

THEODORE E. ELLIOTT.

[To accompany S. bill No. 161.]

JULY 25, 1854.

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

REPORT.

*The Committee on Indian Affairs, to whom was referred Senate bill No. 161, for the relief of Theodore E. Elliott, report:*

This is a claim against the United States for "one keel-boat sold and delivered to P. M. Butler, Cherokee agent, January 22, 1842, at Webber's Falls, Cherokee nation, for the United States, and never paid for—price agreed at three hundred dollars."

The evidence in support of this claim consists of the testimony of two witnesses. The first, James Douglass, says that in the month of January, 1842, he piloted the steamboat "Effort" up the Arkansas river to Webber's Falls, and had in tow two keel-boats, one of which belonged to the steamer, and the other belonged to a citizen of the Indian country; that the keel-boat which belonged to the steamer was sold by the captain to Gov. Butler, the then Cherokee agent, upon which to carry iron, agricultural implements, and other Indian supplies; that the river was so low the steamer could not get up, and the keel-boat was needed to get up the supplies to the Indian country; that the keel-boat was new, and worth three hundred dollars.

The second witness, Joshua R. S. Oliver, says he was on the steamboat "Effort" in January, 1842; that the keel-boat was sold to Gov. Butler in this wise: Gov. Butler wanted the boat to carry supplies, and use for the Indians; that the steamer could not well spare the keel-boat, but Gov. Butler insisted upon having it for five days at least, for the purpose of carrying a load of freight to his place of business in the "nation," and which freight was in the keel, and that if he did not return it within the five days, she would be considered as his, Gov. Butler's; that the boat was not returned, but was kept and used (as he learned) until she was stove and wrecked; that the said claimant was sole owner and captain of the steamer "Effort;" that Gov. Butler was frequently absent from the "nation" until removed from office, and was finally killed in Mexico during the war.

These witnesses both say, in their testimony, that the boat was purchased "*for the use of the government.*"

The above is substantially all of the testimony in favor of the claim. The first thing that strikes the committee in the examination of this testimony is the singularity of the fact that the "pilot" of the steamer

“Effort” and a chance passenger are called upon to state facts which would not usually be more correctly known by other witnesses, whose duty it would be to make memoranda of transactions of this kind. The clerk of the boat, it seems to the committee, was the person who would be most likely to be cognizant of a transaction involving an amount of money of the magnitude of that claimed by the petitioner. And yet the testimony of the clerk is not produced in support of the claim; nor is there any explanation showing the reason why the testimony of the clerk was not taken and presented.

It occurs to the committee that contracts of the sort and magnitude stated in the testimony would not have been made simply by parol, especially by parties of the character engaged in this transaction. For it is notorious that steamboat captains and clerks are more particular in the details of their business, and trust less to the parol agreements with individuals with whom they deal, than any other persons. The thousands of persons with whom they trade, and the scattered position of their customers, would render so loose a manner of carrying on their affairs ruinous in the extreme, and common prudence would compel them to pursue a course far more precise and particular.

Government officers, it is well known, are obliged to communicate, in their report to the departments, a full statement of all their business transactions; and where purchases are made of any article for the use of the government, it is requisite for them to present, with their accounts, vouchers showing the price agreed to be paid. But in this case no report of this transaction was ever made to the department by Governor Butler; nor is there any thing found on the files of the office of Indian Affairs relating to the claim, after full search by the Commissioner of Indian Affairs, made in June, 1850, as shown by his letter to the chairman of the Committee on Indian Affairs in the Senate. Nor was this claim presented to Congress until June, 1850, long after the death of Governor Butler, who alone could give the proper explanation of this transaction, and eight years after the alleged sale of the keel-boat for which payment was sought.

The silence of Governor Butler on the subject, the want of the testimony of the clerk, in explanation of it not being procured, the want of any written contract, memorandum or book charge, and the length of time between the alleged sale and the presentation of the petition, as well as other reasons suggested by the papers, induce the committee to recommend that the bill do not pass.