

5-15-1838

## Losses -- late war with Creek Indians, Alabama.

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LOSSES—LATE WAR WITH CREEK INDIANS, ALABAMA.

MAY 15, 1838.

Laid on the table.

Mr. E. WHITTLESEY, from the Committee of Claims, made the following

REPORT:

*The Committee of Claims, to which was referred the memorial of the Legislature of Alabama, report:*

That the Legislature of the State of Alabama, on the 23d of December, 1837, passed a joint memorial addressed to the Congress of the United States, asking remuneration for those individuals who have sustained losses in consequence of the late war with the Creek Indians; and in that memorial it is represented that many of the citizens of Alabama, residing in that portion of the State lately occupied by the Creek nation of Indians, and in the vicinity of the same, have been subjected to great pecuniary losses in consequence of depredations committed upon their property by hostile Indians of the said Creek tribe, in the prosecution of their savage warfares against the white settlers. That, in many instances, the said hostile Indians have devastated plantations, by destroying the then growing crops; they have burnt dwelling, and other necessary houses; they have carried away, and appropriated to their own use, personal property of great value to the owners; and that many of their citizens were compelled to abandon their homes to secure their personal safety, by reason whereof their property was destroyed: the amount of which said injuries and losses the memorialists could not undertake to estimate. In consideration of which, they pray that said losses may be remunerated; and to save expense to the sufferers, whose limited means, in many instances, would not enable them to attend at the seat of the General Government to present their claims, they pray that an agency may be established in the country where these losses happened, to investigate and settle said claims, subject to such conditions and restrictions as might be prescribed. Relief is asked on the ground that the United States are bound to protect the citizens in their persons, and to preserve their property.

The memorialists further represent, that, during said war, many crops were destroyed, and considerable personal property appropriated, from necessity, by Indians that were friendly, by troops engaged in the military service of the United States, and also by the troops who flocked to the standard of their country at the requisition of the Governor of Alabama, and who were not mustered into the service of the United States; which they say should be paid for, and they pray that an appropriation may be made for that purpose.

There is no evidence to sustain the memorial; but, confiding in the cor-

rectness of the representations made by a Legislature of one of the States of this Union, and in common reports, which may be considered as historical of the events they relate, the committee do not doubt that the people of that State, in the vicinity of the Indians, have suffered severely from the causes and in the manner mentioned.

The committee have given to the subject all the examination and deliberation that are due to the sufferings of a portion of our citizens, and to the character of the memorialists; and it would be much more gratifying to their feelings to allow the claims than to reject them, if they could do so in the conscientious discharge of their duty, and be sustained in their decision by precedent, and the settled policy of the Government.

The committee admit "that the Government of the United States is bound to protect the citizens of Alabama in their persons, and to preserve their property," to the fullest extent that any Government is bound to its citizens; but it does not follow from thence that the Government becomes the insurer of the property of such citizens.

The Government is equally bound to protect the property of our citizens employed in commerce as it is to give protection to those whose capital is employed in agriculture. If the Malays, or pirates, should seize a vessel, murder the crew, and take the cargo to their use, no one would say the United States were bound to remunerate the loss. A misunderstanding may exist between this Government and a foreign Power, by which the millions employed by our citizens in commerce and navigation may be swept from the ocean, and rendered valueless; and yet no one would remunerate the sufferers from the Treasury of the United States. Thousands of such sufferers now exist, and they have combated poverty for years without relief. Such is the case with those who have suffered by Indian depredations on the frontiers, as the settlements have progressed southwest and west, and by those who suffered during the war with Great Britain which commenced in 1812. Every section of our country has, at some period, been a sufferer for the common benefit of the whole Union; and if an accurate and just account were taken, it would be found that the losses have been distributed with a tolerably even hand.

The Committee of Claims in the Senate, on the 23d of January, 1800, in a report made on the petition of Daniel Smith, of the State of Tennessee, wherein a compensation was asked for losses arising from the depredation of Indians, held this language: "Your committee have seriously considered the principles upon which the claim of the memorialist is founded, and lament sincerely his loss; but knowing that an immense number of the citizens of the United States have been plundered of property to a very great amount, both by land and sea, in the same unwarrantable manner, and believing the whole revenue of the United States would scarcely be commensurate to meet the demands of applicants in similar cases, should compensation be made in this, the committee are of opinion it would be inexpedient to open so extensive a field, and, therefore, that the prayer of the memorialist cannot be granted."—American State Papers, vol. Claims, page 222.

The principle laid down in that report may have been departed from in a very few cases, from the haste in which business is sometimes transacted, or from inadvertence; but if any such cases exist, they are too few for precedents, and should not be taken as varying the principle. If the amount of this class of claims in 1800 was an impediment to making a

favorable report on the claim then under consideration, how fearfully has it increased in the years that have intervened, within which we have had an embargo, a non-intercourse act, a war with England, a violation of our neutrality by the belligerent Powers of England and France, and almost a constant collision with some of the Indian tribes; by which the property of our citizens has perished at our wharves, or been destroyed on the ocean and on the land. The obligation of the Government is not to remunerate such losses, but to prevent their occurrence as far as is practicable: this the memorialists do not allege has not been done.

In conformity with the decisions made by this committee, the first branch of the claim, which relates to Indian depredations and aggressions, must be rejected. If the claims are rejected, there can be no use in constituting an agent for the purposes mentioned in the memorial.

As to that branch of the memorial which relates to making payment for the losses sustained by the depredations of the friendly Indians, and by the soldiers of the United States and of the State of Alabama, the committee remark, that where depredations are wantonly committed by our soldiers, the aggrieved party must seek his redress from them. The Government authorizes no act of aggression, and is no more holden for the acts of those who are engaged in the military and naval service, than it is for similar acts committed by its civil agents. If property has been necessarily taken for the use of the public service, that would form the ground for relief. The memorial in this particular is not specific. As this part of the claim is now presented, the committee cannot allow it. The following resolution is submitted:

*Resolved*, It is not expedient to grant the relief prayed for in the joint memorial of the Senate and House of Representatives of the State of Alabama, in General Assembly convened, approved on the 23d day of December, 1837.