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CLAIMS ARISING FROM INDIAN DEPREDATIONS.

House Report No. 1079, Fifty-first Congress, first session.

MARCH 26, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HERMANN, from the Select Committee on Indian Depredation Claims submitted the following

REPORT:

[To accompany H. R. 8150.]

Your committee finds itself overwhelmed with private bills for the payment of Indian depredation claims arising in various portions of the nation, chiefly in the extreme western, southwestern and Pacific States and Territories. It has been found utterly impossible to consider with necessary care even a small portion of these matters. It has therefore devoted its consideration to the various general bills before it which provide for a court or special tribunal before which all such private claims may be considered and finally acted upon. The records of Congress disclose the fact that for many years former committees have experienced alike inability to consider the numerous claims of this class which have been presented to Congress from time to time. It was deemed necessary, and was thought to be a great relief, when Congress provided for the investigation of Indian depredation claims through and by the Interior Department. To this end appropriations have been annually voted to defray the expenses incident to such investigation; but even this has failed to produce the desired result, inasmuch as it is now seen that the various claims investigated and favorably reported to Congress at each session can not be considered by it with a view to appropriation.

The business of this Government has at last become so immense in its details, and the increase of measures before Congress so great, that only matters of the highest public concern can be considered with that care and deliberation so essential to just and correct legislation. Your committee has therefore arrived at the conclusion that a separate and independent tribunal is now an indispensable alternative for the speedy and just settlement of claims arising through Indian depredations, and they accordingly report the accompanying bill, which in their judgment will accomplish such an adjustment of these claims as is desirable and proper. The various Departments of the Government which are connected direct and indirect with the proposed tribunal, have been consulted by your committee, and each and all of them have not only united in an opinion as to the necessity for such a resort, but have approved the general features of the bill. The class of claims which are referred under this bill have an interesting history in the legislation of the country.

The founders of the Government early appreciated the delicate relations which existed between the aborigines of the country and the

whites. To deal fairly and justly by the Indian race, to disarm these people of any suspicion as to unjust methods on the part of the whites, to prevent controversies which seemed inevitable in the various transactions between them, and to avoid personal conflicts which must necessarily have ensued and driven the races to endless hostility, it was early determined, in the act of July 22, 1790, to regulate all trade and intercourse with the Indian tribes. Great care was also provided, in further enactments, as to settlement on Indian lands and the survey of the same, and all individual transfers or purchases of land were strictly prohibited and made void. Cases frequently occurred of Indian depredations on the one hand, and of retaliation by the whites on the other. Indian depredators were pursued into their own territory by the whites, intent upon reclaiming the property taken, or of obtaining indemnity or compensation for property destroyed. Great disasters were often precipitated during these occasions. It was found, later on, further necessary to define still more clearly the relation between the two races. While the Indian, on the one hand, was promised protection against the lawless actions of the white man, on the other a guaranty of indemnity was offered the whites as to the lawless acts of the Indians. These necessities thus created an obligation on the part of the General Government to each of these classes. It became, as it were, not only a common arbiter between them, but an indemnifier as well. Having assumed to guaranty indemnity, it also assumed to enforce a recognition of the rights of each. Various acts of legislation were enacted pursuant to the principle thus adopted. An extract from the act of May 19, 1796, will more clearly emphasize the original obligation on the part of the General Government, in the following words:

That if any Indian or Indians belonging to any tribe in amity with the United States shall come over or cross the said boundary line into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse or horses or other property belonging to any citizen or inhabitant of the United States, or of either of the Territorial districts of the United States, or shall commit any murder, violence, or outrage upon any such citizen or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney, or agent to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose, who, upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe to which such Indian or Indians shall belong for satisfaction. * * * And in the meantime, in respect to the property taken, stolen, or destroyed, the United States guaranty to the party injured an eventual indemnification: *Provided always*, That if such injured party, his representative, attorney, or agent, shall in any way violate any of the provisions of this act by seeking or attempting to obtain private satisfaction or revenge by crossing over the line on any of the Indian lands, he shall forfeit all claim upon the United States for such indemnification. (See act June 30, 1834, sec. 17, 4th Stat. L., 731.)

