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NOTES AND DOCUMENTS

ELIJAH CLARKE'S "TRANS-OCONEE REPUBLIC"

During the summer of 1794 Elijah Clarke attempted to carry out a land-grabbing scheme which had possibilities of developing into an independent government within the limits of Georgia. As this movement lay entirely within the country yet unceded by the Indians, it not only involved the state of Georgia but also the Federal government. Since its location was south and west of the Oconee River, it has generally been given the name of Trans-Oconee Republic. Before the movement was finally broken up in the early fall of 1794, George Mathews, governor of Georgia, threatened Clarke with arrest and trial for treason, and President Washington directed Federal troops in the state to be held at the call of the governor. As it finally turned out, a few Georgia militia were all that was necessary to break up Clarke's government and scatter his adherents. The following document is the answer of Attorney General Walker to Mathews' request for a ruling on the legality of Clarke's activities. The original is in the Telamon Cuyler Collection in the Library of the University of Georgia.¹

At office Augusta
30th August 1794

By a communication from your Excellency dated on the 28th Instant, I am required to furnish an "opinion in writing whether the settlement forming by Elijah Clarke and his adherents on the south west side of the Oconee are or are not violations of the following laws, towit, an act for the punishment of Vagabonds and other Idle and disorderly persons, and for erecting prisons &c &c, passed The 29th February 1764, the land laws of 1783 and 1785, the Act of the appointment of Commissioners to run the line designating the Indian hunting ground passed the 10th of February

1. For a detailed account of this venture see E. M. Coulter, *Elijah Clarke's Foreign Intrigues and the "Trans-Oconee Republic,"* Bulletin of the University of Georgia, XXII, 4 (December, 1922).

1787 And the Act of the United States to regulate trade and intercourse with the Indian tribes passed the first day of March 1793.”

This work I undertake with diffidence because I am aware of the importance of the Subject and because the indispensible duties of my Office call my attention so much to the business of the Supr. Court, now sitting for this county, that I fear my opinion may not be formed with sufficient deliberation; however, as I am ever anxious to do any duty I shall proceed to shew how far in my opinion the settlement forming by General Elijah Clark and his party tends to violate the Said Laws and each of them.

The Act of the then province now State of Georgia passed the 29th Feby 1764 declares “that from and after the passing of this act it shall not be lawful for any person or persons to sell, truck, barter or exchange, with any Indian or Indians, any rum or other strong liquors, clothing or any other thing whatsoever, privately in the woods, in their hunting grounds, or at cowpens in the settlements, or at any other place, other than at Stores or houses licensed for that purpose, &c; and every firm so offending shall be proceeded against agreeable to an Act entitled, ‘an Act to prevent persons from purchasing land from the Indians, and for preventing persons trading with them without License’;” which last Act subjects the offender to a fine of one hundred pounds, one half to the Informer, and the other to the State; and by the said Act of 1764, it is further declared, “if such offender shall not have effects sufficient whereon to levy the fine inflicted by the aforesaid Act, then, and in every such case, the offender shall suffer corporal punishment by whipping, not exceeding one hundred lashes, and not less than fifty; and the Justices of the Peace, upon complaint made of any such offence are hereby authorized and required to bind over the offender by recognizance with sufficient sureties for his appearance at the next Sessions of Oyer and Terminer and General gaol delivery to answer such Action or information as shall be there brought or exhibited against him pursuant to the said Act and for want of sureties to commit such offender to the common gaol.”

The seventh section of the same Act expresses “that if any person or persons after the passing this Act shall presume to erect or set up any houses or huts on the land reserved for the Indians as hunting grounds, or for their own use or shall trespass thereon by hunting such person being thereof convicted, in the manner before mentioned touching trading or bartering with the Indians in the woods, shall be liable to the same punishment as in that case is inflicted and the Justices before whom such complaint is

made shall or may order such huts and buildings thereon made or being to be destroyed, and shall likewise bind over the offender for his appearance at the next session or otherwise commit him to gaol as before mentioned." The settlement forming by Genl Clark is merely an offence against this latter clause and upon conviction before a court and Jury may be punished in the manner directed by the before recited Acts; but how far this Act of 1764 is in force at this day is a very great doubt in my mind; it was at its creation to be in force for the term of two years and from thence to the end of the next session of the Assembly and no longer but it was afterwards continued by a succession of Acts up to the 29th of September 1773 when an Act was passed extending it for one year and from thence to the end of the next Session of Assembly and no longer. On the 30th July 1783 an act was passed entitled "An Act to continue the several laws of this State near expiring" and for other purposes therein mentioned in which the Act of 1764 is not enumerated.

