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Alfred Stewart.

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ALFRED STEWART.

FEBRUARY 25, 1834.

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

Mr. EVERETT, of Vermont, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to which was referred the petition of Alfred Stewart, report:

That the petitioner, as heir, claims compensation for five negroes, taken in 1780, in a hostile manner, by an armed band of Cherokee Indians, within their territory, from his father, Thomas Stewart, a citizen of North Carolina, while removing with his family to Tennessee.

The committee find the facts stated to be true. They are, however, of opinion that the petitioner is not entitled to relief. The injury complained of was in itself an act of war, committed while the United States were at war with the Cherokees, and to which the party voluntarily subjected himself by entering the territory of a hostile nation. Though the acts of war may have been occasional only, yet, until relations of peace were established by the Government, the hazard must rest on those who undertake it; so much so that no obligation is imposed on the Government even to demand redress, much less to indemnify the sufferers.

The petitioner suggests that the United States have, by some treaty with the Cherokee nation, assumed to indemnify him for his losses. The committee have examined those treaties so far as to satisfy themselves that no such obligation has been assumed. This being a case which gives to the party no claim on this Government for indemnity, nor to the Government any right to demand redress of the Cherokee nation, the present claim must depend on the express stipulations of the treaties. The first treaty that established relations of peace between the United States and the Cherokee nation was the treaty of Hopewell, (November 28, 1785.) By the first and second articles, the parties mutually agreed to restore all prisoners, and the Cherokees further agreed "to restore all negroes taken during the late war from the citizens to such persons, and at such time and place as the commissioners (negotiating the treaty) shall appoint." To claimants of the class under consideration, this was a provision of mere favor, not

imposing on the Government any other than a political duty to insist on its execution. Of the proceedings under this article the committee are not advised, further than that the negroes in question were not restored. The Government had then a right to complain of this as a violation of the treaty. But still it was a right on which they might insist or forbear, as policy should dictate, without incurring any obligation to the party. It may be proper to remark, that the treaty of Hopewell was a treaty of limits, not a treaty of cession. The war which again broke out put an end to the treaty stipulation. Peace was again restored by the treaty of Holston, (July 2, 1791.) It contained no provision for satisfaction, on account of the non-fulfilment of the treaty of 1785. But, on the contrary, the 15th article provides "that all animosities for past grievances shall henceforth cease;" the same that is implied by the first article, "that there shall be peace and friendship between the parties." Thus, then, the Government have abandoned all claim for depredations of every character committed in war prior to 1785, and also for the non-execution of that treaty; and this without creating a new obligation where none originally existed. The treaty of Holston, however, is a treaty of cession. But from the fourth article it appears that the cession is made on the express consideration of an annuity of one thousand dollars, (enlarged by the additional article to fifteen hundred,) so that all implication that Indian depredations formed a part of the consideration, is excluded. The committee consider, then, that the last treaty put the present claim at rest forever.

The committee have been referred to the report of the Committee on Indian Affairs, (of March 22, 1832,) in the case of Pettigrew and Scott, as a precedent applicable to the present case. They do not perceive their analogy, either in principle or in fact. In that case the committee stated, as the principles on which the report was based: "If the act complained of by the petitioners had been committed by an Indian tribe *in time of peace*, no one could doubt that the established policy of the Government would give the petitioners a claim for relief, whether the Government had or had not, in their negotiations, obtained an indemnity from said tribe. If, on the other hand, the depredation had been committed by an Indian tribe, *in a state of war*, no principle could compel the Government to make restitution, *unless in a subsequent treaty of peace the Indian tribe had yielded an equivalent for such spoliations.*" The facts found were that the depredation was committed in 1794, by the Cherokee Indians, *in time of peace*, while Pettigrew and Scott were descending the Tennessee river, by virtue of a right which, by the treaty of Holston, (1791,) was secured to all citizens of the United States. That in the next treaty of peace, (that of 1794 being merely additional to that of Holston, in 1798,) made at Tellico, it was agreed by the 9th article, that "all animosities, aggressions, thefts, and plunderings, prior to that day, (the commencement of the conferences in 1798,) shall cease, and be no longer remembered or demanded on either side." The depredation being committed *in time of peace*, and *since the last treaty of peace*, and prior to the day mentioned, was a case clearly within the first principle adopted by the committee. The present is a case of a depredation committed "*in a state of war.*" The committee did not, however, mainly rely on this ground, but on the other principle, that the Indians had, in the same treaty, yielded an equivalent for such spoliations, by a cession of land. They appear to have drawn this inference rather from evidence of facts that occurred pending the treaty, than from the treaty itself. Without,

however, questioning the correctness of the inference, the committee do not perceive that the evidence stated in that report has even a tendency to prove that the cession was intended as an equivalent for depredation committed prior to the preceding treaty of peace, (1791.) Nor do they recognise any principle that could give that effect to the cession, short of express words in the treaty itself. They therefore recommend the adoption of the following resolution :

Resolved, That the petitioner is not entitled to relief.