It will thus be seen that the usual remedies afforded by the municipal law were absolutely denied the injured party, and he was prevented from seeking private satisfaction for the loss incurred. A thief taking away another's property, or an enemy burning another's dwelling, or trespassing in the least upon another's rights, can be followed throughout the whole nation and the courts are open to the injured claimant. The property of the wrong-doer can be seized by the strong arm of the law, and recompense had and the wrong redressed. In the interest of peace and public policy, the Indian trespasser, however, can not be pursued into any courts, nor can his property be taken in satisfaction for the injury he inflicts. The reservation line is the boundary of his refuge, and too often it has been a refuge for thieves and murderers. The injured settler of the frontier, who has perhaps but his faithful yoke of

oxen as his reliance in building his American home in the wilderness, must fold his arms and quietly submit should some Indian depredator stealthily encroach upon the settler's lines and there take away or destroy his only property. He could pursue the white criminal, could invoke the aid of the law, both to punish for the wrong act and to recover the property if found. But in the case of the Indian depredator he is restrained by the severe admonition of the law itself.

The analogy between the express liability of the States, or of municipal bodies, to answer for damages by riots or mobs, or of the United States, under treaty provisions, to compensate for injuries done aliens in this country, is not so close as is the relation of the Government to its own injured citizens—the victim of Indian depredations. Congress responded most readily, and with extreme liberality, to the demands of China for compensation for loss of life and property of alien Chinese by mob violence in Wyoming. The obligation to protect its own citizens from Indian violence is doubly strong in view of the express guardianship assumed by the Government of the Indian tribes. It undertook to guard, to care for, and to protect the Indians. It assumed the corresponding duty to maintain sufficient force by which to prevent injury to its citizens from such of these savage wards as should escape its surveillance.

In view of this relation of the General Government to the Indian tribes, its jurisdiction is supreme, and the various States, under the Constitution, can afford no remedy not in harmony with the Federal statutes. The State, as well as the citizen, must resort to the authority of the General Government for redress. Without its assent no injury can be remedied and no wrong can be punished. For every other injury to the citizen the law provides a direct remedy. Indeed, we are reminded that it is a maxim of the law that for every wrong there is a remedy. There is also a Constitutional guaranty to every citizen (and the power of the nation is pledged to its maintenance) that he shall not be deprived of his property without due process of law. When the Government withdraws from the citizen the right to sue and to protect, or to recover his property when wrongfully taken, it in effect confiscates his property. "That it has the power to so enforce the rights and interests of private citizens to secure the safety or prosperity to the public" there can be no doubt, as the Supreme Court has said, but beyond this there still exists the Constitutional principle "*that private property shall not be taken for public use without just compensation.*" This principle, as applied to the question involved in Indian depredation claims, appeals to the conscience and good faith of Congress. In another form, as we have demonstrated, this obligation to the citizen, in relation to the Indian wards of the nation, is also recognized and maintained. The Government assumed an express responsibility to the injured claimant. It became his guarantor, and while it took away his ordinary remedy it yet provides him an indemnification. It undertook to do the punishing as well as to follow the further remedy for such recovery as was possible, and to this end (in the act of Congress last mentioned) it was provided—

That it shall be lawful for the President of the United States to deduct such sum or sums as shall be paid for the property taken, stolen, or destroyed by any such Indian out of the annual stipend which the United States are bound to pay to the tribe to which such Indian shall belong.

The guaranty of indemnification to its citizens was continued and re-enacted by the Government during various years and terms of Congress until the act of February 28, 1859. Up to that time all losses

were regularly paid through the Departments upon proof being made to the proper officers. No recourse was had to Congress. No other legislation was had, and no such uncertainty and delay was experienced as is now suffered through the inaction of Congress. Indemnification was made directly out of the Treasury for the property taken or destroyed. As to all losses, therefore, as accrued previous to February 28, 1859, the obligation of the Government continued unimpaired and its liability to that extent has never been disputed. These and subsequent losses constitute a valid and subsisting debt against the Government. The last-named act repealed so much of the previous legislation as provided for the indemnification being made immediately out of the Treasury, but continued the provision as to the indemnification being made out of the annuities due the Indians. A doubt, however, arose as to whether the act did not of itself repeal the guaranty of indemnification, and thus destroy the further obligation of the Government to claimants. This doubt was set at rest in the succeeding Congress by the joint resolution of June 25, 1860, which provided that the preceding act "shall not be construed to destroy or impair any right to indemnity which existed at the date of said repeal."

