

WIDOW AND HEIRS OF ELIJAH BEEBE.

[To accompany bill H. R. No. 51.]

DECEMBER 20, 1853.

Mr. EASTMAN, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the petition of the widow and heirs of Elijah Beebe, praying to be indemnified for depredations committed on the property of the said Beebe by the Sac and Fox Indians, ask leave to submit the following report :

It appears to the committee, that, in the summer of 1821, Elijah Beebe, deceased, undertook to drive a large quantity of beef-cattle and hogs (being his own property) from Chariton, on the Missouri river, to the military posts on the upper Mississippi. In the month of October following, at the forks of the Des Moines river, in the present State of Iowa, his drove of cattle and hogs was met by a party of Sac and Fox Indians, then in amity with the United States, passing up the said river to their hunting-grounds. The said Indians immediately commenced driving away and scattering said cattle and hogs ; and in spite of every exertion that could be made by the persons employed in driving said cattle and hogs, twenty-two head of the cattle and four hundred and fifty head of hogs, all the property of the said Beebe, were stolen and driven away by the said Indians. The value of the said cattle and hogs, and the damage which the said Beebe sustained from the said Indians, are duly proved.

Memorial to the honorable the Senate and House of Representatives of the United States of America, in Congress assembled.

The petition of the widow and heirs of Elijah Beebe respectfully represents :

That in the summer of 1821, the said Elijah Beebe, having become the purchaser of a large number of beef-cattle and hogs, for the purpose of supplying the military posts on the upper Mississippi, undertook to drive the same from Chariton, on the Missouri river, to the said military posts ; that on or about the tenth day of the following October, at the forks of the Des Moines river, the said Beebe was met by a party of Sac and Fox Indians, who attacked his party, and stole, drove

off, and scattered from the drove, twenty-two head of beef-cattle and four hundred and fifty hogs, many of them being valuable breeding-sows, none of the said cattle and hogs being ever thereafter recovered by the said Beebe.

Your petitioners further represent that, in consequence of the exposure and hardship incurred by the said Beebe in endeavoring to reclaim and get back from the said Indians the said cattle and hogs that they had driven away, he soon after died; that soon after his death, and in the year 1822, a claim was filed with the superintendent of Indian affairs at St. Louis, Missouri, against the said Sac and Fox Indians, for the depredations committed as aforesaid, and proofs of such depredations duly made; that afterwards applications were made to the said tribe of Indians for satisfaction, which said tribe of Indians refused, and the loss of the said cattle and hogs has never been indemnified by either the said Indians or by the government.

Your petitioners are therefore advised that they have a good and valid claim upon the government of the United States for the amount of the said loss, as shall be proved, and they pray the passage of a bill by Congress, authorizing them to be paid said amount. As in duty bound, will ever pray.

SARAH BEEBE.

EDWARD H. BEEBE.

THOMAS H. BEEBE.

NICHOLAS STAHL.

SARAH A. STAHL.

WM. HEMPSTEAD,

FOR MORTIMER and MARY H. KENNETT.

It now becomes necessary to inquire if the petitioners in this case—the widow and heirs of the said Beebe—are entitled to relief at the hands of the government. It is provided by the 14th section of what is called the “intercourse act,” approved April 2, 1802, “that if any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or cross the said boundary line into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy, any horse, horses, or *other property* belonging to any citizen or inhabitant of the United States, or either of the territorial districts of the United States, or shall commit any murder, violence, or outrage upon any such citizen or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney, or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose, who, upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe to which such Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding twelve months, then it shall be the duty of the superintendent, or other person authorized as aforesaid, to make return of his doings to the President of the United States, and forward to him all the documents and proofs in the case, that such further steps may be taken as shall be proper to

obtain satisfaction for the injury; and in the mean time, in respect to the property so taken, stolen, or destroyed, the United States guaranty to the party injured an eventual indemnification."

At the time of the passage of the said law of 1802, the territory where this depredation was afterwards committed belonged to France, but was purchased from that government by the treaty ratified April 30, 1803.

On the 26th day of March, 1804, Congress passed a law, dividing the territory thus acquired from France into two Territories; and by the 15th section of the said law, the act of 1802 above alluded to was extended to the Territories thereby erected and established. Therefore, the particular territory where this depredation was committed was brought under the operation of the act of 1802, by the operation of the act of 1804.—*U. S. Statutes at Large, vol. 2, page 289.*

By the act of June 30, 1834, (*Statutes at Large, vol. 4, page 729,*) Congress legislated anew on this whole subject; and by the 17th section of the said act, the provisions of the 14th section of the act of 1802 are re-enacted, in language a little more explicit than that used in the act of 1802, and with a further provision that all claims arising under that act must be presented in three years from the commission of the injury. This section also provides that, if no annuity is to be paid to Indians committing depredations, out of which the amount of the depredations so committed can be deducted, the said amount shall be paid out of the treasury of the United States.

