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On the Case of A. and J. Kendall

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IN THE SENATE OF THE UNITED STATES.

APRIL 20, 1852.

Ordered to be printed.

Mr. COOPER made the following

REPORT:

[To accompany bill S. No. 379.]

The Committee on Indian Affairs, to whom was referred the memorial of Messrs. Amos and John E. Kendall, claiming to be reimbursed for moneys belonging to them, wrongfully paid out by the government of the United States to the "Western Cherokees" or "Old Settler Indians," have had the same under consideration, and respectfully report:

That it appears the memorialists were employed by written contract entered into with the duly authorized delegates of the "Western Cherokees," under date of July 12th, 1843, as expressed in the preamble, "to aid them in making their rights and condition clearly known to the government and people of the United States, in the confidence of receiving at their hands remuneration for the property of which they have been despoiled, and obtaining new guarantees to protect them in their property and persons." Connected with this contract, as security for the payment of an entirely contingent compensation, was coupled a power of attorney, authorizing the memorialists "to demand and receive from the treasury of the United States, or from the proper office or officers thereof, five per cent., or one-twentieth part of any and everything of value which may be granted or appropriated on account of said claims, to be received directly from the United States, without any further act or authority by or from the said Cherokees west."

"By law, such a power is irrevocable, as will appear not only by decisions of British courts, but likewise by those of the Supreme Court of the United States." (See 2 Espinasse, Nisi Prius, p. 565, and authorities referred to; also Hunt vs. Rousmanier, 8 Wheaton, 201-216.) The same doctrine was recognised by Attorney General Gilpin, in his opinion of April 20, 1837.

That the services were faithfully performed by the memorialists, appears, first, by the endorsement on the contract made by the duly authorized delegates, the same who had before signed the treaty of 1846, after the ratification of that treaty, authorizing and requesting "the Secretary of War to pay the commissions stipulated in the within contract, out of any moneys which may be found due to them under the said treaty; it being our intention that this contract shall be executed in good faith." Secondly, by the report of Hon. William Medill, Commissioner of Indian Affairs, dated February 8, 1849, (Senate Ex. Doc. No. 32, 1st session 32d Congress, page 25), in which he says: "The files of this department attest the assiduity and ability

with which Messrs. Kendall and Stambaugh attended to the duty intrusted to them, and I think it highly probable that the 'Western Cherokees,' or 'Old Settlers,' are greatly indebted for the stipulations made for their benefit in the treaty of 1846, to the researches and persevering efforts of their counsel. The evidence upon which I have based my opinion, is my own knowledge of the personal exertions of the counsel named," &c. And by the reference made to these claims by Hon. Orlando Brown, the successor of Mr. Medill, in his annual report dated November 30, 1849, in which he says: "A considerable amount will be due to that portion of the Cherokees known as the old (or original) settlers west of the Mississippi, who, as a separate and distinct community, have incurred liabilities of various kinds, and, among others, for valuable and efficient services rendered them in prosecuting their claims against the government, and which, it is well known, were greatly instrumental in effecting the negotiation of those claims, and the large allowances in consideration of them."

Thirdly, by the letter of the Secretary of the Interior, of the 18th July, 1851, (page 79, Senate Ex. Doc. No. 32, 1st session 32d Congress,) in which he says: "I have carefully examined the claims of Messrs. Thompson Harris and Kendalls against the Indians for professional services, and from the evidence before me, I am satisfied that they are just and reasonable, and should be paid."

It thus appearing that there was a regular power of attorney, made by the proper and authorized representatives of the "Western Cherokees" to the Messrs. Kendall, containing an assignment of five *per centum* of the fund which might be recovered for the use of the said Cherokees, the committee are of opinion that equity and good faith unite in requiring the payment of such sum as may be found due to the claimants by the proper accounting officers of the government. They have therefore reported a bill, requiring the First Comptroller to examine the claim of the memorialists, and if he shall find that a power of attorney was executed, and an assignment made by the authorized representatives of the "Western Cherokees" to the claimants, and that, by act of the United States, such portion of the fund as was due to them under the assignment was paid over to the Indians against their consent, and after notice by the claimants to the contrary, in such case he shall report the amount due to them, which is directed to be paid, out of any money in the treasury not otherwise appropriated.