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James E. Sefton

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by JAMES E. SEFTON*

A list of the most noteworthy congressional debates over slavery would include those on the Compromises of 1820 and 1850, the Gag Rule, the slave trade, and the Kansas-Nebraska Bill, among others. Sometimes, however, debate on a comparatively minor episode of a large issue can be highly illuminating. In the spring of 1852, the House of Representatives devoted perhaps ten hours to a bill which brought to a close a bizzare story that had begun sixteen years earlier during federal efforts to remove the Seminole Indians from Florida. Ever since the United States acquired Florida from Spain in 1819, white residents had clamored for removal of the Indians. Desultory guerrilla warfare increased, reaching a climax between 1835 and 1842 in the Second Seminole War.[1] General Thomas S. Jesup, who commanded the United States troops in Florida from 1835 until 1838, saw that the long-standing hostility between the Seminoles and their parent tribe, the Creeks, might be turned to his military advantage. In August 1836 he recruited a regiment of Creeks for federal service. The enlistment contract stipulated that the Creeks were "to receive the pay and emoluments and equipments of soldiers in the Army of the United States, and such plunder as they may take from the Seminoles."[2]

While in federal service the Creeks captured or received the surrender of more than 100 Negroes who had been living with the Seminoles and whom the Indians considered their allies. Most of these were slaves of various Seminole chiefs; some were runaways from white plantations in Florida and Georgia; a

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* Mr. Sefton is associate professor of history at California State College, Northridge.

1. John K. Mahon, *History of the Second Seminole War, 1835-1842* (Gainesville, 1967).

2. *Congressional Globe,* 32nd Cong., 1st sess., 611.

small number claimed to have been born free. Those who could be identified as runaways were restored to their white owners by General Jesup, who paid the Creeks $20.00 each for them. The remainder were kept in federal military custody and transferred to Fort Pike, Louisiana, for safekeeping.[3] Jesup, meanwhile, hoping to hasten the final surrender of the Seminoles, realized that one of the major stumbling blocks was the Indians' fear that upon surrendering they would lose their remaining Negroes. On March 6, 1837, certain chiefs signed a document of capitulation at Camp Dade, in which Jesup agreed "that the Seminoles and their allies, who come in, and emigrate to the West, shall be secure in their lives and property; that their negroes, their *bona-fide* property, shall accompany them to the West; and that their cattle and ponies shall be paid for by the United States, at a fair valuation."[4]

Troubles soon multiplied. The Camp Dade cease-fire agreement shortly broke down, due in part to the displeasure of whites with Jesup's apparent policy on Negroes. He did not want planters searching for their runaways (nor slave-catchers looking for any salable black man) to raid Indian settlements, thus jeopardizing the removal project. Nor did he want to expose his troops to danger in the process of aiding the planters, an attitude which to the whites seemed inconsistent with the spirit of the fugitive slave law. But the general came under pressure from many sources. As a result, his policy on Negroes between April and September 1837, was a crazy-quilt of orders and statements which attempted to do the impossible: sort the Negroes into several categories according to individual histories. Those who ran away from white owners were to be returned; those whom the Seminoles captured from whites might or might not have to be returned depending on the date of capture; those whom the Seminoles purchased and still possessed, or who had surrendered, could go west with the Indians in accordance with the Camp Dade agreement; those captured by the Creeks were their property; the few who insisted they were free were mentioned least and left in a kind of limbo.[5]

3. *House Executive Documents,* 25th Cong, 3rd sess., no. 225, 4-5.
4. *Ibid.,* 52.
5. Ibid., 2-5, 8-22, 51-57; Mahon, *History of the Second Seminole War,* 201-06.

