

5-7-1850

## Report : Claim of Erskine and Eichelburger

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IN SENATE OF THE UNITED STATES.

MAY 7, 1850.

Submitted, and ordered to be printed.

Mr. BALDWIN made the following

REPORT:

*The Committee of Claims, to whom was referred the memorial of Erskine and Fichelberger, merchants, of Baltimore, praying for the payment of a balance yet remaining due to them, of a debt contracted by John Gunter, jr., a Cherokee Indian, prior to the Cherokee treaty of the 29th of December, 1835, having had the same under consideration, report:*

That by the ninth article of the treaty of New Echota, it is stipulated that "the United States agree to appoint suitable agents, who shall make a just and fair valuation of such improvements now in the possession of the Cherokees as add any value to the lands," and that "the just debts of the Indians shall be paid out of any moneys due them for their improvements and claims; and they shall also be furnished, at the discretion of the President of the United States, with a sufficient sum to enable them to obtain the necessary means to remove themselves to their new homes, and the balance of their dues shall be paid them at the Cherokee agency west of the Mississippi." By the twelfth article of the treaty, it is provided that "those individuals and families of the Cherokee nation that are averse to a removal to the Cherokee country west of the Mississippi, and are desirous to become citizens of the States where they reside, and such as are qualified to take care of themselves and their property, shall be entitled to receive their due portion of all the personal benefits accruing under this treaty, for their claims, improvements, and per capita, as soon as an appropriation is made for this treaty." By the seventeenth article it is provided that "all 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." It appears that John Gunter, jr. was a Cherokee of intelligence and capacity for business, and that he had, before the conclusion of the treaty, become indebted to the petitioners to the amount, as afterwards ascertained by the commissioners, of \$4,442 94, and to other creditors to the amount of \$4,733 08, exclusive of a debt to Andrew Moore, for the payment of which the commissioners, on the 24th of January, 1837, advanced to Gunter \$2,500.

The treaty with the Cherokees was ratified and became obligatory, as appears by the proclamation of the President, on the 23d of May, 1836, and the board of commissioners, under the seventeenth article, was organized for business as early as the 7th of December, 1836. On the 13th of February, 1837, they reported to the office of Indian Affairs, "that they had adjudicated some thousands of cases," and on the 23d of March, 1837, the commissioners say that "from the time which has elapsed since we first invited creditors to present their demands against the Cherokees, we presume that nearly all the just demands against the emigrating Cherokees have been presented and adjudicated." On the 2d of August, 1837, the commissioners caused a notice to be published that all persons having claims against individual persons of the Cherokee nation who had not emigrated west, for debts contracted previous to the 23d of May, 1836, must present them on or before the 1st of October then next, or they would not thereafter be received for adjudication. It appears by a letter of Rhea & Ross to the memorialists, dated August 10, 1837, enclosing to them the printed notice by the commissioners, that Gunter had already left the country, and that the claim of the memorialists had not then, owing to the negligence or misconduct of a former agent, been presented for adjudication.

The improvements of John Gunter, jr., and John Gunter, sen., then deceased, in consequence of the difficulty of determining between their conflicting claims, were estimated together, and amounted in the aggregate to \$11,041 91; and by an order of the commissioners, passed on the 1st of October, 1837, it was ordered and adjudged that the whole of said valuation which has not been advanced to the said John Gunter, jr., be paid to the creditors of said John Gunter, jr., and John Gunter, deceased, in discharge of their just debts, which have been adjudicated and allowed by the commissioners.

On the 12th of May, 1837, the commissioners advanced to John Gunter, jr., who was then about to leave the country, the sum of \$3,050 out of said valuation; they having no knowledge or belief at that time that he was so largely in debt as they afterwards ascertained him to be. In making this advance the commissioners state that they acted "in pursuance of the course which had guided them in relation to the Cherokee people generally, who were of equal intelligence and standing with John Gunter, jr., and under the full impression that his assets were more than sufficient for the discharge of all debts against him which would be filed for collection with the commissioners."

The debts due to the memorialists, and others which were afterwards presented, exceeded the amount of the valuation remaining in the hands of the commissioners, and consequently could only be paid pro rata, leaving thereafter a balance due to the memorialists of \$2,824 03 on the 1st of October, 1837.

The treaty with the Cherokees, for their removal as a nation and for the purchase of the improvements of individuals, was a compact to which the Cherokee nation and the government of the United States alone were parties. No creditor of any individual Cherokee had any vested interest in his improvements unless by virtue of some specific lien. A *bona fide* sale by the owner, whether to an individual or to the government of the United States, would have been effectual to entitle the purchaser to the improvements and the seller to the purchase money. To secure to the

Cherokees a fair price for their individual improvements, and at the same time to aid them and their creditors in the ascertainment and payment of their debts from the proceeds, provision was made in the treaty for the appointment of commissioners, whose decision should be final in the premises. The stipulations in the treaty, as has already been remarked, were with the Indians alone, and it was to the Indians that the government of the United States became responsible for their due performance. The benefit which their creditors derived was merely incidental and collateral, and not as parties to the contract. If, therefore, the government of the United States has fully satisfied the Indians for their individual improvements as appraised by the commissioners, acting fairly and in good faith towards their creditors, the committee are not aware of any principle on which any who may have been accidentally overlooked, whether from their own laches or from error in judgment on the part of the commissioners, have a right to call upon this government for indemnity. In regard to the payments by the commissioners to John Gunter, junior, of \$2,500, on the 24th of January, 1837, and of \$3,050 on the 12th of May, 1837, the first was expressly made to enable him to discharge a debt declared by the commissioners to be due to Andrew Moore, and in the absence of any proof to the contrary must be presumed to have been duly applied. The advance of \$3,050 was not made until nearly a year had elapsed from the promulgation of the treaty, nor until nearly two months after the commissioners had reported their opinion "that from the time which had elapsed since they first invited creditors to present their demands, nearly all the just demands against the emigrating Cherokees had been presented and adjudicated." Had the memorialists or their agent used proper diligence in the presentment of their claim, there is no reason to doubt that it would have been paid in full. It is their misfortune and not the fault of the government if they confided it to an agent who was negligent or unfaithful to his trust.

The committee recommend that the prayer of their petition be not granted.