

IN THE SENATE OF THE UNITED STATES.

MAY 10, 1888.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 594.]

The Committee on Claims, to whom was referred the bill (S. 594) for the relief of Alexander J. Mueller, submit the following report :

This claim has been before the Senate Committee on Claims since the Forty-seventh Congress, but no report has ever been made upon it.

The claimant was a loyal citizen of Kansas during the late war, and was employed as a teamster by Alexander McDonald and Perry Fuller, who were contractors with the Government to supply and deliver at the Cherokee Agency, in the Cherokee Nation, and at Fort Smith, Ark., a large quantity of commissary supplies. The contract was made at Washington, D. C., March 16, 1864, by W. G. Coffin, superintendent of Indian affairs, southern superintendency, on behalf of the United States, with the above-named contractors.

On or about September 12, 1864, the claimant, Mueller, had three teams and wagons loaded with flour which he was hauling for the said contractors from Fort Scott to Fort Gibson. There were about three hundred wagons in the train to which Mueller was attached, including Army and suttlers' wagons, besides those in the employ of the contractors. Major Hopkins, in command of the Second Kansas Cavalry, with about 400 men, seems to have acted as escort, and Mueller had permission to join the train with his teams and wagons. About two hundred and twenty-five of the teams and wagons belonged to the Government and about fifty to seventy-five to citizens.

The teams and wagons used by Mueller were his own property; two of them consisted of two horses and two mules each, and the third one was a two-horse team; the whole, six horses and four mules, being valued at \$2,000; the three wagons and five sets of harness, with equipments, blankets, and provisions, were valued at \$1,200. On September 19, 1864, at or near Cabin Creek, in the Cherokee Nation, at about 1 o'clock in the morning, the detachment was attacked by a Confederate force of cavalry and artillery, and after some fighting the Union troops were defeated and the entire train was captured by the attacking party.

Mueller made good his escape, but lost his teams, wagons, and all of the property already mentioned which he had in the train.

It is for the property thus lost that he makes his claim.

The committee is unable to see why the Government should bear this loss; it does not appear from the contract that the Government obligated itself to protect the contractors or their employes; there was no privity between the Government and the claimant.

The record does not show what the arrangement was between Mueller and the contractors; being engaged in a dangerous service, it is a natural supposition that the compensation would be greater on that account; but those were matters to be adjusted between them. The claimant's loss was one of the casualties of war, and the failure of the Union soldiers to successfully defend his property created no obligation in his favor against the Government. The Government neither employed him nor insured him against loss, nor against the capture of his property.

Under these circumstances, the committee can find no valid reason why the Government should relieve him or why the sum claimed by him should be paid; it is, therefore, recommended that the bill be indefinitely postponed.

