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Clark -- adm'r of Seagrove et al., Indian depredations. Memorial of Archibald Clark, Administrator of Robert Seagrove, deceased, for himself and other citizens of Georgia.

22d Congress, 1st Session. [Doc. No. 143.] Ho. of Reps.

CLARK—ADM'R OF SEAGROVE ET AL.

INDIAN DEPREDATIONS.

MEMORIAL

OF

ARCHIBALD CLARK,

Administrator of Robert Seagrove, deceased, for himself and other citizens of Georgia.

February 27, 1832.

Referred to the Committee of the Whole House, to which is committed the bill H. R. No. 128.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled:

The memorial of Archibald Clark, administrator of Robert Seagrove, deceased, on behalf of himself and other citizens of Georgia,

Respectfully shows:

That the said Robert Seagrove and others sustained severe losses through depredations committed on their property by Indians of the Creek nation previously to the year eighteen hundred and two; and that their claims for compensation for these losses are still unsatisfied, in consequence of a construction which has been given to the treaty of the Indian spring, in 1821, by those charged with its execution. The commissioner appointed by the President of the United States to decide on the claims of citizens of Georgia, under that treaty, rejected claims for property *destroyed* by the Creeks; on the claims which were admitted, he refused to allow interest; and he also refused to allow compensation for the increase of female slaves who had been taken. Against such a construction, and especially against so much of it as denied compensation for *destroyed* property, your memorialist protests, as being contrary to the letter of the treaty, to the intention of the parties, and to the principles of justice. And he relies with great confidence on the sanction given to his protest, by the authority of certain proceedings heretofore had in the House of Representatives.

On the fifth of February, in the year eighteen hundred and twenty-eight, a report was made by the Committee on Indian Affairs, presenting a historical view of the treaty of the Indian spring, of its collateral circumstances, and of the acts done in execution of it. This report, (*see doc. Ho. of Reps., 20th Congress, 1st session, Rep. No.* 128,) after adverting to the payment of one hundred and one thousand three hundred and nineteen dollars and twenty-two cents, under the treaty, and to the possession by the Government of one hundred and forty-eight thousand six hundred and eighty dollars and seventy-eight cents, the residue of the fund of two hundred and fifty thousand dollars, stipulated by the treaty as applicable to the payment of the claims of the citizens of Georgia, gave it as their decided opinion, that this residue might "be applied, under the direction of the President of the United States, to the payment of any claims, which, in his opinion, come within the spirit of the said treaty and agreement," [i. e. an agreement, entered into simultaneously with the treaty, between certain commissioners on the part of Georgia, and the Creeks,] "if, indeed, all such have not been already adjusted and paid." On the subject of *destroyed* property, the committee declare an opinion on their part, that it "is as much entitled, under the provisions of the said fourth article of the aforesaid treaty, to indemity, as if such property had been in existence at the execution of the said treaty, subject, however, to the exceptions particularly specified and set forth in the aforesaid instructions." These instructions had been given by the Secretary of War to the commissioner already referred to by your memorialist; and the committee say "they can find nothing therein contained, which would exclude any such claims, which ought, in the opinion of the committee to be paid." They supposed that the questions of interest, and the increase of female slaves, had been duly considered by the President, and had probably entered into the prices, alleged to be high, at which the negroes, for whose loss compensation was claimed, were fixed by the commissioner. The committee were also of opinion, that, in regard to the balance of the fund in the hands of the Government, "it would be competent for Congress to legislate on the subject, if it should be deemed necessary," but they considered legislation inexpedient, because they regarded it as being "entirely competent for the President of the United States to allow and cause to be paid any and all claims intended to be provided for in said treaty," if not already adjusted and paid.

After this report had been read, a substitute for it was offered by Mr. Thompson, of Georgia, enforcing the principles asserted by the majority in regard to destroyed property, arguing in favor of allowing interest and compensation for the increase of female slaves, but differing from the majority in regard to the expediency of legislation on the part of Congress, and recommending the passage of a bill "*to carry into full effect the fourth article of the treaty of the eighth of January, eighteen hundred and twenty one, between the United States and the Creek nation of Indians, so far as relates to the claims of the citizens of Georgia against the said Indians for injury done prior to the year eighteen hundred and two.*" The bill thus recommended authorized compensation for destroyed property, compensation for the value of the increase of female slaves, and the payment of interest out of the fund fixed and provided by the treaty, on all property so destroyed, or captured and detained, except property capable of increase. This report presented a clear and unanswerable statement of the history of the treaty.

On the twenty-sixth of January, in the year eighteen hundred and thirty, the Committee on Indian Affairs made a report, (*see doc. Ho. of Reps.*, 21*st Congress*, 1*st session*, *Rep. No.* 115,) noticing the exclusion, by the commissioner, of claims arising from "property destroyed by the Indians, and not actually taken away and detained by them." The committee say, that in this "they are decidedly of opinion that the commissioner erred, and that thereby the citizens of Georgia were injured by the rejection of a large portion of their claims." This committee appears to have concurred in the supposition expressed in the report first referred to, that the slaves were estimated at high prices. They inclined to allow this consideration some weight in their estimate of the claim, which they think reasonable, "that something should be allowed, by way of damages, for the detention of property for twenty, thirty, or forty years; and that, too, against the express stipulations of several treaties." The committee declined making a full report, and referred the House to the reports already mentioned by your memorialist.

On the twenty-seventh of December, eighteen hundred and thirty-one, the Committee on Indian Affairs made a report, (*see doc. Ho. of Reps.*, *22d Congress*, 1*st session*, *Rep. No.* 65,) in most respects identical with the substitute report of February 5, 1828, but compromising the claim for the value of the increase of female slaves.

