

4-24-1878

## Claims of Kansas

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IN THE SENATE OF THE UNITED STATES.

APRIL 24, 1878.—Ordered to be printed.

Mr. TELLER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 80.]

*The Committee on Claims, to whom was referred S. bill No. 80, having had the same under consideration, do make the following report:*

That the bill so referred provides for the reimbursement of the State of Kansas for moneys expended by said State in repelling invasion and suppressing Indian hostilities within the State and upon its borders.

Your committee have examined the evidence submitted, which consists of executive orders, proclamations, telegraphic dispatches, &c., which fully establish the fact that in the year 1864, in addition to the war of the rebellion, there was a sudden outbreak of Indian hostilities upon the western border of the State, of a fierce and most atrocious character. Murder and all the nameless horrors of an Indian war threatened the then unprotected settlements of Kansas, Nebraska, and Colorado. In this emergency, and to meet a demand which would not admit of delay, General Curtis called on the governor of Kansas for a force of State militia, which call was responded to with patriotic promptitude.

With the force thus placed in his hands by the State, General Curtis made a successful campaign against the hostile Indians, but was called back before the work in hand was complete to meet a large army of Confederates approaching the State from the east, under command of General Price, and threatening invasion.

In the years 1865 and 1866 predatory bands of hostile Indians were constantly engaged in committing depredations upon the frontier settlements of Kansas, and they grew to be so serious and extensive as to compel the calling out of detachments of State militia by the governor for the protection of the lives and property of citizens of the State. Murders were committed and a large amount of property captured and destroyed by the Indians.

To quote from a printed statement laid before the committee by the present governor, George T. Anthony:

Emboldened by success, these roving bands became daily more numerous and insolent, until the spring of 1867, when, animated by a spirit of hostility at once fiercer and more malignant than before, they waged a warfare along the entire border of Kansas of relentless cruelty, difficult of parallel even in the annals of their own heartless and horrible warfare.

Early in the beginning of the year 1867 the governor of the State was appealed to by the citizens of the frontier for protection from the Indians who were fairly engaged in this work of destruction. On the 8th

day of May, 1867, a communication, signed by George W. Glover and thirty-eight others, was sent to him from Lima, Kans., urging assistance, and stating that—

On yesterday a war party struck the settlements in White Rock Valley, and killed two men and one woman, and wounded one boy who escaped to tell the sad story. Others are missing; supposed to be captured or killed. Many families are leaving their homes, and cannot return unless they have protection. We appeal to you for help and protection against these merciless savages.

The then lieutenant-governor was himself residing in the western part of the State, and indorsed the above communication as follows:

If you can do anything, do it promptly, that the settlers may return to their homes and save their stock and other property.

N. GREEN, *Lieutenant-Governor*.

Petitions, numerously signed, were soon after this sent to the governor from citizens of the Republican, Solomon, and Smoky Hill Valleys, and from Marion, Butler, and Greenwood Counties, detailing murders and robberies by the Indians all along the border, and asking for military protection. The governor in response to these and other petitions and dispatches of similar import, ordered to the most exposed localities, small detachments of militia. Governor Anthony says:

But with an exposed border of three hundred miles in length, and the overland routes between Kansas, Colorado, and New Mexico, and the working parties on the Kansas Pacific Railroad to protect, it was found impossible to afford protection without calling out a battalion of State militia.

While the State authorities were thus engaged, Maj. Gen. W. S. Hancock was in the field in person, exerting himself to the utmost but without avail, as the Indians still continued their depredations and murders until the white settlements were rolled back many miles.

In the month of June, 1867, a simultaneous attack was made by portions of the Cheyennes, Arapahoes, and Kiowas upon settlers in the Republican, White Rock, Solomon, and Smoky Hill Valleys, and upon surveying parties on the Kansas Pacific Railroad west of Fort Harker.

The following dispatches will give some idea as to the Indian troubles on the line of said road:

JUNCTION CITY, KANS., June 21, 1867.

GOVERNOR CRAWFORD: Thomas Parks, one of our principal contractors, and three other men, were killed by Indians on Tuesday. General Smith says we have all the protection he can give. Can you not give us a regiment of infantry militia at once, to protect our working parties and the frontier settlements?

