

CYRENIUS BEERS AND OTHERS.

MARCH 20, 1888.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DUNN, from the Select Committee on Indian Depredation Claims, submitted the following

REPORT:

[To accompany bill H. R. 654.]

*The Select Committee on Indian Depredation Claims, to whom was referred the bill (H. R. 654) for the relief of Cyrenius Beers, deceased, or Clarence I. Peck, the personal representative; also D. T. Chaney, the personal representative of Vail & Robison, both deceased, having had the same under consideration, submit the following report:*

At the time these depredations were committed there was no local Indian agent for these Indians, and these claims were made out and presented to Congress within one year after the depredations were perpetrated. No action was obtained at that time, but the claimants continued to press their claims, and at last the Committee on Indian Affairs of the Forty-eighth Congress, to whom they were referred, reported favorably to the House, but it was not reached for consideration in that Congress. These claims were again presented to the Forty-ninth Congress and again referred to the Committee on Indian Affairs; again reported favorably to the House and was not reached for consideration in that Congress.

The report made at that time is given in this connection and adopted, as follows:

[House Report No. 4152, Forty-ninth Congress, second session.]

*The Committee on Indian Affairs, to whom was referred the bill (H. R. 4300) for the relief of Cyrenius Beers, or his personal representatives, and also the personal representatives of Vail & Robison, having had the same under consideration, submit the following report:*

These claims were presented to the Forty-eighth Congress, referred to the Committee on Indian Affairs, and reported favorably to the House. It was not reached for consideration in that Congress. The report made at that time is given in this connection:

“The claimants, Cyrenius Beers and William S. Robison and Solomon Vail, in the summer of 1866, were engaged in freighting goods across the Great Plains, and on the 18th of July, 1866, while engaged in fitting up a ferry-boat to enable them to cross the Big Horn River en route from Omaha, Nebr., to Virginia City, Mont., were attacked by a band of Sioux Indians, who stampeded all their teams and succeeded in taking away thirty-eight mules and one horse, the property of Cyrenius Beers, and thirty mules, the property of Vail & Robison. After this loss of teams the said claimants

were put to considerable trouble and expense to get their goods freighted to their destination, and they file the following bills:

*"The United States to Cyrenius Beers, Dr.*

(July 18, 1866.)

|   |            |
|---|------------|
| To thirty-eight mules, at \$250 .....   | \$9,500.00 |
| To one horse .....  | 200.00     |
| To hauling 18,240 pounds of freight from the crossing of the Big Horn River to Virginia City, at 9½ cents per pound ..... | 1,779.08   |
| Wages of five men one month guarding the train, at \$100 a month .....  | 500.00     |
| To board of seven men one month, at \$20 a week .....   | 560.00     |
| To wages of Reuben C. Gray one month for going for train .....  | 100.00     |
| To board of R. C. Gray one month .....  | 80.00      |
|   | <hr/>      |
|   | 12,719.08  |

*"United States to Vail & Robison, Dr.*

|   |            |
|---|------------|
| To thirty mules, at \$225 .....             | \$6,750.00 |
| To hauling 24,500 pounds of freight .....   | 2,388.75   |
| To wages of men guarding train .....        | 500.00     |
| To board of six men, etc .....              | 480.00     |
| To wages of one man going after train ..... | 100.00     |
| To board of one man two months .....        | 160.00     |
|   | <hr/>      |
|   | 10,378.75  |

"The evidence filed in this case and examined by your committee consists of the affidavits of the claimants, Cyrenius Beers and William S. Robison, corroborated by the affidavits of R. C. Gray, James Sinclair, Louis Richards, Battiste Penea, and four Indians, named 'Four Horses,' 'Buffalo Chief,' 'High Back Bone,' and 'Flat Iron,' and fully prove that claimants were damaged to the amount they claim. They show by General Orders, No. 27, of Maj. Gen. John Pope, and an order of Provost-Marshal William Staring, and an order of Capt. I. L. Proctor, that they were at the Big Horn River by direction of the military authorities, and by the said affidavits they show that they were acting at the time the depredations were committed in strict compliance with said orders.

"United States Indian Agent V. T. McGillycuddy, of the Pine Ridge Agency, to whom these claims were referred, in his report to the Commissioner of Indian Affairs, says:

"In finally returning the depredation claim of Cyrenius Beers and others to your office, I have the honor to report that after careful examination of the evidence, etc., I judge the claim to be a just and honest one and well sustained, and that the amount claimed is not unreasonable. I would recommend that the same be paid."

"The Hon. H. Price, Commissioner of Indian Affairs, in a letter to the Secretary of the Interior, dated March 14, 1884, says:

"After an examination of all the evidence presented in the claims, I am of the opinion the depredations were committed as alleged. I therefore recommend that claimant, Cyrenius Beers, be allowed the sum of \$9,700 for loss of his mules and horse. That Wm. S. Robison and Solomon Vail be allowed the sum of \$6,750; payment in both claims to be made from funds belonging to Sioux of different tribes, including the Santee Sioux of Nebraska."

