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David Brearley (to accompany bill H. R. no. 760).

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DAVID BREARLEY.

[To accompany bill H. R. No. 760.]

MARCH 2, 1833.

Mr. THOMPSON, of Georgia, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to whom was referred the petition of David Brearley, have had the same under consideration, and submit the following report:

The petitioner sets forth in his petition, "that he, as agent, &c., under the treaty of the 4th of January, 1826, between the United States and the friends and followers of the late General William McIntosh, was instructed, after exploring and selecting a country suitable for their location west of the Territory of Arkansas, to use every exertion in his power to encourage and facilitate their emigration," in the performance of which duties it became necessary, as he alleges, for him "to purchase a certain family of negroes;" that, "after having established an agency in the country assigned to the Indians under his charge, and having located the said negroes and other property thereat, he was, while in the discharge of his official duties which called him to the city of Washington, on the 15th June, 1829, removed from office." That "his business, public and private, necessarily devolved upon his agent then in the Indian territory, in whose charge it had been left; soon after which, the Indians who had once been the owners of said negroes, finding that he was out of office, and not likely to return to that country, set up a claim to them, in which they were so far encouraged by the succeeding agent, as to restrain the removal of the negroes from the Indian territory, in consequence of which, as he alleges, he suffered great damage in the maintenance of said negroes, and by the loss of their labor; and that, being so restrained by the interposition of the Indian agent from removing said negroes out of the Indian country, he was compelled to sell them for what they would bring under the disadvantageous and embarrassing circumstances thrown around them by the interposition of the agent, which compelled him to take a price far below their real value, for all of said negroes, except one boy, who is now, as alleged by the petitioner, in the possession of the pretended owner and claimant, Thomas Grierson, a half breed Creek Indian."

The petitioner further alleges, in his petition, that his agent, who was necessarily compelled to remain in the Indian territory until the business of the negroes was settled, was unable to remove his stock, consisting of a few horses, and that a valuable mare and colt belonging to the petitioner was stolen by two Indians of that tribe, and that the agent of Indian affairs in

that country declined any interposition with a view to the restoration of the property so stolen. The petitioner, in conclusion, prays that a law be passed allowing to him the amount of damages which he sustained by the interference of his successor in the Indian agency, which restrained his removal of his property from the Indian country, including the negro boy who is still withheld from him, as also the value of the mare and colt so stolen from his agent; all which property he alleges that he carried into the Indian country while acting in the office and capacity of Indian agent.

It is shown by testimony of the Hon. Dixon H. Lewis, that the negroes in question were a part of the property of an old Scotchman by the name of Grierson, who died in the Creek nation. That, after his death, said negroes were claimed by several individuals, among the rest, the chiefs of the nation, on account of an alleged debt due from said Grierson. That he, the said Lewis, was employed by the heirs, who had removed into the white settlements, as an attorney to defend them against these claims, and to protect them in the possession of the negroes. That the court decided that the negroes were the property of the heirs of Grierson; after which decision, a man by the name of Reuben Jordan bought of Thomas Grierson his share of said negroes, and, for greater security, he took a bill of sale not only from Thomas Grierson but from his sister Elizabeth Grierson, to whom a relinquishment of title had been made by the other heirs, in order that she, in her own name, could prosecute the suit at law. That, at the time, that a party of Indians were removing to Arkansas, Thomas Grierson secretly run said negroes off, and met the emigrating party some where in Alabama, and sold them to one Benjamin Hawkins, a half breed. That Hawkins, upon his return from Arkansas, was prosecuted by Jordan for stealing said negroes, and was in the custody of the sheriff. That Hawkins alleged he bought the negroes of Grierson. That Jordan was able to prove that Hawkins knew that Grierson had sold them to him (Jordan.) That, during this state of things, the petitioner arrived from Arkansas, and found Hawkins bound over to court for negro stealing. That the petitioner needed the services of Hawkins to aid him in his efforts as emigrating agent, to procure enlistments in the Creek nation, of emigrants to the Creek Indian settlement west of the Mississippi. That the petitioner, to effect a compromise, paid to the said Jordan for said negroes (who had been carried to Arkansas,) the sum of twelve hundred dollars. That Hawkins was liberated, and Jordan conveyed to the petitioner by bill of sale the negroes in question. That, to his own knowledge, the petitioner has Jordan's title, *which he knows to be good*, and that whatever of title Hawkins pretended to have, was passed to the petitioner in consideration of his satisfying Jordan, by which he, Hawkins, was liberated.

