

JONES TO ELLIOT.^a

ABERDEEN TO SMITH.^b

ELLIOT TO JONES.^c

ELLIOT TO JONES.^d

GALVESTON *September 15th, 1843.*

The Undersigned Her Britannic Majesty's Chargé d' Affaires to the Republic of Texas has the honor to acknowledge Mr. Jones two notes of the 4.th Inst.

The Undersigned will avail himself of the opportunity to Matamoros to forward a despatch to Mr. Doyle covering His Excellency's Proclamation of the 4th. Inst. respecting the return of any Mexicans still in this country to the Head quarters of General Woll—and He trusts that this additional proof of the President's friendly readiness to respond to the amicable feelings of the Mexican Government, will have a salutary effect on the approaching negotiations.

He has also to acknowledge the receipt of a draft on the Collector of Customs at Galveston for the sum of \$3840.60 payable ninety days after date, in satisfaction of the claims of Mr. Joseph Russell. In reporting this arrangement to Her Majesty's Government He will not fail once more to point out that the payment has been made as soon as practicable in the past pressed state of the finances of Texas. He permits himself to offer his congratulations upon the steady improvement of that important branch of the public affairs, and to express the sincere hope that all the other honorable sacrifices, and wise efforts of the Government for the peace, strength, and prosperity of the Country, may be attended with equally marked success.

He begs to renew to Mr. Jones the assurances of highest consideration and esteem with which he has the honor to remain

His faithful and obedient Servant

CHARLES ELLIOT

The Honorable ANSON JONES,
Secretary of State
etc. etc. etc.

^a September 11, 1843. See Calendar.

^b September 11, 1843. See Smith to Jones, September 20, 1843; same to same, November 29, 1843.

^c September 14, 1843. See Calendar.

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JONES TO ELLIOT.

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DEPARTMENT OF STATE,
Washington, Sept. 16th. 1843.

The undersigned, Secretary of State of the Republic of Texas, has the honor now to reply to that part of the note addressed him, on the 17th ulto., by Capt. Elliot, H. B. Majesty's Chargé d' Affaires, which relates to the claim of Lizardi & Co.* for goods alledged to have been taken from the Schooners "Little Penn" and "Abispa" by the Texian armed Schooners "Invincible" and "Brutus".

The Undersigned regrets that circumstances have prevented him from giving to this subject, and to the former communications of Captain Elliot, a more prompt and decisive attention and reply; but he has not felt justified, or able to form definite opinions in relation to them, in the absence of many documents etc. connected with the same, of which he has not been enabled to avail himself, as he could have wished, in consequence of their being among the archives of the nation at Austin. For this reason he is constrained to rest his objections to the claim, for the present, and untill further proof shall have been adduced by the claimants upon the views expressed in the "opinion" of the Attorney General. The Government of Texas, however, is most desirous to dispose of this claim, in a just and strictly legal manner, and no delay not absolutely necessary to enable it to form a proper conclusion on the subject, will be used.

The undersigned would embrace this occasion to observe that in the conversation he had the pleasure to have with Captain Elliot in May last, he must have made an impression different from what he intended on the mind of Captain E. when he was understood to say, (as expressed in Captain Elliot's note above referred to), "that all the Government of Texas required in that (this) matter was specific proof that the goods, taken on board the Mexican Schooner "Abispa" (employed in saving the cargo of the "Little Penn", were shipped for account of parties settled in England, and not for Don Pedro Sastre settled in Mexico, that is, proof of the kind required by the Admiralty Courts in England in similar cases", and he now begs leave to correct the impression then made, by stating that he intended to be understood to say that without going into the consideration of the principles of law involved in the case, the proof on which the parties relied to sustain their allegations was not sufficient to justify this Government in acknowledging the force of their claim, as it was not the kind of proof required, in similar cases, by the Admiralty Courts of England etc. etc.

* Though Lizardi & Co. are not mentioned in Elliot's letter of the 17th, the claim here referred to was made by that firm.

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The undersigned avails himself of the present occasion to renew to Capt. Elliot the assurances of the high consideration and respect with which he has the honor to remain

His Most Obt Svt

Signed ANSON JONES

To,

Capt. CHARLES ELLIOT
H. B. M. Chargé d' Affaires
etc. etc. etc.

JONES TO ELLIOT.

DEPARTMENT OF STATE,
Washington, Sepr. 19th. 1843.

