

JOSEPH COOPER.

[To accompany bill H. R. No. 3.]

DECEMBER 21, 1835.

Mr. E. WHITTLESEY, from the Committee of Claims, made the following
REPORT:

The Committee of Claims, to which was referred the petition of Joseph Cooper, report:

That a bill was reported for the relief of the petitioner on the 25th of February, 1834, to which this committee refer, and make the same a part of this report. Concurring with the former committee, this committee herewith report a bill.

FEBRUARY 25, 1834.

The Committee of Claims, to which was referred the petition of Joseph Cooper, report:

That he presents the following account against the United States, to wit:

The United States of America, to Joseph Cooper, of Missouri, Dr.

1831, August, to interest on \$3,320 28 from the 1st day of March, 1830, till the 1st of August, 1831, say one year and 5 months, at 10 per cent.	\$470 36
To interest on \$3,320 28, from the 1st day of June, 1830, till 1st of August, 1831, say one year and 2 months, at 10 per cent.	387 36
To interest on \$3,320 28, from the 1st day of September, 1830, till 1st August, 1831, say 11 months, at 10 per cent.	304 35
1830, September, to this amount paid Luther Blake, to defray his expenses to go to Colonel Crowell, principal agent for Creek Indians, in Georgia, to collect my money	85 00
To amount of interest on the same, from September, 1830, till say 1st January, 1834, 3 years and 4 months, at 10 per cent.	28 33
December, to three trips from home (Howard county, Missouri,) to Fort Gibson, on Arkansas river, estimated at 350 miles, one trip in June, 1830, another in September, and the other in December following, say 700 miles, going and returning, to collect my money at the agency agreeably to contract, at \$75 each trip, for time and expenses	225 00
Interest on same, from 1st January, 1831, till 1st January, 1834, say 3 years, at 10 per cent.	67 50
To amount paid General Thomas A. Smith of Missouri, to go to Washington City, and endeavor to get my account settled, and receive my money and expenses	300 00

To interest on same, from January, 1831, till 1st January, 1834, say 3 years, 10 per cent. - - - - -	90 00
	<u>\$ 1,957 90</u>

When the claim was first examined by the committee, they found it was necessary, to arrive at a correct knowledge of the facts, to obtain copies of documents in the War Department. These were furnished, and are herewith presented and made a part of this report.

No. 1 is an extract of a letter from Thomas L. McKenny to John Crowell, notifying him of his appointment by the Secretary of War as agent for the Creek nation of Indians, with power to appoint persons under him to superintend the removal of the Creek Indians west of the Mississippi. This letter bears date on the 10th day of June, 1829. No. 2 is the copy of a letter from John Crowell, appointing Luther Blake an agent to superintend the removal of the Indians. Luther Blake gave public notice on the 10th of September, 1829, that he would receive proposals for supplying about 1,400 pounds of beef a day, for nine months, to commence on the 1st day of December, 1829, and to end on the last day of August, 1830; the beef to be delivered at such time and place as the agent should require.

Under this advertisement eight proposals were made. One proposal was to furnish at \$3 49 per hundred; one at 3 $\frac{3}{4}$ cents per pound; one at \$3 43 per hundred; one at \$4 00 per hundred; one at \$3 16 per hundred; one at \$3 48 per hundred; one at \$3 47 per hundred; and Joseph Cooper, the petitioner, bid to supply the beef required at \$2 88 $\frac{3}{4}$ per hundred, which offer last mentioned was accepted, and the necessary bond was executed. The appointment of Blake as a sub-agent was not reported to the Secretary of War. Mr. Cooper furnished the beef, and Mr. Blake gave him a certificate, of which the following is a copy:

United States, Indian Department, to Joseph Cooper, Dr.

For 344,965 pounds of beef furnished, public contract, to subsist the emigrating Creek Indians, at \$2 88 $\frac{3}{4}$ per 100 lbs. delivered at the western Creek agency, amounting to - - - - - \$9,960 45 $\frac{3}{4}$

I certify, on honor, that Joseph Cooper has furnished three hundred and forty-four thousand nine hundred and sixty-five pounds of beef, at two dollars eighty-eight and three-fourth cents per hundred pounds, according to public contract, entered into on the 1st day of December, 1829, at this place, to subsist Creek emigrants.

LUTHER BLAKE,
Acting Agent Indian Affairs.

WESTERN CREEK AGENCY, 27th of August, 1830.

The committee are not in possession of the contract, nor a copy of it; but it appears by the condition of the bond executed by the petitioner, that he had agreed "to deliver fourteen hundred pounds of good merchantable beef per day, more or less, for nine months, beginning the first day of December next, and ending the last of August, 1830, to be butchered by him at such time and place, and in such quantities, as the agent might, from time to time, require." Whether a more formal contract than is furnished by the bond was entered into, is not within the knowledge of the committee, and they are not in the possession of information relative to the time the

beef was to have been paid for, except as will be hereafter mentioned. The petitioner in his account fixes the payment at the expiration of each three months. It appears by the copy of a letter from Samuel S. Hamilton to the petitioner, dated November 19, 1830, that the petitioner had written a letter to the Secretary of War, on the 28th of October, 1830, in which he enclosed a copy of his account, and requested its payment. The petitioner by this letter, written by S. S. Hamilton by direction of the Secretary of War, was informed that the War Department did not recognize Mr. Blake as a disbursing agent, nor as having any power to make contracts for the Government, and that no contract of the kind referred to had been forwarded to the War Department. From the want of all information on the subject, except so far as it was communicated by the petitioner, he was told it became necessary to refer the claim to General Campbell, the agent for the western Creeks, for his examination and report, before any payment could be made. Singleton Vaughan, who was security for Joseph Cooper, testifies that payments were to have been made at the expiration of each three months from the 1st of December, 1829, until the contract was completed; but he does not mention whether the contract was in writing, except so far as the bond is evidence of the agreement.

