

SENATE BILL No. 96—CLAIMS—TREATY OF GHENT.

MARCH 22, 1828.

Read, and, with the said bill, committed to a Committee of the Whole House to-morrow.

Mr. WICKLIFFE, from the Committee on the Judiciary, to which was referred the bill from the Senate, entitled "An act supplementary to an act to provide for the adjustment of claims of persons entitled to indemnification under the first article of the Treaty of Ghent, and for the distribution among such claimants of the sum paid, and to be paid, by the Government of Great Britain, under a convention between the United States and His Britannic Majesty, concluded at London, on the thirteenth of November, one thousand eight hundred and twenty-six," passed on the 2d day of March, 1827, made the following

REPORT :

The Committee on the Judiciary, to which was referred the bill from the Senate, [No. 96] entitled "An act supplementary to an act to provide for the adjustment of claims of persons entitled to indemnification under the first article of the Treaty of Ghent," &c. has had the same under consideration, and beg leave to report :

By the resolutions of the House, the Committee was specially instructed to obtain and report, in connexion with the bill, the resolutions, or petition, in pursuance of which, said bill was introduced into the Senate. All the information which the Committee has upon that subject, will be seen by reference to the paper, (No. 1.) To whom this communication was addressed, the Committee is not informed. It is found among the papers, and may be regarded as furnishing the reasons upon which the Senate acted.

In discharge of the other duties imposed by the resolution, the Committee believe the most satisfactory evidence upon the subject could be obtained from the members of the Board of Commissioners themselves. And a letter was addressed by one of the Committee to the Board, marked A ; to which the letters B, C, and D, were received as answers ; all of which are referred to as part of this report.

The Committee, upon a full examination of the whole subject, believe it to be inexpedient to extend the time of the Board of Commissioners. The Committee deem it unnecessary, if not improper, to give, at full length, the reasons which have conducted its members to this determination, lest it might, in some degree, involve the discussion of a question raised before the Board, and yet undecided ; they, therefore, content themselves with the recommending that the first section of the bill be stricken out.

No. 1.

SIR : Having been charged with the prosecution of certain claims for property removed by the British, contrary to the terms of the Treaty of Ghent, before the Commissioners appointed under the convention of London, we take the liberty of stating the reasons which induce us to ask that the term assigned for the closing of that commission should be enlarged, and to request that you will do us the favor to lay them before the Committee to whom the resolution on that subject was referred.

It is known to the Committee, that the sum paid by Great Britain in discharge of her obligation to pay for the property removed after the treaty, is much less than the amount of claims made before the joint commission ; and, of course, that it is the interest of those who have just claims, to prevent the allowance of such as are not of that description.

The greater part of the claims represented by us, have been allowed, and the amount of seventy-five per cent. has been paid to our constituents. Claims are still undecided, amounting to a sum sufficient to absorb the whole of the remaining part of the fund. These are chiefly for slaves taken from the States of Virginia and Maryland, and their allowance will depend principally on the proof of the time of their removal.

It has been argued before the Commissioners, that these last claimants will have done enough to establish these claims, by shewing that the slaves in question were taken by the British forces ; throwing upon us the burthen of proving the negative, that they were not here at the time the treaty was ratified. On this question, no decision has yet been had, and as the Commissioners do not meet until the first of March, no decision can take place until that day ; after which, it will be impossible for us to procure the proof that will be required of us, before the probable end of the session, when the Commission will, by the present limitation, expire. The evidence which such a decision will require, must be sought for principally in the British ports of Halifax and Bermuda, and perhaps in Europe, so that no diligence on our part can procure it in time, unless the term for closing the commission is enlarged. Nor can we be charged with any neglect, inasmuch as the novel nature of the argument, the allowance of which would impose on us this obligation, was such as to prevent our anticipating its being urged or allowed.

D. BOULIGNY,
JOHN E. FROST.

Washington, February 5th, 1828.

(A.)

WASHINGTON, *March 14, 1828.*

GENTLEMEN : A bill to extend the time of the Board (of which you are members) created by the act of Congress of the last Session,

has passed the Senate, and been referred to the Committee on the Judiciary of the House of Representatives, of which I am a member, under certain specific resolutions and instructions.

