

IN THE SENATE OF THE UNITED STATES.

APRIL 20, 1854.—Ordered to be printed.

Mr. TOOMBS made the following

REPORT.

[To accompany Bill S. 43.]

*The Committee on Indian Affairs, to whom was referred Senate bill No. 53, entitled "A bill to authorize the payment of certain claims for depredations and spoliations during the hostilities with the Creek and Seminole Indians in 1836 and 1837," have had the same under consideration, and report:*

That in the year 1832 the United States made a treaty with the Creek Indians, by which they ceded all their lands lying east of the Mississippi, reserving to each head of a family a specified quantity of land, who was entitled to hold the reservation in fee simple, independent of the tribe. These lands were situated wholly in the State of Alabama. It was stipulated in the treaty that the owners of these reservations might occupy or sell them at their pleasure, the contracts of sale being subject to approval by the government, to prevent imposition upon the Indians. While the Indians were not obliged by the treaty to emigrate, but might remain in Alabama if they chose to do so, the United States set apart and guaranteed to them a large tract of country west of the Mississippi river. After the ratification of the treaty, and immediately after the surveys were made and the reservations were set apart to them, the Indians commenced selling them out to citizens of the United States, under the sanction and approval, and even encouragement, of the government, until in the spring of 1836 scarcely an Indian owned a single acre of land in the ceded country. The government also, immediately after the completion of the surveys, put all the balance of the lands ceded to it by the Indians into market, and great numbers of citizens bought homes and settled in the ceded country in the midst of the Indians. The Indians having sold out their lands and squandered the proceeds, were left houseless and homeless, wanderers and outcasts, and in utter destitution. In the spring of 1836 the whole tribe was in a state of starvation, and began first by stealing, then by begging, and finally by intimidation and force, to extort a subsistence from the persons who had settled in the ceded country under purchases of land from themselves and from the government. There being no government troops stationed in the country, and the settlements being still sparse and inadequate to mutual protection, and the authority of the tribe being wholly insufficient to control or restrain

the starving Indians, after the perpetration of numerous murders by them privately, it was deemed unsafe to reside in the ceded country, and almost the whole population abandoned their homes, left such of their property as could not be carried away in a hasty flight, and sought safety in Georgia and the old settlements of Alabama.

After the whites abandoned their homes, marauding parties of the Indians continued to devastate the Indian country, and made occasional inroads across the Chatahoochee river into the neighboring settlements of Georgia, murdered many of the inhabitants, and destroyed and carried away much of their property. Upon information of these events, the governors of Georgia and Alabama immediately called into service a large body of volunteers, and marched them into the disturbed district; and the government of the United States ordered troops and its own officers to Alabama to suppress these outrages. General Jessup having been ordered to Alabama by the general government, immediately upon his arrival in the country, accepted the services of from 1,300 to 1,500 friendly Indians, to aid in suppressing the outbreak, and being without the means of support, they joined in the general plunder, and were subsisted upon the property of the unfortunate citizens. It is clearly proven, by the evidence of the commanding officer of the Indians, (Colonel Hogan,) that this band of Creeks, in the service of the United States, marched through the ceded country, slaughtered the cattle and hogs belonging to the settlers, and seized and consumed whatever remnant of corn, bacon, and other provisions of the inhabitants, had escaped the ravages of those whom they called the hostile Indians, and thus the ruin of the unfortunate inhabitants, begun by lawless enemies, was consummated by pretended friends, under the sanction of the flag of their own country. It is proven by the testimony of Colonel John B. Hogan, an agent of the government, and "acting adjutant and inspector general of a brigade of Indians, under the chief Opoth-le-Yoholo," that he raised from 1,300 to 1,500 Indians under that chief, at the instance of Governor Clay and General Jessup; marched them into the disturbed district, and was "ordered by General Jessup to subsist the force in the best manner (he) could, and (he) had forage parties out every day hunting up corn, fodder, and beef." He further states, "that as soon as the Indians would drive up a gang of cows, calves, or oxen, before I was aware of their being in any part of my camp, (which was very extensive, having from 1,300 to 1,500 Indians scattered all over the hills about Big Springs,) those Indians that were most in want of provisions would commence shooting them down. In this way an immense number of cattle were destroyed, and a great many more than were required for the actual subsistence of the whole army. No effort of mine, and of the white persons who were with me, and who acted as officers among the Indians, could prevent the abuse that took place in the destruction of cattle."

These facts are abundantly sustained by other unquestionable testimony, leaving no doubt but that the government supported its own troops by an indiscriminate plunder of the property of the citizens it was bound to protect. It further appears, that as soon as volunteer troops could be collected from Georgia and Alabama in sufficient numbers to repress the outrage and punish the aggressors, nearly all of the

Indians, who had been engaged in these depredations, came in and surrendered to the officers of the United States, received rations, and were protected by them, and emigrated to their homes west of the Mississippi river; and so far from demanding indemnity from them for their spoliations, which it was perfectly in its power to obtain, the government of the United States have continued to pay them large annual annuities, and occasionally made large grants of money to them under different pretences, wrung, in due proportion, from the hard earnings of these plundered citizens. A few straggling parties only of these Indians refused to emigrate, and attempted to make their way through Georgia to the hostile Seminoles in Florida; they were pursued by the Georgia troops, and those of them who escaped being killed in battle succeeded in this effort; other small parties concealed themselves in the swamps and other secure places in the ceded country, and subsequently to the general emigration recommenced their depredations, but were speedily met, defeated, and subdued by the Alabama volunteers, commanded by General Wellborn.