"The Secretary of the Interior, in a letter dated March 17, 1884, transmitting these claims to Congress, recommended the allowance as set out in the above-recited letter of Commissioner Price.

"Your committee are of the opinion that claimants ought to be paid for the horse and mules from the treaty funds of the Sioux Indians; but they think that the estimate of the value of said horse and mules as made by Commissioner Price is too large, and that \$200 per head for said mules and horse is a fair valuation. Therefore they recommend that this bill be amended as follows:

"In lines 5 and 6 strike out "twelve thousand seven hundred and nineteen dollars and eight cents" and insert "seven thousand eight hundred dollars."

"In line 9 strike out "ten thousand two hundred and seventy-eight dollars and seventy-five cents" and insert "six thousand dollars."

"Add to the bill the following:

"In full of all claims on account of said losses, to be paid from the treaty funds of the Sioux Indians of different tribes, including the Santee Sioux of Nebraska."

The bill as presented to your committee comes in the form recommended by the above report.

Pursuant to the acts of March 3, 1885, and May 15, 1886, the Secretary of the Interior reported these with other claims in favor of citizens and against Indians having treaty stipulations with the United States, with the opinions and conclusions of the Commissioner of Indian Affairs and the Secretary of the Interior on all material facts, and all evidence and papers pertaining thereto. The conclusions of the Commissioner, in his report to the Secretary dated December 31, 1886, are given herewith, and are as follows:

"From a careful consideration of the foregoing record, which embraces all the material facts in this case and a full abstract of the evidence filed, there can be no doubt of the truth of the charge contained in the declaration of the claimants. The evidence of the witnesses who accompanied claimants and those who were upon the ground when the depredation occurred is quite positive, and added to this are the admissions and evidence of the Indians as reported by the agents of the Pine Ridge and Rosebud Agencies, which also corroborate said charges.

"Apart from the loss of their stock, the claimants were undoubtedly damaged in the delay of their trains, extra cost of transportation, of freight charges, etc., which are in the nature of consequential damages, for which no provision is made in the intercourse laws. But for the loss of their stock, a fair and just indemnity should be made. In the former report of the office the recommendation was made to allow the claimant Beers \$9,700 for the loss of his thirty-eight mules and one horse, and the claimants Robison & Vail \$6,790 for the loss of their thirty mules.

"The Committee on Indian Affairs (Forty-eighth Congress), in its consideration of the case, came to the conclusion that \$7,800 to the former claimant and \$6,000 to the latter would be a fair valuation for the property lost as shown by the evidence.

"From a careful view of the case it is believed that the conclusions of the committee under all the circumstances are correct and just, and it is therefore submitted:

"First. That at the date of the alleged injuries claimants were citizens of the United States, and said Indians were in treaty relations with the Government. (Treaty October 10, 1865, 14th Stats., p. 695.)

"Second. That said depredations were committed by said Minneconjou Sioux Indians at the time and place as charged, by which the claimant Beers lost thirty-eight mules and one horse, worth \$7,800, and the claimants Robison & Vail lost thirty mules, worth \$6,000, for which amount said Indians by the terms of the first article of said treaty were chargeable, but as claimants failed to apply for relief within the time prescribed by the law then in force (4th Stats., p. 732) their claims are barred."

Your committee from their examination of the records and papers find themselves unable to concur in the opinion of the Commissioner of Indian Affairs, that these claims are barred by the statute of limitations referred to last above, for neglect or failure of claimants to present the claims within three years' time after the depredations were committed, because we find by the records of the House Journal, second session, Thirty-ninth Congress, p. 182, January 17, 1867, that these claimants did present these claims to Congress for action and payment. And the claims have been presented and diligently pressed for final action in nearly every session of Congress since said time. And the time when first presented was within one year after the loss of this property was sustained by these claimants.

Even if technically it were held a bar because claimants made their application for relief directly to Congress within the time fixed by said law (4th Stats., p. 732) instead of to the Indian Office, still it has been the uniform practice in claims from this committee for the House to make their passage dependent on the law and equities of each case independent of the exact compliance with the statute of limitation. But in the one under consideration every fact is established beyond contradiction. After the loss of their property the claimants came swiftly to the Government and asked for relief. They have been here for twenty years. Their claim is just and it should be paid.

Therefore your committee unanimously report this bill with the recommendation that it do pass.

The liability of the Indian nations or tribes named in the bill for the payment of the damage suffered by these claimants, for the loss of their mules and horse, flows from the acts of Congress made and provided in such cases, and article 1 of a treaty made with these Indians in February, 1869, and article 8 of a treaty made October, 1876, and that there are funds or moneys due to these Indians which are not required to be expended for their maintenance.

The bill should be amended as follows: On line 5 strike out the word "Cyrenus" and insert instead the word "Cyrenius;" after the word "Beers," on line 5, insert the word "deceased;" on line 7 strike out the word "Robinson" and insert the word "Robison;" on line 8 strike out the word "Robinson" and insert the word "Robison;" after the word "Robinson," on line 8, add and insert the words "both deceased."

Therefore, your committee report that these claims are just and honestly due and that this bill, when amended, should pass.

