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Recommended Citation

S. Misc. Doc. No. 4, 32nd Cong., 2nd Sess. (1852)

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MEMORIAL
OF
THE STATE OF GEORGIA,

IN BEHALF

Of herself and the State of Alabama, praying indemnity for damages committed upon the citizens of those States by the Creek Indians in 1836-'37.

DECEMBER 20, 1852.—Ordered to be printed.

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

SECTION I. The memorial of the State of Georgia, in behalf of herself and her sister State of Alabama, most respectfully represents to your honorable bodies, that in the year eighteen hundred and thirty-four the government of the United States advertised and offered for sale, at public outcry, that portion of the public domain in the State of Alabama known as the Creek nation. This territory had been ceded to the United States by treaties ratified April the twenty-second, eighteen hundred and twenty-six, and April the twelfth, eighteen hundred and thirty-four, made with the Creek tribe of Indians, the whole of which was offered for sale to the highest bidder, as aforesaid, in eighteen hundred and thirty-four, except the portion covered by Indian reservations. The treaty of eighteen hundred and thirty-four empowered the Creeks to sell their reservations, under the control and direction of the United States, which was mostly effected in the latter part of the year eighteen hundred and thirty-four, under the supervision of the agents of the government. It was in this way that these lands in the Creek nation were occupied by the whites, and thus, for the first time in the history of the country, the white man, by the policy of the government, was settled among the Indians.

SEC. II. The citizens, thus domesticated with the red man, exercised a forbearance in their intercourse with the Indian truly commendable, and had no direct instrumentality in promoting the hostilities that broke out early in May, eighteen hundred and thirty-six, by which outbreak several of the most valuable citizens of Georgia and Alabama lost their lives, and many their property. This sudden assault, by a lawless band of warriors, upon the lives and property of the whites, was beyond the control of the settler. The government alone could have prevented it by taking the necessary steps, at an earlier period, to move the tribe to its destined home beyond the Mississippi.

SEC. III. The Creek Indians, by the policy of the government anterior to the outbreak in May, eighteen hundred and thirty-six, had become landless. They had planted no crops, game was destroyed, and they had no means, whatever, of subsistence. In this desperate condition, they were forced to kill the cattle and other stock of the whites for support, which, with a few exceptions, was submitted to by the settler without redress or remuneration, as their condition bordered upon starvation. Mr. A. Balch, a government commissioner appointed by the President to investigate the causes that led to the Indian hostilities in eighteen hundred and thirty-six, reported, that in the latter part of the year eighteen hundred and thirty-four, the Creeks suffered for want of food; that in eighteen hundred and thirty-five they were reduced to a state little short of starvation; but he said it was contrary to the policy of the government to supply them with food, as this act of benevolence would have retarded emigration. (See Executive Doc. second session Twenty-fourth Congress, No. 154, page 157.)

SEC. IV. This mistaken policy of the government, to starve them into emigration, if such was the design, was the primary cause that led to hostilities; the loss of life, and the destruction of the property of her citizens, for which your memorialist now asks indemnity, notwithstanding the frequent communications of the executives of Georgia and Alabama, besides many highly respectable citizens residing in the Creek nation, to the Secretary of War, advising the government of the unsettled and discontented condition of the Creek tribe of Indians, and a strong probability of hostilities. Their request for military aid to keep the Indians in subjection was not granted. (See Executive Document, seventh volume, second session Twenty-fourth Congress, No. 276.)

SEC. V. At the commencement of the outbreak, those citizens of Alabama and Georgia residing in the nation and in the vicinity of the nation, who escaped the assaults of the hostile Creeks, were compelled to flee from their homes in haste, to place their families in security out of the nation and its vicinity, leaving their property behind, which was either destroyed by the enemy or used by the United States troops and friendly Indians. The supplies thus furnished from the cribs, meat-houses, barns, cattle, and other stock of the citizens of Alabama and Georgia, residing in the Creek nation and vicinity, were absolutely necessary to support the troops of the government and friendly Indians that rallied to the rescue, until the government could furnish the needful provisions for the army; besides, hundreds of cattle and other stock were shot down by the friendly Indians under the command of General Jesup to prevent their falling into the hands of the hostile Indians. See letter of Hon. D. H. Lewis, the petition of Jeremiah Bennett, and others; letter and affidavit of Colonel John B. Hogan, United States emigrating agent; letters of General Thomas J. Woodward, J. B. Collins, Colonel Charles McLamore, and other gentlemen of equal standing and respectability. (Executive Document, second session Twenty-fifth Congress, No. 127.)

