

7-2-1838

## Indian depredations.

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H.R. Rep. No. 1028, 25th Cong., 2nd Sess. (1838)

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INDIAN DEPREDATIONS.

[To accompany bill H. R. No. 865.]

JULY 2, 1838.

Read, and, with the bill, committed to a Committee of the Whole House on the state of the Union.

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

REPORT:

*The Committee of Claims, to whom was referred Executive document No. 127, report :*

That, by the second section of an act entitled "An act making appropriations for the current expenses of the Indian department, and for fulfilling treaty stipulations with the various Indian tribes for the year eighteen hundred and thirty-seven," passed on the 3d of March, 1837, page 38 of the pamphlet laws of the United States, the President of the United States was authorized by suitable agents to inquire what depredations were committed by the Seminole and Creek Indians on the property of citizens of Florida, Georgia, and Alabama, immediately before the commencement of actual hostilities on the part of the respective tribes of Indians; what amount of depredations were committed during the pendency of said hostilities; what portion of the Creek tribe were engaged in such hostilities; and what depredations have been committed by a remnant of said tribe supposed to be friendly, and a part of whom were actually employed against the Seminoles, since the removal of the main body of them west of the Mississippi. And he was requested to report the information he might obtain to Congress at its then next session. The proviso to the said section excluded all conclusions that the United States were to be holden to pay the amounts so ascertained where the cases did not come within the purview of the act of April 9th, 1816, and the acts amendatory thereto; or within the "act regulating the intercourse between the Indian tribes and the United States." Under the authority so vested in the President, he appointed L. T. Pease, J. M. Smith, and Mr. Gibson, commissioners to obtain the information contemplated by the section cited. Mr. Gibson served only a part of the time, and the other two took the testimony that remained to be taken after Mr.

Gibson left the board; and the report is only signed by them. Their report, and a classified list of the cases presented, with the amount claimed and allowed, accompanied by some testimony as to the first class, form the principal part of executive document No. 127.

It was transmitted to the House by the President on the 14th of February, 1838, and referred to the Committee of Claims.

In the last part of the document are several letters and two depositions in relation to the destruction of property by the friendly Indians under the command of Opothle Yeholo, which were submitted to the Commissioner of Indian Affairs, and were not before the commissioners appointed by the President.

The first class reported by the commissioners contains a "list of claims said to be within the provisions of the act of Congress of April 9, 1816, and the acts amendatory thereto."

The aggregate amount of this class is	-	-	-	\$25,300 45
Of this amount there is for buildings impressed				\$15,000 00
Hospital supplies impressed	-	-	-	5,611 55
Stores, &c., impressed	-	-	-	1,228 07
Arms, &c., impressed	-	-	-	1,093 83
Cotton impressed	-	-	-	315 00
Horses and equipage lost	-	-	-	2,052 00
				<hr/>
				\$25,300 45

The commissioners do not state whether they thought the evidence proved that these claims should be allowed.

What occasion existed for "impressing a house" is not known to the committee; nor do they know whether the house was destroyed. There is no evidence in relation to this claim; and, therefore, the committee cannot say whether it comes within the principles of the act of April 9, 1816, and the act of March 3, 1817, paying for losses occasioned by the destruction of buildings by reason of their being used as barracks, or as places of deposite, by order of an officer.

One item of this class is for "hospital supplies impressed," amounting to \$5,611 55. It does not appear what articles composed these supplies.

In an account made out by Mr. Skinner, at page 38, he charges the gross amount of "\$5,611 55 for army and hospital supplies pressed from his store on the 16th of May, for the subsistence of the volunteers and other troops then collected at Irwinton to defend the frontiers and protect the settlement in the Creek nation, appraised, in lots, by disinterested judges." It is presumed, from the two certificates that follow, that these judges were appointed by General Irwin, commanding the 5th division of Alabama militia, and by E. Kirkpatrick, division quartermaster.

E. Kirkpatrick (page 38) says "the account is correct and just, and that the goods were actually taken and used by him for the public service, and that they were so taken and issued in consequence of there being no supplies or funds belonging to the public at that post, (Fort Irwin,) and the country being in the most imminent peril from hordes of hostile Indians; they (the goods) were, therefore, indispensably taken and issued to said troops in the United States service. He believes Mr. Skinner has received no compensation therefor." William Irwin, commanding the 5th division of the Alabama militia, (page 39,) says "the account is just and

correct; and that said goods were necessarily taken and issued to his command, in the public service, by his order." In the list of claims the item now under consideration is designated "hospital supplies." Mr. Skinner designates the articles composing this account as "army and hospital supplies," and General Irwin and his division quartermaster designate the articles as being "goods." Before the committee recommend an allowance of this account, they desire to know what articles compose it. If they were delivered over to the men because funds were not supplied, and therefore took the place of funds, the committee wish to know whether the men were charged with said goods, so that the amount lessened the sum due from the United States to General Irwin's command.

