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Report : Claim of E. Gurley

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Recommended Citation

S. Rep. No. 141, 47th Cong., 1st Sess. (1882)

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 8, 1882.—Ordered to be printed.

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

REPORT :

[To accompany bill H. R. 1670.]

The Committee on Claims, to whom was referred the bill (H. R. 1670) for the relief of E. J. Gurley, have examined the evidence submitted, and adopt House Report 201, submitted to the Forty-sixth Congress, as a correct statement of the facts. Said report is as follows :

The Committee of Claims have examined the petition and testimony affecting the claim of E. J. Gurley, of McLennan County, Texas, and find that the petitioner asks payment of two claims for attorney's fees for services rendered to the government by employment of officers of the government. The first is for professional services in the prosecution of Peter Garland and some eighteen other persons, charged with the murder of seven Caddo Indians, in Palo Pinto County, Texas. The petitioner, Mr. Gurley, has been for many years a practicing lawyer at Waco, Tex., and during the year 1859 he was employed by Maj. Robert S. Neighbours, superintendent of Indians in Texas, to prosecute said Garland and others. The defendants, nineteen in number, were charged with the murder of seven friendly Indians of the Caddo tribe, of the Brazos Agency, in Texas, on the 27th day of December, 1858.

On the 14th day of January, 1859, said superintendent of Indians made affidavit before Hon. N. W. Battle, judge of the district court, in whose district said offense was charged to have been committed, alleging the perpetration of the crime, and that no peace-officer residing in said county could be procured to execute a warrant of arrest against said offenders. So great was the indignation among the people along the frontier of Texas adjacent to the Indian reservation, on account of the outrages committed by the Indians upon the white people, and so thoroughly were the entire people in sympathy with the defendants, that the civil officers refused to execute the process of the court. The petitioner, then, on the 17th day of January, 1859, obtained an order from said district judge, directed to Capt. John S. Ford, commanding a company of Texas rangers on the Texas frontier, and commanding him with the force under him to arrest the defendants and bring them before the court for trial; but Captain Ford was himself a frontier man and had been fighting Indians all his life, and had frontier men under him who had been compelled to take the field to protect themselves and families from Indian depredations, and he and they were also in sympathy with the defendants, and he refused to execute the process. The petitioner then applied to Gov. H. R. Runnels for an order to Captain Ford to execute the process. After a great deal of trouble and delay, the order was executed, but it was found, when the issue was made and met, that the courts were powerless and the laws silent in the presence of a whole population in arms for their own protection and the protection of their defenders.

The prosecution shared the fate of the civil power; it passed away in the presence of an irresistible force. An accommodation was finally had that removed the Indians out of the State, and the troubles arising out of these charges and all others from the same source passed away with the removal of the Indians. The part taken by Mr. Gurley, as prosecutor for the United States, involved him in great personal danger, as the sentiment of the country was overwhelmingly with the accused. He was continually threatened by armed men, and the whole population were in bitter hostility to him; but notwithstanding the peril in which he was placed and the loss of business his relation to the accused caused him, he firmly and faithfully pressed the prosecution and exerted himself with great courage, industry, and perseverance, till the civil power subsided in the presence of an assemblage of armed men, which the State was unwilling to meet and overcome with force. All of this occurred in a district where Mr.

Gurley had a large practice, almost all of which was sacrificed by his employment in these causes. Hon. John Hancock, a member of the Forty-fourth Congress, and his law partner, states his service to be worth not less than \$5,000; Judge Battle says not less than \$2,500 or \$3,000. He has also testimony of other citizens of Texas, and among them the governor of Texas, the Indian agent, Colonel Rosa, and others, all testifying to the courage, ability, and efficiency with which he discharged the duties of his position. We therefore think he is entitled to the relief he asks, and for this branch of his case we report as a reasonable compensation the sum of \$1,000.

The facts in the other case are: That on the 16th day of April, 1854, Capt. R. H. Anderson, United States Army, was ordered by Brig. Gen. W. S. Harney to proceed with a detachment of men under his command to Fort Graham, in Hill County, Texas, and arrest Asst. Surg. Josephus M. Steiner, and convey him to Austin, Tex., for trial before court-martial for killing Maj. R. A. Arnold, his superior officer, who was at that time in command of the fort. His orders stated that "H. P. Brewster, esq., a gentleman of legal learning, would accompany him and give such advice as the exigencies of the mission might require." Sickness in Mr. Brewster's family at the time of Captain Anderson's departure prevented him from accompanying the command, and Captain Anderson proceeded without him and arrested Dr. Steiner in Hill County, Texas, while he was claimed by the sheriff of said county as his prisoner and in his lawful custody, and proceeded with him toward Austin as far as Waco, where he and his detachment were arrested by legal process on a charge of rescuing the prisoner Steiner from the custody of the sheriff of Hill County, the penalty for which offense was confinement to hard labor in the penitentiary not less than five years nor more than ten years. In consequence of the absence of Mr. Brewster, Captain Anderson employed the firm of which Mr. Gurley was a member to defend himself and his men, and advised his superior officers of what he had done. On the trial by the examining court the men under his command were discharged, but he was held to answer before the district court of Hill County, to which he was remanded, and by which he was tried and acquitted, the petitioner acting as counsel during the trial.

This claim was before Congress at a previous term on the petition of the applicant asking for \$5,000. The circumstances surrounding this case are similar to the facts in the former case. The attorney in this case had to contend against a whole people whose sympathies were all for Steiner, and whose passions were aroused fiercely against Captain Anderson and his men, for what they considered a flagrant act of military usurpation, and the victim of that outrage a man of unbounded popularity with them. On the 4th day of June, 1858, the Senate Committee on Military Affairs reported a bill to the Senate for the relief of petitioner for the sum of \$1,500 (Cong. Globe, vol. 36, part 3, page 2699). January 31, 1860, the same committee reported a bill for \$1,000 (vol. 39, part 1, page 647), which was afterward passed by the Senate and sent to the House (vol. 40, part 3, page 1451). In the House the Judiciary Committee reported back the Senate bill to the House and recommended its passage (vol. 41, part 3, page 2354). The bill on a point of order was sent to the Committee of the Whole, and was not reached in the calendar during the session. The claim of the petitioner is meritorious and just, and considering the long time that has elapsed during which the petitioner has remained unpaid, and that the Senate have twice reported in favor of its payment, once at \$1,500 and once at \$1,000, the committee feel that the sum of \$1,000 is but reasonable compensation, and they report in favor of paying said amount for said services in defending Captain Anderson and his men.

Wherefore your committee report back House bill No. 1670, and that it ought to pass.