## 1841-10-04 Letter from Governor McDonald to Governor Kent Requesting Extradition of Philbrook and Kelleran

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Transcription:

Executive Department Ga

Milledgeville 4th October 1841

Sir

Anxious to preserve amicable relations between the States of Georgia and Maine, two members of this great confederacy, and to maintain the harmony of the Union, I must respectfully ask your Excellency's attention to the case of Philbrook and Kelleran charged with having committed a crime against the laws of this State and renew the demand for their arrest and confinement until an agent can be sent to receive and bring them for trial to the jurisdiction within which offence is alleged to have been committed. The correspondence with the authorities of the State of Maine on this subject, has been laid before the Representatives of the people of Georgia, and the reasons therein assigned for refusing to comply with the demand have been maturely considered by them and they regard them as wholly untenable and inconsistent with the provisions of our common Constitution. In this opinion I fully concur. The General Assembly of Georgia at its last session acting under the solemn belief that the State of Maine had disregarded her constitutional rights by refusing to surrender persons charged

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charged with the commission of a crime within her jurisdiction seriously affecting the security of the property of her citizens. After fully weighing the reasons assigned for this refusal, reluctantly passed an Act the effect of which would have been to have suspended all intercourse between these States. For reasons which will be communicated to the next Legislature, which will shortly assemble, this act did not receive the Executive assent. This I state that you may be apprised of the deep feeling of the people of Georgia on this subject.

I am pleased to find in your correspondence with my predecessor the following remarks - "I beg leave to assure you that this opinion is not formed in reference to the nature of the property alleged to have been stolen, or to the particular relations existing in your State, and which in some degree are connected with this question. I fully recognize the Constitutional right of Georgia to enact her own penal laws, and to make that a crime which is unknown to our laws as such, and to demand fugitives from justice. I place the case upon the sole ground of the fair construction of the Constitution in this particular, irrespective of peculiar and particular circumstances which may become connected with the discussion."

This narrows the case down to the single point, whether the persons accused are fugitives from justice within the meaning of the Constitution. Of this I beg leave to state, with due deference to the opinion expressed by you

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in the letter from which the above extract is made, there can be no doubt. To establish this, it is only necessary to refer to the obligations that would have rested on the states in regard to this matter and the rights and powers they would have possessed, had they parted with no portion of their sovereignty, and the alteration made in their circumstances in this particular by the adoption of the Constitution of the United States. By the laws of Nations it will be conceded I apprehend, that if a citizen of Georgia were to Commit an offense against its laws and escape into Maine, there would be no obligation on the part of the latter to deliver him up on demand. Had these States remained independent sovereignties, this might have been provided for by treaty stipulation. But if a citizen of Maine were to enter the territory of Georgia & violate its laws and then return to his own State, the State of Maine would be bound to surrender him or make a recompense for the wrong, and a refusal to do the one or the other of these things, would in certain cases be a just cause of war. It would be no excuse to say that the accused denied having committed the offence; or, that if he did commit it he was just about to return on his homeward journey at the time; or that he departed the territory of Georgia before accusation was made against him, and that he was therefore not a fugitive from justice and that he returned by the accustomed route, and since his arrival at home had

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attended to his business openly. Under the laws of Nations the state of Maine might require evidence of the guilt of her citizen before she would surrender him, but could not demand other proof that he had fled from justice, than that he had committed the offence in a foreign State and returned to his own Country. Now in what manner had the adoption of the federal Constitution affected the relation of the states to each other in this particular? The Constitution prohibits them from entering into a treaty and therefore they Cannot stipulate in that way for the surrender of fugitives from justice. A state Cannot engage in War nor grant letters of marque or reprisal, and therefore if a citizen of one State enters the territories of another State and there Commits an offence against its laws, and returns to and his own State, and reparation is refused, the aggrieved State cannot resort to the mode of redress usually adopted by independent sovereignties. But for all the cases the Constitution has provided a remedy in that clause under which the demand is never made, and a Consideration of the surrender of the persons above mentioned by the States, has imposed on the General Governments the duty of delivering fugitives from justice and has so altered the laws of the nations in reference to the States themselves as to require the delivery of persons escaping from the justice of one State into another to be delivered up on demand upon a charge of crime. It does not, as the laws of Nations, require that evidence supporting the charge should accompany the demand,

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nor do its terms justify the construction that other proof that the accused had fled from justice, should be adduced than is required by the laws of Nations. One State cannot be called upon to make good the injury committed by its citizens upon the rights of another State, or the property of its citizens. So far as this matter is concurred the states are to be regarded as one great community, each one protecting its own rights and those of its citizens by the effectual enforcement of its penal laws enacted for this purpose, the other states, or the General Government affording all the necessary means of securing offenders against the laws, who might convey themselves out of its jurisdiction and therefore beyond the reach of its process, & be found in the limits of another state. Adopt the construction which Your Excellency gives to the Constitution and in cases where a state would have the unquestionable right by the laws of Nations to demand either a recompense for the wrong, or the surrender of him who perpetrated it, there would be no redress. It is not supposable that a proposition to exempt from the operation of the second clause of the second section of the fourth article of the Constitution of the U.S. the citizens of our State who should while in the territory of another state commit treason felony or other crime, and escape or return to his own state before an accusation was preferred against him, or who perpetrated the offence while in the act of departing from the State, would have been counter[vanced?] by the great

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men who framed that instrument. It was intended that all that could be accomplished either by the laws of Nations or by treaty stipulations among the states as independent sovereignties for their own safety should be effected under the Constitution and that the states should be auxiliary to each other in the execution of their criminal laws. Let it be supposed that a citizen of Georgia travelling through the State of Maine were, as he was about to depart from its territory, to commit murder, robbery or arson and to pursue his onward journey unaccused and unmolested until he reached his residence here, and after his arrival were openly to pursue his usual business, could it be entertained for a moment that he should not be arrested and delivered up on demand of the authorities of Maine? Or suppose that Philbrook and Kelleran had, in the port of Savannah, after they were ready to sail for Maine and had left the wharf, murdered one of their seamen, a citizen of Maine, and that for this offence they had been indicted in a court of this State having jurisdiction of the case, and a demand had been made of your Excellency to deliver them up, conforming in all respects to the Constitution and laws of the United States, could it with propriety be objected to the demand that they were not fugitives from the justice of this State; or that they were not accused before they actually left the port, or that

they denied the commission of the offence? I apprehend in neither case would such a course be justifiable.

It would be monstrous for the States to act upon the principle, that the provision in the Constitution under consideration does not apply to offenders who are able to make their escape from the State in which the crime charged against them was committed, before an accusation could be made; or to such as enter a neighboring State apparently for a lawful purpose, and after having made preperation to leave it, perpetrate the offence and depart forthwith. Such a course would give rise to, and encourage difficulties of enormous magnitude among citizens of conterminous States, thwart the wise and philanthropic purposes of the constitution and lead to consequences fatal to the peace of the country. Every reason is in favor of the construction placed by me on the constitution. The convenience of the accused party should never be consulted. If he is wronged by the prosecution his redress is ample.

Your Excellency will oblige me by giving this subject your early attention.

I have the honor to be your obedt. servant.

Charles J McDonald

His Excellency Edward Kent- Governor of Maine.

Governor of Georgia October 4 1841

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