In the first class of cases ten horses were enumerated as having been lost; of this number, six are said to have been killed in battle, three are said to have died for want of forage, and one is said to have been stolen. The act of January 18, 1837, authorizes the Third Auditor to liquidate claims for horses that have been killed in battle, or that have died for the want of forage. Sanders R. Vann is owner of the horse said to have been stolen. He says he was left with the sick, and was detached from his horse in consequence thereof, and he supposes his horse was stolen in the month of July, 1836. Major John C. Webb says Mr. Vann was a member of Captain Moses Gun's company, and was attached to Capt. Arnold Seale's company, as a mounted man, for a few days, and, after a forced march to Tuskegee, he was left to wait on the sick, and, during his confinement there, his horse was supposed to be stolen by the Indians.

This is a loss not provided for, either by general or special legislation, unless it shall so happen that the theft was in consequence of the horse being turned out to graze. The case, however, rests on supposition, which is too vague and uncertain to authorize the committee to recommend that this claim be allowed.

The item for stores, &c. impressed, amounting to \$1,228 07, is composed of articles particularly enumerated at page 42 of said executive document No. 127. The articles necessarily used in the military service, so far as they were distributed to the men, should be paid for. General Irwin should show how they were disposed of.

The account for arms, &c., amounting to \$1,093 83, is composed of items for arms, &c., ammunition, and blankets, (page 43.) How these were disposed of does not appear. It is very probable that most, if not all, the two last accounts, should be paid. The commissioners have not returned a list of claims under the head of the "second class," and they say no claim under that class was presented.

The committee suppose the commissioners were instructed, under the head of the second class, to arrange such claims as should be presented for such depredations as came within the purview of the acts regulating the intercourse between the Indian tribes and the United States.

*Third class.*—Under this head, commencing at page 7 of executive document 127, is a list of claims, to the number of 1,003, for depredations committed by the Creek Indians upon the citizens of Georgia and Alabama. Tabular columns show the amount claimed and the amount allowed, under the heads of "Before hostilities," "During hostilities," and "After removal." The amount claimed for depredations committed before hostilities is \$495; during hostilities, \$1,257,407 30; after re-



for such losses; and it may be doubted whether it is within the constitutional powers of the Government to do it. No part of the property was in the service of the United States, and they are not the insurers of the property of their citizens against savage aggression; nor against the aggression of civilized nations.

“The destruction of the property of our citizens on the frontier by a tribe of Indians may be good cause of our going to war, and so may the capture of our vessels on the ocean be a good cause of war against the nation whose subjects have thus disregarded their moral, social, and national obligations; but in neither case has the sufferer a claim on the United States.

“The committee regret the losses the claimants have sustained, but they are similar to those sustained by others on the frontiers, as settlements and civilization have extended westward from the Atlantic coast.”

The committee had under consideration the memorial of the Legislature of Alabama, in relation to the depredations committed by the Creek Indians, and they made a report thereon on the 15th of May, 1838, which is numbered 932.

It is urged in that memorial, that the Government of the United States is bound to protect the citizens of Alabama in their persons, and to preserve their property.

The committee say, they 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 depredations 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 unwar-

rantable manner, and believing that 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, *Ind. 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 or on the land. The obligation of the Government is not to remunerate such losses; but to prevent their occurrence as far as is practicable.”

The committee refer to the case of George and James Anderson, reported on the 17th of May last, and to the case of Alexander Watson.

In the last case, the committee notice the claims presented for Indian depredations in Michigan, in 1812; and in Illinois, Indiana, and Michigan, in 1832, as follows: “The sufferers in Michigan and on the Western frontiers by Indian depredations during the last war with Great Britain; have not been relieved. The outrages in Michigan were committed against the articles of capitulation. Those articles guaranteed that private property should be protected; but as soon as the American troops surrendered, the Indians plundered the inhabitants without restraint. The sufferers have repeatedly applied to Congress for relief. They alleged, as the sufferers in Florida and elsewhere now do, that the Government was bound to protect them, and that the many should contribute from the common treasury to relieve those who had lost their whole property in a common cause.

