that act. It is well known that the feudal law did exist in Louisiana previous to its acquisition by the United States, and that by that law alluvion does accrue to the crown. Now if the feudal law did exist, and by that law alluvion did accrue to the crown of France, does it not follow that the same right did accrue to the United States by the deed of cession from France, who owned the territory? If the claimant was in possession when this act passed, it became the duty of the President of the United States to give him three months notice previous to his removal; if not, no such notice was necessary. On this point I need only refer to the fact that it was not so early as the passage of the act, indeed not till the 23d of May that the claimants came into possession. They were quieted in possession, so far as the rights of the United States were not concerned, on the 23d of May, 1807.

The decision of the corporation court of New-Orleans is relied on as giving a title to the petitioner. That that decision did at all effect, in the remotest possible degree, the right of the United States, is a position which no man acquainted with the principles of law will contend for. The decision cannot affect the right of the United States because, it was not contested or defended before that court.

It is said that the feudal law does not exist in France. From time immemorial it has existed all over Europe. That it exists at this time in this country there can be no doubt. The right to lands is allodial, but it is inherent in the government. Is it denied that the government can take property from an individual, making him compensation therefor? If the right to land be indefeasible, could the government run a road through it? It certainly could not. I wish it to be distinctly understood that I do not attempt to say where the real right to the property in question does reside. But I do say, that, according to the treaty of cession, it did become the government of the United States to exercise the power which the President under the law of 1807 did make use of.

If there has been any violation of right, it was in the passage of the law under which the President acted. It was such a one as, under present persuasion, could not have voted for, even to remove a Yazoo purchaser. I would even give to such an one his right to a fair trial. I would not have agreed to pass it, for a reason given a day or two ago, that the right to trial by jury is unalienable; it is a right which descends to us with our other birth-rights; it is one without which liberty is but a name. It was an unfortunate circumstance that such a law did pass. But if the legislature thought proper to enact such a law, let them not, in the name of the great God, throw the blame on their instrument, on the President, who was innocent of fault, and bound to carry the statute into effect. There is undoubted proof that the President only acted in pursuance of the statute. The retroactive part of the statute is the most horrible feature in it.—[Mr. Randolph.—Does the gentleman mean to advance this position, that there is in the government of the United States (not of the *state* of Virginia for instance) a right to take any property which it pleases on giving compensation to the owners?] Mr. *Gholson* continued. I mean to advance no such position. This is an external government, and all matters relating to internal concerns fall within the province of the state governments, whose power in this respect will not be doubted. Although the federal government cannot exercise this power *in the states*, I by no means admit that they cannot exercise it *in the territories* over which they have a right to legislate. It is a right of such a nature as should be exercised with great delicacy and caution. Yet though it is necessary that privileges should never be invaded but with a hallowed hand, it is sometimes necessary to give up a little for the general good.

But it is said that this is an extreme case, that this small spot was selected as the object of Executive vengeance. I am informed that in almost every instance of intrusion on the public lands, settlement was made by individual claimants. I would rather give up fifty times the value of the land of the U. S. than encroach against law on that of any individual. It was not the execution of the law which encroached on the rights of the citizen, but the law itself. I would ask, how can it be contended to the contrary? Who was in possession of the land when the law passed? It had been used as public property, and had every requisite to that character; and as such, when any one took possession of it, the President would not have done his duty under the act of 1807, had he not caused them to be removed.