The Committee has imposed upon me the duty of investigating the subject, and the collection of the facts and evidences necessary to enable it to discharge the duties imposed by the order of the House.

As some of the inquiries relate to the wishes and opinions of the Board upon the propriety of the passage of the bill, as also upon other subjects, the best evidence of which must be in the possession of the Commissioners, I have been directed by the committee to communicate with you.

I, therefore, have the honor of transmitting to you a copy of the resolutions of the House of Representatives, to which I invite your attention, and solicit from you such information as you may possess, and feel at liberty to give. How far the latter clause in the resolution may draw to itself the investigation, if not, the decision, of any matter *sub-judice*, I leave to the determination of yourselves, with the expression of the opinion of the committee, that they do not suppose it could have been the intention of the House of Representatives to have interfered with those questions which rightfully belong to the decision of the Commissioners.

Your answer, as early as your duties and convenience will permit, is respectfully desired.

I have the honor to be, respectfully,
Your obedient servant,

C. A. WICKLIFFE.

Messrs. CHEVES,
PLEASANTS, and }
SEWALL, } *Commissioners.*

(B.)

BOARD OF COMMISSIONERS, &c.

March 19, 1828.

Hon. CHARLES A. WICKLIFFE.

I have the honor to acknowledge the receipt of your note, of the 1st instant, addressed to this Board, and, in reply, to say that I have perused the answer of Mr. Pleasants to the same note, on which is stated so fully my view of the facts to which the answer of this Board is required, that I deem it unnecessary here to repeat it. I will only add, that, in relation to the inquiry contained in the last resolution, those cases are still *sub-judice*, and the very point involved is, whether there is proof of the deportation after the ratification of the Treaty of Ghent—and, on that account, I should feel reluctance in undertaking, at this time, to state what is the evidence before the Board: for I should, in such case, according to my view, connect with the proof

offered by the claimants, many facts not proven by *them*, and all the circumstances under which the compromise by the Treaty of London of 1826, was made.

I have the honor to be,
Your obedient servant, respectfully,
HENRY SEWALL.

(C.)

COMMISSIONERS' OFFICE.

19th March, 1828.

HON. C. A. WICKLIFFE :

SIR : Some difference of opinion existing among the Commissioners, as to the best mode of answering the communication which the Board have had the honor to receive from you, on behalf of the committee of the House of Representatives, to whom is referred (with instructions from the House) the bill from the Senate for prolonging the duration of this Board, the Board determined that the end the committee had in view, would probably be best answered by each member making a separate communication on the subject. This determination has occasioned some delay on our part, though it is hoped not so much as to produce any serious inconvenience to the committee. I proceed to present such a view as, in my judgment, will meet the wishes of the committee, in as few words as I can.

With reference to the first resolution of instructions, having no knowledge of the subject, I can say nothing.

On the subject of that part of the second resolution, which asks if the Board has asked for, or suggested the necessity of an extension of the term of their duration ? I reply, that nothing has been asked for or suggested by the Commissioners on the subject. Just before the adjournment of the Board in January last, it informed the claimants that the evidence and arguments on the general question before it, must be closed by the first instant, when it would be necessary for it to decide them, unless Congress should extend the period prescribed for the sitting of the Board ; and that the Board would not agitate the question of further time, but leave it to the parties interested to do so or not, according to their own views of the propriety or necessity of the measure. The Board at its meeting (according to adjournment on the 1st instant) found the bill referred to by your note, before the Senate, and felt itself bound to await the decision of Congress on the question.

In reply to the further interrogatories in said resolution of instructions, I presume that the design of the bill in extending the term, is to enable a certain class of claimants, whose cases have been decided, and who have received, agreeably to the provisions of the act of Congress establishing this Board, 75 per cent. of their principal, to procure testimony (from abroad principally) to prevent certain other claimants, those from Maryland and Virginia, commonly called the

Chesapeake claimants, from establishing their claims; the effect of which would be to stay proceedings in many cases which are *sub judice*, and ready for hearing. To whose benefit and whose prejudice the successful exercise of such endeavor would operate, I need not state.

