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### Thomas Talbot and others

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H.R. Rep. No. 370, 28th Cong., 1st Sess. (1844)

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THOMAS TALBOT AND OTHERS.

MARCH 27, 1844,

Read, and laid upon the table.

Mr. J. B. HUNT, from the Committee on Indian Affairs, made the following

REPORT :

*The Committee on Indian Affairs, to whom was referred the memorial of Thomas Talbot and others, respectfully report :*

That, from the memorial and accompanying affidavits, it appears that on the night of the 12th of October, 1827, the memorialists and others, on a return trip from Santa Fe, in Mexico, to the State of Missouri, on the route marked as the line of travel by the commissioners, while encamped, were attacked by an armed band of Pawnee Indians, who succeeded in driving off the horses, mules, and asses of the petitioners, to about one hundred and sixty; that, on pursuit made, they succeeded in recovering sixty, and lost the residue, being one hundred; that the value of those lost was appraised by disinterested persons at the sum of \$4,000: which amount, with the interest thereon, is claimed by the petitioners to be paid out of the annuities going to said Indians.

At the time of the robbery complained of, a treaty of amity existed between the United States Government and the Pawnee Indians, by which they had stipulated, among other things, not to molest the citizens of the United States passing or repassing through their country from the United States to New Mexico; and that they would, to the utmost of their powers, exert themselves to recover horses or other property which might be stolen from any citizens of the United States by any individuals of said tribe.

This claim was presented to the consideration of Congress in 1828. The Committee on Indian Affairs reported against the claim, on the ground that the Government was not responsible, and recommended a demand by the Executive Government on said Indians for restitution under the treaty above mentioned. In 1832 this claim was again presented to the consideration of Congress, and again at the next session, and once more at the session of 1833-'34; at each time it was referred to the Committee on Indian Affairs, and on each occasion the committee were discharged from its further consideration, with leave to the petitioners to withdraw the papers.

It further appears from the papers presented, that the Indian agent, in behalf of the petitioners, as early as 1828, made a demand upon these Indians for a return of the property, under the treaty of 1825; that the Indians admitted that their young men had taken the property, and that they would return the same "as soon as they could steal as many from their enemies."

In 1833 the Government made another treaty with these Indians, by which they were to be paid annuities for twelve years, to four different bands of this tribe—to two of said bands each \$1,300; to the other two each \$1,000. It also appears that in 1835 another application was made by the Indian agent on said Pawnees to allow the Government to retain for the petitioners, out of said annuities, the value of the property which had been taken by them. To this application they replied, "that they thought all claims against them had been cancelled when they ceded away their lands to their great father in 1833."

No provision is made in either of the above treaties for the payment of damages for depredations committed by this tribe of Indians. The War Department has decided that they had no power to grant the relief sought; that they could not retain the money from the annuities, because they were payable to different bands of this tribe; that there was no evidence to show which of the bands committed the robbery, and the late Secretary of War suggested to the petitioners to apply to Congress for relief.

The committee, after fully examining the subject, have come to the conclusion that it would be a violation of the treaty of 1833 to retain the annuities stipulated to be paid by that treaty, for the purpose of paying damages which accrued previous to the making of the treaty, and not in any way recognised by its provisions. The settlement of this claim should have been enforced at the time of the treaty, (and one of the parties to the treaty, the Indians, supposed all previous claims were settled,) or provision should have been made for the settlement of such claims afterwards.

These annuities are payable in goods, and are to be paid to different bands of this tribe in different amounts. It is not known which of these bands committed the offence; and if a *pro rata* distribution should be made, the innocent must suffer with the guilty. By the 14th section of the act of the 30th of March, 1802, it is provided, that if any Indians belonging to any tribe in amity with the United States shall *come over or across the boundary-line into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horses or other property belonging to any citizens of the United States, or any territorial district of the United States, then certain measures are to be adopted for the recovery of the property.* The transaction set forth in the memorial did not occur within the limits of any State or Territory of the United States, but in the Indian country, at a point on the route marked out by the commissioners and over which the Government had no jurisdiction, and therefore not embraced in the act of 1802. The act of 1834 differs from the act of 1802 in this respect—that it provides for robberies committed in the Indian country; but this law was passed subsequent to the act complained of, which, therefore, is not affected by its provisions.

This claim, as before stated, was presented to Congress in 1828, and referred to the executive branch of the Government, upon the supposition that restitution would be made by the Indians on the demand of the Government. The demand was made, and evaded by a promise to pay as soon as they could commit another similar offence. A treaty was subsequently made, without any reference by either party to this claim. Why it was neglected, does not appear; but if it had been pressed upon the notice of the Government at that time, they were not bound to enforce its payment from the Indians. It is usual for Governments, in making treaties, to provide for the claims of its citizens; but they are not bound to enforce these claims, if

it would prevent a treaty, or lead to a war. In this case, no provision was made, but we do not think the Government liable for the neglect; and we have before stated that, in our opinion, it would be a violation of the treaty to compel the Indians to pay. The loss sustained by the memorialists is one of the perils of commerce; it is not different materially from a loss at sea by piracy, and yet the Government has never been considered responsible for any such loss.

The committee respectfully beg leave to submit the following resolution:

*Resolved*, That the committee be discharged from the further consideration of the memorial, and that the petitioners have leave to withdraw their papers.