R. M. SHOEMAKER,

*General Superintendent Union Pacific Railroad, Eastern Division.*

On June 24, the following was received:

LEAVENWORTH, KANS., June 24, 1867.

Hon. S. J. CRAWFORD,  
*Governor of Kansas:*

I have just returned from Fort Wallace, over the line of the Union Pacific Railroad Eastern Division. The Indians along the whole line are engaged in their savage warfare. On Saturday, three more of our men were killed and scalped. Our laborers, one thousand or more, have been driven in. Unarmed men cannot be expected to expose themselves to these savages. General Hancock is away west of Fort Wallace, so I cannot apply to him, and I do not know where a dispatch will reach General Sherman. In this emergency I do not know to whom else to appeal but to you. What can be done to put an end to these atrocities?

JOHN D. PERRY,

*President Union Pacific Railroad Company, Eastern Division.*

On June 24, Governor Crawford received the following dispatch:

Our locating party under Colonel Greenwood was attacked by Indians, west of Monument Station, Saturday morning. The Indians fought four hours for the possession of the camp, but were finally repulsed. Our men killed two Indians, but lost their stock.

R. M. SHOEMAKER.

Later on the same day, the following was received :

GOVERNOR CRAWFORD: The Indians have killed two more of our men, near Bunker Hill Station, and driven the workmen all off the line. Please send us arms and ammunition. Unless you send us protection our work must be abandoned.

R. M. SHOEMAKER.

LEAVENWORTH, *June 28, 1867.*

GOVERNOR CRAWFORD: The following dispatch has just been received :

"FORT HARKER, *June 28, 1867.*

"R. M. SHOEMAKER: My camp was attacked by Indians yesterday at 7 a. m. We lost one man killed and one badly wounded. Five Indians were killed.

"J. B. RILEY, *Engineer.*"

Unless we are promptly protected, all the men will be driven off the work, and the citizens out of the country.

R. M. SHOEMAKER.

On the 27th day of June, 1867, General A. J. Smith called upon the governor for a battalion of volunteers, but on the morning of the 28th the requisition was withdrawn, when Governor Crawford telegraphed General Sherman as follows :

TOPEKA, *June 28, 1867.*

General W. T. SHERMAN,  
*Saint Louis, Mo. :*

General Smith this morning recalled his requisition for volunteers. This leaves our frontier settlers, railroad men, and all others in Western Kansas, exposed, and liable to be murdered and scalped at any moment. What shall be done? I cannot move against the Indians with militia, but will, if desired, furnish the government with a volunteer force sufficient to put an end to these outrages. The Secretary of War informs me that full power is vested in you, and the management of the whole affair committed to your discretion. If so, I do earnestly hope you will call out a volunteer force and move against the Indians at once.

S. J. CRAWFORD, *Governor.*

To this dispatch the following was received :

SAINT LOUIS, MO., *July 1, 1867.*

Gov. S. J. CRAWFORD: You may call out a volunteer battalion of six or eight companies, to be at end of track on Saturday next. I will come in person.

W. T. SHERMAN,  
*Lieutenant-General.*

The governor issued a call on the same day for a battalion of militia, which call was promptly responded to by the citizens and at once entered upon active service. It was called the Eighteenth Kansas, and is referred to in the following dispatch of General Hancock :

FORT HARKER, KANS., *August 26, 1867.*

GOVERNOR CRAWFORD: Captain Arms, Tenth Cavalry, with one company of his regiment and two companies of the Eighteenth Kansas Volunteers, was attacked on the 21st instant, at noon, on the Republican River, by a large force of Indians, reported to be 800 or 1,000 in number, and were engaged until the night of the 22d. Our troops, about 150 in number, covering a wide space of country, were finally forced to retire, with a loss of three men killed and left on the field, and thirty-five wounded, who were brought in. The command also lost forty horses during the engagement. Captain Arms reports a large number of Indians killed and wounded: Lieutenant Price, of the Eighteenth Kansas, says about 150. The command encamped about three miles from Fort Harker last night. Major Moore, of the Eighteenth Kansas, with the remainder of the battalion, and Major Elliott, of the Seventh Cavalry, with about two hundred men of that regiment, started this morning for the Indians.

