

3-13-1860

On the Case of Sour-john

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>

 Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

S. Rep. No. 132, 36th Cong., 1st Sess. (1860)

This Senate Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860—Ordered to be printed.

Mr. SEBASTIAN submitted the following

REPORT.

The Committee on Indian Affairs, to whom the papers in the case of Sour-john, a Cherokee, were referred, ask leave to report:

That the origin and history of this claim are very fully set forth in a statement of facts on file, made under the authority of the office of Indian affairs, from which it appears that :

By decree No. 112, Reg. Decrees, the first board of Cherokee commissioners awarded \$3,050 to the heirs of Sour-john, for the value of a reservation in Georgia, taken under the treaty of 1817 and 1818. In the decree, the commissioners state that "the claimants are Towney, the widow of Sour-john, Olly, Tooka, Akey, Utzah, Sally, Polly, and Archibald, the children."

Of the amount awarded there was first paid to Gillispy, the attorney in the case, \$305, leaving for the heirs, \$2,745.

April 20, 1841, "a list designating the names of certain individuals, who are entitled to compensation for reservation claims," &c., was sent to Major Armstrong, with instructions to pay said individuals; and with this special instruction, that when awards are in favor of heirs, your attention is invited to the decrees of the commissioners, copies of which were sent to you on the 18th November, and there were other injunctions of caution in the letter of instructions.

Major Armstrong paid the amount due, \$2,745 in the second quarter, 1841, to Elijah Sour-john, Bill Sour-john, and Tooka Downing; and upon the coming in of his account for that quarter, that item, \$2,745 was suspended, for the reason that he had paid the whole sum to three persons, only one of whom was named in the original decree, Tooka, and nothing was left for the other heirs named.

In 1843, Major Armstrong, in explanation, stated that he had paid the whole amount to "three heirs, as stated in the voucher, because there were no heirs named on the roll furnished me, or reference made that there were other heirs. The payment was made in the presence of a large number of Cherokees; the interpreter, and other respectable Cherokees, stating that the three I paid were the heirs and the only heirs of Sour-john. I have never heard of any other heirs."

The item was continued *suspended*, through subsequent settlements,

until 1845, when an affidavit of John Drew, a member of the Cherokee National Council, dated March, 1845, was offered in support of the allowance of the item. In this affidavit, John Drew swears that he "*was well acquainted with the Cherokee people,*" &c., and "*believes the money was paid to the legitimate and proper heirs.*"

To this affidavit is appended a statement or certificate of Governor Butler, to the following amount: That, within his (Governor B's.) knowledge, there are no other heirs, (than the three to whom the money was paid.) That he knows John Drew; that he is a highly respectable citizen, &c., and that said Drew is a member of the National Council, &c.

Upon the affidavit of Drew, and the certificate of Governor Butler, Mr. Commissioner Crawford, in March, 1845, *allowed* the item of \$2,745, suspended in Major Armstrong's account of 1845; and, in auditing of the account settled September, 1845, the Second Auditor *passed the amount to Major Armstrong's credit.*

The claim now comes up upon application of Mr. T. Fox Taylor, who represents himself as attorney for certain Cherokee claimants, and in a letter, dated 20th May, 1846, says he wishes "information in regard" to a "claim allowed the heirs of Sour-john, deceased, for a reversion of land, by the board of commissioners, &c. You will please refer to the decrees of the commissioners in that case, where you will discover who those heirs are, and inform the undersigned whether or not the amount awarded them has been paid; and, if not, why it has not been done; and, if paid, by whom and to whom, and by what authority."

From the foregoing statement of the case, it will be seen that the United States has once, through its authorized agent, paid this claim to certain persons who, according to the testimony on file and the action of the proper officers, in allowing the payments, were deemed the true and sole heirs of Sour-john, deceased, until satisfactory evidence is produced that there was fraud or mistake in the payment. This is not done. The claim has rested a long period since the last action upon it, and no proof is yet afforded that the original heirs of Sour-john, named in the decree, or their descendants, yet survive or were surviving at the time of payment by Major Armstrong, except those who were then recognized as such upon the most satisfactory authority. The committee has caused the files and records of the Indian Office and the Journals of Congress to be explored, but find nothing beyond that which has been stated. The claim made by the agent of these heirs is unsupported by any power of attorney, or any proof that the parties whom he professes to represent, are in being; while the resolution introduced in the Senate, in 1847, for the payment of this claim, does not appear to have been based upon any report of the facts. The committee, therefore, report adversely to the claim.