“That by the violation of the capitulation, the petitioners acquired a just claim on the British Government for indemnity and satisfaction, which they expected the Government of the United States would have prevailed upon that of Great Britain to make, by paying the petitioners for all losses and damages sustained by them in consequence thereof.

“That the United States having concluded a treaty of peace, and subsequently a commercial treaty, with Great Britain, without mention being made of Michigan, or of the claims of the petitioners, they thereby lost their claim of redress and indemnity upon the British Government; but that the obligation of making it thereby devolved upon the United States, to whose justice and liberality they appealed accordingly for remuneration and payment.

“The commissioners appointed to treat of peace between the United States and Great Britain, were instructed, under date of January 28, 1814, to claim indemnity for the destruction of property contrary to the laws and usages of war. ‘Mr. Adams, in a report made to the House of Representatives on the 17th of December, 1817, on the petition of sundry

citizens of the United States, inhabitants of the district of Detroit, in the Territory of Michigan, says the commissioners urged a provision of indemnity for the citizens of the United States who had suffered loss or damages, such as those complained of by the petitioners. This provision was insisted on until it was distinctly known that the only alternative to its abandonment was the inevitable continuance of the war.—*State Papers, vol. Claims, page 529.*

“The inhabitants in Indiana, Illinois, and Michigan since that war, and particularly in the war with Black Hawk, in 1832, have suffered severely in the destruction of their property by the Indians, but their losses and damages have not been paid.”

No sufferings could be more excruciating than were endured by the inhabitants of Wyoming during the American Revolution, nor the destruction of property more complete. The condition of the inhabitants was peculiar: they were within the chartered limits of Pennsylvania; but, so far from being fostered, the State authorities were arrayed in hostility to them. The State of Connecticut, to whom they held allegiance, gave them no protection; and they were the peculiar objects of the vindictive cruelty of the Indians, and of their allies, the British.

In 1776, the settlements were found to contain five thousand persons. Of this number, one thousand one hundred persons were capable of bearing arms; of this force, about three hundred enlisted to serve against the common enemy. “In the spring of 1778, about eight hundred men, composed of British regulars, Tories, and Indians, under the command of Colonel John Butler, assembled at Niagara, and marched to the reduction of Wyoming.” About a month previous to this, force having arrived in the vicinity of the settlement, messengers were sent to the commander-in-chief of the continental army, with information of the meditated attack, and the aid of the confederation was supplicated. Those who had enlisted were with the main army, with the exception of five officers, who resigned their commissions to aid in defending their families. A battle was fought, and the victory was won by the enemy. About three hundred of the settlers were killed or missing. “The conditions of the capitulation were entirely disregarded by the British and savage forces; and after the fort was delivered up, all kinds of barbarities were committed by them. The village of Wilkesbarre, consisting of twenty-three houses, was burnt; men and their wives were separated from each other, and carried into captivity; their property was plundered, and the settlement laid waste; the remainder of the inhabitants were driven from the valley, and compelled to proceed on foot sixty miles through the great swamp, almost without food or clothing; a number perished in the journey, principally women and children; some died of their wounds; others wandered from the path in search of food, and were lost; and those who survived called the wilderness through which they passed *the Shades of Death.*”

These sufferings and these losses have not been in the least mitigated by any Government.

During the American Revolution, and subsequent thereto, to the treaty of Greenville, on the 3d of April, 1795, the country west of the Alleghany mountains was a field of suffering and slaughter, as far as the white man penetrated the wilderness.

The Government encouraged emigration, and it was as much bound



then, as now, to give protection to the inhabitants; but no losses in all that vast region have been remunerated.

Those who now suffer should consider what others have endured in other sections of the country.

Before the embargo was laid on the ships and vessels of the United States, on the 22d of December, 1807, the commerce of the country was flourishing.

The exports for the years designated were as follows:

Years.	Domestic.	Foreign.	Total.
1806	\$41,253,727	\$60,283,236	\$101,536,963
1807	48,699,592	59,643,558	108,343,150
1808	9,433,546	12,997,414	22,433,960

The act of December 22, 1807, was repealed by the act of March 1, 1809. After the 28th of June, commerce immediately revived; and for 1809 was reported as follows: Exports nominally, during one year prior to the 1st day of October, 1809, but, in fact, during the six months and a half ending on that day; exportations having been prevented by the embargo until the 15th day of March, 1809.

