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REPORT

OF

THE SECRETARY OF THE INTERIOR,

IN RELATION

To a liquidated balance due the Creek Indians for losses during the last war with Great Britain.

JUNE 19, 1852.

Laid upon the table, and ordered to be printed.

DEPARTMENT OF THE INTERIOR,

June 18, 1852.

SIR: I have the honor to communicate to the Senate herewith, a letter from the Commissioner of Indian Affairs dated the 17th instant, enclosing explanations in regard to the item of \$110,417 90, which was embraced in the estimates from this department, for "liquidated balance found due the Creek Indians for losses sustained during the last war with Great Britain."

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART.

Secretary.

Hon. WILLIAM R. KING,

President of the Senate, *pro tempore*.

DEPARTMENT OF THE INTERIOR,

OFFICE INDIAN AFFAIRS,

June 17, 1852.

SIR: The last annual estimates of the department embraced an item of \$110,417 90 for payment of balance of a liquidated claim for losses suffered in 1813-'14 by the friendly Creek Indians, who acted as the allies of the United States during the difficulties with a portion of that tribe known as the "Red Stick War."

From the proceedings in Congress upon this claim, further information in relation to it seems to be important, in order that its merits and the obligations of the government in respect to it may be clearly understood. I therefore submit a full and lucid statement on the subject furnished me by the agent for the Creeks, and respectfully suggest its transmission for the information of Congress.

Very respectfully, your obedient servant,

L. LEA, *Commissioner*.

Hon. A. H. H. STUART,

Secretary of the Interior.

Claims of certain Creek Indians for spoliations and losses during the hostilities with a portion of that tribe in 1813 and 1814, commonly known as the "red-stick war."

These claims, though of long standing, are shown by the published records of the government and by unquestionable facts, to be valid and just. They rest upon explicit promises, and upon the strongest principles of right and justice. A portion of them have long since been paid, and the balance remain as unliquidated and valid demands against the government. They have never been abandoned, but, on the contrary, have been repeatedly urged and their payment insisted on by the Indians. The Executive Department of the government recognizes their justice; and their non-payment is only to be accounted for by the fact that they have never, until recently, been properly explained and submitted to Congress. This was done for the first time in the report of the head of the Indian bureau to the Senate committee on Indian affairs, dated May 10, 1850. (See annual report of the Commissioner of Indian Affairs for 1851, page 311.) That report, though conclusive as to the justice of the claims and the obligation to pay them, does not, however, fully set forth their merits and the facts and circumstances upon which they rest.

The sanguinary hostilities with a portion of the Creek Indians in the years 1813 and 1814, and the causes which led thereto, form a part of the published history of the country. (See Pickett's History of Alabama, vol. ii. chap. 31, and American State Papers on Indian Affairs, vol. i. pages 836 to 860.) Considering the provocations and the influences operating upon the Indians, it is only remarkable that the whole tribe did not combine and engage in hostilities against the United States. But fortunately for the government, then engaged in a war with a foreign power, and for the people in that section of the country, a large portion maintained their allegiance to the United States and remained friendly. They did all in their power to restrain and control their disaffected brethren, and when this could not be done, they joined the forces of the United States and fought gallantly against their own people, and were greatly instrumental in subduing and bringing them to terms. In consequence of the course which they thus pursued, they were greatly harassed and injured by the hostile Indians. Their houses, fences and crops were burnt and destroyed, and their cattle and other stock killed and driven off. Whole towns and settlements were swept off and destroyed by their infuriated brethren; while they also suffered injury to some extent by portions of their property being taken for the use of the troops. Notwithstanding all this they preserved their good faith, fully participated in all the dangers and sacrifices of the war, and freely shed their blood in battle along with their white brethren. For the losses which they sustained by the depredations and spoliations committed upon their property by the hostile Indians, they were promised indemnity by the authorities of the government.

The Secretary of War, in a letter of March 17, 1814, to General Pickney, commanding the troops operating against the hostile Creeks, instructing him in relation to the terms upon which peace would be granted to them, prescribed among other things that they should be required to relinquish to the United States as much of their portion of the Creek territory

as would be an equivalent for the expenses of the war, &c. In further instructions of the 20th of the same month to same officer, he stated: "That the proposed treaty with the Creeks should take a form altogether military, and be in the nature of a capitulation; in which case the whole authority of making and concluding the terms will rest with you exclusively. In this transaction, should it take place, Colonel Hawkins, as agent, may be usefully employed."

