

JOHN DICKSON.

[To accompany bill H. R. No. 441.]

MARCH 26, 1858.

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

### REPORT.

*The Committee of Claims, to whom was referred the memorial of John Dickson "asking that he may be paid the balance of a judgment obtained by Hugh Glenn against the United States," have had the same under consideration, and submit the following report:*

On the 20th of January, 1817, Hugh Glenn, of the State of Kentucky, contracted with the United States to furnish provisions at the military posts within the limits of several of the northwestern States, including the State of Indiana. His contract did not specify the quantity to be furnished at the several points, but bound him to furnish of the articles enumerated such quantities as "*shall be required of him for the use of the United States at all and every place or places where troops are or may be stationed within the limits*" of the States mentioned upon "*thirty days' notice being given of the post or place where rations may be wanted,*" &c. It further bound him to furnish the supplies "*upon the requisition of the commandant of the army or a post in such quantities as shall not exceed what is sufficient for the troops to be stationed,*" &c. It was also required that rations should, from time to time, be issued to such Indians as visited the various military posts, and in such quantities as were necessary.

The facts involved in this claim were presented to Congress as early as 1826, when General Harrison, who is supposed to have been familiar with such transactions, made a favorable report from the Committee on Military Affairs in the Senate, accompanied by a bill for the relief of the party.

Again, in 1850, Mr. Thomas, from the Committee of Claims in the House of Representatives, made a report which your committee now deem so full and conclusive that they are induced to adopt it, as follows:

"The Secretary of War, on the 8th of May, 1816, instructed the officer commanding at *Fort Harrison*, in the State of Indiana, that he was 'required to certify all abstracts of rations issued to' the Indians who 'usually resorted' to that fort. To enable him to fulfil this duty, the *Indian agent* there was also instructed 'to make daily reports' to the officer '*of the number of Indians present, and for whom*

rations [were] to be issued,' that the commandant might know what quantity of rations were necessary. Brevet Major John T. Chunn was the officer in command, and General Posey was the Indian agent.

"Upon the reports of the agent to Major Chunn, he certified to the Department of War 'abstracts of rations' issued and furnished the Indians at *Fort Harrison* by Hugh Glenn to the amount of \$44,764 02.

"In the course of the execution of Glenn's contract, he was advanced the sum of \$133,346 14 for supplies furnished at the following forts, to wit: Belle Fontaine, Fort Osage, Fort Clarke, Fort Crawford, Fort Edwards, Fort Armstrong, Belle Point, and St. Louis. When his account was rendered at the Department for final settlement, he claimed that he had furnished provisions at the various forts to the value of \$142,884 74, including the \$44,764 02 for issues at Fort Harrison; for which amount Major Chunn had certified the abstracts. Upon an inspection of the account, it appeared to the Secretary of War that the amount certified for Fort Harrison was too large; that the number of Indians frequenting that post could not have been so large as to require so many rations. He accordingly suspended this item of the account, which left a balance standing on the books of the Department *against* Glenn of \$37,792 76. He ordered a court-martial to try Major Chunn for what was supposed to be *fraud* in certifying the abstracts, and ordered suit to be brought against Glenn for the \$37,792 76.

"The court-martial sat at Terre Haute, near Fort Harrison, and, after a careful investigation of all the facts and the examination of a number of witnesses, *honorably acquitted* Major Chunn. The suit against Glenn was tried in the United States district court in Kentucky, and resulted in favor of Glenn upon the verdict of a jury and upon an investigation of all the facts. The jury say: 'We of the jury find that the defendant, Hugh Glenn, is entitled to a credit of \$44,764 02 for rations issued to the Indians at Fort Harrison from the first day of June, 1817, to the 30th day of June, 1818, for which a credit has been claimed by him and suspended by the officers of the government. We therefore find for the defendant. We also certify that the defendant set up no other claim, nor made any other question on the trial of this cause, except what relates to the above sum of \$44,764 02, and that our verdict is founded upon the evidence relating to that item only.'

