

HEIRS OF JOHN W. WEST.

MAY 29, 1888.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. ALLEN, of Michigan, from the Committee on Indian Affairs, submitted the following

R E P O R T :

[To accompany bill H. R. 7365.]

The Committee on Indian Affairs, to whom was referred House bill 7365, have duly considered the same and submit the following report:

The committee find from the papers submitted by the Secretary of the Interior that the claim of the heirs of John W. West, deceased, for their interest in the West saline property, taken by the Cherokee national council, Indian Territory, is provided for by the seventh article of the treaty with the Cherokee Nation of August 6, 1846, which is in these words:

The value of all salines, which were the private property of individuals of the Western Cherokees, and of which they were dispossessed, provided there be any such, shall be ascertained by the United States agent and a commissioner to be appointed by the Cherokee authorities; and should they be unable to agree they shall select an umpire, whose decision shall be final, and the several amounts found due shall be paid by the Cherokee Nation or the salines returned to their respective owners (9 Stat., p. 874).

The committee find that the claim of the heirs of John W. West, deceased, was recommended by the Secretary of the Interior after his approval of the report of the commission appointed to ascertain the value of the saline property thus taken to be presented to Congress for its appropriate action.

The committee find from the testimony that John W. West acquired his interest in the saline property by purchase from his brother, Bluford West. That there was a contract partnership between Bluford West, John W. West, and David Vann for the purpose of owning and operating the West saline, each partner to have one-third interest therein. One of the partners, David Vann, subsequently refused to abide by the contract and withdrew from the concern. John W. West retained his interest and continued with Bluford West in developing the saline, and defrayed one-third of the expenses required to work it.

The West saline property was taken possession of by the Cherokee national authorities October 30, 1843, since which date the claimants and their testator have been unjustly deprived of the use of it.

The committee find, from the report of the Secretary of the Interior, that early in 1845 a board of United States military officers, consisting of Captain Woods and Lieutenant Kirkham, was appointed to examine and report as to the value of the West saline, including the adjoining

homestead farm. After careful personal inspection they fixed the value of the homestead farm at \$4,125, and the saline property at \$15,000; total, \$19,125.

It appears that the interest of Bluford West in the saline property was settled by the Cherokee authorities in 1873 by the payment of \$12,000, which included the homestead farm, and is believed to be a compromise. The provision of the treaty not having been complied with, owing to the neglect or refusal of the Cherokee authorities to appoint a commissioner to act with the United States agent in fixing the value of the saline and the homestead, the Secretary of the Interior held that the settlement was illegal, and in his letter of November 27, 1882, to the Commissioner of Indian Affairs, ordered that official to instruct the United States Indian agent at the Union Agency to advise the Cherokee Nation that he was ready to proceed under the provision of the treaty to value the West saline property and adjoining homestead farm, and to request the nation to appoint a commission to act with him. In accordance therewith Mr. D. W. C. Duncan was chosen by the Cherokee Nation to act with Hon. John Q. Tufts, United States Indian agent at the Union Agency, Muscogee, Ind. T.

This commission took much testimony and gathered considerable documentary proof. They fixed the value of the saline property, at the time it was taken by the Cherokee national authorities (1843), at \$15,000 and the adjoining homestead farm at \$4,125. They expressed their judgment that the heirs of John W. West, deceased, were justly entitled to one-third interest in the saline property, and that the appropriation of \$12,000 by the Cherokee authorities was in full for the interest in the saline property owned by Bluford West and for his adjoining homestead farm, and regarded it as a compromise by the administration of Bluford West and said authorities of all claims against the Cherokee Nation.

It appears that in November, 1883, Allen Gilbert, the representative and agent of the heirs of John W. West, presented their claim to the Cherokee national council, then in session, for allowance and payment but the council adopted a report, made by a committee of that body, adverse to its payment, and still declines to pay it, or any part of it.

