

4-4-1878

Report : Petition of J. Turner et al.

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IN THE SENATE OF THE UNITED STATES.

APRIL 4, 1878.—Ordered to be printed.

Mr. HEREFORD, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 1038.]

The Committee on Claims, to whom was referred the petition of Jesse Turner and others, asking to be relieved from liability as sureties on bond of Geo. W. Clarke, report as follows:

George W. Clarke was appointed Indian agent and gave bonds as such August 19, 1854, in a penalty of \$40,000, with S. M. Hays, Phineas H. White, Charles F. Brown, S. F. Cotterell, Hiram Brodie, James M. Brown, Joseph J. Green, and Jesse Turner as sureties; all of the sureties are dead except James M. Brown, Charles F. Brown, and Jesse Turner.

The agent, Clarke, was found to be in default and relieved from duty on December 31, 1856. The amount of the defalcation is found to be \$1,245.77.

No further action was taken in this case until December 15, 1875, when each of the parties living was notified.

Suit was instituted March 6, 1877, in the United States district court for the western district of Arkansas.

The above are the facts as gathered from a letter of Hon. K. Rayner, Solicitor of the Treasury, bearing date February 7, 1878, in response to a letter from a member of this committee, to whom the subject had been referred. The following is an affidavit in the case; which is substantiated by several others:

STATE OF ARKANSAS, Crawford County, ss:

I, Augustus I. Ward, of Crawford County, State of Arkansas, do state upon oath, that I have resided at Van Buren, Crawford County, for the last thirty-four years. That I was well acquainted with George W. Clarke, and Samuel M. Hayes, P. H. White, S. F. Cotterell, Hiram Brodie, J. J. Green, Charles F. Brown, James M. Brown, and Jesse Turner, his securities upon his bond as Indian agent, upon which his now reported defalcation occurred in December, 1856. I know that George W. Clarke was the owner of real estate at that time of considerable amount, but do not know what encumbrances, if any, existed against it. His family resided here during most of the time he was in Kansas as Indian agent. Clarke was an energetic man to raise money. All the persons who are named as the securities upon his bond were in solvent circumstances in December, 1856. Since that time, up to the time of the breaking out of the late war, the sum of fifteen hundred dollars could have been made out of any one of them. Since then, the results of the late war and other causes changed the circumstances of all the persons named as Clarke's securities, and most of them are unable to pay who survived the war.

P. H. White died about 1857; he was a merchant, engaged in business at this place; his estate was closed by administration since the war, and did not pay the creditors in full.

Joseph J. Green died in the spring of 1863; his estate was administered upon; after paying his debts but little was left, which was used or expended for the support of his children; the administration has been closed long since.

Samuel M. Hays, one of the securities upon Clarke's bond, died in 1871. His estate has been administered upon; not yet closed. He left some property, both real and personal, but, after the payment of the debts probated against the estate, I think there will be but little left.

Hiram Brodie, one of the securities on Clarke's bond, died in February, 1875. The estate is being administered upon, and I am informed and believe, that after the payment of the debts probated against said estate there will be but little left; the property of the estate was small in amount.

Sutton F. Cotterell, another of the reported securities, died about November, 1875, at Little Rock, Ark. His estate was insolvent. Had no property, as I am informed.

Charles F. Brown, another of the named securities upon Clarke's bond, is insolvent; has no property; took the benefit of the bankrupt law since the war, and has been discharged; paid his debts in that way.

James M. Brown left this county in 1862; had property in negroes and mules at the time he left here, and some real estate, long since sold. His present circumstances I have no means of knowing, as he resides in the State of Texas.

Jesse Turner I have known intimately for 34 years. He is a practicing attorney at this place, advanced in life, has some real estate, and should he have this debt to pay it will greatly embarrass him, and he can only pay it at a great sacrifice of his small amount of property.

I have been engaged in the business of a merchant, most of the time at my residence, at Van Buren, Crawford County, for the past 34 years, and have, as I believe, the means of knowledge of the matters hereinbefore stated by me.

AUGUSTUS J. WARD.

Sworn to and subscribed before me this 15th day of February, A. D. 1878.

JOHN B. OGDEN,
Notary Public.

From the letter of the Solicitor of the Treasury and this affidavit, we obtain the following facts:

George W. Clarke, the Indian agent, became defaulter, and his defalcation was known to the government December 31, 1856. No further action was taken in the matter until December 15, 1875—a space of nineteen years lacking fifteen days—the sureties being uninformed of the defalcation for that space of time. Suit was brought March 6, 1877, which is more than twenty years after the right of action had accrued. If the government had used proper diligence, it is quite probable all or a good portion of the amount could have been made out of the principal; certainly the other securities could have all been compelled to pay their pro rata of the amount, and these securities relieved to that extent. The government, by its own laches, has lost a part of its security, and to that extent has damaged the other remaining securities.

In a case in England, it was declared by one of the judges "that long dormant claims have more of cruelty than justice in them, and that Christianity forbids an attempt at enforcing the payment of a debt which time and misfortune have rendered the debtor unable to discharge." (See *A'Lourt v. Cross*, 3 Bing. R., 329.)

Of the original eight sureties, five are dead and three living, and possessed of very limited means, perhaps none worth anything, unless it be Jesse Turner, who is a practicing attorney, advanced in years, and owning a small amount of real estate.

Under the circumstances, the committee believe that great injustice has been done to the sureties by the delay on the part of the government, and think that the remaining sureties should be relieved from liability on said bond, and therefore report the accompanying bill and recommend its passage.