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Report : Petition of F. Wood

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IN SENATE OF THE UNITED STATES.

FEBRUARY 18, 1840.

Submitted, and ordered to be printed.

Mr. HUBBARD made the following

REPORT :

The Committee of Claims, to whom was referred the petition of Fleming Wood, praying indemnification for losses occasioned by a seizure and detention of goods by United States officers, for an alleged violation of the laws regulating trade with the Indian tribes, report :

That they made application to the War Department for such information as it was in possession of, relative to the seizure of the goods, and the claim of the petitioner, and have been furnished with a report from the Commissioner of Indian Affairs on the case, together with the correspondence between the petitioner, the agents of the United States, and the Commissioner of Indian Affairs ; all of which, that is deemed of importance to a correct understanding of the merits of the claim, is hereunto annexed. As the committee are of opinion, that the report of the Commissioner is fully sustained by the law and the facts in the case, they adopt that as a part of their report, and submit the following resolution :

Resolved, That the prayer of the petitioner ought not to be granted.

LETTERS ACCOMPANYING THIS REPORT.

- A. The Secretary of War to Mr. Hubbard.
- B. Commissioner of Indian Affairs to the Secretary of War.
- C. Captain Armstrong to Governor Stokes.
- D. Governor Stokes to Captain Armstrong.
- E. Captain Armstrong to Messrs. Wood & Harris.
- F. Same to Commissioner of Indian Affairs.
- G. Messrs. Wood & Harris to same.
- H. Commissioner of Indian Affairs to Captain Armstrong.
- I. Same to Messrs. Wood & Harris.
- J. F. Wood to Commissioner of Indian Affairs.
- K. Commissioner of Indian Affairs to F. Wood
- L. Captain J. Stuart to Commissioner of Indian Affairs.

A.

WAR DEPARTMENT, *February 15, 1840.*

SIR: I have the honor to transmit herewith the report of the Commissioner of Indian Affairs, and accompanying documents, upon the memorial of Fleming Wood, praying indemnity for goods seized for a violation of the law regulating trade with the Indians, which was referred by your letter of the 28th ult. The memorial is herewith returned.

Very respectfully, your most obedient servant,

J. R. POINSETT,

HON. H. HUBBARD,

*Chairman Committee on Claims,
U. S. Senate.*

B.

WAR DEPARTMENT,
Office Indian Affairs, February 13, 1840.

SIR: In obedience to your directions, I have the honor to report all the information, which is in possession of this office, in relation to the claim of Fleming Wood for indemnity for the seizure and detention of property on account of an alleged violation of the intercourse law of 1834; the memorial of the claimant having been enclosed to you by Honorable H. Hubbard, chairman of the Committee of Claims of the Senate, and referred to this office.

It appears that, in July, 1837, a license was granted, by M. Stokes, Esq., agent for the Cherokees, to Messrs. Wood & Harris, to trade with those Indians, agreeably to the provisions of the second section of the act to regulate trade and intercourse with Indian tribes, &c., approved June 30, 1834, which prohibits any trading with Indians, in the Indian country, without such license; that, having been informed of this fact, and that Messrs. Wood & Harris were then erecting houses for the purpose, in the Cherokee nation, near the Arkansas line, and opposite to Fort Smith, where they had another store, Captain William Armstrong, acting superintendent of the Western Territory, on the 9th September, 1837, apprized the Cherokee agent that (in virtue of authority conferred upon him by the same section of the act) he would "be under the disagreeable necessity of revoking said license, as it is the policy of the Government to keep the Indians from visiting the line as much as possible, to prevent the introduction of liquor into the Indian country, and other violations of the law;" and that Mr. Stokes declining to carry out the views of the superintendent, the latter, on the 12th December, did revoke the license, and prohibit the parties from further trading under it until the case was submitted to this office for approval or otherwise; adding, that "this notice would have been given you sooner, but for the absence of both of you from Fort Smith." On the same day (12th December) Captain Armstrong reported the facts to this office, and assigned as reasons for the course adopted, the bad policy of permitting the establishment of trading-houses directly on the line of the Indian territory, and the fact that "Messrs Wood & Harris have now a store in Fort Smith, and are among the largest whiskey-dealers on the line, and their new store is in sight on the opposite bank of the Arkansas." The section of the inter-