"General Harrison, as chairman of the Committee on Military Affairs in the Senate, made a report in 1826 in favor of this claim, in which the following language is found:

"That for supposed misconduct in relation to this affair, Major Chunn was arrested and tried by a court-martial. The trial, however, terminated in an honorable acquittal of the officer by the court, *no testimony being produced to show that he had authorized more provisions than were required by the sub-Indian agent, or that he had certified abstracts of issues to a greater amount than had been issued by the sub-contractors.* A doubt in this particular seems to have been the reason why the Secretary of War suspended the item of \$44,764 02. That doubt being removed by the *official certificate* of Major Chunn,

the decision of the court-martial, and the verdict of the jury, the committee see no principle on which the payment can be further suspended.'

'The committee would further remark, that they have procured from the office of the Adjutant General the documents of the trial of Chunn; that he was arrested for certifying the abstracts aforesaid, and for neglect of duty in not requiring the Indian agent at the post to make daily reports to him of the number of Indians present, agreeably to the order of the War Department requiring specially that duty of commandants of posts to which Indians usually resort; that they have examined it carefully for testimony which would inculcate the contractors, but have found none; that if there were any fraud in the issues complained of, (which the proceedings of the trial will not justify them in charging on any one,) it must have been practised by the sub-Indian agent, who, it appears, had been authorized by Governor Posey, Indian agent in 1817, to make requisitions on the officer commanding for a liberal supply of provisions in favor of Indians at that station. Good reason, too, for a liberal treatment of the Indians in that quarter existed in the prospective treaty which afterwards was held at St. Mary's.'

'When the transcript of the judgment rendered in favor of Glenn was presented at the department, the accounting officers credited him by \$37,792 76, (part of the judgment,) which balanced his account, but refused to pay the remaining \$6,971 26. That sum has not yet been paid, and the committee, concurring with the Senate Committee on Military Affairs, can 'see no principle on which the payment can be further suspended.'

'It was proper in the Secretary of War to suspend the payment of the amount charged, and to allow only for the amount of rations actually and bona fide issued to the Indians.' His deciding to do so, shows that he understood very well that the commandant of the post and the Indian agent had the right to direct the amount of provisions to be furnished, and that the contractor had no discretion in regard to it. He doubted only whether the certified abstracts were true, or, in other words, whether these officers had not been guilty of fraud in certifying abstracts with the knowledge of the contractor. That question has been tried, and nothing has appeared in evidence to fix guilt upon anybody.

'By the order of the Secretary of War, the commandant was not required to know personally how many Indians resorted to the fort. He was only required to certify the abstracts of rations, based upon the 'daily reports' made to him as to the 'number of Indians present and for whom rations are [were] to be issued.' The rations were issued upon these 'reports.' However fraudulent might have been the conduct of the 'agent,' the commandant ought not to have been affected by it, unless he had notice of it. He and the agent might both have acted fraudulently, and that should not affect the right of the contractor to his compensation, unless he had notice of their fraud, and was *particeps criminis*. He was bound by his contract to furnish all 'that shall [should] be required of him,' 'upon the requisition of the commandant.' He had no discretion about it. If he had failed

or refused to furnish what he was ordered to furnish, unless he knew of some fraud, he would have been liable on his contract. The only case in which he would have been excused for not complying with such requisition, would have been where he *knew* that the *agent and commandant*, or *either* of them, had acted fraudulently. The committee cannot find in this case any pretence that he was guilty of any such conduct, or was even suspected of it. There is not a single intimation against his honesty, or that of any of his agents. He could not know how many Indians resorted '*daily*' to Fort Harrison, for he was not a government officer, and did not reside at the fort. He obeyed the requisitions made upon him by the agents of the government, which he was bound to do under his contract, and should be paid.

"After the trial in Kentucky, Glenn assigned all his interest in the balance due him, after settling his account at the department Demas Deming, who has since assigned the same to the memorial as the surviving partner of the firm of Lambert & Dickson. The committee, therefore, report a bill in his favor for \$6,971 26, the balance due."

After another full and careful examination of all the facts, your committee now readily endorse the foregoing report, and recommend the payment of the balance of the judgment as found due by the United States district court for the district of Kentucky, to the parties who may show themselves legally entitled thereto; and for that purpose your committee report the accompanying bill, and recommend its passage.