

7-7-1846

Report : Mr. Ashley

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IN SENATE OF THE UNITED STATES.

JULY 7, 1846.

Submitted, and ordered to be printed.

Mr. ASHLEY made the following

REPORT :

[To accompany bill S. No. 227.]

The Committee on the Judiciary, to whom was referred the petition of Milledge Galphin, legal representative of George Galphin, deceased, report :

That George Galphin was, prior to the year 1773, a licensed trader with the Creek and Cherokee Indians in the then colony of Georgia. That he was also, by the assignment to him of their several claims, the representative of other traders to whom, with himself, those Indians had become largely indebted. In the same year Sir James Wright, governor of the colony of Georgia, in pursuance of instructions from the British government, concluded a treaty with the said Indians by which a considerable extent of territory (now forming the counties of Wilkes and Lincoln, and portions of the counties of Oglethorpe and Green, in the State of Georgia,) was ceded to the crown of Great Britain; and, by an express provision inserted in the treaty, the debts of the Indians to these traders were secured to be paid from the proceeds of the lands ceded, which thus became charged with their payment.

The king afterwards, in the year 1775, ratified the treaty, and directed instructions to be issued for the appointment of commissioners under it, to liquidate the claims of the traders with a view to their payment out of the fund thus provided for that purpose. Before these commissioners, Galphin's claims were proven to the amount of nine thousand seven hundred and ninety-one pounds fifteen shillings and five pence sterling money of Great Britain, and would unquestionably have been paid by that government had not an event occurred which totally changed the relations which existed between the colonies and the mother country, and arrested, and, as it has resulted, entirely destroyed all prospect of a settlement in that quarter.

That event was the war of independence which broke out in 1776, the year after the liquidation of Galphin's claims by the commissioners; and disregarding all other considerations than those of patriotism and love of liberty, he, with a magnanimity and self-devotion, the extent of which was proved by the entire loss of his claims, threw himself into the ranks of the opponents of tyranny and oppression, and manfully and faithfully adhered to them and their cause throughout the trying period during which that

struggle continued. And such was his devotion to his country and the efficiency of his services against her enemies; and so important did the British government regard his destruction to the success of their cause within the sphere in which his services were rendered, that a resolution passed the Parliament attainting him of high treason, and a price was set upon his head as an outlaw and a rebel.

The price of his patriotic devotion to his country was the loss of his claim against the British government, which was liquidated and would have been paid but for this cause. Other Indian traders whose claims rested on precisely the same grounds as that of Galphin's, and were provided for by the same treaty, but who adhered to the British side in the revolution, were paid by that government; while that of Galphin's heirs, he being now dead, was rejected because of his adhering to the side of popular rights against an arbitrary and unjust government.

The lands ceded by the Indians in 1773 to the crown of Great Britain, for the sole purpose of discharging their debts to the traders, on the success of the struggle for independence, passed into the possession of the State of Georgia, and now constitute several counties and parts of counties within her limits. Believing the liability of those lands for the payment of their debt still to follow their change of ownership, the heirs of Galphin prosecuted their claim before the legislature of that State, but were never able to procure its recognition by more than one or the other branch of that body; for while all agreed in its justice and equity, doubts entertained by many as to the obligation of the State to pay it, operated to defeat its success.

As there can be no question as to the justice or equity of this claim, the question presents itself: who is bound to pay it? The government of the United States, or that of the State of Georgia? Here was a debt secured by express treaty stipulation between the British government and certain Indians, and no obstacle remained in the way to its payment as provided for in the treaty; it had become a vested right, and but for the Revolution which intervened would have been acquitted and discharged. The Revolution was not the act of the State of Georgia. She was merely a participant in what was the common, glorious act of all; it was by no special act of her's that the treaty by which this debt was secured was set aside: and it would seem, that being only a sharer in the act which caused the rights secured under it to be disregarded, she could scarcely be called on to meet the whole responsibility, which should be the joint responsibility, as its benefits were the joint benefits, of all who contributed to its accomplishment. As well might any single State be called on to indemnify a citizen of the United States against the act of the general government, because he resided within her limits, as that the State of Georgia should be called on to discharge this debt which was arrested in its payment by the Revolution; which may, considering its consequences, be called a national act, and which transferred from the British government, against which Galphin's heirs could now have no claim, to that of the United States, their right of appeal for its settlement. By the act of the Revolution, the government which followed, and of which Galphin, as he had contributed to its establishment, claimed the protection, transferred to itself all the obligations which existed prior thereto on the part of the government which by it was set aside, as far as the claims of a similar character with the present were concerned. The government of the United States now stands in the re-

lation to the Indian tribes that Great Britain did prior to the Revolution. And the obligations of the treaty entered into by that government with the Creek and Cherokee Indians before that event, which had for its object the payment of the just debts of the traders, would seem to devolve on the United States, wherever it could be shown that the claimant had fixed that obligation by his support of the government substituted. That the obligation runs no further is sufficiently manifest, and needs no argument. The government of Great Britain paid the debts of the Indians to such traders as had espoused her cause, and rejected Galphin's, who opposed it. And it was the duty of the United States, of whose government Galphin's heirs were now the subjects, to prosecute theirs, and, failing to do so, have made themselves justly liable for its payment.

Apart from the considerations above set forth, the State of Georgia appropriated these lands—set apart as they were by the treaty of 1773 as a fund for the payment of these debts—to the public defence, and the bounty warrants of the officers and soldiers of the Georgia line in the revolutionary army were located upon them. By an act of Congress approved July 5, 1832, the government of the United States provided for certain claims, which Virginia had assumed, to the officers of that State engaged in the public service during the revolutionary war. It is believed that the principles of that act are applicable to the present claim, which the committee think ought to be allowed, and accordingly report a bill for his relief.