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Timothy D. and Robert A. Pettigrew.

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TIMOTHY D. AND ROBERT A. PETTIGREW.

APRIL 16, 1830.

Read, and committed to a Committee of the Whole House to-morrow.

Mr. HUBBARD, from the Committee on Indian Affairs, to which had been referred the case of Timothy D. Pettigrew, and Robert A. Pettigrew, made the following

REPORT:

The Committee on Indian Affairs, to whom was referred the memorial of Timothy D. Pettigrew and Robert A. Pettigrew, report:

That the memorial sets forth, that, in the year 1794, John and James Pettigrew left South Carolina with thirteen slaves and other property, for the purpose of making a settlement on the Mississippi river; that, in passing down the Tennessee river, at a place called the Muscle Shoals, the said John and James Pettigrew were murdered by Cherokee Indians, and the property of which they were possessed was either taken and carried away, or destroyed; that the memorialists are the nephews and heirs at law of the said John and James Pettigrew; and that, by the provisions of the treaty of Tellico, made with the Cherokee nation in 1798, the memorialists are prevented from enforcing their claim against that nation, or against any individual of that nation; and that the Government is bound thereby to make compensation for the property thus taken away or destroyed.

The subject-matter of this memorial was presented to the consideration of Congress, as early as January, 1805; and that, whenever it has received the attention of a standing committee of the House, it has experienced the same fate—a report unfavorable to the prayer of the memorialists. It is true, however, that, in 1810, a different result was produced, by the examination of a select committee, to whom the subject had been referred.

With a view of presenting the facts which can have a bearing in the decision of the House, on this memorial, the committee have carefully examined the several treaties existing between the United States and the Cherokee nation, which can have any relation to this claim, and also the testimony which has been presented, and they now submit the subjoined statement.

In May or June, 1794, John and James Pettigrew, who were brothers, and in connexion with one William Scott, purchased a boat on the river Holston, and proceeded down that river and the river Tennessee, having thirteen negro slaves, belonging to the two Pettigrews, with some other property, the amount of which is not shown. That they arrived at the Muscle Shoals, on the Tennessee river, where they were murdered by Cherokee Indians, and the property described, was either destroyed or taken and carried away.

It appears from the evidence, that the memorialists are the heirs at law of the said John and James Pettigrew; and that endeavors were repeatedly made, and at much expense, prior to the treaty of Tellico, in 1798, to recover from the Cherokees the property so plundered, but without success—except the recovery of one slave, a negro child.

It also appears, from the testimony, that the said John and James Pettigrew were engaged in their own business; that they had left South Carolina with the intent of locating themselves *on the banks of the Mississippi*; and that *the Muscle Shoals*, where the murder was committed, and where the property was plundered, was within a tract of country then possessed by the Cherokee nation, and which had not, at that time, been ceded to the United States.

The treaty on which the memorialists rely was concluded near Tellico on the 2d day of October, 1798, and the only part of that treaty which can be applicable to the present case, is contained in the ninth article, and is as follows:

“It is mutually agreed between the parties, that horses stolen and not returned within ninety days, shall be paid for at the rate of sixty dollars each; if stolen by a white man, citizen of the United States, the Indian proprietor shall be paid in cash; and if stolen by an Indian from a citizen, to be deducted as expressed in the fourth article of the treaty of Philadelphia. This article shall have retrospect to the commencement of the first conference at this place in the present year, and no further: *And all animosities, aggressions, thefts, and plunderings, prior to that day, shall cease, and be no longer remembered or demanded on either side.*”

On the second day of July, 1791, a *treaty of peace and friendship* between the United States and the Cherokee nation was concluded on the bank of the Holston, near the mouth of the French Broad. The fifth article of this treaty secured to the citizens of the United States the *free navigation* of the river Tennessee.

Although the treaty of Holston expressed the desire of the parties to establish permanent peace and friendship, yet the history of the times furnish melancholy evidence that no such consequences followed; that peace was not established within our borders; that hostilities still continued between the United States and Cherokee Indians.

The next treaty with the Cherokee nation which followed the treaty of Holston, was concluded at Philadelphia on the twenty-sixth day of June, 1794, a time subsequent to the commission of the aggressions complained of by the memorialists.

The preamble of the last mentioned treaty sets forth; That the treaty of Holston had not been fully carried into execution, by reason of some misunderstandings which had arisen: and the first article declares, “that the parties are desirous of *establishing peace and friendship* between them in a permanent manner:” and the fourth article of the said treaty expressly declares, “that the said Cherokee nation, in order to evince the sincerity of their intentions in future, to prevent the practice of stealing horses, attended with the most pernicious consequences to the lives and peace of both parties, do hereby agree,” &c. &c. Notwithstanding the various provisions of a specific character, contained in the treaties herein referred to it does not appear that peace and tranquillity were effectually established with the Cherokees until some time afterwards. The President of the United States, on the 17th February, 1795, communicated by special message to Congress, the following important information; “In confidence I

“also forward copies of several documents and papers received from the Governor of the Southwestern territory. By these it seems that hostilities with the *Cherokees* have ceased, and that there is a pleasing prospect of a *permanent peace with that nation.*”

The committee cannot but regard this claim as having its origin in depredations committed in a period of hostilities between the United States and the Cherokee Indians, and within the limits then possessed by that nation, and on that account not entitled to the favorable consideration of Congress.

The committee are not aware that the language of the ninth article of the treaty of Tellico, which is inserted in this report, creates any liabilities on the part of the United States, which did not exist before. They cannot suppose that this treaty made the Government liable to individual citizens for property which had, at any prior period, been plundered by Cherokee Indians. The treaty itself does not, in express terms, impose any such liability on the United States; and the committee do not incline to give any extended construction which the letter of the treaty will not warrant.

Under any view of this case which the Committee have taken, they do not consider “that the United States are bound to guaranty the possession of negro slaves to individuals, passing, for no public purpose, through the country of hostile savages;” and that no existing treaty provisions imposed on them the express obligation of making any compensation to the memorialists for the property plundered.

Therefore they report, that the memorialists have leave to withdraw their memorial.