The undersigned, Secretary of State of the Republic of Texas, avails himself of the earliest possible opportunity, which his public duties and the state of his health have afforded him, to reply to the Note which Captain Elliot did him the honor to address him, on the 17th. ulto., in reference to the claims of Messrs. Cotesworth & Pryor, Geo. O'Gorman, D. V. Egerton and J. C. Beales, to grants of land, made them at various times, under the Colonization Laws of Mexico, and confirmed to them by subsequent enactments of Texas, then a State of the Mexican confederacy.

In answer to all the averments of these several claimants, the undersigned, referring Captain Elliot to the conversation he had the pleasure to have with him, in the early part of May last, would now beg leave to repeat, with some additional explanations, the belief, then verbally expressed, that these were all cases properly referable to the ordinary courts of Justice, to whom Congress, by express enactment, had granted exclusive, as well as ample jurisdiction of the same, with full power to extend justice and equity to all those, who, either by the breaking out of the war of Independence, the interruptions consequent upon this event, or the subsequent acts of the government, under the "Consultation", the "Convention", or the Legislature, had received any injury. The provision excluding aliens, it is believed, will not apply to any of these parties claimants, in as much as the Constitution provides (Gen. Prov. Art 10th.) that "All persons (Africans and the descendants of Africans and "Indians excepted) who were residing in Texas on the day of the "declaration of Independence, shall be considered Citizens of the "Republic of Texas, and entitled to all the privileges of such."

Under this liberal provision of the Constitution, all persons who emigrated to the country, previous to the 2d. of March 1836, have universally been admitted to enter our courts, and to sue for justice.

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The construction of the word residence, has been equally liberal, as according to the Constitution of the State in force up to that period, it was the privilege of those residing in the State, to be absent from the country for a continuous period of five years, without forfeiting any of their rights.

The parties now claiming indemnity of the government of Texas, therefore, if they think proper to apply to the Courts in Texas, will not be excluded, even although they may have been absent for years, as the Constitution and Laws, by fair and usual construction, entitle them to all the rights of citizenship. The provision of the law, complained of, can apply to those only, who had not come to the country, previous to March 2d. 1836, which, it is presumable, was not the case with any of the present claimants. These facts being admitted, it is evident, as the undersigned believes, there can be no force in the assertions, made by these parties, that they have been denied the privilege and the right of appealing for redress, for any injury they may have received, to our Courts.

In view, therefore, of the fact that the Courts of Justice have the sole jurisdiction of all cases similar to the present, it will scarcely be necessary for the undersigned to remark to Captain Elliot, that the President, being subordinate to the constitution and the Laws, has no power vested in him to make valid any such claims to land, and that he can do nothing in the premises, unless it be to place the subject before Congress, for their consideration and action, in order that if the Laws are defective, or have denied either aliens, or Citizens, their just rights, the legislative power of the country may extend to them an equitable remedy, as he has already done with those of Messrs Cotesworth & Pryor, Egerton and O'Gorman.

The undersigned also deems it unnecessary, at this time, to discuss the question, whether these parties have the right to ask the interference of a foreign government, in a matter like the present. He will, however, observe that they have never come forward to seek redress, through any of the channels, which are and have been, for a long time, open to them in the country.

They have never deposited, in the General Land Office of the country, their contracts, titles, or any evidences of their claims. They have never asked for justice or redress, either of the Courts or the Legislature of this country; but have, in the first instance, applied to a foreign and distant government.

The evidences of their having complied with the conditions of their contracts and of the rights they may have consequently acquired, are here, and here, the undersigned is constrained to think, if the parties had just claims, they should have first preferred them, the more especially, as this government has always evinced a disposition to adopt the most liberal measures, for the protection of rights acquired

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under the former sovereignty of the country. Their not adopting this course, appears to the undersigned to weaken very much the force of their claim. In compliance with the request of Captain Elliot, contained in his note to the undersigned, of the 30th. Sept. last, as he has before had the honor to inform Captain Elliot, His Excellency, the President, transmitted to Congress, on the 28th. Decr. last, the claims of Messrs Cotesworth & Pryor, Egerton and O'Gorman, with a Message, in which he solicited the consideration of that body to the subject, and that equity should be done to these claimants.^a By reference to this message, a copy of which the undersigned has the honor to enclose, it will be perceived that the government of Texas had not the means of giving Congress the information which was necessary, to enable them to act definitely upon the subject, and it will therefore become necessary for the parties to furnish this information, at a future session, in order to attain the object they may have in view.