To the foregoing reports, your memorialist invites the notice of Congress. It seems proper to be added, that, on the second of March, eighteen hundred and thirty-one, (*see doc. Ho. of Reps.*, 21*st Congress*, 2*d session*, *Rep. No.* 109,) the Committee on Indian Affairs made a report, adverse to a claim preferred by a deputation of the Creek Indians, for indemnification for property alleged to have been taken or destroyed by citizens of Georgia since the year eighteen hundred and twenty-five. The report proceeded on the opinion entertained by the committee, that such claims "have usually been the subject of consideration and settlement, by treaty or contract, with the Indians. These claims, it is probable, will, in a short time, be taken into consideration in the same way."

The four reports concerning the claims of citizens of Georgia, under the treaty of the Indian spring, to which your memorialist has referred your honorable bodies, fully sustain the principle of remuneration for property *destroyed* by the Creek Indians prior to eighteen hundred and two; two of them recognise, without qualification, the claim for interest on property destroyed, or captured and detained; one of them does not controvert the original justice of the claim for interest, but assumes that in the allowed cases it may have been granted in another form, so far as negro property was the subject of demand; and this opinion is expressed more distinctly in its first branch, in another of these reports. In regard to the claim for the value of the increase of female slaves, two of the reports expressly assert it; another holds the same doctrine concerning it, which it holds on the question of interest; and the remaining report is silent on the topic.

On the subject of compensation for destroyed property, the doctrines of all these reports are not more remarkable for unanimity, than for their concordance with the treaty of the Indian spring, and with the principles of justice. The fourth section of that treaty contains these words: "And as a further consideration for said cession, the United States do hereby agree to pay to the State of Georgia whatever balance may be found due by the Creek nation to the citizens of said State, whenever the same shall be ascer-

tained, in conformity with the reference made by the commissioners of Georgia, and the chiefs, head men, and warriors of the Creek nation, to be paid in five annual instalments, without interest, provided the same shall not exceed the sum of two hundred and fifty thousand dollars; the commissioners of Georgia executing to the Creek nation a full and final relinquishment of all the claims of the citizens of Georgia against the Creek nation, for property taken *or destroyed* prior to the act of Congress of one thousand eight hundred and two, regulating the intercourse with the Indian tribes." The description, in the last clause, of the claims to be released, is obviously a description of the claims to be paid; and, of course, distinctly provides for the payment of claims for *destroyed* property. Your memorialist cannot imagine any terms in which such a provision could have been more precisely expressed. The commissioner on the part of the United States did, however, in substance, decide that the word "*destroyed*" had some latent meaning, different from its ordinary acceptation; but what that meaning was, he did not think proper to indicate, and your memorialist is not sufficiently ingenious to discover. But he protests against a rule of construction which, when words are introduced into a solemn instrument, the parties to which must be presumed to have known what they were saying, and to have meant what they said, denies to those words their natural grammatical signification, and roams into a wide field of extrinsic circumstances, in quest of an artificial meaning. And he respectfully submits, that the history of the treaty and of the compacts collateral with it, manifest, beyond a reasonable doubt, the impropriety of the construction which your memorialist complains of.

It is well known, that, previously to the treaty of the Indian spring, numerous citizens of Georgia, sufferers under Indian depredations, had long and loudly objected to the omission, in former treaties, of a provision for destroyed property, and of the practical construction given to those treaties. The dissatisfaction of the claimants led to the passage of a resolution by the Legislature of Georgia, remonstrating with the General Government on these topics; urging the negotiation of a new treaty, which should supply the injurious omission; and appointing commissioners, on the part of the State, to attend the conferences which might be held. These conferences were ultimately held at the Indian spring; and a principal object of them, so far as the citizens of Georgia were concerned, was to supply the omissions which have been mentioned. A list of claims of citizens of Georgia, the evidence in support of which had been collected under the order and superintendence of the Government of that State, amounting, in the aggregate, to upwards of $280,000, including claims for property destroyed, was exhibited to the negotiating parties, on the conference ground, by the Georgia commissioners, pending the negotiation. And many of the claimants attended on the ground, exhibiting and defending their claims arising from *destroyed* property, as well as from losses otherwise sustained, before the negotiators on the part of the United States and of the Creeks. The propriety of providing in the treaty for *all* these claims was earnestly discussed on that occasion; and on a full view of *all* the claims, the sum of *two hundred and eighty thousand dollars* was proposed by the Georgia commissioners, as the amount to be provided for their payment. Your memorialist states, under the correction of one of these commissioners, now an honorable member of the House of Representatives, that the only objection adhered to by the Indians was one to an allowance for numerous small claims, for the abduction of potatoes, articles of clothing, &c. They contended that

in some instances reprisals had been made. At the suggestion of one of their principal chiefs, a deduction of *thirty thousand dollars* on these accounts was agreed to. The remaining *two hundred and fifty thousand dollars* was the sum fixed on, which was considered as being applicable, under the fourth article of the treaty, to the mass of claims which had been put forth, so far as they should be sustained by proof.

