48TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1344.

JOHN FLETCHER.

APRIL 24, 1884.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. S. W. PEEL, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 429.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 429) for the relief of John Fletcher, beg leave to report as follows:

This claim was before the Forty-third Congress and considered by the Committee on Indian Affairs, in the House of Representatives (House Report No. 780, first session Forty-third Congress); and was also before the Forty-fourth Congress, and considered by the Committee on Claims, in the House of Representatives (House Report No. 9, second session Forty-fourth Congress). And your committee also find that said claim was before the Forty-fifth Congress, and considered by the Committee on Claims in the Senate (Senate Report No. 521, second session Forty-fifth Congress), and that at each session of Congress referred to above, the passage of the bill was recommended by the said several committees, the last report (Committee on Claims, in the Senate) being substantially as follows:

Claimant seeks to recover the sum of $3,450 for depredations alleged to have been committed by the Cheyenne and Arapahoe Indians, in the month of November, 1870. The chief question that arises is as to the liability of the Government to indemnify the claimant in view of the facts that exist and are established in the case.

Your committee find that on the 4th day of May, 1870, claimant entered into a contract in writing with "Brevet Brigadier-General M. R. Morgan, commissary of subsistence, United States Army, chief commissary of the Department of the Missouri," by the terms of which he was to furnish, between the 1st day of July, 1870, and the 30th day of June, 1871, at Forts Harker, Hays, Wallace, Larned, and Dodge, in the State of Kansas, and Camp Supply, in the Indian Territory, beef and beef-cattle on the hoof, and that he executed bond with approved security for the faithful performance of his said contract. Your committee further find, from the evidence adduced, that on or about the 25th of November, 1870, while claimant, in pursuance of the terms of his said contract, was *en route* from Fort Dodge, Kansas, to Camp Supply, in the Indian Territory, with a drove of 125 beef-cattle, for the use of the Government troops stationed at the latter point, and when within about twenty-five miles thereof a band of Cheyenne and Arapahoe Indians stampeded claimant's said herd of cattle, and succeeded in driving away 69 head of them, none of which claimant ever recovered; that it does not appear that claimant was guilty of negligence whereby said loss was occasioned, nor does it appear that he ever recovered any part of said 69 head of cattle, or that he has ever recovered any payment or other indemnity for his said loss.

Your committee further find from evidence adduced that said cattle had cost plaintiff a greater sum than he seeks to recover by the bill under consideration; that he paid $50 per head for them in Shawnee County, in the State of Kansas, which is all he seeks to recover; and that, in the opinion of claimant and one of his witnesses, they were worth $75 per head at the time and place at which they were lost; which

your committee think is not improbable, in view of the fact that, by the terms of the contract, they were to be American cattle, and of an average weight of 1,000 pounds; and the stipulated price per pound, net, was 12½ cents.

In the opinion of your committee the testimony shows that they, in character, weight, and quality, conformed to the requirements of the contract; at all events, such is clearly the tendency of the testimony, and your committee find nothing that contravenes it.

Such being the facts in the case, is the Government liable to indemnify claimant for his said loss? That we may be able to arrive at a satisfactory and just conclusion in the premises, it may be well to consider the relations the Indians bear to the Government, and the legislation that affects that relation. Between them and the citizens of the United States legislation has interposed a "high wall and a deep ditch," and has thereby left the latter without remedy, if the Government is not liable for the depredations of those around whom it has thrown its protecting arms, and between whom and its citizens it has interposed insuperable barriers.

The Indians have long been regarded and treated as the wards of the Government. This relation was recognized and acted upon almost three-quarters of a century ago, and at no time since has it been disclaimed. As far back as 1802 our ancestors saw the propriety and necessity of protecting the citizens of the then feeble republic from the rapacity and violence of that race, and provided means of indemnity for spoliations committed by such of them as were in "amity with the United States." (2 Stats. at Large, page 143.)

This liability and promise to indemnify continued as a part of the written law of the land from that time until 1859, when, as we shall presently see, the promise, but not the liability, was revoked by act of Congress. The liability, in the opinion of your committee, did not depend upon, nor was it created by, the promise. It existed independent of the latter—the latter being a simple recognition of the former; and, in the opinion of your committee, the liability has not yet been ignored, but, to the contrary, has been recognized in all subsequent legislation on the subject, although the express promise of indemnity has been recalled.

