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4-12-1884

**F. C. Bulkley**

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### Recommended Citation

H.R. Rep. No. 1296, 48th Cong., 1st Sess. (1884)

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F. C. BULKLEY.

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APRIL 12, 1884.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. T. G. SKINNER, from the Committee on Indian Affairs, submitted the following

REPORT:~

[To accompany bill H. R. 4056.]

*The Committee on Indian Affairs, to whom was referred the bill (H. R. 4056) for the relief of F. C. Bulkley, respectfully report:*

That they recommend that the said bill be amended by striking out of line 6 the words "ten thousand and seventy-five" and inserting the words "seven thousand five hundred," and that the bill so amended pass.

On a full examination, we find the follow facts: In 1870, F. C. Bulkley, the claimant, had a contract to furnish fresh beef for the Indians at Fort Sill, Indian Territory. Mr. Bulkley received orders to have his cattle all at Fort Sill, on or before June 30, 1870, so that the Subsistence Department of the Army could close the contract and turn the subsistence of the Indians over to the Interior Department July 1, 1870. In pursuance of that order, Mr. Bulkley proceeded to Texas, the nearest cattle market, and bought a large number of cattle; among the number, the evidence shows, he bought of C. P. Hamilton 823 head of cattle and 16 horses. He bought of W. R. Baker 400, head of cattle; of S. N. Wood 237 head. These cattle and horses were delivered to Mr. Bulkley on the north side of Red River, in the Indian Territory, the parties agreeing, however, to drive the said stock to Fort Sill at the risk of the said Bulkley. Mr. Baker and Mr. Wood, for protection and convenience in driving, united their herds. The evidence shows that when in camp, about 10 miles from Red River, June 24, 1870, some ten or twelve Kiowa Indians attacked their herd, fired upon their herders, and stole and drove away "205 head of cattle;" of these, 138 head were bought of W. R. Baker and 67 head of S. N. Wood. The evidence also shows that some thirty Kiowa Indians attacked the herd of C. P. Hamilton June 16, 1870; that one man was killed, the cattle were stampeded, 16 horses were driven off, 139 head of cattle were entirely lost; 5 more were so badly injured that they died. The affidavits show that every effort possible was made to collect the cattle belonging to all of these herds, but the actual loss was as above stated. Among the papers is a letter from Hon. Ed. F. Smith, Commissioner of Indian Affairs, in which he states that this claim was presented to the Indians in council; that they admitted the depredations, but refused to make reparation. The Commissioner estimates Mr. Bulkley's actual loss at \$10,075. The Hon. C. Delano, Secretary of the Interior, in a letter dated March 27, 1874, refers this

claim to Congress for an appropriation under the act of May 29, 1872. Your committee estimate claimant's loss at \$7,500. The evidence shows that Mr. Bulkley was lawfully in the Indian Territory; that he did not attempt any private revenge; that the claim was presented within three years, and that it was examined carefully under the regulations of the Department. The law, as well as the practice, used to be to pay all such claims without any action on the part of Congress; but two years after these depredations were committed, and whilst these claims were being investigated by the Department, the law of May 29, 1872, was passed, requiring a "specific appropriation by Congress before payment."

#### THE LAW OF THE CASE.

The act of June 30, 1834 provides (see Stat. at L., vol. 4, p. 731):

SEC. 17. That if any Indians, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person, lawfully in such country, or shall pass from the Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse, horses, or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or subagent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians belong, for satisfaction, in a reasonable time, not exceeding twelve months. It shall be the duty of such superintendent, agent, or subagent to make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper in the opinion of the President, to obtain satisfaction for the injury; and, in the meantime, in respect to the property so taken, stolen, or destroyed, the United States guarantee indemnification: *Provided*, That if such injured party, his representative, attorney, or agent, shall in any manner violate any of the provisions of this act by seeking, or attempting to obtain, private satisfaction or revenge, he shall forfeit all claim upon the United States for such indemnification: *And provided also*, That, unless such claim shall be presented within three years after the commission of the injury, the same shall be barred, and if the nation or tribe to which such Indian may belong receives an annuity from the United States, such claim shall, at the next payment of the annuity, be deducted therefrom, and paid to the party injured; and if no annuity is payable to such nation or tribe, then the amount of the claim shall be paid from the Treasury of the United States: *Provided*, That nothing herein contained shall prevent the legal apprehension and punishment of any Indian so apprehended.

