

M. M. MARMADUKE AND OTHERS.

[To accompany Bill H. R. No. 636.]

APRIL 13, 1860

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

REPORT.

*The Committee on Indian Affairs, to whom was referred the memorial of M. M. Marmaduke and others, beg leave to report:*

In 1824-'25 an act was passed by Congress to establish a public highway from Fort Osage, on the Missouri river, near the western boundary of the State of Missouri, through the Indian territory, to the nearest settlements in New Mexico. Commissioners were appointed to survey and mark out said road, and to treat with the Indian tribes along the same for the safety and protection of citizens of the United States who might travel upon it. Accordingly, in 1825-'26, the commissioners did survey and mark out the road, and made treaties with the Osage, Kansas, and Pawnee tribes of Indians, providing for the safety and protection of the citizens of the United States who might travel over it. About the same time consuls were appointed in several of the northern towns of New Mexico, and every encouragement offered by the United States to encourage and foster trade with New Mexico over the route so established.

In the spring of 1828 the memorialists and others, encouraged and invited by the facilities thus furnished, provided themselves with the goods and the necessary transportation, and associated themselves together as a travelling company for mutual assistance and protection. They travelled together to Santa Fé, in New Mexico, and after having disposed of their goods, chiefly in exchange for horses, mules, and asses, they again associated themselves together to aid and assist each other in driving their stock to Missouri over the road so established by the United States. On their return to Missouri with their stock, numbering about 1,200, on the night of the 28th of August, 1828, whilst they were encamped on the north bank of the Arkansas river, near the mouth of the Pawnee fork, they were attacked by a large number of Indians, who drove off some 600 head of their stock, notwithstanding every effort was made on the part of the memorialists to prevent it, two of their party being killed and several wounded.

At that time it was not certainly known what tribe had committed the robbery, but from the testimony of persons well acquainted with the habits, customs, dress, and instruments of war of various Indian tribes, taken in connexion with the testimony of Miguel Lujan, a Mexican, who, at that time, was a prisoner among the Pawnees at their village, and who states that a day or two after said robbery a party of Pawnees returned from the mouth of Pawnee fork with a large number of horses, mules, and asses, corresponding in number and description with those taken from the memorialists, stating that they had stolen them from a party of whites returning from New Mexico, there can be no doubt that the robbery was committed by the Pawnees.

In May, 1829, one of the memorialists, M. M. Marmaduke, wrote to the Secretary of War, informing him of the robbery, claiming indemnity therefor, and asking to be advised how to proceed to establish his claim; and subsequently made a similar application to the superintendent of Indian affairs, General Clark, thus showing a knowledge of their rights, and a determination not to abandon them. At this time the memorialists were informed that Thomas Talbot and others, were prosecuting before Congress a claim for a similar robbery committed by the same Indians on the same road in the year 1827; and not being in possession at that time of sufficient evidence to fix the robbery upon the Pawnees, and desiring to know the action of Congress upon the question of liability involved in the case of Talbot and others, before incurring the trouble and expense of prosecuting their claim, they were induced to defer the same.

By the intercourse act of 1802, which was in force at the time of the robbery, Congress guarantees "eventual indemnity" to citizens of the United States for all losses sustained whilst lawfully in the Indian country, by reason of robberies committed by Indians. By the treaty with the Pawnees made in 1825, above referred to, they stipulate that they will not molest or interrupt any citizen or citizens of the United States who may be passing from the United States to New Mexico or returning thence to the United States, and by the treaty of 1833 they are entitled to \$1,300 annually; so that they are, by their own treaty engagements, bound not to molest or disturb the citizens of the United States who are lawfully in their territory, and the United States holds in its own hands the means of indemnifying all losses sustained by their acts.

The memorialists were lawfully in the Indian territory at the time of said robbery, travelling along the highway established by the United States, for the purpose of encouraging and facilitating the commerce in which the memorialists were engaged. The robbery was committed within the jurisdiction of the United States and within the Indian territory, and from all the facts abundantly proven, and in view of the precedent in the case of Talbot and others, above referred to, as well as the uniform action of Congress in numerous cases since, your committee are of opinion that the memorialists are entitled to indemnity for the value of the animals so lost by them, respectively, according to their cash value at the time of said robbery, and therefore report the accompanying bill.