MR. RANDOLPH said he merely wished to say a few words in answer to his colleague, because he was afraid that he had put the question upon a footing which in justice to the petitioner it ought not to be placed upon. I would ask him (said Mr. R.) whether he thinks the right of the U. S. so untenable, their title so frail, or the prejudice against the title of the petitioner so weak as to render it necessary to fortify the side which he has taken on this question by making it a question, as it has already been made, between the late President of the U. S. and the petitioner? Ought the feelings of the House to be touched in this manner? Ought that chord to be made to vibrate? It is true that my colleague may say that the law of 1807 was first set on foot by myself. On me, then, let the blame rest, and not on the claim of the petitioner, who has already enough to contend with. On me let the whole weight fall. It does seem, from the uniform practice in this House, that when a man gets up to canvass any act performed by the Executive, under law or no law, he must preface whatsoever he says, if he means to be listened to with respect, by a *disclaimer* of any sort of intention to censure the Executive. No matter how great the enormity in question, it is absolutely necessary, it would appear, in order to prevail upon the House to lend a favorable ear to your argument, to disclaim all design of inculpating the Executive. Do we live in a land of liberty or do we not? I know that in England the throne is interdicted by the constitution from all attack, that the king can do no wrong; and yet, sir, when a wrong is committed there, they are not (to use a strong but expressive epithet) very mealy-mouthed, but arraign his majesty's *ministers* with all the freedom with which counsel in a court will arraign the credibility of a witness. I want to have some means within my power whereby I can thoroughly canvass the conduct of the Executive branch of the government. Suppose a member to rise in his place, and instead of throwing a blame on the President, were to throw it on some poor head of a department—would he not be told that it was unmanly and unfair—that under the constitution having no king who can do no wrong, it is not fair to lay blame on a secondary officer but upon him who is responsible for the act? And there I have placed it, sir. Could I think of blaming the Governor of Orleans territory? I might as well blame the private who in obedience to his orders dispossessed the party put in possession. If we also would canvass the conduct of our ministers, and the President is our minister, we must drop this way of saying, as I believe they do in Catholic countries, the infallibility of the Pope, of saying "God bless the President! he is always just right, and can never do wrong!" But here, sir, is an enormous wrong—on whose shoulders shall we pack it? In my representative capacity, I shall consider it my duty, fall on whose shoulders it may, to state it. I know that it is an invidious task to charge any man with blame, and that rising to eulogise him is a much more agreeable one. But it seems that *I* am the cause of all this. The bill in question, it is well known, came from the Senate. It is equally well known to you, sir—if not, be it now known—that I never saw it before it made its entry into these walls. But with what shew or color of justice can I be deemed the father of the bill? If it be meant that I was the cause of its being passed, because I was the humble instrument of arresting that claim till time and a majority of the House could be found to pass that bill, I am obliged to the gentleman for reminding me of what I believe the proudest triumph of my life. It was a glorious triumph, an unprecedented one—for that claim came here, not only with the undivided sanction of the Heads of Departments, but with the sanction of the best talents of the nation, and of integrity equal to any within these walls. I hope it is not the last time that an honest majority in this House shall triumph over Executive influence.

But it seems that a great deal of warmth has been displayed on this subject; that we ought to discuss this matter with great coolness. I should like to know of my colleague, if he were turned out of his house under the obligation of this same law, in a bleak and dreary winter's night, whether he would think a little of this warmth amiss. Whatever may be the opinion or belief entertained in states exempt from that accursed evil, I believe it is notoriously true that there is not a slave (who has no property of his own) that would not display greater warmth if his little house had been violated by his master in the way in which the property of the petitioner has been. When we are directing the bayonet, pointing the instrument, there is no occasion to be warm; but when it comes to our own throats—and it is coming—I do not mean it is the *intention*, but, if this principle be sanctioned, it must come—and I trust in God, that, under any circumstances, even under the north pole, I sh[illegible]ll never display less warmth on a[illegible]h occasion than I have done [illegible].

My colleague und[illegible]es to say what the law was in the Louisiana territory prior to its cession, and in so doing opens the merits of the claim which he said he did not intend to touch. Whether the feudal law is or is not, was or was not in existence there, cannot affect the question, inasmuch as the very grant of the property was an allodial grant, taken out of the operation of the feudal law of France by the express limitation of the grant itself. It is not true, as I understand it, that the feudal law is the law in all monarchical countries. [Mr. Gholson said that since the reign of Charles II. there had not been that part of the feudal system in existence which required every man to do service, &c. But he had said and did maintain that there is now remaining in every part of Europe a portion of the feudal system. He certainly had only meant that the feudal system yet existed *quo ad hoc*.] Mr. Randolph continued. It has been much the fashion for a long time in Europe, and particularly since Dr. Robinson published his celebrated history of Charles V. to account for every thing by the feudal system. I do not understand however, that it exists in Spain, but that property is granted as allodial.

Again, Sir—I understand my colleague to advance the doctrine that the federal government possessed the right of taking any private property in the territories which it pleased for public use, paying the owner the value thereof, paying damages. I ask my colleague to shew the grant by which the general government holds the power; for it will be recollected that the power of this government is more straitened than any citizen is in his property. It must shew a grant of all the power it exercises. If the government possess this power, I want to know how it got it.