WINFIELD S. HANCOCK,  
*Major-General, United States Army.*

Two other companies of this battalion on the 30th of August, had an engagement with the Indians who had attacked Major Arms on the 21st and 22d, and after a several hours' engagement won a decided victory. Soon after this fight the Indians went into winter quarters leaving the frontier comparatively peaceful, and which remained so until

the spring of 1868, when the Indian warfare was again resumed. The first attack was made by about 400 Cheyennes and Arapahoes against the settlements in Southwestern Kansas. They penetrated the State as far as Council Grove, killing and wounding a number of citizens and capturing and carrying away a large amount of stock and other property. Besides, they captured and robbed a number of freight trains on the plains and murdered and scalped several teamsters. They then turned their attention to the settlements in Northwestern Kansas, murdering and scalping men women and children in Mitchell, Ottawa, and Republic Counties. The settlers who escaped, took refuge in a stone corral. The governor, on hearing of these raids, went in person to the scene of the Indian atrocities, and hastily organized a volunteer company and moved to the relief of the surviving settlers, providing for the wounded, and burying the dead.

About forty persons were found to have been murdered and scalped in this outbreak. Immediately following this, the governor telegraphed General Sheridan as follows :

TOPEKA, KANS., September 11, 1868.

GEN. P. H. SHERIDAN, *Fort Hays*: Will you issue to me, for the State, five hundred stand of Spencer carbines, with accouterments and ammunition? If so, I will at once organize a battalion of picked men, well mounted, to guard the border from the Republican to the Arkansas.

S. J. CRAWFORD, *Governor*,

The general responded :

FORT HAYS, September 11, 1868.

GOVERNOR CRAWFORD: I will give you the carbines and accouterments for the purpose you indicate. *Your proposition will give me seven good companies now on duty on the frontier.*

P. H. SHERIDAN,  
*Major-General, U. S. A.*

The governor thereupon organized a battalion of five companies for a period of three months' service, which was armed, equipped, and rationed by the United States Government, and distributed at different points along the western borders of the State, from the Arkansas to the Republican Rivers, and rendered efficient service in the protection of life and property upon the advanced frontier settlements.

On the 21st of September, 1868, General Sheridan sent to the governor of Kansas, from Fort Larned, this dispatch :

GOVERNOR CRAWFORD: It has been reported to me this morning that a war party of Cheyennes and Arapahoes crossed the Arkansas east of the Big Bend, on the night of the 19th. They had a fight with General Sully, on the North Canadian, losing seventeen killed. General Sully's command is now on the Cimarron, and will follow into the Wichita Mountains as soon as he can get on hand the necessary supplies. Captain Graham had a fight on Sand Creek, on the 15th, west of Fort Wallace, killing eleven Indians.

I had to take the two mounted companies from Harker to watch the Kiowas and Comanches. I will know to-day whether they will leave the State and go to their reservations or join the hostile Indians.

P. H. SHERIDAN.

This dispatch was followed by the two succeeding ones :

FORT HAYS, KANS., October 8, 1868.

GOVERNOR CRAWFORD: General Hazen has informed me that the friendly overtures which were made to the Kiowas and Comanches at Larned, on the 19th and 20th September, 1868, have failed, to secure peace with them or removal to their reservation; and I am authorized to muster in one regiment of cavalry from your State for a period of six months. I will communicate further with you on the subject on receipt of additional instructions from General Sherman.

P. H. SHERIDAN,  
*Major-General, United States Army.*

FORT HAYS, KANS., *October 9, 1868.*

GOVERNOR CRAWFORD: Under directions received from Lieut. Gen. W. T. Sherman, commanding Military Division of the Missouri, from the honorable Secretary of War, I am authorized to call on you for one regiment of mounted volunteers, to serve against hostile Indians on the plains for a period of six months unless sooner discharged.