This claim was acted upon by the Commissioner of Indian Affairs and on the 30th of July, 1883, submitted to the Secretary of the Interior, who, in his decision of August 29, 1883 (re-affirmed September 16, 1884) approved that part of the report of the commission which declared that—

John W. West, deceased, in his life-time and at his death, was entitled to one-third interest (\$5,000) in the Bluford West saline, and that by his death his heirs or legal representatives have rightfully succeeded to the same with such moderate interest and good conscience will dictate.

The Secretary of the Interior in his letter of September 16, 1884, to the Commissioner of Indian Affairs, says:

The treaty provided that if the United States agent and Cherokee commission fail to agree they shall select an umpire whose decision shall be final, and the several amounts found due shall be paid by the Cherokee Nation, or the salines returned to their respective owners.

The Cherokee Nation has not only failed but refuses to comply with the terms of the treaty. There are no funds to the credit of the Cherokee Nation out of which this Department can order payment of the amount claimed by the heirs of John W. West, deceased, and it is therefore not considered within the power of this Department to enforce payment of the claim without special legislation of Congress therefor. The matter should be presented to the Congress for appropriate action. In order to do this you will prepare and submit the necessary papers in proper form to be laid before Congress at the approaching session.

The committee find that bills for the relief of the heirs of John W. West, deceased, were introduced in the preceding Congress (S. 2048, H. R. 7499) and referred to the respective committees on Indian Affairs, but that no action was taken upon them. The committee are of the opinion that the amount claimed is justly due, and should be charged against and deducted from any money due from the United States to said Cherokee Nation of Indians.

The committee recommend that the bill be amended by striking out in line 8 the word "thirteenth" and inserting "sixteenth," and striking out in the same line the word "October" and inserting the word "September;" also in the same line to strike out the words "forty-three" and insert the words "eighty-four," thus making the interest to begin from the date of the report of the Secretary of the Interior favorable to the claim.

The committee append to the report the following papers:

DEPARTMENT OF THE INTERIOR,
Washington, September 16, 1884.

SIR: I have considered your report of March 6, 1884, submitting the application of J. M. Bryan for a re-opening of the "Bluford West saline" case for the reason alleged that during the investigation by the commission appointed in pursuance of Department directions of November 27, 1882, and in accordance with the seventh article of the treaty of 1846 (9 Stat., 874), some papers and documents having important bearing upon the case having mysteriously disappeared, but have since been found, and are, with all the other papers in the case, presented with your report.

Mr. Bryan was afforded an opportunity to present the facts in his case orally on July 12, 1884. He claims that the papers and proofs upon which he bases his request for a re-opening of the case show—

- (1) That the Cherokee Nation did exercise control over the Bluford West saline property after its owners were dispossessed of it.
- (2) That the sum of \$12,000, paid to Nancy Markham, was for her homestead property adjoining the "saline," and was not intended to liquidate the claim of the estate of Bluford West against the nation for the saline property.
- (3) That the estate of Bluford West is entitled to and should receive the sum of \$30,000 as payment for damages, etc., resulting from being dispossessed of said saline property.

The alleged lease, showing the exercise of control by the Cherokee Nation over saline does not affect the finding of the commission which investigated the case; nor does the alleged itemized statement of property upon which it is claimed that the payment of \$12,000 was made show that the payment was alone for property therein set out and described. The decision of August 29, 1883, on the case which it is sought to have reconsidered is based upon the finding of the commission appointed to investigate and report the matter in accordance with and as required by the provisions of the above treaty referred to.

The saline was taken from the owner by the Cherokee national authorities in the latter part of 1843. Early in 1845 a board of military officers of the United States was appointed, with instructions to examine and report as to the value of this and other claims. That board, after careful personal inspection of the property on the West homestead farm adjoining the saline, stated its value, when taken, to have been \$4,125. The board also submitted a similar itemized schedule as to the saline property, and concluded its report with the following summary:

"Our estimate of the value of his improvements on the farm and the actual expenditure on the well would be \$9,425, and if the value which we consider has been given to the saline by Mr. West's labor, and without this it had no value, be added, which we have put down at \$10,000, our valuation, including everything, will amount to \$18,425." They reported further that they "found Mr. West's family occupying the improvements on the place, but seemed to be under constant expectation of being removed under the provisions of the law of 1843."