In confirmation of the testimony of the Hon. Dixon H. Lewis, the original bills of sale, the first from Reuben Jordan and the second from Benjamin Hawkins to the petitioner for the aforesaid negroes, are now before the committee, and submitted herewith to the House. The statement of Luther Blake shows that Walter Grierson, who, under the will of old Grierson, the original owner of the negroes, had a claim to a part of the property in question, sold his interest in said property to Thomas Grierson, and that the latter subsequently conveyed the title of said negroes, by bill of sale, to Benjamin Hawkins. It is proved to the satisfaction of the committee that the right to the negroes in question was, by the last will of old Grierson, vested in Sandy, Walter, and William Grierson, sons of the testator. That Thomas

Grierson purchased Walter Grierson's share of said negroes. That the other heirs of the testator had relinquished their title to Elizabeth Grierson, to enable her, in her own name, to prosecute a suit for said negroes against adverse claimants. That the claim of Elizabeth Grierson was sustained by a judicial decision. That Thomas Grierson and Elizabeth Grierson, by bill of sale, vested the title to said negroes in Reuben Jordan. That Thomas Grierson subsequently run said negroes off secretly, and conveyed them, by bills of sale, to Benjamin Hawkins. That the said Reuben Jordan and the said Benjamin Hawkins, each, vested, by a bill of sale, the title of said negroes in the petitioner. The conclusion is therefore irresistible in the estimation of the committee, that the legal and equitable title to said negroes was in the petitioner. The petitioner was resident agent of Indian affairs in the western Creek territory; consequently, his property was legally introduced into that territory. He was, consequently, entitled to protection of his person and property, not only during his continuance in office, but on his removal therefrom; he had a right to the protection of Government in the removal of his property from the Indian territory. Protection was not only withheld, but the interposition of his successor in office restrained his removal of the negroes in question, by requiring, as appears by the testimony submitted to the committee, the petitioner to give bond and ample security for an amount equal to the value of all the negroes in question, conditioned to be void on the delivery of said negroes, "to answer any judicial decision, or decision by any other competent authority," which might thereafter be made in relation to them, notwithstanding one of said negroes (and among the most valuable of them) was then clandestinely in the possession of the pretended owner, Thomas Grierson. The committee are therefore clearly of the opinion that the petitioner is justly entitled, not only to the amount of the difference between the price for which he was compelled to sell the negroes, the possession of which he was permitted to retain, and the real value of said negroes (including the boy so clandestinely taken from) at the time of such sale, in the country where sold, but to a full allowance of all other damages connected with said negroes, which he sustained in consequence of the interposition of his successor in the agency. The correspondence between the agent of the petitioner, and the successor of the petitioner, General John Campbell, relative to the mare and colt alleged and proven by the commissioner to have been stolen from him, shows that the agent, General Campbell, declined interposing his authority as agent to recover the stolen property. The interposition of the agent so sought, your committee are of opinion, was due to the petitioner; and that the withholding of it entitles him to the full value of the mare and colt so stolen from him. The petitioner has submitted to the committee, which is herewith presented to the House, a statement, supported by testimony, of the various items of damage of which he complains, and for which he asks restitution. The items of charge in this statement indicating the value of the negroes, as well as the charge for the loss of their labor, will seem, on a superficial view, to be extravagant and unwarranted. But when the fact is adverted to, that Indians usually set a very high value on this species of property, which it may be reasonably supposed is much enhanced by removal to that distant region, the objection will vanish. Besides, the petitioner has long been wrongfully deprived of the use of the amount of money which, as your committee believe, he is

justly entitled to receive from the Government—a consideration which is conceived to be not only a full compromise of, but far more than equivalent to any excess (if any) in the charge so exhibited by the petitioner.

Your committee, satisfied that the petitioner has sustained damage to the amount of six thou-and three hundred and ninety dollars and twenty-five cents, for which he has a fair claim against the United States, founded in principles of law and common justice, they therefore report a bill for his relief.