50TH CONGRESS, 1st Session. } SENATE. { REPORT No. 1963.

IN THE SENATE OF THE UNITED STATES.

AUGUST 1, 1888.—Ordered to be printed.

Mr. PASCO, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 1088.]

The Committee on Claims, to whom was referred the bill (S. 1088) for the relief of Charles W. Denton, of Oregon, submit the following report:

This claim first came before the House of Representatives at the second session of the Forty-second Congress in a letter from the Secretary of the Interior marked Executive Document No. 96, dated January 25, 1872, and it was there referred to the Committee on Claims for consideration.

The claim was filed in the following words:

CLAIM OF CHARLES W. DENTON.

To the honorable Commissioner of Indian Affairs, Washington, D. C.:

I beg leave to present for adjustment and payment, if found proper, an account against the United States, growing out of the relations of the Government with the Indian tribes in Oregon. The accompanying affidavits will show the nature of the claim and the reason why the claim and proof are submitted now. The claim is this:

United States of America to Charles W. Denton, Dr.

To use and occupation by the Indians of eastern Oregon of the lands of Charles W. Denton from 1854 to 1860, by authority of the Government or its agent, and for fire-wood and waste of timber from said lands by the Indians during said years, at $5,000 per year..... $25,000

his
CHARLES W. + DENTON.
mark.

DALLES CITY, WASCO COUNTY,
State of Oregon, September 30, 1870.

After examining and considering the facts before them, the committee reduced the amount from $25,000 to $5,000 and reported a bill favoring the payment of that sum, which passed the House and was sent to the Senate January 25, 1873.

It has since been before the House and been referred to different committees, but no other report has ever been there made.

The bill, which came from the House, after its passage there, to the Senate during the third session of the Forty-second Congress, in January, 1873, was referred to the Committee on Claims, but no action was taken upon it before the adjournment. At the first session of the Forty-third Congress it was again introduced and referred to the Committee on Claims. An adverse report followed and the bill was indefinitely postponed. It was again introduced at the first session of the Forty-fifth Congress and referred to the Committee on Military Affairs; but

that committee does not seem to have made any report upon it. It was again introduced at the second session of the Forty-sixth Congress, and an exhaustive report was made by Mr. Cockrell, from the Committee on Claims, to which it was referred. In their report the following conclusions are reached:

First. The claim is old and stale, and the amount of it is grossly exaggerated and mere guessing.

Second. The claimant has been guilty of gross negligence, indifference, and inattention in the presentation of his claim and in the production of competent legal testimony to sustain it, the evidence being general, indefinite, and uncertain.

Third. The claimant had no legal or equitable right to make this donation claim within 1 mile of the said military reservation then known to him; and the fact that the Government officers at the United States land office in Oregon, without knowledge of this fact, received final proofs and issued a patent certificate, and subsequently, in 1873, a patent was issued to him and his wife by the Commissioner of the General Land Office, cannot be held as against the United States to give claimant a legal or equitable right to recover damages of the character asserted in his claim.

Fourth. Even admitting as against the United States the validity of the donation claim and that the subsequent patent issued thereon could be so construed as to vest title and right of action thereon from the date of the inception of the claim in 1854, yet such title and right of action vested not in the claimant only, but for the east half in claimant and for west half in the wife of claimant in her own right, and there is no evidence to show whether the depredations were on the half belonging to claimant or on the half belonging to his wife, and if on both, how much on each half.

Fifth. According to the plat of the official surveys these lands were high tablelands, good grazing, timber scattering, oak and pine, and according to the evidence in the case, Mr. Denton in 1857 had only 75 or 80 acres in cultivation, and the extent of any claim that he and his wife might have under any circumstances would be the rental value of such lands as were actually used and occupied by the Indians, and the value of the timber actually used and destroyed. There is no evidence whatever as to the rental value and very little evidence as to the value of the timber, and it appears from the proof made by claimant that he was in actual possession of the land the entire time, which facts had to be proven in order to complete his claim.

