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[Report : Petition of Nicholas Ware and Wm. A. Carr

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IN SENATE OF THE UNITED STATES,

FEBRUARY 1, 1822.

Mr. Eaton, from the Committee on Public Lands, to whom was referred the petition of Nicholas Ware, and Wm. A. Carr, executors of Thomas Carr, deceased, made the following REPORT:

In February, 1784, the state of Georgia, with a view to ascertain the precise quality and situation of that portion of her western territory lying on the big bend of Tennessee river, appointed seven commissioners, with authority to proceed there, open an office, and perfect titles, under certain limitations and restrictions embraced in the resolution. Nothing is said of the compensation to be extended to the commissioners for their services. On the 25th of December, 1785, a report was made by them, and, in August following, the legislature resolved, that "each of those commissioners, who had actually attended their duty, should be entitled to five thousand acres of land in the district, as a gratuity and full compensation for their trouble;" and that they should have a warrant of survey. These facts are established by records produced from the state of Georgia properly and legally certified.

But five of the commissioners entered on a discharge of the duties assigned them, viz: John Donnelson, Stephen Heard, William Downs, Joseph Martin, together with Thomas Carr, who had been appointed in lieu of —- Noper, resigned. The enterprise was arduous and full of danger, and one of the commissioners (Donnelson) lost his life while in the discharge of this duty.

Subsequent to August, 1786, the acts and proceedings of Georgia furnish no information of the reason why the lands reserved and appropriated for those commissioners, were not located, and titles to them perfected; a deposition, however, of Zachariah Cox, states, that "he assigned the land claimed under the act, by making special location in the Tennessee purchase;" though what authority he had from Georgia to make location, does not appear from any proofs or documents furnished, other than the act of 1795, commonly termed the Yazoo act. In this it is provided that, within the limits of what had been sold to the Tennessee company, of which Mr. Cox was the head, there should be "reserved 50,000 acres, to be equally divided amongst the commissioners, appointed by the state for the
purposo of examining the quantity, quality, and circumstances, of the
great bend of the Tennessee river."

No doubt is entertained by the committee of the correctness of this
claim. The commissioners never acted under any special contract
with Georgia as to the remuneration to be made them for their ser-
vices. They proceeded as they had been required under the act of
1784, upon a hazardous enterprise, in a wilderness country, and
amongst savages in no wise friendly disposed, to the execution of the
trust confided to them, with no security for compensation other than
a confidence in the liberality of the state. Whether, then, the amount
of their claim should be determined by the act of 1786, which gave
to each of them five thousand acres, or by the act of 1795, sec. 15,
which enlarged it to fifty thousand acres, was an inquiry with the
Committee. There being no special contract, it rested with the
gratuity and liberality of Georgia. That state possessing the sove-
reignty and soil had a right to fix the amount as she pleased, and,
having fixed it, the title became vested, and could not, as your Com-
nittee conceive, be affected or impaired by any subsequent transfer
to the United States. Georgia herself admits the correctness of the
claim, that it has never been satisfied, and, by a memorial from the
legislature of that state, in the year 1818, desires that it may be
satisfied. Taking into view, however, that the act of 1795, was re-
pealed by Georgia, and that the memorial is silent as to the quantity,
the Committee have preferred considering the claim under the ope-
ration of the act of 1786, which limited the amount to be given to each
commissioner to five thousand acres.

By the articles of compact and cession from Georgia to the
United States, it is covenanted that confirmation shall be given
to all perfect British and Spanish grants, and to all surveys or
settlements made in that district of country, over which those com-
missoners had been appointed to preside. Authority is also given,
if exercised by the United States within a year, to set apart not ex-
ceeding five millions of acres as a fund out of which to satisfy any
other claims that might exist against that state. The United States,
in pursuance of that compact, and within the time limited, created a
fund to that amount, from which were to be satisfied such claims as
might be preferred, founded "upon any act or pretended act of
Georgia." From this act of Congress, in connexion with the arti-
cles of compact and cession, it seems obvious that this claim rests
against the United States and not against the state of Georgia.

The Committee, under a view of all the circumstances, have re-
ported a bill for the relief of the claimants, extending to each of the
commissioners five thousand acres.