No new question has arisen or testimony been filed, it is believed, which has given rise to the desire of extending the term. The question, the possible decision of which may make such extension desirable to the class of claimants asking it, it was distinctly understood at the first meeting of this Board in July last, would be made. Upon this question, several voluminous arguments have been filed by the counsel and agents on each side, the last of which has been recently received, and the decision of the question awaits the decision of the bill from the Senate now before your committee.

It is presumed that the fund to be distributed will very nearly or quite pay the principal due for *all* the refugee slaves, if, as is believed, will be mostly the fact, the property other than slaves, shall be found not to come within the provisions of the treaty.

The grounds on which the 75 per cent. has been adjudged to those claimants who have received it, are, the evidence produced by those claimants, positive or presumptive, to satisfy the Commissioners, or a majority of them, that their claims come within the provisions of the Conventions. As before stated, the Commissioners are directed, in so many words, by the act of Congress establishing the Board, to pay immediately to each person whose claim is established, 75 per cent. of the principal sum awarded, and so till the claims should all be decided. (See sec. 9th of the act of last Session of Congress establishing this Board.) In this 75 per cent. of the principal so paid, no interest of course is included; the question of interest has been reserved in all the cases adjudicated, as it will be unnecessary, it is presumed, to decide it at all, if the fund should not be more than sufficient to pay the whole principal; which cannot be ascertained till all the cases have been examined.

In reply to the last interrogatory in the instructions, I remark, that those claimants who have received nothing, and whose claims are now before the Board, have of course not yet had those claims examined; the fact of the character of their evidence, and whether it will prove that their property was within the United States at the ratification of the treaty, is precisely what the Commissioners have to determine; it being indeed the pivot upon which turns the successful or unsuccessful decision of the claim.

In conclusion, I take the liberty of stating, that, should the bill from the Senate not pass, it may yet be necessary to extend the term some time, to enable the Board to complete the business, which it is probable they will hardly be able to accomplish by the rising of Congress; but upon this point I can speak with no certainty at this time.

The claims on the definitive list, amount to between 1,000 and 1,100; of these, near 700 have been examined; a number of them finally decided, except, as before stated, as to the question of interest; the remainder (of the 700) principally, are partially decided, awaiting the

decision of the question of presumptive evidence before referred to. Some have been rejected. At their first meeting, in July last, the Board decided every question which was ready for decision; at their late meeting on the first of November last, they did the same, except as to a few cases kept under advisement, for particular reasons. The cases now on the docket, and which are in a course of examination, have been very recently put down for hearing.

I have thus given, as explicitly as I could, the information in my power to give, which I believe to be required by the instructions to the committee.

With sentiments of the highest respect for yourself and the committee, I am your obedient servant,

JAMES PLEASANTS.

(D.)

BOARD OF COMMISSIONERS,

Under the 1st Article of the Treaty of Ghent, 19th Mar. 1828.

SIR: I have the honor, in reply to your note of the 14th instant, to state the following facts:

The extension of the time beyond the period prescribed by law for the sitting of this Board, has not been asked for, or suggested to be necessary by the Commissioners, except that, in January last, when the Board was about temporarily to adjourn, it informed the claimants that the evidence and the arguments on the general questions before it, (which will be hereafter particularly stated,) must be closed by the first instant, when it would be necessary to decide them, unless Congress should extend the time prescribed for the sitting of the Board; and that the Board would not agitate the question of further time, but leave it to the parties interested to do so or not, according to their own views of the propriety or necessity of the measure. The Board, at its meeting, according to adjournment, on the first instant, found the bill referred to in your note, before the Senate, and has felt itself under these circumstances, bound to wait the decision of Congress on the question.

The first meeting of the Board was on the 10th of July last, which was the day prescribed by the act creating it, for its first meeting. There are on the definitive list between one thousand and eleven hundred cases, which include slaves and all other property. Of these, between six and 700 cases have been examined by the Board. Those which have been examined consist, principally of two classes; they are almost exclusively claims for slaves, and the following facts refer exclusively to that species of property.

