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Elizabeth Woodward and George Chorpenning. (To accompany H. Res. no. 112.).

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ELIZABETH WOODWARD AND GEORGE CHORPENNING.

[To accompany H. Res. No. 112.]

JUNE 27, 1864.—Ordered to be printed.

Mr. NELSON, from the Committee on Indian Affairs, made the following

R E P O R T .

The Committee on Indian Affairs, to whom was referred the petition of George Chorpenning, submit the following report :

The committee have reviewed the facts as set forth by the proofs in this case, and fully concur in the views expressed by the Committee on Indian Affairs, in report No. 102, 1st session, 35th Congress, which reads as follows :

The Committee on Indian Affairs, to whom was referred the petition of George Chorpenning, submit the following report :

The committee have carefully examined the petition, papers, &c., in this case, and report that it is fully established that Absalom Woodward and George Chorpenning were contractors for carrying the United States mail from Salt Lake, Utah Territory, to California; that, in the performance of this duty, they were compelled to pass regularly through the Indian haunts in Utah Territory; that the mail parties were repeatedly attacked, and mules, horses, and other property stolen and destroyed by the Indians. In November, 1851, Absalom Woodward, with his escort of five men, were attacked and murdered by the Indians, and all the property in their charge destroyed.

The petitioner, Chorpenning, continued to carry the mail for Woodward & Chorpenning down to July 1, 1852, and on his own account since.

The proof is sufficient to establish that, from the commencement of the service down to July 1, 1862, eighty-three mules and horses, and other property valued at \$3,275, were killed and destroyed by the Indians, and this does not include a large amount of money lost with Woodward when he was killed.

The proof, also, establishes that from July 1, 1852, to March, 1856, eighty-six mules and horses were killed, and property of the value of \$570 destroyed by the Indians. For this property Absalom Woodward and George Chorpenning are entitled to indemnity from the government.

It has been the policy of the government to regard the Indians within its limits, and not subjected to the legislation of any of the States, as distinct, but imperfectly organized, political communities under the control and protection of the government of the United States.

The intercourse of the whites with the Indians is regulated by law, and all persons going among them, in the service or by the special license of the United States, are under its protection.

If such persons are injured by the Indians, they have no redress by resort to judicial tribunals, for none such exist among the Indians; and such persons are strictly prohibited from obtaining redress by reprisals, but the government promises to pay their losses.

It is unnecessary to review the series of laws passed to effect these objects. The act of the 30th June, 1834, (5 Stat. at Large,) is the last of the general series, and is now in force. By the 17th section of this act it is, among other things, enacted that if any Indian or 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 within such country, such person may make application to the superintendent, agent, or sub-agent, who, on being furnished with the necessary proof, shall, under the direction of the President, make application to the nation or tribe to which such Indian or Indians shall belong for satisfaction; and if such nation or tribe shall refuse satisfaction in a reasonable time, not exceeding twelve months, such superintendent shall make return of his doings to the Commissioner of Indian Affairs, that proper steps may be taken to obtain satisfaction for the injury, and in the mean time the United States guarantee to the party so injured an eventual indemnification: provided, first, if the party seeks personal satisfaction or revenge, he forfeits his claim for indemnification; second, if the claim is not presented in three years it is barred. If the Indians receive an annuity, the claim is to be paid from the annuity; if the Indians do not receive an annuity, it is to be paid from the treasury.

The 7th section of the Indian appropriation bill passed the 27th of February, 1851, is as follows, viz:

Be it remembered, That all the laws now in force regulating trade and intercourse with the Indian tribes, or such provisions of them as may be applicable, shall be, and the same are hereby, extended over the Indian tribes in the Territories of New Mexico and Utah.

Woodward and Chorpenning were lawfully in the Indian territory. They were there by the authority of and in the execution of the laws of the United States, and in the actual service of the government. As such they were entitled to rely on its promises of indemnity.

