

CALIFORNIA—REFUND MONEY TO STATE OF, FOR SUPPRESSING INDIAN AGGRESSIONS.

[To accompany bill H. R. No. 92.]

APRIL 26, 1854.

Mr. McDougall, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred House bill No. 92, entitled "A bill to refund to the State of California the expenses incurred in suppressing Indian aggressions within that State," report:

That the bill so referred is intended to provide for the satisfaction of a claim made by the State of California against the United States, for the amount of moneys expended by said State in suppressing Indian hostilities within the State, and upon the lines of emigration from the Atlantic States. The documents and papers presented to the committee, in explanation of the claim, are so voluminous as to render it inconvenient to embody them in this report, and the committee, therefore, present only such of the leading facts upon which the claim is made as are necessary to a general understanding of its character.

The southern, eastern, and northern border of California was formerly, and to a great extent still continues to be, occupied by Indian tribes, many of which are both numerous and warlike. The discovery of gold, and the consequent rush of emigration, and the rapid occupancy of the State, particularly the mountain and mining districts, had not been anticipated by the general government, consequently no adequate provisions were made to guard against or prevent collisions between the emigrants and the Indian inhabitants. No treaties had been negotiated, and the state of the country was such as to render it impracticable for the general government to maintain there an efficient military force, on account of the small pay, and the strong temptation to desertion.

Collisions between the Indian and white population commenced as early as 1849; and during the years 1850, 1851, and 1852, formidable and systematized attacks were made by several of the Indian tribes upon the white settlements in California and the emigrants arriving overland.

That the federal government had not furnished, and could not furnish, adequate protection, appears from a correspondence as late as April, 1852, between the Executive of the State of California and General E. A. Hitchcock, commanding the Pacific division of the United States army. By letter bearing date the 8th of April, 1852, Governor Bigler informed General Hitchcock of the resumption of hostilities by

the Indians of the north, and, after a statement of the facts, asked the aid of the federal government, at the same time suggesting that if the government had not a sufficient number of troops to detail for this service, he would promptly issue a call for them whenever so requested. To this communication General Hitchcock, by letter dated April 10, 1852, made a reply, from which the following is extracted :

“I trust your excellency, and the considerate portion of the population of California, will not infer, from the existence of such evils, so naturally growing out of the condition of the country, any want of disposition, on the part of the general government, to render every protection possible under the circumstances.

“That the number of troops, both in California and Oregon, is fewer than the nature of the service requires, I have duly represented to the War Department; and not long since, a body of five hundred men reached here, which I suppose to be but a part of those designed to be sent on my application.

“If there has seemed any reluctance or delay in sending troops to this military division, the reason is to be found not in any want of disposition on the part of the government to do full justice to the claims of California, but because it is well known to be almost impossible, owing to the peculiar temptations to desertion, to hold troops embodied and efficient for service anywhere on this coast. I will, however, lose no time in communicating to the War Department the views and wishes of your excellency, and, in the mean time, will make the best use of the force under my command for the protection of the country.

“In regard to the militia of the State, I have supposed that your excellency is aware of my entire want of power to give any sanction to their being employed, and that I can only recognise such a force when called into service by the President of the United States.

“I have the honor to be, sir, very respectfully, your obedient servant,

“E. A. HITCHCOCK,

“Colonel 2d Infantry, Bt. Brig. Gen. Commanding.

“His Excellency JOHN BIGLER,

“Governor of California.”

Upon a full inquiry into the facts, as well as from the communication of the commanding general just quoted, it appears that the regular force of the United States was altogether inadequate to the service required in California, and that the last mentioned officer did not consider himself authorized to employ the volunteer force of the State, without direct authority from the President. The only alternative left the executive of the State of California, was, upon his own responsibility, and that of the State legislature, to take such steps as the emergencies of the country might demand.