The government, therefore, has, by the laws above referred to, taken upon itself the obligation of indemnifying "any citizen or inhabitant of the United States" against losses arising from the depredations of our Indian tribes. It is the duty of the party incurring the loss to make application for indemnity to the superintendent, or other person authorized by the President for that purpose, and furnish the necessary proofs. There the duty of the party ends. He neither has the right, nor can he do anything further. When he makes his application in the manner prescribed by law, and furnishes his "necessary documents and proofs," the obligation for an eventual indemnity by the government is complete. Then the government has to do certain other things, (over which the party has no control,) in order to justify a deduction of such sum or sums as shall be paid for the property taken, stolen, or destroyed, from the stipend which the United States are bound to pay to the tribe to which the Indian or Indians belonged that committed the depredations.

The question to be decided, then, is, has the application been made, and have the necessary proofs and documents been furnished? The application was made to the superintendent of Indian affairs at St. Louis; and the claim of Mr. Beebe was filed in 1822, as appears by the following certificate:

SUPERINTENDENCY OF INDIAN AFFAIRS,
St. Louis, June 27, 1837..

This will certify, that it appears from the records of this office that a claim of E. Beebe against the Sacs and Foxes was filed in it for the following:

1822.—For 22 head of cattle, at \$28.....	\$616
For 150 head breeding-sows, at \$8.....	1,200
For 300 head young sows, at \$4.....	1,200
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	3,016
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GEO. MAGUIRE,
Clerk Office Sup't Indian Affairs.

The proofs of the commission of this depredation, and of the value of the property destroyed, stolen, or carried off, consist of the depositions of Solomon Wells, David G. Bates, and Jesse W. Shull.

Mr. Wells, who was with Beebe at the time, testifies that they were met at the forks of the Des Moines river by a party of the Sac and Fox Indians, who commenced driving and scattering their cattle and hogs; that they followed the said Indians two days before overtaking them, and when they came up with them they found twenty-eight head of cattle in their possession. Mr. Wells further states that, after recovering possession of these cattle from the said Indians, they were still harassed by them; and that they continued to harass and drive away their cattle and hogs until they had stolen and driven away twenty-two head of cattle and four hundred and fifty head of hogs. The deponent further states the value of the property destroyed by the said Indians, the time expended and the trouble had in pursuing said Indians, and the actual damage of the interruption to Mr. Beebe. The Hon. Thomas H. Benton certifies that Mr. Wells is a man of good character, and to be believed.

Capt. Bates testifies that, on the thirteenth day of October, 1821, he agreed to accompany a drove of cattle from Clarksville, on the Mississippi, as far as Dubuque; and when they arrived at the Des Moines river the Indians informed them that, a few days previous, some men from the Missouri had tried to cross a drove of cattle at the old village, *sixty* miles above, which was scared back by the Indians; that the cattle were entirely scattered, and that a number of the cattle had been killed by the Indians, and they believed the hogs were entirely destroyed. This admission of the Indians is all that is proved in Captain Bates's deposition which is material. Gen. Jones, of the Senate, certifies that he is acquainted with Bates, and that the utmost reliance may be placed on his statements.

Capt. Shull, after stating in his deposition a conversation he had with Beebe at Prairie du Chien, in the fall of the year 1821, in regard to his loss of his drove of cattle and hogs, by their being driven away and stolen by the Indians, goes on further to say, that he (Shull) was at that time living at Dubuque's mines, and trading with the Sac and Fox Indians; that the said Indians informed him that Quashquamie's band had that summer scattered and dispersed a drove of cattle and hogs, on the waters of the Des Moines, which a white man was driving north, and had killed some of them. During the following winter and spring the Dubuque band of Indians brought in from their hunts a great many beef-hides, and offered them for sale to him; telling him that they had killed the beeves on the waters of the Des Moines, *where Beebe's drove*

had been scattered the summer before. The deponent further states that there was no other drove of cattle and hogs but Beebe's passing or being driven through that portion of the Indian country in the year 1821; that he has no hesitation in stating that the hides must have been of Beebe's drove; and that, residing among those Indians from 1819 to 1826, he always heard it admitted by them that Beebe's cattle and hogs were dispersed and destroyed as above mentioned. The veracity and credibility of Capt. Shull is certified to by Senators Jones and Dodge, of Iowa, and Senator Dodge of Wisconsin.