The statement that the Cherokee council in 1873 appropriated the \$12,000 in payment for and as the value of property which, when taken thirty years before, was valued at only \$4,125, is so unreasonable, that it can not be accepted as true, unless sustained by positive and conclusive evidence. No such evidence on that point is found among the papers herewith. The main evidence relied upon to establish that point is a copy of a sworn statement of an account of the homestead or farm property, wherein its value is set out at \$12,370, which is claimed to have been prepared and submitted to the commission in 1872 and to have been made the basis of the \$12,000

appropriation. The commission examined a number of witnesses on this point who were in a position to know the facts, and from their testimony and from the documentary evidence in the case, conclude that "the settlement was a compromise of all claims, and that now there is nothing due to Mrs. Nancy Markham, administratrix, from the nation."

This view of the case was adopted by this Department in its decision of August 29, 1883, made after a careful review of your letter of June 30, 1883, submitting the report made by the commission, with the testimony taken in the case. Nothing, in the additional proofs and papers filed and arguments made, is found to justify the Department in reconsidering that decision so far as any interest or claim of Mrs. Nancy Markham, administratrix, is concerned.

CLAIM OF JOHN W. WEST, DECEASED.

The Cherokee national council delegates, as well as Mr. Bryan, present statements and arguments, requesting the reconsideration of so much of the decision of August 29, 1883, as adopted that part of the report and findings of the commission which declared that John W. West, deceased, in his life-time and at the date of his death was entitled to one-third interest (\$5,000) in the said Bluford-West saline, and that by reason of his death his heirs or legal representatives have rightfully succeeded to the same, and that some moderate rate of interest would be allowed thereon in accordance with the dictates of equity and good conscience.

As a reason for requesting such action it is claimed that John W. West was not a Western Cherokee, and could not claim the benefits of the provisions of the seventh article of the treaty of 1846. That article provides that "the value of all salines which were the private property of the Western Cherokees and of which they were dispossessed, provided there be any such, shall be ascertained by the United States agent and a commission to be appointed by the Cherokee authorities," etc. The proof and report of the commission show that prior to the date of the treaty John W. West acquired an interest in the saline owned by his brother, Bluford West, who was a Western Cherokee.

The preamble of the treaty of 1846 sets out that "whereas serious difficulties have for a considerable time existed between the different portions of people constituting and recognized as the Cherokee Nation of Indians, which it is desirable should be speedily settled, so that peace and harmony may be restored among them."

No violence is done to the terms of the treaty by entertaining a claim of any Cherokee Indian to an interest in one of said salines, when such interest was acquired from a Western Cherokee. Such a claim is considered as fairly and reasonably provided for by the treaty.

I therefore decline to reconsider the decision of the Department of August 29, 1883, for the purpose of declaring that that part of the report of the commission relating to John W. West, or his heirs is outside of the scope of their duties under the treaty. In the decision of August 29, 1883, your recommendations "that the heirs of John W. West should be left to pursue their remedy before the Cherokee authorities, if they see fit, without interference in their behalf by the Department," was concurred in.

It now appears by papers filed by Allen Gilbert, as attorney and agent for the heirs of John W. West, deceased, that the claimants presented said claim to the Cherokee national council held November, 1883, praying for its allowance and payment; that the said council adopted a report adverse to the payment of the claim, made by a committee of that body; and that said council still refuses to pay the claim or any part thereof. In view of these facts he claims that it is the right of the United States Government, as a party to the treaty, to insist on its fulfillment by the Cherokee Nation, and he therefore prays that such steps may be taken by this Department as will secure the rights of the claimants. The treaty provided that if the United States agent and Cherokee commission fail to agree, "they shall select an umpire, whose decision shall be final, and the several amounts found due shall be paid by the Cherokee Nation, or the salines returned to their respective owners."

