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FLEMING WOOD.

MARCH 3, 1851.

Laid upon the table, and ordered to be printed.

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

REPORT:

The Committee on Indian Affairs, to whom was referred the petition (with accompanying papers) of Fleming Wood, praying to be indemnified for the loss of property that was seized and detained by the officers of the United States, for an alleged violation of the laws regulating trade and intercourse with the Indian tribes, report:

That they have had the same under consideration, and from an investigation of the case it appears that, in July, 1837, a license was granted by the agent of the Cherokees to Fleming Wood to trade with the Cherokee Indians; but that said Wood had, in several respects, violated the conditions of the law upon which his grant to trade with the Indians was founded. In view of these violations the license was revoked by the officer having jurisdiction in the case, and the revocation was approved by the general government. Of all this the petitioner was duly notified, and yet he continued to trade with the Indians for nearly three months, which was as clearly unlawful as though no license had been granted. And, although the goods were seized and sold by the government, according to the express provisions of the law, yet the fine of five hundred dollars, (\$500,) imposed by the same act, was never exacted, or at least never collected of the petitioner. The committee incorporate the petition of Fleming Wood, marked as exhibit A, and also the letter of Mr. Brown, Commissioner of Indian Affairs, and papers referred to in said letter, numbered 1 and 2, as part of the report, and ask that it be printed.

Your committee recommend the rejection of the prayer of the petitioner, and ask to be discharged from its further consideration.

A.

A memorial to the honorable the Senate and House of Representatives of the United States of America in Congress assembled.

Your memorialist, Fleming Wood, of the city of Natchez and State of Mississippi, would most respectfully represent to your honorable body, that in July, 1837, he united himself with one Egbert Harris, of said

State, in a mercantile house at Fort Smith, Arkansas, in the name and firm of Wood & Harris; that the said firm of Wood & Harris applied to the Cherokee nation in council, on or about the 24th or 25th day of said month of July, for permission to erect a suitable house to vend goods, wares, and merchandise in, opposite Fort Smith, in said Cherokee nation; which was granted by the unanimous consent of said nation then in council.

The said firm of Wood & Harris then applied to Governor Stokes, the Cherokee agent at Fort Gibson, in said nation, for license to sell goods, wares, and merchandise at the above-named place; at the same time rendering a schedule, and giving bond and approved security not to violate the intercourse law; upon which, license was granted the said firm for two years.

The said firm of Wood & Harris then erected a suitable house, agreeably to contract with said Cherokee nation in council, at no little expense; but at an expense and costs of upwards of one thousand dollars, owing to the scarcity of mechanics and suitable timber for said building. When the above house was completed, the said firm of Wood & Harris supplied it with certain goods, wares, and merchandise, according to schedule, and bought sundry other goods, wares, and merchandise at various times, suitable for the trade with the said Cherokee nation, under a firm conviction that they would not be molested, but protected by the government; but before they reached the place of their destination—Fort Smith, or opposite thereto—by misrepresentation or otherwise, the said firm of Wood & Harris had their goods illegally seized and detained by the officers of the government, and their house which they were in, opposite Fort Smith, in said Cherokee nation, closed—at an immense sacrifice of feeling, credit, and money. Nor did the injury stop here. The said firm of Wood & Harris was then sued for libel in the United States district court, held at Little Rock, as will be seen by document marked A, containing a certified copy of the proceeding had at said court; which cost said firm, especially your memorialist, a great deal of time, expense, money, and trouble in travelling sundry times to and from Natchez to Little Rock, a distance of upwards of six hundred miles by water, to attend said court at its various sessions, till finally determined on the 29th day of October last, (1839;) also in feeing attorneys for the defence of said suit.

Your honorable body will also perceive that the goods seized and placed in the marshal's hands have been kept boxed up for two summers past, or ever since April, 1838, thereby rendered almost useless, and of little or no value, from moth, mildew, and rust.