The undersigned takes pleasure in further stating, that the President will, at an early day, (if desired) present the claim of Mr. Beales, with recommendations, to Congress, similar to those contained in the Message just above referred to, and that he will also ask their attention to a repeal of that part of the 27th. Sec. of the Land Law of the Republic, which denies to Aliens, Empresarios, and their assignees, the privilege of entering our courts of Justice, which, it is presumed, will remove every doubt, should any still exist in the minds of the present claimants, of the intentions of this government; and throw wide open to them her doors of Justice, both by her tribunals of Law, and her Legislature.

With this declaration of the acts and the purposes of this government, in reference to these claimants, which the undersigned flatters himself, will be satisfactory to Captain Elliot, he will now proceed, in compliance with an intimation, contained in Captain Elliot's note to the undersigned, under date of the 4th. of February last, and for the satisfaction of Her Majesty's Government, to refute as far as his present means will enable him (the Archives of the Nation being at Austin) the statements of said claimants, or to explain the same. Premising therefore, that the principal fact, that of the doors of Justice having been closed to them by this government, has been sufficiently alluded to, the undersigned will endeavor to show that these parties, have acquired no rights to land in this country, or to any compensation for their services.

The Colonization laws of Mexico and of Coahuila and Texas, under which the parties assume to have obtained contracts, contained certain conditions, the non performance of which by the contractors,

^a See *Senate Journal*, 7th Tex. Cong., pp. 57-58.

(Empressarios) worked a forfeiture of the said contracts, and all the rights guaranteed under them. Among others, the Colonists were to be of the Roman Catholic Apostolic Religion, to be of good character, to reside upon their lands, to cultivate a certain portion within a specified time, and the whole of the land within another specified time, etc. etc. The Contractor was also bound to introduce, a certain proportion of the number of families, contracted for, in some instances, within eighteen months, and the whole number, in four or six years.

Upon the arrival of thirty families, a town was to be laid off, the lots sold and religious worship established. Many other conditions were, in some instances, annexed, but it will be unnecessary to specify them, as those already enumerated are sufficient for the purpose of the undersigned. Vide Gen. Colonization Law Mexico of the year 1823, Nat. Colonization Law of 18th. August 1824, Colonization Laws of Coahuila and Texas of March 24th. 1825, and 28th. of Ap. 1832, and the contracts made under them with S. F. Austin, D. G. Burnet, Austin & Williams et al.^a These conditions, so far as the undersigned has been able to learn have never been performed by these parties claimants.

The claims of Messrs Cotesworth & Pryor, Egerton and O'Gorman, were first brought to the knowledge of the undersigned, by the note of Captain Elliot, under date of the 30th. Sept. last, and was, as he thinks, the first notice the Government ever had of the existence of any such claims. The undersigned, at this moment, is not able to refer to a copy of Lord Palmerston's note to Gen. Henderson, in 1839^b; but speaking from recollection, he thinks his Lordship specified no names, but made his appeal to Mr. Henderson in general terms. The undersigned has instituted the most careful enquiry at the Land Office, and of Citizens of the country, who have resided here from the earliest period of its settlement, but can obtain no information of any such persons, or of any one who knows of any Colonists having been introduced by, or contracts granted to, them. It would certainly appear that if they, or any of them, obtained grants for colonizing any of the territory of this Republic, and had taken the necessary steps in complying with the terms and conditions of their contracts, particularly if they had brought to the country any number of Emigrants, some one of those in this country, whom the undersigned has consulted, would have been cognizant of the facts. No colonization contract could have been made after the 26th. of March 1834, (see Decree No. 272, Laws Coahuila and Texas) and in the fulfillment of the conditions of any, made previous

^a For all, see Gammel, *Laws of Texas*, Vol. I and Sayles, *Early Laws of Texas*, Vol. I *passim*.

^b October 23. See Calendar.