Even if the elaborate documentation needed for such a policy had been available, nobody would have been satisfied. Planters, press, and territorial legislatures nagged; slave traders defied, and then demanded protection; Creeks pestered for possession of the ones they had captured; Seminoles distrusted, Negroes feared to come into the lines lest they be captured by Creeks. Finally, on September 6, Jesup announced that all captured Negroes would be held at Fort Pike pending orders from the secretary of war.[6] Three days later Jesup ordered that the Creek regiment be mustered out of service, thus precluding further captures under the 1836 enlistment contract. Negroes now surrendered in greater numbers, and since they seemed to possess a strange influence over the Indians, admittedly not common to a slave-master relationship, the Seminoles too came in more speedily.[7]

By the spring of 1838 the Negroes were no longer an impediment to the Indians' removal from Florida, but they were still an impediment to peaceful relocation in Oklahoma. During 1837 General Jesup had been sending Negroes not the property of whites to Fort Pike in groups to get them out of the general theatre of war. New Orleans was also a principal stopover on the journey to the Indian Territory. The government's removal program envisioned the Seminoles and Creeks becoming close neighbors in Oklahoma.[8] By the Camp Dade agreement, the Seminoles expected their slaves to go west with them; by their enlistment contract the Creeks also anticipated possession. Here was the kernel of the matter. The presence of ex-Seminole slaves among the Creeks would be sure to cause friction and perhaps war between the tribes.

Jesup foresaw the danger, and he tried unsuccessfully to preclude it. When he mustered out the Creeks, he offered them $8,000 for the slaves they had captured in hopes that the government would then send them to a Liberian colony. But the Creeks wanted the slaves, and in the spring of 1838 a delegation of chiefs was in Washington clamoring for possession. Through the agency of Joel Poinsett, secretary of war, and C. A. Harris, commissioner of Indian Affairs, a solution was found. James C. Watson, a Georgia slaveowner who was well-known to the war

6. *House Exec. Doc.*, no. 225, 4-5.
7. *Ibid.*, 20; Mahon, *History of the Second Seminole War*, 93-94, 128, 205-06.
8. *House Exec. Doc.* No. 225, 2-24; Mahon, *History of the Second Seminole War*, 77, 206.

department as a contractor in earlier Indian removal operations, agreed to purchase the slaves claimed by the Creeks. On May 8, 1838, he signed a contract with the delegation in Washington, agreeing to pay $14,600 for sixty-seven Negroes, the number to which sickness and death had reduced the original contingent. The Creeks, by power of attorney, appointed N. F. Collins to receive the Negroes from federal custody and to turn them over to Watson. The war department provided Collins with orders directing the commanding officer at Fort Pike to release them; Watson gave the money to Major William Armstrong, senior Creek agent and one of the organizers of the agreement, who paid it to the Creeks on July 4.[9]

Tribulations continued. Watson never received the Negroes. Jesup had been sending not only the slaves to Fort Pike but the emigrating Seminoles as well. For some unaccountable reason, officers at the fort permitted the Indians and slaves to be reunited, and once this occurred it was impossible to distinguish slaves the Creeks had captured from ones they had not, let alone separate any of them from the Seminoles. When Collins arrived with the war department's orders, the commanding officer declined to obey them since heavy force would have been needed. Instead, the 1,275 emigrés at Fort Pike, red and black, were loaded aboard two transports, and the little flotilla, Marine Lieutenant John G. Reynolds commanding, went chugging up the Mississippi with the remonstrating Collins tagging along. Every time the odyssey presented a chance– at Natchez, Vicksburg, Arkansas Post, Little Rock, Fort Smith, Fort Gibson– Collins pleaded to debark with Watson's Negroes. Nothing availed. At every menace the Seminoles became more refractory. When Reynolds asked the governor of Arkansas for aid in effecting delivery, he was ordered to get the expedition out of the state without delay. General Matthew Arbuckle, federal commander in Arkansas, also refused to help. Thus Watson's Negroes and their Seminole masters reached the Indian Territory where they remained. Secretary Poinsett, not wishing to start a new war, rescinded the original delivery orders and recommended that Congress indemnify Watson.[10]

9. *House Reports*, 27th Cong., 2nd sess., no. 558.
10. *Ibid.; House Exec. Doc.* No. 225, 28-30, 42-51, 81-82, 91-116; Mahon, *History of Second Seminole War*, 251-52.

