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## Report : Mr. Johnson

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IN THE SENATE OF THE UNITED STATES.

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MARCH 13, 1854.—Ordered to be printed.

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Mr. JOHNSON made the following

**REPORT.**

\* [To accompany Bill S. 272.]

*The Committee on Public Lands, to whom was referred the petition of Mark and Richard H. Bean, report:*

That the petitioners, Mark and Richard H. Bean, being authorized as they conceived, by the laws and policy of our government, looking to the settlement and exploration of its domain, both with a view to the discovery of lead mines and salt springs, settled, in the year 1817, upon the Illinois river, a tributary of the Arkansas, near its confluence with the last named stream, having thereat discovered a saline spring. That two years subsequent, to wit: in the year 1819, urgent inducements were offered to them by Major Bradford, an army officer commanding at Fort Smith, to engage in the manufacture of salt for the use of the troops at the before named garrison, and they were assured by the officer named, (in the event of so doing,) that the protection of the United States government should be afforded them.

That upon the plighted faith of the United States army officers, the Messrs. Bean erected, at heavy cost to themselves, residences and other buildings requisite to secure their salt works from the rigors of the seasons, and expended large sums of money in procuring the various implements and fixtures necessary to complete the establishment aforesaid, and successfully carry on the process of salt making, relying with certainty upon a greatly augmented demand for salt, whenever the country contiguous thereto should become settled and occupied with white people.

That this event did not transpire until the year 1826, from which time the Messrs. Bean were begining to realize some reward for their labor, hardships, and expenses encountered by them during the eight years wherein they had been engaged in the business before mentioned. But by a treaty made between the government and the Cherokees, May 6, 1828, they were despoiled of their property, in consequence of the whole country (embracing their salt manufactory and the entire land which they had located upon and reduced to agricultural cultivation) having been stricken off of the Territory of Arkansas and given to the aforesaid Indians.

The facts herein detailed are fully sustained by the written testimony of General Arbuckle and Colonels Bonneville and Miles of the United States army, who were stationed during that period in that vicinity, and the properly authenticated affidavits of thirteen other resident citizens, all of whom are gentlemen of high respectability and undoubted veracity. Five of these witnesses estimate the loss suffered by Mark and R. H. Bean, on account of the aforesaid act of the federal government, at \$15,000, while a sixth computes it at \$20,000. The first estimate, that of \$15,000, is affirmed by the statements of Colonels Miles and Bonneville. The former says, "I deem this estimate just, and much more moderate than what I should have awarded, had I been called on to give a verdict in the case." The latter remarks that the memorialists "could not have lost by the abandonment of their buildings, out-houses, furnaces, wells, warehouses, and a five-mile road to the falls, and a warehouse there, less than \$15,000; nor do I believe they would have sold out, at any time, their full claim to that place for double that amount." These are officers well known, and whose truth, integrity, and high character must carry conviction.

By reference to the Cherokee treaty alluded to, it will be found that its third article is in these words:

"The United States agree to have the lines of the above cession run without delay; and to remove, immediately after the running of the eastern line from the Arkansas river to the southwest corner of Missouri, all white persons from the west to the east of said line, and also all others, should there be any there, who may be unacceptable to the Cherokees, so that no obstacles arising out of the presence of a white population, or a population of any other sort, shall exist to annoy the Cherokees; and also to keep all such from the west of said line in future."

From the foregoing article of said treaty it will be seen, that the government absolutely confiscated all the real property of what kind soever belonging to the white population within that portion of the Territory of Arkansas which had, previous thereto, been opened to the lawful use, occupation, and settlement of our people, and in effect, if not in words, bestowed the same upon these Indians as a gift or part consideration for their lands in Georgia. The injustice done to the white settler was greatly increased by the fact that he had been invited to this spot by the officers and authorized agents of the United States. It is believed, this government has fully admitted that it was bound to indemnify the sufferers in this case by the act of 24th of May, 1828, (see pages 306 and 307 of Little & Brown's edition of the laws, vol. 4,) entitled, "An act to aid the State of Ohio in extending the Miami canal from Dayton to Lake Erie, and to grant a quantity of land to said State to aid in the construction of the canals authorized by law, and for making donations of land to certain persons in Arkansas Territory;" wherein this law provides, that two quarter sections of land should be given "to each head of a family, widow, or single man over the age of twenty-one years, actually settled on that part of the Territory of Arkansas which, by the first article of the treaty between the United States and the Cherokee Indians west of the Mississippi, ratified the 23d day of May, 1828, has ceased to be a part of said Territory, who shall remove from such set-

tlement according to the provisions of that treaty;" and which donation was declared to be made from the United States "as an indemnity for the improvements and losses of such settlers under the aforesaid treaty." Such remuneration in land, however, fully in the opinion of the committee, commits the government to the principle of indemnifying all persons similarly situated. It is true that it applied only to settlers on small subdivisions of land, and whose improvements were not at all of a costly character; yet, as before stated, it fully admits and supports the claim of these petitioners to just and fair compensation for the loss sustained by them, and resulting from the acts of the treaty making power of this government.

