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James L. Johnson.

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JAMES L. JOHNSON.

[To accompany H. R. C. C. No. 110.]

JUNE 15, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred H. R. C. C. 110, "for the relief of James L. Johnson, surviving partner of the firm of Beck & Johnson," with the report of the Court of Claims, having had the same under consideration, report:

That this bill was reported by the Court of Claims to the thirty-seventh Congress, appropriating two hundred and fifty dollars to satisfy a judgment of said court in favor of said Johnson.

The claim on which the decision of the court was made is for property taken and destroyed in 1857 by the Kiowa Indians, near Fort Atkinson, on the Arkansas river.

The 17th section of the act of Congress of June 30, 1834, provides—

"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 the said country, or shall pass from the Indian country in any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse, horses, or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or sub-agent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians shall belong for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding twelve months, it shall be the duty of such superintendent, agent, or sub-agent to make return of his doings to the Commissioner of Indian Affairs that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction; and in the mean time, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the party so injured an eventual indemnification: *Provided*, That * * * * * if the nation or tribe to which such Indian may belong receive an annuity from the United States, such claim shall, at the next payment of the annuity, be deducted therefrom and paid to the party injured."

By this act it will be seen that the liability of the United States does not occur until the person claiming to have been injured by Indian depredations shall have applied for damages to the proper agent or superintendent of the offending Indians; and when such application is made and the necessary "*documents and proofs furnished*," such superintendent or agent is, under the direction of the President, to make application to the proper nation or tribe of Indians

for satisfaction. If the offending Indians refuse for twelve months to make satisfaction, the agent is to report to the Commissioner of Indian Affairs in order that further steps may be taken; and then, and not till then, does the United States guarantee to the party injured an eventual indemnification. This having all been done, the United States is authorized to deduct such damages out of any annuity thereafter payable to such Indians.

The committee have carefully examined the case, and are clearly of opinion that there never was any presentation of this claim to the tribe of Kiowas under the act of Congress before referred to. Without such a presentation the United States had no right to reserve the amount of the claim out of annuities due said Indians. And without such presentation the United States did not guarantee, in the language of said act, "*to the party so injured an eventual indemnification.*" In this view of the case, the committee are of opinion that the claim should be disallowed. But it is exceedingly doubtful if certain treaties made between the United States and the Kiowa, Comanche, and Apache Indians in 1837 and 1853 do not supersede the provisions of the act of Congress of June 30, 1864. By the treaty of 1853 these Indians agree and bind themselves to make "*restoration, &c., for any injury, &c., to the people of the United States who may be lawfully residing in or passing through their said territories.*"

Here was a distinct agreement by the Kiowas to pay for a certain class of damages, which was made after the act of 1834. This treaty provides a new mode of adjustment; and although it may be claimed that the United States is bound to see that this agreement is complied with, still it appears to be exceedingly doubtful whether the previous obligation assumed by the United States in behalf of our citizens, under the act of 1834, "to guarantee an eventual indemnification," is not superseded by its duty to enforce the agreement which this tribe of Indians made in the treaty of 1853. If so, the Court of Claims had no jurisdiction.

The committee, therefore, report adversely, and recommend that said bill be laid upon the table.