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relation to the encroachments of the agents of the
Hudson's Bay Company upon the trade and
Territory of Alaska

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MESSAGE
OF THE
PRESIDENT OF THE UNITED STATES,
IN RELATION TO

The encroachments of the agents of the Hudson's Bay Company upon the trade and territory of Alaska.

FEBRUARY 5, 1869.—Read, referred to the Committee on Commerce, and ordered to be printed.

To the Senate and House of Representatives :

I transmit, for the consideration of Congress, a report from the Secretary of State, and the papers which accompanied it, in relation to the encroachments of agents of the Hudson's Bay Company upon the trade and territory of Alaska.

ANDREW JOHNSON.

WASHINGTON, *February 3, 1869.*

DEPARTMENT OF STATE,
Washington, February 3, 1869.

The Secretary of State has the honor to submit to the President, herewith, copies of a letter from the Secretary of War, and of the undersigned's reply thereto, in relation to the encroachments of agents of the Hudson's Bay Company upon the trade and territory of Alaska.

In order to carry into full execution the statutes prohibiting unauthorized trade and intercourse with Indians in Alaska, it appears essential that a district court of the United States, with the usual judicial and ministerial officers, should be established therein. It does not adjoin any other territory of the United States. The expedient heretofore employed of annexing such new and sparsely-settled Indian country to some established territory for judicial purposes is impracticable in this instance, because offenders could not be transported to the place of trial without passing beyond the jurisdiction of the United States, or being conveyed by sea to Oregon or California.

I have the honor to suggest that the subject be brought to the attention of Congress.

Respectfully submitted :

WILLIAM H. SEWARD.

The PRESIDENT.

List of accompanying papers.

General Schofield to Mr. Seward, January 27, 1869, with an accompaniment.

Mr. Seward to General Schofield, January 30, 1869.

General Schofield to Mr. Seward.

WAR DEPARTMENT,
Washington City, January 27, 1869.

SIR: I have the honor to send herewith a copy of a communication from F. M. Smith, jr., reported by Major General Halleck to be the gentleman who has traded in northern Alaska, concerning the alleged habitual encroachment of the agents of the Hudson's Bay Company upon the trade and territory of Alaska, and to request to be furnished with your views upon the subject, together with any information which may be afforded by the treaty concluded between the United States and Russia for the cession of the territory, or any other of the archives of your department.

Very respectfully, your obedient servant,

J. M. SCHOFIELD,
Secretary of War.

The Hon. SECRETARY OF STATE.

The Russians have been aware for many years that the traders of the Hudson's Bay Company have established themselves on their territory; but, owing to either lack of energy or faithfulness of employes of the Russo-American Company, have failed to report it to the home government.

Our boundary line, according to maps of the Western Union Telegraph Exploring Expedition, (and which are considered the best,) is latitude 145° west.

Fort Youkon (the English) is a large and well built one, consisting of the commander's, men's stores and trading houses, all surrounded by a stockade.

It is situated in longitude 149° 15' west, latitude 65° 10' north, some 125 miles within our lines.

This fort has been considered by the Hudson's Bay Company the most valuable one west of the Rocky mountains. It is, however, the hardest one for them to supply with goods and provisions, they having to pack everything on half-breeds' backs, in some places over 60 miles of portage.

In addition to trading in the immediate vicinity of their fort they have made annual trips down the Koickpak river some 400 miles, to a place called Nuklukiaaih, longitude 151° west and latitude about 65° north, about half-way to the most northern post the Russo-American Company have, viz., Fort Nulato, situated longitude 158° 35' west and latitude 64° 40' 20" north. Coming down on the ice on the breaking up of the Koichpak in the spring, they have always been enabled to complete their trading and get away before the Russians, laboring under the disadvantage of an equal distance to go and against the current, could arrive.

The Russians and English have never met but once and that was in the spring of 1866. The Russians arriving at Nuklukiaaih just in time to see the English depart in their boat.