STATE OF MISSOURI, *County of Saint Louis, sct :*

Be it remembered, that on this tenth day of January, in the year eighteen hundred and twenty-three, personally appeared before me, the undersigned, a justice of the peace in and for the county and State aforesaid, Solomon Wells, of said county, of lawful age, and who, being duly sworn, declareth and saith: that in the summer of 1821 he was employed by the late Elijah Beebe, deceased, to assist in driving a quantity of beef-cattle and hogs from Chariton, on the Missouri, to the military posts on the Mississippi; that on or about the tenth day of October following, at the forks of the river Desmoines, they were met by a party of Sac and Fox Indians, passing up (as we supposed) said river to their hunting-grounds; that said Indians commenced driving and scattering our cattle and hogs; that he, this deponent, with others, followed them two days before he overtook them—at which time the said Indians had twenty-eight of the cattle in their possession; that when they saw us they left the cattle and fled. This deponent further states, that said Indians continued harassing the party to which he belonged, by driving away the cattle in small quantities, in different directions *up* the country, as we supposed, to their hunting-grounds. And said deponent further states, that, in consequence of being so harassed by said Indians, the party to which he belonged, as aforesaid, were detained twenty-one days, and twenty-two head of cattle of said drove, belonging to said Elijah Beebe, deceased, were lost, and taken, as I verily believe, by said Indians. This deponent also states, that said Indians took from us, at the same time, at least four hundred and fifty head of hogs, also the property of said Elijah Beebe, deceased; and that said Indians burned the prairies as they went away, to prevent, as this deponent believes, any pursuit from said deponent and party; and that on the trail, so far as the Indians could be traced, said deponent found where said Indians had killed one of said hogs. And he further saith, that he should estimate the value of said twenty-two head of cattle, at that time, to be at least twenty-eight dollars per head, as said Beebe, when afterwards obliged to sell, at Prairie du Chien, a quantity of the same drove of cattle, and of the same quality, sold them for that price. This deponent further states, that, out of the quantity of hogs stolen as above by said Indians, he verily believes about one-third of them were breeding-sows—the other two-thirds were young hogs, over six and under twelve months old; that in consideration of the delay occasioned in the retardment of the expedition—they having failed in reaching St. Peter's—and the trouble and expense said Beebe

was at in endeavoring to recover them from the said Indians, this deponent further states, he verily believes that the said hogs ought to be valued to said E. Beebe's estate at the contract price he was to have received for them at St. Peter's; that is to say, the breeding-sows at eight dollars per head, and the other hogs at four dollars per head. And this deponent expressly states, that the said party, being detained as mentioned, could only get as far as Prairie du Chien, and consequently failed altogether in fulfilling the contract for St. Peter's. And further he says not.

SOLOMON WELLS.

Sworn to and subscribed before me, this 10th day of January, 1823.

MOSES SCOTT,

*Justice of the Peace in the town of St. Louis,
township and county aforesaid.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, John Ruland, clerk of the circuit court, and ex officio recorder in and for said county, hereby certify that Moses Scott was duly appointed a justice of the peace for the county of St. Louis, by commission from the governor of the State of Missouri, dated the twentieth day of November, A. D. 1820; which said commission is recorded in my office in book K, p. 24; and which said commission was for the term of four years from the date thereof.

In testimony whereof, I have hereunto set my hand and affixed [L. s.] the seal of said court, at office in the city of St. Louis, this 20th day of June, A. D. 1837.

JNO. RULAND, *Clerk.*

I know Mr. Solomon Wells, whose affidavit is given above, and that he is a man of good character, and to be believed.

THOMAS H. BENTON.

THE SAC AND FOX TRIBES OF INDIANS,

To estate of Elijah Beebe, deceased, Dr.

1822.

To the value of 22 head of cattle, taken and stolen by you from the late E. Beebe, in October, 1821, at \$28 per head	\$616 00
To the value of 150 head breeding-sows, stolen at same time, at \$8 per head.....	1,200 00
To the value of 300 head young hogs, stolen at same time, at \$4 per head.....	1,200 00
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	3,016 00
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On the 13th day of October, 1821, I, David G. Bates, the deponent, left St. Louis, Missouri, on board and in command of the keel-boat Elk; and where Clarksville now stands, the deponent fell in with Locke and Wright's drove of cattle, and after making a bargain for three yoke of oxen and two cows and calves, deponent agreed to accompany the drove as far as Dubuque, which contract was complied with. On our arrival at the Des Moines river, the Indians informed us that a few days previous some men from the Missouri had tried to cross a drove of cattle at the old Iowa village, sixty miles above, which were scared back by the Indians; that the cattle were entirely scattered, and that a number of the cattle had been killed by the Indians, and they believed the hogs were entirely lost.

On arriving at Mr. Farnum's trading-house, at the Flint Hills, Mr. F. and Mr. Blondeau informed us that they had heard of Beebe's defeat at Des Moines, and that it must have been done by Quashquamie's band, as they were about that place at the time the thing was done.

Mr. Beebe, Solomon Wells, and Mr. Briggs fully corroborated and confirmed the above in numerous interviews, afterwards, at Prairie du Chien.

My impression is that Mr. Beebe's information to me was, that he lost at Des Moines one hundred and thirty-two head of cattle, which was corroborated by the words of Mr. Wells and Mr. Briggs.

D. G. BATES.

Sworn to and subscribed before me, this twenty-fourth day of September, eighteen hundred and thirty-six.

ALBION T. CROW,

Justice of the Peace, Jo Daviess county, State of Illinois.

I am personally acquainted with D. G. Bates, whose signature is affixed to the above, and have no hesitation in stating that the utmost reliance may be placed in his statement.

GEO. W. JONES.

DECEMBER 22, 1838.

STATE OF ILLINOIS, *Jo Daviess county:*

I, W. B. Green, clerk of the county commissioners' court of said county, do hereby certify that the foregoing-subscribed Albion T. Crow was, at the time of making the foregoing certificate, an acting justice of the peace in and for said county, duly commissioned and qualified, and that, as such, full faith and credit are due to his official acts.

