

IN SENATE OF THE UNITED STATES.

FEBRUARY 25, 1840.

Submitted, and ordered to be printed.

Mr. NORVELL made the following

REPORT:

[To accompany Senate bill No. 57.]

The Committee on Public Lands, to whom was referred the bill for the relief of Francis Laventure, Ebenezer Childs, and Linus Thompson, with sundry memorials and remonstrances on the subject, submit the following report:

In the summer of 1835, Francis Laventure, Ebenezer Childs, and Linus Thompson, citizens of Green Bay, in the Territory of Wisconsin, being the owners of three floating rights, which were granted upon pre-emptions at Green Bay, under the pre-emption act of June 19, 1834, and the law of 1830 revived by that act, located the said rights, agreeably to the provisions of that act, and in conformity thereto, and to the instructions of the Treasury Department, upon fractional lots Nos. 1, 2, and 3, of section 32, township 7, range 22, at the office of the Green Bay land district. They paid the amount of the purchase money to the receiver of public moneys, and took his certificates or receipts for the same. These certificates are understood to remain still in their possession. No suggestion was made by the register or receiver with regard to the location.

The lots above described were situated on the west bank of the river Milwaukee, within the established limits of the Green Bay land district, at the time of proving the pre-emptions and locating the floats. They were a part of the township which had been advertised for sale by the proclamation of the President of the United States, dated the 6th of May, 1835, and were considered subject to the operation of all the provisions of the pre-emption laws. Under these laws, they were accordingly located by Laventure, Childs, and Thompson; and no doubt appears to have been entertained of the validity of their title until March, 1838. At that time, the Commissioner of the General Land Office decided that the lands acquired by the treaty of Chicago with the Pottawatomies and other tribes, in September, 1833, were not subject to the operation of the pre-emption law of June, 1834; and he therefore rejected the claims of Laventure, Childs, and Thompson, as well as some other pre-emption claims located on those lands. This was nearly three years after they had paid their money, received their certificates, divided, subdivided, and sold considerable portions of their lots, and made, with those who purchased from them, extensive and valuable improvements thereon.

The legislature of the Territory of Wisconsin, in a memorial adopted at two successive sessions and approved by Governor Dodge, urge upon Congress the confirmation of the claims embraced in the bill referred to the committee. They recite the facts stated in the beginning of this report, and say that the three floating rights in question were located, agreeably to the provisions of the pre-emption act of June, 1834, upon lots one, two, and three, of section thirty-two, township seven, range twenty-two, in the county of Milwaukie, and received receiver's certificate of the same. In the same year, the late President of the United States, by proclamation, ordered the sale of certain lands in the Green Bay land district to be held at Green Bay in the month of August or September. Among the lands thus ordered for sale was township seven, it being then embraced within the limits of the said land district, and at which sale the whole of the township was sold, with the exception of such parts as had been previously obtained by pre-emption or floating rights. Since that time, the original purchasers, or those who have held under them, have had undisputed possession of the premises. In 1838 these floating rights were rejected by the Commissioner of the General Land Office, and an order was issued by him to the land officers at Green Bay, directing them to refund the money paid therefor. The present occupants of these lands have erected many valuable buildings thereon, and are now only prevented from making further improvements by the decision above referred to. The title has passed from the original purchasers, through a great number of persons, to the present owners, who have paid therefor at from two hundred and fifty to five thousand dollars per acre, and who supposed no doubt existed as to the validity of their titles; and, if the Government does not interpose and grant some relief, consequences will follow ruinous to many innocent individuals, who must lose what has already been paid, together with all the improvements made on the premises. If, after the lapse of three years, pre-emptions allowed by the authorized agents of the Government are to be rejected, there is no safety in purchasing lands similarly obtained from the United States. Such a course would involve in ruin the best citizens of the West, and destroy all confidence in titles, whether derived from the United States or private individuals; would retard the settlement of the country, prevent the transfer of property, and involve in endless and ruinous litigation many of the industrious citizens of the Territory.

These statements and views are reiterated in a fresh memorial, just laid before the Senate, from the legislature and governor of Wisconsin. They are confirmed in sundry memorials numerous signed by individuals, and by affidavits duly made under oath. One of these affidavits, dated on the 7th of December, 1839, and signed by Solomon Juneau and seven other respectable citizens of Milwaukie, declares that, in 1836, fractional lots 1, 2, and 3, were surveyed and laid out, and formed part of the town of Milwaukie; that they have been sold at various prices, as high, in some instances, as five or six thousand dollars per acre; that a large number of persons are interested therein; that previous to the month of May, 1839, when the deponents learned that the certificates of the receiver, given to the original purchasers, had been ordered to be cancelled, those purchasers and the persons who held under them, had erected many buildings and made other valuable improvements on the premises; that certain other persons, residing on some of these lots, have as they learn, petitioned Congress either to cause the said lands to be brought into market again, or to pass a special

pre-emption law in their favor. The deponents testify that either of these measures would occasion a loss to them and others of the money they have paid, and the improvements they have made; and that a refusal by Congress to confirm the titles of Laventure, Childs, and Thompson, would perhaps totally ruin many valuable citizens, who have expended all their means in purchasing lots and improving them, and would seriously retard the growth and prosperity of the place. The deponents moreover state that the individuals, adverse to the confirmation of the original titles, are interested in avoiding further payments on their purchases. And the inference from this and other documents is, that the individuals alluded to, having made only partial payments, think that they can obtain from Government the premises which they occupy on better terms, if Congress should comply with their request, than they would by the payment of the obligations and balances due from them to those from whom they purchased.

Another affidavit, signed and sworn to by B. H. Edgerton and eight other citizens, testifies that nine-tenths of the improvements made on these fractional lots 1, 2, and 3, which comprise 145 acres, are owned by those who, for two years past, have been petitioning Congress for a confirmation of the titles of the original pre-emptors; that their improvements amount to upward of \$100,000; and that more than one hundred individuals have made these improvements, which have derived their chief value from their capital and labor. The confirmation of these claims would, they state, also prevent the endless litigation to which adverse interests would otherwise give rise.

The remonstrances against the confirmation of these claims, also numerous signed (many of the signatures, however, being apparently in the same handwriting), state that the remonstrants "have been informed and believe" that fractional lots 1, 2, and 3, were originally floated illegally and fraudulently; that, from information, they are of the opinion that the manner of obtaining them was improper, and that the claims of the pre-emptors ought not to be confirmed. They concur with the memorialists in their appreciation of the value of the improvements made upon these lots; but they represent that these improvements took place at a time when money was plenty, and that the sudden revulsion in monetary affairs has materially affected the remonstrants interested therein. They pray that Congress may not confirm the claims of Laventure, Childs, and Thompson; but that they will authorize the survey of the premises into town lots and out-lots, and direct the sale of the same at public auction, or grant to the settlers thereon those portions of the same which they have occupied and improved. Various private letters, referred to the committee, are of similar tenor and purport with the remonstrances. They ostensibly oppose the confirmation of the claims chiefly on the ground of imputed fraud.

The decision of the Commissioner of the General Land Office, as before intimated, on these and other pre-emption claims, was communicated to the register and receiver at Green Bay, in a letter dated the 22d of March, 1838, and was to the effect, that lands acquired by the United States under the treaty with the Pottawatomies and other tribes of Indians, concluded at Chicago on the 27th of September, 1833, and whose ratification was proclaimed by the President on the 21st of February, 1835, were not subject to the operation of the pre-emption act of June 19, 1834. In that letter he informed the register and receiver that he had cancelled the certificates of the claimants whose claim is embraced in the bill referred to the committee, and directed the receiver to refund to them the money which they had paid.

him for the fractional lots in question. At the same time he authorized Linus Thompson to re-locate by virtue of his float; and, in a letter dated the 29th of March, 1838, he gave a like authority to Francis Laventure and Ebenezer Childs. But it is not pretended that any of these claimants have availed themselves of this authority; nor have they either received back the money directed to be refunded to them, or surrendered the certificates issued to them by the land office at Green Bay. It is presumed that it is supposed that this would weaken the strength of their titles to the fractional lots on the west side of Milwaukie; and they have, therefore, held on to their certificates. On the 29th of December, 1839, upon representation that the claims of Laventure and Childs were founded in fraud, the Commissioner countermanded the authority given by him to those individuals, on the 29th of March, 1838, to re-locate their floats on other lands. In a letter to a member of the committee, the Commissioner states that no evidence of fraud has been presented to his office.