Your memorialist will now show to your honorable body that at th time, and long before the decision of the above-named suit for libel, he was the whole and sole owner of said goods, wares, and merchandise, as may be seen by reference to document marked B, showing the dissolution of Wood & Harris. You will also see, by reference to document marked C, he paid said Harris, on the 29th day of September, 1838, in full of all dues, &c. Consequently, your memorialist, and not Wood & Harris, was the injured party, and had to sustain the whole loss of money, goods, credit, time, and trouble. He would therefore represent to your honorable body, in his own right and name, and not that of another, that from the money expended in building said storehouse, opposite Fort Smith,

in said Cherokee nation; the loss in goods purchased in good faith to vend at said store, but prevented by closing the same; the detention of the goods seized for nearly two years, and their great diminution in value, as well as the immense sacrifice of credit sustained by him, attendant upon said seizure, (owing entirely to circumstances over which he had no control, but which disappointment and losses were produced by agents acting for and in behalf of the government,)—your memorialist cannot, under oath, estimate his loss, in the above and foregoing case, less than the sum of ten thousand dollars, (\$10,000;) for which, in strict justice to himself and family, he would ask your honorable body to grant him speedily. As in duty bound, he will ever pray, &c.

F. WOOD.

HINDS COUNTY, *State of Mississippi*, ss:

Personally came before me, the undersigned, justice of the peace in and for said county, Fleming Wood, who, being duly sworn, deposeth and saith that the facts in the foregoing memorial contained are just and true as stated.

Sworn to and subscribed before me this 9th day of January, 1840.

L. S. DIXON, J. P.

DEPARTMENT OF THE INTERIOR,

Office Indian Affairs, March 18, 1850.

Sir: I have had the honor to receive your letter of the 13th instant, enclosing the claim of Wood & Harris, for damages sustained by them in consequence of the seizure of their goods by government officers, for an alleged violation of the intercourse act of 1834.

This case has been twice disposed of by this office. In the first place by a report to the Secretary of War, of February 13, 1840, in which the whole subject was fully investigated, and the claim disallowed, upon grounds therein stated. I enclose a copy of that report for your information. Again in the month of May, 1844, the claim was referred to this office by the Committee on Indian Affairs, and a report was made upon it to the Secretary of War, on the 21st of that month, a copy of which accompanies the papers.

I have reviewed the whole matter and examined all the papers in the case, and, there being no new facts or evidence produced, fully concur in the two decisions above mentioned.

The papers are herewith returned.

Respectfully, your obedient servant,

ORLANDO BROWN.

HON. W. SPRAGUE,
House of Representatives.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
May 21, 1844.

SIR: I have, agreeably to your request, revised a report made by me in February, 1840, relative to the claim of Fleming Wood to indemnification for losses alleged to have been occasioned by a seizure of goods, for a violation of the laws regulating trade and intercourse with the Indian tribes, &c. This report will be found in Senate document, 26th Congress, 1st session, No. 198.

A careful consideration of the case, after the lapse of four years, has only served to deepen my conviction of the correctness of the view first taken. This view was fully concurred in by the Committee of Claims in the Senate of the United States.

The law gives the power to superintendents and agents to grant licenses to trade with the Indians, at certain points or places, which it shall be the duty of the officers granting the licenses to fix from time to time, to be inserted in the licenses. The superintendent has the power to revoke the license whenever in his opinion it is proper, for any reason, to do so.

In this case he thought, and in my judgment thought wisely, that the store of Messrs. Wood & Harris was at a very improper place, and that it was his duty to revoke the license. He did so with much mildness in reference to time and manner, and only had the goods seized when they refused to comply, or at least did not comply with his request or order that they should cease to trade in the Cherokee nation; and not then, until his revocation had been approved at Washington, and more than two months after it took place. There is no rash exercise of power here, but a judicious use of it, to a proper end.

The claimant is entirely mistaken in supposing that the superintendent had no legal right to control the place where the trade was to be carried on, so long as the license continued, or that there was no power to revoke it. There was both, and it was the duty of the superintendent to do, in my opinion, what he did do.

The moment the license was revoked, the trade, which was continued for two months afterwards in the Indian country, was as clearly unlawful and without license as if no license had ever been granted. The one granted by Governor Stokes was revoked by Major Armstrong on the 12th December, 1837, as the claimants themselves show. They, notwithstanding, traded until the 21st April, when the goods were seized. Their ignorance of what the law was, or required, does not change the matter.

I have been asked to consider that the jury who tried the case found the following verdict: "We, the jury, find, from the evidence, that the said Fleming Wood and Egbert Harris did not trade in the said Cherokee nation without license, as alleged in said libel; but that at the time specified in said libel they were duly licensed to trade in said Cherokee nation; and that said goods, wares, and merchandise were illegally seized and detained from the said Wood & Harris, and were not subject to confiscation and forfeiture, and that said goods, wares, and merchandise belong to the said claimants, Wood & Harris." A strange verdict on the facts disclosed; but with that I have nothing further to do than to say that although it is conclusive on the said seizure and trial, and restored the goods to the claimants, yet it proves nothing, and cannot be permitted to change

admitted facts, or the legal consequences of them, beyond the direct and necessary effect of the verdict.