Another circumstance which the committee thinks should have great weight in sustaining the claim of Messrs. Mark and Richard Bean for indemnification is: that their houses, furnaces, fixtures and implements, used not only for manufacturing, but farming purposes, which had subjected them to a heavy outlay of money and toil, they were forced to abandon upon the unfortunate locality whence they were compulsorily ejected under the treaty that forced the whites to surrender their homes to the Cherokee Indians, who, to the present day, have been in full possession and enjoyment of the estate and property of said petitioners, and are still actually engaged in the manufacture of salt on said premises.

In addition to the facts hereinbefore presented, and which your committee think are amply sufficient to sustain the claim of Mark and Richard H. Bean to the smallest sum proven to have been lost by them, they append hereto and make part of this report all of the papers deemed necessary by the committee in explanation and proof of the petitioners claim for relief. They are: the petition itself, marked A; a statement in "further support of the petition," by Mark and Richard H. Bean, and the affidavits of William Quesenbury and William McGarrah, marked B; General Arbuckle's statement, marked C; Lieutenant Colonel Bonneville's statement, marked D; and Brevet Lieutenant Colonel Miles' statement, marked E; and the committee recommend the passage of the accompanying bill.

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A.

*To the honorable the Senate and House of Representatives of the United States in Congress assembled:*

The petition of the undersigned, Mark Bean and Richard H. Bean, respectfully sheweth: That in the year 1817 they discovered a salt-lick on the Illinois river, near its junction with the Arkansas, in what was then the Missouri Territory; that in 1819, the officer in command at Fort Smith, Major Bradford, in view of obtaining on reasonable terms a supply of salt for the use of the troops at that post, urged your petitioners to engage in the manufacture of salt at said lick, and promised that in case they would do so their rights should be fully protected and secured by the government; that, induced by the solicitations and re-

lying on the promises of Major Bradford, they proceeded to make the necessary improvements and established suitable works; that, in consequence of the exclusion of white settlers from the tract known as the "Lovely Purchase," upon which the salt works of your petitioners were located, the proceeds of their salt for many years afforded them a very inadequate remuneration for their trouble and expense, and they did not realize anything like a profit on their investment until after the country was thrown open to the whites by the government in 1826; that, just as they were beginning to reap the hard-earned reward of eight years of labor and expense, they were deprived of their property by the treaty made in May, 1828, with the Cherokee Indians, by which the Lovely Purchase was ceded to that tribe, and in which no reservation was made of their works; that, although ample provision was made by Congress to indemnify the other settlers similarly dispossessed of their improvements, your petitioners have never received any compensation or indemnity whatever for the heavy losses they sustained in consequence of the treaty of 1828, with the exception of a donation of 320 acres of land granted to one of them, Mark Bean, under the act passed to meet such cases, in consideration of, and as an equivalent for an improvement made by him at some distance from the salt works. Your petitioners further represent, that, so far from there being any good reason for such discrimination in favor of others and against themselves, their claims, in point of fact, rested on higher grounds than those of any other persons dispossessed by the treaty of 1828:

1st. Because, while others were in the country on permission—their presence being barely tolerated by the government—your petitioners went there at the request of the government, made through its properly-authorized representative; and, at times when all other white settlers were rigidly excluded, your petitioners were encouraged to remain.

2d. Because the government actually derived benefit from their labors and improvements in the reduced price of salt for the use of the troops and of emigrant Indians—the saving thereby effected during the eight years they were engaged in its manufacture amounting, as your petitioners are prepared to show, to more than \$5,000.

3d. Because their rights had been acquired under circumstances of peculiar hardship, privation, and danger—their works being situated in the wilderness, at a point which, in 1819, and long afterwards, was 50 miles beyond the extreme frontier outpost in the southwest, on the battle-ground of two powerful tribes of hostile savages, where supplies of all kinds could only be procured with great trouble and at an enormous expense, and where they were constantly exposed to the inroads of Indians, and to consequent loss of life and property.

Your petitioners, satisfied that the government never in any case intends to deprive individuals of their just rights without compensation, much less when those rights are acquired, as in this instance, under its express sanction, confidently ask your honorable body to indemnify them for the loss of their works, and, in so doing, to consider—

1st. The vast and extraordinary expense incurred in putting and in keeping them in operation; and,

2d. The actual value of the works at the time of dispossession.