The intention of the parties is further shown by the compacts made, simultaneously with the treaty, on the conference ground. One is an agreement between the Georgia commissioners and the Creeks, concerning the claims which had just before been discussed. This agreement, after stating that the citizens of Georgia, by the said commissioners, had represented that they had claims to a large amount against the Creek nation, provides, "in order to bring the *same* to a speedy and final settlement," "*that all the talks had upon the subject of these claims at this place*, together with all claims on either side, of whatever nature or kind, prior to the act of Congress of one thousand eight hundred and two, regulating the intercourse with the Indian tribes, with the documents in support of them, shall be referred to the decision of the President of the United States, by him to be decided upon, &c. &c." The other of the compacts to which your memorialist has adverted, is a release, by which the Georgia commissioners, after reciting the provisions of the treaty for the payment by the United States, and the acceptance by themselves, on behalf of citizens of Georgia having claims on the Creek nation prior to the year eighteen hundred and two, of the sum of two hundred and fifty thousand dollars, do, "*for and in consideration of the aforesaid sum of two hundred and fifty thousand dollars*, secured by the said treaty or convention, to be paid to the State of Georgia for the discharge of *all* bona fide and liquidated claims which the citizens of the said State may establish against the Creek nation, release, exonerate, and discharge the said Creek nation from *all and every claim and claims*, of whatever description, nature, or kind, the same may be, which the citizens of Georgia now have, or may have had, prior to the year one thousand eight hundred and two, against the said nation." And the commissioners, "*for the consideration hereinbefore expressed*," assign to the United States, *for the use and benefit of the Creeks*, all the right, title, and interest of the citizens of Georgia "to all claims, debts, damages, and property, *of every description and denomination*," of the citizens of Georgia, prior to the year eighteen hundred and two, against the Creek nation.

The internal evidence afforded by these two documents, in support of your memorialist, appears irresistible. They show, that claims to a large amount of the citizens of Georgia against the Creeks were brought forward at the conference of the Indian spring; that "talks" concerning them were held; that a fund of two hundred and fifty thousand dollars was stipulated for the payment of them, under the direction of the President; and that both the Georgia claimants and the Indians looked to this fund as the consideration which had passed by the treaty, for the comprehensive and sweeping release from the Georgia commissioners to the Indians. Your memorialist would here remark, that this amount was manifestly designed to embrace compensation for *destroyed* property, because the other claims to which the treaty was applicable would be very far from requiring such a sum. On the subject of the intention of the parties as to the disposition of this fund, the reasoning of the report of December 27, 1831, is conclusive. "It is believed," say the committee, "that a reference to the treaty, with the transactions immediately connected with it, will afford to the House sufficient reason to con-

clude that the Indians considered the $200,000 which the United States stipulated to pay *in money to the Creek nation*, with a full and final release from the claims of citizens of Georgia, a full equivalent for the territory ceded by the treaty; and that those Indians did not look to any balance of the $250,000 which might remain after the payment of the Georgia claims, as belonging to the nation; for it is reasonable to suppose that the Georgia commissioners, who represented the claimants, and presented to the negotiating parties a list of claims of citizens of Georgia, the evidence of which had been collected under the superintending control of the Government of that State, amounting, in the aggregate, to more than $280,000, urged the stipulation of a sum sufficiently large to cover the claims which might be established against the Creek nation; while the commissioners on the part of the United States labored for the stipulation of as limited a sum as a strict regard to a commendable liberality, a desire to effect an adjustment of a difficulty of long standing, the principles of justice, and the interests of the United States, would justify or require: and that the Indians, satisfied to receive the $200,000 in money from the United States, with an entire release from the Georgia claims, as an equivalent for the territory ceded by them to the United States, were content, therefore, to leave the adjustment of the amount which should be stipulated to pay those claims, to the Georgia and the United States' commissioners. It is obvious to your committee, that while the Indians considered the $200,000 stipulated in the treaty to be paid in money to the nation by the United States, with an entire release from all claims of the citizens of Georgia against the Creek Indians, a full and fair equivalent for the territory ceded by the treaty, the United States considered the $250,000 stipulated to be paid by them to the Georgia claimants, with the $200,000 stipulated to be paid by them in money to the Indians, not more than an equivalent for the territory so ceded by the treaty. It follows, therefore, that the Creek Indians have no claim to the unexpended balance of the $250,000 stipulated to be paid by the United States to the Georgia claimants."

On a review of the facts and documents to which your memorialist has referred, it appears that the omission of former negotiators with the Creeks to stipulate for compensation for the destruction of property belonging to citizens of Georgia, had been the subject of general complaint among the sufferers thus pretermitted; that their complaints produced legislative action on the part of the State of Georgia, and the appointment of commissioners to represent them at the conferences for forming a new treaty; that, accordingly, those commissioners did attend these conferences; that many of the injured individuals also attended them, and exhibited their claims for property *destroyed*, as well as for other wrongs received at the hands of the Creeks; that their claims were discussed with the Indian negotiators; that, after objections on the part of these negotiators, which were canvassed, a deduction from the amount proposed by the claimants was suggested, and assented to, which left the sum of *two hundred and fifty thousand dollars* applicable to the claims which had been the subject of argument; that a treaty was made, requiring, on fair principles of construction, that *destroyed* property should be paid for; that an agreement was, at the same time and place, entered into between the Georgia commissioners and the Indians, evidently contemplating these very claims as its subject; that, in consideration of the sum of *two hundred and fifty thousand dollars*, the said commissioners executed a release to the Indians of all claims of every kind, prior to the year eighteen hundred and two, of the citizens of Georgia against the said

Indians; and that the justice of the demand of compensation for *destroyed* property has been recognised in four several reports, made on full deliberation to the House of Representatives.

If ever claims stood firm on the basis of plighted public faith, historical facts, and high authority, it would seem that those advocated by your memorialist are emphatically of such a character. It is not therefore without surprise, and indeed astonishment at the extravagance of the pretension, that he has witnessed a recent attempt by the "special agent, and the chiefs, head men, and warriors of the Creek nation, to obstruct the passage of the bill now before the House of Representatives, "to carry into effect the fourth article of the treaty of the Indian spring," and to appropriate to themselves the money which the Creeks had solemnly acknowledged to belong to Georgia. The preceding pages have already anticipated the answer to many of the pretences set forth by the remonstrants in their memorial. Some of its positions seem to require a special notice.

