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Benjamin Murphy

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H.R. Rep. No. 162, 24th Cong., 1st Sess. (1836)

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BENJAMIN MURPHY.

[To accompany bill S. No. 36.]

JANUARY 13, 1836.

Read, and with the bill, committed to a Committee of the Whole House to-morrow.

Mr. H. EVERETT, from the Committee on Indian Affairs, to which had been referred the bill from the Senate, No. 36, to pay Benjamin Murphy for his corn, cattle and hogs, taken by the Cherokee Indians, made the following

REPORT:

The Committee on Indian Affairs, to which was referred Senate Bill No. 36, report, that in their opinion the same ought not to pass.

DEPARTMENT OF WAR,
Office of Indian Affairs, Feb. 11, 1832.

SIR: In compliance with your order to report on the claim of Benjamin Murphy, for property taken and destroyed by the Cherokees, which claim was presented by the Hon. A. H. Sevier, I have the honor to state, that by the treaty of May, 1828, with the Cherokees, the United States ceded to them certain lands, and agreed to have the lines of the cession run without delay, not later than the 1st of Oct. then next, and to remove immediately after running the said lines, all white persons from the west to the east of a certain line, and to keep them from the west of said line in future. The depredation complained of, was committed about the middle of December, 1828, on the west of said line and within the ceded territory. Under this statement of the case, the claim cannot be adjusted by this Department.

I have the honor to be,

With great respect,

Your humble servant,

ELBERT HERRING.

To the Hon. LEWIS CASS,
Secretary of War.

DEPARTMENT OF WAR,
Office Indian Affairs, Feb. 27, 1832.

SIR: In obedience to your order to report on the question proposed by the Hon. A. H. Sevier, in his communication to you of the 20th instant, "when Mr. Joseph Brearley completed his survey of the western boundary line of Arkansas, run under the authority of the treaty with the Indians in 1828:"

I have the honor to state, that the only information which the files and records of this office can furnish on that subject, is contained in the following letter of Thomas L. McKenney, Esq. to Joseph H. Brearley, Esq:

DEPARTMENT OF WAR,
Office Indian Affairs, February 17, 1829.

SIR: I have to acknowledge the receipt of your letter to the Secretary of War, of the 2d December, accompanied by your account, and field notes, and plat of the line surveyed by you.

It is not esteemed to be necessary to direct you to make any further surveys.

I am, &c. &c.

THOS. L. MCKENNEY.

To Jos. H. BREARLEY, Esq.

And I have the honor further to state, that neither the letter, account, field notes, nor plat, referred to in the above letter of Thos. L. McKenney, can be found in this office. The probability is, that the account was handed over to the Second Auditor's office for settlement, and that Brearley's letter, field notes, and plat, were deposited in the Land Commissioner's office. I caused application to be made for those several documents in the two last mentioned offices; but the pressure of business has prevented, as yet, the necessary search for them.

I have the honor to be,

With great respect,

Your humble servant,

ELBERT HERRING.

His Excellency LEWIS CASS,
Secretary of War.

UNITED STATES OF AMERICA:

Arkansas Ter. Pulaski Co. }
Big Rock Township, } set.

Personally came before me, the undersigned, an acting justice of the peace in and for the county and township aforesaid, John Linton, of lawful age, who, after being duly sworn, deposeth and saith, that he was employed by Benjamin Murphy to lay his claim for stock, &c. before the Cherokee Council; that he deposited the account, with the deposition of John Murray, with Capt. Vashon, Agent, by whom they were laid before the Council; that this deponent attended the Council several days before they would take up Murphy's claim; that the Council did not deny Murphy's hostile treatment, nor his having been ordered away by their chief, but went on the ground, as shown in their report to the Agent, that Murphy had sold his stock to a Joseph Blair, who resides among the Indians, and an Irishman who likewise is a hireling among them; this deponent states, that Blair told him that Murphy had never sold him his stock, but that the Indians had used it; that he saw a large number of Murphy's cattle in a chief's pen, and told him that they were Murphy's cattle; that Blair stated that he was afraid to speak out, or to act, for fear of being tied up and