That simple suggestion set in motion the legislative machinery which creaked and groaned for fourteen years. Congresses were elected and adjourned; committees sat, reported, and rose; Watson died, and his estate went bankrupt. Congress, in the winter of 1838, received the first petition, but not until the spring of 1852 was an appropriation voted. Occasionally a committee would report a bill.[11] The largest proposed award was $21,604 in 1842: the purchase price, four years' interest, and a little extra to cover the expenses of Watson's agents. But such bills never reached debate. Only in June 1848 did one ignite a spark of controversy, and even that was a little tempest confined to the committee of claims, where four members including David Wilmot had with a full-scale minority report set their faces solidly against any award at all. The minority report was a curious item. In stating the facts of the case, the anti-slavery quartet admitted several key propositions which their ideological successors in the 1852 debate would staunchly deny. And after clearly admitting that the Negroes were both slaves and property, they quoted at length from the Philadelphia Convention, *The Federalist*, and related sources to show that slaves were not property at all. But again the bill failed to reach debate.[12] Finally, on January 29, 1852, John R. J. Daniel of North Carolina, chairman of the committee of claims, submitted the bill that was enacted for the purchase price plus six per cent interest.[13]

Daniel's bill went upon the private calendar for consideration in the committee of the whole. House rules, plus objections by anti-slavery congressmen, resulted in a badly fragmented debate, beginning on February 20, recurring on March 19, and again on April 9, when the bill finally passed.[14] The three-day debate was a very untidy affair due to the complexities of the case and the random assignment of the floor. For clarity, therefore, it has been reorganized according to its main questions, working down from the larger ones to the smaller.

11. *House Report* 558; *House Reports*, 28th Cong., 1st sess., no. 132; *House Reports*, 29th Cong., 1st sess., no. 535.
12. *House Reports*, 30th Cong., 1st sess., no. 724.
13. *House Reports*, 31st Cong., 1st sess., no. 102; *House Reports*, 32nd Cong., 1st sess., no. 45.
14. *Congressional Globe*, 32nd Cong., 1st sess., 420, 611-16, 650, 791-99, 1035-43.

The most basic question of all was whether slavery existed among the Seminoles. Congressman William Sackett of New York and other opponents argued that since there was no positive evidence in "Seminole law" that slavery existed, one must necessarily conclude that it did not.[15] Thomas Bartlett, a freshman congressman from Vermont, when asked by Georgia's James Johnson whether slavery might not exist "under customary laws without statutory laws," merely brushed the embarrassing inquiry aside. Neither the laws of Florida nor the laws of the Seminole "nation," he said, revealed whether slavery existed among the Indians.[16] Sackett even invoked international law by asserting, "The law of nations– the contrary not being shown– clearly establishes the fact that slavery does not exist there, and therefore they [the Negroes] were taken as ordinary prisoners of war."[17] He could not safely elaborate the proposition, however. The Seminoles, and all Indian tribes for that matter, had a very dubious status as "nations" in spite of the federal government's practice of treating with them as if they were foreign powers. John Marshall, when it was a matter of deciding whether the Cherokees were a "foreign nation" within the meaning of the Constitution, called them a "domestic dependent nation."[18] Later, when it was a matter of deciding whether Georgia law had any force in Cherokee country, he exempted the tribe from all but federal laws.[19] Slavery certainly existed in Florida Territory by an act of its legislative council which the federal government had taken no steps to annul.[20] It was, of course, improbable that the federal government would permit international law to supercede any domestic law where Indian affairs were concerned.

