

IN SENATE OF THE UNITED STATES.

AUGUST 28, 1850.

Submitted, and ordered to be printed.

Mr. SEBASTIAN made the following

REPORT:

The Committee on Indian Affairs, to whom was referred the subject of the claim of the chiefs and warriors of the friendly Creeks for indemnity for losses sustained during the war of 1814, have had the same under consideration, and respectfully report:

The committee have carefully examined into the history, origin, and extent of this claim, and find that it has been correctly stated in the following communication from the Commissioner of Indian Affairs, with the accompanying documents, marked A and B, which are incorporated as a part of this report, and furnish, with the references they contain, all the material facts necessary to a full understanding of the subject:

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, May 11, 1850.

SIR: I have the honor to communicate the information desired by you in your letter of the 30th ultimo, respecting the origin and history of the claim of the Creek nation for losses sustained by that part of the tribe who were friendly to the United States during the last war with Great Britain.

The claim originated during the said war, and is for losses sustained in consequence of the claimants taking part with, and remaining friendly to, the United States. It is based on the promise embodied in a communication from General Thomas Pinckney to Colonel Benjamin Hawkins, United States agent for the Creek tribe, of 23d April, 1814, in which was stated the terms upon which peace would be granted to the hostile portion of the tribe, viz: that "the United States will retain so much of the conquered territory as may appear to the government thereof to be a just indemnity for the expenses of the war, and as a restitution for the injuries sustained by its citizens, and the friendly Creek Indians." * * *

"You will please, sir, to communicate these terms to the friendly Indians, and to enjoin them, in the prosecution of the war against such as may continue hostile, to abstain carefully from injuring those who may be returning with the intention of making their submission. You may likewise inform them that the United States will not forget their fidelity; but, in the arrangements which may be made of the lands to be retained

as indemnity, their claims will be respected; and such of their chiefs as have distinguished themselves by their exertion and valor in the common cause, will also receive a remuneration in the ceded lands, and in such manner as the government may direct."

Those propositions resulted in the treaty concluded by General Jackson on 9th August, 1814, by which the Indian title was extinguished to between fourteen and fifteen millions of acres of land. Prior to signing the treaty, the friendly Indians called the attention of General Jackson to the promise of General Pinckney, with the view that a provision should be inserted for the remuneration of their losses; but the General declined, because his power to negotiate did not "extend to embrace by treaty or capitulation the promises contained therein." The Indians, however, agreed to sign the treaty, on the condition, among others, that the said promise should be sent on with the treaty, saying, "we rely on the justice of the United States to cause justice to be done us." (See American State Papers, volume 1, pages 837, 857, and 858.)

By reference to volume Indian Treaties, page 159, it will be seen that, by the treaty of 1814, the cession to the United States was intended to compensate the government for the expenses of the war with the hostile Creek Indians; that it was strictly of a military character—more of the character of a capitulation, with a pledge for indemnity, than an ordinary civil compact.

On the 29th August, 1815, the War Department informed Colonel Benjamin Hawkins, the Creek agent, "that it is the wish of the President that you should proceed to the liquidation of the claims of the friendly Indians to indemnity upon the principles of General Pinckney's and your letter to them." The result to be transmitted to the department, to be laid before the President for his ultimate decision and approbation.

On the 1st April, 1816, Colonel Hawkins made his report "on the claims of the friendly Indians, for losses sustained by them in their civil war, agreeable to the terms of peace offered by Major General Pinckney 23d April, 1814, and the preliminaries to the treaty of Fort Jackson of August following." He states that it is imperfect, from the peculiar situation of affairs there, and cannot be otherwise till all the hunters are in, which is not expected "till the last of next month."

According to the data before him, the aggregate of the claims which had been presented amounted to \$108,415 12½, and the amount of the same reported on favorably, to \$78,360 75; and he states that, from the best information he has obtained, the whole amount of just claims will not exceed \$100,000.

The subject received the attention of Congress, and resulted in the passage of "An act for the relief of certain Creek Indians," approved 3d March, 1817, which authorized the Secretary of War "to cause the sum of eighty-five thousand dollars to be paid to the friendly Creek Indians whose property was destroyed by the hostile Creek Indians in the late war, in fair and just proportions to the losses which they have severally sustained from such Indians."

