

7-10-1846

Report : Mr. Johnson, of Maryland

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IN SENATE OF THE UNITED STATES.

JULY 10, 1846.

Submitted, and ordered to be printed.

Mr. JOHNSON, of Maryland, made the following

REPORT :

[To accompany bill S. No. 231.]

The Committee of Claims, to whom were referred the memorial and petition of Erskine and Eichelberger, merchants, of Baltimore, report :

The petitioners state that in the prosecution of their regular business as merchants, and in that capacity, they had various mercantile transactions with John Gunter, junior, an intelligent and responsible Indian of the Cherokee tribe, who was engaged in trade and traffic in the Cherokee nation, of which he was a prominent member; that shortly before the conclusion of the treaty made with said Indians, by the United States, of 1835-'36, Gunter became indebted to the petitioners in the sum of \$4,422 94, for which sum they held Gunter's promissory note, voluntarily given, and as to which no dispute or controversy existed at any time; that by the provisions of the treaty, the direct object of which was to effect the removal of the Indians, the property belonging to them, as improvements, was surrendered by them to the United States, on a valuation to be made by commissioners appointed by the United States for that purpose; and that the sum of the valuation should be applied by the commissioners specifically and exclusively to the discharge of the debts due from the Indians, respectively, to citizens of the United States; that the valuation of the improvements of Gunter, so made by the commissioners, amounted to eleven thousand and forty-one dollars and ninety one cents (\$11,041 91,) and greatly exceeded the aggregate of his debts, including that of the petitioners—being in the aggregate nine thousand one hundred and seventy-six dollars and two cents (\$9,176 02;) that the petitioners had regularly filed their claim before said commissioners, in the form and within the time they had prescribed for that purpose, and thereupon the whole amount so claimed was admitted to be just and proper, and so recorded in the proceedings of the commissioners; but the commissioners had, at an early stage of their proceedings, dissipated the valuation fund to the amount of \$5,551, by advancing that amount to Gunter, to wit, \$2,500; part thereof "to enable him to discharge a debt due to Andrew Moore," which debt (if such existed at all) was not examined and determined by the commissioners, and the residue thereof, \$3,051, was advanced by them to Gunter himself, for his private purposes; and, in consequence of

such illegal advances, the valuation fund did not cover the debts for which it was thus pledged and guarantied by the United States. The commissioners, however, proceeded to pay the whole amount of a portion of said debts, and to distribute the balance of the fund *pro rata* towards the discharge of the other portion of the debts ; leaving thereafter a balance due to the petitioners of \$2,824 03 on the 1st day of October, 1837, bearing interest at 6 per cent. per annum from that date.

The committee have fully examined the facts in the case, and the grounds on which the petitioners found their claim to indemnity against the United States, and are well satisfied that the true merits of their claim, both as to facts and principles, have been fairly stated, and that the sum they have claimed is justly due to them.

The national considerations which led the United States to enter into the stipulations contained in the treaty would fully justify the petitioners in their demand of indemnity from the United States, and the stipulations in themselves, by express terms, recognise the like responsibility ; but, however clear these two positions are, it is not necessary to recur to either or both of them to support the claim, since the improvement fund was itself more than sufficient to discharge all the debts for which it was liable, if the misapplication and illegal disposition of the fund by the commissioners, as before stated, had not been made. The petitioners were not consulted with regard to the appointment of the commissioners, who were the *ex parte* agents of the government, and for whose acts the government is clearly liable.

The committee are satisfied that the petitioners have lost their debt by the error or misconduct of the commissioners, and that the obligation of the government to indemnify them is fully established. They therefore report a bill for their relief.