In testimony whereof, I have hereunto set my hand and affixed [L. s.] the seal of said court, this 22d July, 1837.

W. B. GREEN.

STATE OF ILLINOIS, *County of Jo Daviess, sct:*

Jesse W. Shull, of said county, being duly sworn, says that in the fall of the year 1821 he was at the village of Prairie du Chien, on the Mississippi, where he saw Mr. Elijah Beebe, of St. Louis, Missouri,

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with some cattle—the part of a drove he had started with from St. Louis for Lord Selkirk's settlement, on Red River of the North. Mr. Beebe was then at Prairie du Chien with his hands, and he then informed him that he had started from St. Louis with a large drove of cattle and hogs in the summer of that year to drive them to Red river, to fulfil a contract made to deliver them there; that after crossing the river Des Moines on his route, with his drove in safety, he was met by a band of the Sac and Fox Indians, who got among the drove and frightened them, scattered and chased them, so that they were dispersed in such a way that he lost the greater part of them; that the Indians killed and ate many of the beef-cattle and hogs; that in consequence of the drove being thus dispersed and destroyed, he was not able to fulfil his contract, by which he lost several thousand dollars; that as this deponent was then trading with and residing at Dubuque's mines, among said Sac and Fox Indians, he requested him to tell those Indians that if they would bring in and deliver to him (J. W. Shull) the beef-cattle and hogs of said Beebe which were still running at large, they should be paid for their trouble; that accordingly, when he (Shull) returned to his trading establishment that fall, he proclaimed to all the Indians what Beebe had told him; they informed him that Quashquamie's band had that summer scattered and dispersed a drove of cattle and hogs on the waters of the Des Moines, which drove a white man was driving north, and had killed some of them. During the following winter and spring, (this deponent further states,) the Dubuque band of Indians brought in from their hunts a great many beef-hides, and offered them for sale to him, telling him that they had killed the beeves on the waters of the Des Moines, where Beebe's drove had been scattered the summer before. This deponent further says, that as there was no other drove of cattle and hogs but Beebe's passing or being driven through that portion of the Indian country in the year 1821, he has no hesitation in stating the hides must have been of Beebe's drove; and he also says that, residing among those Indians from 1819 to 1826, he always heard it admitted by said Indians that Beebe's cattle and hogs were dispersed and destroyed as above mentioned, and from all the information he then learnt, and the facts in his own knowledge, he believes that four thousand dollars in 1821 would not have been unreasonable as a charge for the damage and injury actually committed on Beebe by the depredation aforesaid.

J. W. SHULL.

Sworn to and subscribed before me, the undersigned, clerk of the county commissioners' court in and for said county of Jo Daviess, this first day of July, A. D. 1837.

W. B. GREEN,
Clerk Commissioners' Court.

In testimony whereof, I have hereunto set my name and affixed [L. s.] the seal of said court this 1st August, A. D. 1837.

W. B. GREEN,
Clerk Commissioners' Court.

I am personally acquainted with Captain J. W. Shull, who has certified as above, and state that he is a man of veracity, and that every reliance may be placed upon his statement.

GEO. W. JONES.

HOUSE OF REPRESENTATIVES,
December 22, 1838.

We fully concur in the within statement of General Jones

DECEMBER 26, 1850.

HENRY DODGE,
A. C. DODGE.

Such were the "documents and proofs" submitted to the Indian agent to establish the loss incurred by Mr. Beebe for Indian depredations. All that was incumbent on Mr. Beebe, or his representatives, was to show such a loss by the destruction or stealing of property by the Indians as the law specifies, and the United States guaranties an eventual indemnity. He had nothing further to do, either with the government or the Indians; and the admission or denial of his claim, by the Indians, (adequate proof thereof having been made,) could not affect his rights under the law, or change the liability of the government.

It appears, however, that Joseph M. Street, Indian agent, presented the claim to the said Indians in 1836, and again in 1838, who at one time denied all knowledge of the depredations; and at another time charged that such depredations were committed by other Indians.

ROCK ISLAND, *September 28, 1836.*

I certify that I laid the within claim before the Sac and Fox Indians at the treaty at Rock island, September, 1836, and after it was read to them by the interpreter of the government they denied any knowledge of the claim, and refused to pay it.

JOS. M. STREET, *U. S. Indian Agent.*

GALENA, *August 11, 1838.*

DEAR SIR: Enclosed you will find the documents of the claim of the widow and heirs of the late Elijah Beebe, deceased, against the Sac and Fox Indians, for depredations committed by them, and which has been so often presented in some shape or other since the year 1823; and which was allowed by Gov. Dodge, as you will see by the certificate enclosed. It is directed by the War Department that the claim be proceeded with according to the intercourse act of 1802, section 14. I beg that you will therefore, at the next annuity payment to the said Indians, present the claim to them for payment, and make return of the proceedings as the regulation requires.

Will you have the goodness, likewise, to inform me what shall be done in relation thereto; and in case of refusal to pay, to forward the documents of your report to the War Department immediately, in order that no further delay may take place.

I am, respectfully, yours, &c.,

CHAS. S. HEMPSTEAD,

Att'y for Beebe's rep's.

