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Report : Mr. Jarnagin

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IN SENATE OF THE UNITED STATES.

JANUARY 14, 1847.

Submitted, and ordered to be printed.

Mr. JARNAGIN made the following

REPORT:

The Committee on Indian Affairs, to whom has been referred the memorial of Benjamin Crawford, of Pennsylvania, praying redress on account of a military seizure of his person and property, have had the same under consideration, and submit to the Senate the following report:

The memorialist says that, prior to going into the Creek nation of Indians as a trader, he became acquainted with Colonel James Logan, the United States agent in said nation. That said agent, to induce him to go as a trader, pointed out to him sundry advantages to be derived from such a trade. That he would authorize, or license, the memorialist as a trader, if he would go to said agent's landing and make his establishment there. The memorialist agreed to the terms and consented to go among the Creeks as a trader, and said agent made out a list of such articles and goods as, he said, suited the Creek trade. By said list the memorialist made his purchases in the eastern cities, in the year 1839, and a small supply from New Orleans, for the Creek trade: was put to considerable expense in building a boat, for the purpose of transporting his goods to a situation on the Arkansas river above steamboat navigation; and before he left Fort Smith his father-in-law had an interview with Logan, who was then informed of the intentions of the memorialist, and he expressed his entire approbation in encouraging terms, as he had done before. Soon after this interview, the memorialist proceeded up the Arkansas river to the Creek agency with his goods, where he arrived in the latter part of February, 1840, and was then requested by said agent to remain at his residence, giving with such request a full license and permission to remain and trade as long as he might choose. That he continued at the landing of said agent, on the Arkansas, peaceably pursuing his business, till the middle of April, 1840, when he was arrested and taken prisoner by an officer, Lieutenant Elliott, of the army of the United States, at that time in the command of twenty-five men. When Lieutenant Elliott presented himself, the memorialist informed him he was trading in the Creek nation by the permission of the agent before named, who was then absent from his post, and, if disturbed in his business, he would expect compensation for consequent loss and damage. The only reply made by Lieutenant Elliott was an inquiry about the quantity of whiskey on board the boat of

the memorialist. He was informed there was about twelve or fifteen gallons on board, brought by permission of said agent, for the exclusive use of those belonging to the boat. The memorialist was then told he must consider himself a prisoner, and a guard was placed over him and in his boat, of which possession was taken. Early the next morning Lieutenant Elliott ordered his men to shove the boat off, for the purpose of taking it down the river. Against this course the memorialist remonstrated, and told Mr. Elliott the river was too low to take the boat out; but no regard was paid to any thing said on that subject, and the boat was taken several miles down the river, till she arrived at a place where there was not water sufficient to float her, and she went aground. Lieutenant Elliott then asked to be shown the ardent spirits on board; which being done, he caused them to be brought out and thrown into the river, amounting to about fifteen gallons of whiskey and a jug of brandy. He took the memorialist to Fort Gibson as a prisoner, leaving a guard of men with the boat, which was in the middle of the river. On arriving at Fort Gibson, memorialist was taken before the commanding officer, Colonel Cummings, who said he had been informed memorialist had been selling whiskey to the Indians. He was assured no whiskey had been sold or otherwise disposed of to the Indians by memorialist, of which fact he proposed to produce proof. Without hearing the proof the Colonel said memorialist was at liberty to return to his boat, but that he had better leave the Indian country as soon as he could get away. The next day the guard was taken from the boat, leaving her aground in the middle of the river, where she was detained for some time; but so soon as the water rose, memorialist proceeded with his boat to Fort Smith, having been at great expense and loss of time, besides having on hand a large stock of goods, bought for the Creek trade and suited to no other market. That by his imprisonment, by the course pursued towards him by the United States troops, and being deprived of the privilege of trading with the Creek Indians, pursuant to the authority granted to him by the agent, Colonel Logan, he has sustained damage to the amount of seven thousand five hundred dollars, at least. That it is true he had ardent spirits in his boat, but the same was taken on board by the consent of the agent, Colonel Logan, for the use only of himself and his hands, and none of it was sold or intended to be sold to the Indians; but if such intention be deemed no justification, he has been advised by legal gentlemen that the seizure of his person and property was against law, and hence a violation of his rights as a citizen, because, as they tell him, the intercourse act of 1834 was in *abeyance* till the President prescribed rules and regulations to enforce its provisions, which had not been done when he was arrested. He prays for equitable and fair redress. The foregoing is the case made by the memorialist himself. It is in proof that, on the 15th of April, 1840, Colonel Cummings issued an order to Lieutenant Elliott to proceed to the Creek agency and remove from the nation Jonas Bigelow and Mr. Crawford, who had illegally located themselves in that vicinity, saying in the order "that Crawford has a trading boat, which you will search; and if ardent spirits are found in it, you will destroy the spirits and remove the boat and men down the river." Lieutenant Elliott says he found on board the boat some twelve or fifteen gallons of whiskey and a jug of brandy, which he destroyed. This was done in April, 1840, and about one year

