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Memorial of the Legislature of Alabama, praying that the citizens of that state may be indemnified for losses sustained during the Indian hostilities in 1836-37

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MEMORIAL
OF THE
LEGISLATURE OF ALABAMA,

PRAYING

That the citizens of that State may be indemnified for losses sustained during the Indian hostilities in 1836-37.

FEBRUARY 9, 1852.

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

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

The memorial of the State of Alabama most respectfully represents to your honorable bodies, that in the year 1834 the government of the United States advertised and offered for sale, at public outcry, that portion of the public domain in Alabama known as the Creek nation. This territory had been ceded to the United States by treaties ratified April 22, 1826, and April 12, 1832, made with the Creek tribe of Indians, the whole of which was offered for sale to the highest bidder as aforesaid, in 1834, except the portion covered by Indian reservations. The treaty of 1832 empowered the Creeks to sell their reservations, under the control and direction of the United States, which was mostly effected in the latter part of the year 1834, under the supervision of the agents of the government. It was in this way that those lands in the Creek nation were occupied by the whites; and thus, for the first time in the history of the country, the white man, by the policy of the government, was settled among the Indians.

2. The citizens thus domesticated with the *red man*, exercised a forbearance in their intercourse with the Indian truly commendable, and had no direct instrumentality in promoting the hostilities that broke out early in May, 1836; by which outbreak, several of the most valuable citizens of Alabama and Georgia lost their lives, and many their property. This sudden assault, by a lawless band of warriors, upon the lives and property of the whites, was beyond the control of the settler. The government alone could have prevented it, by taking the necessary steps, at an early period, to move the tribe to its destined home beyond the Mississippi.

3. The Creek Indians, by the policy of the government long anterior to the outbreak in May, 1836, had become landless; they had planted no crops, the game was destroyed, and they had no means whatever of subsistence; in this desperate condition they were forced to kill the cattle and other stock of the whites for support, which, with a few exceptions, was submitted to by the settler without redress or remuneration, as their condition bordered upon starvation. Mr. Balch, a government commissioner,

appointed by the President to investigate the causes that led to the Indian hostilities in 1836, reported that in the latter part of the year 1834, the Creeks suffered for the want of food; that in 1835 they were reduced to a state little short of starvation; but he said, "it was contrary to the policy of the government to supply them with food, as this act of benevolence would have retarded emigration." (See Ex. Doc. second session twenty-fourth Congress, No. 154, p. 157.)

4. This mistaken policy of the government to starve them into emigration, if this was the design, was the primary cause that led to hostilities, the loss of life, and the destruction of the property of her citizens, for which your memorialists now ask indemnity. Notwithstanding the frequent communications of Governor Clay, of Alabama, and the Executive of Georgia, besides many highly respectable citizens residing in the Creek nation, to the Secretary of War, advising the government of the unsettled and discontented condition of the Creek tribe of Indians, and a strong probability of hostilities, their request for military aid to keep the Indians in subjection was not granted. (See Ex. Docs., vol. 7, second session twenty-fourth Congress, No. 276.)

5. At the commencement of the outbreak, those citizens of Alabama and Georgia residing in the nation, who escaped the assaults of the hostile Creeks, were compelled to flee from their homes in haste, to place their families in security out of the nation, leaving their property behind, which was either destroyed by the enemy, or used by the United States troops and friendly Indians. The supplies thus furnished from the cribs, meat-houses, barns, cattle and other stock of the citizens of Alabama and Georgia, residing in the Creek nation, were absolutely necessary to support the troops of the government and friendly Indians that rallied to the rescue, until the government could furnish the needful provisions for the army. Besides, hundreds of cattle and other stock were shot down by the friendly Indians, under the command of General Jesup, to prevent their falling into the hands of the hostile Creeks. (See letter of the Honorable D. H. Lewis; the petition of Jeremiah Bennett and others; letter and affidavit of Col. John B. Hogan, United States emigrating agent; letters of General Thos. J. Woodward, McLemore, and other gentlemen of equal standing and respectability—Ex. Doc. second session twenty-fifth Congress, No. 127.)