With regard to the claim of Linus Thompson, the Commissioner is not aware of any other objection to it than its location upon land not subject to the operation of the pre-emption act of June, 1834. In relation to the claims of Laventure and Childs, he states that, in addition to that objection, the allegations of fraud which have been made would induce him to suspend action upon the subject, if the claims were before him, until the truth of those allegations should be investigated. The imputation of fraud in these cases is of recent date, suggested since the application to Congress was made for their confirmation, and stimulated by rival, personal, and conflicting interests, and passions. There is, however, in the bill referred to the committee, a proviso rendering the confirmation of these claims dependent upon the fact, that they would have been legal and valid had the treaty of Chicago been ratified prior to the 19th of June, 1834, when the pre-emption act was passed. This proviso obviates any objection to the bill arising out of the suggestion of fraud, and leaves the question open for decision on principles of equity, justice, and expediency.

It will be observed, that the claims of Laventure, Childs, and Thompson were rejected by the Commissioner of the General Land Office on the ground that the lands on which they were located, acquired by the treaty of Chicago, were not subject to the operation of the pre-emption act of June 19, 1834. That treaty was concluded on the 27th of September, 1833. It was conditionally ratified by the Senate in May, 1834. The pre-emption act passed on the 19th of June, 1834. The conditions of the ratification of the treaty having been acceded to, the President proclaimed its final ratification in February, 1835.

In point of fact, the lands acquired under the Chicago treaty may be considered to have been substantially owned by the United States in 1833—some months before the passage of the pre-emption act of June, 1834. The treaty was conditionally ratified before the passage of that act. The conditions were, as just stated, subsequently acceded to by the Indians. The facts go to show the ownership in the United States in a still stronger light. At the time of the location of the floating rights of Laventure, Childs, and Thompson, in the summer of 1835, the lands actually belonged to the United States, and were ordered to be sold by a proclamation issued by the President on the 6th of May, 1835. The title of the Government was then perfect. And it would seem to the committee that, although technically the Commissioner of the General Land Office was perhaps authorized to reject

those claims, substantial justice, equity, and expediency, require their confirmation.

Since the original entry of the fractional lots proposed by the bill to be confirmed, the greater part, if not all, of the property has passed from the original owners to a number of innocent purchasers. In the erection of buildings and other improvements, a large sum of money has been expended; which, together with the purchase-money, will be lost to those of the present proprietors who have actually made their payments, unless the titles to these lands should be confirmed. It would be derogatory to the character of the nation; this Government would exhibit itself in the attitude of a grasping miser and speculator on the capital and labor of individuals, if Congress could consent to take back the lands improved, made valuable, and held by those individuals, under what they believed to be valid titles. Congress can surely never authorize these lands to be thrown into the market again, and, with their valuable improvements, made at the expense and by the industry of private citizens, sold to replenish the Federal treasury. The lands have already been sold by the agents of the Government, and paid for by the original claimants, who now seek from Congress a confirmation of their titles. If any irregularity attended the proceeding, it was the duty of the public agents to have prevented it; and it was their fault that it occurred. It would be unworthy of the Government to avail itself of the error of its own officers, especially when the probability is that the land would not, without the improvements, have commanded more than the minimum price fixed by law. It is certain that a portion, if not all, of the persons now soliciting Congress to reject the bill before it, and to set the land up at auction again, or to grant a special pre-emption to the settlers upon it, are individuals who occupy but a small part of the property, and who still owe largely for the prices which they stipulated to pay for their premises. It is in proof that nine-tenths of the improvements on these lands were made by the petitioners for the confirmation of the titles of Laventure, Childs, and Thompson. To grant special rights of pre-emption to all the settlers upon it, as well those who have not paid for their premises as those who have, would be to lend the sanction of Government to the violation of solemn contracts between individuals. Those who have paid, and who have made their own improvements, do not ask such an interposition from Congress. They would have no motive to do so. It is only the debtor holders of parts of the property who desire to be relieved in that way.

The committee are aware, that decisions, adverse to pre-emptions under similar circumstances with those of the present case, have been made. Such decisions may have been very proper on the part of officers, whose duty it is simply to interpret and execute the laws as they find them on the statute book. But applications to Congress for relief need be made only when existing laws do not afford it. When made, they are addressed to our sense of equity and justice; to our consciences and liberality; and we neither are, nor ought to be, in such cases, tied down by the rigid rules of law, to the exclusion of equitable and fair considerations of right and justice. Upon the whole, therefore, the committee are of the opinion, that it is both expedient and important, that the bill should pass. The litigation arising on the property in question, ought to be suppressed in the bud. The difficulties and controversies produced by rival and adverse interests and feelings, ought to be tranquillized and terminated. They interpose serious obstacles to the improvement and prosperity of a point on the western shore of Lake Michi-

gan, destined to become a great commercial place. Paternal considerations on the part of the Government, a just spirit of equity and liberality towards the pre-emption claimants, their undisputed possession of the property for nearly three years, and the still continued possession of it by them, or by those who hold under them, with the greatly increased value which their capital and labor have imparted to it, all indicate the policy and justice of a confirmation of the titles of the original claimants. The committee, therefore, report the bill without amendment.

Memorial of the legislative assembly of the Territory of Wisconsin, praying the confirmation of the claims of Francis Laventure and others, to certain lands in that Territory.

To the honorable the Senate and House of Representatives of the United States of America, in Congress assembled :

The memorial of the legislative assembly of the Territory of Wisconsin
RESPECTFULLY REPRESENTS :

That, in the summer of 1835, Ebenezer Childs, Linus Thompson, and Francis Laventure, being possessed of three floating rights, under the pre-emption law of 19th June, 1834, located the same, agreeably to the provisions of said act, upon lots one, two, and three, of section thirty-two, township seven, of range twenty-two, in the county of Milwaukie, and took the receiver's receipts for the same.

That, in the same year, the late President of the United States, by proclamation, ordered the sale of certain lands in the Green Bay land district, to be held at Green Bay, in the month of September; among the lands so ordered for sale, was the said township seven (it being then embraced within the limits of said land district), at which sale the whole of said township was sold, with the exception of such parts as had previously been obtained by pre-emption, or floating rights. In the month of May, 1838, these floating rights were rejected by the Commissioners of the General Land Office, and the officers of the Land Office, at Green Bay, were directed to refund to the original purchasers, the money that had been paid for said premises.

Since the sale of said premises, the original purchasers, or those who held under them, have had possession, and, until some time in the winter of 1838, undisputed possession of the same, and have erected buildings and made other valuable improvements thereon, and, until a short time previous to the aforesaid decision of the Commissioners of the General Land Office, no doubt was entertained of the validity of the title to said premises, and numerous sales were made at prices, varying from two hundred and fifty, to five thousand dollars per acre. If the Government does not interfere and protect the purchasers of said lands, consequences will follow, ruinous to many individuals, and will involve hundreds in expensive and almost interminable litigation. If, after the lapse of years, the decisions of the authorized agents of the United States are to be reversed, and pre-emptions rejected, there is no safety in purchasing lands similarly obtained; all confidence would be destroyed in titles, whether obtained

from the United States, or from individuals ; the transfer of property would be prevented, and the settlement and improvement of the country, retarded. A similar memorial to the foregoing, was sent to your honorable body from this assembly, at its last session ; but, since that time, having learned that a number of individuals, consisting, in part, of those who have purchased of said lands, and have paid but a small part of the consideration therefor, and who wish to take advantage of a default in the titles, to get a release from their obligations ; and on part of individuals who wish to take advantage of any thing, whereby they hope to benefit themselves, have taken possession, by making claims upon said premises, and have forwarded petitions to your honorable body, praying to have the said lands sold ; we deem it our duty to again lay the matter before you. This assembly are further urged to do this, in consequence of the difficulties and disturbances that have since arisen between the purchasers and claimants, and which, if not checked by some immediate action upon the subject, may lead to consequences disgraceful to individuals and to the community.

