TO THE PRESIDENT.

PARDONS AND REMISSIONS OF FORFEITURES.

the property he may abandon, to be assessed by persons to be appointed by the President of the United States.

The term "property which he may abandon," seems to me to relate to his fixed property—that which he could not take with him; in a word, the land and improvements which he had occupied. On payment for these, the United States would, I think, acquire rights which would be inconsistent with the continuance of the right of occupancy theretofore existing in the tribe; and whatever right was thus acquired by the United States, would, in terms of the articles of cession before referred to, inure to the benefit of Georgia. The principle which is embraced in the first of these propositions is recognized by the treaty of 1817; and although the claims acquired under that treaty were adjusted and settled by the compact of 1819, yet the United States were, I apprehend, first to apply the same principle to future acquisitions made with the assent of the particular occupants. To have relinquished the right so to apply it, would have been to abandon the policy by which, both before and since, they have endeavored to promote the emigration of the tribes dwelling within that State; of which abandonment the result would be, that when even a majority of any tribe had been gradually withdrawn, and had received from the United States compensation for their respective claims, the remnant, however small, would extend their title of occupancy over all the lands lying within the limits originally allotted to the whole tribe. Such, at least since the year 1808, seems not to have been the understanding, either of this government, or of the particular tribe whose rights are involved in this inquiry.

JN. MACPHERSON BERRIEN.

To the Secretary of War.

PARDONS AND REMISSIONS OF FORFEITURES.

The pardoning power is coextensive with the power to punish, and is general and unqualified, except only in the cases of impeachments and proceedings for contempts; and it consequently includes the power of remission of fines, penalties, and forfeitures, under the revenue laws.

The power, however, does not go to the length of making restitution of fines, penalties, and forfeitures after they have been actually paid into the treasury.
The case of the memorialists is one in which the exercise of the pardoning power is rendered proper, from the entire absence of all criminal intent in the commission of the act from whence the forfeiture arises.

OFFICE OF THE ATTORNEY GENERAL,
March 17, 1830.

Sir: I have examined the memorials of Adelaide Adams and of Adam Stone and Asa Fairfield, which you did me the honor to refer to me; and I am of opinion—

1. That the rights of the seizing officer do not conflict with this power, since, as against the United States, no such right is vested until after condemnation and the payment over to the collector of the proceeds of the forfeiture for distribution.

2. That the case of the memorialists is one in which the exercise of the pardoning power is rendered proper, from the entire absence of all criminal intent in the commission of the act from whence the forfeiture arises.

In reference to the first of these propositions, I would observe, that the pardoning power is considered to be coextensive with the power to punish, except only in the cases of impeachments and proceedings for contempts. In all other cases, it is well remarked by a respectable writer on constitutional law, that “the power is general and unqualified; it may be exercised as well before as after trial; and it extends alike to the highest and the smallest offences. The remission of fines, penalties, and forfeitures, under the revenue laws, is included in it; and in this shape it is frequently exercised. But, although it may relieve the party from the necessity of paying money into the treasury, it cannot, after the money has reached the treasury, compel the restitution of it.”

In relation to the second, I remark, that the Supreme Court of the United States (in the case of the United States vs. Morris) have decided that the power of the Secretary of the Treasury, under the authority vested in him by law, extends to a remission of a forfeiture at any time before or after condemnation, until the money is actually paid over to the collector for distribution. The decision does not rest upon any express grant of power to remit after condemnation, but because such an exercise of it is rightful for the purpose of carrying into effect the intention of the act, and does not conflict with the rights
of the seizor, whose title the court considers as always liable to be divested by the government until the money is actually paid over to the collector for distribution. If this be true in relation to the power exercised by the Secretary of the Treasury, under the authority given to him by law to remit forfeitures, it does not seem to me that the power of pardon, which the constitution has vested in the President, (which, as we have seen, is coextensive with the punishing power, and is applicable to the remission of fines, forfeitures, and penalties,) can be restricted within narrower limits. The last position is too obviously manifest, from the facts of the case, to render any remark necessary to sustain it. There is a total absence of any intention to violate the laws of the United States in all the parties concerned in this transaction.

I herewith return the papers sent to me; and I have the honor to be, very respectfully, your obedient servant,

JN. MACPHERSON BERRIEN.

To the PRESIDENT OF THE UNITED STATES.

VACATING DECREES OBTAINED BY FRAUD.

An original bill, in the nature of a bill of review, is the proper proceeding to set aside a decree obtained by the production of forged documents. On suggestion of a gross fraud, the court will, upon an original bill, overrule a plea of a decree and a report made and confirmed thereon, if the suggestion of fraud be not denied.—(Lloyd vs. Mansell, 2 P. W. 73.) Lord Hardwicke held that, against a decree procured by fraud and covin, the party aggrieved may obtain relief by original bill.—(Bradish vs. Gee, Amb. 229.) Lord Thurlow held that such a decree could not be set aside by petition, but might be by original bill in the nature of a bill of review.—(Mussell vs. Morgan, 3 Br. Ch. Ca. 78.)

ATTORNEY GENERAL’S OFFICE,
March 25, 1830.

Sir: Although the duty of advising with the several district attorneys in matters committed to their charge is not one intrusted to this office, and would be incapable of general exercise, with the means at its command, I have, nevertheless, at your request, examined the bill sent to you by Mr. Roane, and will communicate to you what occurs to me.