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Letter of the Secretary of the Treasury communicating, in compliance with the resolution of the Senate of June 29, 1870, information relative to the settlement of the claim of the legal representatives of George Fisher, deceased, for the use and destruction of property in the Creek Indian War

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LETTER
OF
THE SECRETARY OF THE TREASURY
COMMUNICATING,

In compliance with the resolution of the Senate of June 29, 1870, information relative to the settlement of the claim of the legal representatives of George Fisher, deceased, for the use and destruction of property in the Creek Indian war.

JULY 6, 1870.—Referred to the Committee on Indian Affairs and ordered to be printed.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
July 6, 1870.

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate, under date of June 29, as follows:

Resolved, That the Secretary of the Treasury inform the Senate what amount has been paid at the treasury on the claim of George Fisher's representative, for the use and destruction of property in the Creek Indian war, giving the amount and date of each payment.

The records of the Treasury Department show that, under an act approved April 12, 1848, the Second Auditor of the Treasury was authorized and required "to examine and adjust the claims of the legal representatives of George Fisher, deceased." Under this act the following allowances and payments were made: April 22, 1848, \$8,873; December 30, 1848, \$8,797 94; May 12, 1849, \$10,004 89, or in all the sum of \$27,675 83.

On the 22d of December, 1854, an act of Congress was approved by which the Second Auditor of the Treasury was directed to re-examine the case of George Fisher, and to allow the claimants the benefit of testimony which had been rejected by the Second Auditor for the want of authentication.

Mr. Guthrie, then Secretary of the Treasury, expressed the opinion that no further sum was due upon the claim of Fisher, and no action was taken by the Second Auditor. A copy of Mr. Guthrie's letter is enclosed. By a resolution of June 3, 1858, the duties imposed upon the Auditor by the act of December 22, 1854, were transferred to the Secretary of War, who was directed to "proceed *de novo* to execute the same in their plain and obvious meaning." On the 2d day of October, 1858, the Secretary of War made a decision in which he allowed for the property destroyed the sum of \$18,104. He also allowed interest from the respective dates when the property was destroyed to October 2, 1858, for the sum of \$48,799 33, making a total of \$66,903 33.

From this total he deducted the amounts previously allowed by the Second Auditor, together with interest from the time when the several sums of money had been paid, to October 2, 1858, making a total of

\$44,022 05, and showing a balance in favor of the claimants of \$22,881 28. This amount was also paid by the Treasury Department.

Upon an appeal made by the representatives of Fisher, November 11, 1858, the Secretary of War reconsidered his decision, and on the 30th day of November of that year ruled that the principle on which he had ordered the charging of interest on the payments made by the Second Auditor was erroneous, and that \$16,346 22 thus charged as interest should be refunded to the claimants. This amount was also paid.

The aggregate payments, therefore, on account of this claim are \$66,903 33.

By a joint resolution approved June 1, 1860, the Secretary of War was authorized and required to revise his execution of the act of 1858, and to restate and settle the account as in his opinion justice to the claimants should require.

Under this resolution Mr. Floyd, then Secretary of War, made a decision allowing the further sum of \$66,519 85. His decision was transmitted to the Third Auditor; but before payment was made the resolution of June 1, 1860 was rescinded by the resolution approved March 2, 1861, and all proceedings in the Treasury Department were then suspended.

Upon the passage of the last-mentioned resolution, the legal representatives of George Fisher, by petition to the Court of Claims, sought to obtain a judgment for the further allowance of \$66,519 85. Upon a hearing of the case, (a full report of which is found in the first volume of the Court of Claims Reports,) the prayer of the petitioners was denied.

Senator Davis, of Kentucky, having called the attention of the Senate to the alleged delay on the part of the Secretary of the Treasury in replying to his letter, dated Saturday, the 18th of June, and also to the delay of the department in replying to the resolution of the Senate of the 29th of June, I think it proper to make a statement of the facts as far as they are known to me.

It was only since the remarks of the honorable senator were reported to me that I was aware of the fact that he had addressed the department upon the subject of the claim of the representatives of George Fisher. Senator Davis's letter of the 18th ultimo was, on Tuesday, the 21st ultimo, referred by the chief clerk of the Treasury Department to the Second Auditor of the Treasury upon the supposition that the papers in question were in charge of that officer. The history of the case, as detailed in that communication, shows that the papers were originally in the Bureau of the Second Auditor. An examination of the records of his office disclosed the fact that the papers had been referred to the Department of War, and on the 25th instant the Second Auditor addressed a letter to the Secretary of War requesting the return of the settlement of the claim of George Fisher, deceased, and referring to those settlements by date and number. A copy of the Second Auditor's letter is herewith transmitted.

The chief clerk of the War Department, as appears from his indorsement on the letter of the Second Auditor, informed that officer that the papers in the Fisher case were on file in the Third Auditor's Office. On the 28th ultimo this fact was communicated to the Third Auditor by the Second Auditor, as appears by his letter of that date, a copy of which is also inclosed.

