

1-29-1851

Captain William Armstrong -- Legal representatives of

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Recommended Citation

H.R. Rep. No. 17, 31st Cong., 2nd Sess. (1851)

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CAPTAIN WILLIAM ARMSTRONG—LEGAL REPRESENTA-
TIVES OF.

JANUARY 29, 1851.

Laid upon the table, and ordered to be printed.

Mr. CROWELL, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to whom was referred the memorial of the legal representatives of William Armstrong, deceased, report:

That in pursuance of the provisions of an act of Congress to provide for the organization of the department of Indian affairs, approved June 30, 1834, William Armstrong was appointed one of the two agents for the Western Territory authorized by that act. In the year 1835 he was appointed agent of the Choctaw tribe of Indians, west of the Mississippi, with a compensation fixed by law at fifteen hundred dollars per annum. He continued in the service of the government till his death, which happened in June, 1847. And it is just and proper to say, in this connexion, that he appears to have been a diligent and faithful officer, and that he discharged his official duties to the entire satisfaction of the government.

He has received the compensation provided for his services in the act which created the office, and with which in his lifetime he seems to have been fully satisfied, and his accounts with the government are settled up and closed.

The object of the memorialists is to open these accounts at the department, with the view of obtaining an increased compensation for the services of their ancestor, which the law did not contemplate or allow when they were rendered, and which he, in his lifetime, never sought or claimed in any of his correspondence or intercourse with the government.

The grounds of this claim are thus stated and disclosed in the memorial subscribed by James T. Armstrong, David J. Armstrong, and F. W. Armstrong, legal representatives of William Armstrong, deceased, by J. B. Luce, their attorney:

“That besides the labors legitimately pertaining to his office of Choctaw agent and of acting superintendent, the important and arduous duties of principal disbursing agent for the Western Territory were assigned to him in 1839.

“That in 1845 he was called upon to step out of, and beyond, his proper sphere as agent and acting superintendent of tribes in the west, to cross the Mississippi, to assume the responsibility of delivering the ‘scrip’ or certificates issued in favor of Choctaw claimants living east of that river, and to take upon himself the entire control of the removal of the Indians

then in the State of Mississippi, to the country provided for them west of Arkansas.

"That besides the various duties specified, of Choctaw agent, acting superintendent, principal disbursing agent, agent for the delivery of scrip, and superintendent of emigration, all of which he continued to discharge faithfully, and it is believed with the entire approbation of his official superiors, up to the day of his death in June, 1847, he was also, from time to time, required to serve as commissioner in the negotiation of important treaties with different Indian tribes, to act in the place of subordinate agents in his superintendency during their occasional absence or disability, in matters involving great responsibility, and in various ways to perform services not legitimately connected with any of the offices enumerated.

"That notwithstanding the vast amount of labor involved in the several duties thus imposed, over and above those properly belonging to the office to which he was appointed in the first instance—labor which first impaired his health, and ultimately shortened his life—he never received one cent of pay beyond his regular salary of \$1,500 as Choctaw agent; the amount paid to other and subordinate Indian agents for services which in most instances, it is believed, fall far short, in extent and importance, of those which devolve upon the office of Choctaw agent alone.

"These facts, your memorialists are persuaded, would of themselves, if properly substantiated, satisfy your honorable body that Major Armstrong was justly entitled, at the time of his death, to compensation for extra services. But there are others which greatly strengthen his claims.

"When the bill for the increase of the army was passed in 1838, Congress, acting with reference to the military and not the Indian branch of the service, prohibited the employment of army officers in making Indian disbursements, but neglected to provide for the substitution of others in their stead. This led to the order of the War Department in 1839, already referred to, assigning that duty to Indian agents and superintendents."

The different items of the claim are set forth in the following manner:

1st. A commission of one per cent. on the payments made by Captain Armstrong, in 1840 and 1841, to Cherokee claimants for improvements, spoliation, reservations, &c.

2d. A like commission on all land scrip paid by him to Choctaw claimants, before their arrival in the Choctaw country west of Arkansas.

3d. The usual compensation of superintendent of emigration, during the time of actual service, in superintending the removal of the Mississippi Choctaws in 1845, 1846, 1847.

4th. The usual compensation of a commissioner during the time he was employed in negotiating the Cherokee treaty of 1846.