The Cherokee Nation has not only failed but refuses to comply with the terms of the treaty. There are no funds to the credit of the Cherokee Nation out of which this Department can order payment of the amount claimed by the heirs of John W. West, deceased, and as it is therefore not considered within the power of this Department to enforce payment of the claim without special legislation by Congress therefor, the matter should be presented to the Congress for appropriate action.

In order to this you will prepare and submit the necessary papers in proper form to be laid before Congress at the approaching session.

Very respectfully,

H. M. TELLER,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

DEPARTMENT OF THE INTERIOR,
Washington, April 26, 1886.

SIR: I return herewith the papers in the West saline claim which were sent informally to this Department in compliance with your instructions of the 22d instant.

The record shows that this claim was carefully considered by this Department in 1882, when it was found that the requirements of article 7 of the Cherokee treaty of 1846, prescribing the method for the adjudication of these saline claims with the Cherokee Nation, had never been complied with.

The seventh article of the treaty referred to is in the following words: "The value of all salines which were the private property of individuals of the Western Cherokees, and of which they were dispossessed, provided there be any such, shall be ascertained by the United States agent and a commissioner to be appointed by the Cherokee authorities; and should they be unable to agree they shall select an umpire, whose decision shall be final, and the several amounts found due shall be paid by the Cherokee Nation, or the salines returned to their respective owners" (9 Stat., 874).

In Department letter to your office of November 27, 1882, it was held that "the treaty provided specifically how the value of the claims for salines should be ascertained and settled."

This treaty provision, enacted into law, has not been complied with; its non-fulfillment is entirely due to the neglect of the Cherokee authorities to appoint a commission to act with the United States agent in fixing the value of the saline.

The Cherokee Nation should follow the treaty. The action of its authorities in making a payment to the claimant in the manner reported, even if it was intended as a settlement of her claim or the saline improvements, can not be accepted as a compliance with the treaty, nor as a sufficient defense for its refusal or neglect to comply therewith. The United States and the Cherokee Nation are alike bound by the treaty, and, if the claimant refuse to accept such payment in full satisfaction of the claim, to see to its fulfillment for the protection of those whose interests are specially involved in the provisions thereof.

Any alleged settlement of the claim in other manner than as provided by the treaty, however ample may have been the sum paid, can not be recognized as a legal settlement of the matter in dispute. The agent should be instructed to advise the proper authorities of the Cherokee Nation that he is ready to proceed under the provisions of the treaty to value the saline claimed by Mrs. Nancy Markham, administratrix of Bluford West, deceased, and to request the nation to appoint a commissioner to act with him as required by the treaty in the matter.

The commission thus constituted should consider not only the question of the saline, but also the question involved respecting the actual dispossession of the claimant and the payment of the \$12,000 made by the nation to Mrs. Markham, and report in accordance with the facts what sum, if any, is still properly due under the treaty.

The claim was proceeded with by your office in accordance with the foregoing instructions, and it appears that Mr. D. W. C. Duncan was appointed by the Cherokee Nation to act with John Q. Tufts, United States Indian agent at the Union Agency, Indian Territory, to ascertain the value of the saline in question.

This commission took much testimony and gathered considerable documentary proof, which is fully reviewed in the report of May 25, 1883, to your office, signed by both of the commissioners. The ascertainment and finding of the commission as to the value of the property is as follows:

"Taking into consideration the fact that Captain Woods and Lieutenant Kirkham in fixing the value of this property had the advantage of personal inspection, and, therefore, a far better opportunity to judge than can be enjoyed by any one at the present time, it is the opinion of the commission that \$15,000, the valuation found by them, is fair and equitable, and should be sustained."

