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### Memorial of the General Assembly of Alabama, praying that the people of that state be indemnified for depredations committed on their property by the hostile Creek Indians in 1836

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MEMORIAL

OF THE

GENERAL ASSEMBLY OF ALABAMA,

PRAYING

*That the people of that State be indemnified for depredations committed on their property by the hostile Creek Indians in 1836.*

JANUARY 10, 1839.

Referred to the Committee on Indian Affairs, and ordered to be printed.

*To the Senate and House of Representatives of the United States in Congress assembled :*

The memorial of the General Assembly of the State of Alabama,

RESPECTFULLY SHOWETH :

That by a treaty made and entered into on the 24th day of March, 1832, at Washington city, with the Creek tribe of Indians, all the lands belonging to said tribe were ceded to the United States, on the condition that each Indian warrior or head of a family should have a reservation of a half section of land, which he should be allowed to sell, by procuring the assent of the President of the United States to such sale; and the said tribe was allowed to remain in the country so ceded for five years from the date of the treaty, during which period it was intended that full time should be given to said Indians to dispose of their reservations. At the end of the five years it was provided, that those who had sold their reservations should be removed by the Government west of the Mississippi, while those who had not disposed of their reservations were to hold the same in fee simple, and to remain upon them subject to the laws of the State of Alabama.

One of the first acts of the Government, after the ratification of this treaty, was to cause the lands not located upon by Indian reservations to be surveyed and sold at public auction. This policy of the Government produced the anomalous result of throwing a large body of white settlers, who had purchased land in the Creek country, in contact and juxtaposition with the Indians. For the first time in the history of this Government, the white and red race occupied the same country. This unprecedented state of things produced what might have been anticipated: mutual injuries and violations of property, and, what was a necessary consequence, reciprocal feelings of personal dislike and animosity, which, in many instances, resulted in actual aggressions, either upon the property or the persons of the offending parties. The Government was frequently warned of the progress of these events, and was fully reminded of the consequences which would inevitably result, unless an adequate military force was immediately sent to the country to

overawe the turbulent spirit of the Indians, which was daily manifesting itself in acts of hostility to the white settlers. Primary meetings of the people in many parts of the Creek country were held, in which it was reported to the President, not only that partial hostilities then existed, but that a portion of the Creek tribe, including the lower towns, were actually preparing themselves for the commencement of a general war. It was urged, that from the fact that many of the Indians had already disposed of their reservations, and were roaming through the country, without a home, and without the means of support, in an almost starving condition; that this spirit of partial hostility would rapidly extend itself to the whole tribe; that it was the duty of the Government either to remove this wandering and disaffected portion who had disposed of their lands, or subsist them at the public expense, and to provide an adequate military force to keep them in subjection, until the treaty stipulations, on the part of the Government, were carried fully into effect. This appeared to be due, not only to the Indians, but more particularly to the white settlers, who occupied the country by the consent of the Government, and who were living on lands purchased, either from the Indians agreeable to treaty, or from the Government, and whom the Government was under the strongest obligations to protect in the peaceable enjoyment of these lands.

Without any imputation on the official conduct of the President or Secretary of War, the General Assembly feel it a duty which they owe to a respectable portion of the people of Alabama, to say, not only that no efficient measures were taken by the Government to protect the lives and property of the settlers in the Creek country, previous to the actual commencement of general hostilities, but that even the ordinary military force which had been for years previously, in the most peaceable times, stationed at Fort Mitchell, was removed from the country in advance of the very period when, circumstances have since proved, they were most needed. Whether this occurred from the necessities of the Florida war, or whether it resulted from the assurances which the Government received of the pacific feelings of the Creeks, from the subordinate officers employed in the Creek country, or from whatever cause which may detach blame from the President, the fact must be admitted to present strong claims on the justice of the country, in favor of allowing an indemnity for those losses which the Government might so easily have prevented. It is certainly not assuming too much for the General Assembly to say, that if the Government, upon the first manifestation of a hostile spirit among the Indians, had sent an organized force of two hundred men into the Creek country, all the aggressions which afterwards took place might have been averted. Not only was this not done, but up to the 1st of May, 1836, when the scene of general war actually commenced among the lower Creeks, which terminated in such a destruction of the lives and property of a portion of the people of this State, no measures whatever of a defensive character had been taken by the Government. A scene of savage murder and rapine occurred in the State, the more dreadful, because the Indians outnumbered the whites more than twenty to one, and the less liable to be averted by any other power than that of the Federal Government; because the tribe from which it proceeded were under the *exclusive control and protection* of that Government, pending the carrying into effect with them of the stipulations of the treaty of 1832.

