

E. C. BOUDINOT.

JUNE 10, 1878.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HARTRIDGE, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 5177.]

The Committee on the Judiciary, to whom was referred the memorial of E. C. Boudinot, of the Cherokee Nation, submit the following report:

In July, 1866, the Cherokee Nation made a treaty with the United States.

The tenth article of said treaty is in these words:

Every Cherokee and freed person resident in the Cherokee Nation shall have the right to sell any products of his farm, including his or her live-stock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory.

Relying on that guarantee of the treaty, soon after the treaty was made, E. C. Boudinot, a Cherokee Indian, established a factory for the manufacture of tobacco in the Cherokee Nation, and, from the evidence of government officials, built up a business of great value.

In the year 1868 Congress enacted a law regulating the collection of taxes on distilled spirits, snuff, tobacco, and cigars. The one hundred and seventh section of this act reads as follows:

That the internal-revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars shall be held and construed to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same shall be within a collection district or not.

Boudinot, fearing that the subordinate officials of the revenue department in some of the States bordering on the Cherokee Nation might consider this section of the act of July 20, 1868, as authorizing them to interfere with his factory, applied to the Commissioner of Internal Revenue, Mr. Rollins, for his opinion thereon. He was assured by this officer that the act referred to did not affect the rights of Colonel Boudinot.

Upon the succession of Hon. C. Delano to the office of Commissioner of Internal Revenue, Colonel Boudinot took the precaution to refer the same question to him.

Mr. Delano submitted the matter to his legal adviser, Judge C. P. James, and the following correspondence was sent to Boudinot as a final determination of the whole question:

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,
Washington, October 21,

GENTLEMEN: This office does not propose to apply *within* the territories of the Cherokee Nation the revenue laws relating to tobacco and spirits produced there; but

holds that section 107 of the act of the 20th July, 1868, applies to the articles themselves, and will be enforced when those articles are carried into the States or Territories of the United States for sale. The grounds of this determination and the instructions given to the revenue-officers are more fully explained by the accompanying memorandum of opinion by Judge James, to whom the question was originally referred.

Very respectfully,

C. DELANO,
Commissioner.

Messrs. PIKE & JOHNSON,
Counselors at Law.

The memorandum of opinion referred to in the foregoing letter of Commissioner Delano was in these words:

In the matter of taxes on tobacco produced in the territory of the Cherokee Nation.

SIR: I have examined the argument of Col. Elias C. Boudinot, a citizen of the Cherokee Nation, against the collection within its territory of taxes upon tobacco manufactured there, and have the honor to make the following reply:

The question whether section 107 of the act of 20th July, 1869, intended that the revenue laws relating to tobacco and spirits produced in "the Indian country" should be extended into that country and there enforced, was submitted to me by yourself about the 12th day of August last. I had the honor to advise you that, without any reference to existing treaties, it was apparent on the face of the statute itself that Congress did not intend to apply the revenue laws to the Indian country itself, but to the articles produced there, and that the application could be made only to such part of these manufactures as might be carried thence into the States or Territories of the United States. The action of your office was afterwards taken in accordance with this advice, and instructions to that effect were sent, as I was informed, to the revenue-officers of Kansas, Missouri, and Texas.

Very respectfully,

CHARLES P. JAMES,
Counselor at Law.

Hon. COLUMBUS DELANO,
Commissioner of Internal Revenue.

In a few days after Boudinot received the foregoing letters from the Commissioner of Internal Revenue, his factory and all its appurtenances were seized by the United States marshal, and Boudinot himself was arrested. All his property was speedily libeled for confiscation in the United States court for the western district of Arkansas; and in the course of some months the manufactured material, or so much thereof as seemed to be on hand in possession of the United States marshal, was sold at public auction.

Boudinot appealed his case from the United States district court to the United States Supreme court, and the court affirmed the judgment of the lower court.

In delivering his opinion, Judge Caldwell, United States judge for the western district of Arkansas, remarked that the testimony showed Colonel Boudinot had acted in good faith; and the Supreme Court, in affirming his opinion, used the following language:

In the case under consideration the act of Congress must prevail as if the treaty were not an element to be considered. *If a wrong has been done, the power of redress is with Congress, not with the judiciary, and that body, upon being applied to, it is to be presumed, will promptly give the proper relief.* * * *

We are glad to know that there is no ground for any imputation upon the integrity or good faith of the claimants who prosecuted this writ of error. In a case not free from doubt and difficulty, they acted under a misapprehension of their legal rights. (See 11 Wallace, page 616.)

Congress has directed the dismissal of the civil and criminal proceedings against Colonel Boudinot, and he now comes to Congress praying for that redress which the Supreme Court presumed would be promptly given.

It is worthy of note that the opinion of the Supreme Court against Boudinot was not unanimous, but that several of the judges dissented, Justice Field delivering the opinion of the minority.

Your committee is of opinion that Colonel Boudinot has been harshly dealt with, and that he should have an opportunity of presenting and proving his claim for redress before the Court of Claims; and a bill is herewith reported for that purpose.

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