In regard to the cost of the works, your petitioners would briefly sub-

mit, that in the first instance it was necessary to transport on pack-horses for seventy-five miles, through a country infested with hostile Indians, a year's subsistence, and other necessary supplies, for themselves, their workmen, and their teams; that in order to obtain salt water they were compelled to bore through solid rock more than twenty feet; that their kettles were brought, part of them, overland, through the Indian country, upwards of one hundred miles, and part of them, at vast expense, by keel-boats from Nashville, more than thirteen hundred miles; that the prices of labor and provisions, at all times high in newly-settled countries, were in this case increased by the proximity of different Indian tribes at war with each other, and occasionally with the whites; and, lastly, that throughout the whole period of their stay at the salt works they were subjected to constant and considerable losses from Indian depredations.

As to the value of their works, there were, up to the time of dispossession, no other salt works in the country. Salt could not be obtained elsewhere, except by transporting it in keel-boats from the Kanawha river. The quantity made at the time referred to was at least thirty bushels per day, worth at the then lowest price \$1 per bushel. The cost of manufacturing was about 25 cents per bushel.

With these statements, and with the accompanying evidence, your petitioners submit their case, relying on the equity of Congress for such relief as shall to your honorable body seem just and proper.

MARK & R. H. BEAN.

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B.

We, the undersigned, for the further support of our memorial, now in the hands of Congress, make the following statement:

1st. That, after mature consideration and strict investigation of our losses by the treaty between the United States and the Cherokees, (which losses are fully set forth in our memorial,) we state the amount to be not less than fifteen thousand dollars.

2d. That, in specifying the said sum of fifteen thousand dollars, we have not only made an estimate of our actual damages, in general terms, but we have minutely and particularly considered each article, or cause of damage and loss.

3d. That our present statement can be corroborated and sustained by persons of the highest standing and integrity in our State, some few of whose statements will be forwarded, accompanying this.

In conclusion, we leave our claim to the equity of Congress, believing that the amount stated above will be granted.

MARK BEAN,  
R. H. BEAN.

STATE OF ARKANSAS, }  
 County of Washington, } ss:

This day appeared before me Mark and Richard H. Bean, and testified to the truth of the foregoing statement.

M. W. McCLELLAND, J. P.

FEBRUARY, 1850.

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I, the undersigned, make the following statement of facts concerning the losses sustained by Messrs. Mark and Richard H. Bean in complying with the treaty of 1828 between the United States government and the Cherokee Indians:

I was an eye-witness to the depredations of the Osage Indians, to the heavy outlay of funds necessary to keep the salt works of the said Messrs. Bean in operation, and to the actual abandonment of all their improvements—water, kettles, furnace, and all the utensils and implements used in salt manufacture. I consider, believe, and now state, that the losses the said Mark and Richard H. Bean sustained by the abandonment of said salt-works, in compliance with the United States government, could not have amounted to less than fifteen thousand dollars; and that, were all things connected with their salt works taken into consideration, the amount would be swelled to a much higher sum. I further add—having seen the memorial presented to Congress by said Mark and Richard H. Bean—that the facts therein set forth are, to my knowledge, true; and that, in compensating them for losses referred to in that memorial, the amount could not, in justice, be made at less than the said sum of fifteen thousand dollars.

WILLIAM QUESENBURY.

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STATE OF ARKANSAS, }  
 County of Washington, } ss:

This day, before me, an acting and duly commissioned justice of the peace for said State and county, appeared William Quesenbury, to me well known, and on oath testifies that the foregoing statement is true.

M. W. McCLELLAND, J. P.

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FAYETTEVILLE, ARKANSAS,  
 February 21, 1850.

The undersigned, being called upon by Mark and Richard H. Bean for a statement in relation to their loss occasioned by their necessary abandonment of their *salt-lick*, in what was called the "Lovely Purchase," in compliance with the treaty of 1828, made between the United States and the Cherokees, states: That I was a citizen of said "Lovely Purchase," at the time of said treaty, and a neighbor, and

well acquainted with the said Beans, their business, &c., and can say that, at the time of said treaty, they were successfully engaged in making salt in said "Purchase"—making from thirty-five to forty bushels per day—and that salt at the time was worth one dollar per bushel in their salt-house; and that, to comply with the requisitions of said treaty, they were compelled and did abandon and remove from the said ceded territory, leaving all their salt-manufacturing utensils, together with the extensive improvements made by them in establishing and for the carrying on of said works. From a knowledge of the facts, and to my best opinion and belief, their damage by said abandonment, in compliance with said treaty, was not less than twelve or fifteen thousand dollars.

WILLIAM MCGARRAH.

Sworn to and subscribed before me, the day and date above written.