whipped by the Indians, and got this deponent to write a declaration declaring himself to be a citizen of the United States, and gave the same, in the presence of this deponent, to the Agent, and requested his protection. This deponent, after the Council had made their report, waited on the Agent, and requested a full copy of all the papers in his office; the Agent gave him a copy of the account filed by Murphy, Murray's deposition and the report of the Council, which he said was all the papers in his office relative to the case; this deponent requested the Agent to give him a certificate to that effect, but he refused, saying the certificate he had given was sufficient, and he must be allowed to be the proper judge of his own business. Further this deponent saith not.

JOHN LINTON.

Little Rock, Arkansas Territory.—The above named John Linton, this 11th day of January, 1832, made oath before me, the Governor of the Territory of Arkansas, that the above and foregoing statement, signed by him, is true. Given under my hand,

JOHN POPE.

Mr. Linton is a man, I believe, of good character, and credit is due to his affidavit.

J. POPE.

*Arkansas Ter. Pulaski Co. }
Big Rock Township, } sct.*

This day personally appeared before me, Dudley D. Mason, an acting justice of the peace within and for the county aforesaid, Benjamin Murphy, of lawful age, who, being duly sworn, testifies and states on oath, that he never sold or transferred to Joseph Blair the property mentioned in the deposition of John Murray, and which was presented for allowance before the late Council of the Cherokee nation; and this affiant further states, on oath, that he never sold or transferred to said Joseph Blair any property whatsoever, and that the said property was his own, and that his claim for the same still belongs to him. And further this deponent saith not.

BENJAMIN MURPHY.

Sworn to and subscribed before me, this 11th day of January, A. D. 1832.

DUDLEY D. MASON, J. P.

1830. *Cherokee Nation,*

	<i>To Benjamin Murphy</i>	Dr.
To hogs, taken by the Nation, say five hundred and twenty-one, at \$6 per hog,	-	\$3,126 00
To 137 head of cattle, say \$7 per head,	-	959 00
To one yoke of oxen,	-	80 00
To 65 bushels of corn, say	-	60 00
To cattle drove off, say 50 head, at \$7,	-	350 00
		\$4,575 00

Presented by John Linton, attorney in fact for

BENJAMIN MURPHY.

TOLLUNISKEE, November 4, 1831.

To Capt. GEO. VASHON:

SIR: The committee and Council have rejected Murphy's claim against the Nation, as it has been proven to the Council that said Murphy did convey to Mr. Blair his stock, consisting of horses, hogs, and cattle, and for him to sell and dispose of said stock in any manner that he saw proper, and to claim it as his; it also has been proven that Mr. Blair made use of and disposed of a good deal of said stock, and that there is yet in the range some of said stock which is wild, and that Murphy was ordered away is a fact; notice was given him by Black Fox, a chief, to gather his stock in a certain number of days, and leave the nation with his stock, in consequence of Murphy's marking other people's stock, as was proven to the Council; and that Murphy's stock then was considered as intruding on Cherokee lands. If Murphy has been injured by any of our people, let him authenticate his claim against the individual, and the nation will see him righted if the individual is worth the amount.

J. VANN, *Pres't N. C.*EDW'D. HICKS, *Clerk.*WESTERN CHEROKEE NATION,
Agent's Office, November 5, 1831.

Copy, from the original filed in this office, the other papers in the case not yet being filed.

GEO. VASHON,
U. S. Indian Agent.

UNITED STATES OF AMERICA:

Arkansas Ter. Pulaski Co. }
Big Rock Township, } ss.

