

LEWIS EVANS.

FEBRUARY 1, 1838.

Read twice, and committed to a Committee of the Whole House to-morrow.

Mr. PARKER, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to which was referred the claim of Lewis Evans, make the following report :

That it appears from the evidence in this case, that on the 3d day of January, 1833, John Rogers, an Indian of the Cherokee nation, west of the Mississippi, leased to Hugh Keener, a white man and a citizen of the United States, "the Grand Saline" in the Cherokee nation, consisting of two furnaces of fifty kettles each; in consideration of which, Keener agreed to pay Rogers three thousand bushels of salt per annum for each furnace, to be paid monthly, or as might be demanded; and it was further agreed that, in case said Keener should fail to pay said rent monthly, or as above expressed, the said furnaces were to revert immediately back to said Rogers. The lease was in writing, and duly executed by the parties.

Keener took possession of the Saline, and on the 3d day of March, 1834, entered into a contract in writing with Lewis Evans, a citizen of the United States, and a licensed trader in the Cherokee nation, by which Keener agreed to sell said Evans, for fifty cents per bushel, all the salt he should make at said works, (except the rent,) to be put up every week in barrels, to be furnished by Evans and delivered at the Saline to the agent of Evans, who was to be kept there for the purpose of superintending the packing and weighing of the salt, and of receiving it for Evans.

It appears from the testimony of John Smallman, that he remained at the Saline in the employment of Evans, and as his agent, from about the 15th of March, 1834, till about the 1st of October, in the same year, during all of which time Lewis Rogers, son and agent of John Rogers, was in almost constant attendance at the Saline, and knew of the sale and delivery of all or nearly all the salt which was sold and delivered by Keener to Evans. That, in the two salt houses, the salt delivered to Rogers for the rent was separated from the salt sold to Evans, by a partition wall; and that no part of the salt set apart as rent was ever bought by Evans. That, during the weighing, marking, and delivery, to Evans, of fifteen hundred and sixteen bushels of salt, the value of which constitutes the principal item of the claim now made by Evans to

Congress, either John or Lewis Rogers was present most of the time, and set up no claim to the salt, and made no objection to the sale and delivery to Evans; and that Smallman marked the barrels with the initials of Evans's name in the presence of John or Lewis Rogers, or both of them. Keener was paid by Evans in full for the salt. Smallman further states that all or nearly all the rent salt chargeable to Keener, from the 1st of March, 1834, to the 1st of September following, had been paid by Keener, and received by John or Lewis Rogers. After the salt was delivered to Evans, he went to Arkansas, and sent six wagons and teams for the purpose of bringing away the salt, when both Lewis Rogers and John Rogers prevented their taking it away, and declared Evans should not have the salt unless he could command a stronger force than they could.

Most of these statements are corroborated by the testimony of Barnet Brixy and William Quinton, who also prove that the delivery of said salt to Evans took place in August, 1834; that the salt filled two hundred and fifty-one barrels, which were furnished by Evans; that Lewis Rogers assisted in weighing and marking the barrels, and that Smallman and Quinton were called on to witness the delivery of the salt by Keener to Evans.

It further appears that, on the 1st September, 1834, a settlement took place between Rogers and Keener, when it was agreed between them that 1,660 $\frac{1}{2}$ bushels of salt were due from Keener to Rogers for old arrearages of rent; and that Evans, at their request, entered the same on book.

It is also proved, by Smallman, that Evans requested him to look at the lease executed by Rogers to Keener; that he examined it, and afterwards informed Evans that the only forfeit in the lease was, that the Saline should revert to Rogers if Keener failed in the payment of the rent salt.

A claim was made under the 17th section of the intercourse act, passed June 30th, 1834, by Evans, before Francis W. Armstrong, superintendent of Indian affairs west of the Mississippi, to be remunerated by the Government for the loss he had sustained, on the ground that property had been taken by one of the Cherokee nation. Testimony was taken as required by law, and on the 10th day of January, 1835, a decision was made against Evans. The subject was subsequently brought before the department of Indian affairs, but the commissioner declined giving an opinion on the merits of the case, and decided against Evans, on the ground that it did not come within his jurisdiction, as it was not "property wrongfully taken or destroyed by force, without color of right."

It also appears this case was brought before the Secretary of War on the 5th day of January, 1837, and that he gave a written opinion approving the decision made by the commissioner of Indian affairs, and holding that the claimant was not entitled to relief under the 17th section of the intercourse act.

A majority of the committee concur in the opinion expressed by the Secretary of War, and deem it inexpedient that Congress should grant relief in this case.