Viewing, therefore, the circumstances of the cases, the amount of property involved, the great number of hands through which the same has passed, the time that has elapsed since the sale, and the difficulties that have arisen, and may continue to arise, we would ask of the Congress of the United States, a confirmation of the titles to said lands, believing that in this way only, can strict justice be rendered to the present occupants, and the peace and good order of society maintained.

EDWARD V. WHITON,

Speaker of the House of Representatives.

JAMES COLLINS,

President of Council.

Approved December 30, 1839.

HENRY DODGE.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled :

The memorial of the undersigned, inhabitants of the county of Milwaukee, and Territory of Wisconsin,

RESPECTFULLY REPRESENTS :

That in the summer of 1835, Francis Laventure, Ebenezer Childs, and Linus Thompson, of Green Bay, in said Territory, being possessed of three floating rights, under the pre-emption law of 19th June, 1834, located the same agreeably to the provisions of said law, upon lots one, two, and three, of section thirty-two, township seven, range twenty-two, at the Green Bay land office, and received the receiver's receipts for the same.

In the same summer of 1835, and at the time of the locating the said floating rights, these lands were, by proclamation of the late President of the United States, ordered to be sold at Green Bay in the month of September of that year. At that time the whole of said township seven was sold, except such tracts as had previously been obtained by pre-emptions, or floating rights.

Since the purchase of these lands of the United States in 1835, the original purchasers, and those who hold under them, held undisputed possession of said premises up to the month of May, 1838, when they learned with surprise that the floating rights of the abovenamed individuals had

been set aside, and that an order had been issued by the Commissioner of the General Land Office to the land officers at Green Bay, to refund the purchase money paid for the same. This decision was made upon the ground, that lands acquired by the United States at the treaty of Chicago, were not subject to the operations of the pre-emption law of 19th June, 1834. This treaty was concluded on the 27th day of September, 1833, but was not ratified till 21st February, 1835. The pre-emption law of 1834 required cultivation by the settler in 1833; but as the above treaty was not ratified till after that time, no pre-emption could be obtained on any lands acquired by that treaty, as any person settling upon the same would be a trespasser upon the rights of the Indians. This reasoning, however sound it may be, does not apply in the present case, because the pre-emptions from which these floats originated, were perfected upon lands, the title to which for a long time previous, had been in the United States. However this question may be settled, we cannot see what bearing it can have upon the title to the lands in question, *provided* these floats were located upon the lands *which, at the time of such location, actually belonged to the United States.* The act of 29th May, 1830, which was revived by the act of 19th June, 1834, provides, that where two or more persons may be settled upon the same quarter section, the same may be divided, and each of such settlers shall be entitled to a pre-emption of "*eighty acres elsewhere in said land district.*" The pre-emptions from which these floats originated were obtained under the act of 19th June, 1834, and the floats laid upon lands *within the district,* and which, at the very time of their location, were proclaimed for sale by the President of the United States.

The act of Congress allowing the location of floats upon any lands *within the district,* is without reservation or restriction; and in the present case we can see no reason for the decision requiring the title to the above lands to have been in the Government in 1833. But whether the title was or was not in the United States, and even admitting *it was not,* up to the time of the purchase by these individuals, yet Government assumed the ownership, and by its agents guaranteed a title to the purchasers. And if the Government now has a title, so should a title to these purchasers, and those holding under them, be perfect.

If, however, these points, on strictly legal grounds, should be decided against the present owners, still they rely upon the justice and liberality of Congress for a confirmation of the titles to the above lands.

If any error has been committed, it has been by the land officers at Green Bay, and the innocent purchasers under the original owners are now made to suffer for this ignorance of their official duties. Since the original entry, the whole of the lands embraced in the abovementioned tracts, have passed from the original owners to a large number of innocent purchasers.

These lands have been laid out into lots as part of the town of Milwaukee, and are owned by hundreds of individuals, all of whom bought in good faith, paid high prices, and many of them have made valuable improvements thereon, supposing no doubt existed as to the validity of these titles.

If after a lapse of three years pre-emptions allowed by the authorized agents of Government are to be rejected, there is no safety in purchasing any lands similarly obtained, no matter at what time they may have been purchased. Such a course would involve in ruin the best citizens of the West, and destroy all confidence in titles, whether derived from the General Government or from private individuals. It would prevent the exchange of prop-

erty similarly situated, retard the settlement of the country, and in the present instance, will seriously affect the interests of a large number of people, and involve our inhabitants in general and ruinous litigation.

These premises are a part of the town site of Milwaukie. In the erection of buildings and other improvements a large amount of money has been expended, which, together with the purchase money, unless the titles to these lands should be confirmed, will be lost to the present proprietors.

In view, therefore, of all the circumstances of the case, the amount of property involved, the number of persons through whom the title has passed, and the length of time that has elapsed since the original purchase, we would respectfully ask—is it proper for Government to make hundreds of innocent purchasers suffer for the errors or ignorance of its own officers?

Much more might be said by your memorialists, to induce your honorable bodies to grant relief to the present proprietors of the above lands. They believe, however, that sufficient has appeared to recommend the matter strongly to your consideration.

Your memorialists, therefore, pray that said floating rights may be allowed and confirmed, and that patents may be issued accordingly; or that such other relief may be granted to the present proprietors of said lands as may be right and proper. And your memorialists will ever pray, &c.

GEORGE D. DOUSMAN,
and others.

TERRITORY OF WISCONSIN, }
Milwaukie county, } ss.

Solomon Juneau, Elisha Starr, Allen O. T. Breed, Allen W. Hatch, Henry S. Hosmer, John S. Rockwell, James Sanderson, and Geo. D. Dousman, being duly sworn, depose and say: That they are well acquainted with the situation of fractions one, two, and three, of section thirty-two, township seven, range twenty-two, in Milwaukie county; that, as they have always understood and believed, said premises were purchased at the Green Bay land-office, in 1835, by Linus Thompson, Ebenezer Childs, and Francis Laventure; that, in 1836, said premises were surveyed and laid out into lots, and formed a part of the town of Milwaukie; that they have been sold at from one to six thousand dollars per acre; and that a large number of persons residing in different parts of the United States are interested therein; that, in the month of May, 1838, these deponents learned that the receipts and certificates issued to the above purchasers by the authorized agents of Government, had been cancelled, on the grounds and for the reasons set forth in the petition hereto annexed; that, previous to said month of May, 1838, the purchasers of said premises, or those who hold under them, erected many buildings, and made valuable improvements, to a large amount, on said premises.

These deponents are informed, that certain individuals residing on said premises as tenants under the original purchasers, or those who hold under them, are, and have been making strong efforts against the confirmation of these titles by Government; representing that, in case they should be confirmed, they would thereby be seriously injured.

These deponents are further informed and believe, that those persons are petitioning Congress at this time, either to have these lands brought into

market, or that a special pre-emption law may be passed, granting these premises, or certain portions thereof, to these individuals. The adoption of either of these measures by Congress would seriously injure the persons who have become interested under the original purchasers, inasmuch as they will lose, in most instances, the money they have paid and the value of their improvements. These deponents believe that a refusal, on the part of Government, to confirm these titles, will seriously injure, and perhaps totally ruin, many valuable citizens, who have expended all their means in purchasing or making improvements upon these premises.