Gen. JOSEPH M. STREET,
Agent for the Sac and Fox Indians.

P. S.—Please observe that the above claim was originally presented under, and is to be governed by, the intercourse act of 1802, and not under subsequent acts.

SAC AND FOX AGENCY,
September 8, 1838.

The accompanying claim of Elijah Beebe was presented to the Sac and Fox Indians, at the time of the payment of their annuities for the year 1838, and explained to them. They replied, in substance, that the same claim had before been presented to them, and they had refused to pay it, because the depredations were committed by other Indians than the Sacs and Foxes. They now repeated their refusal to pay, after a full explanation of the nature and amount of the claim.

JOS. M. STREET,
U. S. Indian Agent.

On the 28th day of September, 1836, Governor Dodge, as a commissioner on the part of the United States, made a treaty with the Sac and Fox Indians, which was ratified by the Senate on the 27th day of February, 1837, with the following amendment to the second article: "And also pay the sum of forty-eight thousand four hundred and fifty-eight dollars and eighty-seven and a half cents, to enable said Indians to pay such debts as may be ascertained by their superintendent to be justly due from them to individuals; and if said debts, so ascertained to be just, amount to more than said sum, then the same shall be divided among said creditors *pro rata*; and if less, then the overplus to be paid to the said Indians for their own use."

Under this amendment of the treaty, the Commissioner of Indian Affairs, on the 22d day of March, 1837, instructed Governor Dodge, superintendent of Indian affairs, to examine this claim; and, in accordance with such instruction, a full and thorough investigation of the whole matter was had by Governor Dodge, at the superintendency at Mineral Point, in July, 1837. Governor Dodge, after an examination of the claim, and with a personal knowledge of the parties and the witnesses, adjudged that the sum of five thousand seven hundred and seventy dollars and forty cents was justly due and owing to the petitioners, and he accordingly awarded to them the following certificate:

No. 8.

[\$5,770 $\frac{40}{100}$]

I certify that, in conformity with the amendment made by the Senate of the United States to the second article of the treaty with the Sacs and Foxes, of September 28, 1836, and in accordance with the instructions of the Commissioner of Indian Affairs of March 22, 1837, an investigation of the claim of the widow and heirs of Elijah Beebe, late of St. Louis, deceased, was had, and the amount of five thousand seven hundred and seventy dollars and forty cents (principal and interest) was adjudged to be justly due and owing to the widow and heirs of

Elijah Beebe, late of St. Louis, deceased, from the confederated tribes of Sac and Fox Indians.

HENRY DODGE,
Superintendent Indian Affairs.

SUPERINTENDENCY OF INDIAN AFFAIRS
FOR THE TERRITORY OF WISCONSIN,
Mineral Point, July 7, 1837.

Without inquiring as to whether this claim came within this amendment or not, the Indian department so treated it, and instructed one of its own officers to examine and adjust it. That officer, (Governor Dodge, now a senator from Wisconsin,) being connected with Indian affairs of the country, and a public servant of scrupulous fidelity, made his award as above set out; and as he was the agent of the government to make the investigation, it seems to your committee that his decision should, under the circumstances, have been binding upon the government. It certainly would have concluded Beebe, had it been against him. But the government repudiated the acts of its own agent, and rejected the award. In reply to a letter of one of your committee, on the subject of this claim, Governor Dodge has addressed the following letter:

SENATE CHAMBER, *January 29, 1852.*

SIR: I received your letter of the 28th instant last evening, accompanied by sundry papers in relation to the claim of the heirs of Elijah Beebe for Indian depredations. As superintendent of Indian affairs for the Territory of Wisconsin, under the instructions of the Commissioner of Indian Affairs, I carefully investigated the claim against the Sac and Fox Indians, and was satisfied fully of the justice of the claim in question. I presume a record of my instructions from the Commissioner of Indian Affairs is to be found in the office of that department. The depositions of David G. Bates and Mr. Shull were submitted to me at the time of the investigation in 1837. They were early settlers, Indian traders, and highly respectable gentlemen, of good character, and well acquainted with the Sac and Fox Indians. I was a resident of the State of Missouri, and was well acquainted with the late Elijah Beebe. He was a man of high character and standing, of great enterprise and industry. He died soon after the Indian depredations on his property. I never doubted the justice of the claim of the heirs of Beebe; and had I entertained doubts on that subject, my official investigation of that claim fully satisfied me of its justice, and that it should be paid, either by the Indians or the government.

I have the honor to be, with great respect, your obedient servant,
HENRY DODGE.

HON. GEORGE BRIGGS,
House of Representatives.

P. S.—The papers of the heirs of Beebe are herewith returned.
H. D.

No question was ever made by the Indian department that the law

did not cover this claim, if properly proved. The Commissioner of Indian Affairs, who rejected the claim, says: "It is an alleged depredation, for which, if properly established and supported, provision is made by the 14th section of the intercourse law of 1802." The reasons of the rejection of this claim by the Indian department, are set out in the following decision:

Decision of Commissioner of Indian Affairs on the claim of the heirs and widow of Elijah Beebe.