SEC. VI. Your memorialist would further represent to your honorable bodies, that President Jackson, in his annual message, December, eighteen hundred and thirty-six, brought the subject of losses of the citizens of Georgia, Alabama, and Florida to the consideration of Con-

gress, and recommended an appropriation for their indemnity. In pursuance of this executive recommendation, Congress authorized the President to appoint a board of commissioners to investigate and report the amount of the loss sustained by Indian depredations in said States. L. T. Pease, J. M. Smith, and Mr. Gibson constituted said commission; and after the necessary investigation in Georgia and Alabama, they rendered their report to the Hon. J. R. Poinsett, Secretary of War, twenty-eighth of November, eighteen hundred and thirty-seven. The amount claimed and proven by the sufferers in said States, they report to be one million two hundred and fifty-seven thousand four hundred and seven dollars and thirty cents, out of which amount they allowed three hundred and fifty-five thousand seven hundred and ninety-seven dollars and ninety-two cents; this last sum was for real and actual loss. Said commissioner's refused to allow anything for consequential and resulting damage, though it seems to your memorialist that to do so would be but an act of even-handed justice; but the government has not paid; to this date, either the actual loss for provisions, &c., or the resulting damage.

SEC. VII. Your memorialist has been informed, and believes, that Congress, by special enactment heretofore, has remunerated Generals Clinch and Hernandez, and other citizens of Florida and Georgia, not only for real, but resulting damage likewise. There can be no difference in the losses sustained by these gentlemen and the claimants of Georgia and Alabama, now knocking at the doors of Congress for justice. It was not the fault of the settler who resided on the lands, purchased from the United States and the Creek Indians in good faith, that hostilities occurred; no act on their part could have guarded against it. If there was error, it was on the part of the government, in failing to make in time the necessary arrangements to emigrate the Creeks, always a restless and discontented tribe, at an early period; to have supplied them with food while preparing for emigration; and to have kept in the nation a sufficient military force to have awed them into subjection. If this had been done on the part of the government, your memorialist, in behalf of her citizens and those of Alabama, would not feel constrained to ask Congress to audit and settle the account of her citizens, and those of Alabama, without further delay.

SEC. VIII. Your memorialist would further most respectfully represent to your honorable bodies, that the legislature of Alabama, at its regular session in eighteen hundred and thirty-six and eighteen hundred and thirty-seven, by its memorial, asked the government to grant indemnity for the loss sustained by her citizens during the Indian hostilities of eighteen hundred and thirty-six and eighteen hundred and thirty-seven. This memorial was referred to the Committee of Claims of the House of Representatives, and a report was rendered thereon, fifteenth of May, eighteen hundred and thirty-eight. In July thereafter, said committee made a second report, more *in extenso*, which assumed the grounds that that portion of the demand of the citizens of Georgia and Alabama for destruction of their property by the Creek aggressions, should not be paid by the United States, as it was not the policy of the government to pay for property lost during a state of war, unless the demands come within the rules established by the law of the United

States, approved ninth of April, eighteen hundred and sixteen. The other branch of the claim, asking pay for property used to supply the government troops and friendly Indians with provisions and forage, &c., the committee admitted, and reported a bill for the payment of the same, and recommended its passage; but as this occurred near the close of the session of eighteen hundred and thirty-eight, the bill did not become a law for the want of time.

