35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 66.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1858.—Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT.

[To accompany Bill S. 135.]

The Committee on Indian Affairs, to whom was referred the petition of W. Y. Hansell, William H. Underwood, and Samuel T. Beecker, administrator of Samuel Rockwell, beg leave to report:

The claim of the petitioner is for three years' professional service as attorneys and counsellors to the Cherokee nation of Indians.

By the 10th section of the treaty of 1835 it is provided that "the United States also agree and stipulate to pay the just debts and claims against the Cherokee nation, held by citizens of the same; and also the just claims of citizens of the United States for services rendered to the nation, and the sum of $60,000 is appropriated for this purpose."

A question having early been made as to the construction of this section of the treaty, the Secretary of War submitted the same to the Attorney General during the administration by which the treaty was made, and on the 20th April, 1837, the Attorney General communicated his opinion thereon, in which he says: "I construe the clause as though the phraseology had been 'and also the just claims of citizens of the United States for services rendered to the nation, for which purpose the sum of $60,000 is appropriated.' This, says the Attorney General, I think, is the precise grammatical effect of the language used, and in a case of doubt the grammatical construction should be preferred, unless plainly repugnant to the probable intent. In the present case the grammatical construction will produce no injustice, whereas the extension of the appropriation to both classes of cases enumerated in the clause might do great injustice. It is, moreover, in accordance with the statement of Mr. Schermerhorn, who informs us that the sum of $60,000 was named in the first draught of the article, exclusively with reference to the last description of claims."—(See Opinions of Attorneys General, 3 vol., 208.)

The same construction has been given by the Judiciary Committee of the Senate, to whom this claim has been heretofore referred.

The committee also find that the board of commissioners, on the 20th November, 1838, referred this claim to certain distinguished citi-

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

zens of Georgia, to ascertain the proper amount that should be awarded for their professional services, under the following instructions:

"The claimants being dissatisfied with the amount allowed on their claims, and the board of commissioners, relying on your competency, from your long practice as attorneys in the courts of Georgia, to decide upon the merits of the several claims, hope that you will take them into consideration, and report to them your opinion hereon at as early a day as practicable. Any three of those selected will be competent to make the desired report."

On the 10th December of same year the following report was made:

"The undersigned, in compliance with your request, in the submission of the matters of account of Messrs. Hansell, Rockwell, and Underwood, against the Cherokee nation for professional services rendered as counsel for the Indians, have the honor to report that, after a careful examination of the several items and charges in the accounts submitted, and a comparison with charges by professional gentlemen in the middle section of Georgia, and due consideration thereon, they are unanimously of opinion that Mr. Hansell should receive the sum of $24,588; Mr. Rockwell should receive $22,920, and Mr. Underwood the sum of $28,692—subject to be diminished by the sums heretofore paid them, respectively."

This report was signed by Nathaniel C. Sayre, Edward Tracy, Hiram Warner, Washington Poe, and Henry G. Lamar.

Instead of acting on this report, the board of commissioners referred it to the Secretary of War, who decided that he had no authority to act on the same, and the parties were finally driven to Congress.

The committee believe that the parties are justly entitled to the relief prayed for by them, and they report a bill for the sums still due and unpaid. They beg leave also to refer to the report made by Mr. Berrien, from the Judiciary Committee of the Senate, and to adopt the same as part of their own report.

IN SENATE OF THE UNITED STATES, *September* 20, 1850.

Mr. BERRIEN made the following report:

The Committee on the Judiciary, to whom was referred the memorial of W. Y. Hansell, W. H. Underwood, and the representatives of Samuel Rockwell, ask leave to report:

That the memorialists were the counsel of the Cherokee nation, attending for the space of three years to a great multitude of cases in different circuits of the State of Georgia; that they were solicited by the commissioner who negotiated the treaty of 1835 to aid in the negotiation, with the assurance that their claims should be provided for in the said treaty; that these assurances were given by the commissioner, Mr. Schermerhorn, and the then President of the United States, General Jackson; and the sum of $60,000 was stipulated in the treaty to be

applicable to their claims alone. This fact is acknowledged by the commissioners, and the fact that the treaty could not have been negotiated without the aid of your memorialists is also stated by Mr. Schermerhorn, the commissioner who negotiated the treaty. The claims of the memorialists were presented to the commissioners appointed to carry the treaty into effect, and were by them referred to a committee of Indians, appointed under the twelfth article of the treaty, for the purposes therein specified, who made a report allowing $21,000 for three years' service of three gentlemen of high professional standing. Against this report the memorialists protested; but it was finally agreed that this sum should be received as an advance, the commissioners expressly reserving to themselves the right to review the case and do what justice might require.

Subsequent commissioners were appointed, who disagreed in opinion upon the claim; and ultimately, on the suggestion of the Secretary of War, the commissioners referred the account to seven professional gentlemen of Georgia, with power to any three to act, five of whom united in an award, which was laid before the commissioners. In the meantime, the commissioners had diverted a portion of the fund reserved for the payment of these claims to others, leaving only some $8,000 of that fund unexpended, which sum the last board of commissioners, acting under the award, directed to be paid to the memorialists, it being the whole amount of the reserved fund which remained under their control.

The memorialists now claim that the balance of that fund, which was created for *their benefit alone*, and which has been applied by the commissioners of the United States to other purposes, shall be paid to them. The committee think they are entitled to receive it, and, referring for the facts here stated to the accompanying papers, recommend the adoption of the following amendment to the Indian appropriation bill:

"For payment in full of the claims of W. Y. Hansell, W. H. Underwood, and the representatives of Samuel Rockwell, $30,000, being the balance of the sum of $60,000 reserved in the treaty between the United States and the Cherokee nation (negotiated on the 29th of December, 1835) for the payment of the said claims, and misapplied by the commissioners of the United States to the payment of other claims—the said sum to be distributed in the following manner:

"To W. Y. Hansell, $11,146.

"To W. H. Underwood, $9,035.

"To the legal representatives of Samuel Rockwell, $10,144."