The effect of this would be to give for the Cherokee disbursements, say 1 per cent. on \$600,000 \$6,000 00

For the scrip: the amount paid to claimants before their arrival in the Choctaw country west, was 202½ sections, at \$1 25 per acre, equal to \$162,200, on which 1 per cent. would be 1,622 00

As superintendent of emigration, the actual service was 10 months, which at \$2,000 per annum, the rate fixed by regulation, would be 1,666 66

For 31 days' service as Cherokee commissioner, at \$8 per day

\$248 00

9,536 66

The memorial is presented by J. B. Luce, who assumes to be the attorney of the legal representatives of William Armstrong. By what authority he comes here in that capacity, does not appear from any of the papers on file. It is quite apparent, however, that he is stimulated to an unwonted degree of activity in prosecuting the claim and in looking up testimony to sustain it.

He has called Mr. Poinsett, late Secretary of War, to the stand; but not satisfied with him, he has summoned to his aid Messrs. Crawford and Medill, late Commissioners of Indian Affairs; and though the former is half inclined to respond favorably, still neither of them gives the slightest support to the claim whatever. And, what is particularly worthy of observation and well calculated to awaken suspicion, these efforts to eke out something that might minister to his wishes proving fruitless and unsuccessful, he takes the stand himself. If his testimony were admissible and worthy of credit, it could avail nothing towards establishing a right to increase a compensation. It is merely a statement of what Luce understood Armstrong to say about claiming additional compensation between December, 1843, and June, 1847. These declarations of the party, if true, are not competent evidence for any purpose, much less to make out, of themselves alone, a claim against the government. But are they true?

It is not pretended that any other person but Luce heard Armstrong make them. He received the salary which the law allowed him, and appeared to be contented with it. No person but Luce ever heard him express any dissatisfaction; and during the twelve years that he was in the service of the government, and holding extensive correspondence with the department at Washington, no such claim was made or presented. If the records of the War Department and the Indian bureau furnished evidence of any claim presented by Major Armstrong for additional compensation for extra services, it would afford at least some excuse for this application. But they do not, and this attempt to obtain money from the treasury is destitute even of that poor apology. This is an important fact, and in estimating the evidence must not be overlooked. Before the year 1839, many of the disbursements of the Indian department were made by officers of the line of the army. An act of Congress approved July 5, 1838, prohibited the employment of these officers in this service, and the disbursing duty was subsequently performed by superintendents and officers of the Indian department. Major Armstrong acquiesced, in the orders of the President imposing on him the additional services contemplated by this law. He was receiving at the time his regular annual salary, which he considered a fair equivalent for his services, and his whole time belonged to the government.

During his lifetime, and while performing the public trusts confided to him, he made no complaint, interposed no objection to continuing in office at his former salary, though the law required some additional labor; and he presented no claim for increased compensation.

There is not an officer in the employment of the government, there is

not a clerk in any of the bureaus of the departments, at a salary fixed by law, that may not hereafter present, when his accounts are settled and closed, as just a claim for additional pay as the one under consideration.

Mr. Medill, late Commissioner of Indian Affairs, in a letter dated June 29, 1848, and on file with the papers in this case, thus disposes of the different items of the claim of the memorialists:

"The 4th section of the act organizing the department of Indian affairs, approved June 30, 1834, provides among other things for the appointment of two Indian agents for the Western Territory, at an annual compensation of \$1,500; and in pursuance thereof, William Armstrong and Major Cummins were appointed such agents. The 30th section of the act regulating trade, &c., approved the same day, is in the following words: 'That, until a western territory shall be established, the two agents for the Western Territory, as provided in the act for the organization of the Indian department, this day approved by the President, shall execute the duty of agents for such tribes as may be directed by the President of the United States. And it shall be competent for the President to assign to one of the said agents, in addition to his proper duties, the duties of superintendent for such district of country, or for such tribes, as the President may think fit. And the powers of the superintendent at St. Louis over such district or tribe as may be assigned to such acting superintendent shall cease: *Provided*, That no additional compensation shall be allowed for such services.' In pursuance of the power thus conferred on the President, the duties of superintendent, &c., were assigned to Major Armstrong.

"In reference to the first charge, &c., the amount disbursed, and the circumstances under which the same was done, are correctly stated by Mr. Luce: The Cherokee agency was within the superintendency of Major Armstrong, and the functions of the agent having been suspended, and aware of the difficulty and great responsibility of those payments, the department required them to be made by Major Armstrong. The duty was certainly one of much perplexity and arduousness, and it appears from the records to have been performed to the satisfaction of the government. The whole duty was performed, however, within a period of some six or eight months, and during all which time he was assisted by a special and experienced clerk, who received three or four dollars per day for his services. Had the Cherokee agent not been suspended, the business would have been attended to as a part of his regular duties, without any claim to an allowance beyond his regular salary of \$1,500.