The remonstrants describe themselves as renewing "a claim, long since presented in behalf of those whom they represent, to have this money paid over to them;" and, in another part of their memorial, they say, "nine years have elapsed since what has been officially designated the final award, has been made; and several years have transpired since the last instalment has been paid to the Georgia claimants in full of their demands. The Creek nation have ever claimed to have the residuum of the $250,000, reserved to meet their claims, paid over to them." If the information received by your memorialist is correct, no claim to the residue of the fund was presented to Congress by the Indians until the session of 1828, '30; and he is induced to believe that its presentment at that session resulted from the efforts of the Georgia claimants to obtain legislative aid to their claim on the balance of the money. He is apprised, for the first time, by the remonstrants, that the citizens of Georgia *have* been paid "in full of their demands."

The remonstrants say that Georgia and the Creeks "agreed to submit the subject of litigation, or the question in controversy, to the arbitrament of the President; and his authority in the case having been created, must be measured by the language of the compact. If that authority now exists, no further aid is required from Congress. If it has terminated, nothing, it is respectfully submitted, but a similar consent of parties, can call it into new existence. And the remonstrants subsequently add, "whatever powers ever were delegated, were delegated to the President *eo nomine*, and no other authority can interfere in the question. But the President has long since promulgated his final award and decision; and your memorialists are advised and believe, that, when such a judgment has been formed and proclaimed, the judicial functions are terminated."

If, by the terms "subject in litigation," and "question in controversy," the remonstrants intend that the reference to the President, by the Georgia commissioners and the Indians, authorized that high functionary to decide whether or not claims for *destroyed* property should be paid for out of the fund of two hundred and fifty thousand dollars, your memorialist takes leave to protest against any such construction of the instrument of reference. The reasons of his protest appear on the face of the treaty, and of the agreements and facts connected with it, to which he has already adverted. The powers of the President, under the reference, *quoad* claims for *destroyed* property, were, your memorialist contends, restricted to an examination of the evidence that might be adduced in support of them, and to allowing or rejecting them, according to that evidence. To the assumption that the past acts

of the Executive, under the treaty of the Indian spring, are final and conclusive against all the world, your memorialist replies, that the treaty, the agreement, and the release, taken together, created a trust in the Executive, which has been only partially executed; and that the citizens of Georgia, parties, by their agents, to two of these instruments, and beneficially interested in the other, now call for the full execution of that trust. The object of the trust was, that the treaty of the Indian spring should be carried into effect; and the trustee, instead of executing that part of it which provides for the Georgia claims for destroyed property, "*eo nomine*," executes the treaties of New York, Colerain, &c. &c., which had not provided for these claims. If this course was prompted by the principle, that, because former treaties had omitted to provide for these claims, the omission operates as an abrogation in advance of provisions introduced into a subsequent treaty for the express purpose of supplying that omission, your memorialists must protest against a rule of construction, as novel in its nature as it has proved injurious in its consequences to himself and his fellow-sufferers. Its effect has been to leave idle, for several years, in the hands of the trustee, *one hundred and forty-eight thousand six hundred and eighty dollars and seventy-eight cents*, nearly *three fifths* of the original fund, to the severe injury, and, in some instances, approaching ruin, of those for whose indemnification the fund was created; and, under these circumstances, Congress is invoked, by the remonstrants, to give this sum to the party which had deliberately, and for a good consideration, assented to the creation of the fund for that very object. This aspect of the case, connected with a fact to which your memorialist will now allude, manifests the propriety of the interposition of Congress. The claimants, naturally dissatisfied with the construction given to the treaty by General Preston, commissioner on the part of the United States, and with the executive sanction of that construction, and failing to obtain a farther execution of the treaty, applied for that object to the next administration. The agent of one of them was informed by Governor Barbour, then Secretary of War, that the case having been acted on during the preceding administration, he felt himself restrained from looking into it. The same answer might be made by the present or any future head of the War Department, and thus the door of justice remain forever shut. Surely, in such a state of things, it is competent, your memorialist respectfully submits, for the people of the United States, through their representatives, to direct that a treaty, to which they were parties, should be executed. By the laws and practice of the Government, certain officers are empowered to audit claims on it. But, in cases where they have rejected such claims, is it not every day's experience for Congress to prescribe a rule under which the accounting officer is required finally to decide them? Can any case be imagined, more loudly invoking such action on the part of Congress, than one in which the faith of treaties is involved? Is any rule for executive proceeding more imposing or equitable than that contained in the bill now before one of your honorable bodies, and derived from the very treaty to which it is subsidiary? Your memorialist would add, that the propriety of legislative interposition was admitted by the two last administrations, who suggested to some of the claimants, if they suppose themselves to be entitled to the unexpended balance of the fund, to apply to Congress for relief.

It may be stated that the decisions of General Preston, excluding the claims which are the subject of this memorial, not only excited dissatisfaction among the claimants, as has been mentioned, but also occasioned some

proceedings in the Legislature of Georgia, who prepared a memorial exhibiting the incompatibility of those decisions with the history, objects, and provisions of the treaty of the Indian spring. Your memorialist has made diligent but fruitless search for a copy of this memorial.