Upon an examination of the papers laid before the committee, it appears that, during the years 1850, 1851 and 1852, the State of California had occasion to send out a volunteer force on ten different occasions, to different and generally remote parts of the State, for the suppression of Indian hostilities; since the year 1852, it is not represented that further expeditions have been demanded, or that the gov-

ernment force has not been sufficient for the purposes of defence. It is the expenses incurred during the expedition referred to that is the ground of the present claim.

The necessity for these expeditions appears to have existed from the correspondence and documents in relation to each presented to the committee.

Early in the year 1850, a settlement was made on the Colorado river, at the present site of fort Juma, the point where the emigrant road by Santa Fé and El Passo crosses that river. On the 23d of April, 1850, the Juma Indians, a numerous and warlike tribe, and who had heretofore been friendly, made a sudden attack on the settlement, killed eleven men and drove the remainder in towards Los Angeles; and thereupon confederating with other tribes, threatened the whole southern portion of the State with a general Indian war, as well as to cut off the entire emigration by the south.

These facts, with the additional fact that the United States could not furnish the requisite protection, were represented to the Governor of California, who upon the urgent demand of the citizens of the south part of the State, ordered a military force to be organized for their protection and the protection of the emigrant route.

The sheriff of the county of El Dorado, by letter of the 23d October, 1850, informed the governor that the Indians in that county had assembled in large numbers; had sent their women and children into the mountains, and besides having committed numerous murders, threatened to destroy the towns of Weberville and Ringgold, and had given general notice to the mariners and citizens that they must leave immediately. He represented the number of Indians to be from twelve to fifteen hundred; and that they were on the emigrant trail from Salt Lake, and would cut off the in-coming emigration; and he urged strongly the necessity of a considerable organized force for the purposes of protection. Shortly after this letter was written, a general war broke out in El Dorado county, and the sheriff of the county was authorized by the governor to call out a force sufficient to compel a peace. The sheriff accordingly proceeded to organize a volunteer force and operate against the hostile Indians, and after several engagements and considerable loss of life, succeeded in bringing them to terms.

On the 20th January, 1851, Adam Johnson, Indian agent for the United States, made a communication to the governor advising him that the Indians of the Mariposa and Fresno had made preparations for a general war, and had already commenced hostilities; and after detailing their movements, and the particulars of a brutal massacre of a camp on the Fresno, he solicits, for the people of that region, such aid from the State government, as will enable them to protect their persons and property.

The communication of Mr. Johnson was soon followed by one from James Barney, the sheriff of Mariposa county, from which the following is an extract: "Since the departure of Mr. Johnson, the Indian agent, they have killed a portion of the citizens on the head of the San Joaquin river, driven the balance off, taken away all the moveable property, and destroyed all they could not take away; they have invariably murdered and robbed all the small parties they fell in with

between here and the San Joaquin. News came here last night that seventy-two men were killed on Rattlesnake creek; several men have been killed in Bear valley. The fine gold gulch has been deserted, and the men came in here yesterday. Nearly all the mules and horses in this part of the State have been stolen, both from the mines and the ranches—and I now, in the name of the people of this part of the State, and for the good of our country, appeal to your excellency for protection.”

The preceding representations, with others of a similar nature, induced the Executive, with the approbation of the State legislature, then in session, to place in the field a sufficient force to furnish the protection called for, and force the Indians to terms of peace.

The other occasions upon which the State of California thought it proper to place her own military force in the field, correspond substantially with those already stated in all their essential features. From an official statement laid before this committee in relation to the disturbances in the northern part of the State near the line of Oregon, it appears that in the space of a few months one hundred and thirty white persons were killed, and \$250,000 of property destroyed. These outrages led to two of the expeditions referred to.

Upon a careful consideration of all the facts presented, it appears that, to a great extent, the defence of the people of the State of California against Indian aggression, has devolved on that State, owing to the insufficiency of the troops of the United States on the Pacific coast.

This committee are unable to correctly ascertain the specific merits of all the items that make up the claim presented by the State of California; but, from an examination of the official reports of the officers of that State, it appears that some care has been bestowed by the proper auditing officers in ascertaining and determining the merits of those items, and as the State has assumed and discharged the liabilities incurred, there appears no good reason to suspect that unjust allowances have been made.