"The second charge, for disbursement of scrip, and the third, for services as superintendent of emigration, should, in my judgment, be considered together, as I regard the performance of the first duty as legitimately belonging to that of the last. It will be seen by reference to the instructions to Mr. McRae, the predecessor of Major Armstrong in the emigration of the Choctaws, that it was made a part of his duty to disburse the scrip; and as the latter succeeded him, he was likewise charged with the same trust, with this difference, that the latter was assisted in his operations by his clerk.

"In reference to the fourth item, I would remark that Major Armstrong was, in the first instance, merely invited to this city to aid, by his experience and advice, in the settlement of certain Cherokee differences; that tribe being within his superintendency, and he being thoroughly ac-

quainted with all causes of difference among them. These matters of difference were referred, by mutual agreement, to the arbitrament of Edmund Burke, A. K. Parris, and William Armstrong, whose award was afterwards, by like mutual consent, thrown into the form of a treaty. Major Armstrong, as has been seen, was already in the city; and whose expenses in coming here, remaining in the city and returning home, have already been allowed and paid him in addition to his salary for the same time. I may further remark that, during his absence from the agency in the discharge of those duties, and which are alleged to be extra services, the whole expenses of Major Armstrong, over and above what he would be subjected to were he stationary at his post, were paid him.

"In conclusion, and respecting the whole demand, I feel it my duty to state that the admission by Congress of all or any of the items of charge will be in opposition to the spirit and letter of the laws passed in 1839 and 1842, in regard to extra compensation to salaried officers in the service of the government, and may open the door to many other demands of a similar character, perhaps equally as well founded as this."

It is to be observed that the law which authorized the President to assign the duties to Major Armstrong, for the performance of which his legal representatives, in the person of Mr. J. B. Luce, are now seeking further allowance, was in force at the time of his appointment. And it should be also remarked that this law expressly provided that no additional compensation should be allowed for the services which it was competent for the President, under its provisions, to assign him.

In view of the facts alone, if there were no other impediment in the way of making the allowance, it would be improper to grant the relief prayed for.

The claim rests on no legal or equitable foundation. The allowance of it would be a mere gratuity. This we have no right to grant. In the exercise of judicial functions, Congress is bound to observe the law and follow precedents as much as other judicial tribunals; and to mete out equal and exact justice to all, is a duty no less obligatory in one end of the Capitol, on two hundred and thirty, than it is in the other on nine judges. The rules of decision are the same, though the forms of proceeding are different. It is not denied that accounts between individuals may be overhauled and opened, after they have been settled up and closed; but it is only allowed by courts of justice in cases of fraud and mistake, and not to set up new contracts, which neither party claimed or pretended had any existence at the time of settlement. Mistakes in the statement of accounts, whether arising from fraud or accident, may always be corrected to prevent wrong and injustice. Nothing of the kind, however, is pretended in this case. The settlement was made, and the account stated and paid, according to the terms of the contract. There was no omission, no mistake, no accident, and no fraud.

There is no contract, express or implied, that can oblige the government to pay any further sum to the legal representatives of Major Armstrong. He has received the compensation provided by law for his services, with which in his lifetime, as already observed, he was fully satisfied. What are now claimed as extra services were attached by law to the office which he held at the time of his appointment. To increase the compensation at this time, would be a departure from the rule which has heretofore governed Congress in the adjudication of similar claims. To preserve

uniformity in the decision of that body, so essential everywhere to the satisfactory administration of justice, precedents must not be disregarded; and surely the present case forms no exception to the general rule.

The devices of public functionaries had become so numerous and troublesome, in efforts to swell their income and increase their compensation, as to force upon Congress, in the year 1839, the passage of a law containing the following most salutary provision: "That no officer, in any branch of the public service, or any other person, whose salaries or whose pay or emoluments is or are fixed by law and regulations, shall receive any extra allowance, or any compensation, in any form whatever, for the disbursement of public money, or the performance of any other service, unless the said extra allowance or compensation be authorized by law."—5 Stat. at Large, 349, sec. 3.

This language is plain and unambiguous, and there can be no rational doubt as to the intention of Congress. But the law is no more fatal to the claim of the memorialists, than the facts on which we have already sufficiently commented. In view of both, the committee are constrained to refuse the application of the memorialists.

The question involved in this case has been deemed of sufficient importance to call for a patient investigation and a full discussion, and it is believed that the view here presented will be found unanswerable, if not satisfactory, and may relieve the committee from much labor in the future investigation and adjudication of claims of a similar character, and governed by the same general principles.

The committee recommend the adoption of the following resolution:
Resolved, That the claim of the memorialists be not allowed.