By act of July 15, 1870, the remaining remedy for payment, through annuities, was discontinued, and it was further provided that no claims for Indian depredations shall hereafter be paid until Congress shall make special appropriation therefor. It was, therefore, not until as late as the year 1870 that, in all cases, claimants were required to seek their remedy in Congress. The right, however, to compensation has always continued a subsisting obligation between the Government and the injured party. The remedy alone has changed. It was in 1872 that the Interior Department was first authorized and required to receive evidence relating to Indian depredation claims and to make rules and regulations for the proper investigation of the same, and to make report to Congress at each session as to the nature and amount of such claims, and whether allowed or disallowed by the Secretary, with the evidence upon which his action was based. This was again a continuing recognition, not only as to the character of this class of claims, but also as to the right of the citizen to seek, through Congress, for compensation. Between 1850 and 1885, three thousand eight hundred and forty-six claims were filed, involving \$13,600,000. Of these, two hundred and twenty-five claims have been paid. With the act of March 3, 1835 (23 Stat., 376), commenced the system of annual appropriations for the investigation of Indian depredation claims, and which authorized the Secretary of the Interior to expend these appropriations for such purpose. The further act of 1886 appropriated \$20,000 for continued investigation, and included all claims previously barred by the limitation of the act of 1834. These appropriations and the investigations made thereunder, have continued up to the present day. Since 1885 one thousand eight hundred and sixty-four have been filed.

The very words used in the recent act of March 3, 1885, and referred to by all the subsequent acts of appropriation, contain within themselves unmistakable recognition by Congress as to the continuing guaranty and obligation of the Government in relation to these claims. These acts provide that the Secretary shall determine the kind and value of all property damaged or destroyed by reason of the depredations, and by what tribe such depredations were committed and further provide that his report shall include his determination upon each claim. Pursuant to these various acts, the Interior Department has had presented to it from various claimants, in different States and Ter-

ritories of the Union, 5,710 claims, involving, as per claimants' valuation, about \$19,000,000. It has investigated, with great care and labor, since 1885, and at much expense to the Government, 1,100 claims, involving a total sum of \$4,000,000. But few of these have been allowed for amounts originally claimed. Some have been entirely disallowed, and the remainder have been reduced to correspond with the facts, and \$1,300,000, or 32½ per cent. of the \$4,000,000 have been allowed. Congress has appropriated by special acts \$1,654,530. Prior to 1870, many of these claims were paid by Indian agents.

Numerous acts of Congress have been passed since 1834, up to the present time, making appropriations in individual cases for Indian depredation claims. Seldom, since that time, has a single session passed that there has not been considered, and appropriations made for, some specific claim for depredations. These were not confined to acts committed in the early years of the nation's history, but many were for depredations committed within the last fifteen years. While the original liability, as well as the precedent, for these various payments are not disputed, yet your committee desire to submit this brief review in order that Congress may be reminded of the importance as well as the necessity for a continuation of its just policy toward these numerous claimants, and that it may also realize the absolute impossibility of doing this simple justice and affording compensation under the system which at present prevails through relief bills in Congress. If it is the intention that these just claims shall be honestly adjusted and paid, there should no longer be delay in providing some expeditious and certain method of adjudication. If, on the contrary, it is desired to repudiate and ignore them and to deny compensation, it is no less a duty to the long-expectant and suffering claimants that this announcement should be made at the earliest possible moment by some authoritative action on the part of Congress.

