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On the Case of Erwin and Greathouse

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IN THE SENATE OF THE UNITED STATES.

APRIL 3, 1854.—Ordered to be printed.

Mr. BROWN made the following

REPORT.

[To accompany Bill S. 306.]

The Committee on Indian Affairs, to whom were referred the public documents and testimony of James Erwin, of Arkansas, soliciting relief for himself, and for himself and the heirs and legal representatives of his late partner, Daniel Greathouse, now deceased, have had the same under consideration, and report :

That the said James Erwin, on the 30th of October, 1834, entered into a contract with Captain Jacob Brown, of the United States army, and principal disbursing agent of the United States for Indian removals west, to furnish to the United States, at several specified places, a quantity of corn, beef, salt, and a number of pack-horses, wagons, teams and teamsters, for the subsistence and transportation of a large number of Creek Indians, then about to be removed from Georgia and Alabama to their new homes, west of Arkansas; and that the said Erwin, in compliance with his contract, (a copy of which, with the petition and the testimony, is appended to this report,) did provide and have ready, at the times and places required, the stipulated quantity of corn and beef and salt, and a number of wagons, teams, &c. &c., to carry out, in good faith, his contract with the United States.

It further appears, that after he, the said Erwin, had so prepared himself to comply with his contract, by great exertion, expense, and trouble, *no Indians came* to consume the corn, beef, and salt, or to give employment to his pack-horses, wagons, teams, and teamsters; and that, in consequence of this failure on the part of the Indians to emigrate, he sustained (if not a total) a heavy loss, and asks the United States to pay him for his losses. He avers that he has had no remuneration of the United States for these losses, on the ground that the United States, under the contract, were not bound to pay for any accidents, or for any other rations than those used; and as the failure of the Indians to emigrate was accidental, and as no rations, "*more or less,*" were used, the United States claim to be irresponsible for the losses of Mr. Erwin. It is true that there are such covenants in the agreement; and, if the failure had been but partial, either in the diminution or excess of emigrating Indians, the committee would not be disposed to interfere in the matter. But a *total failure*, wholly unexpected by the

United States and by the contractor, resulting in great loss to him, presents a strong case of equity, and is deemed by the committee well worthy of a favorable consideration.

The committee further report, that afterwards, to wit: on the 31st day of December, 1835, about 14 months after entering into his first contract, the aforesaid James Erwin and a certain Daniel Greathouse, now deceased, entered into two contracts with the aforesaid Captain Jacob Brown, of the United States army, and principal disbursing agent for Indian removals west, one of which was to *subsist* the *emigrating Seminole* Indians, and the other was for the *transportation* of said Seminole Indians from a place called "Rock Roe," on White river, in Arkansas, to the country set apart for them west of Arkansas. This contract resembles in its terms the contract for the removal, &c. of the *Creek* Indians, and resulted, as did the contract for the removal of the Creeks, in a total failure, and in great pecuniary losses to the contractors. The committee propose to indemnify the contractors for their losses in this case also. They find a precedent for these cases in the act for the relief of Richard T. Banks, passed in August, 1842; and to that bill, and to the report accompanying it, they refer.

The committee do not consider the government bound to indemnify Messrs Erwin and Greathouse for all the losses sustained by them, but for such only as a prudent man would have sustained under like circumstances in the management of his own affairs. The proof shows that after the failure of the Indians to emigrate and notice to Erwin, and to Erwin and Greathouse, that the United States would not take the provision then on hand, they permitted the corn to rot and go to waste, and the cattle to wander off and become lost. The United States is not responsible for neglect like this. The committee think the true measure of damages should be the difference between the actual cost of delivering the articles at the depots, and the sum that they would have brought if sold at auction or otherwise, as a prudent man would have sold his property under like circumstances. They report a bill in accordance with these views.