It appears that a Creek delegation was in this city attending to the business of their people in the winter of 1816-'17, and that they then had a talk with the Secretary of War on the subject, who said to them, among other things: "You have been a long time detained here; but

our great council does business slowly, and you wanted to know, before you returned, how much money they would give to your people as a compensation for their property that was destroyed by the hostiles during late war. The law which has passed on that subject authorizes the President to apply eighty-five thousand dollars to that object. The money will be sent to your agent, to be divided among the sufferers in proportion to their losses."

On the 20th March, 1817, David B. Mitchell, who had been appointed the agent for the Creeks in place of Hawkins, deceased, was furnished with a copy of the law above referred to, together with a copy of the estimate of Colonel Hawkins, as to the losses sustained by the friendly Creek Indians, and told that it, with other papers, "were laid before the Committee of Claims, and the law was predicated upon them; but as it is general in its terms, it will be proper to pay the claimants, mentioned in the estimate, only a portion of their claim at present, as it is probable that there may be other claimants entitled to the benefits of the law who are not mentioned in the list of claims furnished by Colonel Hawkins; therefore, a final distribution of the money should not take place until the whole amount of the claims are ascertained."

On the 18th of March, 1818, Agent Mitchell says: "I have now the honor to enclose a concise statement of the accounts presented by the friendly Indians for losses during the late war, and of the application of the sum appropriated by Congress for their payment, by which it appears that a little upwards of \$100,000 is still due. The gross amount of the claims presented, including the abstract made by Colonel Hawkins, is very little over or under \$300,000; but they were reduced by the chiefs to \$195,417 90." A copy of the statement enclosed by Agent Mitchell is herewith, (marked A,) showing that, after applying the \$85,000 appropriated as aforesaid, there remained due to the claimants the sum of \$110,417 90.

The Creek nation, through their deputations sent to this city, repeatedly invoked the action of the government with a view to the payment of the balance due their people for the said losses. On the 28th of March, 1819, the Secretary of War, in a talk to the delegation then here, said: "Brothers, you state that the sum which has been paid is not equal to the damages which you sustained in the late war, and that, in justice, you ought to receive the remainder. The power to remunerate you belongs solely to Congress; and when they appropriated the sum of \$5,000, it was estimated that it was sufficient. Whether an additional sum will be voted to remunerate you for your losses, rests solely with the justice and wisdom of Congress." And again, on the 6th of January, 1820, the Secretary said: "The claim of the Creek nation for further reparation for losses sustained in the late war will be submitted to the consideration of the Committee on Indian Affairs; and should the claim be sanctioned by Congress, the amount will be immediately thereupon committed to the agent to be paid to the nation."

The next action had upon the matter, so far as has been ascertained, was in April, 1824, when the Committee of Ways and Means, in obedience to a resolution of the House of Representatives instructing them "to inquire into the expediency of making an appropriation to compensate the friendly Creek Indians for property lost and destroyed during the late Creek war," reported that it was inexpedient to make any further

appropriation to compensate the friendly Creek Indians for property lost and destroyed during the Creek war. The report was based on the opinion of the committee that the sum of \$85,000, appropriated by the law of 1817, was intended to be a full indemnity for all the losses of the friendly Indians, and was equal to any reasonable expectation. Thus, the report states, "it appears to be manifest, from the estimate by Colonel Hawkins, that the chiefs would have been satisfied, at the date of the treaty, with the sum of \$60,000; and in the letter of the Acting Secretary of War to D. B. Mitchell, predicated on Colonel Hawkins's estimate, it will be proper to pay the claimants mentioned in the estimate only a portion of their claim at present, as it is probable that there may be other claimants entitled to the benefits of the law who are not mentioned in the list of claims furnished by Colonel Hawkins," &c. (See American State Papers, Indian Affairs, vol. 2, p. 492.)

And here I beg leave to express the opinion, from a careful and attentive examination of the whole matter, that the opinion of the committee was based upon a misapprehension of the facts as they actually exist, by not having before them *all* the papers in the department bearing upon the subject, and not discriminating as to the character of the claim actually submitted to them.

The facts as they really exist are as follows: The communication of General Pinckney embraces two propositions affecting the friendly Creek Indians, viz: 1st, *restitution from the conquered territory for the injuries and losses sustained by them*; and 2d, that their claim for a portion of the land embraced within the lines of the tract retained by the United States as indemnity should be respected.