I therefore request that you furnish said regiment as speedily as possible, to be rendezvoused and mustered into the service of the United States at Topeka, Kans. The regiment to consist of one colonel, one lieutenant-colonel, three majors, twelve captains, twelve first lieutenants, twelve second lieutenants, twelve companies of ninety-nine men each, including the requisite number of non-commissioned officers specified in the United States Army Regulations. The pay, allowance, and emoluments of officers and men to be the same as that of United States troops. The men will be rationed from the time of their arrival at the rendezvous, and will be furnished with arms, equipments, horses, and clothing from the date of muster into the service of the United States.

I have the honor to be, very respectfully, your obedient servant.

P. H. SHERIDAN.

*Major-General, United States Army.*

Following this came the proclamation of the governor and the organization of the Nineteenth Volunteer Regiment, numbering twelve hundred men. The governor resigned his position and took command of the regiment in person. In November, 1868, he crossed the Arkansas and joined General Sheridan on the North Canadian. The Indians were pushed from the Wachita River in the interior of the Indian country, where they had been accustomed to winter in safety with their captured white women and stolen property.

As the command advanced, the Indians fell back until they could no farther retreat; and being unable to escape, on the 24th December they surrendered, giving up everything, and agreeing to submit to the United States authorities, and thereafter to be peaceful. Some twenty leading chiefs were held by General Sheridan as hostages until the captive women were brought in and surrendered. The Nineteenth Kansas Regiment was mustered out of service after an arduous campaign in March, 1869.

In the summer of 1869, the Northern Cheyennes and Sioux made a raid into Northwestern Kansas, killing and wounding many citizens, burning houses, and capturing the stock of the settlers. Governor Harvey, on the 9th of July, wrote the President, detailing an account of the Indian aggressions, and proposed furnishing volunteers to the government for the protection of the settlements.

Receiving no favorable response, in view of the threatening attitude of the Indians, he was driven to the necessity of calling into service actively a battalion of State militia. This battalion served for four months efficiently, during which time no considerable mischief was perpetrated by the savages.

Aside from the cruelties and hostilities which your committee have spoken of somewhat in detail, it may be observed that as early as the year 1862, and from time to time since 1869 and up to and including the year 1875, predatory bands of hostile Indians have been more or less threatening and warlike, in consequence of which small detachments of militia have, for a short service, been called out to drive them from the settlements and prevent the loss of life and property of the exposed frontiersmen.

Your committee find that the officers and men of the Eighteenth and Nineteenth Battalions before mentioned were paid by the General Government, but that the expenses of recruiting, organizing, and transporting the men to the place of rendezvous were paid by the State, which has never been reimbursed in whole or in part for the same.

Your committee also find that as to the other companies and battal-



ions named, and which were called into service, no payment for personal services of the men nor for recruiting, organizing, and transporting, has been made by the United States; but, on the contrary, these expenses have been wholly paid by the State government.

The bill under consideration provides that the Secretary of the Treasury shall be authorized to examine, settle, and pay all proper claims of the State for moneys expended by it in organizing, arming, equipping, supplying, subsisting, transporting, and paying the volunteer and militia forces of the State. It also provides that out of the amount to be appropriated, there shall be deducted the amount of direct tax due the United States from the State under the "act to provide increased revenue, and other purposes," approved August 5, 1861, which, according to the information laid before the committee, amounts to about \$62,000.

The aggregate of expenses and liabilities incurred by the State in these several Indian expeditions, as shown by the report of the governor, auditor, and treasurer of State, amount to the sum of \$470,726.15; but, as has been seen, the bill provides that the Secretary of the Treasury shall determine, upon such vouchers as he may deem proper, what the *actual* expenditures have been.

Having found that the State actually incurred expenses and paid the same, in repelling invasion and suppressing Indian hostilities, and the evidence before us being as clear as the nature of the case will probably admit, showing that the expenditures were made necessary by the state of affairs existing at the time, the question remaining to be considered is, whether or not the general government is properly chargeable with such expenditures. Your committee are of the opinion that, from the legislative history of Congress, it has been the understanding that the government was so liable.

