

5-21-1878

Suit Against the Cherokee Nation

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IN THE SENATE OF THE UNITED STATES.

MAY 21, 1878.—Ordered to be printed.

Mr. INGALLS, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill S. 230.]

The Committee on Indian Affairs, to whom was referred the bill (S. 230) entitled "A bill to authorize and enable the Eastern Band of the Cherokee Indians to institute and prosecute a suit in the Court of Claims against the Cherokee Nation," respectfully submit the following report:

There has been a controversy between the Eastern Band of the Cherokee Indians and the Cherokee Nation living west of the Mississippi River; the Eastern Band claiming a *pro rata* share of moneys arising from the sale by the Western nation of land and property which the Eastern Band claim belonged in common to the whole people of the Cherokees.

A treaty was entered into between the United States and the Cherokee Nation on the 29th of December, 1835, securing certain rights to the Cherokee Nation, and subsequently, on the 26th of May, 1836, an agreement was entered into between the representatives of that portion of the Cherokees who went west of the Mississippi River and that portion of the people of that nation who remained east of the Mississippi River who are known and treated with by the Government of the United States under the name of the Eastern Band of the Cherokee Indians. This Eastern Band, so called, has an organization of its own independent of that of the Cherokee Nation proper, west of the Mississippi River. This agreement was intended to fix the respective rights of the Eastern and Western Cherokees, under the treaty before mentioned. The controversy also depends in part upon a supplemental treaty between the United States and the Cherokee Nation of May 23, 1846, touching the subject-matter now in controversy.

Attorney-General Mason, in 1845, and Attorney-General Crittenden, in 1851, gave opinions which sustained the rights claimed by said Eastern Band. The Secretary of War, in July, 1836, and the Commissioner of Indian Affairs, E. P. Smith, in December, 1875, also gave opinions to the same effect. But the controversy has never been settled.

In the opinion of your committee, it is important that this controversy should be settled, and a court of justice would seem to be the proper place for its settlement. And, inasmuch as the controversy is one which arises exclusively under the treaties and laws of the United States, it is a case falling within the judicial power of the United States, without regard to citizenship or alienage of the respective parties.

Your committee, therefore, return the bill with a recommendation that it be passed with the following amendments :

In section 3, line 3, strike out the words " or writ of error " and insert instead thereof the words " by either party."

Strike out section 4 and insert "That the United States shall be made a party to such suit, and it shall be the duty of the Attorney-General to enter an appearance in behalf of the United States."

Strike out of section 7, in lines 6 and 7, all after the word "council."

MAY 21, 1834—Ordered to be printed



REPORT

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