They did not seek private satisfaction or revenge for injuries sustained by them, but cultivated a friendly feeling with the Indians. They made known their losses to the superintendent and agent. Brigham Young, the superintendent, reported the death of Woodward. J. H. Holeman, the agent, in his deposition gives an account of the murder of Woodward; says the Indians admitted their attacks on Henson and other mail trains, and attempted to excuse themselves for the attacks on the mail trains because they had first been attacked by the whites; but did not pretend the persons in charge of the mail trains had attempted to injure them. Says he could not attempt to state the number of mules killed, or the amount of property taken from the mail trains, but the Indians themselves admitted they had killed many. In the letter of the 13th February, 1858, written by the Commissioner of Indian Affairs to the attorney of the parties, the Commissioner says: "That Messrs. Chorpenning and Woodward were lawfully in the country, where and when their property was lost, is admitted. But then the tribes to which the offending Indians belonged cannot be said to have been in amity with the United States; the petition itself styles them as hostile Indians. When the intercourse act was passed, it was with reference to the Atlantic tribes, but few of whom were west of the Missouri; and treaty stipulations were necessary to place them technically upon a footing of amity; and, in addition to that, it was required that they must be upon terms of actual friendship. This law, inapplicable as it is in many respects, has been extended, without amendment, over the tribes of the Pacific coast by the act of February 27, 1851; and in regard to them the same construction must be given as in the case of those for the government of which it was originally intended.

"There is nothing to show that the requirement of the law, that the proofs of the losses should be submitted to an agent to be laid before the Indians, was ever complied with. It is true that reports to this office from the governor and *ex officio* superintendent of Indian affairs for Utah, and from Agent Holeman, show that they were cognizant to some extent of the losses complained of, and it is admitted that it would, under the circumstances, have been, perhaps, impossible to identify the tribes to which the offenders belonged, and impracticable as well as useless, had they been known, to have adopted the regular and exact courses prescribed, or to have submitted the matter to them; but the law is imperative that it should be done."

Your committee are of opinion that only so much of the law of 1854 as was applicable to the Territory of Utah was extended over it by the 7th section of the act of February, 1851. At that date the Territory of Utah was unexplored. What tribes inhabited or made it a place of resort was then, and still is, unknown to the government. No treaties of peace and amity were then, or have since been made.

So much of the law as looked to a regular course of transactions with them as known to savage communities under the regular course of treaties of peace was, and still is, inapplicable. The preparation of documents stating the losses and the tribes to which the assailing Indians belonged was not, in the opinion of the committee, applicable to these Indians, and was impracticable. All the sufferers could do was to report the injuries to the superintendent and agent, and claim the protection of the government. This the committee are satisfied has been done.

But the committee are further of opinion that so much of the law of 1854 as prohibited the injured party from seeking private satisfaction or redress did apply to the Territory, and also so much as promised payment by the government did apply.

The party was restrained from seeking private redress to preserve the country from an Indian war, and this restraint was the consideration of the promise of indemnity. The government, by this law, took the matter in its own hands. It restrained the injured party from seeking redress and promised to make good his losses.

Your committee are of opinion the widow of Absalom Woodward and George Chorpenning are entitled to compensation for the losses, and, as no annuities are payable to these Indians, the parties are entitled to payment from the treasury.

The number of horses and mules lost, as stated above, is eighty-three (83) mules and horses of Woodward and Chorpenning, killed prior to July 1, 1852, and eighty-six (86) mules and horses of Chorpenning, killed from July 1, 1852, to March, 1856.

These animals are proved to be worth from \$200 to \$500 each. Nor does this sum seem to your committee extravagant. The route was between Salt Lake and California; none but the best stock could perform the service. For, in addition to the length of the trip, there were changes of grass, and climate, and water, which would destroy the constitution of any but the very best animals. The prices of stock at Salt Lake and in California were high, and when an animal well suited to the service was procured his value to the contractors was doubtless \$500.