The widow and heirs of Elijah Beebe, late of St. Louis, present a claim for "depredations," committed in 1821, amounting to \$3,016 of principal, and \$2,754 40 for fifteen years' interest, making an aggregate of \$5,770 40.

It appears by the deposition of Solomon Wells, taken on the 10th day of January, 1823, that he was employed, in the summer of 1821, by Mr. Beebe, to assist in driving a quantity of beef-cattle and hogs from Chariton, on the Missouri, to the military posts on the Mississippi; that, about the 10th of October following, they were met by a party of Sac and Fox Indians, who commenced driving and scattering the cattle and hogs; that he, with others, followed them for two days, when they overtook them, and found they had twenty-eight of the cattle, which they left, and fled upon seeing the white men; that the Indians continued to harass the party "by driving away the cattle, in small quantities, in different directions," by which they were detained twenty-one days, "and twenty-two head of cattle of said drove, belonging to said Elijah Beebe, deceased, were lost, and taken (as I verily believe) by said Indians." The witness also states: "That said Indians took from us, at the same time, at least four hundred and fifty head of hogs, also the property of said Elijah Beebe;" and "that, in the trail, so far as the Indians could be traced," he found "where they had killed one of said hogs." The residue of the deposition contains an estimate of the value of the cattle and hogs; and states that "he verily believes about one-third of them" (the hogs) "were breeding-sows, and the other two-thirds were young hogs, over six and under twelve months old."

To this deposition there is annexed a bill or account, setting out the claim at \$3,016.

The deposition of J. W. Shull, taken August 1, 1837, is also adduced. He testifies that Mr. Beebe informed him at Prairie du Chien, in the fall of 1821, that he was driving cattle and hogs to Lord Selkirk's settlement on the Red River of the North; that he met a party of Sacs and Foxes, "who got among the drove, and scattered and chased them, so that they were dispersed in such a way that he lost the greater part of them;" and that, by the desire of Beebe, he mentioned this to the Indians, who said "Quashquamie's band had that summer scattered and dispersed a drove of cattle and hogs, on the waters of the Des Moines, which drove a white man was then driving north, and had killed some of them during the following winter and spring." The witness further says, that "the Dubuque band of Indians brought in from their hunts a great many beef-hides, and offered them for sale to him, telling him they had killed the beeves on the waters of the Des Moines." This witness, the Hon. G. W. Jones states, is a man of veracity.

The deposition of Mr. D. G. Bates is likewise adduced, taken Sept. 24, 1836, who is also stated by Mr. Jones to be a man of veracity. He says he was at the Des Moines river in October, 1821, and that the Indians said that, some days previous, "some men from the Missouri had tried to cross a drove of cattle, sixty miles above, which were scared back by the Indians; that the cattle were entirely scattered; and that a number of the cattle were killed by the Indians, and they believed the hogs were entirely lost." The rest of the deposition refers to conversations with white men; of which, it may be remarked, the witness says that he thinks Mr. Beebe informed him he lost one hundred and thirty-two head of cattle.

This claim was filed in the office of the superintendent at St. Louis; but when, does not appear. It was only a simple statement of the claim, according to the certificate produced, and does not seem to be material. Governor Dodge, as superintendent of Indian affairs, appears to have examined this claim, in conformity with instructions from this office, as his certificate states, of 22d March, 1837, on the supposition that it was embraced by one of the amendments proposed by the Senate to the treaty of 28th September, 1836. It would not be within the amendment supposed to include it, even if the Indians had adopted it; but they rejected it.

The first thing that strikes the mind, is the length of time that has elapsed since this claim originated, without any steps, so far as we know, being taken between 1821 and 1836, that were required for its settlement. *It is an alleged depredation, for which, if properly established and supported, provision is made by the 14th section of the intercourse law of 1802.* That law requires that in such cases the party injured shall apply, by himself, attorney, agent, or representative, to the Indian superintendent or agent, who, upon being furnished with the necessary documents and proofs, shall apply to the proper Indian nation or tribe for satisfaction, and if they refuse it for a reasonable time, not exceeding twelve months, the said superintendent or agent shall make return of his proceedings and the proofs to the President, that such further steps can be taken as may be proper to obtain satisfaction for the injury; and in the mean time the United States guaranty to the party an eventual indemnification. It appears that Joseph M. Street, esq., Indian agent, on the 28th September, 1836, at the treaty of Rock Island, laid the claim before the Indians, who, after it was read to them, denied any knowledge of it, and refused to pay it. It is probable the deposition of Wells alone was read to them at that time, as Mr. Street's certificate is on it, and that of Bates was taken but four days before, at some distance, but both may have been submitted. The claim was again presented, by the same agent, at the payment of the annuities for 1838, and explained, with all the proofs now before me, and again rejected, with the allegation that it was before presented, and that the depredations were committed, by other Indians than the Sacs and Foxes. It was laid before the late commissioner for adjusting the debts of these Indians, under the treaty of 21st October, 1837, who correctly decided that it was not within the treaty provision under which he acted, and it is now presented at this office for allowance.