The remonstrants refer to the agreement between the Georgia commissioners and the Creek negotiators, as recognising "conflicting claims as existing between the parties," and urge that the President's decision was "based upon an examination, wholly *ex parte*, of only one branch of the case submitted to his decision." It is true that the agreement does contain the phrase "claims on either side;" and it is equally true that this phrase occurs in no other part of the proceedings at the conference ground. If any claims, on the part of the Creeks, were spoken of on that occasion, they were, probably, inconsiderable, and included in the "reprisals" which were adjusted by the deduction of thirty thousand dollars, of which your memorialist has spoken, from the original demand of two hundred and eighty thousand dollars made by the Georgia commissioners. Certain it is, that no other Creek claims than those heretofore indicated by your memorialist, were brought forward on the conference ground; nor have any, so far as he is informed and believes, been submitted to the Government. The mention of such claims, by the remonstrants, is the first notice to your memorialist of their existence; and they seem to have been thought of at this late day, rather as a plea against the rights of the citizens of Georgia, than because any confidence in them was felt. On any other supposition, it would be almost miraculous that the remonstrants, who have not hesitated in attempting to drag money out of the very teeth of their own treaty, should have forborne for so many years to breathe a whisper even of pretensions less startling in their character. Your memorialist cannot avoid remarking that this plea is put forth, at this eleventh hour, with but an ill grace, by persons, who, in the very paper containing it, charge the Georgia claimants with *laches* in not adducing *their* claims against the unreversed decision of the commissioner on the part of the United States. He would add, that he has understood, and believes, that the agreement, in which the phrase, insinuating the existence of Creek claims against Georgia, is introduced, was proposed by a gentleman whose views of the treaty would explain the purpose of the insinuation. These views are not unknown to all the members of the honorable House of Representatives.

The remonstrants speak of the omission, on the part of the "arbitrator," to notice the alleged claims of the Creeks; of his having proceeded on *ex parte* testimony; of the high prices which he admitted himself to have allowed for certain property to certain claimants; of his laxity in the admission of evidence; of his having confirmed, with but two exceptions, the decisions of the Commissioner; and add, "we cannot but think that a party by whom such advantages have been enjoyed—who has admitted the validity of the judgment—who has received all the advantages which it afforded him—who has the money actually in his pocket—should be held to be estopped from questioning its efficiency and its conclusiveness." Your memorialist is utterly at a loss to perceive how the advantages, supposing their existence, which the acts of the arbitrator are alleged to have conferred on one description of claimants, have in any manner availed that other description of claimants, partly for whose especial benefit the treaty was

made, but whose cases were thrown out in mass by the arbitrator appointed to execute that provision of the instrument. Neither can he perceive with what plausibility these banished suitors can be said to have "admitted the validity of the judgment," against which, so far as it excluded their own claims, they have uniformly protested.

Your memorialist deems it unnecessary to state the general principles on which the claim for *destroyed* property might be vindicated. It is sufficient for him that the claim was recognised in the conferences at the Indian spring, and by the treaty. Are we called upon to argue that the destruction of any thing is the greatest injury that it can receive? or to admit that the right of an injured party to compensation increases in a ratio *inverse* to the degree of his injury? It is remarkable, that the same nation of Creek Indians, which, as against your memorialist and others, denies its responsibility (previously confessed by it in a solemn treaty) for *destroyed* property, has petitioned Congress at the present session to compensate it for sundry losses, among which the *destruction* of property is enumerated, alleged to have been inflicted on it by citizens of Georgia and Alabama since the year eighteen hundred and twenty-five. It is farther remarkable, that one of the head men or chiefs of the Creeks has signed both this petition, praying *compensation for destroyed property*, and the remonstrance, urging that the Georgia claimants may *not be compensated therefor*.

On the point of interest, the remonstrants rely on the opinion given by the attorney general in eighteen hundred and twenty-two, as being conclusive. With great deference to the learning of that distinguished lawyer, your memorialist must be permitted to remark, that much might be said, and perhaps not without effect, in opposition to some of the general principles on which that opinion is founded; and that if the question were to depend on authority, the remonstrants could not rest with more confidence on the doctrines of the attorney general, than your memorialist would feel in the argument concerning interest, contained in the report of the Committee on Indian Affairs to the House of Representatives at the present session of Congress. He would add, that, on the supposition that the office of Attorney General of the United States is the tribunal entitled *ex cathedra* to decide on questions of interest, its records will be found to afford authority as direct in favor of your memorialist, as that, which the remonstrants have evoked from Mr. Wirt's opinion in eighteen hundred and twenty-two, is in support of themselves.

Your memorialist will here add two observations:

1st. So far as the opinion of the attorney general, in eighteen hundred and twenty two, proceeds on the supposition, that, in the claims for negroes, which were allowed by the commissioner on the part of the United States, the prices fixed were so high as to cover any reasonable demand for interest, the objection applies to such cases only. Some of the claims, (and among them that of most immediate concern to your memorialist,) which the commissioner excluded, were for other species of property.

2d. While your memorialist readily admits that the fund created by the treaty should, in the first instance, be applied to paying the claims, exclusively of interest comprehended under the treaty, he submits that any balance remaining ought to be divided, in the form of interest, among the Georgia claimants, proportionally to the amount of their losses. To whom else ought such contingent balance to go? Surely not to the Indians, who, by the conferences, the treaty, the agreement, and the acceptance of the re-

lease, acknowledged that they had received a sufficient consideration for whatever principal that interest could be raised on. Surely not to the United States, who, by the treaty, acknowledged that they had received a sufficient consideration for the money out of which this interest is claimed, and agreed to discharge claims which, to a large amount, are still outstanding. Your memorialist takes for granted, what the remonstrants have argued, that the United States have no claim on the unexpended portion of the fund. The only remaining supposition, then, is, that it is to lie dormant for ever in the federal treasury—a supposition, which it is not presumable that your honorable bodies would willingly entertain. Were a case, circumstanced like the present claims, to be brought before the chancery courts, which the attorney general referred to in his opinion of eighteen hundred and twenty-two, your memorialist supposes that those courts would decree that the unexhausted portion of the fund should go, in the shape of interest, to the party having a claim for principal, to which it could attach as an incident, instead of going to either of the other parties, both of whom had, for sufficient considerations, divested themselves of any title to it, or to remaining in a condition of perpetual mortmain.

