28th Congress, 2d Session. Rep. No. 120. Ho. of Reps.

FLEMING WOOD.

February 7, 1845.
Read, and laid upon the table.

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

REPORT:

The Committee on Indian Affairs, to whom was referred the memorial of Fleming Wood, submitted the following report:

The memorialist alleges that in July, 1837, he formed a partnership with one Egbert Harris in a mercantile house at Fort Smith, Arkansas, under the name of Wood & Harris; that said firm obtained from the agent of the Cherokee nation of Indians a license to trade in said nation, according to law, having first obtained the unanimous consent of the council of said nation; that they erected a suitable building for the purpose of said trade, on the Arkansas river, opposite Fort Smith, and supplied it with goods, and by their agents commenced trade under the license aforesaid; but that before the partners themselves had reached the place, their goods were seized by the officers of the government, and their "house closed, at an immense sacrifice of feeling, credit, and money." He further alleges that said Wood & Harris were then "sued for libel" in the United States district court at Little Rock, and were put to great expense and trouble in travelling from Natchez to Little Rock, and in feeing attorneys, &c., for defending themselves in said suit, until the final determination thereof, in October, 1839, by a verdict in favor of the defendants; that the petitioner became, by a dissolution of the firm of Wood & Harris before the determination of said suit as aforesaid, the sole party in interest in said suit, and the sole owner of the goods and other effects of said partnership. He also alleges that when the goods, seized as aforesaid, were finally restored to him, they were damaged and rendered nearly worthless by moth, mildew, and rust. He therefore claims that for the loss, detention, and deterioration of said goods, the value of the building erected for the trade aforesaid, the expense incurred in defending said suit, and the immense sacrifice of credit which he sustained by the proceedings aforesaid, (all of which was occasioned by the officers of the United States,) the government should pay him the sum of *ten thousand dollars.*

From the papers accompanying the memorial, the following facts are very clearly proved:

Messrs. Wood & Harris (who appear to have been residents at Natchez) had a trading-house at Fort Smith, within the territory of the Cherokee nation. In July, 1837, they obtained from M. Stokes, esq., the Cherokee agent, a license to establish another trading-house on the Arkansas river, within sight of the fort, where their other store was situated. This license

Blair & Rives, print.

was granted by the proper authority, and agreeably to the provisions of the 2d section of the act "to regulate trade and intercourse with the Indian tribes," approved June 30, 1834. The same section of the act authorizes the superintendent 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. Superintendents have, also, by the 3d section of the act of June 30, 1834, "to provide for the organization of the department of Indian affairs," a general control over all matters pertaining to the welfare of the Indians within their district, according to such regulations as shall be established by the President of the United States; and one of these regulations requires the superintendents to exercise a control over the subject of the *trade and intercourse* between the Indians and citizens of the United States; and without the license required by the act first above cited, no trade with the Indians by citizens of the United States is allowed. At the time of granting the license by the *agent* of the Cherokees to Wood & Harris, William Armstrong, esq., was the acting *superintendent* of the Indians for the western territory, and the place designated in the license for carrying on the trade was within his jurisdiction. On the 9th of September, 1837, Mr. Armstrong addressed a letter to the Cherokee agent, Stokes, inquiring whether he had granted a license to these parties, and saying "If you have, I regret to say that I will 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 law. In granting licenses to traders, they should be located only at certain suitable and convenient places. The location of a trading-house at *that* point, instead of being convenient to the Indians, would be the means of drawing them from their homes, and bringing them into contact with the authorities and citizens of Arkansas; which should be avoided if possible. I hope you will, upon reflection, agree with me upon the propriety of my course."

On the 26th of the same September, the Cherokee agent, Governor Stokes, replied to the above letter, declining himself to revoke the license to Wood & Harris, and referring the matter back to the superintendent, to whose better means of judging of the circumstances, from being in the neighborhood of the establishment, he defers. He says, in the same letter: "As it is altogether impossible for *me* to select suitable places for trade, I have uniformly left it to the *traders* themselves to *choose* their own stations, and have granted them licenses accordingly."

On the 12th of December, 1837, Mr. Armstrong, the superintendent, notified Wood & Harris that their license was revoked; that he had submitted the case for approval or disapproval to the Commissioner of Indian Affairs at Washington, and required them to suspend all trade with the Indians until the action of the Commissioner on the subject should be communicated to him; stating to them, in the same notice, that it would have been given to them sooner, but for the absence of both of them from Fort Smith. On the same day he submitted the case in writing to the Commissioner of Indian Affairs. On the 13th of January, 1838, Wood & Harris wrote to the Commissioner at Washington a statement explanatory of their views of the case, and in justification of their conduct.