Personally came before me, the undersigned, an acting justice of the peace in and for the county and township aforesaid, John Murray, who, after being duly sworn on the holy evangelists of Almighty God, deposed and saith as follows: that some time about the middle of December in the year 1828, that this deponent left Lovely Purchase, near the falls of Arkansas river, in company with Benjamin Murphy, who had resided with said Murphy, at or near the falls, from the preceding April; that when said Murphy left or removed from the falls aforesaid, he left his stock, consisting of cattle and hogs; that this deponent returned in February, in company with said Murphy, to remove his stock; that when they arrived where said Murphy lately had resided, they found some cows and calves penned, belonging to said Murphy; that they went about half a mile further and found a yoke of oxen penned; and a Cherokee Indian, by the name of Thornton, had the oxen in possession, who first put up a claim to the oxen and cattle; but when informed by this deponent that they belonged to Murphy, and that Murphy had come after them, Thornton requested this deponent to inform Murphy, that he would purchase his cattle and hogs—the oxen, he said, he must have; that this deponent and Murphy went to Thornton, and Thornton and Murphy agreed on the price of the cattle, which was, as this deponent understood by them, to be

as follows: ten dollars for a cow and calf, ten dollars for a steer as large as a cow, and so on, down in proportion; that this deponent, Murphy, and Thornton rode into the woods, to see, count, and deliver the cattle to Thornton, and saw a great many of Murphy's cattle; Thornton then observed he would prefer having the cattle penned: this deponent and Murphy then penned a part; Thornton then looked at the cattle, but would give no satisfaction; this deponent and Murphy then got the Indians and showed them the cattle, and turned out such as the Indians claimed, and then marked some young cattle; this deponent and Murphy proceeded and purchased corn, about forty bushels, for which they paid the Indians from seventy-five cents to one dollar per bushel, and fed Murphy's hogs; but nearly every day, they perceived hogs that belonged to Murphy fresh marked, or the mark of Murphy altered into that of the Indians. This deponent states, that the Indians told him that Webber, a Cherokee chief, or his people, had killed a great many of Murphy's largest, fattest, and best hogs; this deponent and Murphy then proceeded and penned a number more of the cattle; when the cattle were penned, Thornton, without giving Murphy any satisfaction, arbitrarily drove off Murphy's oxen; the Indians furthermore told this deponent, that Webber's people had drove off a great many of Murphy's cattle upon the head of Illinois. The Cherokee Indians turned the cattle out of the pen, contrary to Murphy's will, and came to the house where this deponent and Murphy were, and stated, that if they did not go away and leave the cattle and hogs, that they would kill this deponent and Murphy, saying Murphy would not sell them, and they would have them any how. This deponent states, that in consequence of their threats and menaces, they were forced to leave the nation, without bringing any part of Murphy's cattle and hogs; that the Indians made an attempt to kill this deponent, in consequence of his being in company with Murphy, and assisting him with his stock; and this deponent believes they would have killed him, had it not have been for the interposition of Capt. Bonnaville, of the United States troops, stationed at Cantonment Gibson; that Murphy had to fly and secrete himself to save his life. This deponent and Murphy saw and penned, or the most part penned, four hundred and twenty some hogs; the number between twenty and thirty, not now recollected by this deponent; that among these hogs there was no pigs, nor shoats, in consequence of there being no mast of consequence the preceding fall; that these hogs were then in good order; it is now the opinion of this deponent, that these four hundred and twenty odd hogs would have averaged neat two hundred weight per hog, and that pork was then selling at three dollars per cwt.; that the Indians intormed this deponent and Murphy of a hundred, to one hundred and fifty, which, they said, run between the falls and Cantonment Gibson, which they did not get to see, in consequence of being forced, to preserve their lives, to quit the Cherokee nation; this deponent states, that the number of cattle they saw belonging to Murphy, was one hundred and thirty-seven, thirty-eight of which were cows with their calves; this deponent states, that Murphy then asked, (and this deponent believes it to be a fair price,) seven dollars per head, for the cattle round, exclusive of the oxen; this deponent states, the yoke of oxen before mentioned by him, was well broke to work, and must have weighed 750 wt. each, were young and first rate yoke; this deponent states, that he assisted Murphy to put in crib when he moved from a boat, sixty-five bushels of corn, which corn was gone at their return; and the Indians

told this deponent, that Qualooke, a Cherokee Indian, had used the corn; this deponent states, that the Indians mentioned and referred to by him, are the Cherokees settled in Lovely Purchase; furthermore this deponent saith not.

