

2-16-1852

## On the Case of M. and R. Bean

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1852.

Submitted, and ordered to be printed.

Mr. BORLAND made the following

REPORT:

[To accompany bill S. No. 214.]

*The Committee on Public Lands, to whom was referred the petition of Mark and Richard H. Bean, report:*

That, encouraged by the inducements held out by the laws of the United States for the settlement of the public lands, Mark and Richard H. Bean located themselves, in the year 1817, upon the Illinois river, near its junction with the Arkansas, where they discovered a salt-lick.

That, in 1819, they were urged by the solicitations of Major Bradford, of the United States army, then in command at Fort Smith, to engage in the manufacture of salt for the supply of the troops at that post, and were induced by the promises of that officer (that in case they would do so, their rights should be fully secured and protected by the Government) to procure the necessary apparatus and fixtures, and erect the proper buildings for making salt.

That this establishment was erected at considerable trouble and difficulty, and the expenditure of much money, by the petitioners, upon the faith of the promises held out to them by the officers of the Government, and the prospects of an increased demand for salt when the country should be thrown open to settlement by the white people.

That this was not done until the year 1826; and just as they were beginning to realize a remuneration for their labors, difficulties, and expenses, of eight years' duration, they were deprived of their property, and all prospect of advantage from that source, by the treaty made by the Government with the Cherokee Indians on the 6th May, 1828, by which the country, including their salt-works and all the land which had been settled, improved, and cultivated by them, was ceded to the Cherokee Indians.

This statement of facts is corroborated by the written statements of General Arbuckle and Colonels Bonneville and Miles, of the army, and by the duly-authenticated affidavits of thirteen entirely credible and highly respectable individuals. Five of these witnesses have valued the losses sustained by the petitioners, by the act of the Government, at \$15,000, and one of them at \$20,000; the first of which valuations is fully corroborated by the statements of Colonels Bonneville and Miles; the latter of whom states: "I deem this estimate just, and much more moderate than what I should have awarded, had I been called on to give a verdict in the case;"

and the former declares that the petitioners "could not have lost by the abandonment of their buildings, outhouses, furnaces, wells, warehouses, and a five-mile road to the falls, and a warehouse there, less than \$15,000; nor do I believe they would have sold out at any time their full claim to that place for double that amount."

The committee have referred to the treaty with the Cherokee Indians before mentioned, and find, by the third article thereof, that "the United States agree to have the lines of the above cession run without delay; and to remove, immediately after the running of the eastern line from the Arkansas river to the southwest corner of Missouri, all white persons from the west to the east of said line, and also all others, should there be any there, who may be unacceptable to the Cherokees, so that no obstacles arising out of the presence of a white population, or a population of any other sort, shall exist to annoy the Cherokees; and also to keep all such from the west of said line in future." It will be seen that, by this provision of the treaty, the United States destroyed all the real property of every description of the white people within that Territory—which Territory had been previously thrown open to settlement, improvement, and cultivation, and to which white settlers had been invited by the acts and policy of the government, and which of course sanctioned and legalized the rights of property which should thereafter accrue to such settlers within that Territory.

The committee find that the Government has acknowledged the obligation to indemnify these petitioners for their losses by the act of the 24th May, 1828, (vide Little and Brown's edition of the laws, vol. 4, pages 306-7,) entitled "An act to aid the State of Ohio in extending the Miami canal from Dayton to Lake Erie, and to grant a quantity of land to said State to aid in the construction of the canals authorized by law, *and for making donations of land to certain persons in Arkansas Territory;*" by which a donation of two quarter-sections of land was made "to each head of a family, widow, or single man over the age of twenty-one years, actually settled on that part of the Territory of Arkansas which, by the first article of the treaty between the United States and the Cherokee Indians west of the Mississippi, ratified the 23d day of May, 1828, has ceased to be a part of said Territory, who shall remove from such settlement according to the provisions of that treaty;" and which donation was declared to be made from the United States "as an indemnity for the improvements and losses of such settlers under the aforesaid treaty." This donation of land, however, although fully acknowledging the obligation to indemnify all persons so situated, was intended only for settlers on small tracts of land, whose improvements were of small account, but fully acknowledges and sustains the justice of making to these petitioners an adequate compensation and indemnity for the losses which they have sustained by the acts of the Government.

