

JOHN JOHNSTON.

[To accompany bill H. R. No. 218.]

FEBRUARY 23, 1842.

Mr. BARNARD, from the Committee on the Judiciary, submitted the following

REPORT :

The Committee on the Judiciary, to whom was referred the petition of John Johnston, report :

That, having examined the said petition, together with the evidence adduced in support of the same, your committee concur in a report made thereon to the 2d session of the 26th Congress, (No. 114;) to which they beg leave to refer as containing their opinion upon the matters stated in said petition.

FEBRUARY 12, 1841.

Mr. TRUMBULL, from the Committee on the Judiciary, to whom was referred the petition of John Johnston, reported :

That, from the testimony exhibited to them, it appears the petitioner was commissioned to act as Government agent to the Shawnee tribe of Indians, and that he performed the duties as such, from the year 1812 to the year 1829, at an annual salary of \$1,200.

That, during the period above specified, the petitioner, at the request of the officers in the War Department, paid annuities, and performed the ordinary duties of Indian agent, to several other tribes, not required under his said commission, for which he has received no compensation.

That, from the correspondence between the petitioner and the War Department, subsequent to the expiration of his agency, it appears that he was anxious for a settlement of his accounts, and that he anticipated a balance would be found in his favor. His solicitude for a settlement is more especially evinced in his letters to the honorable Lewis Cass, then Secretary of War, dated 18th January, 1834, and 18th August, 1836; and, knowing Mr. Secretary Cass to be personally acquainted with his services, he also expresses a willingness to submit the whole matter to his decision, and promises to abide his determination thereon.

From the letter of Governor Cass, dated at Paris on the 5th of December, 1837, it is evident that said accounts were examined by him previous to his resignation, and that he became satisfied with their correctness, as will appear by the following extract from said letter :

Extract of a letter from Governor Cass to John Johnston, dated at Paris, December 5, 1837.

"But I shall preserve through life a perfect recollection of your services, both in peace and war. I know them to have been arduous, indefatigable, and highly useful; to this point, I have always most cheerfully borne witness.

"It would be difficult to describe to those not then upon the stage, and acquainted with the scenes and actors upon the Northwestern frontier, the nature of your duties, and the exemplary manner in which they were performed.

"When in the War Department, I recollect to have had repeated conversations with Major Lewis, the Second Auditor, upon the subject of your accounts; and, if I am not deceived, it was at one time concluded to settle them, upon your making an affidavit to their accuracy. What prevented the completion of this arrangement I have forgotten, if I ever knew. I can only say that I was prepared, at any moment, to sanction it, had the Auditor submitted it to me officially."

Such an affidavit was made by the petitioner; and nothing seems to have been wanting at that time to their final allowance, but the mere form of presentation by the Auditor to the said Secretary.

For reasons which do not appear, this was omitted; and the petitioner's papers remained in that condition when Governor Cass resigned his place in the War Department, and for several years thereafter, when a suit in law was instituted by the Government against the petitioner in the district court of Ohio.

The petitioner voluntarily admitted service, and entered an appearance in said suit, and a trial was had thereon at the July term of said court, 1839.

The jury, after being returned to a second and third consideration, came into court with their verdict against the petitioner for a balance of about three hundred dollars, and the interest thereon, amounting in all to \$721 48.

The jury seem to have been satisfied with the accounts of the petitioner, so far as they related to his agency with the said Shawnee tribe of Indians; but they disagreed, and refused to allow his claims for money paid and services rendered to any other tribes, and which, if allowed, would have given a balance in his favor of \$844 93. In this part of his defence, the petitioner was much embarrassed by reason of the death and removal of his witnesses. It further appears in evidence, from certificates under the hands of the honorable H. H. Leavitt, the presiding judge on said trial, William Miner, the clerk of said court, Governor Morrow, the foreman of the jury, and William Sawyer, one of the jurors on said trial, that they would have been better satisfied with a verdict for the defendant.

It further appears, in evidence before the committee, that the petitioner has been employed in the service of the United States, in connexion with the Indian department, for nearly forty years; during which time he has disbursed, in money and goods, to the amount of more than one million and a half of dollars, and has at all times conducted himself with the utmost fidelity to the country, as appears, not only from the foregoing letter of Governor Cass, but more especially from a letter written by Gen. William Henry Harrison, dated 13th October, 1828, which is as follows, viz:

“WASHINGTON, *October 13, 1828.*”

“DEAR SIR: In answer to the questions contained in your letter of the — August, I state that, as far as I know, receipts from the Indians, for occasional presents of goods and other articles delivered to them, were never asked for in the settlement of the accounts of the superintendent or agent, the accounts and receipts of those from whom the articles were purchased being deemed sufficient. This was the case also with regard to the regular annuities, when sent in goods; but not so when money was paid. I further state, that a large quantity of goods, which had been forwarded to you for the use of the Indians, were, by my orders, distributed among the troops in the winter of 1812-'13, in consequence of the destitute condition of the latter; and that the circumstances under which they were delivered precluded the obtaining of regular vouchers.

“It gives me great pleasure further to state, that you acted under my orders in the Indian department from 1800 to the spring of 1814, and that, in all that time, you managed the matters committed to you with the greatest ability and industry; and that I have such entire confidence in your integrity and honor, that I would not hesitate to accept your certificate of an expenditure as full evidence of its having been made.

“I am, with great respect and regard, your obedient servant,

“W. H. HARRISON.

“JOHN JOHNSTON, Esq.,
“*Piqua, Ohio.*”

That although, owing to the length of time which was permitted to intervene between the rendering of his account and the bringing said suit, without default on his part; the oftentimes hasty and irregular manner in which it was occasionally necessary, during the war of 1812, to disburse goods to the Indian tribes; the subsequent removal of the Indians to whom the goods were delivered; and the absence of witnesses, by death and otherwise, he was unable to establish his defence before the jury;—yet, after a careful examination of all the circumstances relative to this case, without impugning the verdict of said jury, or in any degree questioning the propriety of their decision upon the testimony before them, the committee are of the opinion that the said Johnston, at the request of the officers in the Indian department, did render meritorious and valuable services not required of him under his commission as agent to the said Shawnee tribe of Indians, and for which he has never been compensated.

That those services, having been in part performed during the war of 1812, were particularly arduous and hazardous to the petitioner; and that, in equity, he ought to receive a consideration from the Government.

That though, from lapse of time and deficiency of evidence, there is much difficulty in ascertaining the exact sum due to the petitioner, the committee fully believe that he is not in arrears, and cannot hesitate to recommend that the amount paid by him upon the said verdict and judgment be refunded, with the interest thereof from the time of payment.

The committee therefore ask leave to report the accompanying bill.