course act, above quoted, authorizes the superintendent of the district to revoke and cancel a license whenever, in his opinion, it would be improper to permit the person licensed to remain in the Indian country, and directs that no trade with the tribes within that country shall be carried on in it, "except at certain suitable and convenient places, to be designated from time to time by the superintendents, agents, and sub-agents, and to be inserted in the license;" the 3d section of the act of same date, "to provide for the organization of the Department of Indian Affairs," enacts "that superintendents of Indian affairs shall, within their several superintendencies, exercise a general supervision and control over the official conduct and accounts of all officers and persons employed by the Government in the Indian Department, under such regulations as shall be established by the President of the United States;" and the regulations prescribed under it impose upon this class of officers the general duty of superintending and controlling the intercourse between the Indians and citizens of the United States, to whom alone licenses are allowed to be granted. The right of the acting superintendent to revoke the license in question cannot, therefore, be doubted, and the propriety of the measure, for the reasons given, was admitted, and the revocation approved on the 20th January, 1838. It further appears that, on receipt of the letter of that date from this office, Captain Armstrong notified the parties of its tenor, and again directed them to cease from trading. This injunction was, however, disregarded, and, after the lapse of about one month, he called upon the military to enforce it, and to seize the goods, in conformity to the requirements of the 4th section of the intercourse law, which directs, "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 and pay the sum of five hundred dollars;" and, by virtue of the 23d section of the same act, which authorizes the employment of the military force of the United States "in preventing the introduction of persons and property into the Indian country contrary to law," this was accordingly done, after the expiration of another month, and some resistance on the part of the agents of the traders, the latter being absent. The goods were turned over to the United States marshal for the Arkansas district, and the prosecuting attorney requested to institute the proper proceedings in the name of the United States. The transcript of the record and judgment in the case, which accompanies the memorial, shows the result.

From this statement of the facts, it appears that the memorialist has no just claim against the United States for indemnity. A copy of so much of the correspondence of this office as relates to the subject is herewith transmitted.

Very respectfully, your most obedient servant,

T. HARTLEY CRAWFORD.

HON. J. R. POINSETT,
Secretary of War.

C.

CHOCTAW AGENCY, *September 9, 1837.*

SIR: I have been informed that you have granted or promised a license to Mr. E. Harris to trade in the Cherokee nation opposite Fort Smith, near

the Arkansas line, and that he is now erecting houses, by your permission, for that purpose. I request to know if you have granted license to erect houses at that point for the purpose of trade; if you have, I regret to say that I will be under the disagreeable necessity of revoking said license, as it is the policy of the Government to keep the Indians from visiting the line as much as possible, to prevent the introduction of liquor into the Indian country, and other violations of law. In granting licenses to traders, they should be located only at certain suitable and convenient places. The location of a trading-house at that point, instead of being convenient to the Indians, would be the means of drawing them from their homes, and bringing them into contact with the authorities and citizens of Arkansas, which should be avoided if possible. I hope you will, upon reflection, agree with me upon the propriety of my course.

Respectfully, your obedient servant,

WILLIAM ARMSTRONG,
Acting Superintendent, W. T.

Governor M. STOKES,
Cherokee Agent.

D.

CHEROKEE AGENCY,
Fort Gibson, September 26, 1837.

SIR: I have received your letter of the 9th September, relative to the license granted to E. Harris, to trade with the Cherokee nation. As it is altogether impossible for me to select suitable places for trade, I have uniformly left it to the traders themselves to *choose* their own stations, and have granted them licenses accordingly.