SEC. IX. The grounds assumed by the Committee of Claims, in rejecting the first branch of the account of the citizens of Georgia and Alabama, who sustained loss as aforesaid, however correct when properly applied, cannot exercise the slightest influence against the payment of the demand of the claimants in this application; the facts will not sustain the committee in its conclusions in the report referred to. The main objection to indemnity rests on the plea that, the depredations being committed during a state of actual war, it was "not in accordance with the policy of the government to indemnify the sufferers." The report of the commissioners, as aforesaid, upon which it is presumed the committee came to the conclusion that the losses sustained occurred during a state of actual war, is incorrect, as will appear from the following facts:

SEC. X. The Indian outbreak occurred the second day of May, eighteen hundred and thirty-six, and resulted in the death of — Flournoy, and others. This was the commencement of hostilities in eighteen hundred and thirty-six. The government of the United States took the census of the Creek nation the thirteenth day of May, eighteen hundred and thirty-three, which exhibits the fact that the whole number of souls of the Creek tribe, exclusive of negroes, was twenty-one thousand seven hundred and sixty-two; of this aggregate the lower Creeks numbered only eight thousand five hundred and twenty-two, exclusive of negroes; and it was this portion of the nation that resorted to hostilities. The counties of Benton, Talladega, Randolph, Tallapoosa, and Chambers, were the homes of the upper Creeks, who did not embark in the outbreak. (See statement of Elbert Harris, Commissioner of Indian Affairs, Ex. Doc., 7th vol., 1st sess. 24th Cong., No. 276.)

SEC. XI. The lapse of three years, from the taking of the census to the commencement of hostilities, could not add any large number to the enumeration. There were less than three thousand warriors in the whole nation, and the upper Creeks, the most populous part, did not engage in the outbreak. Colonel John B. Hogan, emigrating agent, as aforesaid, by affidavit declares that, at the request of Governor Clay, of Alabama, and General Jesup, of the United States army, he raised from thirteen hundred to fifteen hundred friendly warriors under the Chief Opoth-c-yo-hola; that five or six hundred more were raised under Jim-Boy, and placed under the command of General Thomas J. Woodward. These forces constituted the bulk of the warriors of the Creek nation.

SEC. XII. The Creek and Cherokee delegations to Washington city, in their joint memorial to the Congress of the United States, in eighteen hundred and fifty, in protesting against the bill which had passed the Senate, making the annuities of the Creek nation bound for the destruction of the property of the claimants of Alabama, Georgia, and

Florida, in the outbreak of eighteen hundred and thirty-six, say, that "notwithstanding these outrages and wrongs, *four-fifths of the nation* (Creek nation) *remained friendly, and united heartily with the forces of the United States in suppressing hostilities and continuance with them, until the whole of those who were hostile were removed.*" But the muster-rolls on file in the War Department will give the exact number of warriors enrolled, to which your honorable bodies have free access; and the undersigned, in behalf of the citizens of Georgia and Alabama, who sustained loss, invite the most rigid scrutiny. Your memorialist concurs most fully with said delegation, that not more than one-fifth of the warriors of the Creek nation were engaged in the hostilities of eighteen hundred and thirty-six, and denies that the contrary can be made to appear from any reliable source. Your honorable bodies are most respectfully asked to consider these facts—they are conclusive that a majority of the Creek nation were not hostile in eighteen hundred and thirty-six and eighteen hundred and thirty-seven, and that the damage and loss sustained by the claimants in Georgia and Alabama, in the destruction of their property, did not result from a state of actual war, as averred by the committee, but from the aggressions of a remnant of the warriors of the nation, who acted without authority from the council of the nation, the only competent tribunal to declare war. If these are the facts, then it is obvious that the Committee of Claims, in their report, acted from incorrect data in rejecting the claims of the sufferers in Georgia and Alabama. The law of eighteen hundred and sixteen has no just application to this demand: the property of the citizen was not destroyed by a foreign enemy, and during a state of actual war, but by a sudden outbreak, beyond the control of the citizens or the council of the Creek nation. The government alone had the power to guard against the assaults of this small, but lawless band of desperadoes; and, having failed to do so, is alone responsible for the consequences. A small military force would have been sufficient to have kept the nation quiet; and this force was invoked by the executive officers of Alabama and Georgia in vain. For years before this outbreak, the citizens of Alabama and Georgia occupied the country as landholders, having purchased their lands of the government and the Indians: they were not intruders. The claimants then rely with the greatest confidence for redress upon the intercourse act, approved June thirtieth, eighteen hundred and thirty-four. (See United States Laws, vol. 23, p. 114.)