I cannot perceive any reason for changing the views set forth in the report of 1840, but on the contrary am confirmed in their correctness, and do not see the least ground of claim on the part of Messrs. Wood & Harris.

I return herewith the record you left with me.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

HON. JACOB THOMPSON, of *Mississippi*,
House of Representatives U. S.

No. 2.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
February 13, 1840.

SIR: In obedience to your directions, I have the honor to report all the information which is in possession of this office in relation to the claim of Fleming Wood for indemnity for the seizure and detention of property on account of an alleged violation of the intercourse law of 1834—the memorial of the claimant having been enclosed to you by Hon. H. Hubbard, chairman of the Committee of Claims of the Senate, and referred to this office.

It appears that, in July, 1837, a license was granted by M. Stokes, esq., agent for the Cherokees, to Messrs. Wood & Harris, to trade with those Indians, agreeably to the provisions of the second section of the act to regulate trade and intercourse with Indian tribes, &c., approved June 30, 1834, which prohibits any trading with Indians, in the Indian country, without such license. That, having been informed of this fact, and that Messrs. Wood & Harris were then erecting houses for the purpose, in the Cherokee nation, near the Arkansas line, opposite to Fort Smith, where they had another store, Captain W. Armstrong, acting superintendent of the Western Territory, on the 9th September, 1837, apprized the Cherokee agent that, in virtue of authority conferred upon him by the same section of the act, he would “be under the disagreeable necessity of revoking said license, as it is the policy of the government to keep the Indians from visiting the line as much as possible, to prevent the introduction of liquor into the Indian country, and other violations of the law;” and that, Mr. Stokes declining to carry out the views of the superintendent, the latter, on the 12th of December, did revoke the license, and prohibit the parties from trading under it until the case was submitted to this office for approval or otherwise; adding that “this notice would have been given you sooner, but for the absence of both of you from Fort Smith.”

On the same day (12th December) Captain Armstrong reported the facts to this office, and assigned as reasons for the course adopted, the bad policy of permitting the establishment of trading houses directly on the line of the Indian territory, and the fact that “Messrs. Wood & Harris have now a store in Fort Smith, and are amongst the largest whiskey dealers on the line, and their new store is in sight on the opposite bank of the Arkansas.”

The section of the intercourse act above quoted authorizes the superin-

tendent of the district to revoke and cancel a license whenever, in his opinion, it would be improper to permit the person licensed to remain in the Indian country; and directs that no trade with the tribes within that country shall be carried on in it, "except at certain suitable and convenient places to be designated, from time to time, by the superintendents, agents, and sub-agents, and to be inserted in the license."

The third section of the act of the same date, "to provide for the organization of the Department of Indian Affairs," enacts, "that superintendents of Indian affairs shall, within their several superintendencies, exercise a general supervision and control over the official conduct and accounts of all officers and persons employed by the government in the Indian Department, under such regulations as shall be established by the President of the United States;" and the regulations prescribed under it impose upon this class of officers the general duty of superintending and controlling the intercourse between the Indians and citizens of the United States, to whom alone licenses are allowed to be granted. The right of the acting superintendent to revoke the license in question cannot, therefore, be doubted; and the propriety of the measure, for the reasons given, was admitted, and the revocation approved on the 20th January, 1838. It further appears that, on the receipt of the letter of that date from this office, Captain Armstrong notified the parties of its tenor, and again directed them to cease from trading. This injunction was, however, disregarded; and after the lapse of about one month, he called upon the military to enforce it, and to seize the goods, in conformity to the requirements of the fourth section of the intercourse law, which directs "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." And by virtue of the 23d section of the same act, which authorizes the employment of the military force of the United States "in preventing the introduction of persons and property into the Indian country contrary to law," this was accordingly done, after the expiration of another month, and some resistance on the part of the agents of the traders—the latter being absent. The goods were turned over to the United States marshal for the Arkansas district; and the prosecuting attorney requested to institute the proper proceedings in the name of the United States. The transcript of the record and judgment in the case, which accompanies the memorial, shows the result.

From this statement of the facts it appears that the memorialist has no just claim against the United States for indemnity. A copy of so much of the correspondence of this office as relates to the subject is herewith transmitted.

Respectfully, &c.,

T. HARTLEY CRAWFORD.

HON. J. R. POINSETT,
Secretary of War.