The growth and prosperity of that part of the town of Milwaukee are greatly retarded by the doubt that exists as to the validity of these titles. The individuals adverse to the confirmation of these titles have no interest in said premises, other than such title as they derive from the present owners of said premises, and will only be injured by the confirmation of the titles in that they may be obliged to pay for the lands which were sold to them in good faith, by those who supposed they had a good title thereto.

S. JUNEAU,
ELISHA STARR,
A. O. T. BREED,
A. W. HATCH,
H. S. HOSMER,
JOHN S. ROCKWELL,
JAMES SANDERSON,
GEORGE D. DOUSMAN

TERRITORY OF WISCONSIN, }
Milwaukee county, } ss.

I, Cyrus Hawley, clerk of the United States district court for the county and Territory aforesaid, do hereby certify, that Solomon Juneau, Elisha Starr, Allen O. T. Breed, Allen W. Hatch, Henry S. Hosmer, John S. Rockwell, James Sanderson, and George D. Dousman, personally appeared before me, and severally made oath to the foregoing statement.

[L. s.] In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 7th day of December, A. D. 1839.

CYRUS HAWLEY, *Clerk.*

TERRITORY OF WISCONSIN, }
Milwaukee county, } ss.

Solomon Juneau, James Sanderson, Elisha Starr, Daniel Wells, jr., B. H. Edgerton, Geo. O. Tiffany, A. W. Hatch, John S. Rockwell, and Geo. D. Dousman, being duly sworn, severally depose and say, that they have seen what purports to be a petition of citizens of Milwaukee county to the Congress of the United States, praying that body to authorize the sale of fractions one, two, and three, of section thirty-two, of township seven, range twenty-two, in the Milwaukee land district; and, praying further, that the settlers upon the same may have the right of pre-emption to the portions of said fractions improved and occupied by them. And these deponents further severally depose that the individuals, for whose benefit said petition is circulated, entered upon said premises under and by permission of those who originally purchased said tracts of the United States, or those who derive title under them; that, having failed to make payment of the pur-

chase money of the portions of said premises on which which they are now settled, they seek, by fraudulent representations to Congress, to deprive of their title those who purchased of the Government in good faith, and paid high prices for these very lands. And these deponents further depose that nine-tenths of the improvements upon said premises are owned by those who, for two years past, have petitioned Congress for a confirmation of the titles originally obtained from the Government; that the improvements on said premises owned, or pretended to be owned, by those who are opposed to a confirmation of these titles, excepting those who hold under the original owners, do not exceed in value four thousand dollars; and their improvements will not be lost to them, as they will have a title to the lands on which they stand upon confirmation of these titles, by their complying with the terms of their contracts. And while these deponents cannot imagine any ground on which an injury can be done to those settlers on these lands adverse to the confirmation of these titles, they are satisfied that the loss to those who purchased of the Government in good faith will be upward of *one hundred thousand dollars*. These three tracts of land contain about one hundred and forty-five acres; and, previous to any doubt or question of the validity of the titles, were sold from two to six thousand dollars per acre. Upward of one hundred individuals are now interested in these premises. Many will lose all they have paid, and others will have to refund from one to fifteen thousand dollars in case the said titles are not confirmed. Suits, involving a large amount of money, are now pending in the district court of Milwaukie to recover back the purchase-money paid by purchasers for portions of these premises; and these deponents can see no end to the litigation that will arise out of these disputed titles, unless Congress should confirm them. These premises are valuable property, and have derived their chief value from the capital and labors of these deponents, and others interested with them. A greater piece of injustice could not be done to private individuals than is now attempted by those who are opposed to a confirmation of these titles.

Since the purchase of these lands some of these deponents have paid taxes at a high rate, from year to year, as the same have been assessed and taxed, like other lands in the county.

B. H. EDGERTON,
 JAS. SANDERSON,
 A. W. HATCH,
 JOHN S. ROCKWELL,
 GEORGE D. DOUSMAN,
 S. JUNEAU,
 ELISHA STARR,
 DANIEL WELLS, Jr.
 GEORGE O. TIFFANY.

MILWAUKIE, *January 27, 1840.*

TERRITORY OF WISCONSIN, }
 Milwaukie county, } ss.

I, Levi Blossom, jr., a notary public, in and for the county of Milwaukie, do hereby certify that the foregoing affidavit was duly subscribed and sworn to before me, by the persons whose names are thereunto attached.

Witness my hand and official seal, this 26th day of January, A. D. 1840.

L. BLOSSOM, Jr. [L. s.]
 Notary Public.

To the honorable the Senate and House of Representatives of the United States, in Congress assembled :

The undersigned your petitioners, citizens of the Territory of Wisconsin,

RESPECTFULLY REPRESENT :

That they are acquainted with the location of lots Nos. 1, 2, and 3, in section No. 32, of township No. 7 north, of range No. 22 east, in the Milwaukee land district :

That they have been informed and believe that said lots have been illegally and fraudulently floated ; that the floats laid on the same *have been justly reversed by proper authority* ; that the manner of obtaining and the right to lay said floats, the legality and propriety of raising the same, and the extent of the settlers' claims to certain portions of said lots, have been matters of public and general discussion :

That from information derived from such public and general discussion, they are of opinion that the manner of obtaining and laying said floats, was improper and illegal, and consequently, that they were properly and legally raised :

That the said lots are a valuable town site, and ought, in their opinion, to be laid off into town lots, and out lots, and sold as such by authority of the United States :

That from the knowledge of the time when the settlers located upon certain portions of said lots (the greater part of whom have resided upon said lots for the last three years and upward) and the purposes for which they settled, and from their knowledge of the extent of their improvements on the same, being in value from one thousand to eight thousand dollars each, money actually expended in building, &c., to wit : erecting dwellings, stores, outhouses, gardens, orchards, fences, and grading, filling up and otherwise improving said lots, do believe said settlers have an equitable claim to those portions so improved :

That they further believe said lots 1, 2, and 3, would not be half so valuable to Government as they now are, were it not for the improvements made upon them by said settlers :

That they are acquainted with the character of said settlers, and believe them to be an industrious and meritorious class of citizens.

And they would respectfully further represent : That, in their opinion, should Congress not grant said settlers relief, it would ruin them nearly if not quite. So great an amount has been expended by them in improvements upon said lots, at a period when money was plenty and easily obtained ; but the sudden revulsion in monetary affairs so universally felt in all parts of the Union, has materially affected them, and Government only, in their opinion, can relieve them without doing injustice to itself, the community, or a single individual, but, on the other hand, benefit all concerned.

Therefore, your petitioners in view of the foregoing facts, respectfully solicit that Congress will authorize a survey of said premises into town lots and out lots ; also, authorize a sale of said lots at public auction ; and also grant to the settlers on the same, a pre-emption to those portions of said lots which they have improved and occupied, at such price as your honorable body may deem just and reasonable.

And your petitioners as in duty bound, will ever pray, &c.

JNO. T. HAIGHT, and others.

To the honorable the Senate and House of Representatives of the United States, in Congress assembled :

Your remonstrants, inhabitants of the town and county of Milwaukie, in the Territory of Wisconsin,

RESPECTFULLY REPRESENT :

That they reside on lots Nos. 1, 2, and 3, in section 32, township 7 north, and range 22 east. Said three lots are parcel of the Pottawatomie Indian lands, whose title thereto was not extinguished until the year 1836. That in the year 1834, and prior to the extinguishment of the said Indian title, Francis Laventure, Ebenezer Childs, and Linus Thompson, then and now residents of Green Bay, which is distant 120 miles from this place, under color of right, by virtue of the second section of the pre-emption act, of 1830, which reads as follows: "That if two or more persons be settled upon the same quarter section, the same may be divided between the first two actual settlers, if, by a north and south, or east and west line, the settlement or improvement of each can be included in a half quarter section; and in such case the settlers shall each be entitled to a pre-emption of 80 acres of land elsewhere in said land district, so as not to interfere with other settlers having a right of preference," located pre-emption floats on said lots, and took out duplicate certificates of the purchase thereof, at the land office in Green Bay, although at that time said lot (No. 1) was actually settled and built upon by another individual.