What is the evidence? The only witness who testifies, and was with

Mr. Beebe when this property is alleged to have been destroyed, is S. Wells. He says the Indians took twenty-eight head of cattle, which they afterwards abandoned and left with the whites. He then states that twenty-two head were lost, *as he verily believes*, and *at least* four hundred and fifty hogs; and that he saw evidence of the killing of one hog. It is manifest that this witness has no distinct knowledge of the loss: he states not a positive fact, but his *belief*, and talks of at *least* so many hogs, and the large number of four hundred and fifty. The affidavit of Mr. Shull details conversations with Mr. Beebe, and says, further: That the Indians admitted one band had dispersed a drove of cattle and hogs, belonging to a white man, and had killed some of them; and that another band offered beef-hides for sale, saying they had killed the cattle on the waters of the Des Moines. To say nothing of the inconsistency involved in the admission of the Indians' charging one band, and the fact of offering hides for sale by another, the deposition establishes no one fact against these Indians. The testimony of Mr. Bates is still more lame; it is, with one or two exceptions, hearsay, but proves that one other drove, at least, besides Mr. Beebe's, travelled along the same track in the fall of 1821, and removes any impression Mr. Shull might make, by stating that Beebe's was the only drove that passed through the Indian country in that year; and he makes Mr. Beebe's loss one hundred and thirty-two head of cattle, instead of twenty-two, as Wells believes them to be. The loss itself is not established with any certainty; nor its amount; nor by whom committed. The Indian admissions detailed establish nothing. These conversations with detached parts of tribes may lead to acknowledgments by one individual, or many, against others. The only recognition of liability by the Indians, entitled to weight, is one made in council, when the chiefs of all the subdivisions of a nation or tribe are present, and cognizant of the doings of those over whom they rule. That is not only wanting here, but an express negation is twice given to it in council by the tribes.

I am, therefore, of opinion this claim should be disallowed.

The 17th section of the law of June 30, 1834, is in almost the same words as the 14th section of the act of 1802; but provides, further, that no claim shall be allowed that is not presented within three years after the commission of the injury. The former law does not govern this case; but its spirit, without any violation of the act of 1802, may be adopted. Here, then, is a period of fifteen years, during which, according to the proofs exhibited, not one step was taken towards an adjustment of this claim; and perhaps that alone ought to be fatal to it.

Without saying, positively, that length of time ought to be a bar in this case, it certainly gives additional force to the reasons for disallowing the claim, which appear to me to be abundantly sufficient, without its aid for that purpose.

T. HARTLEY CRAWFORD.

JANUARY 1, 1839.

It is proper to examine the reasons of the rejection of this claim by the Commissioner of Indian Affairs, and to see if they are well founded.

It is objected that a great length of time elapsed between the origin

of the claim and the taking of any steps required for its settlement. Without adverting to the fact that no lapse of time can alter the *justice* of any claim, it is only necessary to remark, in a legal point of view, that there is no limitation to the law under which this claim arose, and parties are not required to bring in their claims in a prescribed time, or else be barred. To be sure, the 17th section of the law of June 30, 1834, which is in almost the same words as the 14th section of the act of 1802, limits the time for bringing claims for damages to three years after the commission of the injury. That law cannot have any retroactive effect. The law of 1802, in force at the time of the commission of this depredation, is the law which must govern in the case, and neither the letter nor spirit of any subsequent law can affect it. But, in point of fact, there appears to be no such delay as is suggested. Application for indemnity was made, according to the provisions of law, to the superintendent of Indian affairs at St. Louis, in 1822, the depredations being committed in the fall of 1821. The proof of the loss was made by the deposition of Wells, on the 10th of January, 1823, a little more than two years after its occurrence. If that proof were sufficient, it was then the duty of the government to indemnify the party; and it is not now in the mouth of the government to make its own neglect and delay an excuse for not paying a just claim. From some cause there seems to have been no definitive action upon this claim, after the deposition of Wells was furnished, until a short time before the investigation by Governor Dodge, in July, 1837, when the cumulative testimony of Shull and Bates was adduced. The delay in the case, therefore, was the delay of the government, in not acting upon the proofs furnished, and *not* the delay of the claimants in furnishing proofs. The objection, therefore, in regard to the lapse of time, is not well founded, and the claim is not barred by time.

It is further objected that the evidence is not sufficient. The Commissioner of Indian Affairs says, in his decision rejecting the claim, "that the loss itself is not established with any certainty, nor its amount, nor by whom committed." Now, if it be the rule of law that the evidence of a single uncontradicted witness is sufficient to authorize a recovery in a court of justice, and it does not require a higher degree of evidence to substantiate a claim on the government, then the Commissioner must have misapprehended the testimony of Mr. Wells. Upon an examination of his deposition, it will be found that it *establishes* the loss, the amount, and by whom committed. He was with Beebe at the time, and his means of a knowledge of all the facts cannot be disputed. He states the fact that he was with Beebe, who had a drove of cattle and hogs; that they were met by a party of Sac and Fox Indians; that *said Indians* commenced driving and scattering *said* cattle and hogs. He states the time and the place where this occurred; that *he*, with others, followed *said Indians* two days, and overtook them, and recovered twenty-eight head of cattle; that the *said Indians* continued to harass the party driving the cattle and hogs, by driving them away in small quantities in different directions of the country, and in consequence whereof they were delayed twenty-one days; and twenty-two head of cattle, and at least four hundred and fifty hogs, the property of Elijah Beebe, were lost and taken by *said Indians*. If Mr.

