

SAMUEL MACKAY.

[To accompany bill S. No. 265.]

JULY 10, 1840.

Read, and, with the bill, committed to a Committee of the Whole House to morrow.

Mr. GIDDINGS, from the Committee of Claims, submitted the following

REPORT:

*The Committee of Claims, to whom was referred Senate bill (No. 265) entitled "An act for the relief of Samuel Mackay," report:*

That it appears, from the proofs exhibited in the case, that on the 29th day of February, 1836, the memorialist entered into a contract with Captain Jacob Brown, of the United States army, acting as principal disbursing agent for the removal of Indians, by which the said memorialist agreed to furnish to the Creek Indians, at the issuing depots near the Creek agency west, "all rations, be the same more or less, that should be required, from the first day of April, 1836, to the thirty-first day of March, 1837, inclusive. The rations to be delivered in quantities, and at dates, as should be required and designated; ten days' notice of the quantity to be furnished for the first delivery being given."

It was also stipulated that payments should be made for said rations "at Little Rock, Arkansas, if required; reserving twenty-five per cent. on payments, until the expiration and fulfilment of the contract."

For the fulfilment of these stipulations the memorialist gave his bond, with certain other individuals, as security. It was also stipulated "that, in case of a failure, or deficiency of quantity or quality of the rations to be delivered as above stipulated, then the agent on the part of the United States shall have power to supply such deficiency by purchases; and the said Samuel Mackay hereby agrees to remunerate the United States for any increase of expenditure growing out of, or in any manner consequent thereon."

It appears that, under this contract, the memorialist proceeded to supply such Indians as emigrated during the summer and fall of 1836, and furnished the necessary and proper rations, until the 9th day of January, A. D. 1837, when he informed the officer in command at Fort Gibson of his inability further to perform said contract. It also appears that he then turned over to the United States such provisions as he had on hand, or had contracted for, at the prices which he received them at. That the officers of the United States proceeded to furnish the rations, and charged the memorialist with the amount paid therefor above the price stipulated to be given to the memorialist. That the excess thus paid between said 9th day of January, 1837, and the expiration of said contract, amounted to forty thousand dollars.

There is no evidence furnished the committee which shows the

amount of rations furnished by the memorialist ; nor the amount of money retained by the officers of Government under the stipulations contained in the contract, which provides that twenty-five per cent. should be reserved from the payments to be made to the memorialist.

It appears that the memorialist was unable to perform his contract ; in consequence of which, the Government were obliged to pay a much higher price for the rations than they would have paid had the petitioner complied with his stipulations. The damages thus sustained by the United States were liquidated by the parties. It was stipulated that in case of failure by the petitioner to perform his contract, the amount paid over and above the sum of five cents and four and three-fourths mills, (the price which was to be paid said petitioner,) should be paid by the petitioner to the United States. The amount of excess thus paid appears by the statement of the Commissioner of Indian Affairs to be about forty thousand dollars.

This amount the petitioner has agreed to pay to the United States, and has given security for the faithful performance of his agreement. There is no sufficient reason shown why he did not perform his contract, except his inability to do so. Had the petitioner made an equal amount of profit, neither he, nor any other person, would have supposed the Government entitled to any portion of the amount. The committee do not discover that the petitioner has any claim upon Government for a surrender of any portion of the money reserved on the payments above referred to, or to release him from the payment of said forty thousand dollars.

The committee recommend that said bill be rejected.

There is no evidence furnished the committee which shows the