JOHN MURRAY.

Subscribed and sworn to before me, an acting justice of the peace, in and for the county of Pulaski, Arkansas Territory, this the eighth day of October, 1831.

DUDLEY D. MASON, J. P.

WESTERN CHEROKEE NATION,
Agent's Office, November 5, 1831.

Copy, from original filed in this office; the other papers in the case not yet being filed.

GEO. VASHON,
United States Indian Agent.

UNITED STATES OF AMERICA:

*Arkansas Ter. Conway Co. }
Cadron Township, } *sect.**

Personally came before me, the undersigned, an acting justice of the peace, in and for the county and township aforesaid, John Murray, of lawful age, who, after being duly sworn on the holy evangelists of Almighty God, deposes and saith as follows: that he went with Benjamin Murphy to the Cherokee nation, to assist him away with his stock; that he staid in company and came away with said Murphy; that they put up with a Joseph Blair, a white man, residing among the Indians; that they were ordered away by Black Fox, a Cherokee chief, to depart in four days; that it was impossible in that time to get the stock out of the nation, as the stock was in the forks of the river, between Illinois and Arkansas, and they were threatened with their lives if they staid longer, and the waters uncommonly high, as to render it impossible to move said stock; that this deponent is confident and certain, that Blair never did purchase any stock from Murphy; that he left Blair's incompany with Murphy, and that Blair and Murphy then called the stock Murphy's; that Blair was, and is, a very poor man, not able to purchase any thing, and under a very bad character among the Indians, as to honesty. As to marking the Indians' stock, this deponent states, that when Murphy's stock was penned, they gave the Indians notice, and several came and agreed that the stock was none of theirs; that one day an Indian came and claimed a hog that Murphy had marked; that Murphy replied to him, that his stock was so large he could not know every hog, but if the hog was his, he (the Indian) might take it, and he would give him two other hogs for it, which was the only wrong marking he heard of. And further, this deponent saith not.

JOHN MURRAY.

Sworn and subscribed to, before me, this 3d day of January, in the year of Christ, 1832.

[SEAL.]

JOHN LINTON, J. P.

I, John Pope, Governor of the Territory of Arkansas, hereby certify, that John Linton and Dudley D. Mason, are acting justices of the peace: Linton, for the county of Conway, and Mason, for the county of Pulaski, in the Territory aforesaid; that they have been duly commissioned as such, and that due faith and credit are due to their official acts.

Given under my hand, at Little Rock, on this 11th January, 1832.

JOHN POPE.

We certify that we are acquainted with John Murray, and believe him to be a man of good character, and that full faith and credit ought to be given to him as a witness on oath.

R. A. CALLOWAY.

ROBERT CRITTENDEN.

SAMUEL HALL.

D. D. MASON.

LITTLE ROCK, *January 11, 1832.*

My personal acquaintance with Mr. John Murray is but limited, but his general character is such among those with whom I am acquainted, that I would feel no hesitation in placing implicit confidence in his oath, as a witness, or even his word, as a man of veracity.

WM. WOODRUFF.

TERRITORY OF ARKANSAS, }
 Crawford Co. Upper Township, } *scd.*

Personally appeared before me, the undersigned acting justice of the peace, James McDavid, of the township aforesaid, of lawful age, who, after being duly sworn, deposeth and saith: that he moved up to the mouth of Illinois river with Cherokee Indians, as, and having the appointment of United States blacksmith; and that Benjamin Murphy had removed, but had left his stock, as he saw a large number of cattle running in the prairies, and understood a great number of them belonged to said Murphy, and that Webber, a Cherokee chief, as soon as the Indians drove Murphy off from Illinois, came to this deponent and got a branding iron, made with the letter W. and went out marking and branding cattle; and this deponent was informed by Webber's step son, that they marked and branded twenty-five head of Murphy's cattle in one day, and that this deponent knows that they were out marking and branding several days, and that a great many hogs were killed that Indians said belonged to said Murphy; and further states that Murphy had a large stock of cattle and hogs, and that he took none away from the nation; and further this deponent saith not.

his

JAMES x McDAVID.

mark.

