

LANGTRY & JENKINS.

[To accompany bill H. R. No. 181.]

FEBRUARY 10, 1846.

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

REPORT :

The Committee of Claims, to whom was referred the petition of Langtry and Jenkins, report :

That this claim has been twice favorably reported upon by the Judiciary Committee of the House, at the 1st session of the 28th Congress, and by the Committee of Claims at the 2d session of the same Congress. In those reports this committee concur, and report a bill accordingly.

MARCH 8, 1844.

The Committee on the Judiciary, to whom was referred the petition of Langtry & Jenkins, praying to be indemnified for the violation of a contract by the United States, made with them, report :

That General N. Smith, superintendent of Cherokee removals under the treaty of New Echota, was authorized by the War Department, in May, 1838, to apply the balance of the fund for the relief of poor and destitute Cherokees, then remaining, to the purchase of clothing, to be distributed among them ; that in July, 1838, he accordingly contracted with the petitioners for 3,000 pairs of shoes for those Indians, at \$1 30 per pair, delivered at the agency ; that the shoes were delivered, or offered to be, by the petitioners, according to contract ; but that, in the mean time, the control of the Cherokee poor fund having been given to John Ross, he, as well as General Smith, refused to receive them.

The agent of the petitioners then sold 484 pairs of these shoes at the agency for \$1 per pair, being thirty cents less than the contract price ; the rest were sold at auction, in Nashville, at a still smaller price.

The petitioners charge the government with the contract price, credit the proceeds of sales, and ask to be paid the difference ; to which the committee think they are clearly entitled. If the shoes had been received, and applied to the use of the Indians, the petitioners would have been entitled to be paid out of the poor fund. As the act of the government prevented this, and the poor fund cannot be used by the government to indemnify these con-

tractors, the committee think that Congress should pass a bill for the petitioners' relief.

They state the account somewhat differently from the petitioners, (who have charged for 3,046 pairs of shoes, instead of 3,000,) thus :

<i>United States to Langtry & Jenkins,</i>		DR.
To 3,000 pairs of shoes, at \$1 30 per pair	-	\$3,900 00
CR.		
By proceeds of 2,562 pairs sold at auction	-	\$2,018 35
Do 438 pairs sold at agency	-	438 00
		2,456 35
		1,443 65

The committee report a bill for the payment of this sum to the petitioners, or their assignees.

DECEMBER 18, 1844.

The Committee of Claims, to whom was referred the petition of Langtry & Jenkins, praying indemnity for a loss sustained by them in consequence of the violation of a contract with the United States made by them, report :

That, from the petition and documents referred to the committee, the following facts appear : That, by the treaty of New Echota, of December, 1835, a fund was set apart expressly for the "benefit of the poorer class of Cherokees," to be expended at the Cherokee agency "west, as soon after the removal of the nation as possible;" which fund was afterwards, by a supplemental article, changed to the general national fund. The treaty also stipulates annuities to be paid in provisions and clothing for the benefit of the poorer classes, &c. That Gen. N. Smith, in the early portion of the year 1838, was the regular superintendent for the removal of the Cherokees under the said treaty ; that finding the Indians destitute of clothing and shoes, it appears he made application to the War Department for authority to apply what was called the "poor fund" to the supplying of their immediate necessities ; that he received the authority to so apply it, by a communication under date of May 8, 1838 ; that in and by virtue of that authority, he entered into a contract with the petitioners to supply him for the purposes aforesaid, at the Cherokee agency, with three thousand pairs of shoes, for which he stipulated to give them, upon the delivery, one dollar and thirty cents per pair. It also appears that the petitioners complied strictly with the stipulations of their contract, and produced the shoes, and offered to deliver them. This contract was made in July, 1838. That between the time of the making of the contract, and the delivery of the shoes, the relations of Gen. Smith with the business of removal had en-

tirely changed; and by the action of the government, through her officers, the whole matter of removal had been turned over to John Ross, who refused to accept the shoes when delivered under the contract. Gen. Smith's authority to accept had ceased, and the shoes were thus thrown upon the hands of the petitioners. That the petitioners, through their agent, proceeded to dispose of them to the best advantage, and sold at the agency 438 pairs, at \$1 per pair; and sent the balance, being 2,562 pairs, to Nashville, where they were sold at auction, and netted \$2,018 35—leaving an actual loss between the contract price and proceeds of sale of \$1,443 65. Thus:

United States to Langtry & Jenkins, To 3,000 pairs of shoes, at \$1 30 per pair	-	-	-	<i>Dr.</i>	\$3,900 00
				<i>Cr.</i>	
By proceeds of sale at the agency	-	-	\$438 00		
By proceeds of sale at auction at Nashville	-	-	2,018 35		
					<u>2,456 35</u>
Balance	-	-	-	-	<u>\$1,443 65</u>

From this state of facts, it clearly appears that the petitioners, without any fault on their part, have suffered a loss, from the price stipulated in their contract and the actual sales, of \$1,443 65; and ought, in strict justice, to be remunerated in that amount. And the only questions that could arise are, first—Did the superintendent transcend his authority in making the contract? and, secondly—Whether it should be chargeable upon the Cherokee fund, or paid out of the general treasury?

As it regards the first question, your committee are of opinion that the superintendent of removal of the Cherokees did not transcend his authority, and the evils that resulted in this loss sprang from other sources than that. The superintendent, at the time of the contract, was charged with the duty of their removal; he found them poor, and destitute of the necessary equipment for the journey, and so informed the appropriate department, and was instructed to meet these contingencies out of a fund supposed to be applicable under the treaty for such purposes. The petitioners, looking to these instructions as the authority of the agent of the government to contract, entered into the agreement—looking to that fund for payment, doubtless. A more ample authority your committee deem could scarcely be required in any case. The authority to contract was abundant; and the unnecessary loss was incurred, as your committee believe, by the blunder of changing agents of the government, without making them respect the unexecuted contracts of their predecessors, made in the public service. But this was no fault of the petitioners, and cannot reflect upon their scrutiny in looking into the authority of contracting agents of the government.

In regard to the second question—whether it should be chargeable to the "poor fund," or the annuities specified in the treaty?—the door for investigation seems to be closed. The petitioners applied forthwith for payment out of that fund; and it was refused them, on the authority of an opinion of the then Attorney General of the United States—that, however

just and equitable the claim, it could not be chargeable upon the funds stipulated and set apart in the treaty. Hence, the only remedy left the petitioners was an appeal to the government.

There is no evidence in the papers as to the true value of the shoes; nor do your committee deem it actually necessary, where there exists an express contract fixing the precise amount.

The petitioners claim an amount greater than the amount here reported in their favor, made up of forty-six additional pairs of shoes, a claim for storage and interest, &c.; all of which your committee deem improper to allow. Their claim is founded upon a strict contract; and in asking for that, they must also abide its stipulations; and the government is not in the habit of paying interest upon these claims upon its bounty and justice.

Your committee, therefore, are of opinion that the petitioners are entitled to the sum of \$1,443 65, being the amount of difference between the contract price of the shoes and the proceeds of sales, and report a bill for the payment of this sum.