45TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 192.

E. J. GURLEY.

FEBRUARY 8, 1878.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DICKEY, from the Committee of Claims, submitted the following

REPORT:

[To accompany bill H. R. 658.]

The Committee of Claims, having examined the petitions and testimony in the matter of the claim of E. J. Gurley, of Texas, submit as their report the following:

1. On the 16th of April, 1854, Capt. R. H. Anderson, of the United States Army, received written instructions from Brig. Gen. W. S. Harney to proceed to Fort Graham with four non-commissioned officers and twelve privates and there arrest Assistant Surgeon Josephus M. Steiner, of the Medical Corps, United States Army, and convey him to Austin, Tex., to be tried by court-martial on a charge of mutiny and insurrection in the killing of Maj. R. A. Arnold, his superior officer.

The said instructions stated that H. P. Brewster, esq., would accompany the expedition and give such legal advice as the exigencies of the case might require. In pursuance of these orders, Captain Anderson with his men proceeded to Fort Graham and arrested Steiner, who was in the custody of the sheriff of Hill County, under civil process of the State, who claimed him as his prisoner, held to answer the civil authorities.

Captain Anderson disregarded the authority and claim of the sheriff and started to Austin with the prisoner. When he arrived at Waco, in McLennan County, Captain Anderson and his men were arrested on legal process by the civil authorities of the State, on charge of rescuing the prisoner Steiner from the sheriff of Hill County; that offense being punishable by hard labor in the penitentiary not less than five nor more than ten years.

They were immediately taken before a court of inquiry and the hearing of the case commenced.

In consequence of the absence of Mr. Brewster, who had failed to accompany the detachment, Captain Anderson and his men were without counsel. Able lawyers had been employed to prosecute, and it became necessary for Captain Anderson and his men to have legal assistance for their defense, and the firm of which petitioner was a member was employed for that purpose, and notice given of the employment by Captain Anderson to his superior officer, who made no objection to the substitution of the firm of Gurley for Mr. Brewster.

On this preliminary examination Captain Anderson was held to answer to the district court of Hill County, and the men were discharged.

At the next term of the district court of Hill County petitioner was in attendance on behalf of the government, acting as counsel for Captain Anderson, who was tried and acquitted, and for these services the petitioner asks compensation from the government.

This claim has been befor e Congress since 1858, and was, on the 4th of June of that year, reported on by the Senate Committee on Military Affairs favorably, granting petitioner the sum of $1,500 (Congressional Globe, volume 36, part 3, page 2699). On the 31st of January, 1860, the same committee reported a bill for $1,000 (*ib.*, volume 39, part 1, page 647), which passed the Senate and was sent to the House (*ib.*, volume 40, part 3, page 1451). In the House the Judiciary Committee reported back the Senate bill and recommended its passage (*ib.*, volume 41, part 3, page 2354). The bill went to the Committee of the Whole, and was not reached during the session.

The circumstances of this case are peculiar and unusual, and the committee believe that it would be an act of justice to grant compensation, and that the sum of $1,000 is reasonable for this service.

2. This is also a claim for professional services in the prosecution of Peter Garland and a number of others, charged with the killing of seven Caddo Indians in Palo Pinto County, Texas.

In 1859 Mr. Gurley, who for many years had been a practicing lawyer at Waco, Tex., was employed by Maj. Robert S. Neighbors, then superintendent of Indians in Texas, to prosecute the said defendants on a charge of the murder of seven friendly Indians of the Caddo tribe, of the Lower Brazos agency, which occurred on the 27th day of December, 1858.

On the 14th day of January, 1859, Major Neighbors filed his affidavit before Judge N. W. Battle, of the 19th judicial district of Texas, charging the said Garland and eighteen others with the murder of the seven Indians, and alleging that the civil authorities were powerless to make the arrests.

Thereupon Judge Battle issued his warrant, directed to John S. Ford, captain commanding the Texas Rangers, commanding and authorizing him to use whatever force might be necessary to arrest and take into custody the said defendants, and bring them forthwith to Waco, in McLennan County, there to be dealt with according to law.

Captain Ford refused to obey the writ of the court, claiming that the court had no authority to direct the military to make arrests, particularly when the civil officers had made no effort.

A bitter controversy sprang up between Mr. McCall, district attorney, and Mr. Gurley as to the power of the court to arrest citizens of the county where the alleged offense took place and take them to another for trial; hostile feeling existed to such an extent between the frontier settlers and the reserve Indians that no peace-officer could make the arrests. Indeed, from the testimony before the committee, it is pretty clear that the whole population of the frontier counties of Texas was in sympathy with the murderers, and that any attempt to arrest them would be resisted by armed force.

Alias writs were issued, and every means in his power was exerted by Mr. Gurley to bring the accused to trial, but the overwhelming popular sentiment and hatred of the Indians thwarted both him and the court. In these efforts to bring the accused to trial he engendered a public sentiment against himself which broke down and destroyed a hitherto valuable practice. His activity as prosecutor for the government involved him in personal danger; he was threatened by armed men, and lived amidst a population bitterly hostile to him, fearlessly and faith-

fully pressing for the prosecution with industry and perseverance, until the civil power was compelled to desist in the attempt to bring the offenders to trial by reason of the threatening condition of affairs.

The evidence before us satisfies us that the sacrifices made by Mr. Gurley, in consequence of his engagement in this cause for the government, were very great, and his services valuable to the government. The committee, therefore, believe he should be fairly remunerated for the services rendered.

Hon. Roger Q. Mills, now a member of Congress, and who is familiar with the circumstances, thinks he should receive not less than $5,000; Judge Battle says not less than $2,500 to $3,000. Other citizens of Texas, familiar with the case, among them Governor Runnels, the Indian agent, Colonel Ross, and others, all testify to the ability and efficiency with which he discharged the duties of his position. The committee therefore think that, upon this branch of his claim, he is also entitled to relief, and that $1,000 would be reasonable compensation. They therefore report back the bill (H. R. 658) providing for the payment of both claims, with the recommendation that it pass.

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