The remonstrants argue that interest ought not to be paid on some of the Georgia claims, on the allegation of their "adjustment and payment;" nor on others, because they have not been presented. The first objection assumes one of the points in controversy: for, as your memorialist has contended, after the payment of the principal of the claims provided for by the treaty, if any balance remain, the relations in which the Georgia claimants, the Indians, and the United States would, respectively, stand to that balance, would render the claimants the only persons capable of receiving it; and, of course, until they should have received it, their claims would not be fully paid. Without admitting, to the extent in which it is stated, the technical rule laid down by the remonstrants, your memorialist contents himself with denying its applicability to the claims of the citizens of Georgia. The objection to the claims not heretofore presented, imputing *laches* to the claimants, is altogether untenable. They have always been ready with their accounts and evidence; but, after the decision that property *destroyed* was not to be paid for under the treaty, the exhibition of claims for it, with such a decision hanging over them, would have been worse than an idle ceremony.

On the application for payment of the value of the increase of female slaves, your memorialist can add nothing to the views of that application, which are presented by the report, December 27, 1831, of the Committee on Indian Affairs to the House of Representatives.

Before concluding this paper, your memorialist begs leave to mention a fact, which has just come to his knowledge, and of which the bearings on some points of his memorial, and on the proceedings of the remonstrants, are too plain to require comment. The fact referred to is this: One John Winslett, residing in the Creek nation, has arrived at the seat of the National Government, with authority from John Crowell, agent of the Creek Indians, and from their head men, chiefs, and warriors, to repair to the Seminole nation, originally a part of the Lower Creeks. The object of Winslett's mission is to demand from the Seminoles the negroes carried by them to Florida, when they separated from the Creeks in the year eighteen hundred and sixteen, and to demand also the increase of the said negroes; the negroes thus abducted *being originally the property of citizens of Georgia, and for whom the Indians were considered to have*

paid, under the provisions of the treaty of the Indian spring. The said Winslett is, your memorialist is informed, endeavoring, with the aid of John H. Broadnax, one of the remonstrants, to obtain the sanction of the War Department to his contemplated expedition.

Your memorialist deems it premature, in the present stage of the business, to reply to any objections, whether put forward by the remonstrants or by others, to the *merits* of the claims of himself and other citizens of Georgia, under the treaty of the Indian spring. Should Congress decide in favor of their claims, on principle, to the residuum of the fund created by that treaty, as they confidently hope that your honorable bodies will do, it will then be the proper time for them to adduce evidence in support of their respective claims. That such evidence exists, your memorialist knows, in regard to some of the claims, and is so informed in regard to the rest.

Your memorialist respectfully prays that the bill reported by the Committee on Indian Affairs to the House of Representatives at the present session of Congress, "*to carry into effect the fourth section of the treaty of the 8th of January*, 1821, *between the United States and the Creek nation of Indians, so far as relates to the claims of citizens of Georgia against said Indians for injury done prior to the passage of the act of Congress respecting intercourse with Indian tribes*," may be passed.

And your memorialist will ever pray, &c.

ARCHIBALD CLARK,
Administrator of Robert Seagrove, deceased,
For himself and other citizens of Georgia.

22d Congress, 1st Session. [Doc. No. 143.] Ho. of Reps.

ARCHIBALD CLARK, ADM'R OF R. SEAGROVE, DEC.

[*To be annexed to document No.* 143.]

SUPPLEMENTAL PART

OF THE

MEMORIAL OF A. CLARK, ADMR. OF ROBERT SEAGROVE, DEC.

On behalf of himself and other citizens of Georgia, who claim indemnity under the provisions of the treaty of the Indian Spring, of 1821, *for depredations committed by the Creek Indians, prior to the year* 1802.

March 13, 1832.

Printed by order of the House of Representatives.

To the honorable the Senate and House of Representatives of the United States in Congress assembled.

The memorial of Archibald Clark, administrator of Robert Seagrove, deceased, on behalf of himself and other citizens of Georgia,

Respectfully showeth:

That your memorialist, referring to his memorial heretofore submitted to your honorable bodies at their present session, and designated "*22d Congress, 1st session, doc. No.* 143, *House of Reps.*," takes leave to cite the following passage at page 8–9 of that document.

"It may be stated that the decisions of General Preston, excluding the claims which are the subject of this memorial, not only excited dissatisfaction among the claimants, as has been mentioned, but also occasioned some proceedings in the Legislature of Georgia, who prefaced a memorial exhibiting the incompatibility of those decisions, with the history, objects, and provisions, of the treaty of the Indian spring. Your memorialist has made diligent but fruitless search for a copy of this memorial."

Since the memorial of the undersigned was printed under the order of the House of Representatives, he has been so fortunate as to obtain a copy of the memorial of the Legislature of Georgia described in the foregoing extract. This copy, the undersigned hereto appends, and prays your honorable bodies to receive it as a supplemental part of his former memorial.

And your memorialist will ever pray, &c.

ARCHIBALD CLARK,
Administrator of Robert Seagrove, deceased,
for himself and other citizens of Georgia.

IN SENATE, *December* 12, 1823.

The Committee on the State of the Republic, to whom was referred the resolution of the House of Representatives relatively to the claims of the citizens of Georgia, under the treaty made at the Indian Springs, on the 8th of January, 1821, and the petition of David Glenn, one of the claimants, report:

That they have examined the subject presented to their consideration by these references, with all the care and attention demanded by its importance, and have concurred in the belief that the only efficient mode of obtaining the object in view, will be by an address from the Legislature of Georgia to the President of the United States.