The General Assembly of this State, at its last annual session, presented a memorial to the Congress of the United States, urging the propriety and

justice of granting indemnity to the sufferers by Indian depredations in 1836, to the full amount of the losses actually sustained. This memorial has not yet been definitely acted on by either of the Legislative branches of the Government; but in a report from the Committee of Claims, of the House of Representatives, during its last session, we find a recommendation, in the shape of a resolution, that the claims for depredations ought not to be allowed. In arriving at this conclusion, that committee have adopted a course of argument and inference from facts, from which this assembly begs leave respectfully to express its dissent. The practice of the Government, heretofore, to refuse indemnity for spoliation committed by an Indian tribe at war with the United States, has been urged as a reason for rejecting their claims. To give this argument effect, it should be shown that, under similar circumstances, the Government have adopted a similar decision. The peculiarity of this case is, that it is a claim not for depredations committed by an exterior tribe at war with the United States, but by a tribe kept and detained within the limits of a State, after the larger portions of the tribes had disposed of their lands, and detained, too, in that State of pupilage and dependence on the Government, created by treaty, upon the very lands which the Government had sold to the white settlers. Where, before, have the Government kept an Indian tribe on a tract of country, after disposing of the lands belonging to that country to white settlers? While detained in such a country, in fulfilment of treaty stipulations, what other power than the Federal Government is responsible for enforcing on them the observance of peace? Besides, the Government is unable to prevent the aggressions of exterior tribes, and are therefore not responsible for them; but who can say that ordinary prudence and precaution on the part of Government, (the same which has so lately been used in the removal of the Cherokees,) would not have prevented the late depredations of the Creeks? Because the Government has refused to grant indemnity for losses it *could not* prevent, is it therefore to refuse it for those which it *could*, by ordinary means, have prevented? If so, it amounts to a denial of that protection to its citizens against foreign violence, which is the basis of the allegiance which it claims from such citizens. But why is it that the Government is not bound for depredations committed during a state of war, upon no other principles than its inability to protect its citizens from the consequences of war? This might be a very just argument to its citizens against a claim for indemnity committed by Great Britain or France, or some powerful nation which the Government could not drive into a reparation of the consequences of a war, but it is certainly misapplied, when urged as a reason for not protecting its citizens against the depredations of a miserable remnant of an interior tribe of Indians, who were subdued in less than eight weeks. After subduing the Creeks, why did not the Government, in justice its own citizens, make that tribe, through their heavy annuities, responsible for the losses and depredations of the war? There was no want of power to do this; and acting upon the principles that it is the duty of the Government to afford all protection to their citizens, compatible with the public safety and ability, the Government ought to have imposed the indemnity on the offending tribe. Not having done so, it has not exerted its legitimate means of affording all the protection in its power to the rights of its own citizens, and ought, on every principle of justice, to pay the indemnity out of the public Treasury.

But again, it cannot be denied, that under the intercourse law of 1802,

and under the constant practice of the Government, depredations committed by a portion of a tribe *not at war with the United States*, have invariably been paid by the Government, and then charged against the annuity of that tribe. Nor, though it has been assumed by the Committee of Claims that the depredations committed by the Creek Indians in 1836 were committed during a state of *war*, your memorialists venture the assertion, that during that year, there was no war with the *Creek Indians as a tribe*. A large majority of that tribe were not only at peace with the United States, but actually assisted in bringing the hostilities of a minor portion to a close. The principal chief of the nation, with a majority of the chiefs and warriors, took up arms and assisted in subduing the hostile portion of their tribe. How, then, can it be called a state of war with the Creek Indians? If depredations, by a portion of a tribe, and that the smaller portion, constitute a state of war, then is all prospect of indemnity, under the act of 1802, at an end. If the Government were now to indemnify the sufferers by the late Creek Indian depredations, and were to charge the indemnity against the Creek nation, it is not to be doubted that the sum would be deducted, not from the annuity of the whole tribe, but from the annuities of that portion who committed the depredations. A majority of the chiefs would feel that this was but an act of justice to the larger portion of the tribe, who took no part in the late hostilities. The justice and propriety of this course are so obvious, that your memorialists, with perfect confidence, submit the subject to the impartial consideration of your honorable bodies, together with the following resolutions, as the sense of the General Assembly of Alabama.

*Resolved by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That the depredations committed by the Creek Indians in 1836, on the property of the people of Alabama, prior to the commencement of general hostilities, during said hostilities, and subsequent thereto, ought to be paid to the sufferers out of the Treasury of the United States.

*Resolved,* That our Senators be instructed, and our Representatives requested, to urge said claims on the favorable attention of Congress.

*Resolved,* That a copy of this memorial be forwarded to each of our Senators and Representatives in Congress, with a request that it be submitted to each of their respective Houses.

Passed the Senate December 27, 1838.

JAMES M. CALHOUN,

*President of the Senate.*

J. W. McCLUNG,

*Speaker of the House of Representatives.*