One fact, here, should have much weight in support of the claim of the memorialists for remuneration for their losses: it is, that the improvements, fixtures, and implements, constituting alike their agricultural and manufacturing interests, both of which had cost them a very large expenditure of labor and money, and which they were compelled to leave behind when they were removed under the treaty, were seized upon by the Cherokees, and have, from that time to this, been used by that tribe of Indians

in the manufacture of salt, which has been and is still necessary to supply the wants of that region of country. In this, it is seen that, by the act of the United States, not only were these memorialists driven from possessions which they had rightfully occupied under the sanction of government officers, and usefully to the public interests, and deprived of their valuable property, but those possessions, and that property, in effect, given by the government as a donation and a bounty to a tribe of Indians.

Although the foregoing presents the points upon which the committee believe the claim of the memorialists to be fairly set forth, justly founded, and clearly entitled to payment to the *minimum* amount proved to have been lost, yet it is deemed appropriate to present, as part of this report, some of the papers which have been offered in support of the memorial, that the proof may be at hand for reference to all who may desire to see it, and to present, more in detail than the mere abstract of the report can give, the several facts which make up that proof. These papers are: the memorial itself, marked A; a statement in "further support of the memorial," by Mark and Richard H. Bean, and the affidavits of William Quesenbury and William McGarrah, marked B; General Arbuckle's statement, marked C; Lieutenant Colonel Bonneville's statement, marked D; and Brevet Lieutenant Colonel Miles's statement, marked E.

And the committee recommend the passage of the accompanying bill.

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A.

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

The petition of the undersigned, Mark Bean and Richard H. Bean, respectfully showeth: That in the year 1817, they discovered a salt-lick on Illinois river, near its junction with the Arkansas, in what was then the Missouri Territory; that in 1819, the officer in command at Fort Smith, Major Bradford, in view of obtaining on reasonable terms a supply of salt for the use of the troops at that post, urged your petitioners to engage in the manufacture of salt at said lick, and promised that in case they would do so their rights should be fully protected and secured by the government; that, induced by the solicitations and relying on the promises of Major Bradford, they proceeded to make the necessary improvements and established suitable works; that, in consequence of the exclusion of white settlers from the tract known as the "Lovely Purchase," upon which the salt-works of your petitioners were located, the proceeds of their salt for many years afforded them a very inadequate remuneration for their trouble and expense, and they did not realize anything like a profit on their investment until after the country was thrown open to the whites by the government in 1826; that, just as they were beginning to reap the hard-earned reward of eight years of labor and expense, they were deprived of their property by the treaty made in May, 1828, with the Cherokee Indians, by which the Lovely Purchase was ceded to that tribe, and in which no reservation was made of their works; that, although ample provision was made by Congress to indemnify the other settlers similarly dispossessed of their

improvements, your petitioners have never received any compensation or indemnity whatever for the heavy losses they sustained in consequence of the treaty of 1828, with the exception of a donation of 320 acres of land granted to one of them, Mark Bean, under the act passed to meet such cases, in consideration of, and as an equivalent for an improvement made by him at some distance from the salt-works. Your petitioners further represent, that, so far from there being any good reason for such discrimination in favor of others and against themselves, their claims, in point of fact, rested on higher grounds than those of any other persons dispossessed by the treaty of 1828 :

1st. Because, while others were in the country on permission—their presence being barely tolerated by the Government—your petitioners went there at the request of the government, made through its properly-authorized representative ; and, at times when all other white settlers were rigidly excluded, your petitioners were encouraged to remain.

2d. Because the Government actually derived benefit from their labors and improvements in the reduced price of salt for the use of the troops and of emigrant Indians—the saving thereby effected during the eight years they were engaged in its manufacture amounting, as your petitioners are prepared to show, to more than \$5,000.

3d. Because their rights had been acquired under circumstances of peculiar hardship, privation, and danger—their works being situated in the wilderness, at a point which, in 1819, and long afterwards, was 50 miles beyond the extreme frontier outpost in the southwest, on the battle-ground of two powerful tribes of hostile savages, where supplies of all kinds could only be procured with great trouble and at an enormous expense, and where they were constantly exposed to the inroads of Indians, and to consequent loss of life and property.

Your petitioners, satisfied that the government never in any case intends to deprive individuals of their just rights without compensation, much less when those rights are acquired, as in this instance, under its express sanction, confidently ask your honorable body to indemnify them for the loss of their works, and, in so doing, to consider—

1st. The vast and extraordinary expense incurred in putting and in keeping them in operation ; and,

2d. The actual value of the works at the time of dispossession.

In regard to the cost of the works, your petitioners would briefly submit, that in the first instance it was necessary to transport on pack-horns for seventy-five miles, through a country infested with hostile Indians, a year's subsistence, and other necessary supplies, for themselves, their workmen, and their teams ; that in order to obtain salt-water they were compelled to bore through solid rock more than twenty feet ; that their kettles were brought, part of them, overland, through the Indian country, upward of one hundred miles, and part of them, at vast expense, by keel-boat from Nashville, more than thirteen hundred miles ; that the prices of labor and provisions, at all times high in newly-settled countries, were in this case increased by the proximity of different Indian tribes at war with each other, and occasionally with the whites ; and, lastly, that throughout the whole period of their stay at the salt-works, they were subjected to constant and considerable losses from Indian depredations.