In the debate of March 19 Sackett rather abruptly introduced the question of legal existence once again– apparently to avoid coping with an embarrassment raised by Congressman Daniel– and noted that whereas the laws of some states made color a presumptive indicator of slave status, under the Constitution the presumption was always to be in favor of freedom unless the

15. *Ibid.*, 611, 614, 797, 1036.
16. *Ibid.*, 1036.
17. *Ibid.*, 612.
18. *Cherokee Nation* v. *Georgia,* 5 Peters 1, 17 (1831).
19. *Worcester* v. *Georgia,* 6 Peters 515 (1832).
20. Mahon, *History of the Second Seminole War,* 60.

contrary were proved. Herschel Johnson, having in mind the United States Supreme Court's recent ruling in *Strader* v. *Graham,* was here prompted to ask if the court had not established a rule whereunder they would accept as conclusive the ruling of the highest state court on the status of a Negro.[21] Although Johnson's point did narrow the overly-generous conception Sackett was trying to establish, the New Yorker correctly pointed out its present inapplicability since no determination by a state court was involved.[22]

Those who supported payment did not exert themselves to demonstrate the existence of slavery among the Seminoles. They merely asserted what they said everyone knew: that slavery existed among both Seminoles and Creeks and that they carried on a reciprocal slave trade as well.[23] Historians are agreed that the Seminoles, Creeks, Cherokees, Choctaws, and Chickasaws all held slaves prior to the Civil War. Some Seminole chiefs, to increase their prestige, bought slaves and paid for them with livestock. Creeks in search of slaves frequently raided Seminole settlements. The laws of the Creek Nation as written down in 1825 by Chilly McIntosh, the son of the half-Scot Creek chief William McIntosh, clearly recognize the institution of slavery. Quaker missionaries who visited the Creeks in Oklahoma in 1842 confirmed that they had long held slaves and "appear insensible on the subject of this great evil."[24]

Some congressmen, seeking a weakness in the southern case, pointed out that the Seminoles treated their Negroes much better than whites did. These legislators found, in the accumulated military despatches and letters, references to the "influence" the Negroes had on the Seminoles and to the "affection" of the Indians for the blacks.[25] The status of Indian Negroes seemed to be a blend of slavery and the elements of share-cropping. Seminole practice was to permit the Negroes to live in separate villages and to pay their owners periodically a quantity of grain

21. 10 Howard 82 (1850).
22. *Congressional Globe,* 32nd Cong., 1st sess., 797.
23. *Ibid.,* 612.
24. Sigmund Sameth, "Creek Negroes: A Study of Race Relations" (M.A. thesis, University of Oklahoma, 1940), 2; Edwin C. McReynolds, *The Seminoles* (Norman, 1957), 48; Mahon, *History of the Second Seminole War,* 74; Antonio Waring, ed., *The Laws of the Creeks* (Athens, 1960); Grant Foreman, *The Five Civilized Tribes* (Norman, 1934), 171.
25. *Congressional Globe,* 32nd Cong., 1st sess., 614, 1036.

or livestock as a symbol of their servile status. Seminole society also included other Negroes of every status imaginable. Some were born free, some were West Indian refugees, some were descendants of successful eighteenth-century fugitives from the United States. Intermarriage further complicated the picture. It would, perhaps, be most accurate to say that there was a great diversity of status among the estimated 1,400 Negroes who were associated with the Seminoles in 1835, and that where slavery existed in a chattel form, it was a much less formal institution than the southern plantation version.[26]

The second major question extractable from the 1852 debate was whether the word "plunder," as employed in General Jesup's 1836 enlistment agreement with the Creeks, embraced slaves. Sackett insisted that the agreement had nothing to do with slaves, in part because the word "slaves" was not used, but more fundamentally because of his belief that slaves were not property.[27] John Daniel, James Abercrombie, James Johnson, Charles Stuart, and Josiah Sutherland all took the position that the agreement did include slaves, by virtue of the understanding of the people associated with it. Everyone, they said– Jesup, the Craaks, the commissioner of Indian affairs, the secretary of war– all knew slaves were included. A large body of official correspondence dating from 1836-1840 supported their contentions. It was no trouble (though it was a bit boring) to read it into the record, and doing so seemed to steer the debate away from the wearisome question, now decades old, whether slaves were property.[28] On occasion the debate became narrowly legalistic and focused upon the proper rules of interpreting contracts, with Southerners taking the most latitudinarian view.[29]