They have accordingly prepared, and herewith submit, the following memorial:

To the President of the United States of America:

The memorial and remonstrance of the Senate and House of Representatives of the State of Georgia, in General Assembly met,

RESPECTFULLY SHOWETH:

That the attention of your memorialists has been drawn to the construction given to the treaty entered into between the United States and the Creek Indians, at the Indian Springs, in the year eighteen hundred and twenty-one, so far as the same relates to the claims of the citizens of Georgia, and believing that such construction is calculated to prevent the allowance and payment of many of the said claims, which it was the intention of the parties immediately in interest to provide for, they ask the attention of the President of the United States to the reasons which have influenced to this belief.

These memorialists would respectfully submit, that it was not the intention of the contracting parties to confer on the President of the United States the right to exclude any of the claims of the citizens of Georgia as a class, except those occurring after the act of Congress of the year eighteen hundred and two. To them it seems that the obvious intention of these parties was, to invest him with authority to examine and decide each individual claim with reference to the proof adduced in support of it. The controversy between the commissioners of Georgia, and the chiefs, warriors, and headmen of the Creek nation, regarded the proof of the claims, a list of which was exhibited, and not the question whether those claims, if proved, should be allowed. This inference, as the memorialists believe, may be deduced from the terms of the articles of agreement, as well as from a consideration of the relative character of the reference. But it will prevent repetition, and present a condensed view of the subject, to consider it with reference to the rule of decision complained of.

That rule excludes "all claims originating in the depredations committed (by the Indians on the citizens of Georgia,) in a period of hostilities or previous thereto, if not provided for in the treaty which followed such hostilities." It purports to be founded on the principle adopted among civilized nations, that a treaty merges all pre-existing claims, and that those not provided for, are consequently annulled. In its application to the case under consideration, it has the effect of excluding all claims previous to the treaty of New York, (seventeen hundred and ninety,) except for slaves: and all claims originating subsequently thereto and prior to the treaty of Colerain, (seventeen hundred and ninety-six) except for the property provided to be

given up by that treaty. It is respectfully contended that this rule is inapplicable to the claims of the citizens of Georgia on any just principle of analogy; that it is forbidden by the terms of the agreement entered into at the Indian Springs, and the relinquishment consequent thereto, and is repelled by the circumstances attending that negociation.

No just principle of analogy, it is conceived, will authorize the application of the rules which govern treaties between independent and civilized nations, to the negotiations terminating in compact between the United States, or the State of Georgia, and the Indians residing within the territorial limits of the latter. If, on the one hand, it be admitted that these Indians are, to a certain degree, independent, and that their independence is recognized by the act of treating with them, it seems clear, on the other, that this independence has its bounds. They are locally resident within the territorial limits of Georgia; and it is difficult to conceive the idea of a nation absolutely independent, and yet resident within the limits of another independent State. The question may be tested thus: Absolute independence bespeaks uncontrolled sovereignty, and includes the idea of the right of alienating the national domain, at the will of the nation, and to a purchaser of its choice. Could the State of Georgia—would the United States submit to the uncontrolled exercise of this right—to its exercise in favor of any foreign nation, by any nation of Indians dwelling within their territorial limits? If this question be, as it is believed it must be, answered in the negative, it seems vain to contend that the Creek Indians constitute an independent nation, since the concession strips them of one of the attributes of independence.

But if independent, they are uncivilized, and would, from this consideration, have a just claim to be relieved from rules adopted by civilized nations in the construction of treaties, if those rules were injurious to them in their operation. They cannot, therefore, demand the benefit of them, to set up an implied exemption, contravening the otherwise plain import of their express stipulations. An Indian treaty is, it is conceived, an instrument which is to be construed according to its literal import, or at most, according to its meaning and intent, as these may be collected from the instrument itself, the circumstances attendant on its execution, and the character of its framers; but cannot, it is believed, be properly subjected to the artificial technical rules which prevail between civilized nations: rules, the existence of which was unknown to the savage negotiator, by which he would not have consented that his nation should be bound, and of which he has therefore no just claim to demand the benefit.

If it could be conceded that the principle contended for, was generally applicable to treaties with the Indian tribes, even then, in the view of these memorialists, it would be insufficient to support the rule complained of. At most it is an *implied* release, and may be controlled by an *opposite* and *stonger* implication, and still more by subsequent *express* stipulation. If the several treaties, from that of New York to that of Colerain, operated in terms of the rule to annul all claims not provided for by them, so as to exclude them by implication from the treaty of the Indian Springs, those treaties, operating also by force of their own terms to protect the claims which they had provided for; these were consequently no longer a subject of negotiation, except as to the mode of payment. The negotiations of the commissioners of Georgia, and of the chiefs, warriors, and headmen of the Creek nation, were then, on that occasion, limited to the claims arising posterior to the treaty of Colerain, and prior to the act of Congress of eighteen

hundred and two, a period short of six years—the claims during which amounted, according to the list exhibited in the course of the negociation, and surrendered at its close, to a sum less than seventeen thousand dollars. Can it be believed that such was the view of the negotiators on either side?

Independently of the intrinsic evidence, the agreement furnishes the answer. The reference is not of claims provided, or unprovided for by this or that treaty, but of "*all* claims of *whatever* nature." If the benefit of the implied release contended for in behalf of the Indians, be conceded to them, here then is a waiver of it—a new assumption of their obligation—a reference to the President to liquidate its amount, by deciding on the equity and justice of each individual claim on an examination of the evidence adduced to support it.

