46TH CONGRESS, 2d Session. | SENATE. | REPORT No. 139.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1880.—Ordered to be printed.

Mr. PLUMB, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill S. 80.]

The Committee on Military Affairs, to whom was referred the bill (S. 80) to authorize the Secretary of the Treasury to ascertain and report to Congress the amount of money expended and indebtedness assumed by the State of Kansas in repelling invasions and suppressing Indian hostilities, have had the same under consideration, and submit the following report:

That this bill is identical with the one on the same subject that was fully considered by this committee in the last Congress, and which passed the Senate, but was not acted upon by the House. The committee see no reason for a reversal or modification of the conclusion then reached, and therefore they readopt the views expressed in the report which accompanied the bill, and recommend the passage of the present measure.

The report referred to is as follows:

The bill under consideration provides that the Secretary of the Treasury shall be authorized to examine, settle, and audit all proper claims of the State of Kansas for moneys expended by it in organizing, arming, equipping, supplying, subsisting, transporting, and paying the volunteer and militia forces of the State called into active service by the governor thereof, after the 15th of April, 1861, to aid in repelling invasions and suppressing Indian hostilities in said State and upon its borders, and report his action thereon to Congress.

It appears to the satisfaction of the committee that the State of Kansas has actually incurred and paid expenses in repelling invasion and suppressing Indian hostilities, and that such expenditures were made necessary by the state of affairs existing at the time; the question remaining to be considered is whether or not the general government is properly chargeable with such expenditures.

Your committee are of the opinion that from the legislative history of Congress it has been the understanding that the government was so liable.

By act approved March 21, 1828, the Secretary of War was required to pay the claims of the militia of the State of Illinois and the Territory of Michigan, called out by any competent authority, on the occasion of the then recent Indian disturbances, and that the expenses incident to the expedition should be settled according to the justice of the claims. (See Laws of United States, vol. 4, p. 258.)

By act approved March 1, 1837, an appropriation was made for the payment of the Tennessee volunteers called out by the proclamation of Governor Cannon, on the 28th of April, 1836, to suppress Indian hostilities; and a direct appropriation was also made to Governor Cannon to reimburse him for moneys expended on account of such volunteers. (See Laws of United States, vol. 5, p. 150.)

By act approved March 3, 1841, a direct appropriation was made to the city of Mobile for advances of money and expenses incurred in equipping, mounting, and sending to the place of rendezvous two full companies of mounted men, under a call from the governor of Alabama, at the beginning of the hostilities of the Creek Indians. (See Laws, vol. 5, p. 435.)

By act of August 11, 1842, $175,000 was appropriated as a balance for the payment

and indemnity of the State of Georgia for any moneys actually paid by said State on account of expenses in calling out her militia during the Seminole, Cherokee, and Creek campaigns, or for the suppression of Indian hostilities in Florida and Alabama. (See Laws, vol. 5, p. 504.) By act approved August 29, 1842, a similar appropriation was made to the State of Louisiana. (See Laws, vol. 5, p. 542.)

By act approved July 7, 1838, an appropriation was made to the State of New York of such amount as should be found due by the Secretary of War and the accounting officers of the Treasury, out of the appropriation for the prevention of hostilities on the northern frontier, to reimburse the State for expenses incurred in the protection of the frontier in the pay of volunteers and militia called into service by the governor. (See 5 U. S. Stats., p. 268.) By an act approved June 13, 1842, the State of Maine was reimbursed for the expenses of the militia called into service by the governor for the protection of the northeastern frontier. (See 5 U. S. Stats., p. 490.)

By act approved March 2, 1861, the State of California had appropriated to her $400,000 to defray the expenses incurred by the State in suppressing Indian hostilities for the years 1854, 1855, 1856, 1858, and 1859. (See 12 U. S. Stats., p. 199.)

By act approved July 2, 1836, Captains Smith, Crawford, Wallis, and Long, of the militia of Missouri, and Captain Sigler, of the Indiana militia, were paid for services rendered in protection of those States against Indians, and an appropriation of $4,300 was made for that purpose. (See 5 U. S. Stats., p. 71.)

By act approved February 2, 1861, there was appropriated to reimburse the Territory of Utah, "for expenses incurred in suppressing Indian hostilities in said Territory in the year 1853," the sum of $53,512. (See 12 U. S. Stats., p. 15.) This bill was considered by the House Military Committee, and was reported by Mr. Stanton, who, in his report, says:

"The liability of the Federal Government for necessary expenses incurred by the States and Territories in repelling invasions of their territory by a foreign enemy, or of hostile tribes of Indians within our borders, has been so often recognized that it can no longer be considered an open question.