Near the end of the third day's debate, Sutherland definitively settled the semantic aspect of the "plunder" question by asserting that the word described the method of acquisition rather than the nature of the thing acquired.[30] But this had been the

26. McReynolds, *The Seminoles*, 23, 48, 244; Joshua Giddings, *The Exiles of Florida: or, The Crimes Committed by our Government against the Maroons, who fled from South Carolina and other Slave States, Seeking Protection under Spanish Laws* (Columbus, Ohio, 1858; facsimile edition, Gainesville, 1964).
27. *Congressional Globe*, 32nd Cong., 1st sess., 611.
28. *Ibid.*, 612, 614, 791, 794, 798-99, 1040. The correspondence, in addition to being in the *Globe*, is also in *House Exec. Doc.*, No. 225.
29. *Congressional Globe*, 32nd Cong., 1st sess., 791, 1037.
30. *Ibid.*, 1041.

less knotty branch of the problem. The question whether slaves were property at all was a continuous thread throughout the debate. But because of the circumstances, it took a specific form. Had the federal government, through the instrument of a contract, any power to recognize property in slaves? That may be considered the third major issue raised in the debate.

Here was a basic question of constitutional interpretation, and a longstanding one. Nor did present issues require any new arguments. Sackett, Bartlett, and the other Northerners, adopting as they had to on such occasions the unfamiliar strict constructionist approach, insisted that the Constitution did not recognize slavery and that the federal government had no delegated power to make contracts involving slaves. Johnson, as Southerners had done while debating the compromise measures two years earlier, used the fugitive slave clause to show that the Constitution not only recognized but guaranteed slave property. He also added that slavery among the Seminoles was a fact and that the government could quite properly make contracts "in reference to existing facts."[31] Just before debate finally closed, John Freeman of Mississippi stated, "I know the fact that the Government of the United States have dealt in slaves, and that they have sold slaves under execution to pay debts due to them. And they have taken slaves in payment of obligations, due upon United States bonds of public officers in the South."[32]

Charles Sweetser, seeking further to weaken the constitutional position of the Southerners, asserted that if the slaves had actually been property, then the United States could only transfer title to the Creeks following a judicial proceeding. A rejoinder, necessarily tardy because house debates were always disorderly, came from Sutherland. He believed the whole question of whether the United States could hold slaves or deal in slave property was irrelevant in this case because the government never had title to the slaves at any time. Title, in his

31. *Ibid.*, 612, 792-94, 1037.
32. *Ibid.*, 1039. In March 1848 a resolution had come up in the house directing the judiciary committee to report a bill "to prohibit the sale of persons held as slaves on any precept in favor of the United States," because federal law permitted the type of sale Freeman had referred to. Alexander H. Stephens served notice of his intent to debate the resolution, so it was laid over, and no further action was had. See *ibid.*, 30th Cong., 1st sess., 457.

view, had passed directly from the Seminoles to the Creeks by virtue of capture during wartime.[33] Here was a reference to the fourth major question, and a confusing one indeed: What, according to the laws of war, is the effect of capture upon the legal status of slaves?

Thomas Walsh of Maryland called capture of enemy property a recognized wartime right; others spoke off and on to support that right or to deny its relevance.[34] The truth of the matter, though highly relevant, would have satisfied neither side. There certainly is a right of capture, but its effect is to vest title to the property in the capturing government, not in that government's private soldiers. If slaves were property, this rule would have made the federal government a slave owner, thus bringing the argument back to the third question. And if the slaves were property, they could certainly be plunder, thus bringing them within the scope of Jesup's agreement with the Creeks. Of course, the northern view that the government could in no way recognize slave property would still have left the Negroes slaves of the Seminoles. That outcome was not really desirable to the Northerners, but only less unpalatable than paying a white man for his investment in them. In view of the fugitive slave clause, which convinced Southerners that the Constitution recognized slaves as property, Sackett, Sweetser, and the other Northerners had to search elsewhere for some legal principle that would allow them to classify horses, wagons, and similar things as captured enemy property but captured slaves as prisoners of war.