1st. The first class consists of those which have been allowed. These have been supported by *specific* testimony, positive or circumstantial, which has been satisfactory to the Board, or a majority of it, proving that the slaves claimed in each case, were within the territory or waters of the United States at the date of the ratification of

the treaty. The claimants of this class have received, or are entitled to receive, according to the provisions of the act of Congress, seventy-five per cent. of the principal sum awarded. The question of interest has been reserved in all cases.

2d. The second class consists of such as have not been allowed, but are kept under consideration. The *specific* testimony sustaining these, (except in relation to such slaves as have been found on "*the Halifax list*," hereafter referred to,) consists only of proof of *the taking*, by the enemy, at different periods during the war. The taking appears to have been principally between the beginning of June, 1813, and the beginning of December, 1814; a few only were taken before June, 1813, and a good many appear to have been taken as late as the 5th of December, 1814. Included in this class, are such slaves as have been identified on "*the Halifax list*." This is not one of the documents furnished by the British Government, in execution of the third article of the Convention of St. Petersburg, but one which the British Commissioners, at the time of the dissolution of the mixed commission, put into the hands of the American Commissioner, with liberty to retain it if he thought proper, without stating how it was procured, or from whence it came, but treating it as a document of authenticity, and which was, of course, received by the American Commissioner. It purports to be "a return of American refugee negroes, who have been received into the Province of Nova Scotia, from the United States of America, between the 27th April, 1815, and the 24th October, 1818."

The award of the Emperor of Russia, and the conventions consequent thereon, provide only for the indemnity of those whose property was taken away or destroyed *after* the ratification of the treaty of Ghent.

The claimants of the second class contend, 1st, That, on principles of law, the proof of the taking at any period during the war, throws the burden on the opposing party, of proving that the slaves claimed, were actually carried out of the territory and waters of the United States *before* the ratification of the treaty; and that, on failure to do so, these claimants are entitled to a full participation in the fund.

2dly. That the proof of the taking at any time during the war, with the circumstantial evidence that has incidentally come before the Board, and additional testimony which they have filed to sustain this proposition, authorizes the presumption that all the slaves contained in the second class, remained in the United States until the ratification of the treaty, and ought to be allowed. In the cases of more recent capture, it is urged that this presumption is the stronger.

3dly. It is contended that, in addition to this general presumption, the Halifax document should be taken in itself as sufficient evidence, that all those contained therein were taken away after the ratification of the treaty.

The claimants of the first class resist the first of these propositions, as unfounded in principle; and the second and third, as unsustained by the evidence relied upon. They contend, on the contrary, that the evidence before the Board, repels these presumptions; and they al-

lege, that they can disapprove them, if allowed time to procure the testimony, some of which, they state, is to be obtained from abroad. The object of the bill from the Senate is understood to be, to grant this time. On the merits of this bill, I presume I am not expected to give any opinion, but, it is proper I should say, that, if it be rejected, some further time *may*, nevertheless, be necessary, to close the business of the Board; but, whether any further time will be necessary, or, if any, what time, I am, at present, unable to say. If a more particular knowledge of the points in controversy be desired, it will be obtained by reference to the printed arguments of counsel on either side. The first of these, was filed by the claimants of the second class, in the beginning of November last, when these points were, for the first time, submitted for hearing, although they had, at the first meeting of the Board, been mentioned as points that would be raised.

I believe the foregoing statement of facts, affords the best information I can give on the questions growing out of the resolutions of the House of Representatives, except that which directs an inquiry "whether the fund now remaining, to be distributed by the Commissioners, be sufficient to satisfy the principal sum claimed for refugee slaves and other property, entered on the definitive list? To this, I reply, that it is not sufficient, and that the claims for slaves alone, (considering the decision of the Board, that claimants for slaves originally taken from other States, but found in Georgia, or the waters thereof, at the ratification of the treaty, shall be entitled to the Georgia average) if all claims for that species of property be allowed, will alone absorb the whole fund received from Great Britain.

I have the honor to be, Sir,

Very respectfully,

Your obt^t servant,

LANGDON CHEVES.

P. S. If the bill of the Senate be passed, it will, of course, delay the decision of the general questions before the Board, and the cases which may depend thereon, but no other cases.

L. C.

The Hon. CHARLES A. WICKLIFFE, &c.

Washington City.