On the 25th of February 1784 another Act was made for reviewing and enforcing certain laws therein mentioned whereby it is enacted "that all and singular the several Acts clauses and parts of Acts that were in force and binding on the Inhabitants of the then Province now State of Georgia on the fourteenth day of May in the year 1776 so far as they are not contrary to the Constitution—Laws and form of Government now established in this State shall be and are hereby declared to be in full force, virtue and effect, and binding on the Inhabitants of this State." So that the doubt arises whether this Act of 1764 was in force on the 14th February 1776—I am inclined to think it was.

The Act of 1783 for opening the land office contains the following words, "all and every person and persons whatsoever who shall hereafter Survey or assist in surveying, or procure to be surveyed and marked with lines any of the lands whereon the Indians are allowed to hunt for their support, or who shall obtain or attempt to obtain, a grant for the same, before such lands are taken within the boundary of the white inhabitants of this State, and the mode of granting such lands so to be taken in be agreed and determined on by the Legislature, and published by proclamation, all and every such person and persons shall forfeit and pay the penalty of twenty shillings for every Acre of land he she or they shall so run or attempt to run, or obtain or attempt to obtain a grant, for, which said penalty shall be recovered in any court of record or conscience (according to the amount thereof) within this State, and shall be for the use of the person or persons who will inform of, and send for the same, either by way of information or action;

and if the person or persons against whom any Judgment shall be obtained for any penalty as aforesaid shall be unable to pay the same, or will not produce property whereon the sheriff may levy the amount thereof, he, she or they shall be liable, and the Justices of the County where such cause shall be tried, shall order him, her or them into close confinement, without Bail or main-prize, for the space of two days for every twenty shillings the said penalty so recovered as aforesaid shall consist of, and which shall remain unpaid out of the property of the said delinquent." This clause appears to contemplate a wrong and injury to be redressed by the information or action of any person or persons who will inform of, and see for the same, and does not, in my opinion, amount to a crime punishable by way of indictment.

The Act of 1785 is to the same effect, and gives the same remedy. The Act of 1787 extends the offence, and designates a Crime by declaring, that "any person or persons who shall hereafter be guilty of *marking*, surveying, or attempting to Survey, or obtain grants for any land beyond the temporary line designating the Indian hunting ground in addition to the pains and penalties provided in the land law of one thousand seven hundred and eighty three, to which they are subject, shall be liable to fine and corporal punishment, at the discretion of the Court before which they are *convicted*, provided the same shall not exceed five hundred nor be less than one hundred lashes for the first offence; and for the second offence shall be held and adjudged guilty of felony." The offense committed by Genl Clark and his party, in my opinion, may be construed as coming within this Clause; and the only difficulty in my mind, which can create a doubt as to the legality of proceeding against the offenders under the Act, arises from the fourth section of the 3rd article of the Constitution of Georgia, which States that "all Causes shall be tried in the County, where the defendant resides, except in cases of real estate which shall be tried in the County in which such estate lies; and in *criminal* cases which shall be tried in the County where the *crime shall be committed*." Now in what county the offence was committed by those persons, is a case of great doubt and difficulty; but if the parties should be apprehended, I should feel it my duty to exhibit a Bill of Indictment against them in the County next adjoining the territory which they are illegally settling, and let the Judges decide as to the propriety of sustaining the Indictment: but I cannot conceive that the framers of the Constitution ever contemplated that offences committed by the Citizens of Georgia on any of the territory belonging to the State, should pass with impunity.

The Act of Congress passed the first of March 1793, to regulate trade and intercourse with Indian tribes, completely reaches the offence, and there is no doubt in my mind, but the remedies provided by that Act are intirely adequate to redress and punishment of the offence; but unfortunate for the State of Georgia, that Act is cognizable by the Federal Judiciary only, and if carried into effect by the Federal government only, may be fatally detrimental to the territorial rights of this State: therefore, I hope, every possible exertion will be used by the officers of the Government of the State of Georgia, to redress the injury, and finally to prevent the impending evil.

My most ardent exertions shall at all times be cheerfully used for the public good; and should the intended mission of General Twiggs not have the desired effect, it will afford me great pleasure to join any the offices of government in deliberating on such measures as may be found necessary to be adopted on this important occasion

I am with real
respect, Y. Excellency's
Obt. Servt.

G. Walker. A.G.

His Excellency George Mathews
Governor of Georgia