By act approved March 21, 1828, the Secretary of War was required to pay the claims of the militia of the State of Illinois and the Territory of Michigan, called out by any competent authority, on the occasion of the then recent Indian disturbances, and that the expenses incident to the expedition should be settled according to the justice of the claims. (See Laws of United States, vol. 4, p. 258.)

By act approved March 1, 1837, an appropriation was made for the payment of the Tennessee volunteers, called out by proclamation of Governor Cannon, on the 28th of April, 1836, to suppress Indian hostilities; and a direct appropriation was also made to Governor Cannon to reimburse him for moneys expended on account of such volunteers. (See Laws of United States, vol. 5, p. 150.)

By act approved March 3, 1841, a direct appropriation was made to the city of Mobile, for advances of money and expenses incurred in equipping, mounting, and sending to the place of rendezvous two full companies of mounted men, under a call from the governor of Alabama, at the beginning of the hostilities with the Creek Indians. (See Laws, vol. 5, p. 435.)

By act of August 11, 1842, \$175,000 was appropriated as a balance for the payment and indemnity of the State of Georgia for any moneys actually paid by said State on account of expenses in calling out her militia during the Seminole, Cherokee, and Creek campaigns, or for the suppression of Indian hostilities in Florida and Alabama. (See Laws, vol. 5, p. 504.) By act approved August 29, 1842, a similar appropriation was made to the State of Louisiana. (See Laws, October 5, p. 542.)

By act approved July 7, 1838, an appropriation was made to the State of New York of such amount as should be found due by the Secretary of War and the accounting officers of the Treasury, out of the appropri-

ation for the prevention of hostilities on the northern frontier, to reimburse the State for expenses incurred in the protection of the frontier in the pay of volunteers and militia called into service by the governor. (See 5 U. S. Stats., p. 268.) By an act approved June 13, 1842, the State of Maine was reimbursed for the expenses of the militia called into service by the governor for the protection of the northeastern frontier. (See 5 U. S. Stats., p. 490.)

By act approved March 2, 1861, the State of California had appropriated to her \$400,000 to defray the expenses incurred by the State in suppressing Indian hostilities for the years 1854, 1855, 1856, 1858, and 1859. (See 12 U. S. Stats., p. 199.)

By act approved July 2, 1836, Captains Smith, Crawford, Wallis, and Long, of the militia of Missouri, and Captain Sigler, of the Indiana militia, were paid for services rendered in protection of those States against Indians, and an appropriation of \$1,300 was made for that purpose. (See 5 U. S. Stats., p. 71.)

By act approved February 2, 1861, there was appropriated to reimburse the Territory of Utah "for expenses incurred in suppressing Indian hostilities in said Territory in the year 1853," the sum of \$53,512. (See 12 U. S. Stats., p. 15.) This bill was considered by the House Military Committee and was reported by Mr. Stanton, who, in his report, says:

The liability of the Federal Government for necessary expenses incurred by the States and Territories in repelling invasions of their territory by a foreign enemy, or of hostile tribes of Indians within our borders, has been so often recognized that it can no longer be considered an open question.

The committee also believe that the action of the State and territorial authorities in calling out their military force and engaging in hostilities furnished at least *prima-facie* evidence of the necessity for their action.

As there is no evidence before the committee tending to show that these expenses were unnecessarily incurred, the committee feel bound to recognize the liability of the claim.

By the act approved June 21, 1860 (it being an Army appropriation bill), the sum of \$18,988 was appropriated to reimburse the State of Iowa for the expenses of militia called out by the governor "to protect the frontier from Indian incursions." (See 12 U. S. Stats., p. 68.)

By the same act the sum of \$123,544.51 was appropriated to the State of Texas for the "payment of volunteers called out in the defense of the frontier of the State since the 28th of February, 1855." By the "act making appropriations for the sundry civil expenses of the government for the year ending June, 1864, and for other purposes," an appropriation was made "to pay the governor of the State of Minnesota, or his duly-authorized agent, the costs, charges, and expenses properly incurred by said State in suppressing Indian hostilities within said State and upon its borders, in the year 1862, not exceeding \$250,000, to be settled upon proper vouchers to be filed and passed upon by the proper accounting-officers of the Treasury." (See 12 U. S. Stats., p. 754.)