In his zeal to defend the Executive and throw the whole weight of the blame on the shoulders of those who passed the law, my colleague forgot that the President is as much committed in relation to that law as any man who voted for it. The law must apply to individuals, but it had reference to great tracts of territory. Where was the necessity for this law to dispossess individual settlers, when a single constable was fully competent to that task? The power was granted in such a manner that it might be exercised on an individual, but it was given with reference to such cases as those now occurring in the Mississippi territory, where so many get together as to form an interest stronger than the civil process and capable of resisting it. Can my colleague say, if his title be litigated, and he be put in possession by a decree of the court, that he does take possession "without being thereto duly authorised by law?" Surely not.

We are told that the point in dispute is, has this land been ceded? But have not all the lands in the U. S. been ceded, except such as the grants to which were absolutely perfected at the declaration of Independence? Was not the whole of Kentucky and Tennessee, and by far the greater part of Virginia and Pennsylvania ceded by the treaty of 1783? And to whom? To the individual states? No, sir; to the U. S. in their confederate corporate capacity. The king of Great Britain did not know, neither did France, when she made the treaty, know any state in its individual capacity, but the whole government of the U. S. as united states.

I do say and repeat that this act has not been carried into effect, and the gentleman himself cannot say that it has been carried into effect. Neither can he say that the President was authorised to execute it in regard to this mud bank, without inculpating him for failing to execute it in the case of the intruders in Madison county. When we speak of this particular case of the batture, we are told that this law, like the laws of the Medes and Persians, must be executed. If it was only a duty of the President to execute it one case, he has been guilty of a dereliction of duty in not executing it in the other case.

I know that there are gentlemen far more adequate than I am to do justice to the merits of this case as connected with law. But I declare, that according to the construction given to this law, there is no individual in the U. States who may not be brought under the operation of that law, which it is well known was not passed with that intention, for it is to be gathered from the face of it that military power was not intended to be exercised unless the civil power was insufficient; and I defy any man under a fair construction to place it in any other point of view. Suppose the Secretary of War takes possession of your farm—you say it was never ceded to the United States—but will that declaration put you in possession against an armed force? Your property is taken from you under color of law; military despotism is established under color of law. There is nothing in imagination which can exceed this. Telling a man taking a complaint to go to the Attorney General is something like telling a slave, making a complaint of ill-usage to go to the overseer, the man who has already made up an opinion against the complainant.

With respect to maxims in law, in which no doubt my colleague is much better versed than I am, it is unquestionably true, as respects the doctrine of escheats, that the feudal system prevails in some of the states; but it never has been applied to the extent contended for by my colleague in any state in the union, and certainly not in the state which we represent.

I am afraid, sir, that I have done a mischief where I meant to have done a good. If my object had been to favor the views of the petitioner, I certainly should not have taken the course which I have pursued. Whether the petitioner succeed in his object or not, is a secondary affair, compared with the great constitutional privilege which has been violated in his person. I repeat it again and again. Let any man come forward and complain that his property never was ceded—you are told that the rights of the United Staths are not to be contested by the courts below, and in the mean time leave the rights of the citizen to contend against a file of grenadiers with fixed bayonets—and this, we must do, it seems, for fear that incidentally some blame should fall on the President of the United States. Sir, we had better establish a principle in our government that the President can do no wrong, but hold his ministers responsible for all he does, than hold our rights by this tenure. There will be then some sort of society. I dislike this business, when we find fault with subordinate officers, of being told that they are not responsible; and when we find fault with the President, being told that he is not responsible. Sir, I know as well as you or any other member can know, that he is a *king in masquerade*. I feel it; I know it. I speak not of the late President of the United States or of the incumbent. Every question which is brought up touching the liberty of the citizen serves but to confirm me in the opinion that this government has an awful squinting towards monarchy!

MR. GHOLSON said that so far from clothing any President with an inviolability of character & assigning to him an incapacity to do wrong, he would go as far as his colleague or any other man in support of private and personal right, and to secure the inviolability of private property. Sir, said Mr. G. did any expression escape me to the disparagement of the right of the claimant? I only said that under color of a title derived from the previous laws of the country, the President had considered it his duty to take possession of this land. I pledge my self even to go further. I would give the claimant possession, if he would give security to abide the result of a fair trial of the title. I conceive the law under which he was dispossessed to have been a most execrable one; I was desirous too that the blame should be placed on the right horse, and never said my colleague was the cause of it. But I believe, in an honest zeal against Yazoo perjury, he and his then colleague did subscribe their assent to a