6. Your memorialists would further represent to your honorable bodies, that President Jackson, in his annual message of December, 1836, brought the subject of the losses of the citizens of Alabama, Georgia, and Florida, to the consideration of Congress, and recommended an appropriation for their indemnity. In pursuance of this executive recommendation, Congress authorized the President to appoint a board of commissioners to investigate and report the amount of the losses sustained by the Indian depredations in said States. L. S. Pease, J. M. Smith, and M. Gibson, constituted said commissioners, and after the necessary investigation in Alabama and Georgia, rendered their report to the Hon. J. R. Poinsett, Secretary of War, 28th of November, 1837. The amount claimed and proved by the sufferers, they report to be one million two hundred and fifty-seven thousand four hundred and seven dollars and thirty cents, (\$1,257,407 30,) out of which amount they allowed three hundred and fifty-five thousand seven hundred and ninety-seven dollars and ninety-two cents, (\$355,797 92.) This last sum was for real and actual loss. Said commissioners refused to allow any thing for consequential or resulting damages; though it seemed to your

memorialists, that to do so would be but an act of even-handed justice. But the government has not paid, to this date, either the actual loss for provisions, or the resulting damages.

7. Your memorialists have been informed and believe that Congress, by special enactment heretofore, has remunerated Generals Clinch and Hernandez, and other citizens of Florida and Georgia, not only for real, but resulting damages likewise. There can be no difference in the losses sustained by these gentlemen; and the claimants of Alabama and Georgia are now knocking at the doors of Congress for justice. It was not the fault of the settlers who resided on the lands purchased from the United States and the Creek Indians, in good faith, that the hostilities occurred; no act on their part could have guarded against it. If there was error, it was on the part of the government in failing to make in time the necessary arrangements to emigrate the Creeks, always a restless and discontented tribe, at an earlier period; to have supplied them with food while preparing for emigration, and to have kept in the nation a sufficient military force to have awed them into subjection. If this had been done on the part of the government, your memorialists, in behalf of her citizens, would not feel constrained to ask Congress to audit and settle the account of her citizens without further delay.

8. Your memorialists would further most respectfully represent to your honorable bodies, that the legislature of Alabama, at its regular session in 1836-37, by its memorial, asked the government to grant indemnity for the loss sustained by her citizens during the Indian hostilities of 1836-37. This memorial was referred to the Committee of Claims of the House of Representatives, and a report was rendered thereon May the 15th, 1838. In July thereafter said committee made a second report, more in extenso, which assumed the ground, that that portion of the demand of the citizens of Alabama and Florida for destruction of their property by the Creek aggressions should not be paid by the United States, as it was not the policy of the government to pay for property lost during a state of war, unless the demands came within the rules established by the law of the United States, approved the 9th of April, 1816. The other branch of the claim, asking pay for property used to supply the government troops and friendly Indians with provisions and forage, the committee admitted, and reported a bill for the payment of the same, and recommended its passage; but this occurred near the close of the session of 1838—the bill did not become a law for want of time.

9. The grounds assumed by the Committee of Claims in rejecting the first branch of the account of the citizens of Alabama and Georgia, who sustained losses as aforesaid, however correct when properly applied, cannot exercise the slightest influence against the payment of the demand of the claimants in this application; the facts will not sustain the committee in its conclusion. In the report referred to, the main objection to indemnity rests on the plea that, the depredations being committed during a state of actual war, "it was not according with the policy of the government to indemnify the sufferers." The report of the committee as aforesaid, upon which it is presumed the committee came to the conclusion that the losses sustained occurred during a state of war actually existing, is incorrect, as will appear from the following facts.

10. The Indian outbreaks occurred the second day of May, 1836, and resulted in the death of — Flournoy and others. This was the commence-

ment of hostilities in 1836. The government of the United States took the census of the Creek nation 13th May, 1833, which exhibits the fact that the whole number of souls of the Creek tribe, exclusive of the negroes, was 21,762; of this aggregate the lower Creeks numbered only 8,523, exclusive of negroes, and it was this portion of the nation that resorted to hostilities. The counties of Benton, Talladega, Randolph, Tallapoosa, and Chambers, were the homes of the upper Creeks who did not embark in the outbreak. (See statement of Elbert Harris, Commissioner of Indian Affairs, Ex. Docs., vol. 7, 1st session 24th Congress, No. 276.)