The requisites of the law and the instructions refer to good conduct, good recommendations, and good security. With all these requisitions, Mr. Harris has complied, and although I am very unwilling to have the smallest difference or disagreement in opinion with you, as to regulations which belong to you as head of the department in this country, I cannot consent to revoke the license granted to Mr. Harris upon the plea of his location. You, sir, who have better means of judging of circumstances, from being in the neighborhood of Mr. Harris's establishment, may act in this case, as you may think proper.

I am, sir, with great respect, your obedient servant,

M. STOKES,
Agent for the Cherokees.

Capt. WM. ARMSTRONG,
Acting Superintendent, W. T.

E.

CHOCTAW AGENCY, *December 12, 1837.*

GENTLEMEN: Understanding from Governor Stokes, that you had obtained from him a license to trade in the Cherokee nation, to be located near

the line on the Arkansas river, immediately opposite Fort Smith. I deem it to be my duty, by authority vested in me by the intercourse law, approved June 30, 1834, to revoke said license. You will therefore cease to trade within the Cherokee nation, under the penalty imposed for a violation of the intercourse law, until the case shall have been submitted to the Commissioner of Indian Affairs, for his approval or disapproval. This notice would have been given you sooner, but for the absence of both of you from Fort Smith.

Respectfully, your obedient servant,

WM. ARMSTRONG,
Acting Superintendent, W. T.

Messrs. WOOD & HARRIS.

F.

CHOCTAW AGENCY, *December 12, 1837.*

SIR: I have the honor to enclose you a correspondence between Governor Stokes and myself, in relation to licensing Messrs. Wood & Harris to trade on the line opposite Fort Smith; and, also, a copy of my letter to those gentlemen revoking their license, until your decision should be had.

My great reason for pursuing the course I have, in the objection to locating a trading establishment on the Cherokee line, and near Fort Smith, which is on the Choctaw line, is that Messrs. Wood & Harris have now a store in Fort Smith, and are among the largest whiskey dealers on the line; and their new store is in sight on the opposite bank of the Arkansas. It surely cannot be deemed good policy to establish trading-houses immediately on the line of Arkansas, inducing the Cherokees to come where there is nothing but the river to cross, and a passage ever ready to be given for that object, to obtain spirits.

The intercourse law contemplates that trading establishments should be located at certain suitable and convenient places. The location of Messrs. Wood & Harris, according to my view, is the worst that could be made for the benefit of the Indians; because it is indirectly made a great depository of spirits, which is doubtless the great object in view, giving a decided advantage to those traders in the sale of spirits, which can be bargained for at the store in the nation, and the Cherokee passed over the river, extra of charges to the store in Arkansas, to obtain the spirits which could not be lawfully kept at the store on the Indian side. If there is not some such motive, why would a store be desired on both sides of the river, immediately opposite each other? I have no acquaintance with Mr. Wood, whatever; the other partner, Mr. Egbert Harris, I have known, from character, for some time. I beg leave to refer you to the Hon. A. H. Sevier, for the very objectionable location of this trading establishment.

Respectfully, your most obedient servant,

WILLIAM ARMSTRONG,
Acting Superintendent, W. T.

C. A. HARRIS, Esq.,
Commissioner of Indian Affairs.

FORT SMITH, ARKANSAS, *January 13, 1838.*

SIR: We address you on a subject of much importance to ourselves, and, perhaps, involving a principle which may be generally interesting. In July last, we obtained from Governor M. Stokes, the agent of the Cherokee nation of Indians, a license to trade with that nation, at a point on the Arkansas river, nearly opposite Fort Smith. It may not be unimportant to observe, that that license was sustained and sanctioned by a resolve or decree of the Cherokee nation, in full council assembled. Thus fully authorized, as we supposed, we proceeded, at much trouble and expense, to erect our trading establishment, and commenced and were proceeding in our business, in entire conformity, as we thought, with all the laws and usages of our Government. In the past month I received the following communication :

CHOCTAW AGENCY, *December 12, 1837.*

GENTLEMEN: Understanding from Governor M. Stokes, that you have obtained from him a license to trade in the Cherokee nation, to be located near the line on the Arkansas river, immediately opposite Fort Smith, I deem it to be my duty, by authority vested in me by the intercourse law, approved 30th June, 1834, to revoke said license. You will, therefore, cease to trade with the Cherokee nation, under the penalty imposed for a violation of the intercourse law, until the case shall have been submitted to the Commissioner of Indian Affairs, for his approval or disapproval. This notice would have been given you sooner, but for the absence of both of you from Fort Smith.