But the rule in question is extended to exclude claims to compensation for *property destroyed*, and a verbal criticism has been resorted to by the United States' commissioner as a fit mode of interpreting the terms of an agreement entered into by a savage tribe. It is urged, (still confining the claimants to the treaties anterior to that of the Indian Springs, on which last they exclusively rely,) that a stipulation to *restore*, cannot be applied to that which has been *destroyed* and *does not exist*. The argument, in the view of the memorialists, is entitled to a grave consideration, because of the source from which it emanates. As between individuals, an agreement to deliver or to restore a specific article impliedly includes the alternative of accounting for its value, or of making compensation in damages if the express obligation be not fulfilled, what should exempt a nation from the operation of this rule? If Great Britain had stipulated to restore (instead of making compensation for) the negroes plundered on our sea board during the late war, would her incapacity to make specific restoration of those who had escaped from her possession, or been removed by death, have absolved her from the obligation to restore their value? Did she not, in fact, agree to make restoration in value without regard to these considerations? But an instance more immediately appropriate to the subject may be drawn from the treaty of Augusta. The Indians thereby stipulate that "*all* negroes, horses, cattle, or other property, taken during the late war, shall be restored." The obligation applies to *all negroes, &c. &c., taken during the war*, and would not be released by the incapacity of the contracting party to restore them *specifically*. Upon proof that they had been *so taken*, the right of the citizen of Georgia would, it is apprehended, be complete either to specific restoration, or to restoration in value. But, dismissing the consideration of this verbal argument, it may be, and it is respectfully inquired if there is not something in the distinctive characters of civilized and of savage warfare, which strengthens, in the latter case, the claim to compensation for property destroyed? In wars between civilized nations, the destruction of property is used only as a means to an end in the exercise of force for the attainment of the object of the war. The savage, on the other hand, wars for plunder—destroying what he cannot remove. Is it meet that we should encourage this predatory warfare by extending to it the protective regulations of civilized strife?

But the claim to property destroyed in the case under consideration, is derived from the agreement, the treaty, and the deed of relinquishment, all executed at the Indian Springs. The agreement refers to the decision of the President, *all claims of whatever nature or kind*. The treaty stipulates that the commissioners of Georgia shall relinquish all claims "for proper-

ty taken or destroyed" prior to the act of eighteen hundred and two. A list of claims was exhibited at the Indian Springs, including those for property destroyed, and property unprovided for, by either of the preceding treaties, *on which* the commissioners of Georgia were required to execute and did, in fact, execute, the relinquishment stipulated for by the treaty at the Indian Springs. Why, it may be asked, were the terms of the reference so large, if its objects were so limited? Why were the commissioners of Georgia required to relinquish that to which the citizens of Georgia had no claim—to release the Indians from claims from which they were already absolved, according to the rule contended for by force of preceding treaties?

The argument for which we contend, is further supported by a reference to the circumstances attending the negotiation at the Indian Springs. The claims of the citizens of Georgia had been registered under the laws of the State. A list prepared by authority of its Executive was furnished to the commissioners of Georgia—was exhibited by them as a particular of their demand, and was surrendered as an evidence of what was released to the Indian chiefs at the close of the negotiation. It amounted to a sum which may be stated, in round numbers, at two hundred and eighty thousand dollars. For its payment, the Indians provided a fund of two hundred and fifty thousand dollars in the hands of the United States. Now the application of the rule contended for—that which excludes claims for property destroyed, and property not provided for by previous treaties, would at once have annihilated one half of this claim. The fact will be obvious on a very slight inspection of the list, and must have been manifest to the Indian negotiators. Is it conceivable, if they had intended to rely on this rule as a bar to the claims which it would control, that they would not have ascertained its effect, by applying it to the list of claims exhibited, and have denied their liability for those which it covered? or, having ascertained its effect, and that it would reduce the claims of our citizens to a sum not exceeding one hundred and fifty thousand dollars, that they would have left in the hands of the United States a fund of two hundred and fifty thousand dollars, to be applied to this object, without any stipulation for the payment over to themselves of the large surplus which must inevitably remain?

These reflections seem unanswerably to repel the idea that it was the intention of the contracting parties to exclude the claims under consideration, and it is deemed unnecessary to show that the President of the United States ought not to apply, since it is not believed he is disposed to apply to the contract of these parties, a rule of interpretation which could not have entered into the views of either of them in framing it.

It remains only to add, that the agreement to refer to the President of the United States, the immediate representative of the party bound by the terms of the treaty to pay what should be awarded, the decision of the question how much should be paid, was made in the fullness of that confidence which the people of Georgia have ever felt, and still feel, in the present Chief Magistrate of the Union. In the same spirit, and with the most entire confidence in the justice of the individual to whom this appeal is made, a review of that decision is now solicited. It is believed by the memorialists, that the claims of the citizens of Georgia, which were exhibited by her commissioners at the treaty of the Indian Springs whether provided or unprovided for by previous treaties, are protected by that treaty; and on proof of them in-

dividually, that they are entitled to allowance and payment out of the unappropriated fund in the hands of the United States. And it is respectfully requested that the decision of this question may be referred to the commissioners of the United States and of Georgia who negotiated that treaty, or that such other mode may be adopted as, in the view of the President, shall be consistent with the just rights of the claimants.

IN SENATE, 12*th December*, 1823.

Read, and agreed to unanimously.

THOMAS STOCKS, *President.*

Attest: WM. Y. HANSELL, *Secretary.*

IN THE HOUSE OF REPRESENTATIVES,
20*th December*, 1823.

Read and concurred in.

DAVID ADAMS, *Speaker.*

Attest: WM. C. DAWSON, *Clerk.*

Approved:
22*d December*, 1823.

G. M. TROUP, *Governor.*

SECRETARY OF STATE'S OFFICE,
Milledgeville, 3*d March*, 1832.

The annexed printed pages, from two hundred and forty to two hundred and forty-six inclusive, contain a true copy of the original memorial on file in this office, with the great seal of the State affixed thereto.

EVERARD HAMILTON,
Secretary of State.