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Fred. Phillips.

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FRED. PHILLIPS.

APRIL 20, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BLANCHARD, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5894.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 1912) for the relief of Fred. Phillips, having considered the same, respectfully report:

That the claimant, Fred. Phillips, is a merchant of Salmon City, Idaho; that he has resided there for fifteen years; that in 1877 he received all his goods and merchandise at Corinne, a railroad station on the Central Pacific Railroad, in the Territory of Utah, and transported the same, overland, on wagons, 350 miles; that in the month of August, 1877, he had on this road six large freight wagons, drawn by twelve pairs of mules, loaded with goods, wares, and merchandise, to go to his place of business at said Salmon City, and when about 110 miles south of Salmon City, and when the train was in camp for noon; on the 15th day of August, 1877, the said train and party was surprised, attacked, captured, and destroyed by a band of Nez Percé Indians, the men all murdered except two Chinamen; the mules, horses, merchandise, and property of every kind taken and destroyed. Nothing was found afterwards except the bodies of the murdered, unburied men, and the burned and charred remains of the wagons and goods. About a year afterwards this claim was prepared and presented to the Department of the Interior for investigation and report; and by the order of the department to its agent, who had these Indians in charge, on the 6th day of November, 1879, this claim was, by the agent, presented to the chiefs and head men of said band of Indians for payment; that the band acknowledged they did, at said time and place, as alleged, capture a train of eight wagons, drive off the horses and mules, take from the wagons some of the articles of merchandise, then set fire to the wagons and contents, but that they had no money or property to pay claimant for his loss sustained; that this band of Indians are a part of the Nez Percé "nation"; that they originally inhabited part of Idaho, lying between the Bitter Root Mountains, extending from Pelouse River on the north, thence to the Salmon River and valley on the south.

In June, 1855, a treaty was made with this tribe or nation and signed by fifty-eight chiefs and head men, whereby a portion of this Territory, west and south, was ceded to the United States. Joseph and his band were given the part or portion known as the Wallowa Valley, a tract of land embracing 1,425 square miles, in the State of Oregon, and they

occupied this peaceably until the discovery of gold in this Territory in the fall of 1860, when an agreement was made by the government with the Nez Percés whereby a portion of this reserve was opened up for mining purposes, and the town of Lewiston with 1,200 inhabitants sprung into existence. This act was opposed and protested against by Joseph's band, and this, with the unsatisfactory and insufficient supply of annuity goods provided by the government, caused circumstances which could not be harmonized, except by revising or entering into another treaty, which was done on the 9th day of June, 1863, and a relinquishment made by the Nez Percé nation of all their rights in and to the Wallowa Valley, Salmon River, and Alpowa Valley, for which the United States Government agreed to pay to the tribe or nation, in addition to the annuities and goods provided for in the treaty of June, 1855, the sum of \$262,500. This treaty was signed by Chief Lawyer, head chief of the Nez Percé nation, and fifty other head men of the tribe. Twenty of this number were parties to the former treaty of 1855. Joseph and his band demurred to this last treaty, refused to be parties to it, and claimed the right to still occupy the Wallowa Valley as they had done since the treaty of 1855. This faction of the tribe or "nation" remained on the Wallowa Valley until the encroachments of the settlers renewed the difficulties with these Indians. The government then selected and detailed men to act from time to time as commissioners to adjust and settle these troubles and remove Joseph and his band from the Wallowa Valley to the Lapwa Reserve in compliance with the treaty of 1863.

The commissioners reported the removal of these Indians impracticable. The government then adopted the policy of declaring this valley an Indian reservation, and solicited Congress to appropriate a sufficient amount to pay the white settlers for their improvements and removal from this Territory, which Congress failed to do. Joseph not being inclined to respect the settlers' rights, the reservation rights of these Indians was revoked by the President June 10, 1875, putting the title of Joseph and his band to the Wallowa Valley back to the stipulations in the treaty made June, 1855. To avoid threatened outbreaks again, commissioners were sent to visit and counsel with these Indians. This commission met Joseph and his band November 13, 1876, and failed to make any definite arrangement looking to a removal of these Indians, and in their report say, that while full weight is given to precedents and authorities in the government dealing with the Indians, they look to the fact that Joseph's father, chief of the same band, joined in making the treaty of 1855, which implied a surrender of any specific rights to any particular portion of the whole reserve, which included the Wallowa Valley; that this renders Joseph's claim, even the right of occupancy, uncertain; and that if the principle, usually applied by the government, of holding that the Indians with whom it has treaties are bound by majorities is here applied, Joseph should be required to live within the limits of the Lapwa Reservation, as designated by the treaty of 1863, and recommend military force to be used to effect the removal of Joseph and his band from Wallowa Valley on to the Lapwa Reserve. The government acted on this recommendation, and turned the matter of removal over to the War Department, ordering General Howard to take military occupation of the Wallowa Valley, and remove these Indians therefrom.

First councils were held, and a peaceful removal sought, and June 14, 1877, was mutually agreed upon as the time; but the day prior Joseph began open hostilities, and from that time until the surrender to General Miles, Joseph was on the war path, and during the time, as

heretofore stated, raided this claimant. After their capture Joseph and his band were settled on a tract of land in the Indian Territory. The government took possession and appropriated the whole of the territory of the Wallowa Valley, forcing these Indians to comply with the provisions and stipulations of the treaty of 1863, and is now disposing of and selling these lands in the Wallowa Valley to settlers and purchasers, and receiving therefor all the emoluments and benefits arising therefrom. The amount of land embraced in said Wallowa Valley is about 1,425 square miles. Portions of it are rich in minerals, portions adapted to agriculture and grazing, and all valuable land.

This committee finds that the treaty of 1855, article 8, provides that when depredations are committed on citizens by the Nez Percé Indians, the government may retain for such injury compensation for property destroyed out of their annuities, and the subsequent treaty of 1863 specially refers to this article 8, and declares it to be in full force and effect, and the bill is drawn to the effect that Congress allow the Secretary of the Interior to pay this claimant out of the moneys belonging to the Nez Percé Indians; but the committee, on referring the matter to the Interior Department, are informed that from the irregular execution of the last treaty, Joseph and his band are regarded as non-treaty Indians, and as not participating in its benefits and annuities, and that therefore it would be unwise to compel the treaty portion of the tribe to pay for the depredations committed by Joseph and his band on this claimant, but that the claimant is entitled to pay for loss actually sustained, and the amount should be paid out of the public funds.

The department shows that the only money now in the United States Treasury belonging to the Nez Percés is \$10,000, and that the only money which Joseph and his band receives is a gratuity by the government for their support and civilization, which appropriation has been made annually only since they have been in the Indian Territory. The committee further find that there is no other claim filed for payment for property destroyed by these Indians in their last outbreak and raid, and that by the terms of the first rule of the Interior Department governing and providing for such cases, no other claim could now be filed for payment of property by said Indians destroyed. The amount this claimant puts upon his property is \$20,649.74, but your committee find upon quite a thorough and lengthy examination of the items exhibited, that the prices claimed are too high, more than the government should pay. Your committee think that one-half the amount, last above stated, is the amount justly due, and that should be paid to claimant for his loss, and that the said amount should be paid out of the unappropriated moneys in the United States Treasury.

They, therefore, report the bill favorably by accompanying substitute, the passage of which they recommend.

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