Respectfully, your obedient servant,

WM. ARMSTRONG,
Acting Superintendent, W. T.

Messrs. WOOD & HARRIS.

The above is a true copy of the communication from Captain William Armstrong to Messrs. Wood & Harris, revoking said license, in due form granted us by the Cherokee agent. Not a single objection is urged of delinquency or dereliction of duty on our part; it is not intimated that we have been guilty of any violation of the intercourse law, or a departure from any regulation of the department. We obtained our situation openly and without subterfuge. We were entirely ignorant that any other or further preliminary measure was necessary to give validity and stability to our acquired privilege, or most certainly we should have sought its attainment. During our labors in erecting our fixtures, had a notice from authority been given to stay our proceedings, we should have immediately desisted. Ours we deem a case of peculiar hardship; we are ordered to close our doors, without the assignment of any cause. Up to this moment we are left in entire ignorance of the point of difficulty. We ask of the justice of the department, not to blend ours with a point of office etiquette between this acting superintendent and the agent; that we be not sacrificed to a punctilio, not of our creation, and with which we have no concern.

We have the honor to be, very respectfully, sir, your obedient servants,
WOOD & HARRIS, By
EGBERT HARRIS.

H.

WAR DEPARTMENT,
Office Indian Affairs, January 20, 1838.

SIR: I have carefully examined the papers enclosed in your letter of December 12. Your revocation of the license granted by the agent for the Cherokees to Messrs. Wood & Harris, is entirely approved. The object of the provision in the second section of the intercourse act, which prescribes that the places of trade shall be designated by the superintendent or agent, hadoubtedly was to enable him to prevent the evils that would result from the location of a trading establishment at such a point as you have described. These furnish ample reason for believing that it would be improper to permit Messrs. Wood & Harris to remain in that part of the Indian country.

Very respectfully, your obedient servant,

C. A. HARRIS, *Commissioner.*

Captain W. ARMSTRONG,
Choctaw Agency.

I.

WAR DEPARTMENT,
Office Indian Affairs, February 13, 1838.

GENTLEMEN: In answer to your letter of the 13th ultimo, I enclose a copy of Captain Armstrong's letter to this office of the 12th December, 1837, and of the reply thereto, of the 20th January, 1838.

Very respectfully, your obedient servant,

C. A. HARRIS, *Commissioner.*

MESSRS. WOOD & HARRIS,
Fort Smith, Arkansas.

J.

NATCHEZ, MISSISSIPPI, March 21, 1838.

SIR: In the month of July last, Major Egbert Harris and myself, formed a mercantile establishment at Fort Smith, Arkansas.

Major Harris attended the grand counsel of the Cherokee nation in July last, asked the counsel to grant us permission to locate a store in their nation on the Arkansas river, opposite Fort Smith, producing, at the time, a schedule of such articles as would be offered for sale, which did not in any manner violate the intercourse law, &c., which was agreed to, and made a matter of record by the counsel of said nation then in session.

Wood & Harris then applied, as they then thought, and now think, to the proper person, Governor Stokes, agent for the Cherokee nation, for a license, which was granted in due form and paid for, by Wood & Harris; we also gave a satisfactory bond, not to violate the intercourse law, which we have not, nor do we intend to do so. On our part, we went to no little

expense to erect such a house as we had agreed with the nation to do ; but, no sooner done and occupied as a store, and to the satisfaction of the nation, as we believe, than some ill-designing person or persons should report unfavorably of us to Colonel Wm. Armstrong, agent for the Choctaws, &c., who have endeavored to make us remove our store.