On the question, "Of what claim was the \$12,000 a payment, and what sum, if any, is still due the claimant, Mrs. Nancy Markham," the commission reported as follows:

"From the evidence before them the commission is satisfied that at the time the \$12,000 was appropriated it was the prevailing and candid impression in both the executive and legislative departments of the Cherokee government that it was in full payment of all demands whatsoever, and that the claimant's attorneys were cognizant of the fact that it was so understood, and ostensibly acquiesced in and encouraged that impression.

"To hold now that the settlement was anything less than final would be to encourage sharp practice and effectuate a fraud upon the nation. It is the opinion of the commission that the settlement was a compromise of all claims; and that now there is nothing due to Mrs. Nancy Markham, administratrix, from the nation."

* The final question investigated by this commission was this:

"Have the heirs of John W. West any rightful interest in said saline property; if so, what sum, if any, is still remaining due them on that account?"

After referring to the testimony showing the existence of a contract partnership

between Bluford West, John W. West, and David Vann, for the purpose of owning and operating the West Saline, each partner to have one-third interest, the subsequent withdrawal of Vann, his refusal to abide by the contract; the continuance of John W. West to labor with Bluford West in developing the saline, the former furnishing two of the six hands required to work it, and nothing being found to show that he ever received any consideration for the labor of these hands, unless it be his interest in the saline; the further fact that Mrs. Markham, in 1849, had admitted in a memorial, in the most solemn manner, filed before R. S. C. Brown, United States Indian agent, "that her husband, Bluford West, in his life-time, had conveyed a one-third interest in the saline to John W. West," the reason why no weight should be given to her subsequent impeachment of this instrument, on the ground of "mistake" or "fraud," the payment of partnership debts by John W. West, after the dispossession, and other evidences showing that he had an interest in, and had been a claimant for, this saline the commission report as follows:

"This testimony going to show that John W. West held a third interest in the saline is not contradicted by any satisfactory showing. Joel M. Bryan and Mrs. Nancy Markham both testify that they were not aware that he had any interest in the saline (Test., pp. 147, 154), at the same time, however, Mr. Bryan knew that he was prosecuting a saline claim at Washington. It is the opinion of this commission that John W. West in his life-time, and at the date of his death, justly was entitled to a one-third interest in the saline in question, and that by means of his death his heirs or legal representatives have rightfully succeeded to the same. As to who these heirs are, see test. pap. 100.

"If the valuation (\$15,000) approved by this commission should be sustained, then there will be due the heirs of John W. West the sum of \$5,000. As to the matter of interest, the commission would only suggest that the claim is for property that was actually taken, and of the use of which the claimants and their testator have been unjustly deprived. It would seem that some moderate rate of interest would be in accord with the dictates of equity and good conscience."

The report of the commission was submitted by your office to this Department with report of July 30, 1883, wherein it is stated that authority had been given by the Indian Office to Agent Tufts to allow the heirs of John W. West to appear in support of their rights in the claim. As to the finding and recommendations of the commission the report of your office concluded as follows:

"It does not appear that the claim of the heirs of John W. West has ever been presented to the Cherokee authorities, although a petition was once presented on behalf of Jacob West, father of Bluford and John W. I am of the opinion that the heirs of John W. West should be left to pursue their remedy before the Cherokee authorities, if they see fit, without interference in their behalf by the Department. I have the honor to recommend that the findings of the commission relative to the claim of Mrs. Nancy Markham, administratrix of Bluford West, be approved."

This report was concurred in by this Department, as shown by letter to your office of the 29th August, 1883. On the application of J. M. Bryan this case was re-opened by the Department for the purpose of considering certain alleged important papers which were claimed to have disappeared during the investigation by the commission, but were subsequently found. Oral arguments were made by Mr. Bryan, urging that the findings of the commission should be set aside as to the heirs of Bluford West, deceased, and by Mr. Bryan and the delegates of the Cherokee Nation for a reconsideration of so much of the decision of August 29, 1883, as adopted that part of the report and findings of the commission which declared that John W. West, deceased, in his life-time, and at his death was entitled to one-third interest, \$5,000, in the said Bluford West saline, and that by his death his heirs or legal representatives have rightfully succeeded to the same with such moderate interest thereon as equity and good conscience will dictate. After a careful consideration of all that was offered in argument and proof on these questions the Department concluded as follows, as shown by letter to your office of September 16, 1884, as to the claim of the heirs of Bluford West:

"Nothing in the additional proofs and papers filed and arguments made is found to justify the Department in reconsidering that decision so far as any interest or claim of Mrs. Nancy Markham, administratrix, is concerned.