The trade-and-intercourse act of 1834 expressly repeals that of 1802 (4 Stats. at Large, p. 734); but by the seventeenth section of said act (4 Stats. at Large, p. 731) provisions are made for full indemnity, and the same is guaranteed by the Government. This statute remained in force from the 30th of June, 1834, to the 28th of February, 1859, at which time it was repealed. The repealing clause is as follows:

"*And be it further enacted*, That so much of the act entitled 'An act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers,' approved June 30, 1834, as provides that the United States shall make indemnification out of the Treasury for property taken or destroyed in certain cases by Indians trespassing on white men, as described in said act, be, and the same is hereby, repealed: *Provided, however*, That nothing herein contained shall be so construed as to impair or destroy the obligation of the Indians to make indemnification out of the annuities, as prescribed in said act." (11 Stats. at Large, p. 401, sec. 8.)

Let it be remembered that this leaves in force all of said act except the clause that guarantees indemnity out of the Treasury. The seventeenth section of the act of June 30, 1834, contains the following, among other provisions:

"*Provided*, That if such injured party, his representative, attorney, or agent, shall in any way violate any of the provisions of this act, by seeking or attempting to obtain private satisfaction or revenge, he shall forfeit all claims on the United States for such indemnification."

Thus we find the citizens of the United States are wholly without remedy for wrong and injuries perpetrated by the Indians, unless, by reason of the peculiar relationship they sustain to the Government, and the exclusive guardianship over them assumed by the latter, it is responsible for the willful and unprovoked trespasses.

The act of July 15, 1870 (16 Stats. at Large, sec. 4, p. 360), forbids the use of any part of the annuities then due or thereafter to become due the Indians designated in the act, in payment of claims growing out of their depredations. It should be observed that it does not ignore the liability of the Government in such cases, but rather recognizes it, by providing that claims of that character shall not be paid out of annuities, and that they may be paid by a special appropriation made for that purpose by an act of Congress.

The section referred to reads as follows:

"That no part of the moneys hereby appropriated by this act, or which may hereafter be appropriated in any general act or deficiency bill making appropriations for the current and contingent expenses of the Indian Department, to pay annuities due to or to be used and expended for the care and benefit of any tribe or tribes of Indians *named therein*, shall be applied to the payment of any claim for depredations that may have been or that may be committed by said tribe or tribes, or any member or members thereof; and no claims for Indian depredations shall hereafter be paid *until Congress shall make special appropriations therefor;* and all acts and parts of acts inconsistent herewith are hereby repealed."

By the 7th section of an act approved May 29, 1872 (17.Stats. at Large, page 190), the last clause of the foregoing section is re-enacted, and it is made the duty of the Secretary of the Interior to prepare and publish such rules and regulations as he may deem necessary, prescribing the manner of presenting claims for compensation for depredations committed by Indians, and the degree and character of the evidence necessary to support the same, and to report to Congress, at each session thereof, the nature and character, &c., of such claims, whether allowed by him or not, and the evidence on which the action was based.

Provisions are thus made for ascertaining the extent of injuries that may be inflicted on citizens of the United States; the result of these injuries we call *claims*, and we provide that they may be paid out of our general Treasury, and that they shall not be paid out of the annuities due or to become due the Indians. If we do not thereby recognize a right on the part of those who suffer from the depredations of these people to recover the actual damages they may sustain, what is the meaning and effect of all this legislation? Why do we forbid the injured to redress their own grievances; and why lock up the annuities of those who despoil our citizens, and hold out a pretended promise of payment?

Congress may make appropriations to pay these losses. This is plain. But it is insisted by some that there is no legal liability to pay them. If this be true, when did the liability cease? Why have we continued to pay some of these claims, and why make provisions for prosecuting them in the manner in which we have done; and why do we provide for paying them out of the Treasury? If they are not valid claims, by what authority can we appropriate money out of the Treasury to pay them? The right of recovery depends, in each case, on the particular facts that bear upon it. In this respect it does not differ from the right of recovery in any civil action, such as assumpsit, covenant, or trespass.

Your committee, therefore, recommend that the bill under consideration do pass.

When this contract was made, the act of Congress of 1859 was in force, and the law justified the confidence that the annuities to the Indians truly would be held to indemnify persons who should suffer losses by their depredations. When the depredation was committed that law had been repealed, and no remedy against the Indians remained. A citizen attempting to perform his contract with the Government, who is drawn into an exposure to Indian depredations and suffers loss by such means, has no power to claim or enforce reparation from the Indians. He must look for protection from the Government that stands between him and the Indians and, to preserve its own policy in dealing with them, prevents the citizen from making any reclamations upon them.

It is essentially just that the Government should compensate a citizen for losses sustained under such circumstances, for the reason that while the Indians are not held accountable to civil law for any of their crimes against citizens of the United States, the citizens have not the right to visit upon them the penalties of war to prevent their robberies, or to compel restitution of their property.

Your committe recommend that the bill pass.

And your committee concurring in the said report adopt the same, and recommend that the bill do pass.

The above and foregoing report being the report made by the Committee on Claims at first session Forty-seventh Congress, we, your committee, concur in the same, and recommend that the bill do pass.

○