The aggregate of expenses and liabilities incurred on account of these Indian expeditions appears, from the report of the comptroller of the State of California on the 20th of December last, to have amounted to the sum of \$924,259 65.

The question remaining for consideration is, whether or not the general government is properly chargeable with their expenditures?

It is the opinion of this committee that the obligation of the federal government to furnish specific and particular defence to each several State, is included in its obligation to maintain the “common defence” of the confederacy. That invasions from abroad, insurrections at home, and aggressions from the savage tribes inhabiting our borders, are alike within the protective province of the federal government. Congress possesses the exclusive power “to raise and support armies in time of peace,” and possesses the power to call forth the militia “to suppress insurrections and repel invasions.” In the tenth section of the first article of the constitution, the States stipulate that they will not “keep troops or ships of war in time of peace.”

The conclusion necessarily follows, that the general government is, by the implied, if not the express, terms of the federal compact, bound

to furnish and maintain such military force as the exigencies of the States may demand; and it clearly appears from the legislative history of Congress, that such has always been the understanding of the government.

By act approved March 21, 1828, the Secretary of War was required to pay the claims of the militia of the State of Illinois and the Territory of Michigan, called out by any competent authority, on the occasion of the then recent Indian disturbances, and that the expenses incident to the expedition should be settled according to the justice of the claims. (See Laws of United States, vol. 4, p. 258.)

By act approved March 1, 1837, an appropriation was made for the payment of the Tennessee volunteers, called out by proclamation of Governor Cannon, on the 28th of April, 1836, to suppress Indian hostilities; and a direct appropriation was also made to Gov. Cannon to re-imburse him for moneys expended on account of such volunteers. (See Laws U. S., vol. 5, p. 150.)

By act approved March 3, 1841, a direct appropriation was made to the city of Mobile, for advances of money and expenses incurred in equipping, mounting, and sending to the place of rendezvous, two full companies of mounted men, under a call from the Governor of Alabama, at the beginning of the hostilities with the Creek Indians. (See Laws, vol. 5, p. 435.)

By act of August 11, 1842, \$175,000 was appropriated as a balance for the payment and indemnity of the State of Georgia, for any moneys actually paid by said State on account of expenses in calling out her militia during the Seminole, Cherokee, and Creek campaigns, or for the suppression of Indian hostilities in Florida and Alabama. (See Laws, vol. 5, p. 504.) By act approved August 29, 1842, a similar appropriation was made to the State of Louisiana. (See Laws, October 5, p. 542.)

The question here presented appears to have been distinctly raised in 1831 upon a claim presented by the State of Missouri. By act approved March 3d of that year, Congress made an appropriation for the service of the Missouri militia against the Indians, "provided that the Secretary of War shall, upon full investigation, be satisfied that the United States are liable for the payment of said militia, under the second paragraph of the tenth section of the first article of the Constitution of the United States." (See Laws, vol. 4, p. 465.)

General Cass, then Secretary of War, examined the subject submitted, and gave the opinion of the government as to its constitutional obligations, affirming the liability of the government, and directing payment to be made to the State of Missouri.

Instances of similar legislation might be cited, but it is believed that but little doubt can exist either as to the constitutional obligation or the exposition given by Congressional legislation.

The amount claimed by the State of California appears to be extravagantly large; but considering the number of distinct expeditions made into different and remote regions of the State, running through a period of three years, the extraordinary condition of the country, the extraordinary cost of everything—subsistence, transportation, and material—it will probably be found that there is no unwarrantable dispro

portion between the amount expended by California and the amount of cost to the United States government in carrying on other Indian wars.

The committee being satisfied that the requisite protection was not furnished by the federal government to the State of California, and seeing no good reason to question that the amount claimed was expended in good faith, for the purpose of protection, report said bill back to the House, with an amendment, and recommend its passage.