The claim submitted to the committee was that embraced in the first proposition of General Pinckney; but it is manifest that they arrived at their conclusion by regarding the statement of Colonel Hawkins that he believed, at the time of the drawing of the lines of the land for the treaty, \$60,000 would have been received as an equivalent, as having had reference to the claims of the friendly Indians for losses of property and injuries committed upon them by the hostile party; whereas it had reference to the amount the Indians would have been willing to receive for their portion of the land retained as indemnity to the United States, &c. (See document last referred to, p. 493, and vol. 1, same series, p. 837, for the statement of Colonel Hawkins, and the condition on which the friendly Indians signed the treaty of 1814.)

The misapprehension of the committee is further shown by their reference to the instructions from the Acting Secretary of War, of the 20th of March, 1817, and by regarding the estimate of Colonel Hawkins therein specified as the paper in which he stated his belief that the Indians would have been satisfied with \$60,000, whereas the estimate adverted to was that embodied in Colonel Hawkins's letter to the War Department of the 1st of April, 1816, and hereinbefore quoted from, in which he states that, from the best information he had obtained, the whole amount of just claims for losses would not exceed \$100,000. That paper does not appear to have been sent to the committee from the department; it is herewith, (marked B,) and furnishes a key, I think, to the instructions to Colonel Mitchell, when he was directed to make partial payments only until he had ascertained whether the \$85,000 would be sufficient to pay all the claims. Colonel Mitchell then proceeded, under his instructions

and with the aid of the chiefs, to examine all the claims: the result, showing an amount of \$110,417 90 to be due, is, as before stated, herewith.

In the preceding remarks, the request of the chairman of the committee to be furnished with a history of the Creek claim and the views of this office as to its justice has been complied with. The facts that constitute the history of the claim have been carefully compiled from the public records. The *inferences* from these facts are respectfully and cheerfully submitted, because, if they are erroneous, the committee will at once perceive the error and come to a correct conclusion. The points of most importance in forming a conclusion satisfactory to myself were—

1st. The authority of Agent Mitchell to complete an estimate of losses which was reported as imperfect by his predecessor, Colonel Hawkins. Colonel Hawkins's estimate, as far as he had progressed in making it, stated the claim at over \$100,000, which was reduced to \$78,360 75. Agent Mitchell subsequently reported the gross amount as at about \$300,000, which the chiefs reduced to \$195,417 90. I think that the authority delegated to Agent Hawkins was continued by virtue of the accession to Agent Mitchell.

2d. Whether the committee, whose report is referred to, did or did not find a land claim with a claim for indemnity for losses. I have furnished the chairman with the reasons that have led me to the conclusion that the committee were inadvertently led into such a misapprehension. And

3d. Was the appropriation of \$85,000 by the act of 1817 ever acquiesced in by the Indians themselves as a full equivalent for the indemnity claimed by them? Their repeated applications to Congress show that they did not so understand it or receive it.

All of the foregoing is most respectfully submitted.

ORLANDO BROWN.

Hon. D. R. ATCHISON,

*Chairman of the Committee on Indian Affairs,
Senate of the United States.*

A.

Extract of a letter from General David B. Mitchell, Creek agent, to the Secretary of War, dated March 18, 1818.

I have now the honor to enclose a concise statement of the accounts presented by the friendly Indians for losses during the late war, and of the application of the sum appropriated by Congress for their payment, by which it appears that a little upwards of \$100,000 is still due.

The gross amount of the claims presented, including the abstract made by Colonel Hawkins, is very little over or under \$300,000, but they were reduced by the chiefs to \$195,417 90. A general abstract of the whole will be forwarded as soon as completed.

Statement of claims for losses by the friendly Creek Indians during the late war, as liquidated and settled by the chiefs in council, at Fort Hawkins, in July, 1817, and at the agency in January, 1818; also, showing the sums paid and the balance due.

1st. Amount liquidated for upper towns at Fort Hawkins, in July, 1817	-	-	\$77,512 50	
Deduct this amount paid at same time	-	-	31,029 00	
			<hr/>	\$46,543 50
2d. Amount liquidated for lower towns at Fort Hawkins, in July, 1817	-	-	29,775 00	
Deduct this amount paid at same time	-	-	11,910 00	
			<hr/>	17,865 00
3d. Miscellaneous claims liquidated at Fort Hawkins, in July, 1817	-	-	27,157 00	
Deduct this sum paid to these claims	-	-	10,862 00	
			<hr/>	16,295 00
4th. Amount liquidated at the agency, in January, 1818	-	-	49,524 00	
Deduct this amount paid to these claims	-	-	19,809 60	
			<hr/>	29,714 40
			<hr/>	
Whole balance due	-	-		110,417 90
				<hr/> <hr/>

