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

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Recommended Citation

S. Doc. No. 29, 17th Cong., 1st Sess. (1822)

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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

purpose 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 services. 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 sovereignty 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 Committee 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 repealed by Georgia, and that the memorial is silent as to the quantity, the Committee have preferred considering the claim under the operation 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 commissioners had been appointed to preside. Authority is also given, if exercised by the United States within a year, to set apart not exceeding 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 articles 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 reported a bill for the relief of the claimants, extending to each of the commissioners five thousand acres.