

## IN THE SENATE OF THE UNITED STATES.

FEBRUARY 7, 1867.—Ordered to be printed.

Mr. WILLEY submitted the following

## REPORT.

*The Committee on Claims have considered the memorial of Seth Eastman, heretofore referred to them, and beg leave to make the following report :*

This memorial was referred to the Committee on Indian Affairs in December, 1859. In March, 1860, Mr. Clark, from that committee, made a favorable report on said memorial, accompanied by a bill. The report was as follows :

“On the 27th of February, 1850, the memorialist, then a captain in the United States army, was detailed by the Secretary of War for the illustration of the History of the American Indians, then being prepared under the direction of the Indian department.

“This ‘assignment was made at the request of the Commissioner of Indian Affairs, in view of his peculiar qualifications for that particular service,’ and ‘for the purpose,’ as appears by a communication from that officer, ‘of preparing for the engraver of the book drawings taken from paintings made by him whilst at Fort Snelling.’

“Prior to this time he had been stationed in the Indian country, and had made himself acquainted with their habits, customs, and modes of life.

“He was an artist, and had employed much of his leisure time and limited means in perfecting himself in his art, and in procuring materials, making sketches and drawings to illustrate a work of his own upon the Indians, which he then contemplated publishing.

“When detailed for the illustration of the government work, he devoted not only himself, his art, and skill, but his materials, and the former products of his art, to that purpose.

“He was then the owner of sixty-seven paintings and sketches, which were afterwards engraved, and formed some of the most pleasing and valuable illustrations of the respective volumes.

“For each engraved plate of these sixty-seven pictures and sketches so prepared by the memorialist before he was detailed for the work, and for some other pictures and sketches prepared by him afterwards, the government paid the engraver three hundred and twenty-five dollars.

“The memorialist continued upon the illustration of this work from March 1, 1850, to April, 1855; and when he appropriated his materials and the former products of his art to that purpose, he supposed he would be paid therefor, although he was told there was no appropriation then made, out of which payment could be paid.

“How well he performed the duty imposed upon him appears from the following extract from a communication from the Commissioner of Indian Affairs the Secretary of War :

"The opinion, as expressed, was, that from his peculiar fitness to such a task, from talent, taste, and an intimate knowledge of the customs, habits, and characteristics of the Indians, from having long dwelt among them, and from the large amount of material collected by him when serving on the frontiers, the public would sustain a serious loss were he taken from the work, and his place could not with any degree of probability be supplied without considerable expense to the government; and it was earnestly hoped that the Secretary of War would not insist upon his being *relieved* until the completion of the volume then in progress."

"In April, 1855, the memorialist finished the illustration of the history of the Indians, and returned to his duty as an officer in the army.

"The engraved plates of his pictures and sketches remained in the custody of the government, and he received nothing for the use of his pictures and sketches, or for the peculiar talent, art, and skill which he had employed upon the work, except his ordinary pay as an army officer.

"Thus matters remained until the act of January 25, 1859, for the relief of Mrs. Henry R. Schoolcraft. By that act the Secretary of the Interior was 'required to cause a copy-right to issue, securing to Mrs. Henry R. Schoolcraft, to her heirs, assigns, and legal representatives, the exclusive right to republish the book entitled "History, Statistics, Condition, and Prospects of the Indian Tribes of the United States," heretofore published under order of Congress, and to make and publish any abridgment or compilation thereof, for the term of fourteen years from the passage of this act; and he is further required to transfer and deliver to said Mrs. Schoolcraft all the plates, the property of the United States, used in the printing and illustration of said book.'

"By the operation of that act the copy-right of those pictures and sketches, which the memorialist made before he was detailed for the illustration of the work, and which belonged justly to him, was secured to Mrs. Schoolcraft, and he is debarred from the use of them in any work he might wish to publish, or subjected to unpleasant litigation.

"He was absent in Utah at the time of the passage of the act for the relief of Mrs. Schoolcraft, and knew nothing of its provisions until long afterwards.

"He now asks that he may be paid for the property of his which Congress has transferred to another, or of which the value has been greatly impaired by the act of January 25, 1859; and the committee think it just this should be done.

"In determining the value of that property, the committee have found no certain guide, but they have considered the estimate they have put upon it a low one, to wit, seventy-five dollars for the copy-right of each of the sixty-seven pictures, making the sum of five thousand and twenty-five dollars; and they report a bill for that sum."

This bill was not finally acted on, and the memorial, in January last, was referred to this committee; and the committee, on further examination, have been led to question the equity of the claim, and to doubt the propriety of granting the relief prayed for, or any relief.

It seems that Mrs. Mary Eastman, wife of the memorialist, in the summer of 1854, published a book entitled "Chicora, and other Regions of the Conqueror and the Conquered," in which there are twenty-one plates or illustrations. In comparing these with the plates in the work of Schoolcraft, it was ascertained that nearly if not all of them are identical with so many of those in Schoolcraft's work, for which the memorialist claims compensation, as appears by a memorandum of the memorialist filed with his petition. Now the copy-right for this work of petitioner's wife was secured in 1854. The act securing the copy-right to Mrs. Schoolcraft was in 1859; so that, to the extent of these twenty-one plates, they have priority of right.

It would seem, therefore, that, at the very time Eastman was in the employ of the United States government, he selected from his sketches and pictures

such of them as he wished to use, and, indeed, that he used the very plates the government had made for its own work; and thus it would appear that, in all probability, he got the use and benefit of those twenty-one plates for his wife's work without any cost to his wife or to himself.

Under these circumstances, the committee conclude that the claim for the remainder of the sixty-seven pictures does not represent such a case as Congress ought to entertain, especially when it is considered that while he was making those pictures the petitioner was in the service of the government, receiving the full pay his station entitled him to. The committee, therefore, recommend that the prayer of the memorialist be refused.