The committee recommended that the claim be not allowed and that the bill be indefinitely postponed, and it was so ordered by the Senate when the report came up for action. No further report has been made since that date and no fresh evidence has been filed in behalf of the claimant, and no further reason appears why the former action of this committee and the Senate should be reviewed; on the contrary there are additional reasons for sustaining the former action based upon a further examination of the case made under the direction of the Interior Department, the results of which have been communicated to the committee.

It appears that the claim was referred by the Commissioner of Indian Affairs, on the 15th day of September, 1887, to one of the special agents appointed to investigate Indian depredation claims; and his report, dated December 8, 1887, adverse to the claim, is before the committee, with the testimony which he took, upon which and his personal observations his report is based. The agent states that he went over the land twice with a view of giving it a close personal inspection. It is located on a small creek and comprises 320 acres, or one-half of a section of land; there is a small lot of valley land near the creek, but the greater portion of the land is on the top and sides of the mountains and has never been cultivated.

The agent goes on to show from the tax-books of the county, transcripts from which are filed with his report, for the years 1858, 1859, and 1860, that Denton had cattle, horses, wagons, and carts, and a crop of grain of the value of $500, appears in one of these returns; that his taxable property increased from $2,525 in 1858 to $3,030 in 1859 and $3,293 in 1860. The returns for the other years could not be found on the public record. From this he infers that the claimant's farming operations were not seriously interfered with, and that the statement

that the Indians occupied all of his tillable land and that it was out of his power to use it is not supported by the evidence. These tax returns further show that the value of the improvements on his land was increasing during these three years. The report further shows that the Indians were friendly, and Denton's own statement proves that they drew rations and supplies from the Government and were under its care and protection; and the only direct injury charged against them is that they used his timber for fuel. The agent states that if, as one of the witnesses alleges, there was a dense growth of cotton-wood along the banks of the creek which the Indians cut for fire-wood, "this would have been an advantage to claimant, for here is where he wanted and needed his land cleared for cultivation." He goes on to say:

I desire to state that I have given these hills a personal inspection, and there are not many large stumps of pine trees on said land, nor are there many smaller ones cut. It appears as if a family might have used fire-wood off the land, and that seems to be the extent of it. It is a scrubby character of timber and the country surrounding does not anywhere look as if it was ever heavily timbered.

One of the witnesses, whose testimony was before the committee when the case was before examined and which is included in Executive Document No. 96, before referred to, made a general statement, as most of the others did, that Denton had suffered damages to the amount of $4,000 to $5,000 each year the Indians were on his land. This witness appeared before the agent and said:

I have to-day examined an affidavit that my name appears signed to in the printed claim of C. W. Denton, No. 872, and I am sure that I could not have sworn that the said Charles W. Denton sustained a loss of $4,000 or $5,000 per annum for depredations committed on his ranch by the Indians. I am certain that I did not intend to make any such statement. My intention was to state in my affidavit that the said C. W. Denton sustained a loss of $3,000 damages for the whole length of time that the Indians were occupying his ranch. This is what I then estimated the damages at, and I place the same estimate of damage upon it now on the date of this statement. I am satisfied that my affidavit in the printed record, this day examined by me, does not represent my statement correctly, which I made on the 3d day of September, A. D. 1870, as to the amount of damages sustained by C. W. Denton, for I fully intended to state that the whole amount of his damage was $3,000.

It seems from the agent's statements that other witnesses claim to have signed their affidavits without fully realizing their contents. None of them testify as to any facts upon which any specific amount of damages can be estimated. They only contain general statements that timber was used for fuel and that Denton was unable to start his orchards and market garden as soon as he desired, and that he lost the opportunity to make money by the sale of vegetables and fruit he might thus have raised.

Except as to the matter of fuel, which has been already considered, the damages alleged are purely consequential in their nature.

There is nothing before the committee to justify them in recommending any other action than that heretofore taken by them and the Senate. The reasons which were then regarded as sufficient for denying any relief still exist. There is no proof of any appreciable damage whatever. It seems clear that the Indians did not obstruct the claimant's planting and farming arrangements. They were friendly neighbors, with means to support them, receiving regular supplies from the Government, and their presence had its advantages to him as well as its disadvantages. It is very questionable whether Denton would have received any patent for the land had all the facts as to its location been known.

The committee recommend that the bill again be indefinitely postponed.