Major Robert Kennicott, the commander of the exploring party sent into the interior of that country by the Western Union Telegraph Company, has spent four winters previously in the north, passing one winter at Fort Youkon. He says that, notwithstanding the immense difficulties they contended against, they collected a very large number of skins yearly.

Respectfully, your obedient servant,

F. M. SMITH, JR.

Mr. Seward to Mr. Schofield.

DEPARTMENT OF STATE,
Washington, January 30, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of the 27th instant, enclosing extracts from a communication from Mr. M. F. Smith, jr., concerning the alleged habitual encroachment of the agents of the Hudson's Bay Company upon the trade and territory of Alaska, with a request for my views upon the subject.

By the sixth article of our treaty with Russia of March 30, 1867, the cession of territory and dominion therein made is "declared to be free and unincumbered by any reservations, privileges, franchises, grants, or possessions by any associated companies, whether corporate or incorporate, Russian or any other, or by any parties except merely private individual property holders."

Article 5 of the treaty between Great Britain and Russia of February 28, 1825, (3 Hertslet's Treaties, 364,) which was revived and continued by the 19th article of the treaty between the same powers of January 12, 1859, (10 Hertslet, 1063,) provides that "no establishment shall be formed by either of the two parties within the limits assigned by the two preceding articles to the possession of the other; consequently British subjects shall not form any establishment, either upon the coast or upon the border of the continent comprised within the limits of the Russian possessions." The articles referred to established the boundary lines between the British and Russian possessions on the northwest coast of America, the same adopted in our treaty of cession with Russia.

The provisions above cited are conclusive against the right of the Hudson's Bay Company to establish or maintain such an establishment as Fort Youkon is described to be in the communication from Mr. M. F. Smith, jr. I understand the decision of the Supreme Court of the United States in the case of *Harrison vs. Cross*, (16 Howard, 164-202,) to declare its opinion that upon the addition to the United States of new territory, by conquest and cession, the acts regulating foreign commerce attach to and take effect within such territory *ipso facto* and without any fresh act of legislation expressly giving such extension to the pre-existing laws. I can see no reason for a discrimination in this respect between acts regulating foreign commerce and the laws regulating intercourse with the Indian tribes; there is, indeed, a strong analogy between the two subjects. The Indians, if not foreigners, are not citizens, and their tribes have the character of dependent nations under the protection of their government, as Chief Justice Marshall remarks, delivering the opinion of the Supreme Court in *Worcester vs. The State of Georgia*, (6 Peters, 557,) "The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States, and provide that all intercourse with them shall be carried on exclusively

by the government of the Union." The same clause of the Constitution invests Congress with power "to regulate commerce with foreign nations, * * * * and with the Indian tribes."

The act of June 30, 1834, (4 Stat., 729,) defines the Indian country as, in part, "all that part of the United States west of the Mississippi and not within the States of Missouri and Louisiana, or the Territory of Arkansas." This, by a happy elasticity of expression, widening as our dominion widens, includes the territory ceded by Russia.

That act provides that no person shall trade with any of the Indians (in the Indian country) without a license; that any person, other than an Indian, who shall attempt to reside in the Indian country as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession; and shall, moreover, forfeit the sum of \$500; that no license to trade with the Indians shall be granted to any persons except citizens of the United States; that a foreigner going into the Indian country without a passport from the War Department, the superintendent or agent of Indian affairs, or the officer commanding the nearest military post on the frontiers, shall be liable to a fine of \$1,000; finally, that the superintendent of Indian affairs, and Indian agents, and sub-agents, shall have the authority to remove from the Indian country all persons found therein contrary to law, and the President is authorized to direct the military force to be employed in such removal.

These provisions seem to be all that can be necessary in the way of legislation to prevent the encroachments of the Hudson's Bay Company, alleged by Mr. M. F. Smith, jr.

Of the practical difficulties in the execution of these provisions you have better means of judging than has this department.

I have the honor to be, sir, your obedient servant,

WILLIAM H. SEWARD.

Hon. JOHN M. SCHOFIELD,
Secretary of War, Washington, D. C.