Accordingly, General Pinckney employed Colonel Hawkins, the government agent for the Creeks, to make known to them the terms upon which peace would be granted; among which was, that "the United States will retain so much of the conquered territory as may appear to the government thereof to be a just indemnity for the expenses of the war, and as a restitution for the injuries sustained by its citizens, and the friendly Creek Indians." He was instructed to "communicate these terms to the friendly Indians, and enjoin them, in the prosecution of the war against such as may continue hostile, to abstain carefully from injuring those who may be returning with the intention of making their submission. You may likewise inform them that the United States will not forget their fidelity, but in the arrangement which may be made of the lands to be retained as indemnity, their claim will be respected; and such of their chiefs as have distinguished themselves by their exertions and valor in the common cause will also receive a remuneration in the ceded lands, in such manner as the government may direct." Colonel Hawkins, in a report to the Secretary of War of August 1, 1815, states: "That as soon as the terms of peace were offered, as expressed in the letter referred to, [General Pinckney's letter to him, above quoted,] I took measures to explain them literally to the friendly Indians, and through them and the prisoners in our possession to the hostiles, who had fled or were flying to Pensacola."

The United States thus clearly and unequivocally, through its authorized officers, promised the friendly Creek Indians:

1st. That their losses should be included as a part of the indemnity for which lands would be taken from the hostile Indians; and,

2d. That in selecting or taking those lands, the territorial claims, or rights of the friendly Indians, should be respected.

In the mean time General Jackson succeeded General Pinckney in command, and was instructed to consummate the arrangements committed to that officer.

The war ended with the treaty or capitulation of Fort Jackson, of August 9, 1814, the terms of which were dictated by General Jackson, and which both the friendly and hostile Indians were required to sign.

Though acting under the instructions given to General Pinckney, a copy of which had been furnished him by the War Department, General Jackson, from supposed want of authority, did not make any provision in the above instrument for the losses sustained by the friendly Indians; nor did he respect their territorial rights. Besides taking all or nearly all of the lands of the hostile Indians, amounting to from seven to nine millions of acres, he included also about eight millions of the territory of the friendly Indians, for which they have never received any compensation whatever.

As to the extent of territory taken from the friendly Indians, and the injustice thereby done to them, (see report of Colonel Hawkins to the Secretary of War, of August 18, 1815; State Papers, Indian Affairs, vol. ii. page 493.

They remonstrated against the arrangement thus required of them, and urged the recognition of the promises made by General Pinckney ; but, as stated, General Jackson refused to do this in the treaty or capitulation, claiming that these promises should constitute part and parcel of the treaty. The friendly Indians finally consented to sign it, only on condition that an authenticated copy of General Pinckney's letter containing the promises, should be sent on therewith to the President of the United States, saying, " We rely on the justice of the United States to cause justice to be done to us." General Jackson complied with that condition as follows :

" The following is a transcript of a letter from General Thomas Pinckney to Colonel Benjamin Hawkins which, pursuant to the requisition of the chiefs and warriors of the Creek nation, I direct to be sent to the President of the United States, duly certified, upon the suggestion to the said chiefs that my powers do not extend to embrace, by treaty or capitulation, the promises contained therein.

"ANDREW JACKSON,
"Major General Commanding."

The treaty or capitulation was ratified February 16, 1815, and on the 12th July following, the Secretary of War wrote to the agent for the Creeks, Col. Hawkins, as follows :

" I am directed by the President to request that you will report to this department, as soon as practicable, your opinions on the following points :

" 1. As to the nature and extent of the indemnity which the friendly chiefs claim, in consequence of the letter addressed by General Pinckney on the 23d April, 1814.

" 2. How far the government ought, from motives of justice or policy, to yield to their claims.

" 3. Whether indemnity ought to be made to them by restoring a part of the ceded land, or by an additional annuity, or by giving them a certain fixed sum in money or goods.

" 4. Whether these compensations (of whatever nature they may be) should be confined entirely to the friendly chiefs."

Colonel Hawkins reported August 18th, that he had no data upon which to calculate as to the extent of the claims for the individual losses ; part of the vouchers having been taken by General Jackson's secretary, and the remainder had been " given to the assistant agent at Coweta." In regard to the claim on account of the lands of the friendly Indians, included in the cession exacted by the treaty, he expressed the opinion that " at the time of drawing the lines for the treaty, sixty thousand dollars would have been received as an equivalent." He further stated that justice was on the side of the Indians ; that policy required " a strict fulfillment of the expectations of the chiefs ;" and he gave his opinion as to the manner in which the claims should be adjusted and settled. On the 9th of the same month, the Secretary of War instructed him that it was the wish of the President that he should proceed to the liquidation of the claims of the friendly Indians, on the principles of General Pinckney's letter and his own. On the 1st of April, 1816, Colonel Hawkins accordingly transmitted a report " on the claims of the friendly Indians, for losses sustained by them in their civil war, agreeably to the terms of peace offered by Major General Pinckney, 23d April, 1814, and the preliminaries of the treaty of Fort Jackson, of

August following." He stated that from the peculiar situation of affairs, the report was imperfect; and could not be otherwise till all the hunters came in. The aggregate of the claims presented, up to that time, was \$108,415 12½. The amount favorably reported upon was \$78,360 75. He estimated that the whole amount of the just claims would not exceed one hundred thousand dollars. Upon this partial and incomplete report, Congress, on the 3d March, 1817, appropriated eighty-five thousand dollars to be paid to the friendly Creek Indians, whose property was destroyed by the hostile Creek Indians in the late war, in fair and just proportion to the losses which they have severally sustained from said Indians. Colonel Hawkins having died, David B. Mitchell was appointed in his place.