J. W. CHEW, J. P.

STATE OF ARKANSAS, }  
County of Washington, } ss:

I hereby certify that M. W. McClellan and John W. Chew, esquires, before whom the above and foregoing proof of Mark and R. H. Bean, William Quesenbury, and William McGarrah, was taken, were, at the time of taking said proof, justices of the peace in and for the county and State aforesaid, duly commissioned and sworn, and that their signatures, as appear thereto, are genuine.

In testimony whereof, I have hereunto set my hand, and affixed the [L. S.] seal of my office, as clerk of the circuit court of said county, this the 21st day of February, 1850.

P. R. SMITH, Clerk.

C.

HEADQUARTERS SEVENTH MILITARY DEPARTMENT,  
Fort Smith, November 3, 1849.

GENTLEMEN: In accordance with your request, I can state that, when I arrived in this country, in the spring of 1822 or 1823, you were making salt on the Illinois, about forty-five miles from this place, on the road that was travelled for some time from Fort Smith to Fort Gibson, after the latter post was established. On my arrival here, I understood from Major Bradford, the commanding officer, that you had been permitted to establish your salt works at that point, as there was then a great scarcity of salt on this frontier; and it is known to me that you were permitted and did continue your operations at that saline until the country was ceded to the Cherokees, when you were compelled to remove therefrom. The country between this and the point designated, and west of it was then occupied by Indians; and during



the time you were carrying on the manufacture of salt I heard that many of your horses, cattle, hogs, &c., were stolen or destroyed, and that these and other depredations were principally committed by the Osages. Whether you have received any remuneration for the losses you sustained, I am not advised.

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

M. ARBUCKLE,

*Brigadier General United States Army.*

Messrs. MARK and RICHARD BEAN,

*Washington County, Arkansas.*

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D.

SACKETT'S HARBOR, January 28, 1850.

DEAR SIR: In consequence of the application of Mark and Richard Bean to forward to you a statement of their losses, &c., in the Indian country, I did so in general terms, stating to you the difficulties and losses they must have sustained, being on the war-ground of two different nations of hostile Indians. Learning that it was not so much losses of that character they met with, as it was the specific losses incident to the treaty ceding the Lovely Purchase to the Indians in 1828, I therefore make the following statement, in addition to the one already forwarded to you: I went to Fort Smith in March, 1822; the Beans, at that time, were located about fifty miles west of Fort Smith, on the Illinois river, about five miles from the present Webber's Falls of the Arkansas; here they had an extensive establishment, called Beau's Salt-licks, in full operation, supplying with salt the whole of that country. There were no other salt works within several hundred miles of it; and I believe the only salt coming in competition with them was that from the Kanawha salt-works. I looked upon their establishment as a good fortune for themselves; and having now passed all the difficulties with the Indians, with their buildings, and the establishment of their works, they had only to wait for the filling up of the country by emigration to be the owners of the finest property in that country. That part of the country was filling up rapidly when it was transferred to the Indians—when the Beans and all the settlers of the Lovely Purchase were turned out, to make room for the Cherokee Indians, in 1828. I suppose they could not have lost (by the abandonment of their buildings, outhouses, furnaces, wells, warehouses, and a five-mile road to the falls, and a warehouse there) less than fifteen thousand dollars; nor do I believe they would have sold out, at any time, their full claim to that place for double the amount. I would also state, that I was very well acquainted with these gentlemen; that I have visited their establishment frequently; and they were looked upon as the first of the land, and their removal from that country was almost destruction to them.

Sir, I am, very respectfully, yours,

B. L. E. BONNEVILLE,

*Lieutenant Colonel 4th Infantry.*

HON. SOLON BORLAND,

*United States Senate, Washington.*

E.

FORT WASHITA, *March 1, 1850.*

MY DEAR SIR: I received, a few days since, a communication from Messrs. Mark and Richard Bean, of Washington county, Arkansas, appealing to me, as one among the very few living, having a knowledge of their improvements and salt-works in the old Lovely Purchase, (now Cherokee nation,) as to their estimated value—putting, themselves, a value of fifteen thousand dollars for improvements, location, loss of kettles, &c., &c. I deem this estimate just, and much more moderate than what I should have awarded, had I been called on to give a verdict in the case. As far as I can recollect, after the lapse of twenty-five years, Messrs. Bean's improvements consisted of a good double log-house, negro quarters and stables, two drying-houses, and a large salt-house for deposit, with sheds over two rows of kettles, at two springs. The number of kettles I cannot remember, but judge there must have been about sixty at one spring, and from thirty to forty at the other. These kettles were brought into the country before steam navigation was deemed practicable on the Arkansas, and were transported at great expense over six hundred miles in keel-boats.

I am, sir, with very great respect, truly, your obedient servant,

D. S. MILES,

*Brevet Lieutenant Colonel 5th Infantry.*

HON. SOLON BORLAND,

*United States Senate, Washington city, D. C.*