As to the value of their works, there were, up to the time of dispossession

tion, no other salt-works in the country. Salt could not be obtained elsewhere, except by transporting it in keel-boats from the Kanawha river. The quantity made at the time referred to was at least thirty bushels per day, worth at the then lowest price \$1 per bushel. The cost of manufacturing was about 25 cents per bushel.

With these statements, and with the accompanying evidence, your petitioners submit their case, relying on the equity of Congress for such relief as shall to your honorable body seem just and proper.

MARK & R. H. BEAN.

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B.

We, the undersigned, for the further support of our memorial, now in the hands of Congress, make the following statement :

1st. That, after mature consideration and strict investigation of our losses by the treaty between the United States and the Cherokees, (which losses are fully set forth in our memorial,) we state the amount to be not less than fifteen thousand dollars.

2d. That, in specifying the said sum of fifteen thousand dollars, we have not only made an estimate of our actual damages, in general terms, but we have minutely and particularly considered each article, or cause of damage and loss.

3d. That our present statement can be corroborated and sustained by persons of the highest standing and integrity in our State, some few of whose statements will be forwarded, accompanying this.

In conclusion, we leave our claim to the equity of Congress, believing that the amount stated above will be granted.

MARK BEAN,  
R. H. BEAN.

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STATE OF ARKANSAS, }  
County of Washington, } ss :

This day appeared before me Mark and Richard H. Bean, and testified to the truth of the foregoing statement.

M. W. McCLELLAN, J. P.

FEBRUARY, 1850.

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I, the undersigned, make the following statement of facts concerning the losses sustained by Messrs. Mark and Richard H. Bean in complying with the treaty of 1828 between the United States Government and the Cherokee Indians :

I was an eye-witness to the depredations of the Osage Indians, to the heavy outlay of funds necessary to keep the salt-works of the said Messrs. Bean in operation, and to the actual abandonment of all their improvements—water, kettles, furnace, and all the utensils and implements used in salt manufacture. I consider, believe, and now state, that the losses the said Mark and Richard H. Bean sustained by the abandonment of said salt-works, in compliance with the United States Government, could not

have amounted to less than fifteen thousand dollars; and that, were all things connected with their salt-works taken into consideration, the amount would be swelled to a much higher sum. I further add—having seen the memorial presented to Congress by said Mark and Richard H. Bean—that the facts therein set forth are, to my knowledge, true; and that, in compensating them for losses referred to in that memorial, the amount could not, in justice, be made at less than the said sum of fifteen thousand dollars.

WILLIAM QUESENBURY.

STATE OF ARKANSAS, }  
County of Washington, } ss:

This day, before me, an acting and duly commissioned justice of the peace for said State and county, appeared William Quesenbury, to me well known, and on oath testifies that the foregoing statement is true.

M. W. McCLELLAN, J. P.

FAYETTEVILLE, ARKANSAS,  
February 21, 1850.

The undersigned, being called upon by Mark and Richard H. Bean for a statement in relation to their loss occasioned by their necessary abandonment of their *salt-lick*, in what was called the "Lovely Purchase," in compliance with the treaty of 1828, made between the United States and the Cherokees, states: That I was a citizen of said "Lovely Purchase," at the time of said treaty, and a neighbor, and well acquainted with the said Beans, their business, &c., and can say that, at the time of said treaty, they were successfully engaged in making salt in said "Purchase"—making from thirty-five to forty bushels per day—and that salt at the time was worth one dollar per bushel in their salt-house; and that, to comply with the requisitions of said treaty, they were compelled and did abandon and remove from the said ceded territory, leaving all their salt-manufacturing utensils, together with the extensive improvements made by them in establishing and for the carrying on of said works. From a knowledge of the facts, and to my best opinion and belief, their damage by said abandonment, in compliance with said treaty, was not less than twelve or fifteen thousand dollars.

WILLIAM MCGARRAH.

Sworn to and subscribed before me, the day and date above written.

J. W. CHEW, J. P.

STATE OF ARKANSAS, }  
County of Washington, } ss:

I hereby certify that M. W. McClellan and John W. Chew, esquires, before whom the above and foregoing proof of Mark and R. H. Bean, William Quesenbury, and William McGarrah, was taken, were, at the time of taking said proof, justices of the peace in and for the county and State

aforsaid, duly commissioned and sworn, and that their signatures, as appear thereto, are genuine.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, as clerk of the circuit court of said county, this the [L. S.] 21st day of February, 1850.