In the Secretary of War's instructions to him of March 20, 1817, respecting the payment of this money, he was told that it would be proper to pay the claimants mentioned in Col. Hawkins' estimate, "only a portion of their claims at present, as it is probable there may be other claimants entitled to the benefits of the law who are not mentioned in the list furnished by Col. Hawkins, therefore a final distribution of the money should not take place until the whole amount of claims are ascertained." Accordingly, Mr. Mitchell proceeded to complete the investigation of the claims, and paid over the amount appropriated by Congress to the several claimants *pro rata*, according to his instructions. He made a detailed report, showing the names of the claimants, the amount of their claims as ascertained and liquidated, and what was paid thereon. From this report it appears that the amount received by each claimant was only about two-fifths of that ascertained to be due to him. A concise statement was also furnished by Agent Mitchell, showing the general result of the investigation and payment, as follows:

Amounts liquidated for upper towns at Fort		
Hawkins, in July, 1817-----	\$77,572 50	
Deduct this amount, paid at the same time-----	31,029 00	
		\$46,543 50
Amounts liquidated for Lower towns, at Fort		
Hawkins, in July, 1817-----	29,775 00	
Deduct this amount, paid at the same time-----	11,910 00	
		17,865 00
Miscellaneous claims liquidated at Fort Hawkins,		
in July, 1817-----	27,157 00	
Deduct this amount, paid at the same time-----	10,862 00	
		16,295 00
Amount liquidated at the agency, 1818-----		
Deduct this amount, paid to these claims-----	49,524 00	
	19,809 60	
		29,714 40
Whole balance due-----		<u>110,417 90</u>

After a careful investigation, as shown by the report of the Commissioner of Indian Affairs before referred to, the executive branch of the government has acknowledged the justice of these claims, and, in its estimates, asked an appropriation of the above amount to enable it to meet the continued and pressing demands of the Indians for their payment. Every con-

sideration of equity, justice and good faith, requires that the appropriation be made without further delay. The facts and circumstances upon which the claims rest, as shown by the documents on file in the Indian Department and in the published archives of Congress, may be briefly summed up as follows:

1. The Creek Indians who remained friendly, and acted as the allies of the United States in the contest referred to, were promised restitution or indemnity for the losses they sustained by the destruction of their property by the hostile Indians.

2. This indemnity was to be, and was secured by the quantity of lands taken by the government from the hostile Creeks.

3. Though General Jackson refused to incorporate the above promise in the treaty or capitulation, the Indians considered it part and parcel thereof, and agreed to sign that instrument only on condition of the letter of General Pinckney, containing the promise, being sent on with the treaty to the President, which General Jackson had done.

4. The President becoming satisfied of the obligation of the government to pay these claims, caused the agent, Colonel Hawkins, to be instructed by the Secretary of War to investigate and liquidate them.

5. On a partial and incomplete report of said agent, Congress appropriated the sum of eighty-five thousand dollars in part payment of the claims, which the Secretary of War directed to be paid *pro rata* to the claimants.

6. The former agent having died, his successor, in accordance with instructions from the War Department, completed the investigation and liquidation of all the claims, and paid the eighty-five thousand dollars accordingly.

7. The final report of that agent shows that that sum fell short of the whole amount of the claims as ascertained and liquidated, \$110,417 90. Aside from their manifest justice and equity, additional obligations upon the government to pay these claims without further delay, are found in the following facts:

1. Contrary to the clear and definite understanding with the friendly Indians, about eight millions of acres of their territory, besides what was taken from the hostile Indians, was wrested from them by the treaty of Fort Jackson, without any compensation whatever.

2. In the treaty with the Creeks of January, 1821, the United States required them to agree to pay two hundred and fifty thousand dollars out of the consideration allowed them for the lands thereby ceded, on account of the claims of the citizens of Georgia for depredations and injuries committed by the Creeks prior to the act of 1802 regulating trade and intercourse with the Indian tribes, after which time, by that law, all such claims were payable out of the Indian annuities.

3. In February, 1825, the government induced a portion of the Creek Indians, headed by General William McIntosh, to enter into a treaty, which was unsatisfactory to the majority of the tribe. Serious difficulties ensued; McIntosh was killed, and loss and injury sustained by his followers. The United States was compelled to abrogate the treaty, and in consideration of the losses sustained by the McIntosh party in consequence of their having been instrumental in making it, the United States agreed to pay them of one hundred thousand dollars.

The government having acknowledged the obligation to pay those who suffered, and having compelled the Creeks to make good all the da-

predations and injuries committed by them on white persons, there would seem to be an obligation of the strongest character to pay these claims for losses suffered in consequence of the claimants having preserved their faith with the government, and acted as its allies in the serious and bloody contest with their brethren in 1813-14.

PHILIP H. RAIFORD,
U. S. Agent for the Creek Indians.

WASHINGTON CITY, *June 15, 1852.*