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Report : Mr. White

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IN SENATE OF THE UNITED STATES.

MARCH 5, 1838.

Submitted, and ordered to be printed,

Mr. WHITE made the following

REPORT:

The Committee on Indian Affairs, to whom were referred the petition and papers of the executor of Thomas Golphin, deceased, have had the same under consideration, and ask leave to submit the following report:

Prior to the summer of the year 1773, the Creek and Cherokee Indians had become indebted to several individuals, who were traders among them, and of the number to whom they were thus indebted was George Golphin, grandfather of the petitioner, to whom they owed the sum of £9,791 15s. 5d., sterling money of Great Britain. Those traders resided in South Carolina or Georgia, then colonies of Great Britain. With a view to strengthening the white settlements in those colonies, the British Government was desirous of extinguishing the Indian title to the lands lying within their boundaries, and the said Indians being willing to provide a fund out of which to satisfy those debts, did, about the time before mentioned, convey to the British Government, by treaty, a large and valuable tract of their land, situate within the limits of Georgia, in trust that these lands should be sold, and out of the proceeds of the sale the said debts should be paid and satisfied. Great Britain agreed to execute the said trust, and the traders, in confidence that it would be faithfully executed, and that the fund was an ample one, gave to the said Indians an acquittance and discharge from all further liability. In due season Great Britain appointed commissioners, and was proceeding in the execution of said trust, but before it could be completed the war of the revolution commenced, independence was declared and finally acknowledged by Great Britain, and thus it was put out of her power to sell or dispose of the trust fund. Some of those traders, whose debts were thus secured, were loyalists, adhering to the mother country in the great contest, and they, it is believed, have been paid the full amount of the debts due to them, while George Golphin adhered to the country in which he lived, was an active, efficient, and patriotic whig, and has been denied any compensation whatever from the Government of Great Britain.

His representatives appear to have made several applications to the State of Georgia for compensation, but as yet no relief has been obtained. In the

year 1835, when the last negotiation with the Cherokees was going on, an article was inserted in the treaty, by which the United States was to become bound to pay this, with other debts of the like kind. When the treaty was submitted to the Senate for its advice, it was amended, by striking out this article, and so it happens that there is no obligation on the United States to satisfy this demand, unless one can be implied from the facts before stated.

It would appear to be hard and unjust, that in conflicts between nations the rights of individuals should be sacrificed, and in this case it would be peculiarly hard, that Golphin should be deprived of all compensation on account of his unshaken fidelity to his country.

The committee entertain the opinion that if the *trust fund*, at the close of the revolution, had *inured to the benefit* of the United States, or if, by virtue of the revolution, they had acquired the *power* to dispose of it, there ought to be no hesitation in satisfying this demand out of the Treasury of the United States; but this was not the case. The fund was land; that land was situate within the limits of one of the thirteen States; the State where it was situate acquired the control over it, and had a right to dispose of it when and to whom she pleased, and to apply the proceeds according to her own pleasure, without consulting the Government of the United States.

As the Government of the United States acquired no title to this land, and no *power* to carry into *effect the trust*, or in any way to *control the fund*, the committee can see no ground upon which they are authorized to recommend its payment.

The provision attempted to be made for its payment in the treaty, ought to have no influence in deciding the question. It only proves that the Cherokees believed the debt to be just and unpaid, and as the sum they were to receive would neither be *increased* nor *diminished* by providing for its payment, they were willing to stipulate that the United States should make the payment. If with this stipulation in it the treaty had been ratified, then would the United States have been pledged for its satisfaction; but when it was stricken out, so far as relates to an obligation to pay, the *United States stand as if it had never been inserted*.

Whether the State of Georgia, within whose limits these lands lie, is under any obligation to satisfy this demand, is a question with which the committee do not believe Congress has anything to do.

She, as well as the other States of the Union, will exercise her own judgment, and will always do that which is just to others, and comports with her own character, independently of any opinion, entertained or expressed, by the Congress of the United States. The committee recommend for adoption the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.