Sworn and subscribed to before me, this 26th day of February, 1834.

MATTHEW MOORE, *J. P.*

UNITED STATES OF AMERICA,
Cantonment Gibson.

Personally came before me, the undersigned Joseph Blair, of lawful age, who, after being duly sworn, deposed and saith, that in the year 1829, he came with the Cherokees, being then United States wheelwright, and settled at the mouth of the Illinois river; that Benjamin Murphy, who had lived in the neighborhood, had already removed; sometime afterwards, the time not recollected by this deponent, but he knew it was before he could finish his house, Murphy came with one John Murray, to drive away his stock; they came to the house of this deponent, where they staid collecting Murphy's stock of cattle and hogs. Whilst Murphy was collecting his stock, William Thornton, a Cherokee, and clerk and agent for Walter Webber, a Cherokee chief, stuck up an advertisement on the door of John Jolly, principal chief, forewarning Murphy from driving away his stock, or any person or persons from trading for it. Murphy still continued to collect, when in the absence of this deponent, a considerable number of Indians gathered at this deponent's house, and made an assault on Murphy, who made his escape by the interposition of this deponent's wife, and that they then pushed on John Murray, and that scenes of blood were prevented by the interposition of Captain Bonnaville, of the United States army, stationed at Cantonment Gibson—this, this deponent has had from his wife immediately on his return, and from Captain Bonnaville, and also from the Indians, who stated that their Council had ordered Murphy away, and that he should not take his stock: at which time the river was so full, that it was coming out of banks. At night Murphy came to this deponent's house, from lying out from the Indians, and being ordered off by Black Fox, the second chief, Murphy solicited this deponent to take care of his stock of cattle and hogs, or to sell them, so that they should not be entirely lost; which this deponent promised Murphy he would, if it was in his power, and Murphy left this deponent's house. Early next morning this deponent, in pursuance of his promise, went to see about Murphy's stock, and found about seventy head of cattle in Walter Webber's pen, belonging to Murphy; Webber forbid this deponent from touching or meddling with them, alleging that he had a small debt against Murphy, which he had purchased from one Choctau; this deponent then offered to pay said Webber the amount of said debt, which Webber refused to take, and altered Murphy's mark into his own. This deponent states, that Murphy had about three hundred head of hogs, which run in the cane bottom, between his house and Webber's; also, a large quantity up the Illinois; also, a considerable gang near the Sulphur Springs, and a small gang below General Jolly's; that this deponent saw a great many of these hogs marked in Walter Webber's mark, both before they drove Murphy away and afterwards; and in other Indians marks; and while he continued striving to save them, he saw the Indians killing and packing them away—as for this deponent purchasing Murphy's stock, or to give Murphy any thing for them, he most positively denies. This deponent knows that William Thornton took a valuable yoke of work oxen belonging to Murphy, which he refused to give up. And this deponent knows that the whole stock, by the means before mentioned, was entirely lost to Murphy; and he further states, that a long time after the depredations before mentioned, the Cherokees were allowed, and did drive away their stock from among the whites; and further this deponent saith not.

JOSEPH BLAIR.

The above named Joseph Blair signed the foregoing statement in my presence, and declared that he was willing to swear to the facts therein stated; but from ill health could not ride or travel to the Arkansas Territory, or to any other place where this could be legally done.

M. ARBURCKLE,

Col. 7th Infantry Com'dg.

FORT GIBSON, February 15, 1834.

UNITED STATES OF AMERICA:

Arkansas Territory, }
Conway county, } sct.

