4-14-1830

# John M'iver.

21st Congress, 1st Session. [ Rep. No. 363. ] Ho. of Reps.

# JOHN M'IVER.

April 14, 1830.

Read, and laid upon the table.

Mr. Whittlesey, from the Committee of Claims, to which had been referred the case of John M'Iver, made the following

## REPORT:

*The Committee of Claims, to whom was referred the petition of John M'Iver, report:*

The memorialist claims to be paid the value of 640 acres of land, of which he complains he was deprived by a treaty of the United States, made with the Cherokee tribe of Indians, on the 27th day of February, A. D. 1819, (See Laws U. S. 6 vol. 748.) The facts of the case, as appears from the record of a judgment of the Supreme Court of the State of Tennessee, which accompanies the petition, are as follows: that, in the year A. D. 1795, a grant issued to Stokely Donaldson and William Terrell, from the State of North Carolina, for 5,000 acres of land, which embraced the above mentioned 640 acres as a part of it; that the title passed through a regular train of conveyances to the petitioner, John M'Iver; that, in the year 1824, he brought suit against the tenants in possession of the tract of 640 acres, part of the grant, and, on the hearing of the case, judgment was rendered against him. The defendants in that suit derived title as follows: In the aforesaid treaty with the Cherokees, by which a certain portion of their country, situated in the State of Tennessee, was ceded to the United States, there were certain reservations of 640 acres to each person named in a list annexed to the treaty, to be held in fee simple, and laid off so as to include their improvements, and as near the centre thereof as possible; that, of the persons named on said list, Richard Timberlake was one, for whom the tract of land aforesaid was laid off, in conformity to the provisions of said treaty; that the defendants in that suit held under a regular conveyance from said Timberlake, whose title was adjudged to be valid. The petitioner assumes the fact, that he has been deprived of his right or claim to the land, by the act of the United States, and, on that ground, rests his claim for indemnity. It therefore becomes material to inquire what right or title he took by the grant of 1795, issued by the State of North Carolina? The grant aforesaid, was, at that time, a part of the Cherokee country, and, from an examination of the laws and adjudicated authorities in the States of Tennessee and North Carolina, as well as in the Supreme Court of the United States, the committee are of opinion that the grant was, at the time of its emanation, utterly void; and that the grantees, and those claiming under them, never had any

title whatever, and, consequently, the petitioner has been deprived of nothing by the United States, and, therefore, is not entitled to call upon them for indemnity for his pretended loss. The State of North Carolina appears to have been actuated by an honorable and watchful desire to preserve to the Indian tribes within her chartered limits, the undisturbed possession of their lands. Among her earliest acts of legislation, after the Declaration of Independence, was a law of her Legislature, passed in 1778, (Laws of N. Carolina, 1 vol. 355,) "declaring all entries and surveys of lands theretofore made, or which might be made within the Indian boundary, utterly null, and of no force or effect." In 1783, (Laws of N. Carolina, 1 vol. 436,) that State passed another act, defining the Indian boundary, and declared all *entries and grants* made within the bounds set apart by that act to the Cherokee Indians, utterly void, and imposed a fine of fifty pounds upon every person who should enter and survey any land within their territory. At that time, the present State of Tennessee was a part of the State of North Carolina, and the grant in question was made in contravention to those laws. The earliest adjudicated case which your committee has been able to find, is the case of Avery vs. Strother, reported in Cameron and Norwood's Reports, 485, decided by the Supreme Court of North Carolina. That case, in all its leading facts, was precisely analogous to the one now under consideration. It was there adjudged that the entry and grant were prohibited by the above mentioned laws, and, on that account, void. The doctrine of the Supreme Court of North Carolina has been repeatedly reviewed and affirmed by the Supreme Court of the United States. In the cases of Preston vs. Browder, 1 Wheaton, 115; Danforth vs. Thomas, 1 Wheaton, 155; and Danforth vs. Wear, 9 Wheaton, 677; grants made under similar circumstances, are declared to be invalid, and the inviolability of the Indian territory, under those laws, is fully recognised. The decision of the Supreme Court of the State of Tennessee, in the present instance, must have been made in obedience to, and in conformity with, the previously established law on this subject. Your committee are, therefore, clearly of opinion, that the United States has deprived the petitioner of no right, and he is, therefore, entitled to no relief. If the petitioner did, in fact, acquire a title under the grant of the State of North Carolina, they are, by no means, prepared to say that it was in the power of the United States to divest him of that title; but, being of opinion he never had a title, it is unnecessary to investigate that question.

The following resolution is submitted to the consideration of the House:

*Resolved*, That the petitioner is not entitled to relief.