P. R. SMITH, *Clerk.*

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C.

HEADQUARTERS SEVENTH MILITARY DEPARTMENT,  
*Fort Smith, November 3, 1849.*

GENTLEMEN: In accordance with your request, I can state, that, when I arrived in this country, in the spring of 1822 or 1823, you were making salt on the Illinois, about forty-five miles from this place, on the road that was travelled for some time from Fort Smith to Fort Gibson, after the latter post was established. On my arrival here, I understood from Major Bradford, the commanding officer, that you had been permitted to establish your salt-works at that point, as there was then a great scarcity of salt on this frontier: and it is known to me that you were permitted and did continue your operations at that saline, until the country was ceded to the Cherokees, when you were compelled to remove therefrom. The country between this and the point designated, and west of it, was then occupied by Indians; and during the time you were carrying on the manufacture of salt, I heard that many of your horses, cattle, hogs, &c., were stolen or destroyed, and that these and other depredations were principally committed by the Osages. Whether you have received any remuneration for the losses you sustained, I am not advised.

I am, gentlemen, very respectfully, your obedient servant,  
M. ARBUCKLE,  
*Brigadier General United States Army.*

Messrs. MARK and RICHARD BEAN,  
*Washington County, Arkansas.*

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D.

SACKETT'S HARBOR,  
*January 28, 1850.*

DEAR SIR: In consequence of the application of Mark and Richard Bean to forward to you a statement of their losses, &c., in the Indian country, I did so in general terms, stating to you the difficulties and losses they must have sustained, being on the war-ground of two different nations of hostile Indians. Learning that it was not so much losses of that character they met with, as it was the specific losses incident to the treaty ceding the Lovely Purchase to the Indians in 1828, I therefore make the following statement, in addition to the one already forwarded to you: I went to Fort Smith in March, 1822; the Beans, at that time, were located about fifty miles west of Fort Smith, on the Illinois river, about five miles from the present Webber's Falls of the Arkansas; here they had an ex-



tensive establishment, called Bean's Salt-licks, in full operation, supplying with salt the whole of that country. There were no other salt-works within several hundred miles of it; and I believe the only salt coming in competition with them was that from the Kanawha salt-works. I looked upon their establishment as a good fortune for themselves; and having now passed all the difficulties with the Indians, with their buildings, and the establishment of their works, they had only to wait for the filling up of the country by emigration to be the owners of the finest property in that country. That part of the country was filling up rapidly when it was transferred to the Indians—when the Beans and all the settlers of the Lovely Purchase were turned out, to make room for the Cherokee Indians, in 1828. I suppose they could not have lost (by the abandonment of their buildings, outhouses, furnaces, wells, warehouses, and a five-mile road to the falls; and a warehouse there) less than fifteen thousand dollars; nor do I believe they would have sold out, at any time, their full claim to that place, for double the amount. I would also state, that I was very well acquainted with these gentlemen; that I have visited their establishment frequently; and they were looked upon as the first of the land, and their removal from that country was almost destruction to them.

Sir, I am, very respectfully, yours,  
**B. L. E. BONNEVILLE,**  
*Lieutenant Colonel 4th Infantry.*

Hon. SOLON BORLAND,  
*United States Senate, Washington.*

E.

FORT WASHITA, *March 1, 1850.*

MY DEAR SIR: I received, a few days since, a communication from Messrs. Mark and Richard Bean, of Washington county, Arkansas, appealing to me, as one among the very few living, having a knowledge of their improvements and salt-works in the old Lovely Purchase, (now Cherokee nation,) as to their estimated value—putting, themselves, a value of fifteen thousand dollars for improvements, location, loss of kettles, &c., &c. I deem this estimate just, and much more moderate than what I should have awarded, had I been called on to give a verdict in the case. As far as I can recollect, after the lapse of twenty-five years, Messrs. Bean's improvements consisted of a good double log-house, kitchen, negro quarters and stables, two drying-houses, and a large salt-house for deposits with sheds over two rows of kettles, at two springs. The number of kettles I cannot remember, but judge there must have been about sixty at one spring, and from thirty to forty at the other. These kettles were brought into the country before steam navigation was deemed practicable on the Arkansas, and were transported at great expense over six hundred miles in keel-boats.

I am, sir, with very great respect, truly, your obedient servant,  
**D. S. MILES,**  
*Brevet Lieutenant Colonel 5th Infantry.*

Hon. SOLON BORLAND,  
*United States Senate, Washington city, D. C.*