And your remonstrants further represent, that, as they are informed and believe, said floats were laid at the instance, with the connivance, and principally for the benefit of some shrewd and wealthy speculators, who sold in smaller parcels to others, the price augmenting at an enormous ratio at each successive sale, until the whole of lot No. 1, although one half of it was marsh, sold without improvements from \$3,500 to \$6,600 per undivided acre; and town lots on lot 2, of the size of 140 feet by 50 feet, sold from \$1,000 to \$1,250 per lot. At the height of this speculation, and at these ruinous prices, your remonstrants, who are mostly mechanics and laborers, desirous of locating in the vicinity of Milwaukie, deceived by false appearances and representations, purchased village lots and small parcels of this tract at enormous prices, for the purpose of actual settlement and improvement; that the terms on which they purchased were usually one-fourth cash down, and the balance in payments of three, six, and nine months; and, that wholly unaware of any defect of title in the original pre-emptors of said lots, many of your remonstrants went on and erected dwellings and other buildings, at great expense, and made other valuable improvements on the premises so purchased by them. At this juncture, and after your remonstrants had actually paid a large portion of the purchase money which they were to pay for their purchases, which sums so paid are far more than the actual value of the lots purchased by them, the bubble of speculation burst, and they were left with heavy and ruinous balances still due, and with their lots dead and comparatively valueless upon their hands.

And your remonstrants would further represent, that said floats were subsequently raised by the Commissioner of the General Land Office, on the ground that the Indian title to said land was not extinguished when they were laid, and that the pre-emptions to said lots, taken out by said

Laventure, Childs, and Thompson, were illegal and void ; which decision, on appeal to the Secretary of the Treasury, was confirmed. That, thereupon, those speculators who were the previous purchasers of these lots, and who had sold to your remonstrants at greatly enhanced prices, applied to Congress for confirmation of title to said three lots in said original pre-emptors, Laventure, Childs, and Thompson ; representing, as your remonstrants are informed, that distress and ruin awaited them unless the title to said lots was so confirmed ; that in pursuance of said application, a bill was passed in the Senate, at the last session of Congress, numbered Senate bill 68, confirming said title accordingly, and was sent to the House of Representatives for confirmation ; that the Committee on Private Land Claims reported against its passage, and in this state the bill now stands for the further action of the House.

And your remonstrants would further state, that, as they are informed and believe, said speculators, many of them at least, purchased said lots on the condition that they should pay for them if the title should prove good, and that, as between themselves, they usually conveyed by quitclaim deeds, without warranty of title ; whereas, they sold to your remonstrants by giving bonds for deeds conditioned to convey on full payment of all the purchase money ; that some of your remonstrants, after having paid a large amount, have been prosecuted for the balances still due on these bonds, the suits for which are now pending ; that the plaintiffs in these suits, rely for recovery on the ground for confirmation of title in said original pre-emptors ; and that if said titles are confirmed, and judgments are recovered against your remonstrants, it will reduce many of them to utter poverty and ruin.

Your remonstrants are fully aware of the great disadvantages under which they labor, in opposing the confirmation of title to said lots, in said original pre-emptors, from the fact that the application is supported by speculators who are men of wealth and influence, some of whom are high in office, scattered throughout the Territory and the Union—one only of whom is a resident on said tract ; while your remonstrants are mostly mechanics and laborers, who bought for permanent settlement and improvement, and who are now all of them actually residing on said lots, and have made valuable improvements thereon.

And your remonstrants would further state, that although said lands are valuable, yet they are far from being worth the enormous prices which they, incautiously, by false appearances and representations, agreed to pay said speculators ; and that should Government see fit to offer them in market to the highest bidder, they would gladly purchase them at a fair price, to save their improvements from the grasp of the speculator, and themselves and families from beggary and ruin.

Your honorable body are doubtless aware, that there are various other claims in this Territory, and elsewhere, resting on precisely the same grounds with that of said Laventure, Childs, and Thompson, all of which are directly against the letter and the spirit of the pre-emption act ; and that, if title in this case is confirmed, it will be a precedent eagerly caught at by others, and thus Government will be defrauded out of a considerable amount of revenue which might be obtained on the sale of such lands in market.

Your remonstrants, therefore, respectfully pray, that said bill do not pass, and that title in said Laventure, Childs, and Thompson, by no other act be confirmed.

J. B. ZANDER, and others.

MILWAUKIE, November 20, 1838.

MILWAUKIE COUNTY, }
 Wisconsin Territory, } ss.

Personally appeared before me, Elihu Higgins, justice of the peace, in and for said county, Hubbel Loomis, Jeremiah B. Zander, and William Howard, who are known to me, and after being duly sworn, say, that the facts set forth in the above remonstrance are true.

H. LOOMIS,
 J. B. ZANDER,
 WILLIAM HOWARD.

I hereby certify, that the deponents are persons that are entitled to credibility.

Sworn and subscribed before me, this 26th day of November, 1838.

ELIHU HIGGINS,
Justice of the Peace.

GENERAL LAND OFFICE, February 8, 1840.

SIR: I have the honor, in reply to your letter of the 6th instant, requesting, in behalf of the Committee on Public Lands, of the Senate, "a copy of the decision of this office upon the claims of Laventure, Childs, and Thompson, to certain fractions of land on the west side of the Milwaukee river, near the town of that name," to enclose, herewith, a copy of my letters of the 22d March, 29th March, 1838, and December 20, 1839, to the land officers at Green Bay, Wisconsin Territory, in which the action of this office on these claims is fully set forth.

I am, with much respect, your obedient servant,
 JAS. WHITCOMB, *Commissioner.*

Hon. JOHN NORVELL,
Senate of the United States.

MARCH 22, 1838.

GENTLEMEN: This office having decided that lands acquired by the United States at the treaty of Chicago, concluded on the 27th September, 1833, but not ratified until the 21st February, 1835, were not subject to the operation of the act of June 19, 1834, rejected the claims of the following individuals, viz:

Francis Laventure, float north half northeast quarter 32, 7 north, 22 east, per certificate	5
Ebenezer Childs, float lot 2, northeast fractional quarter 32, 7 north, 22 east	6
James Vieux, pre-emption, northwest quarter 31, township 7 north, 22 east	22
Linus Thompson, float lot 3, southeast quarter 32, 7 north, 22 east	22
Jacques Vaux and Lewis Vaux, pre-emption, northwest quarter northeast and south half northeast quarter 4, 3 north, 22 east	1,562
Jacques Vaux, float lots 1 and 2, section 9, 3 north, 23 east	1,563
Lewis Vaux, float lot 6, section 9, 3 north, 23 east	1,564
Robert Grignon, float lot 5, section 9, 3 north, 23 east	1,601
William Powell, float lot 4, section 9, 3 north, 23 east	1,607

Luther Gleason, float lot 3, section 9, 3 north, 23 east	} No entries: on application and tender of money for these tracts.
James Nevill, float east half northwest quarter, 3 north, 23 east.	

This decision, on an appeal to the Secretary of the Treasury, having been confirmed by that officer on the 19th instant, and direction given to have the same carried into effect, I have cancelled the certificates above mentioned, viz, 5, 6, 22, 24, 1,562, 1,563, 1,564, 1,601, and 1,607; and the receiver is authorized to refund to the individuals entitled to receive the same, the amount of purchase-money paid for the tracts described in those certificates respectively, taking receipts for the same, which he will forward to this office with his account current for the month in which the repayments may be made, having reference therein to the date of this letter.