It is perfectly clear that these spoliations were not committed under any authority from the Creek Nation of Indians, but they were the lawless acts of roving bands of Indians seeking plunder. • No action was fought with them in Alabama, where the tribe resided, except with the small parties who concealed themselves and remained after the body of the nation had removed; and none in Georgia, except with the other small parties, who were overtaken by the Georgia militia, in their plundering excursions, or in their attempts to get into Florida. Therefore, the whole of the spoliations committed fall clearly within the principle of the various intercourse acts passed by Congress, by which this government has bound itself to compel the Indians to pay for such outrages, or to indemnify the citizens for them out of the public treasury. Thus far the government have done neither the one nor the other. Compensation for that portion of the spoliations committed by Indians in the service of the United States, and by the orders of its officers, is demanded under the plain letter and meaning of the constitution, which fully sustains that demand: that constitution declares that private property shall not be taken for public use without just compensation.

Immediate notice was given of these depredations to the government, and earnest appeals were made to it by the sufferers for indemnity; and Congress, on the second day of March, 1837, passed an act authorizing the President of the United States to appoint three commissioners to inquire into and report the amount and nature of these spoliations. They were appointed, entered upon the discharge of their duties, visited the Creek country, heard evidence on each claim, and, after a severe scrutiny of the claims, rejecting all demands for consequential damages, reported the actual value of the property taken or destroyed by the Indians, together with all the attendant circumstances. This report was submitted to Congress by the President on the 27th of January, 1838, and embraces all the claims for which payment is sought and provided for by the bill referred to your committee. The claimants have continued from time to time to urge the consideration and payment of their claims by Congress, but hitherto in vain.

Your committee are not aware of any objections having been urged

against the accuracy of the claims or the mode of ascertaining them, except by the injured parties, who complain that consequential damages ought to have been allowed, and that the commissioners undervalued the property taken and destroyed by the Indians. The only objection to their payment which seems heretofore to have been urged, is, that these depredations were committed by the public enemy in public war, and that therefore the government is not bound to indemnify the citizens for them. The first and sufficient answer to this objection is, that if the rule be a sound one, the facts do not warrant its application to these claims. The soundness of the rule itself is open to grave objections. It is against principle, and the authorities upon it are conflicting. The sound and fundamental general principle of the social system is that each member of society "shall only bear his quota" of the public burdens or public calamities either in peace or war. It being the duty of society to protect all of its members, even when the State is really unable to perform this duty, it violates the principle upon which it is based, and of natural equity, not compel each member of the State to bear his equal proportion of injuries committed against any one member even by the public enemy. Grotius says, that the publicists are divided on the question, and Vattel, who seems to relieve society from the absolute obligation, puts it mainly on the ground that a different rule would soon "exhaust the public finances," but he fully admits its strict justice and conformity to natural equity. He says, "it is perfectly consonant to the duties of the State and sovereign, and of course perfectly equitable, and even strictly just, to relieve, as far as possible, those unhappy sufferers who have been ruined by the ravages of war, as likewise to take care of the family of those whose head and support has lost his life in the service of the State. There are many debts which are considered as sacred by the man who knows his duty, although they do not afford any ground of action against him." But if this rule is sound, it is not universal. Even if this was public war, waged by public authority on both sides, one of its legitimate objects on one side was to secure the expenses to the government and the losses to the citizen of conducting it. Vattel says, "who ever uses a citizen ill, indirectly offends the State which is bound to protect this citizen; and the sovereign of the latter should avenge his wrongs, punish the aggressor, and, if possible, oblige him to make full reparation; since otherwise the citizen would not obtain the great end of the civil association, which is safety." All publicists admit, that it is not only just, but that it is the duty of the conqueror to compel the enemy to repair the wrongs which his own injustice has occasioned. This government has almost uniformly acted upon this principle, even in its public wars with the Indian tribes on this continent. Stipulations for indemnity for injuries committed in war are to be found scattered through all the Indian treaties of peace. Such provisions are to be found in all the treaties made with the Creek Indians, from the treaty of Augusta, in 1783, down to the treaty of Indian Springs, in 1821, establishing the fact that the government has uniformly demanded of the Indians indemnity for spoliations committed in actual public war, in her treaties of peace, and has compelled the Indians to pay for other spoliations committed by the tribes not in public war, or undertaken herself to pay

them in her various laws regulating intercourse with the Indians; therefore, by the laws of nations, and by the uniform policy of the government exhibited in its Indian treaties, these claimants would be entitled to indemnity even if these spoliations had been committed in a public war. But in this case there was no treaty of peace, for the reason that there was no public war by the nation.

But public war can only exist by authority of the sovereign power. The evidence is full and conclusive that neither the sovereign power of the Creek nation, nor any other public authority of that nation authorized war against the United States or of its citizens, at this time. On the contrary, the nation opposed it, and its head chief, Opath-le-Yo-ho-lo, and fifteen hundred warriors, enlisted in the service of the United States to suppress this lawless violence, and to punish the perpetrators. The spoliations for which redress is now sought were caused by "predatory expeditions, undertaken without lawful authority, and without cause, as likewise without the usual formalities, and solely with the view to plunder;" and is therefore excepted by Vattel and all the approved publicists from the principle under which redress is here sought to be derived, and brings it within the principle under which, by the practice of all civilized nations, the citizen or subject has been held entitled to indemnity, and under which this government has uniformly extended redress. Your committee, therefore, unanimously recommend the passage of the bill, which is herewith reported back to the Senate.