Recapitulation showing the application of the sum appropriated:

Paid to upper Creeks, in July, 1817	-	-	-	\$31,029 00
Paid to lower Creeks, in July, 1817	-	-	-	11,910 00
Paid to miscellaneous claims	-	-	-	10,862 00
Paid at the agency, in January, 1818	-	-	-	19,809 60
				<hr/>
				73,610 60
Paid Maj. Hughes by special order of the chiefs	\$3,400 00			
Paid 2½ per cent. discount on sale of bills for \$83,000	-	-	-	a 2,075 00
Received by McIntosh at Washington	-	-	-	2,000 00
				<hr/>
				7,475 00
b This balance, placed in the hands of the two principal chiefs by general consent, to be applied to some cases of peculiar hardship, otherwise unprovided for	-	-	-	3,914 40
				<hr/>
				85,000 00
				<hr/> <hr/>

a Eighty-three thousand dollars of the money having been remitted in drafts upon the United States Bank in Philadelphia, and the branch of that bank in Savannah refusing to pay them, this charge arose from the difference of exchange between Savannah and Augusta and Philadelphia at that time, and has been allowed by the chiefs, rather than be delayed or run the risk of conveyance by an agent.

b When the first payments were made it was necessary, as the claims

were not all received at that time, and the amount was much greater than the sum appropriated, to adopt some rule of proportion in making the payment. Two-fifths was finally determined upon; and this sum is the balance, after paying two-fifths of the whole claims liquidated. And as some cases have occurred which merit attention, but were excluded in consequence of the limitation, this amount has been set apart to relieve [redacted] by general consent.

D. B. MITCHELL,
Agent for Indian affairs.

CREEK AGENCY, *March 18, 1818.*

B.

COWETAU, *April 1, 1816.*

I herewith transmit, in obedience to the orders of your department, a report on the claims of the friendly Indians for losses sustained by them in their civil war, agreeably to the terms of peace offered by Major General Pinekney, 23d April, 1814, and the preliminaries to the treaty of Fort Jackson, of August following. It is imperfect, from the peculiar situation of affairs here, and cannot be otherwise till all the hunters are in, which is not expected till the last of next month.

As soon as the terms of peace were offered, I directed Mr. Limbaugh, assistant agent, to commence taking their claims; and, after the treaty of Fort Jackson, ordered, in conformity with the directions of General Jackson, that he should continue until he had taken in the whole of their claims. The rule adopted was for the claimants to appear before him, in presence of some chiefs of the town, give in a detailed account of losses, with the value affixed to each article, the account signed by the owner and countersigned by the interpreter and assistant agent.

Upon receipt of the order to report on the claims, I proceeded to execute the same; but other public duties, a severe indisposition, and the defect in the vouchers, as noted in the report, retarded them until the Indians commenced their winter's hunt, which was earlier than usual from necessity, and has not yet terminated. Added to this, the chiefs who convened Mookaubatchee having suspended the ratification of the treaty, and conducted themselves, in relation to it, in the manner detailed in the account of that transaction, I have not been able to prevail on them to come forward and afford any aid, to enable me to execute the duties enjoined on me satisfactorily.

The speaker for the upper Creeks, who is more interested than any other, if his account is correct, has repeatedly declined signing his claim or giving any explanation, and does believe, or affects to believe, by so doing it would render the treaty complete on the part of the nation, and be in violation of the advice he has received on that subject.

I believe, from the best information I have obtained, the whole amount of just claims will not exceed one hundred thousand dollars; and it is probable, upon a revision in presence of the claimants, there may be a deduction in some of those reported on. If it should be deemed advisable to take order on this report, and appropriate money for the purpose, a sum not exceeding one hundred thousand dollars will be sufficient.

The claimants should receive by themselves, and not by attorney or order, to prevent a speculation on them, which has already commenced, by persons obtruding themselves on them, and trying to obtrude them on the government, to secure the payment of their claims on shares of one-half or one-fourth. I shall continue, as opportunity offers, to complete the report from time to time, and will have a meeting in every town interested as soon as I am apprized the claimants are come in from hunting.

I have the honor to be, respectfully, dear sir, your obedient servant,
BENJAMIN HAWKINS.

WILLIAM H. CRAWFORD,
Secretary of War.