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to that time, a considerable number of families must have been introduced and settled on their lands, or the contract would have been forfeited. This introduction of families, and settlement of a colony, it will readily be admitted, could not have been effected without its having become a matter of public notoriety, and certainly the government would have had some information of the same. In the absence of all such knowledge, the presumption appears to be, that these parties or some one for them, might have procured a Grant of Land from Coahuila and Texas, that they may have taken some preparatory steps for sending out Colonists, and perhaps incurred some expense, but that, difficulties arising soon after between Texas and Mexico, they suspended all thought of carrying out their contracts, until after the acknowledgment of the Independence of this country, by the United States and France, when they again turned their attention to the subject, and concluded to bring the matter before the Government of Her Majesty. That they could have fulfilled any or all the conditions of their contracts, appears, from the circumstances, to be impossible; consequently they have long since forfeited the same, and can have no right to any land in Texas, or claim for any damages they may have sustained. If, however, they were prevented from carrying out their contracts, by the breaking out of the war in 1835, which was not the case, this circumstance might entitle them to some consideration in equity, but to no right in law.

The undersigned will now, in support of the opinion expressed by Mr. Henderson, "that the grants to settle land, obtained "by British "subjects from the Mexican Government, were conditional; that gov- "ernment reserving to itself the right to arrest, at any time, the settle- "ment of those lands etc.,"^a refer Captain Elliot to the 7th Art. of the Nat. Colonization Law of the 18th. Augt. 1824, and the action, based thereon, in the 11th. Art. of the Law of the 6th. April 1830.

They are as follows—

Art. 7th. Nat. Col. Law.^b "Until after the year 1840, the general "Congress shall not prohibit the entrance of any foreigner as a col- "onist, unless imperious circumstances should require it with respect "to the individuals of a particular nation"

Art. 11th. Law 6th. April 1830.^c "In exercise of the right, re- "served to the General Congress, by the 7th. article of the Law of the "18th. Augt 1824, the citizens of foreign countries lying adjacent to "the Mexican Territory, are prohibited from settling in the States as "Colonists etc. Those contracts of colonization, the terms of which "are opposed to the present article, and which are not yet complied "with, shall consequently be suspended."

^a See Calendar, under title Henderson to Palmerston, October 30, 1839.

^b See Sayles, *Early Laws of Texas*, I, 52.

^c *Ibid.*, 56.

From these, it is evident that the Republic of Mexico viewed all contracts of colonization, as political contracts; that she always held reserved the right to annul or suspend them, and that in the above instance, she exercised that right, with respect to all contracts for colonizing her vacant territory, with immigrants from adjoining countries. It follows that if she could suspend these, she had the same right to suspend all others. So far, therefore, as Texas is bound to assume any of the responsibilities incurred by Mexico in forming these contracts, she is equally entitled to avail herself of the rights which Mexico reserved to herself, and which she exercised.

These observations apply, with equal force, to the contracts said to have been entered into with Mr. J. C. Beales, and which, after what has been already stated, will require but few further remarks.

Mr. Beales commences by setting forth in his memorial,^a that he is the owner of certain specified grants, known as *Empressario Grants*, and that said grants vest in him an exclusive private right to the land described in said grants, for six years etc. etc. He has not, however, specified that any condition whatever was annexed to the said Grants, or that the Government of Coahuila and Texas required any thing of him, as a consideration for the privileges he claims, and before any right could be "vested"; nor does he assert, that he has complied with these conditions, except in introducing a few colonists, and thus tacitly, at least, admits his failure to perform them. These conditions have been already enumerated in a preceding part of this note. If this construction of the plea entered by Mr. Beales be correct, it follows, as a matter of course, that he admits the forfeiture of his contract. But waiving this, perhaps too technical, construction, the undersigned, is prepared to show that the said Beales never introduced a single family or emigrant into Texas. A few pauper families were introduced and settled, through his agency, by a New York company, on one of his grants, but did not remain and cultivate their lands. With this exception, it is, I believe, a fact of great notoriety in Texas, that no Colonists were ever brought to this country by Mr. Beales, or by any one claiming under him.

The Laws and acts of Texas, of which Mr. Beales complains, "declaring that your memorialist by name has, and had, no right to Land in Texas, and declaring your memorialist, and all aliens, and assignees of Aliens, from entering her courts of Justice," the undersigned has never seen, nor is he aware that any such laws have ever been passed.

As has been heretofore remarked, the breaking out of the war, although it may have been of some injury to Mr. Beales, by inter-

^a Undated as to the month and day, but written in 1842. See *The Morning Star*, April 6, 1844; *Telegraph and Texas Register*, April 10, 1844; copy inclosed with Elliot to Jones, February 4, 1843; in *Senate Journal*, 7th Tex. Cong., p. 57.

