

GEORGE CHORPENNING.

MAY 29, 1874.—Recommended to the Committee on the Judiciary and ordered to be printed.

MR. B. F. BUTLER, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 3533.]

The Committee on the Judiciary, to whom the petition of George Chorpenning was referred, beg leave to report :

That they have had the subject of said memorial under consideration, and made the fullest investigation that time and circumstances would permit. The petitioner and his counsel were before us, inviting the most rigid scrutiny we could apply to the case. They professed entire willingness to abandon any part of the claim which might appear to be tainted with fraud. They asserted the perfect fidelity of the petitioner in all his service as a mail-contractor; the reasonableness of his demand for compensation, and the honesty of his conduct in prosecuting his claim. They challenged the production of any proof of corruption on the part of Congress, or undue influence upon the Postmaster-General in any way, or corrupt motive on his part. They gave their consent to go behind the award and back of the act of Congress, and give up their rights under both if they were corruptly obtained. Moreover, they agreed that we might determine whether justice had been done to the petitioner by the Postmaster-General, and make the award conform to the truth, if any part of it was founded on the false testimony of witnesses or false facts, or by the suppression of facts. To that end they produced what they alleged to be all the evidence in their own possession, invited us to inspect the records, and requested us to send for any other persons or papers which we might deem likely to present the subject in a light unfavorable to the petitioner. Those heretofore known to hold opinions adverse to the petitioner were notified by the committee that they might appear and would be heard.

But no person appeared to contravene the allegations of the memorialists. Certainly, however, silence or absence of all opposition to the claimant does not, in our opinion, prove the claim to be just or honest. The claim must be made out affirmatively. Individuals having reason to believe it false may not have thought it their duty to volunteer information on the subject. From the fact that nobody appeared against the petitioner, your committee were not enabled to make so thorough an examination of the details of the claim as it would have been desirable to do, except for the conclusion to which we have come, which submits

those details to another tribunal. We regret, however, that the other side, if there be one, was not represented.

We have examined all the evidence that was in our reach, and all that we have any belief exists. A consideration of it evolves the following general state of facts :

George Chorpenning was a contractor with the Post-Office Department for carrying the mails of the United States. His service began in 1851 and ceased in 1860. He had one contract for carrying the mails from Salt Lake to Sacramento and back for \$14,000 per annum, and afterward another for the route between Salt Lake and San Pedro for \$12,500 per annum. Still later he had a third between Salt Lake and Placerville. We find that his duties under the first two contracts were fulfilled in the face of great peril, hardship, and difficulty, with energy and fidelity, and at a ruinous expense to himself. At the same time he performed a great amount of extra service cast upon him by reason of the impassable condition in winter of the Sierra Nevada and Rock & Mountains, the hostility of the Indians, and the failure of other contractors. These services, regular as well as extra, seem to have been highly appreciated by the Department. They were not only very valuable, but absolutely necessary, and so onerous that at one time when Chorpenning, by reason of repeated depredations by the Indians, was supposed to be unable to go on, another person was engaged to do the same work at a compensation of fifty thousand dollars per annum. Other frontier contractors, who, at the same time, encountered Indian difficulties similar to those of Chorpenning, but not so great in degree, and who were not burdened with the performance of any extra services whatever, broke down, and were finally relieved by special acts of Congress granting them, on two separate occasions, largely-increased compensation for their regular service.

About this time, (in the spring of 1856,) and before all his services were ended, Mr. Chorpenning also applied to Congress for relief in his case. Thereupon it was enacted, by the law of March 3, 1857, that his pay under the first two contracts should be increased, as in the cases of the other contractors, and also authorized the Postmaster-General to settle his claims for certain specified extra services which he had performed.

Proceedings were had under this act, but there arose a difference of opinion between Postmaster-General Brown and Chorpenning as to the allowance for these extra services ; and, although it would seem to have been admitted that there was something due, yet, upon that difference of opinion, the Postmaster-General, acting, it seems, under a direction from President Buchanan, found against him in part as to the amount to which he was entitled for his extra work. Because of this opinion of Postmaster-General Brown, the whole matter was afterward treated, under the rules of the Department, as *res adjudicata*, and, although Chorpenning made numerous attempts to have the matter re-opened and reheard, and although sustained by the opinions of law-officers of the Government, yet the Department held to the rule that the decision of one Postmaster-General ought not to be re-examined by another.

Meanwhile, after the decision upon the claim under the first two contracts, Chorpenning (in April, 1858) had taken another contract for carrying the mails between Salt Lake and Placerville, Cal., in four-horse coaches. It appeared that he was specially selected to do this service, because in his previous action in carrying out his contract he had given the strongest proof of efficiency and fidelity, so much so as to be a preferred contractor—so far as he legally might be in the Department. But owing

to the failure of the Post-Office appropriation bill in March, 1859, the Postmaster-General deemed it necessary to reduce the mail-service, thereby entailing heavy burdens upon this contractor in largely reducing his pay while the expenses of his line went on. Thus a dispute arose between Mr. Chorpenning and the Post-Office Department as to the rate of compensation which he should receive. Finally, in May, 1860, and while it had still two years to run, the contract was annulled.

In the course of his attempts to have his claims adjusted, Mr. Chorpenning brought his petition in the Court of Claims as and for a debt due from the United States, arising under a contract as construed by the act of 1857. But the Court of Claims decided, in an elaborate opinion, that the action of Postmaster-General Brown upon the subject was in the nature of an adjudication, and that, without authority of Congress in his behalf, the Court of Claims could not take the jurisdiction to inquire into the merits of the claim, but held themselves estopped by the action of the Postmaster-General.

In February, 1870, Mr. Chorpenning presented a memorial to Congress setting forth his claims under the act of March 3, 1857, and, also, those arising out of the curtailment and annulment of his last contract; whereupon Congress enacted the joint resolution of July 15, 1870, whereby all the matters in dispute were referred to the Postmaster-General for adjustment and settlement, and on the 23d day of December, 1870, an award was rendered by him in favor of Chorpenning, payment of which was suspended by subsequent legislative action.

Your committee are fully convinced upon the evidence that, upon the merits of the whole claim of Mr. Chorpenning, there is something due him, in justice and equity, from the United States, but your committee believe that the ascertainment of the details of that amount, and its adjustment by a committee of Congress, or by Congress itself, is wholly impracticable, not to say impossible, in order to do justice either to the claimant or to the United States. Fully convinced of this proposition, and believing that the citizen claiming a right or debt against the Government which can be established by competent evidence upon legal principles before a court of justice should always have recourse to the courts of his country to establish his rights, your committee have reported a bill to give jurisdiction to the Court of Claims over this whole subject, with power to take the whole matter into consideration, and to make the fullest examination about and determination of the rights of the claimant, as well as those of the Government, subject to an appeal to the Supreme Court of the United States by either party, if either party is dissatisfied with the determination of the Court of Claims.

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