11. The lapse of three years from the taking of the census to the commencement of the hostilities could not add any large number to the enumeration. There were less than 3,000 warriors in the whole nation, and the upper Creeks, the most populous part, did not engage in the outbreak. Col. John B. Hogan, emigrating agent as aforesaid, by affidavit declares that, at the request of Governor Clay of Alabama, and Gen. Jesup of the United States army, he raised from 1,300 to 1,500 friendly warriors, under the chief Opothle-Yohola, and that five or six hundred were raised under Jim Boy, and placed under the control of Gen. Thomas J. Woodward. These forces constituted the bulk of the warriors of the Creek nation. The Creek and Cherokee delegations to Washington city, in their joint memorial to the Congress of the United States in 1850, in protesting against the bill which had passed the Senate, making the annuities of the Creek nation bound for the destruction of the property of the claimants of Alabama, Georgia and Florida, in the outbreak of 1836, say that notwithstanding these outrages and wrongs, four-fifths of the nation (Creek nation) remained friendly and united heartily with the forces of the United States in suppressing hostilities, and continued with them until the whole of those who were hostile were removed. But the muster-rolls on file in the War Department will give the exact number of warriors enrolled, to which your honorable bodies have free access; and the undersigned, in behalf of the citizens of Alabama who sustained loss, invite the most rigid scrutiny.

12. Your memorialists concur most fully with said delegation that not more than one-fifth of the warriors of the Creek nation were engaged in the hostilities of 1836, and deny that the contrary can be made to appear from any reliable source. Your honorable bodies are most respectfully asked to consider these facts—they are conclusive: that a majority of the Creek tribe were not hostile in 1836-37, and that the damage and loss sustained by the claimants in Alabama, in the destruction of their property, did not result from a state of actual war, as averred by the committee, but from the aggressions of a remnant of the warriors of the nation, who acted without authority from the council of the nation, the only competent tribunal to declare war. If these are the facts, then it is obvious that the Committee of Claims, in their report, acted from incorrect data in rejecting the claim of the sufferers in Alabama and Georgia.

The law of 1816 has no just application to this demand; the property of the citizens was not destroyed by a foreign enemy, and during a state of actual war, but a sudden outbreak, beyond the control of the citizens, or the council of the Creek nation. The government alone had the power to guard against the assault of this small but lawless band of desperadoes; and having failed to do so, is alone responsible for the consequences. A small military force would have been sufficient to have kept the nation quiet, and this force was invoked by the executive officers of Alabama and Georgia in

vain for years. Before this outbreak the citizens of Alabama and Georgia occupied the country as land-holders, having purchased their land of the government and the Indians; they were not intruders. The claimants, then, rely with the greatest confidence, for redress, upon the intercourse act, approved June 30th. (See United States Laws, 23d vol., page 114.)

13. And your memorialists further represent unto your honorable bodies, that during the summer and fall of 1836, the Indians in the nation were collected, by the authority of the United States, at the camp of Lieutenant Sloan, preparatory to their removal; such of the warriors as had been engaged in hostilities, had mostly escaped to Florida. In the fall of the year, the depredations having ceased, the emigrants returned into the nation at the invitation of the government authorities, and were assured by them of protection for the future. But in the month of December, 1836, a company of between 100 and 200 warriors escaped from Lieutenant Sloan's camp and commenced hostilities afresh. On the last of December, 1836, they attacked the plantation of Dr. Cullin Battle, shot down a negro man, and burnt up the overseer's house, and a smoke-house newly filled with provisions for a year's supply for seventy negroes; and from thence proceeded through the nation, committing their depredations, until routed by the command of Colonel Wellborn, and the survivors had escaped to Florida. These depredations were committed after the first outbreak had been suppressed and the country drained of the Indians, and after the emigrants had been invited back by the government authorities present—a case covered by the Indian intercourse act of 1834.