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rupting his enterprise, can only give him a claim to the equity of Congress. And this claim will be divested of much of its force and effect, when it is taken into consideration, that his first two contracts of colonization, were applied for, and obtained in the very midst of the difficulties between Texas and Mexico in 1832, and his third contract, nearly four months after the battle of Velasco, and the disturbances at Anahuac and Nacogdoches, which was the true period of the commencement of our revolution. At the time, therefore, these contracts were obtained, the impossibility of complying with their conditions, by colonizing the grants with European families, as specified, must have been perfectly apparent to Mr. Beales. It is, therefore, fairly deducible from this circumstance, and the whole tenor of his subsequent conduct, that he procured these contracts, (as he afterwards used them) for the purposes of speculation in foreign markets, and not with the intention of carrying them out, in good faith, as had been before done with similar engagements, by Gen. S. F. Austin and others, by whose exertions, Texas has been redeemed from the wilderness and the savages.

By reference to Mr. Beales three contracts, it will be perceived, from their respective dates, that the first only could have been made under the Colonization Law of 1825; the remaining two consequently were under the new law of 1832. The first is dated according to his schedule, on the 14th. of March, 1832, and, allowing six years for the period of its performance, would have expired on the same day in [the] year 1838. The second is dated 1st. May 1832, and could, by the then colonization law, have been granted to a Mexican citizen only, and but four years could have been allowed for its performance; consequently it would have expired on the 1st. of May 1836. The third is dated Oct. 9th., granted under the same law as the last above named, and would have expired Oct 9th. 1836. By the terms of the last two grants, one sixth of the families should have been introduced within eighteen months from the date of the contracts respectively, etc. etc. There is no proof that this was the case; on the contrary, it is believed this condition was not complied with; hence these grants were forfeited from one to two years before any of the legislation, complained of by Mr. Beales, could have been had, and before he was "ruthlessly" interrupted by the revolution in Texas. These contracts would have expired nearly two years before the land law was passed; consequently Mr. Beales cannot complain of a law that could not, under any circumstances, have affected his legally acquired rights. The closing of the land offices, in the last of Novr. 1835, a few months before these contracts expired, is the only act which could have inured to his injury. And that this act was not productive of injury to Mr. B. is evident from the well known fact that no colonist had ever been legally settled on these grants; nor would

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there have been any settled thereon by Mr. Beales, in all human probability, even if the war had not broken out, and the land offices had not been closed. The undersigned would also further remark, that the declaration of Independence itself—the time when all Empresario grants were declared to have ceased—took place only a few weeks before these two contracts of colonization ceased by their own limitation. Up to that time, he could have continued to introduce colonists, upon the conditions expressed, and he and they would have received their quotas of land, on the re-opening of the Land Offices in 1838, as specified in his contracts.

From what has now been stated, the undersigned trusts, it will be apparent that Mr. Beales has sustained but little, if any, injury, either from the breaking out of the war in Texas, or the subsequent acts of the Government, in relation to empresario claims. But for whatever wrong has been done him, as has been before observed, the undersigned confidently believes, full redress may be had by application to our courts or the Legislature of the country, if he thinks it expedient to place the facts and the testimony properly before them.

In evidence of this, the undersigned begs leave to refer Captain Elliot to the fact that the colony claimed by Mr. Beales as the "Milam or Colorado grant" was subsequently colonized by Col. B. R. Milam, through the agency of R M Williamson Esq., and Congress by their act passed Jan. 14th. 1839, granted to the said Williamson ten leagues and ten labors of land, as a compensation for the introduction and settlement, of two hundred families upon the same.

In relation to the nine grants, of Eleven leagues each, claimed by Mr. Beales, the undersigned presumes it will only be necessary to state to Capt Elliot, that the question, involved in these, is simply one of validity of title, and can be settled only by the courts of Law. The exception in the 27th. Sec. of the Land Law, in respect to alien Empresarios, and their assignees, does not apply to holders of these claims, who whether aliens or citizens, are equally entitled to assert them before the Judiciary of the Country.

In conclusion, the undersigned thinks it right to inform Captain Elliot, he has been informally notified by Gen. Murphy, Chargé d'Affaires of the United States, that Mr. Beales some years since, assigned all his landed interests in Texas, of every description whatever, to certain citizens of that country, who claim to be the exclusive beneficiaries of any remunerative action which this government may hereafter take in reference to these contracts.

The undersigned embraces the occasion to renew to Captain Elliot the assurances of the high consideration and respect with which he has the honor to remain

His very obedient and faithful servant,
(Signed)

ANSON JONES.

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