Personally came before me the undersigned, an acting justice of the peace for the county aforesaid, John Murray, who, after being duly sworn, deposeth and saith, that the Cherokees west of the Mississippi, took from Benjamin Murphy five hundred and twenty-one hogs; that in this deponent's estimation, each hog, on an average, was worth six dollars, making the hogs worth three thousand one hundred and twenty-six dollars; that the Indians took one hundred and thirty-seven head of cattle, and one yoke of oxen, from said Murphy; that the stock cattle, on an average, were worth seven dollars per head, making nine hundred and fifty-nine dollars; that the yoke of oxen was well worth eighty dollars; that the Indians took from said Murphy, sixty-five bushels of corn; that the corn was worth thirty-nine dollars; so this deponent says, that the property that he knows the Indians, by force, did take from said Murphy, at a low estimation, was worth four thousand two hundred and four dollars, and further this deponent sayeth not.

JOHN MURRAY. [SEAL.]

Sworn to and subscribed before me, this 24th day of December, 1834.

JOSEPH I. SIMMONS, J. P.

EXECUTIVE OFFICE, LITTLE ROCK,
Arkansas Territory.

I, John Pope, Governor of the Arkansas Territory, do hereby certify, that Joseph I. Simmons, who has subscribed the within and foregoing certificate, was, at the date thereof, a duly qualified justice of the peace, in and for Conway county, in the Territory aforesaid, and that due faith and credit are due to his official acts and certificates as such.

In testimony whereof, I have hereto subscribed my name, and caused the seal of the Territory to be affixed, at Little Rock, in said Territory, on this fourteenth day of January, in the year one thousand eight [L. s.] hundred and thirty-five, and in the fifty-ninth year of the independence of the United States of America.

JOHN POPE.

January 14, 1835. From the information I have received, in which I place confidence, Mr. John Murray is a man of good character and respectability.

JOHN POPE.

WASHINGTON CITY, D. C.

April 4, 1832.

Sir: In compliance with your request, I will briefly state what I know of the circumstances of the claim of your constituent, Mr. Murphy; I am confident that your claimant had a very large stock within the country ceded to the Cherokees, under the treaty of the 6th of May, 1828; that he did lose the greater portion of it in consequence of this cession, and having to remove, I am equally certain, and I think him justly entitled to the justice of the Government, and to remuneration for the losses he has sustained.

Your obedient servant,

J. W. FLOWER.

Hon. A. H. SEVIER.

Personally, and before the undersigned, an acting Justice of the Peace for the county of Lincoln, John Murray, who after being duly sworn, deposed and said: that the Cherokees west of the Mississippi took from the said Murphy two hundred and twenty-one horses, five or six hundred dollars worth, on an average, each being worth six dollars; that the horses were worth three hundred and twenty-six dollars; that the Indian took one hundred and thirty-seven head of cattle, and one pair of oxen, from said Murphy; that the stock value, on an average, were worth seven dollars per head, making nine hundred and fifty-five dollars; that the value of oxen was worth eighty dollars; that the Indians took from said Murphy, thirty-five barrels of corn; that the corn was worth thirty-nine dollars; so the defendant says, that the property that he claims the Indian by force did take from said Murphy at a low estimation, was worth two hundred and ten dollars, and further this day...

JOHN MURRAY. [sworn]

JOSEPH A. SIMMONS, J. P.

EXECUTIVE OFFICE TERRITORY OF ARIZONA
John Pope, Governor of the Arizona Territory, do hereby certify, that Joseph A. Simmons, who has subscribed the within and foregoing certificate, was at the date thereof a duly qualified Justice of the Peace in the Territory of Arizona, and that the said certificate is such as to be in his official acts and capacities as such.
In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Territory to be affixed, at Santa Fe, this 27th day of January, in the year one thousand eight hundred and thirty-two, and in the eighth year of the independence of the United States of America.

JOHN POPE

From the information I have received, I have concluded to withhold my assent to the proposed bill for the purpose of a more full and complete investigation of the facts...

JOHN POPE