"As to the claim of the heirs of John W. West, deceased:

"I therefore decline to reconsider the decision of the Department of August 29, 1883, for the purpose of declaring that that part of the report of the commission relating to John W. West or his heirs is outside of the scope of their duties under the treaty. In the decision of August 29, 1883, your recommendations that the heirs of John W. West should be left to pursue their remedy before the Cherokee authorities, if they see fit, without interference in their behalf by the Department, was concurred in. It now appears, by papers filed by Allen Gilbert, as attorney and agent for the heirs of John W. West, deceased, that the claimant presented said claim to the Cherokee national council, held in November, 1883, praying for its allowance and payment; that

the said council adopted a report adverse to the payment of the claim, made by a committee of that body, and that said council still refuses to pay the claim or any part thereof. In view of these facts, he claims that it is the right of the United States Government, as a party to the treaty, to insist on its fulfillment by the Cherokee Nation, and he therefore prays that such steps be taken by this Department as will secure the rights of the claimants.

"The treaty provided that if the United States agent and Cherokee commission fail to agree 'they shall select an umpire, whose decision shall be final, and the several amounts found due shall be paid by the Cherokee Nation, or the salines returned to their respective owners.'

"The Cherokee Nation has not only failed but refuses to comply with the terms of the treaty. There are no funds to the credit of the Cherokee Nation out of which this Department can order payment of the amount claimed by the heirs of John W. West, deceased, and as it is therefore not considered within the power of this Department to enforce payment of the claim without special legislation by Congress therefor, the matter should be presented to the Congress for appropriate action. In order to do this you will prepare and submit the necessary papers in proper form to be laid before Congress at the approaching session."

During the first session of the Forty-eighth Congress and preceding the later decision a bill (S. 1862) had been introduced for the relief of the heirs of John W. West, deceased, and had been referred by the Senate committee to this Department for report. While the reply to the Senate committee was in course of preparation it is found that Mr. Bryan had been before Mr. Secretary Teller, urging a reconsideration of the decision already made on the case August 29, 1883, and re-affirmed by decision of September 16, 1884; that Mr. Bryan's argument and statements had been taken down and reduced to writing September 23 and 24, 1884, and that they were found on the desk of the Secretary March 4, 1885, at the time he retired from the office of the Secretary. It also appears that the reply prepared for the Senate committee on the request for information on the bill (S. 1862) and laid before the Secretary for signature, was left by him unsigned and without final action.

These facts, all indicating that Secretary Teller had so far re-opened the case as to hear arguments thereon, have constrained the Department to hold the case as open to further consideration and to afford the parties in interest an opportunity to proceed therewith, to produce additional evidence, and to be heard by attorneys and counsel in oral arguments thereon.

No new evidence has been presented since the decision of September 16, 1884. The hearing took place on 22d and 23d instant, and all the matters stated in argument by attorneys and counsel have been carefully considered, and the conclusion reached is that no good and sufficient reason has been shown for disturbing the decision on the claim of August 29, 1883, re-affirmed by decision of September 16, 1884.

On the other hand, it is made more clearly to appear that the action already had on the case was right and just. Bills having been introduced in the present Congress (S. 2048 H. R. 7499) for the relief of the heirs of John W. West, deceased, and sent to the Department by the Senate and House Committees on Indian Affairs for reports, and this day referred to your office, you are hereby instructed to prepare and submit to this Department the information called for to be forwarded to those committees.

All the papers are herewith returned.

Very respectfully,

L. Q. C. LAMAR,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.