Domestic \$31,405,702      Foreign \$20,797,531      Total \$52,203,233

The amount fell in 1812 and in 1813; and in 1814 exports were—

Domestic \$6,782,272      Foreign \$145,169      Total \$6,927,441

The news of peace reached the seat of Government in February, 1815; and the exports to the 30th of September were—

Domestic \$45,974,403      Foreign \$6,583,350      Total 52,557,753

The district tonnage of the United States in

1807, was      -      -      -      -      -      -      1,208,735 $\frac{2}{3}$ ths.  
 1812, was      -      -      -      -      -      -      1,269,997 $\frac{2}{3}$ ths.

The embargo was laid against the most earnest remonstrances of the majority of the commercial men. Their business was destroyed; and if their vessels did not rot during the embargo and the war, they were greatly deteriorated in value. This class of our citizens suffered severely.

The withdrawal of labor from agriculture raised the price of wages; the demand for provisions in the army and navy increased their price; and while commerce was paralyzed, agriculture was prosperous.

Whatever losses and sacrifices were encountered, were for the common benefit, and yet they fell on distinct portions of the country.

No Government can equalize the burdens incident to the adoption of restrictive measures against the aggressions of foreign Powers, nor such as are incident to a state of war; it is in vain to attempt it. These principles were fully debated in the years 1815 and 1816, and again in 1825. The result was, that all claims which arose from the wanton acts of the

enemy, whether such acts were committed by the British or the Indians, were rejected.

These decisions, solemnly made, are obligatory and binding on the committee, so long as they stand as the judgment of Congress.

The committee refer to a report made by the Committee of Claims, on the 16th of March, 1832, and is in the Reports of Committees, 1st session 22d Congress, volume 3, report 386; also, to a report made on the 3d of April, 1834, in the Reports of Committees 1st session 23d Congress, report No. 383.

Claims to a large amount are contained in said executive document 127, which were not examined by the commissioners; nor are they within the purview of the act of March 3, 1837.

These claims were presented principally to the Commissioner of Indian Affairs through the honorable Mr. Dawson, and the honorable Mr. Lewis, of the House of Representatives, that they might be sent with the report of the commissioners to Congress, as they are set forth in two petitions, signed by ninety-eight subscribers, citizens of Alabama. They say "that during the winter of eighteen hundred and thirty-four, the year eighteen hundred and thirty-five, and the spring of eighteen hundred and thirty-six, they became settlers of that part of Alabama known as the Creek nation; that having purchased lands of Government, or of those who had purchased of the Indians according to treaty stipulations, they reasonably expected governmental protection, more especially as by settling among the Indians, carrying civilization among them, and reducing their hunting-grounds to tillage, the petitioners were contributing to effect the humane and benevolent purposes of Government, in causing the remnant of the Creek nation to remove to their destined homes beyond the Mississippi.

"Whilst your petitioners were peaceably and industriously employed in improving their possessions, striving to secure to themselves that competency and affluence which is the proud prerogative of a free Government to guaranty to its industrious and peaceable citizens, and incidentally contributing to effect your policy, we were suddenly involved in a ruinous and destructive war. Our complaints, though long and loud, were not heeded, until the deadly ball of the Indian rifle had taken off many a valuable citizen or innocent woman and child.

"Unlike other pioneers, we were not surrounded by a chain of military posts to which we might fly, with our property, for protection. Our immediate neighbors were our enemies, and our only chance of escape was to flee, unencumbered with property, to the nearest frontier settlements, leaving our all at the mercy of the enemy. On this they rioted, it is true; but we have abundance of evidence, some of which we herewith submit to your honorable bodies, proving that twelve or fifteen hundred Indians (friendly so called) under Opoth-le-yoholo, and five or six hundred under Jim Boy, were taken into the service of the United States, and sent into our settlements without provisions, and ordered to subsist on what they could find; that these troops killed, consumed, destroyed, or carried off our property to a vast amount; that having been promised the plunder of the hostiles, as a part of their wages, they considered, as the whites had vacated the country, every vestige of property as free plunder. Their officers did not and could not restrain them. Wherefore, from the peculiar situation in which the policy of the General Government had placed

us, we are induced to hope our prayer will not be unheeded; and inasmuch as our property, to wit, cattle, corn, fodder, &c., was taken to feed our armies, and our plunder to pay the wages of your soldiers, we most earnestly pray your honorable bodies to make speedy appropriations to remunerate us, thus relieving us from a deep and abiding distress.

“And your petitioners, as in duty bound, will ever cherish the warmest gratitude for your justice and liberality,” &c.

