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Saml. Rockwell, William Y. Hansell, and William Underwood

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SAML. ROCKWELL, WILLIAM Y. HANSELL, AND WILLIAM
UNDERWOOD.

MAY 20, 1842.

Laid upon the table.

Mr. COWEN, from the Committee of Claims, submitted the following

REPORT:

The Committee of Claims, to which was referred the petition of Samuel Rockwell, William Y. Hansell, and William Underwood, report:

That this claim is for the professional services of the petitioners, as attorneys and counsellors at law, in prosecuting and defending the rights of the Cherokee nation of Indians. The services for which compensation is claimed were rendered anterior to the treaty concluded at New Echota between the United States and the Cherokee nation, on the 29th day of December, 1835.

The petitioners contend that the tenth article of said treaty created an obligation on the part of the United States to compensate them for said professional services.

The tenth article of that treaty contains the following clause: "The United States also agree and stipulate to pay the just debts and claims against the Cherokee nation, held by the citizens of the same, and also the just claims of the citizens of the United States for services rendered to the nation, and the sum of sixty thousand dollars is appropriated for that purpose; but no claims against individual persons of the nation shall be allowed and paid by the nation." (See Laws U. S., 9th vol., p. 1347.)

The seventeenth article of this treaty, as published in the same volume, page 1351, is as follows: "All the claims arising under or provided for in the several articles of this treaty, shall be examined and adjudicated by General William Carroll and John F. Schermerhorn,* or by such commissioners as shall be appointed by the President of the United States† for that purpose, and their decision shall be final; and on their certificate of the amount due the several claimants, they shall be paid by the United States. All stipulations in former treaties which have not been superseded or annulled by this shall continue in full force and virtue." Commissioners were appointed, according to the provisions of the seventeenth article, who proceeded to discharge their duties. The claims of the petitioners were presented to these commissioners, who referred them to a Cherokee committee then sitting at New Echota; the commissioners also being in session at that place. The Cherokee committee, composed of

* These names struck out in the ratification.

† "By and with the advice and consent of the Senate," to be inserted. See act of ratification.

citizens of the Cherokee nation, were put in possession of all the written proofs relative to these claims, and one of the claimants appeared before the committee. This committee reported favorably for a portion of these claims, and "the commissioners" assented "to the conclusions to which the committee" had arrived "so far as to order and adjudge that certificates do issue in favor of the said several claimants, in accordance with the opinion of the committee." "The commissioners" reserved "to themselves, however, the right, at any subsequent time, upon a reinvestigation of the whole subject, to make such further decree as a sense of duty and justice" might "seem to enjoin on them."

This order by the commissioners was made at New Echota July 8, 1837. These claims were again brought before the commissioners in March, 1838. The commissioners then were Thomas W. Wilson, John Kennedy, and James Siddell. Commissioners Wilson and Kennedy were of opinion that they had no power to allow any additional compensation. Mr. Kennedy dissented.

On the 20th of November, 1838, agreeably to a suggestion of the Secretary of War, Commissioners Siddell and Wilson referred the accounts of the petitioners to respectable practising lawyers of the State of Georgia, to consider and report their opinions on the accounts "at as early a day as practicable." December 10, 1838, these referees reported that "Mr. Hansell should receive the sum of \$24,588, Mr. Rockwell should receive the sum of \$22,920, and Mr. Underwood the sum of \$28,692, subject, however, to be diminished by the sums" theretofore "paid to them respectively." The commissioners, upon the coming in of this report, referred it to the Secretary of War, and he declined acting, not having, as he considered, any power in the premises. Congress is now called upon to decide, in the first place, whether they have any power over this question; and if it be found that they have such power, to exercise it according as the right and justice of the case may seem to require.

The question arises between parties to contracts: the Cherokee nation of the one part, and the petitioners of the other. The petitioners complain that the Cherokee nation owes them, severally, certain sums of money for professional services. The claim is denied and resisted by the nation upon the ground of payment. Has Congress jurisdiction of these questions? Have we the parties or the subject-matter before us? It is true that a fund has been entrusted to the United States to pay claims of this description. The United States, by treaty, were constituted trustees to disburse this fund. The powers of the trustees are, however, limited and defined by the terms of the treaty which confers or delegates the trust. The seventeenth article of that treaty, which has been cited, contains a clear, unambiguous, and indispensable limitation upon the power of the United States over this fund. The Cherokee nation authorized the President of the United States, "by and with the advice and consent of the Senate," to appoint commissioners, whose decisions were to be *final* upon claims such as these, and upon whose certificate of the amount of such claims the United States were authorized to pay them out of the trust fund. It seems very clear to the committee that no other tribunal beside that of a commission, constituted as provided for in the treaty, has any power or authority over these subjects. The United States may pay out this money upon the certificate of such commissioners, but upon no other certificate, adjudication, draft, or law whatever. The decision of those commissioners, the referees of the Cherokee nation, by the express and

unequivocal terms of the submission, was to be final. Where can be found a power to review this final decision? Who has authority to correct the errors of these arbiters? What right has Congress to interfere? Is it because they are the depositaries of the legislative power of the trustees? Does it follow that Congress can change, alter, and modify a power derived from a treaty over the money of other nations because they can control the application of the money of the United States? The committee submit that but one answer can be given to these questions. This fund does not belong to us. The obligations of a treaty rest upon us, and bind us to apply it to certain uses. Any other application of this money would be in violation of those obligations. The arrogation of a power to set aside, or amend, or in any way whatever to alter the decision of the tribunal, constituted, according to the provisions of the treaty, with power to finally decide, would, as the committee think, be in bad faith, and just cause of complaint by the Cherokee nation.

This view of the case, if correct, renders it unnecessary to proceed further in the consideration of these cases. It may not be improper, however, to observe that it appears that the petitioners have received considerable sums for these services already: that Mr. Hansell has received \$5,703, Mr. Rockwell \$6,000, and Mr. Underwood \$13,200, part of which was paid directly by the Cherokee nation, and part by the United States, upon the certificates of the commissioners.

The petitioners say that "it was stipulated and agreed by the United States commissioner who made the treaty on behalf of the United States that a just compensation for the professional services of" the "memorialists should be paid to them by the United States, and the tenth article of the treaty is understood and believed to create an obligation on the part of the United States to redeem the pledge given by its accredited agent." The committee have seen nothing in this case which shows that any one was empowered, on behalf of the United States, to assume the payment of these accounts; and it will hardly be contended that the tenth article of the treaty, which only appropriated \$60,000 for the payment of claims of this description, was at the time intended as a provision for the purpose of securing to the claimants the payment of their entire claims, which amount to considerably more than the total appropriation, and the more especially when it is considered that the representative of the late William Wirt had a claim for similar services.

The committee are satisfied that the petitioners rendered valuable services to the Cherokee nation. It is not intended to call in question the fidelity with which they fulfilled their highly responsible, arduous, and disagreeable duties, nor to deny to the petitioners the credit of having been instrumental in saving that unfortunate people from additional calamities, if not from total extinction. These considerations, however, in the absence of an express promise, constitute no ground of claim upon the United States for pecuniary compensation. The Cherokee nation were their clients. The services were rendered to and for them. There is no obligation resting upon the United States to pay for services of this nature rendered to a nation of Indians, unless in cases of positive and express agreements.

The committee, after such examination of the case as they have been able to give it, are of opinion that the petitioners are not entitled to relief, and recommend the adoption of the following resolution:

Resolved, That the petitioners are not entitled to relief.