

IN SENATE OF THE UNITED STATES.

JANUARY 12, 1841.

Submitted, and ordered to be printed.

Mr. PHELPS made the following

REPORT :

[To accompany bill S. No. 195.]

*The Committee on Indian Affairs, to whom was referred the petition of Gary Hinant, praying compensation for property taken from him by a party of Creek Indians in 1836, report :*

That, in the course of the removal of the Creek Indians, during the summer of 1836, it was deemed necessary to dispose of certain property possessed by them in the State of Alabama; that a portion of it was sold by the officers commanding the troops in the service of the United States, and charged with the removal of said Creek Indians; that the said Hinant became the purchaser of certain property belonging to a party of Creeks residing at Canjauda town, in Cherokee county, Alabama, which was sold by a Captain Davidson, of the Alabama militia, by order of his superior officer; that said Hinant paid for the same; and that the avails, or a part of the same, were paid by the officer to the Indian Department, by order of the Commissioner of Indian Affairs. Whether this sale was made by order of General Jesup, then commanding in that section, does not appear; nor does it appear that General Jesup was authorized to issue such an order. The committee, however, find that, shortly after said sale, the property was reclaimed by the Indians, who took it by force from the possession of said Hinant, who never received any benefit therefrom. It further appears that the Indians subsequently made a claim against the United States for this identical property purchased by Hinant, as property lost or abandoned in consequence of their removal. That claim against the United States was satisfied by the treaty of November 23, 1838, by which a gross sum was allowed in satisfaction of all claims of the same character.

The claim of the petitioner clearly does not come within the general law allowing compensation for Indian depredations, as it occurred within the limits of an organized county of Alabama, and not in the Indian country. Nor are the United States responsible, in the opinion of the committee, for the unauthorized act of a military officer in derogation of private right. Yet, as the act of the officer in this instance was so far adopted by the department as to compel the payment of the money into the public Treasury, it seems but just that the Government should refund the amount received, when the consideration for which it is paid fails. This the Commissioner declined to do, upon the ground that the United States indemnified the Indians for the property abandoned or lost agreeably to the stipulations of

the treaty, and therefore the avails of the property belonged of right to them. This decision of the Commissioner was clearly right, if it be assumed (as the committee believe the fact to be) that this identical property was embraced in the claim for which compensation was made by the treaty of November 23, 1838. But, in this view of the subject, it is equally clear that the Creek Indians, having reclaimed the property for which such compensation was made, are justly liable, either to refund to the United States the compensation received, or to make good the injury sustained by the petitioner.

It appears, further, that the property retaken from the petitioner by the Indians was subsequently sold by them to another purchaser. As the transaction took place within the jurisdiction of the State of Alabama, the claim was rejected by the department, upon the ground that full redress might be had in the courts of that State, by action against the subsequent purchaser. But the committee consider it extremely doubtful whether the title derived from the sale by military authority could be regarded in a court of law as valid. If it could not, most clearly the Government could not justly retain the money; and, if redress *could* be had by action against the subsequent purchaser, the result would be simply to transfer the loss from one innocent party to another, and, at the same time, create a valid claim upon the Creek Indians in favor of the latter.

The committee, therefore, recommend that the money paid by the petitioner be reimbursed, and the amount deducted from the first payment becoming payable to the Creeks; and they submit the accompanying bill to that effect.