The appeal was distinctly of the "higher law" variety. Bartlett attacked Jesup's agreement as violating both "the law of nations, that obtains among civilized and Christian nations," and "the law of nature."[35] Sweetser called it "a *barbarism* that even savages would scout as unworthy of even savage warfare."[36] The doubts about whether the Negroes had ever actually been slaves afforded a useful springboard, since there was little doubt that they would have been slaves if either the Creeks or Watson had obtained effective possession of them. Thus in the opening debate of February 20 Sackett called the directive to Watson's

33. *Ibid.*, 32nd Cong., 1st sess., 1037, 1039.
34. *Ibid.*, 1038, 611.
35. *Ibid.*, 1036-37.
36. *Ibid.*, 1040-41.

agent to release the Negroes an unlawful order to make slaves out of prisoners of war. At the end of the second day, March 19, Charles Skelton asked if it were lawful, in America or anywhere else, to sell prisoners of war into slavery. Stuart promptly assured him it was quite legal for the government to go into an area where slavery was a recognized institution and to offer a regiment of Indians all the slaves they might capture.[37]

Discussion of the capture question led the chamber back to the Mexican War in search of precedents, and on April 9 a three-way colloquy pitted Sweetser against Johnson and Walsh. The Southerners wanted to know how the taking of various property from enemy aliens in Mexico differed from the taking of slaves from our own rebellious population in Florida. Sweetser insisted that the cases differed because the Seminoles were under the protection of our flag "to some extent" and so the government was bound to protect their rights as citizens of Florida. He also noted that in Mexico the property did not end up in the hands of individual troops.[38]

Such citings of recent history failed to satisfy anyone. But the general matter of capture led into the fifth major question, a purely factual one: were any of the Negroes in dispute actually captured by the Creeks? Here was a point, surely, on which simple chronology would make an end of cavil. Jesup enlisted the Creeks in September 1836, though they did not get into actual service until late December. The Seminoles signed an instrument of surrender at Camp Dade in March 1837, and the Creeks were mustered out of service the following September. Since the terms of the Camp Dade agreement seemed to preclude further seizure of property belonging to Seminoles who surrendered, and in fact stated that "their negroes, their *bona-fide* property, shall accompany them to the West," Sackett concluded that captures could only have occurred during the brief interim between December 1836 and March 1837. He did not think there was sufficient evidence to show that specific captures had taken place during this period, and that on the contrary, many Negroes either surrendered or had been seized following the Camp Dade agreement.[39]

37. *Ibid.,* 612, 799.
38. *Ibid.,* 1038.
39. *Ibid.,* 611, 793.

To combat Sackett's position, Johnson merely referred to General Jesup's order of September 9, 1837, mustering the Creeks out of service and paying them for the Negroes they had captured. The instructions were specific: "The chiefs and warriors who were actually in the field, and present at and aiding in the capture of the Negroes, are alone to receive any part of the sum allowed; those who remained in the camp, and did not march, are to receive nothing. Eight thousand dollars will be paid to the captors for the Seminole negroes, and twenty dollars each for those the property of citizens."[40] Moreover, on July 20, 1837, Jesup sent to the adjutant general of the army a list of "the Indian negroes captured during the campaign." Since dates of individual captures are not given in the list, there is no way of knowing whether any of the 103 were taken after the Camp Dade agreement. The list is entitled "Registry of negro prisoners captured by the troops commanded by Major General Thomas S. Jesup, in 1836 and 1837, and owned by Indians, or who claim to be free." Only eight on the list "claimed to be free"; the others all indicated a specific Indian as their owner.[41] In addition, General Jesup's correspondence for the late summer of 1837 shows his intention that since the Camp Dade cease-fire had failed and hostilities were resuming, the policy of awarding property to the capturing units would resume as well.[42] Thus there is clear evidence that the commanding general considered that at least some Negroes fell within the purview of his 1836 agreement with the Creeks, and perhaps he should have been the best judge.

