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Gustavus F. Jocknick

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GUSTAVUS F. JOCKNICK.

MARCH 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HOUK, of Tennessee, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 7091.]

The Committee on War Claims, to whom was referred the petition of Gustavus F. Jocknick, submit the following report:

The facts out of which this claim for relief arises will be found stated in House report from the Committee on Claims of the Forty-third Congress, which is appended as a part of this report.

Your committee concur in the conclusions stated in that report, and report herewith a bill and recommend its passage.

[House Report No. 661, Forty-third Congress, first session.]

In May, 1869, Silas H. Swetland was appointed by the Secretary of the Interior to make payment of certain moneys to the Eastern Cherokees in North Carolina; and, at the same time, the Secretary directed the Commissioner of Indian Affairs to detail a clerk of the Department to witness the payments, the detail to be made "with particular reference to personal integrity and tried experience as an accountant, as also his qualifications to judge of the evidence filed in support of the claim of legal representatives," etc.

Mr. Jocknick, being a clerk in the Department, was selected by the Commissioner of Indian Affairs and detailed to accompany Swetland and witness the payments. He did not seek this duty, nor was he consulted as to his wishes in the matter.

The payments were made, so far as Swetland had funds in his hands to make them, and all the payments made were witnessed by Mr. Jocknick.

Long afterward, and about the 29th day of March, 1873, Mr. Jocknick was arrested at his desk in the Department of the Interior, upon the charge, preferred against him in the United States circuit court for the western district of North Carolina, of conspiracy to defraud the Eastern Cherokee Indians. This was the first intimation he had that his actions were not fully approved, both by the Indians and the Department.

At the May term, 1873, of the circuit court, held at Asheville, Mr. Jocknick appeared with his witnesses and counsel. When the case was called, the United States attorney moved the court to enter a *nolle prosequi* as to Mr. Jocknick; whereupon the following proceedings were had:

In the circuit court of the United States in and for the western district of North Carolina.

UNITED STATES

vs.

S. H. SWETLAND, G. F. JOCKNICK, AND OTHERS, }

The above criminal action having come on to be tried before this court at the May term, 1873, thereof, holden at Asheville, in the county of Buncombe and the State of North Carolina, and a motion having been made by the district attorney on behalf of

the United States to enter a *nolle prosequi* and dismiss the indictment as against the defendant, the said Gustavus F. Jocknick; and the court, the Honorable Robert P. Dick presiding, having directed a suspension of the entry of a *nolle prosequi* as to the said defendant until the evidence on his behalf should be heard by the court; and the evidence on his behalf having been offered, heard, and considered by the court:

It is considered by the court that the district attorney have leave to enter a *nolle prosequi* in the action as to the said Gustavus F. Jocknick; that the action of the said district attorney in so doing is proper and approved.

It is further considered by the court that the evidence offered on behalf of the said Gustavus F. Jocknick fully exculpates him from the charges contained in the indictment against him.

ROBERT P. DICK,
United States District Judge.

MAY 15, 1873.

UNITED STATES OF AMERICA,
Western District of North Carolina:

I, E. R. Hampton, clerk of the United States circuit court for the western district of North Carolina, hereby certify that the foregoing is a true and correct copy of the order made by his honor, Judge Dick, who was at that time the presiding judge of the said circuit court, in the case of Gustavus F. Jocknick, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Asheville, on this 16th day of May, A. D. 1873, and the 97th year of the American Independence.

{ SEAL OF
THE COURT. }

E. R. HAMPTON,
Clerk United States Circuit Court, Western District North Carolina.

The Honorable Robert P. Dick, holding the circuit court at Asheville, also certified in regard to the attendance of witnesses as follows:

In the circuit court of the United States in and for the western district of North Carolina.

UNITED STATES
vs.
S. H. SWETLAND, G. F. JOCKNICK, ET AL. }

I, Robert P. Dick, judge of the district and circuit courts of the United States in and for the western district of North Carolina, hereby certify that it appeared to me in evidence in open court that Maj. C. A. Earnest, United States Army, Alexander Johnston, and Henry R. Clum were produced as witnesses before this court at the May term, 1873, thereof, at Asheville, on behalf of the defendant, Gustavus F. Jocknick; that subpoenas, under seal of this court, were issued to procure the attendance of said witnesses, under which they were produced; that said first-named witness came from Omaha, Nebr., and said other witnesses came from Washington, D. C., that an affidavit of said defendant has been filed in this court declaring his inability to pay the expense of such attendance of such witnesses, but that the same was not filed until after the issuing of said subpoenas, and that consequently an order of this court directing their payment by the United States marshal can not be made; but, in my judgment, such expenses ought to be paid and reimbursed to the defendant by the Government, and especially under the circumstances of his complete exculpation from the charges brought against him, after hearing by the court, and on motion of the district attorney on behalf of the United States.

It also appeared in open court that said witnesses were very material for the defense.

Dated the 15th day of May, 1873.

ROBERT P. DICK,
United States District Judge.

After his return to Washington, Mr. Jocknick made application to be reimbursed the expenses incurred by him in defending this prosecution, and the Commissioner of Indian Affairs and Board of Indian Commissioners recommended payment; but the Comptroller of the Treasury decided that there was no appropriation out of which it could be paid and that its payment was not authorized by existing laws.

The expenses incurred by Mr. Jocknick in this case, according to vouchers placed in the hands of your committee, amount to the sum of \$1,717.44.

Your committee regard this as a peculiar case of hardship on Mr. Jocknick and recommend the passage of an act for his relief.

It may be proper to say that, after his arrest, he was suspended from his clerkship in the Department of the Interior, but after his exculpation he was reinstated and has the full confidence of the Department.

The committee therefore recommend the passage of the accompanying bill.