

## IN THE SENATE OF THE UNITED STATES.

JUNE 18, 1866.—Ordered to be printed.

Mr. BUCKALEW made the following

## REPORT.

[To accompany joint resolution S. R. 108.]

*The Committee on Indian Affairs, to whom was referred the claim of Samuel Norris, report:*

That on the 11th of June, 1860, the Court of Claims, per Loring, justice, decided that the government of the United States was not bound to the claimant, in point of law, for the payment of the whole or any part of his demand; that the case belonged to a class of cases theretofore brought before that court by Samuel Hensley and other petitioners, in which it had been held that certain commissioners for the negotiation of treaties with Indians in California had no authority to contract debts on the credit of the United States. In other words, the court held that in this case, as in several other similar cases, no legal obligation had been incurred by the United States. Such being the opinion of the court, the question now presented is whether Congress will, by some direct provision of law, authorize the settlement and payment of the claim upon grounds of equity and justice which were not cognizable by the court, but which may be regarded by the legislative power.

In 1850 Redick McKee, George M. Barbour, and O. M. Wozencraft, were appointed commissioners "to hold treaties" with the various Indian tribes in California, and they proceeded to that country in January, 1851. The Indians had been in arms against the whites, and it was necessary to secure peace with them by negotiation, or to chastise them by military power. The commissioners were authorized "by all possible means to conciliate the good feeling of the Indians," &c., and, of course, to exercise all reasonable discretionary powers for that purpose. They ascertained that the troubles existing were caused by the starving condition of the Indians, who, by the sudden influx of a white population, had been deprived of their usual means of subsistence. The commissioners, under their instructions, applied themselves to the removal of the cause of the prevailing war, and for that purpose made the contracts with Norris, who was at that time largely engaged in the cattle trade. Mr. Norris was a Dane by birth, had never before resided in the United States, was ignorant of our mode of transacting government business, and did not have the least doubt of the authority of these commissioners to bind the government by the agreement they made with him. About the same time a similar contract was made with John C. Frémont, and some time afterwards, when the same parties had ceased to be *commissioners*, and were reduced to *Indian agents*, another contract was made with Samuel J. Hensley.

Frémont's claim was paid under an act of Congress approved July 29, 1854. Norris and Hensley afterwards presented their petitions to Congress, but the Court of Claims having in the mean time been established by act of Congress approved February 24, 1855, they were referred to that tribunal.

The court first considered Hensley's claim, and after a thorough examination ascertained and stated the quantity of the beef actually delivered by Hensley, and the amount equitably due him from the government, but gave an adverse decision on the technical ground that the Indian agent did not have legal authority to make such a contract, and that therefore it was not binding on the government.

On this report Congress, by act approved June 9, 1860, directed the payment to Hensley of the amount "as found by the Court of Claims." (Statutes at Large, vol. 12, page 847.)

Having disposed of Hensley's claim, the court at the same term took up that of Norris, and, without attempting to ascertain the amounts involved, classified it with that of Hensley, and rendered an adverse decision.

That Mr. Norris is equitably and justly entitled to compensation for the value of the property furnished by him in good faith to the government authorities, and which was used with such signal benefits to the government, there can be no doubt, and he now asks that his claim be referred back to the Court of Claims, relieved from the objection of want of authority in the commissioners who made the contracts in question with himself and others.

A large number of treaties were negotiated by the commissioners; the Indians were thoroughly pacified, depredations upon the white settlers prevented, troops then in the field were disbanded, and large war expenditures by the government saved by the proceedings of the commissioners in making contracts for supplies with Mr. Norris and with other claimants who have been heretofore paid. It will, therefore, be but just that the government make compensation in this case; and in view of the payment of the other claimants, it would appear unreasonable to withhold payment in the present case.

But as some question has been made as to the number and value of the cattle delivered by Mr. Norris under his contract, and as the commissioners had no legal authority to settle the amount of the claim any more than to contract it, the committee propose that the Court of Claims shall require proof from the claimant of the number and value of the cattle delivered and applied to the support of the Indians, without being concluded or bound by the drafts drawn in favor of the claimant upon the Indian department by O. M. Wozencraft, one of the commissioners.

The committee, therefore, report a joint resolution for the relief of the claimant, in accordance with the foregoing views.