The Camp Dade agreement was central, and Sackett had

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40. *Ibid.*, 792; Thomas S. Jesup to Lieutenant Searle, September 9, 1837, in *House Exec. Doc.* No. 225, 20; Orders No. 175, Headquarters Army of the South, September 6, 1837, in *ibid.*, 4.
41. Jesup to Brigadier General R. Jones, July 20, 1837, in *ibid.*, 65-69. It is interesting to note that every Negro on the list has an English Christian name, which in view of the small number claiming to be free suggests either an original white owner or an aversion on the part of Indians to using Seminole names for non-Indians.
42. There is also a letter to Captain B. L. Bonneville, Seventh Infantry, who commanded a detachment of Choctaw warriors, stating that the Choctaws should have whatever Seminole property they seized, Negroes included. The letter is dated ten days after the Creeks were mustered out. *Ibid.*, 19-21. If any Negroes were in fact captured by the Choctaws, they apparently were sent west without the development of any special controversy.

still another use for it. The very same property which Watson bought from the Creeks had been guaranteed to the Seminoles by Jesup, he said. Hence, if Secretary Poinsett and Indian Commissioner Harris had induced Watson to buy it, they would be liable to imprisonment for "while in the public service, unlawfully and clandestinely trying to violate a solemn treaty of the Government." At this bombshell Daniel merely observed that there were two groups of slaves involved, and that the surrender agreement did not cover ones previously captured. Sackett, the only effective reply having slipped his mind, passed on to something else.[43]

It was just as well that the Northerners not try to make too much out of the Camp Dade agreement. They could not use it against the property rights of Watson without using it in favor of the property rights of the Seminoles. This obvious anomaly sometimes encouraged Southerners to doubt the sincerity of the opposition. As Herschel Johnson remarked on the second day of debate, some members seemed not to care that the Negroes were slaves of Indians as long as they were not slaves of southern whites.

What Sackett should have done when Daniel confronted him with the existence of two groups of slaves was to ask the sixth major question: in view of the confusion at Fort Pike, how could individual Negroes be labelled "captured" or "surrendered"? The Northerners had their share of embarrassing situations; here was one for the supporters of the bill. Johnson met it by asserting that Watson's right to payment rested not on identification of specific individuals but on the fact of the government's possession of his property and its failure to meet its obligation to convey it to him. Responsibility for identification was the government's, he averred, and if the Negroes could not be identified, it was no fault of Watson's.[44] This was a rather shaky position, but it was the only ground available, and there was an element of cleverness about it. In 1852 identification was irrelevant since the issue was only reimbursement of the purchase price, not the full market value or physical possession. Moreover, the contract between Watson and the Creeks did not contain a list of the slaves sold. They had been in con-

43. *Congressional Globe*, 32nd Cong., 1st sess., 796.
44. *Ibid.*, 615, 793.

tinuous military custody, and the officers in charge had not instituted a system of identification at the outset. Military correspondence shows that the slaves were moved from place to place in Florida in small groups before being sent to Fort Pike, and although some rosters were compiled, the paperwork was not very efficient.[45]

The charge that federal officials had been delinquent in identifying the Negroes lay at the threshhold of the seventh major question: what was the status of the United States with respect to Watson's contract with the Creeks? Clearly the government was not a party to it, and nobody undertook to prove the contrary. The real disagreement came over the extent of knowledge and assent. In a long exchange with Johnson on March 19, Sackett maintained that the government did not regard itself as a participant in Watson's deal with the Creeks, and in fact had no knowledge of it until 1840. Johnson read letter after letter detailing the government's involvement at every stage of the sale proceedings.[46] Sackett was not convinced, whereupon Alexander Evans of Maryland took up the letter-reading task. On the day after the contract was signed, Commissioner Harris asked Major General Alexander Macomb, commanding general of the army, for orders directing the commanding officer at Fort Pike to release the Negroes to Watson's agent. The adjutant general sent the orders out the next day. Evidence of assent to a sale could hardly be stronger, Evans declared.[47]