SEC. XIII. At an early period after hostilities ceased, your memorialist brought to the consideration of Congress the loss sustained by her citizens. There has been no neglect on the part of the claimants: their demand has been prosecuted against the government with due diligence, but in vain. The claimants had no authority or power to demand and receive restitution, either from the Creek nation or the troops in the service of the United States. There was no legal tribunal in which the claimants could have coerced the payment of their demands, either against the one or the other; though they are gravely told, by the report of the committee, that they must look to the troops in the service of the United States, and the Indians, for pay. But the committee did not indicate the *modus operandi* by which this could be effected. Whether this was designed to add insult to injury is left for

the consideration of your honorable bodies, and further comment is unnecessary.

SEC. XIV. The government, in the removal of the Creek Indians to the country assigned them beyond the Mississippi, *with the full knowledge of all the facts and losses sustained by the claimants, demanded no indemnity in their behalf*; and, having failed to do so by the intercourse law of eighteen hundred and thirty-four, must be responsible to the sufferers, or there would be a great wrong without a remedy. A fair construction of the act referred to gives the claimant a legitimate and equitable demand against the government, not only for actual, but likewise for constructive or resulting damage.

SEC. XV. The amount of the claim, in the aggregate; due the claimants in Georgia and Alabama, cannot affect its legality and equity in the slightest degree; and if the sum total involved should be the means to elicit the most rigid investigation on the part of Congress, your memorialist will have the most abiding confidence in its payment. Investigation must result in the full liquidation of the demand, unless Congress should depart from all the rules of law and equity that have heretofore governed its actions in the final adjustment of claims against the government. If it were even true that the loss of the claimants occurred during a state of war with the Creek tribe of Indians, yet the rule resulting from the act of eighteen hundred and sixteen could not, in justice, be applied to the settlement of the present demand; there is vast difference between a war with Great Britain and a war with the Creek tribe of Indians. The law of eighteen hundred and sixteen, under which the Committee of Claims rejected a part of the claim, was enacted a short time after the close of the war with England, and was designed by Congress to govern the settlement of those demands that originated during that war: the one was a powerful foreign enemy, and governing their hostilities by the usages of civilized warfare; the other a tributary people, wholly under the control and power of the United States, and governed by rules of warfare peculiar to the savage. This tribe, from the first treaty with the United States, in August, seventeen hundred and ninety, down to the last treaty, in eighteen hundred and thirty-three, ever acknowledged its dependence upon the government. The United States, by a small military force, could and ought to have kept the tribe at peace; besides, the Creek nation was too weak at the time of the outbreak to give rise to the application of the principle "that the government cannot be expected to protect its citizens from losses resulting from an actual state of war." This resulted from the law of eighteen hundred and sixteen, and, so far as a civilized enemy is concerned, is reasonable: for it is contrary to the usages of civilized warfare to destroy private property, unless occupied by the enemy: With the savage foe it is otherwise: it is their habit to destroy everything that is destructible upon which they can lay their hands, as well the property in possession of the government troops as the private cabin of the settler; indeed, the private dwelling of the citizen, unprotected by a sufficient force, is the first doomed to the torch and destruction. If this be true, then the reason of the rule can have no just application to the claim of the citizens of Alabama and Georgia who sustained loss and damage by the aggress-

sions of the Creek Indians in eighteen hundred and thirty-six. In civilized warfare the rule is equitable; in savage warfare it is absurd.

SEC. XVI. Your memorialist, the State of Georgia, further represents to your honorable bodies, that it is now about fourteen years since the legislature of Alabama, in eighteen hundred and thirty-six and eighteen hundred and thirty-seven, brought the subject-matter of this claim to the consideration of Congress; and nothing but an imperative sense of duty to the claimants of Georgia and Alabama could now induce the State again to ask the government to render justice to her citizens. There is no other tribunal on earth that has jurisdiction of the matter. The courts of the land are closed to the payment of the just demands of the citizens against the government, and Congress has refused, time after time, to create any legal tribunal competent to adjudicate such demands and render impartial justice.

SEC. XVII. The accounts of the respective claimants of Georgia and Alabama are on file, and have been on file since eighteen hundred and thirty-seven, in the office of Commissioner of Indian Affairs at Washington, and open to the inspection of your honorable bodies; and your memorialist most respectfully asks your honorable bodies to act upon this long-deferred claim without further delay.

Assented to January 22, 1852.