In 1859 this law was amended as follows (sec. 8, Stat. at L., vol. 2, p. 401):

That so much of the act entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontier, approved June 30, 1834, as provided that the United States shall make indemnification out of the Treasury for property taken or destroyed in certain cases by the Indians trespassing on white men in certain cases as described in said act, be, and the same is hereby, repealed; *Provided, however*, That nothing herein contained shall be so construed as to prevent, impair, or destroy the obligations of the Indians to make indemnifications so prescribed in said act.

Approved February 28, 1859.

It will be seen that the obligation is not only on the Indians to make indemnifications, but the Government has obligated itself that they will see that this is done; that if the Indians will not make settlement, then the Government has solemnly agreed to deduct it from the Indian annuities and pay it to the party injured. The object of this obligation on the part of the Government is to prevent the people from trying or attempting to obtain private satisfaction, and probably bring on an Indian war at great expense to the Government. This claim was adjusted, and should have been paid ten years ago. We hold that the Government should not only keep its faith with the Indians, but also with its own citizens. The neglect on the part of the Government to

do this has, without much doubt, been the cause of much of our Indian difficulties. If the Government would be more careful to fulfill its agreements with its own citizens, and with the Indians, much if not all of our Indian troubles would cease. But as long as the Government fails to observe its agreements with the Indians and with its own citizens, both lose confidence, and trouble is the result.

The custom used to be, as we have said, after the Secretary of the Interior had investigated a claim of this kind, and decided how much was due, to deduct it from the Indian annuities and then pay it to the injured party.

Congress, however, on May 29, 1872 (see chapter 233, vol. 17, p. 190, Revised Statutes, sec. 446), enacted the following:

The Secretary of the Interior shall prepare and cause to be published such regulations as he may deem proper, prescribing the manner of presenting claims arising under laws or treaty stipulations, for compensation for depredations committed by the Indians, and the degree and character of the evidence necessary to support such claims, he shall carefully investigate all such claims as may be presented, subject to such regulations prepared by him, and no payments, on account of any such claim, shall be made without a specific appropriation therefor by Congress.

This in no wise changes the obligations of the Indians to pay for these depredations; it does not change the obligation of the Government to see that it is done. Your committee can see how embarrassing it must be to the Secretary of the Interior that the proper appropriations are not made, so that he can settle such claims. If this is not done, your committee can see the danger that men may become disgusted and seek private redress. In this case the letter of the Commissioner of Indian Affairs, as well as the Secretary of the Interior, shows that every provision of the law has been complied with. The evidence in the case shows that it was taken before Hon. L. Tatum, the agent of these same Indians, immediately after these depredations, when it was all fresh and subject to the strictest examination. The testimony is from men who were on the ground and witnessed these depredations, and knew all about them. Agent Tatum had the witnesses all before him, and every opportunity to make a full investigation; besides the letter of the Commissioner shows that the Indians admitted the whole matter.

If these claims had been promptly paid, and the Indians understood that they were compelled to make such damages good, it would have been a salutary lesson for the Indians. As it is, it is a direct encouragement to these Indians to commit crimes. We wish to say that the officers seem to have done their whole duty in the matter, that the fault is with Congress in not making the appropriations contemplated by the law. Your committee believe that this claim is just, to the amount of \$7,500, and should be paid, the amount deducted from any money due the Kiowa and Comanche tribes of Indians. The Indians are bound to do this, the Government is bound to see that it is done; to not do it is to offer a premium on just such depredations.

We think that such claims in future should be promptly adjusted and as promptly paid, so that the Indians will understand what it is for. This will have the tendency to restrain them in future, and effectually stamp out all such depredations.

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