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David A. McKnight.

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DAVID A. MCKNIGHT.

APRIL 16, 1896.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CURTIS, of Kansas, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. R. 7181.]

The Committee on Indian Affairs, to whom was referred House bill 7181, having had the same under consideration, submit the following report:

The bill provides for the payment to David A. McKnight, as surviving partner of the late firm of Ellis, Johns & McKnight, the sum of \$12,007.72 out of the balance of a fund in the Treasury appropriated by act of August 23, 1894 (28 Stat. L., 451), in satisfaction of a judgment rendered by the Supreme Court of the United States in favor of the Old Settlers or Western Cherokee Indians. The sum so recovered was \$800,386.31, of which 35 per cent was set apart by the Indians to pay their several attorneys, and the unexpended balance of said latter sum remains in the Treasury by virtue of Senate resolution of March 2, 1895 (Congressional Record, Fifty-third Congress, third session, p. 3039), awaiting further action by Congress.

The claim made in this instance is in the nature of an appeal to Congress—as a tribunal invested with ample equitable powers—from the award of a fee for legal services rendered said Indians, made by the Commissioner of Indian Affairs, under direction of the Secretary of the Interior. To him, in the first instance, said appropriation act had committed the payment of attorneys' fees "justly and equitably payable" for legal services in prosecuting the Indian claim. Several attorneys being aggrieved by the Department's action (see Senate Doc. 77, fifty-fourth Congress, first session), the balance of said fund was held in the Treasury by the resolution referred to, for the purpose of rectifying such errors as might be made to appear.

Your committee have examined the documentary and sworn evidence laid before the Department in support of said firm's claim for fees, and find that the following facts were fully established:

The original claim was for 2 per cent of the amount recovered for the Old Settlers, or for \$16,007.72; and it was for legal services rendered in part by Mr. McKnight, but chiefly by the late Hon. E. John Ellis, of Louisiana. Mr. Ellis's services began as early as the beginning of the Fiftieth Congress, and very probably before that date, and were devoted to the presentation of the claim of the Indians to the committees of the Senate and House, to the passage of the bill for their relief through the two Houses afterwards, and to the preparation of the petition for the Court of Claims to which the bill had referred it. They therefore covered a period of at least sixteen or eighteen months and

were rendered with that energy and devotion which were characteristic of Mr. Ellis. He had been for some years a member of this House, in which he is remembered yet for his great talents as a man and a legislator; and he was well equipped with the eloquence and logic necessary to carry conviction to the mind of the busy committeeman, as well as thoroughly familiar with the course of Congressional legislation. Hence he was placed by his associates in responsible charge of the case in Congress, and, as particularly stated by Hon. John T. Heard, one of the attorneys at an earlier stage of the prosecution, whose services Congress specially appropriated for from this same fund by the act of August 15, 1894 (28 Stat. L., 31, Private Laws), the necessary legislation was accomplished through Mr. Ellis's efforts. An affidavit of Hon. John W. Douglas is to the same effect:

My recollection is that Mr. Ellis was looked to largely to take charge of the matter before Congress, being considered very competent in such cases.

The following two letters from Hon. Henry L. Dawes and Hon. S. W. Peel, then chairmen of the Indian Committees of the Senate and House, respectively, exhibit the value of these services in no unmistakable terms:

SENATE OF THE UNITED STATES,
Washington, D. C., April 21, 1892.

MY DEAR SIR: I knew the late E. John Ellis very well and had a very high personal regard for him. I knew that he interested himself very much in the prosecution of the claims of the Old Settlers or the Western Cherokee Indians, and acted precisely as if he was counsel in the case. He frequently consulted with me upon the subject, and with other members of the committee. I am not sure that he ever appeared before the full committee in any hearing that was held in their behalf, for I do not remember of any special hearing. The matter was considered by the committee, and Mr. Ellis and others interested in it presented their views mostly to the committee individually.

I am, truly, yours,

H. L. DAWES.

D. A. MCKNIGHT, Esq.,
1416 F Street, City.

HOUSE OF REPRESENTATIVES, UNITED STATES,
Washington, D. C., April 20, 1892.