You are also authorized to permit Linus Thompson, Robert Grignon and William Powell, to re-locate, and Luther Gleason and James Nevills to locate now their floats upon any land in your district now vacant, which was subject to such entry, before the expiration of the law under which those floats arose, with the further instruction imposed by my circular of 11th October last with regard to vacant and unimproved land, provided the claimants or those interested in those floats shall, after due notice by you of these instructions, locate the same without unnecessary delay.

The floats of Francis Laventure and Ebenezer Childs, depending upon the validity of their original claims, which is at present suspended, will form the subject of another communication, when authority will be given for their re-location, should it be decided that they are entitled to such rights.

Respectfully, your obedient servant,

JAS. WHITCOMB, *Commissioner*

REGISTER and RECEIVER,
Green Bay, Wisconsin Territory.

MARCH 29, 1838.

GENTLEMEN: Since my letter of 22d instant, the case of Childs and Laventure, then suspended for further examination, has been attentively considered, and their joint entry, per certificate No. 4, approved. Their right to floats being also deemed established, you are authorized to permit the re-location of those which, by my letter abovementioned, you were informed had been cancelled; provided, the claimants, or those interested in those floats, shall, after due notice by you of these instructions, locate the same without unnecessary delay.

Respectfully, your obedient servant,

JAS. WHITCOMB, *Commissioner*

REGISTER and RECEIVER,
Green Bay, Wisconsin Territory.

DECEMBER 20, 1839.

GENTLEMEN: On the 22d March, 1838, a communication was addressed to your office in reference to certain pre-emption claims, among which was that of Francis Laventure and Ebenezer Childs. The floats of these indi-

viduals, as located, were, for the reasons therein given, cancelled, and instructions of the 29th March were furnished you for their re-location; the proof on file showing that they were entitled to the floating privilege. It being, however, represented that the original claim was founded on fraud, so far as the right of Ebenezer Childs is concerned—he being at the time, and for some years previous, a resident of Green Bay, and deriving his claim from the purchase of an alleged improvement made by his father-in-law, (Mr. Grignon,) who himself lived twenty-five miles distant from the tract upon which improvement is said to exist, and from which the floats are derived—you will consider said instructions for the re-location of *these* floats rescinded; and if application for that purpose should be made, refer the matter to this office, when a full examination of the subject will be directed. Such an investigation, for the purpose of correcting entry No. 4, in the joint names of said Laventure and Childs, in the event of such fraud being proven, would now be given, but for the fact that certificate 4 has been patented, and the control thereof passed from this office; and the only thing left is to prevent the extension of the fraud, if it exists, by controlling the locations of the floats, until all doubt of their legitimate character is removed.

Respectfully, your obedient servant,
JAS. WHITCOMB, Commissioner.

REGISTER AND RECEIVER,
Green Bay, Wisconsin Territory.

GENERAL LAND OFFICE,
February 11, 1840.

SIR: I have examined the papers in the cases of Francis Laventure Ebenezer Childs, and Linus Thompson, referred to me by you as chairman of the Committee on Private Land Claims; and have the honor to refer you, for information as to the action of this office on the claims, for which the confirmation of Congress is now sought, to my letter of the 8th instant, and its enclosures, to the honorable John Norvell, one of the committee of which you are chairman. With regard to the case of Linus Thompson, this office is not aware of any other objection to the claim than its location upon land not subject to the operation of the act of 19th of June, 1834; but with regard to the other two, in addition to the same objection, allegations of fraud have been recently made, which would induce this office, were these claims before it for its action, to suspend them until these allegations, of which proof is proffered, should be entirely removed by satisfactory evidence.

I am, with much respect, your obedient servant,
JAS. WHITCOMB, Commissioner.

HON. L. F. LINN,
Chairman Committee Private Land Claims, Senate U. S.

P. S. The papers are herewith returned.

GENERAL LAND OFFICE,
February 12, 1840.

SIR: I have the honor to acknowledge the receipt of your letter of yesterday; and in reply to the inquiry, "upon what grounds the General Land Office decided that lands acquired by the United States at the treaty at Chicago, concluded on the 27th of September, 1833, but not ratified until the 21st of February, 1835, were not subject to the operations of the act of 19th of June, 1834?" I herewith enclose the opinions of the Solicitor of this office, dated, respectively, February 11, 1837; February 21, 1837; and March 23, 1837; in which all the points in regard to the effect of the treaty are fully set forth. No cases similarly situated with those of Laventure, Childs, and Thompson, are known or believed to have been confirmed by this office. I have also to state that the "representations of fraud" were unaccompanied by any *evidence* to support them; and that no evidence was required by this office, inasmuch as it had made a final disposition of the location now sought to be rendered valid by the confirmation of Congress; and the mention of such representations in my former letter was only made to put the committee in possession of all the objections known to this office; those representations being from such a source, and of such a nature, as to call for the action of this office, as indicated in my letter of the 20th of December last, a copy of which was sent you.

I am, with much respect, your obedient servant,

JAS. WHITCOMB, *Commissioner.*

HON. JOHN NORVELL,

Committee Private Land Claims, Senate U. S.

P. S. I also enclose a copy of the letter of Mr. Byron Kilbourn, dated 8th November last, being the one containing the representations above alluded to.

GENERAL LAND OFFICE,
Solicitor's Bureau, February 11, 1837.

SIR: I am of opinion that the supplemental article of the Chicago treaty of October, one thousand eight hundred and thirty-two, is part and parcel of the treaty. It was, at the treaty, agreed by the commissioners on the part of the United States that the Pottawatomie grant to the Godfroy "shall be considered in the same light as though the purport of the instrument had been inserted in the body of the *treaty*," *except* that its rejection by the President and Senate should not affect the validity of the treaty. By this stipulation, made in the presence of the chiefs of the Indian tribes, the faith of the nation is pledged to complete the grant by issuing a patent. The treaty has been *ratified*, and this supplemental article was not rejected. The grant to the Indian *donees* is a part of the consideration of the cession to the United States of the Indian title. The view I take of this case does not, as I apprehend, bring me in conflict with the laws of the United States regulating trade and intercourse with the *Indian tribes*. Section 12 of that act provides "that no purchase, grant, lien, or other conveyance of land, or of any title, or claim thereto, from any *Indian*, or nation or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty or convention entered into pursuant to the constitution."

We have the authority of the President and Senate that the treaty at Chicago was made pursuant to the constitution. It is the *treaty* which, in my estimation, gives validity to the claim of the Godfroys. The prior Indian grant of 1830 should hold of no effect under the law. It was a dead letter, until the treaty gave it life. It was then made a part of that treaty, simply to save writing and time. They might have adopted any piece of writing containing the mutual understanding of the parties, for the same purpose, no matter when made, or by whom.

I am, very respectfully, your most obedient,

M. BIRCHARD.

General WHITCOMB,
Commissioner.

Chicago Treaty of 27th Sept. 1833.—Case of pre-emption to the Notta wa-se-pee reserve in Michigan, O. P. Lacey, agent; and of Powell, Grignon, Nevill, Gleason, and L. and J. Vaux, at Root river, Wisconsin.

GENERAL LAND OFFICE,
Solicitor's Bureau, February 21, 1837.

SIR: In these cases, referred to me for my opinion as to the day when the treaty took effect, and also when these lands became subject to pre-emptions, under act of June, 1834, I have the honor to state that the *treaty* took effect on the twenty-first February, one thousand eight hundred and thirty-five, the day it was ratified by the President and Senate of the United States. The general rule is, that treaties are obligatory upon the parties from the date of the signatures; upon third parties, from the date of the ratification. This rule only applies where the contracting powers have neglected to stipulate the day on which the treaty is to go into operation. In the treaty in question, the parties stipulated as follows: "*This treaty, after the same shall have been ratified by the President and Senate of the United States, shall be binding on the contracting parties.*"

The Senate, on their part, ratified by two resolutions: one dated 22d May, 1834; the other 11th February, 1835. No part of the treaty as yet became obligatory upon *anybody*. Something more had been contracted, to wit: ratification by the *President*. He gave that by proclamation the day I have stated. It is the only ratification this treaty ever received from *him*. This opinion shows that no pre-emption to these lands was granted by the act of 19th June, 1834. There could have been no possession under that act. It was *Indian* lands in 1834, of which no white man could be possessed, or could be a "settler or occupant," agreeably to the act.