Mr. Jones, a clerk in the Third Auditor's Office, was directed to search for the papers, but failed to find them. It appears, upon investigation, that Mr. Stetson, another clerk in the Third Auditor's Office, had on

the 16th of June loaned these papers to Mr. Potts, chief clerk of the War Department. The papers were returned by Mr. Potts to Mr. Stetson on the 22d or 23d of June, and the latter, knowing that the subject was under consideration in Congress, retained the papers upon his own desk that they might be at hand when called for. Mr. Jones, being ignorant of this fact, was thus led to make a report to the chief clerk of the Third Auditor's Office on the 29th instant, (as appears from the endorsement of the latter, under that date, upon the letter of the Second Auditor, of the 28th instant,) that the papers were not in the Third Auditor's Office. On the 30th of June the error was discovered.

The resolution of the Senate was received on the 29th of June and referred to the Third Auditor. On Saturday, the 2d of July, the Third Auditor made a report to the Secretary of the Treasury of the facts in the case.

I have the honor to be, very respectfully,

GEO. S. BOUTWELL,
Secretary.

Hon. SCHUYLER COLFAX,
*President of the Senate and
Vice-President of the United States.*

TREASURY DEPARTMENT, April 4, 1855.

SIR: I find that the Second Auditor, under date of 22d April, 1848, rejecting certain depositions for want of sufficient authentication, awarded to the representatives of George Fisher the sum of \$8,873, as a full and fair equivalent for the property destroyed by the United States troops, and that said sum was accordingly paid to the representatives. I also find that the said Auditor again took up the said case, under an opinion of the Attorney General as to the rejected depositions, and made another award, in which he allowed on the whole case, for the property destroyed by the United States troops, the sum of \$8,973, being \$100 more than allowed by the first award, and on this latter award allowed interest at the rate of six per cent. from the 13th February, 1832, the time when Congress was first petitioned to settle the claim, and deducted therefrom the first award of \$8,873, leaving a balance of \$8,799 94, which was paid to the representatives.

I further find that, upon the opinion of the Attorney General, Toucey, you took up the case and allowed interest upon the last award of \$8,973, from the 13th July, 1813, to the 13th February, 1832, and allowed the further sum of \$10,004 89.

You will thus see that the sum awarded to Fisher's representatives by your predecessor, under his second award, embracing the rejected depositions, has been fully paid, with interest from the 13th February, 1813, and that there were not the two sums of \$8,873 and \$8,973, constituting \$17,846, awarded for the damages done by the United States troops, and consequently there is no such balance due for interest, or otherwise, as you suppose.

In my opinion, the second award of your predecessor, allowing interest from 1832, to the time application was first made to Congress for compensation, was all that equity and justice called for, and that Attorney General Toucey's opinion ought not to have been applied to the case as it stood, and did not justify the further allowance of interest.

As the second award of your predecessor was made on the basis of the rejected depositions, on making his first award, the act of 1854 authorizing these depositions to be considered and a further award made, was for the want of the proper information, and as they have already been considered and acted upon, you are not authorized to revise the action of your predecessor under the provisions of the act of 1854, but should make a detailed report of the case to me, so that I may lay it before the President to be presented to Congress for their reconsideration.

The papers are herewith returned.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

P. CLAYTON, Esq.,
Second Auditor of the Treasury.

[Indorsement.]

TREASURY DEPARTMENT, June 21, 1870.

J. H. Saville, chief clerk, refers letter of Hon. Garrett Davis, United States senator, who incloses printed report in case of George Fisher deceased, having reference to an old claim of this man for property taken in the Creek Indian war, which is being investigated by the Committee on Indian Affairs. Said committee desire certain information specified herein.

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,
June 25, 1870

SIR: On the 18th June, 1858, the following settlements of the claim of George Fisher, deceased, viz: No. 6349, April 22, 1848; No. 7710, December 30, 1848, and No. 8338, May 12, 1849, were transmitted by letter from this office to John B. Floyd, Secretary of War.

I have the honor to request the return of said settlements, to enable this office to answer a communication of 18th instant from Hon. Garrett Davis to the Secretary of the Treasury, concerning said claims, and referred on the 21st instant by the Secretary of the Treasury for report.

Respectfully,

E. B. FRENCH,
Auditor.

Hon. SECRETARY OF WAR.

[Indorsement.]

Respectfully returned to the Second Auditor.

All papers in the Fisher case are on file in the Third Auditor's Office.
JOHN POTTS, *Chief Clerk.*

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,
June 28, 1870.

SIR: I beg to call your attention to the letter of the 25th instant, from this office to the Secretary of War, herewith asking the return of certain settlements of the claim of George Fisher, deceased, made in April and December, 1848, and May, 1849; and to the indorsement of the chief clerk of the War Department in returning the communication above referred to. Please return the inclosed.

Respectfully,

E. B. FRENCH,
Second Auditor.

Hon. THIRD AUDITOR,
Treasury Department.

[Indorsement.]

THIRD AUDITOR'S OFFICE,
June 29, 1870.

Respectfully returned to the Second Auditor, with the information that an examination of the files of this office does not confirm the indorsement of the chief clerk War Department, on inclosure.

It is believed that, if the within-described Second Auditor settlements had been transmitted to this office by the War Department, they would have been promptly forwarded to the Second Auditor's Office, to whose files they pertained.

A. M. GANGEWER,
Chief Clerk.