The committee sent to the Commissioner of the General Land Office to ascertain how many of the petitioners had purchased land of the United States, or had become the proprietors of land by purchase of the Indians, under treaty stipulations.

It appears from a list of those who purchased land of the United States within the State of Alabama, and within the district where the depredations were committed, that nineteen of the petitioners were land proprietors by purchases made of the United States. The Commissioner says there is no evidence in his office that any of them became proprietors by the purchase of Indian reservations.

The petitions mentioned are accompanied by a letter from Colonel Hogan, one from General Woodward, one from Major Collins, with a deposition from Major Torrence, with a deposition from Colonel Hogan, with a letter from Major McLemore, one from John B. Strange, and with a certificate from Charles F. W. Miller, late quartermaster in the army against the Creeks. These letters and depositions are referred to as forming a part of said document No. 127. They generally prove that the property of the inhabitants which they had left in their flight was taken for the use of the troops, as they marched through the deserted country, and particularly so by the Indians in the service of the United States, under the command of Opoth-le-yoholo. Some of the persons mentioned, (and General Woodward more fully than the other gentlemen,) say that the destruction was wanton and immense. The conduct of General Jesup is spoken of by General Woodward as being hostile to the settlers.

General Jesup being in the city, the committee addressed a letter to him, and, having drawn his attention to so much of said document as related to the depredations said to have been committed under his command, they requested information on the subject of these depredations generally, and on points specially designated. His answer, under date of June 19, 1838, is received, accompanied with copies of orders, and a statement made by Captain Parrot, (who, at the time mentioned, acted as aid-de-camp to General Jesup,) authenticating the copy of an order from General Jesup to General Woodward, dated June 9, 1836. General Woodward was authorized to collect and employ in the service of the United States as many friendly Indian warriors as could be obtained. He was directed to scour the country between the hostile Indians and the white settlements in the direction of Irwinton.

The order contains some further instructions, and concludes as follows: “Any property taken by the force under your command, which does not belong to either the whites or friendly Indians, may be divided among the Indians with you.”

Colonel Hogan says he was directed to take an account of all the property used or consumed by the army, with such appropriate descriptions as would enable the owner to get his pay. He found it impracticable to make out accurate descriptive lists.

It appears from his testimony, and from the statement of others, that property to a considerable amount was taken and used by the troops, and by the Indians in the service of the United States, under the command of Opoth-le-yoholo. Much property was wantonly destroyed. So far as the property was necessarily used by the troops, and by the Indians in the service, it should be paid for. This has been the uniform practice of the Government. Property wantonly destroyed has not been paid for.

During the last war with Great Britain, so far as the property was necessarily used in Michigan, Ohio, and Indiana, as the troops occupied the country deserted by the inhabitants, a compensation was made to the owner.

It was the practice to take a descriptive list of the property, and when the owner returned he was enabled to obtain such vouchers as ensured payment. Much property was destroyed by the Indians in the British service, and by the wanton and lawless acts of our own troops, for which no relief was granted.

In many of the cases it was difficult to make proof of a claim; and in the cases now under consideration that difficulty will be greatly increased. It is evident, from the statement made by General Jesup, as well as from the facts disclosed by others, that a large tract of country had been abandoned by the settlers, on the first breaking out of hostilities on the part of the Creeks; that their property was abandoned, and to a considerable extent was taken or destroyed by the hostile Indians.

It may be the misfortune of the sufferers that they cannot, in all instances, prove their property was used in the military service; but that consideration should not, in the opinion of the committee, open the door to an indiscriminate payment for all the property that has been destroyed during the late and present Indian wars. The committee think the accounting officers of the Treasury should be authorized by a general law to settle all claims where the United States have necessarily used the property of an individual, and have not such vouchers as will enable the owner of such property to obtain his money from the disbursing or accounting officers. If the accounting officers were empowered to settle such claims, Congress would be relieved from a very numerous class of cases, and speedy justice would be done to many persons whose property has been used in the military service, and to whom payment is important.

With this view, the committee report a bill to embrace so many of the claims mentioned as depend on the use of property in the military service of the United States.

As to the horses mentioned in the first class of cases, the committee submit the following resolution:

*Resolved*, That so much of the first class of cases in executive document No. 127, as relates to the loss of horses, be referred to the Third Auditor to settle under existing laws.

*Resolved*, That so much of executive document No. 127 as relates to the destruction of property by the Indians, not in the service of the United States, ought not to be allowed.