He further testifies that the money was not paid when it became due; that the petitioner was greatly embarrassed in not receiving it; that Luther Blake went to the Creek agency in Alabama to see Col. Crowell, the principal agent, in September, 1830, and to obtain the money, for which the petitioner paid him eighty-five dollars; that the witness made one journey to the western Creek agency, and that the petitioner went twice, and both were disappointed in collecting the money; that the petitioner was in good circumstances when he entered into the contract, but was subjected to great loss by the non-performance of the contract on the part of the United States, and was obliged to borrow money, for the use of which he thinks the petitioner was obliged to pay about ten per cent.

Thomas A. Smith testifies that the petitioner was greatly embarrassed by the failure of the United States to make payment according to their contract; that he was obliged to borrow money, and he thinks the interest, with his trouble, was about ten per cent.

He testifies that he came to Washington to settle the account, for which the petitioner paid to him three hundred dollars. The debt was recognised to the amount of \$9,960 86 by the accounting officers, but this witness was unable, at that time, (March 12, 1831,) to obtain the money, for reasons assigned on the certificate of the Second Auditor, to which he refers, and is as follows: "The fund from which this claim should be paid is in the hands of Col. Crowell, who will be ordered *forthwith* to deposite the amount to the credit of this Department, for the purpose of liquidating it.

P. G. RANDOLPH,

Acting Secretary of War."

Claiborne T. Jackson testifies to the embarrassments of the petitioner; that he borrowed money of the witness, and of the bank at St. Louis, and he thinks the interest paid and the expense of renewing his notes amounted to near ten per cent.

The Hon: Mr. Ashley, in a letter addressed to the committee, at the request of the chairman, states, he cashed a note drawn by said Cooper in the spring of 1830, for the sum of four thousand dollars, after deducting the bank discount, and was induced to do this from a representation made

by Gen. Smith of the petitioner's circumstances, caused by the failure of the United States to perform their contract. He speaks in very favorable terms of the character of the petitioner for integrity.

When the account was examined by the Second Auditor, he allowed \$11,140 46, of which sum the Second Comptroller disallowed \$1,179 60, being the excess over the sum of \$9,960 86, the price of the beef delivered. This excess being much less than the amount now claimed, the committee requested the Second Auditor to furnish them with the vouchers containing said sum of \$1,179 60. The Second Auditor, in answer, says, the vouchers were withdrawn, and he has no means of knowing what particular expenditures or charges they contained.

It appears by a receipt, a copy of which is furnished by the Second Auditor, that T. A. Smith, as attorney in fact for Joseph Cooper, received of John Crowell, on the 31st day of May, 1831, the sum of \$9,960 86, being the amount reported by the Treasury in favor of Joseph Cooper, for provisions furnished the Creek Indians who have emigrated west of the Mississippi.

A requisition for the above sum was issued by the Second Auditor in favor of Richard Smith, cashier, on the 23d of June, 1831.

The claim is submitted to the committee to decide, under the above statement, and proof of the facts.

The committee think the petitioner has been unreasonably delayed in receiving the money due from the United States, and that he has been obliged to borrow money in consequence of such delay, for which he has paid, or become accountable to pay, interest. They are not in the possession of the necessary proof to enable them to report the amount of money expended by the petitioner as legal interest on the loans he obtained, but they think, whatever it may be, it should be refunded to him. If the petitioner gave more than at the rate of six per cent. (except to banks, and then only on the ordinary practice of the banks in discounting for a less period than a year,) the committee think the United States ought not to pay such excess. It does not appear from the papers with certainty when the money was to have been paid; but from the circumstance that money was in the hands of Mr. Crowell, the committee draw the inference that it was understood by Blake and the petitioner that the money was to have been paid at the western agency for the Creek nation. They do not perceive that the petitioner was guilty of any omission or neglect in not furnishing the War Department with a copy of his contract, nor in not giving notice that such a contract was made, as this was the duty of the agent, and not of the contractor.

It has not been usual (nor are the committee disposed to set so dangerous a precedent) to allow claimants for any costs or expenses incurred in obtaining their debts from the United States. It would probably have answered as well to have written, as to have sent agents to obtain the money; but whether it would or not, the committee cannot, without a violation of principle, recommend the payment of any money expended in sending agents to obtain the money of Col. Crowell, or in coming to Washington.

As to the interest, the committee report a bill to refund that, and they are satisfied, from the testimony, the petitioner paid as much, to compute the interest on the instalments as they fell due, to the 31st of May, 1831, the last date being the day the principal was paid, according to the receipt of T. A. Smith.