DEAR SIR: In regard to the bill passed by the Fiftieth Congress, conferring jurisdiction upon the Court of Claims to determine the rights of the Old Settlers or Western Cherokee Indians, I am requested by the friends of the late E. John Ellis to refer to the part he took as attorney in the prosecution of the claim.

The firm, I think, was Ellis, McKnight & Johns. I can say that Mr. Ellis was very zealous in the prosecution of the claim; it was one he had had under his control, as I understand it, for many years. He frequently appeared before the Committee on Indian Affairs of the House in its interest, and made an argument before the subcommittee, of which I was chairman, and was very efficient in getting up the law and data to submit to Congress. After our committee had come to the conclusion that it was a meritorious claim, or sufficiently so to go to the courts, Mr. Ellis appeared before the whole committee and presented it in a more forcible manner than I had ever seen it done before. There is no doubt but that he rendered valuable service, and I believe that he did all any lawyer could under the circumstances.

Respectfully,

S. W. PEEL.

The SECRETARY OF THE INTERIOR,
Washington, D. C.

Early in 1888, during the first session of the Fiftieth Congress, the two committees reported in favor of the Old Settlers' claim, and during the second session of the same Congress a bill was passed referring it to the Court of Claims for final adjudication. Mr. Ellis's contract of employment was not reduced to writing until December 15, 1888,

when a fee of 2 per cent of the amount recovered by the Indians was agreed upon as "the consideration of the services heretofore rendered by the said E. John Ellis and the services hereafter to be rendered and performed by him." This contract was made with him and his assigns, was afterwards assigned to the said firm, and was approved by the Secretary of the Interior and Commissioner of Indian Affairs. Mr. Ellis died on the 29th of April, 1889.

When the firm's claim for fees came before the Commissioner of Indian Affairs he held that the "legal services," for which a just and equitable fee was to be paid by direction of Congress, must rest upon fee contracts executed under section 2103, Revised Statutes (see Senate Doc. 77, p. 10), and, under a ruling of the Attorney-General in another case, that Mr. Ellis's legal services began on the date of his written contract only (*Ibid.*, p. 16), and therefore that they extended "but little over four months." (*Ibid.*, p. 18.)

Afterwards the Secretary of the Interior overruled the Commissioner's construction of the law (*Ibid.*, p. 24), but unfortunately was misled by his finding of fact to award a fee for the shorter and least valuable portion of the services claimed for. He says (*Ibid.*, p. 25):

The claim of E. John Ellis. The proof shows that this claim is of the most meritorious character. To be sure, the services of Mr. Ellis were not of long duration, for he died a few months after he was employed in the case. * * * I am of opinion that the estate of Mr. Ellis should be allowed the sum of \$4,000 in full of his services.

It is therefore clear that the allowance for fees made to the firm of Ellis, Johns & McKnight, and which was afterwards paid to Mr. McKnight, the surviving partner, was based on a mistake of fact, and was not the sum "justly and equitably payable" within the meaning of the act of Congress. This is rendered more apparent by a comparison of the amount of this award with those made by the Department to other attorneys who did no more, and even less than was done by Mr. Ellis for the Old Settler Indians. Into the details of this line of inquiry and into other facts urged in support of the claim, it is deemed unnecessary to go; but your committee have examined all the facts fully and are satisfied that in view of the magnitude of the Indian claim and the contingency of the attorney's fee, the sum of \$4,000 is wholly inadequate in value to that of the legal services rendered, and that said services were fully worth the 2 per cent of the recovery stipulated for.

And while it is true that this committee has recommended the passage of the bill for the relief of Vorhees and Jones, and one for the relief of S. W. Peel for defeating the various claims against the Old Settler Cherokee Indians, which your committee believes should have been defeated, and those bills in part were based on the fact that the claim of David A. McKnight, who represents the estate of Mr. Ellis, was reduced, yet, in view of the fact of the great services rendered by Mr. Ellis, your committee believe that his estate should have been paid in full for the services rendered by him, and it was admitted by the attorney for the Old Settlers that this estate should have been paid at least \$8,000 for his work.

There can be no doubt but that the principal work was done by Mr. Ellis.

The Secretary of the Interior says that his services were "of the most meritorious character."

Your committee therefore recommend the passage of this bill.