Wells is to be believed, there can be no doubt that depredations were committed on the property of Beebe, and that the Sac and Fox Indians were the depredators. As to the amount, the measure of value for the cattle seems to be fairly fixed, which is twenty-eight dollars per head, and which is the price that they sold the same quality of cattle from the same drove for, at Prairie du Chien. He fixed the value of the hogs, very fairly, at the price Beebe had contracted them for.

Capt. Shull testifies that he was trading among the Sac and Fox Indians in 1821, at Dubuque's mines, and that those Indians informed him that a certain band of their tribe had that year scattered and dispersed a drove of cattle and hogs, on the waters of the Des Moines, which a white man was driving north, and had killed some of them. During the following winter and spring the Dubuque band of Indians brought in a great many beef-hides, and offered to sell them to him, telling him that they had killed them on the waters of the Des Moines, where Beebe's drove had been scattered the summer before. He further states that there was no other drove of cattle and hogs but Beebe's passing or being driven through that portion of the country in the year 1821; and he has no hesitation in stating that the said hides must have been of Beebe's drove. That, living among said Indians from 1819 to 1826, he always heard it admitted by them that Beebe's cattle and hogs had been dispersed and destroyed as above stated. Shull's testimony is strongly corroborative of that of Wells. While it might be conceded, for the argument, that the admissions of the individual Indians could not bind the tribe, yet certain *facts* stated by Shull proved conclusively that these Indians had possession of cattle after the time of alleged loss of Beebe. Their bringing in a great quantity of hides to sell to him, and his positive statement that no other drove of cattle and hogs had been driven through that portion of the country in 1821, render it very certain that such hides were from Beebe's cattle. There is nothing strange or inconsistent, as is suggested, in the Dubuque band bringing in hides from cattle scattered and killed by another band. Indeed, Quashquamie's band would be much more likely to sell the hides from cattle they themselves killed, to another band of Indians, than to sell them themselves directly to a white trader.

The deposition of Bates is nearly all hearsay; though it is made use of by the Commissioner of Indian Affairs to discredit a statement of Capt. Shull, that there was but one drove of cattle and hogs passing up through a particular portion of the Indian country in 1821. Bates states that he agreed to accompany a drove of cattle from where Clarksville now stands, on the Mississippi river, to Dubuque; that, on their arrival at the Des Moines river, the Indians informed them that some days previous some men from the Missouri had tried to cross a drove of cattle at an Indian village sixty miles above, which were scared back by the Indians; that the cattle were entirely scattered, and that a number of them had been killed by the Indians, and they believed the hogs were entirely lost. The Commissioner says that Bates's deposition "proves that one other drove at least, besides Mr. Beebe's, travelled along the same track in the fall of 1821, and removes any impression Mr. Shull might make, by stating that Beebe's was the only drove that passed through the Indian country in that year." Shull

states positively that Beebe's was the only drove that passed through *that portion* of the Indian country in 1821; that is to say, that portion of the Indian country on the route from Chariton, on the Missouri river, to Fort Snelling. A knowledge of the geography of that country shows that the drove of Beebe and that which Bates accompanied, instead of travelling *along the same track*, necessarily travelled along entirely different tracks. The drove that Bates was with passed up the west bank of the Mississippi river, crossing the Des Moines river at its mouth, passing Flint Hills, (now Burlington, Iowa,) and thence following the river up to Dubuque. Beebe's drove undertook to pass from Chariton, on the Missouri river, to the headwaters of the Mississippi, crossing the headwaters of the Des Moines sixty miles above where Bates's drove crossed. There is no contradiction, therefore, of the statement of Shull in the deposition of Bates from which an argument is sought to be drawn that the cattle whose hides the Indians offered for sale might have belonged to another drove than Beebe's. There can be no pretence that the drove with which Bates was, lost any cattle, as no mention is made of any such loss; but, on the other hand, Bates says he contracted to accompany the drove to Dubuque, "which contract was complied with;" which, of course, implies that the drove reached that point. The "impression" of Bates that Beebe lost one hundred and thirty-two head of cattle is a mistake, as Beebe never claimed to have that number of cattle.

The depredation is proved to the entire satisfaction of your committee, as is also the amount of the loss sustained by Beebe. The delay does not appear to be his fault, or that of his representatives. The government has contracted an obligation to make an indemnity for the loss, which obligation should be now cancelled directly by the government, leaving the question to be decided hereafter as to whether the amount of the said loss should be deducted from the annuities (if any) which the said Indians receive.

The award of Governor Dodge gave the petitioners interest, which would seem to be just and proper in this case; but the government has never recognised the principle of paying interest on claims, and your committee feel constrained to adhere to the rule, and reject the allowance of interest in this case. They therefore recommend the passage of a law providing for the payment of the amount of the loss, without any interest on said amount.