The pre-emptions claimed are all void, and must be disallowed. The error in the arguments of counsel arises from the assumption of premises that are unsound. They should not have overlooked the stipulation of the treaty, and reasoned upon the subject as though the contract of the parties had not given a day from which only the treaty was to bind them. Having done this, the contract cannot be construed so as to make it cover by relation the time that elapsed between its date and ratification.

Where the rule of construction as to date is given by *contract*, all other rules must yield to it. The cases cited by Mr. Carroll, (*Fisher vs. Hamden*, and *Hylton's lessee vs. Brown*,) are both cases arising under the treaty of peace with Great Britain, of 1782, in which no stipulation was made as to the day when the treaty was to become obligatory. They are not inconsistent with the rule I have laid down. I conceive they are consistent with, and in support of it. It will dispose of the pre-emptions in Michigan, and two of the floats laid on section nine at Root river, to wit: the floats of Louis Vaux and Jacques Vaux. The floats being void, the location is void also.

The cases of Powell, Grignon, Nevill, and Gleason, are cases of floats located, or attempted to be located, on section nine, at the mouth of Root river, Wisconsin Territory. The question arises, Were the lands "*public lands*" subject to location? What was understood by the term as used in the act of 1834? Was it not such lands as the United States owned? of which the *freehold* and right of occupancy were in them? As to the soil and jurisdiction, the United States have always owned them. Their title has been perfect, save only the Indian right of *occupancy*. This they contracted for at Chicago; and the contract is, that their right shall be absolute (three years after the date of the treaty,) or sooner if convenient for the Indians to remove west of the Mississippi. See *last clause of second article*, stipulating that the Indians shall retain possession *north* of Illinois, without molestation or interruption, and under the protection of the *laws* of the United States. This *protection*, among other things, is a prohibition to intrusions by white persons on lands which they have the right to possess—the protection of their possessory right of the only title which they ever owned, as is said by the Supreme Court. The Indian title is not then extinguished, and the law of 1834 does not authorize a sale of these *lands*. Some of the Indians yet remain on the cession; while any so remain, they all have the free and uninterrupted right to every part and parcel of the territory. And no white man can say, you shall keep off from section *nine*, or from any other portion of it.

The able counsel urge that a legal title may pass to the pre-emptors, subject to this reservation to the Indians: that if the Indians do not complain of the interference, no other person can plead it. They are mistaken. A patent issued without authority is void. If the Executive should patent the entire public domain, his patent would be worth less than so much blank parchment; the title would still be in the United States, unless the law authorized *the sale*. So in these cases: if the law does not authorize the sale until the Indian right is extinguished, patents will be void if issued; and, being void, other persons *than Indians* will plead and *prove* the Indian right of occupancy, to show that it is void. The final result will be, that the parties would lose their title and improvements, and only gain the vexation of a ruinous and expensive lawsuit. It is the best thing for them, however thankless the task, to stop the proceedings here.

If patents have issued to others, in like cases, (as the counsel intimate,) timely notice should be given them, so that the endless scenes of litigation that will otherwise *surely come* may be avoided. I have purposely omitted many points urged by counsel, having no time to spend on unnecessary work. If my decision shall operate prejudicially to the applicants, I can only regret it. The farther one is deluded in a stray path, the greater is his misfortune. But arguments upon the hardships of the law should be addressed to Congress. We cannot sell lands where they have not given us

the power. My opinion is not "*novel*," that word is more applicable to the decision made by the officers at Green Bay, and the construction put upon the law and treaty by counsel. The Attorney General decided that the pre-emption act did not authorize the sale of the lands while the Indians retained the right to remain upon it. The fact that the Government stipulated in this treaty for the right to survey and sell that part of the territory lying in Michigan, before the final removal of the Indians, should have been a sufficient notice to every person that, without such contract, Government did not claim the right to sell the lands while the possessory right was with the Indians.

I am, very respectfully, your most obedient servant,

M. BIRCHARD, *Solicitor*.

To JAMES WHITCOMB, Esq.,
Commissioner.

HOUSE OF REPRESENTATIVES,
Washington, January 28, 1840.

SIR: I have the honor to make the following statement, in reply to your inquiries relative to the claims of Francis Laventure, Ebenezer Childs, and Linus Thompson:

Two of these persons (Laventure and Childs) lived at Green Bay more than twenty years ago, and Thompson has resided there for the last sixteen years. The "Green Bay settlement" extends from a point nine miles below the head of the bay, up the bay and the river Neenah, to the Grand Kaukaulah, a distance of about thirty miles. A person residing anywhere in the settlement is said to reside *at Green Bay*.

The Indian title to the lands within this settlement was considered as having been acquired by the French and English Governments, and transferred by the latter to the United States. This was the basis of our civil jurisdiction in that country, and of the title of individuals to land, previous to the year 1835. Upon this point, I beg of you to accept, as a part of this communication, the accompanying paper, containing extracts of the treaties, reports, decisions, and laws, relative to title to land in Wisconsin.

The fact of possession long and uninterrupted has been considered evidence of the assent of the Indians to the occupancy of the individual, which gave the right of jurisdiction to the local government, and of protection to the individual. It is well known that the mouth of the Milwaukee river was an ancient trading station, where the Menomonies, Winnebagoes, Pottawatomies, Chippewas, and Ottawas, were accustomed to meet their traders, but have not, for many years, had permanent villages, having surrendered the possession to the whites. The tract thus occupied by Juneau, Jean Vaux, and others, since my residence in that country, extended up the Milwaukee about two miles, and up the Menomonie (a branch which unites with the Milwaukee near the lake) about four miles. The circumstances being similar, I think it is fair to presume the title was extinguished here, as it was, in the opinion of Government, at Detroit, and other places in the northwest.

The general term used in the cession of the Pottawatomies, of "all their lands along the western shore of Lake Michigan," ought not to be understood as asserting the right of ownership by them of the tracts then occu-

pied by traders or farmers, or which were within the limits of the ancient settlements. At the time fractions 1, 2, and 3, were selected, no question of title was raised, because there was no doubt that these tracts were within the Milwaukie settlement; and the President of the United States had caused them to be surveyed, and, by proclamation, offered them for sale, prior to the ratification of the Chicago treaty. I am confident that no person in that country, at that time, imagined that the right of these parties was affected, either one way or the other, by the Pottawatomie treaty. Previous to the location of these floats, others had been laid on lots in the adjoining section, on the same side of the river, and as much within the Pottawatomie cession as these tracts; and patents were immediately issued. The land has been patented on every side of these tracts, and yet the commissioner made a question whether these lots were ceded by the treaty. They are situated on the west bank of the Milwaukie river, near its mouth, in the Green Bay land district, and are in the township and section which were offered for sale by the proclamation of the President, and had never been reserved from sale for any purpose whatever. And even if the Indian title was not entirely extinguished, (as it *was*,) the title sought by the claimants did not militate against theirs, as the privilege of hunting and fishing (which is the whole of the Indian title) did not affect the fee. But if the title of the United States was not perfect at the time the President said it was, and the sale was made, it is so *now*; and a good title can be made. The Government, in any case, conveys only such title as it holds; but, in this instance, the only question now is, whether Government had the title when the patents were demanded; and of this there can be no doubt. The privilege which the parties acquired upon their joint pre-emption, was the preference in the purchase of land elsewhere within the district which was then in market. This right they obtained, and they made the purchase in strict conformity to the pre-emption laws and the instructions of the Treasury Department; they paid their money, and took the receiver's receipts therefor, according to law, which they still hold.