14. At an early period after hostilities commenced, your memorialists brought to the consideration of Congress the loss sustained by her citizens. There has been no neglect on the part of the claimants; their demand has been prosecuted against the government with due diligence, but in vain; the claimants had no authority or power to demand and receive restitution, either from the Creek nation, or troops in the service of the United States. There was no legal tribunal in which the claimants could have coerced the payment of their demands, either against the one or the other, though they are gravely told, in the report of the Committee of Claims, that they must look to the troops in the service of the United States, and the Indians, for pay. But the committee did not indicate the *modus operandi* by which this could be effected; whether this was designed to add insult to insult, is left for the consideration of your honorable bodies, and further comment is unnecessary.

15. The government in the removal of the Creek Indians to the country assigned them, beyond the Mississippi, with a full knowledge of all the facts, and losses sustained by the claimants, demanded no indemnity in their behalf; and having failed to do so by the intercourse act of 1834, must be responsible to the sufferers, or there would be a great wrong without a remedy. A fair construction of the act referred to, gives the claimants a legitimate and equitable demand against the government, not only for actual, but likewise for constructive or resulting damages.

16. The amount of the claims in the aggregate due the claimants in Alabama and Georgia cannot affect its legality and equity in the slightest degree; and if the sum total involved should be the means to solicit the most rigid investigation on the part of Congress, your memorialists will have the most abiding confidence in its payment. Investigation must result in the full liquidation of the demand, unless Congress should depart from

all the rules of law that have heretofore governed its action in the final adjustment of claims against the government.

If it were true that the loss of the claimants occurred during a state of war with the Creek tribe of Indians, yet the rule resulting from the act of 1816 could not in justice be applied to the settlement of the present demand; there is a vast difference between a war with Great Britain and a war with the Creek tribe of Indians. The law of 1816, under which the Committee of Claims rejected a part of the claim, was enacted a short time after the close of the war with England, and was designed by Congress to govern the settlement of those demands which arose during that war. The one was a powerful foreign enemy, governed in their hostilities by the usages of civilized warfare; the other a tributary people, wholly under the control and power of the United States, and governed by rules of warfare peculiar to the savage. The tribe, from the first treaty with the United States, in August, 1790, down to the last treaty, in 1833, ever acknowledged its dependence upon the government.

The United States, by a small military force, could and ought to have kept the tribe at peace. Besides, the Creek nation was too weak at the time of the outbreak to give rise to the application of the principle, that the government cannot be expected to protect the citizens from losses resulting from the law of 1816. So far as a civilized enemy is concerned it is reasonable, for it is contrary to the usages of civilized warfare to destroy private property, unless occupied by an enemy. With the savage foe it is otherwise. It is their habit to destroy everything that is destructible upon which they can lay their hands—as well the property in the possession of the government troops, as the private dwellings of the settler. Indeed, the private dwelling of the citizen, unprotected by a sufficient force, is the first doomed to the torch and destruction. If this be true, then the reason of the rule can have no just application to the claims of the citizens of Alabama and Georgia, who sustained loss by the aggressions of the Creek Indians in 1836. In civilized warfare the rule is equitable; in savage warfare it is absurd.

17. Your memorialists, the State of Alabama, further represent to your honorable bodies, that it is now about fourteen years since the legislature of Alabama brought the subject-matter of this claim to the consideration of Congress, and nothing but an imperative sense of duty to the claimants of Alabama could now induce the State again to ask the government to render justice to her citizens. There is no other tribunal on earth that has jurisdiction of the matter. The courts of the land are closed to the payment of the just demands of the citizens against the government, and Congress has refused time after time to create any legal tribunal competent to adjudicate such demands and render impartial justice.

18. The accounts of the respective claimants of Alabama and Georgia are on file, and have been on file since 1837, in the office of the Commissioner of Indian Affairs at Washington, and open to the inspection of your honorable bodies; and your memorialists most respectfully ask your honorable bodies to act upon this long deferred claim without further delay.

Be it resolved by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That his Excellency the Governor be instructed to forward a copy of the memorial above referred to, to each of our senators and representatives in Congress, and that the former be

instructed and the latter requested to use their best exertions to secure the accomplishment of its objects.

JOHN D. RATHER,
Speaker of the House of Representatives.
CHARLES McLEMORE,
President of the Senate.