thereafter the memorialist procured the certificate of James Logan, the Creek agent, on the 12th of July, 1841, as follows: "This is to certify that I am well acquainted with Benjamin Crawford as an Indian trader; I know nothing against his character as such, but believe him to be fair and honorable in all his dealings with the Indians, and in every respect worthy of such a trust." It is worthy of observation that Mr. Logan says not one word in his certificate about any permission given to the memorialist in the spring of 1840, or at any other time, to trade with the Indians, or about consent that any quantity of ardent spirits might be introduced into the Creek nation by memorialist, for his own use and that of his hands, and yet such assent is a principal point made in the present application, and one to which it is believed proof would have been made if the fact had been as alleged in the memorial, and Colonel Logan is the witness from whom it should have come. In September, 1841, Mr. Rufus Sutton made an affidavit, in which he said he was in the employment of Benjamin Crawford, the memorialist, during the time he was trading with the Creek Indians in the winter and spring of 1840, and knew there was no whiskey taken above Fort Smith, only what was thought necessary for the use of those belonging to the boat. That none was sold to Indians or intended to be sold to them, and that Crawford had charged the persons on the boat not to sell ardent spirits, or let the Indians know there was any on board. That he heard Colonel Logan tell Mr. Crawford to stay and trade at his landing as long as he chose, and also heard him say, at different times, that Mr. Crawford had license to trade at his landing, and he and his family traded with him to a large amount. Mr. Sutton relates the conduct of Lieutenant Elliott substantially as stated in the memorial. Mr. Robert T. Moore says he was in the employ of Mr. Crawford at and before the time he went to trade in the Creek nation, and knows there were no ardent spirits on the boat, except thirty or forty gallons thought to be necessary for those in charge of the boat. That none was sold or given to the Indians within his knowledge, and Colonel Logan said Mr. Crawford was a licensed trader. Joseph Armorer, the father-in-law of Mr. Crawford, deposes to the verbal license to trade from the agent; that no whiskey was sold to the Indians; that the supply kept in the boat was for the use of the hands, and by leave of the agent; and that Mr. Crawford took about \$12,000 worth of goods to the Creek nation, and was doing a good business. On the 2d day of September, 1841, L. Richards, M. Wright, and C. M. McClellan made the following affidavit: "We, L. Richards, Maurice Wright, and Charles M. McClellan, having been called upon by Mr. Benjamin Crawford to say what damages we believed he had sustained by reason of his being removed from the Indian country, by the order of Colonel Cummings, dated 15th April, 1840, we do therefore certify that we verily believe that he has sustained loss and damage to the amount of seven thousand five hundred dollars." The committee must say, this is quite a sweeping statement, general in its terms, without items or specification, not very low or moderate in amount, and withal very unsatisfactory. On the 16th of April, 1845, two of said witnesses, Richards and Wright, were called upon to vouch their statement by oath, when they said: "At the time, they believed the facts set forth in the certificate to be true; but at this particular time they do not recollect the evidence upon which the certificate was given." The com-

mittee have information as to the general character of these witnesses from the honorable A. Yell, of Arkansas, and that it is good; but there is nothing showing the opportunity they had of forming a correct opinion of the amount of damages sustained by Mr. Crawford. Mr. Sutton and Mr. Moore, who were in the employ of Mr. Crawford, certainly best knew, and they are silent on that subject. The last piece of evidence offered to the committee is the affidavit of R. T. Queen, sworn to the 24th February, 1846, and he says, "I hereby certify that some three years ago I had a long conversation with Colonel Logan in relation to Mr. Benjamin Crawford's claim, the same now before Congress, when he said that Crawford ought to be paid, (Colonel Logan was then Creek agent.)" Whatever respect the committee might have for the opinion of Colonel Logan, they cannot make it the ground of their decision in this case. From the whole testimony these facts appear: that in February, 1840, Mr. Crawford went to the Creek agency as a trader, without a written license; that he took with him a quantity of ardent spirits; that Colonel Cummings heard he was there and sent Lieutenant Elliott to remove him, who found ardent spirits in Crawford's boat and destroyed them, and forced Mr. Crawford to leave the Creek nation; and he now asks that Congress pay him seven thousand five hundred dollars for losses and damages.

The memorial shows that Mr. Crawford was in the Creek nation, but not in conformity with any of the provisions of the act of Congress of the 30th of June, 1834, "to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers." He had given no bond, nor had he any license as a trader, as required by the second section of said act. Not having complied with the requirements of said section, he was subject to the fourth section, which declares "that any person other than an Indian who shall attempt to reside in the Indian country as a trader, or to introduce goods, or to trade therein without such license, shall forfeit all merchandise offered for sale to the Indians, or found in his possession; and shall, moreover, forfeit and pay the sum of five hundred dollars." No verbal permission from the agent could exempt him from the penalties of said section, and if his boat and cargo had been destroyed he would have had no claim against the United States for indemnity. But this is not all. Mr. Crawford actually introduced ardent spirits into the Creek nation of Indians, and said act of the 30th of June, 1834, provides that, "if any person shall introduce, or attempt to introduce, any spirituous liquor or wine into the Indian country," &c., "such person shall forfeit and pay a sum not exceeding three hundred dollars." "And it shall, moreover, be lawful for any person in the service of the United States, or for any Indian, to take and destroy any ardent spirits or wine found in the Indian country, except military supplies, as mentioned in this section." So it is not very apparent that Colonel Cummings and Lieutenant Elliott were not well warranted in doing all that is laid to their charge in the memorial of Mr. Crawford; but perhaps it is best the committee should express no opinion upon that point, because, if they had the authority of law for what they did, they are not responsible; nor can there be any just claim against the United States for damages; and if they had no such authority, they are personally liable, and there can be no claim against the United States for trespasses committed by military officers acting without authority, not being insurers against private wrongs com-

mitted by such officers; and in this case it is neither alleged nor shown that Colonel Cummings or Lieutenant Elliott acted under any other orders or directions than those to be found in the general law. Therefore—

Resolved, That Benjamin Crawford is not entitled to any redress from the United States for or on account of the military seizure of his person and property, set forth in his memorial.