From the date of the sale to the present time, the original purchasers, or those holding under them, have had the actual possession of these tracts. It appears that the commissioner has refused to issue the patents, for the reason that the title of Government was not perfect on the day of the passage of the pre-emption act, (the 19th of June, 1834.)

It is admitted that the title was perfect at the time the pre-emption was proved and the floating rights located.

It is also admitted that the title of the United States was perfect to the land which was occupied by the pre-emptors, having been ceded by the Menomonies long before the passage of the act of the 19th of June, 1834.

The question then is raised, Were these tracts a part of the Indian country to which the Indian title had not been extinguished at the period when the rights of these parties accrued to them?

The pre-emption act gave the right of preference, where two persons were settled on the same quarter section, to each of them to purchase eighty acres *elsewhere* within the district. The word *elsewhere* is presumed to mean wherever else the United States were the owners of unoccupied land within the district, which was not reserved from sale by act of Congress, or by order of the President, or which had not been appropriated for any other purpose. The right of the pre-emptor to the floating eighty acres arises, and accrues to him, from the time the decision is made by the land officers

that he is a joint occupant of a tract with another person. He may *then*, and not before, make his application for the purchase of any vacant tract in that district, of which the land officers have the plats of survey, and which have been proclaimed for sale by the President ; and the period when the United States obtained the title to the various portions of the district is not a question to be raised. Neither is that of the period of the inception of his right to the tract he actually lived upon ; for the float is a right issuing out of a right. It is the fact of the double possession of a tract which is subject to entry by pre-emption, which gives the right of preference to both to buy eighty acres elsewhere in the same land district, at the minimum price. No previous occupation or cultivation of the tracts preferred by them is required ; and it is, therefore, immaterial whether the possession of them was, or was not, forbidden by law. In this instance it was not forbidden. The United States had the title when the sale was made ; and the land officers and the people were so informed by the proclamation of the President, by which the whole of this township was offered for sale at the date of the certificates of these parties.

The committee cannot doubt that this view of the course pursued by the executive officers of Government is correct, as every tract of land in the same township with these fractions was sold at the same time these rights were granted and located, and patents duly issued to the purchasers according to law. This could not have been the case with all of them, if the Government had no title ; and several of those lots were taken upon floating rights, in the same manner as fractions 1, 2, and 3, were taken by Laven-ture, Childs, and Thompson.

The south boundary of the cession made by the Menomones to the United States is described in their treaty of the 8th of February, 1831, to be a line "beginning at the south end of Winnebago lake, and running in a southeast direction to Milwaukie or Manawauky river ; thence down said river to its mouth ; thence north, along the shore of Lake Michigan," &c.

The Pottawatomies, by this treaty, which was concluded with the United States on the 26th day of September, 1833, ceded "all their land along the western shore of Lake Michigan, bounded on the north by the country lately ceded by the Menomones, and on the south by the country ceded at the treaty of Prairie du Chien, made on the 29th July, 1829."

In the second article is the following clause : "It being understood that the said Indians are to remove from all that part of the land now ceded, which is within the State of Illinois, immediately on the ratification of this treaty ; but to be permitted to retain possession of the country north of the boundary line of the said State, for the term of three years, *without molestation or interruption, and under the protection of the laws of the United States.*"

It appears that the Senate did "advise and consent to the ratification" of this treaty, as expressed by their resolution of the 22d of May, 1834, with certain "amendments and provisions ;" which amendments and provisions were afterwards assented to by the Indians, and the treaty was proclaimed by the President as fully ratified in all its parts on the 21st of February, 1835.

Before the expiration of the three years, either from the conclusion or ratification of this treaty, Government entered into the possession of the tract north of the State line of Illinois, (with the assent of the Indians, it is presumed,) and caused it to be surveyed, so that it was prepared for sale ; and

all of that part of township 7 which lies west of Milwaukie river, and within the limits of the cession made by this treaty, was actually sold, by the direction of the President, in the month of August, 1835. Patents have been issued to every purchaser, it is believed, with the exception of the three petitioners; a rejection of whose claims, for the reason that the Indians were in possession, or the treaty not ratified, would invalidate the titles of the other purchasers.

An act was passed by Congress, on the 2d of July, 1836, entitled "An act to confirm the sales of public lands in certain cases," which provides: "That, in *all* cases where any entry has been made under the pre-emption laws, pursuant to instructions sent to the register and receiver from the Treasury Department, and the proceedings have been in all other respects fair and regular, such entries are hereby confirmed, and patents shall be issued thereon, as in other cases." Your committee do not perceive why the cases of Laventure, Childs, and Thompson, were not embraced within this provision.

But, it appearing from the memorials of the Legislature, and the representations of the petitioners, that the proceedings of those pre-emptors were fair and regular, the only question, it seems to me, which is presented, is: Has the Government the title to the lands now? If it has, (and of this there is no doubt, for it has never offered them for sale since the entry,) justice to them, and to those who have received patents in the same township, would entitle them to their patents.

In Wisconsin, the receipts of the receivers have been considered evidence of title; and these pre-emptors sold in the same manner as every other person did who purchased land of Government. Their title was considered as good as their neighbor's; and was as good, until a question arose upon the flats which were located at the mouth of Root river on land which had never been proclaimed for sale.

These fractions were not considered of any great value at the time they were purchased; and they were sold at moderate prices. It was supposed they would become valuable, if Milwaukie should prove to be (as it has) one of the best points for trade on the western shore of the lake. At that period there were not more than twenty houses in the town of Milwaukie and very few settlers in its vicinity.

There have been expended in improvements on these fractions large sums of money—I should think more than a hundred thousand dollars. I do not think that the persons who reside on them now, and who object to the confirmation, made the improvements, but have come into the possession of them by purchase from those who did. As they have failed to pay the consideration, it is now a matter of interest to them to defeat the title of their landlords, and avoid their contracts. This will leave them in the possession of those lots which have been rendered valuable by the improvements made by others; and I perceive that, with their remonstrance, they ask of Congress to *grant the right of pre-emption to themselves*. It is manifest that they are actuated in their opposition by no other motive than to benefit themselves. Right, justice, equity, the honor, integrity, or interest of the Government, are not the objects which they propose; they seek their own aggrandizement alone. Some eight or ten individuals ask of Congress to ruin more than a hundred persons who have in good faith bought and sold the property, and by the same decision to invalidate every title in the same township west of the Milwaukie river. They state, "it would ruin

most of the actual settlers now on the land, who are last purchasers at great prices." These titles, it appears, have passed through many hands, all of whom considered them as good as any other titles in that country; and it might, and probably would, occasion greater injury to more individuals, to destroy the original sales (if Congress had the power to do so, which it has not) than to confirm them. They would have Congress do injustice to hundreds of persons equally meritorious with themselves, to enable eight or ten persons to evade the fulfilment of their contracts, fairly made, and upon what they deemed a sufficient consideration. And they acknowledge they are to this moment in the full possession of the land and improvements which they received, and which may have cost those of whom they purchased many thousands of dollars more than has now been actually paid to them by the "last purchasers."

No question of right or of justice appears to be presented by them, to induce Congress to take this property from its present *bona fide* purchasers. The "last purchasers" ought to be satisfied if they have as good a title as they bargained for. Their petition for a pre-emption to themselves too plainly shows the motives by which they have been actuated in their opposition to the sale made by the land officers.

I think the facts and reasoning presented by such men, for such a purpose, may well be regarded with suspicion; and I cannot doubt that Congress will grant the prayer of the Legislature of Wisconsin, and pass an act to quiet these titles.

I remain, sir, with great respect, your most obedient servant,

J. D. DOTY.

HON. JOHN NORVELL, *Senator,*
Committee on the Public Lands.