Major Harris is absent from Arkansas, and my private residence is here ; I therefore have, this day, received a letter from my clerk, of Fort Smith, enclosing a letter of date, "Choctaw agency, February 28, 1838," from Colonel Armstrong, agent, &c., to Wood & Harris, advising us that he had forwarded to you a copy of his letter to us, informing us that the license granted by Governor Stokes for two years had been revoked, and that you approved of it ; consequently, I have this day replied to our clerk at Fort Smith to withdraw the goods from the nation, for the present, till you could be consulted.

Now, sir, will you be kind enough to inform me, whether Colonel Armstrong has the right to revoke what Governor Stokes has done ? and, whether there is any power to revoke what is binding on us by our bond and securities, unless we first violate our contract or the intercourse law which, as before observed, we have not done ?

Should we violate our contract, we and our securities are liable to be sued ; and until then we should be suffered to remain quiet and peaceable, as we ever wish to be.

I have no dislike to Colonel Wm. Armstrong or any of the officers of this Government, and hope, so long as I live, to be and remain a peaceable citizen ; but I dislike to be imposed upon ; and, as a free citizen, when I have not, nor intend to violate any law or contract, I deem it hard to be treated as we have been. I hope, sir, upon the reception of this to hear from you, when we will be dealt more generously by than Colonel Armstrong wishes or indicates.

I am, sir, with much respect, your obedient servant,

F. WOOD.

COMMISSIONER OF INDIAN AFFAIRS,
Washington City.

K.

WAR DEPARTMENT,
Office Indian Affairs, April 19, 1838.

SIR : I have received your letter of the 21st ultimo. In answer, I have to inform you that the 2d section of the intercourse law of June 30, 1834, gives to superintendents authority to revoke or cancel licenses, whenever they are satisfied that it would be improper to permit the person licensed to remain in the Indian country. In determining this question, they are not restricted to violations of the laws, or to the conduct of the individuals ; but they may consider the position selected, the nature of the traffic, and the number of existing trading-houses. The reasons assigned by Captain Armstrong, for revoking the license given by General Stokes to Mr. Harris and yourself, were long since approved ; and, upon reviewing them since the receipt of your communication, I discover no reason for a different decision.

Very respectfully, your obedient servant,

C. A. HARRIS, *Commissioner.*

F. WOOD, Esq., *Natchez, Mississippi.*

L.

FORT COFFEE, *April 25, 1838.*

SIR: Two individuals, namely, Wood & Harris, obtained, in the year 1837, a license from Governor M. Stokes, agent to the Cherokees, to trade in the Cherokee nation, near Fort Smith. The location was not a suitable one, in the opinion of the acting superintendent of Indian affairs for the western Territory (Captain Armstrong), who revoked the license in the month of December last, and has since received your approval of the same, and immediately gave notice to the parties, that his revocation of their license had been approved by you, and that they would "therefore cease from trading, under the penalty imposed by the intercourse law, for a violation of the same." They did not remove as required, but continued to trade.

In the month of March last, just as Captain Armstrong was on the eve of taking his departure for Washington city, he made a call upon me to seize the store of Messrs. Wood & Harris, and to remove them from the Indian country. I accordingly, on the 21st instant, after giving the party timely notice of my intention, sent a command under Lieutenant McKavett, with orders to that officer to proceed into the Cherokee nation, and to seize the goods in the store of the persons abovementioned, and to turn them over to the marshal of Arkansas district; all of which he done.

I am now preparing the necessary papers, preparatory to entering a prosecution against Wood & Harris, through the United States prosecuting attorney for the district of Arkansas.

The goods taken amounted in value to about \$1,500. The principal owners were not at home, and the agent in charge of the store, locked the door on the approach of the party, and refusing to open it, the party consequently opened it by force.

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

JOHN STUART,

Captain 7th Infantry.

C. A. HARRIS, Esq.,
Commissioner of Indian Affairs.