Some opponents sought stronger ground in the related allegation that whatever the government's role in the case, it had not guaranteed Watson possession of the slaves, but at best had promised only to order their release.[48] Perhaps there could be a difference between promising to give an order and promising to guarantee delivery, but the Southerners could not see it. As Evans insisted, the United States "induced the sale, brought it about, fixed the price, and ordered delivery, and then failed to fulfill the order, and that is the point of the case."[49] One may also reasonably suppose that Watson would have been reluctant to invest borrowed money in a purchase, especially of slave

45. *House Exec. Doc.* No. 225, 2-28.
46. *Congressional Globe*, 32nd Cong., 1st sess., 794-96, 613-14.
47. *Ibid.*, 797-98.
48. *Ibid.*, 792.
49. *Ibid.*, 798.

property, without credible assurances that he would actually receive it.

Woven throughout the debate on the government's relation to the contract was a ninth question: was the government to blame for losing the property? The government held the property in trust, Evans said, and then permitted it to be eloigned and carried off. The government thus became responsible for its value. "All else is irrelevant," he said in a fit of piqued fatigue, "and there is no use of lugging in all these things and embarrassing the minds of the committee with such an accumulation of matter."[50] On the final day the debate again became narrowly legalistic, with warnings about possible court actions against the government for failure, as the bailee, to deliver the property to the bailors.[51]

On that note the debate ended rather abruptly. Some of the nine major questions had been answered, others had not. Some were unanswerable, either from lack of evidence or from presence of conflicting and confused evidence. The house recognized the futility of further debate and so after defeating, seventy-five to forty-seven, a move by Thaddeus Stevens to adjourn, the chamber approved the measure by a vote of seventy-nine to fifty-three.[52] Senate action was perfunctory. The bill came over from the house on April 12, and on July 26, after trading a few aspersions and jibes about delaying tactics, courtesies, rights, and perquisites, the senators agreed to take it up. They hurried it through without debate and without a roll call.[53] President Fillmore signed it, apparently without question.[54]

The debate had been a curious one, not just for specific legal intricacies but for broader points as well. For twenty-five pages of the *Congressional Globe,* legislators attacked and defended slavery while debating a bill that would not alter the status of a single individual. The Negroes had remained with the Indians all along and were the subject of numerous tribal difficulties. Kidnappers carted some of them off to be sold to white planters. Some set out with Wild Cat, a renegade Seminole chief, to

50. *Ibid.*
51. *Ibid.,* 1038, 1041-42.
52. *Ibid.,* 1043.
53. *Ibid.,* 1047, 1115, 1651-52, 1922-23.
54. 10 Statutes, 734.

settle in Mexico during the winter of 1849, but only reached Cow Bayou, Texas, before they decided to return. Their second such odyssey ended in capture by the Comanches who held them for ransom, which the Creeks decided to pay as a means of getting possession of more Negroes. Territorial separation of the Creeks and Seminoles by the treaty of 1856 brought some degree of quiet, and the Emancipation Proclamation finally gave the Negroes their freedom. Their descendants, as well as those of slaves belonging to the other southeastern tribes, still live in Oklahoma.[55]

Notwithstanding that all the rhetoric would not free a single Negro, the debate was nonetheless a classic encounter on one of the most sensitive elements of the slavery system. States rights, local option, treatment of slaves, and other things were probably side issues. Money was changing hands, and that was the heart of it. Furthermore, Watson's motive for the purchase seemed to be pure speculation since the 1838 market value was considerably more than he paid. The debate may well have gained in intensity by coming along just two years after Congress had ended the slave trade in the District of Columbia as part of the Compromise of 1850. Therein lies another point. Statesmen hailed the 1850 measures as closing up all of the slavery questions still outstanding. Yet the Watson case showed how the subject would not down. No matter what laws were passed, it seemed there was always a need for one more.

55. Foreman, *The Five Civilized Tribes*, 243, 256-57, 262-70.