The Interior Department of the Government, which has so long been considering the subject before us, has repeatedly recommended to Congress the payment of these claims. The Commissioner of Indian Affairs, in his report to the honorable Secretary of the Interior, and which is approved by the Secretary, in favorably reporting upon the bill now submitted by your committee, uses the following language:

Ninety-four years ago, under the sanction of George Washington, Congress solemnly promised eventual indemnity to the citizens and inhabitants of the United States who might, through no fault of their own, lose their property at the hands of Indians enjoying treaty relations with the United States. In all this time that promise has been kept in not more than 3 per cent. of the claims which have been filed. The law forbade these claimants, under a penalty of losing the amount of their claims, from attempting by private efforts to recover their property where such efforts might involve the country in an Indian War—from taking "private satisfaction or revenge"—in the language of the law, and forced the Government upon them as their attorney to collect for them the amounts which might be due. Becoming thus, by its own law, the agent and attorney of these people, and forbidding them any other course of proceeding, it appears to be more than in the ordinary sense bound by honor and good policy to redeem its pledges, and faithfully carry out its promises. I think the jurisdiction conferred, by the inclosed bill, is entirely just and proper, and is sufficiently guarded to protect the Government from the payment of unjust claims to undeserving people. All previous legislation upon this subject has limited the jurisdiction of the Government in the settlement of these claims, to the consideration of those resulting from depredations committed by Indians who, at the time were "in treaty relations" with the United States.

It is noticed that in subdivision, section 1, the qualification of treaty Indians is omitted, and in my opinion the omission is entirely proper for a just and equitable view of the matter. The Government of the United States was in duty bound to protect those adventurous citizens who, upon its invitation and promise if not express obligation, to afford them such protection, peopled the barren West and converted its barbar-

ism into civilization. But they did not receive that protection by reason of the inadequate military force employed in that part of our domain. It was no fault of theirs, but the wrong of the Government, and the Government ought not to attempt to plead that wrong or its negligence in negotiating treaties with these savages, as an excuse for the non-payment of the claims which may be and no doubt are in every respect just as honest and just as equitable as those which were committed by Indians who at the time were enjoying treaty relations. The Treasury Department likewise, having been consulted upon this subject, replies as follows: "The necessity for some legislation by which this class of claims should be provided for has long been apparent, and the tribunal proposed in the bill seems admirably adapted for the purpose of giving these difficult cases a thorough investigation and speedy settlement."

Nor does the disposition manifested by Congress within the past few years justify the country to believe that it is the intention to longer ignore these obligations. There is a general unanimity of sentiment after long experience and reflection that the proper course to pursue is that which your committee now recommend to Congress. The Indian Affairs Committee of this House in the Forty-eighth Congress had under consideration at that time the subject of Indian depredation claims, and it unanimously reported a bill "To establish a board of commissioners to examine, adjust, and report on all claims arising out of Indian treaties and depredations committed by the Indians, and for other purposes." Their examination of the subject was an exhaustive one, and their report is a most interesting document. The functions of the commissioners proposed were, as far as possible, judicial, and the Attorney-General was required to see that the interests of the Government were properly defended; and the committee reported:

That after a careful consideration they have reached the conclusion that the only consistent proceeding, with a due regard on the one hand for the obligations of the Government, and on the other for the proper security of the Government from unfounded claims, is to provide for the examination of these claims by some tribunal endowed with ample facilities for sifting their merits thoroughly in whose findings Congress may safely repose confidence.

In the Fiftieth Congress it became apparent to all that the Committee on Indian Affairs could not properly consider the numerous details connected with Indian legislation and at the same time pass upon the mass of Indian depredation claims before it, and the creation of a select committee became a necessity. The rules of the House provided for this. This committee having this class of legislation alone to consider were enabled to devote to it careful as well as prompt attention, and in the same session it reported to Congress a bill "To provide for the adjudication and payment of claims arising from Indian depredations." This also proposed the creation of a separate tribunal for a final adjustment of this class of claims, and the committee in reporting the bill say:

Fully appreciating the justice of the demands of the claimants now before Congress and the Departments of the Government for depredations committed by the Indians, and recognizing the moral and legal responsibility of the United States for their indemnification and payment, and being satisfied that a proper and speedy adjustment of the amounts due each party as well as the determination of a relevant and important adjunct of the question can not be had at least for years owing to existing modes of considering them, this committee has reached the conclusion that justice to the claimants, justice to Congress, and justice to the Government concur in demanding that a tribunal distinctively judicial in character whose decisions deliberately and judicially had would command the respect and confidence alike of Congress and the country should be organized and charged with this duty, and hence the committee have carefully examined and prepared and do recommend this bill to the favorable consideration of the House.