In the sundry civil bill of the following year an appropriation of the sum of \$117,000 was made to the same State "to supply a deficiency in the appropriation for the costs, charges, and expenses properly incurred by the State of Minnesota in suppressing Indian hostilities in the year 1862." (See 13 U. S. Stats., p. 350, 351.)

By act approved May 28, 1864, the sum of \$928,411 was appropriated for the payment of damages sustained by citizens of Minnesota "by reason of the depredations and injuries by certain bands of Sioux Indians." (See 13 U. S. Stats., p. 92.)

Beside the appropriation made to the State of California, before re-



ferred to, by act approved August 5, 1854, the sum of \$924,259.65 was appropriated to reimburse the State for expenditures "in the suppression of Indian hostilities within the State prior to the 1st day of January, 1854." (See U. S. Stats. at Large for 1853 and 1854.)

The question of the liability of the General Government for the payment of this class of demands seems to have been carefully considered by the Committee on Military Affairs of the House, in connection with this claim of California for reimbursement.

Mr. McDougal submitted the report of the committee, in which he said :

The question remaining for consideration is, whether or not the General Government is properly chargeable with their expenditures ?

It is the opinion of this committee that the obligation of the Federal Government to furnish specific and particular defense to each several State is included in its obligation to maintain the "common defense" of the Confederacy. That invasions from abroad, insurrections at home, and aggressions from the savage tribes inhabiting our borders, are alike within the protective province of the Federal Government. Congress possesses the exclusive power "to raise and support armies in time of peace," and possesses the power to call forth the militia "to suppress insurrections and repel invasions." In the tenth section of the first article of the Constitution, the States stipulate that they will not "keep troops or ships of war in time of peace."

The conclusion necessarily follows that the General Government is, by the implied, if not the express, terms of the federal compact, bound.

The question here presented appears to have been distinctly raised in 1831 upon a claim presented by the State of Missouri. By act approved March 3 of that year, Congress made an appropriation for the service of the Missouri militia against the Indians, "provided that the Secretary of War shall, upon full investigation, be satisfied that the United States are liable for the payment of said militia, under the second paragraph of the tenth section of the first article of the Constitution of the United States." (See Laws, vol. 4, p. 465.)

General Cass, then Secretary of War, examined the subject submitted, and gave the opinion of the government as to its constitutional obligations, affirming the liability of the government, and directing payment to be made to the State of Missouri.

Instances of similar legislation might be cited, but it is believed that but little doubt can exist either as to the constitutional obligation or the exposition given by Congressional legislation.

Your committee, after having given the subject such consideration as time and opportunity would allow, feel bound to conclude that the General Government owes to the States the duty of protection, especially against the incursions of hostile savages, over whom the United States authorities have, from the foundation of our government, exercised a kind of parental control. And this being the case, when, from any cause, the States are not given such protection, and reasonable and necessary expenses are incurred by such States in repelling invasions from the Indians and suppressing hostilities, reimbursement should be made for the same by the United States.

This claim of the State of Kansas coming, as we believe it does, within the principle just stated, should, in the opinion of the committee, be paid.

Your committee are, however, of the opinion, in view of the fact that there are now so many demands upon our national Treasury, to meet which an immediate response in payment would, if possible, not at least be advisable, that, instead of a direct appropriation in satisfaction of this claim, it would be prudent to provide for the issuance of United States certificates for such amount as the Secretary of the Treasury may, upon investigation, find to be due the State, said certificates to be of the denomination of one hundred, five hundred, and one thousand dollars each, as the Secretary may direct, to run for ten years

from date of each, with interest payable semi-annually at the rate of three and sixty-five hundredths per centum per annum.

Your committee have likewise felt that, whatever sum may be found due the State under the provisions of this bill, should, when paid, be received in full satisfaction of the State's claim, so as to avoid the possibility of another demand, which might be made (as is often the case where appropriations are secured) for deficiencies in the amount of allowance.

The views of the committee, as herein expressed, we think are best embodied in the bill herewith submitted, the passage of which your committee would recommend, as a substitute for the original bill.

S. Rep. 283—2

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