On the 20th of January, 1838, the Commissioner of Indian Affairs informed Armstrong, the superintendent, that he had fully examined the

case, and entirely approved of the revocation of the license of Wood & Harris: and of this Colonel Armstrong informed them on the 28th of February, 1838. In the mean time, the Commissioner, on the 13th of February, had sent to Wood & Harris copies of the letter of the superintendent, referring the case to the department here; and of the letter of the Commissioner to Armstrong, informing him of the approval by the department of his revocation of the license. Notwithstanding these proceedings, Wood & Harris continued their trade with the Indians as before. In this condition of affairs, the superintendent directed Captain John Stuart, of the 7th United States infantry, to seize the goods of Wood & Harris, take possession of their store, and to remove them from the Indian country; and, on the 21st of April, 1838, in pursuance of this order, Captain Stuart sent a command under Lieutenant McKavett, and seized the goods, took a complete inventory of them, and turned them over to the marshal of the State of Arkansas. The goods were valued in said inventory at about *sixteen hundred dollars.*

At the next term of the United States district court in Arkansas, the United States attorney for said district caused the said goods to be libelled as forfeited to the United States, for a violation of the act of June 30, 1834, styled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers." Of these proceedings, due notice was given to Wood & Harris. At the next term of the court, in November, 1838, the action was continued by consent of parties; and leave was given to the attorneys to take out commissions for taking testimony in the case. At the following term (to wit: on the 1st day of April, 1839) Wood & Harris filed their answer to the libel, to which a general replication was put in by consent; and the action was continued, with leave to the parties to take certain depositions, to the next term of said court, in June following. The court ordered a jury to be summoned for the trial of said cause on the 24th of that month; and on the morning of that day, *on motion of Wood & Harris*, supported by affidavit, the cause was ordered to be continued to the next term; and at that term (to wit: on the 4th of November, 1839) a verdict was rendered in said court in favor of said Wood & Harris. At the same time, a decree of restoration was entered for the claimants, and the court ordered it to be certified of record that "*there was probable cause for the seizure of the goods, wares, and merchandise mentioned in the libel in the case, and in the inventory therewith filed.*" The goods were accordingly restored to the claimants, Wood & Harris.

At the 1st session of the 26th Congress, the petitioner applied for relief, and his petition was referred, in the Senate, to the Committee on Claims; on whose report, (see Senate documents, 1st sess. 26th Congress, vol. 5, No. 198,) that body resolved that the prayer of the petitioner *ought not to be granted.*

The papers were brought to this House, and referred, without any additional evidence, to this committee.

From an examination of the law applicable to this case, and of the facts as shown by the memorialist himself, the committee cannot doubt the authority of the superintendent to revoke the license of the traders in this case, the expediency of his exercising that authority, or the fact that he did exercise it. But the jury who tried the cause came to a different result, (upon what grounds or evidence it does not appear, nor is it material,)

and declare, by their finding, that the memorialists were not at the time trading without a license, as alleged in the libel, and that their goods were unlawfully seized and detained by the government. The goods were ordered to be restored, and were restored; and the controversy is, *judicially*, at an end.

But the petitioner now comes to the legislature, and claims to be indemnified for the damage which he has sustained by the detention of his goods while thus under libel, and the injury which he alleges was done them while thus detained; for the costs and expenses of his defence, including his own time, travel, trouble, and his attorney's fees; for the consequential damage which he has suffered by the breaking up of his business; and for injury to his credit and character, by means of the prosecution. He shows no circumstances of peculiar hardship in his case, or anything to distinguish it from the hundreds of cases occurring every year, in which the government unsuccessfully prosecutes an individual, or proceeds against his property, for an alleged violation of its laws. It is not attempted to be proved in this case, nor is it even *alleged*, that the officers of the government acted from malicious or corrupt motives. On the contrary, it appears from the petitioner's own showing that all their conduct was characterized by the greatest clemency and forbearance. The most ample *notice* was given by them; the least possible *force* was used, and only so much as was necessary to overcome the resistance which was opposed to them; and as to the alleged detention of the petitioner's goods by *unreasonable delays* of the proceedings in court, the record produced by the petitioner shows that there were none to which he did not consent at the time, and that *one* of the continuances was on his own motion, and *against* the wishes of the government.

The judge who tried the cause entered upon the record a certificate that there was *probable cause* for the seizure of the goods.

Unless, therefore, the House is willing to adopt and apply, *generally*, the principle of indemnifying *all* persons who have been acquitted by the verdicts of juries in prosecutions instituted by the government against them, not only for the costs and expenses of their defence, but for all damages which they may have sustained, whether direct or consequential, immediate or remote, by reason of the prosecution, (including injuries to the *character* as well as to the *property*,) the committee can see neither the propriety nor the justice of granting the prayer of this petition. They therefore, concurring with the committee of the Senate who examined the case five years ago, recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.