In recognition of the merits of this class of claims the same committee report:

To no class of its citizens is the American Government more indebted than to the heroic men and women, who, as pioneers of our civilization, abandoning home, and

comfort, and ease, risked life and property to secure homes, wealth, and progress as the heritage of those who should follow in their pathway. A cheerful compensation of their losses, so incurred, under the guaranty of the Government, is the deserving reward of their sacrifices.

This bill, somewhat amended, passed this House during the same session at which it was reported. It was favorably reported from the Committee on Indian Affairs of the Senate, with various amendments but failed to be considered for want of time. And now your committee submit the third report, and with it a bill, also providing for a tribunal, the passage of which they recommend with all the earnestness of former committees.

The Senate having at this session of Congress (and for the first time) created a select committee on Indian Depredation Claims, it is believed that an early and thorough, as well as a final, consideration may be given this subject by the Fifty-first Congress, and that a method may be provided for the direct payment of these long existing obligations of the Government.

Your committee express the belief that such an announcement will be glad tidings to the pioneers in the far West, who conquered the wilderness, reclaimed the desert plains, subdued the savage, and by stubborn occupancy, contended for in many a bloody contest, acquired valuable territory to this nation from Indian as well as foreign foe. They spread the light of civilization and freedom, that the stage-coach, and later on the palace car, might follow in peace and in pleasure. The deep ruts made by the emigrant wagon have become the channels of a mighty commerce, and have guided the way to a people who have established a wonderful empire which but a few years ago was the frontier of the nation. The Government, however, has never properly appreciated these great sacrifices or the magnificent results which they have produced. At the very time when it should have protected these people it neglected them. When they entered upon their brave pilgrimage to these distant regions of the great West they did so with implicit faith that the laws and protection of their country would go with them. They had a right to expect this. The Government through its policy as well as its acts invited its citizens to people the frontier. It extinguished the Indian title. It extended the public surveys. It enacted various laws by which the settler might acquire title to its domain. It received a fixed price for the sale of its lands and assumed to confer title. Forts were established, troops in inadequate numbers were stationed at widely separated points, treaties were entered into, Indian agencies and reservations were provided for within well-known and designated boundaries, and in all the vast territory within which the Indian depredations were committed the flag of the nation floated as the emblem of authority and protection of a great and strong Government.

To the early settlers, however, it was stronger in sentiment and theory than it was strong as a shield to them in the numerous perils and conflicts which beset them. They soon learned to rely upon their own resources. They patiently submitted to untold privations and sacrifices. They formed their own companies, provided their own arms and ammunition, constructed their own forts, and with their own commanders they marched to battle, generally against great odds, and often, when vanquished, suffered tortures inflicted by no other foe. Frequently their dwellings were burned, their cattle and horses were driven off, their crops were destroyed, their families and comrades were massacred, and when they appealed to their country for relief the response seldom came, and when it did it was too late or too feeble to be of any avail.

Many of these Indian marauders and murderers were armed with Government weapons, supplied with Government ammunition, clad in Army coats, and often started out with Government rations.

Singular as it may seem, the major portion of the pioneers of the West who still survive are people of small means. Many who were once possessed of large property lost all or nearly all by Indian depredations, and they never recovered from the injury thus inflicted. It is chiefly this class of the early settlers of the country who are appealing to the Government, to this committee, and to Congress for relief before they die. Many have abandoned all hope. They believe they are appealing to an ungrateful and forgetful country. A great number, however, have an abiding faith that justice will yet be done. Their hopes have been sustained by the various promises from year to year conveyed to them from Congress, and with this cheer still animating them they continue at each session to introduce and re-introduce their familiar claims to Congress and to appeal to their Representatives for final payment.

Your committee, in conclusion, express the belief that the bill reported not only provides for a just and careful and final determination of these claims in the interest of the claimants, but also guards the liability and rights of the Government as well as the Indians against extortionate or fraudulent claims, and we therefore report it back to the house, with a recommendation that it pass.

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