"The committee also believe that the action of the State and Territorial authorities in calling out their military force and engaging in hostilities furnished at least *prima-facie* evidence of the necessity of their action.

"As there is no evidence before the committee tending to show that these expenses were unnecessarily incurred, the committee feel bound to recognize the liability of the claim."

By the act approved June 21, 1860 (it being an Army appropriation bill), the sum of $18,988 was appropriated to reimburse the State of Iowa for the expenses of militia called out by the governor "to protect the frontier from Indian incursions." (See 12 U. S. Stats., p. 68.)

By the same act the sum of $123,544.51 was appropriated to the State of Texas for the "payment of volunteers called out in the defense of the frontier of the State since the 28th of February, 1855." By the "act making appropriations for the sundry civil expenses of the government for the year ending June, 1864, and for other purposes," an appropriation was made "to pay the governor of the State of Minnesota, or his duly authorized agent, the costs, charges, and expenses properly incurred by said State in suppressing Indian hostilities within said State and upon its borders, in the year 1862, not exceeding $250,000, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury." (See 12 U. S. Stats., p. 754.)

In the sundry civil bill of the following year an appropriation of the sum of $117,000 was made to the same State "to supply a deficiency in the appropriation for the costs, charges, and expenses properly incurred by the State of Minnesota in suppressing Indian hostilities in the year 1862." (See 13 U. S. Stats., pp. 350, 351.)

By act approved May 28, 1864, the sum of $928,411 was appropriated for the payment of damages sustained by citizens of Minnesota "by reason of the depredations and injuries by certain bands of Sioux Indians." (See 13 U. S. Stats., p. 92.)

Besides the appropriation made to the State of California, before referred to, by act approved August 5, 1854, the sum of $924,259.65 was appropriated to reimburse the State for expenditures "in the suppression of Indian hostilities within the State prior to the 1st day of January, 1854:" (See U. S. Stats. at Large for 1853 and 1854.)

The question of the liability of the general government for the payment of this class of demands seems to have been carefully considered by the Committee on Military Affairs of the House, in connection with this claim of California for reimbursement.

Mr. McDougal submitted the report of the committee, in which he said:

"The question remaining for consideration is whether or not the general government is properly chargeable with their expenditures.

"It is the opinion of this committee that the obligation of the Federal Government to furnish specific and particular defense to each several State is included in its obligation to maintain the 'common defense' of the confederacy. That invasions from abroad, insurrections at home, and aggressions from the savage tribes inhabiting our

borders are alike within the protective province of the Federal Government. Congress possesses the exclusive power 'to raise and support armies in time of peace,' and possesses the power to call forth the militia 'to suppress insurrections and repel invasions.' In the tenth section of the first article of the Constitution the States stipulate that they will not 'keep troops or ships of war in time of peace.'

"The conclusion necessarily follows that the general government is, by the implied, if not the express, terms of the Federal compact, bound.

"The question here presented appears to have been distinctly raised in 1831 upon a claim presented by the State of Missouri. By act approved March 3 of that year, Congress made an appropriation for the service of the Missouri militia against the Indians, 'provided that the Secretary of War shall, upon full investigation, be satisfied that the United States are liable for the payment of said militia, under the second paragraph of the tenth section of the first article of the Constitution of the United States.' (See Laws, vol. 4, p. 465.)

"General Cass, then Secretary of War, examined the subject submitted, and gave the opinion of the government as to its constitutional obligations, affirming the liability of the government, and directing payment to be made to the State of Missouri.

"Instances of similar legislation might be cited, but it is belived that but little doubt can exist either as to the constitutional obligation or the exposition given by Congressional legislation."

Your committee, after having given the subject such consideration as time and opportunity would allow, feel bound to conclude that the general government owes to the States the duty of protection, especially against the incursions of hostile savages, over whom the United States authorities have, from the foundation of our government, exercised a kind of parental control. And this being the case, when, from any cause, the States are not given such protection, and reasonable and necessary expenses are incurred by such States in repelling invasions from the Indians and suppressing hostilities, reimbursement should be made for the same by the United States.

This claim of the State of Kansas coming, as we believe it does, within the principle just stated, should, in the opinion of the committee, be paid whenever the proper amount has been satisfactorily determined.

The bill provides for no appropriation, but leaves that matter to be determined hereafter by Congress upon the facts to be reported by the Secretary of the Treasury, under the provision of the bill.

The committee, therefore, recommend that the bill be passed without amendment.