

1-18-1847

## Report : Mr. Atchison

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IN SENATE OF THE UNITED STATES.

JANUARY 18, 1847.

Submitted, and ordered to be printed.

Mr. ATCHISON made the following

**REPORT :**

[To accompany bill S. No. 101.]

*The Committee on Indian Affairs, to whom was referred the petition of Thomas Talbot and others, find, from the petition and other papers presented, the following facts clearly made out :*

The petitioners, and other traders, left Fort Osage, in the State of Missouri, in August, 1826, with merchandise for the northern provinces of Mexico, where they remained prosecuting their trade until the month of September, 1827; having converted their merchandise into specie, horses, mules, and asses, they started on their way to the United States, following the route then lately surveyed, by commissioners for that purpose appointed by the government of the United States, from Missouri to Santa Fe, in New Mexico; having prosecuted their journey to a point about twenty-five miles west of the Pawnee fork of the Arkansas river, they encamped; and, having placed out their sentinels, and using all prudent and usual precautions to secure their stock, about midnight they were aroused by an attack upon the camp: guns were fired, the war-whoop raised, and a band of thirty Indians rushed in among, scattered, and drove off about one hundred head of horses, mules, and asses. The next morning it was discovered that the attack had been made by a band of Pawnee Indians, and every exertion was made to recover the horses, mules, and asses, but without success. In 1828, application for relief was made by the petitioners to Congress, and repeated in 1832 and 1833, but without success. In the year 1835, Thomas Talbot, one of the petitioners, addressed a letter to General Cass, then Secretary of War, inquiring of him if it would be inconsistent with existing relations between the United States and the Pawnee Indians for the company to make reprisals; to which letter the Secretary replied, in substance, that the proper remedy of the petitioners was under the intercourse law of 1802; that the claim should be presented to the offending Indians by their agent; that if they admitted the justice of the claim, it should be paid out of their annuities: if they denied the claim, the agent would report the facts to the Indian department; and if the claim was made clear by proper evidence, payment would be made out of annuities due the Indians; and that any attempt by the parties to redress themselves would forfeit all claims upon the government for indemnity, and would be inconsistent with our relations with the Indians.

In 1828, the year after the depredations were made, Major John Dougherty, agent for the Pawnees, presented this claim to the Pawnee Indians, and demanded of them a restoration of the stock above mentioned. The Indians admitted that their young men had taken the stock, and promised to restore it or make compensation for it, *as soon as they could steal as much from their enemies*. At this time there were no annuities due the Pawnees; but, by the treaty of 1833 between the United States and the Pawnee Indians, the Grand Pawnees and Republican villages became each entitled to \$1,300 annually, and the Pawnee Loups and Tappage Pawnee villages to \$1,000 each, for 12 years.

In 1825, the same agent again demanded compensation for the robbery aforesaid. The Pawnees answered, that they thought that all claims against them had been cancelled by the treaty of 1833. It is proved that the stock taken by the Pawnees was valued by disinterested persons at the sum of \$4,155. By the treaty between the United States and the Pawnees of 1825, the latter stipulate that they will not molest or interrupt any citizen or citizens who may be passing from the United States to New Mexico, or returning thence to the United States.

There can be no doubt but that the petitioners were lawfully in the Indian country, merely passing through from New Mexico to the United States by the usually travelled route; indeed, the route was surveyed by commissioners appointed by the United States government, and for the express purpose of encouraging and facilitating the then infant trade, overland from the United States, with northern Mexico. It is the duty of all governments to give protection to their citizens, and to redress wrongs done either to person or property; and this duty is peculiarly obligatory where the wrong is inflicted by a foreign nation, people, or government.

There is a case (says Vattel) where the nation, in general, is guilty of the crimes of its members; that is, when, by its manners and by the maxims of its government, it accustoms and authorizes its citizens indiscriminately to plunder and maltreat foreigners; to make inroads into the neighboring countries, &c. Thus the nation of Usbecks is guilty of all the robberies committed by the individuals of which it is composed. The Pawnee Indians are just such a people as above described, and certainly come within the rule laid down, if any people on the American continent would come within the rule. Your committee are of opinion, aside from the general rule above laid down, that the Pawnees, as a nation or independent people, would be responsible for the injury done the petitioners, under the treaty of 1825; for, by the 4th article, and last clause of the article, they stipulate "that they will not molest or interrupt any American citizen or citizens who may be passing from the United States to New Mexico, or returning thence to the United States." Two years thereafter, they violated that treaty by the robbery of the petitioners. The petitioners could not make reprisals, and thus redress their own wrongs, for this would have been a violation of the laws of the United States, and would have subjected them to punishment. Their only remedy was an appeal to their own government, which was made in 1827, and has been prosecuted up to this time without effect. A demand has been made, as before shown, upon the Pawnee nation; the justice of the claim acknowledged; but still no redress has been obtained. The committee are therefore of opinion that the petitioners are entitled to indemnity from the government, and therefore report the accompanying bill.