

WINNEBAGO INDIANS.

[To accompany Senate resolution No. 14.]

APRIL 24, 1850.

Mr. McLANAHAN, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to whom was referred "A resolution to authorize the payment of twelve thousand dollars to the Winnebago Indians," report:

That from the documentary evidence furnished in this case by the Commissioner of Indian Affairs, they feel no hesitation in recommending the passage of this resolution. Your committee, however, deem it proper briefly to enumerate the facts upon which they arrived at this conclusion.

John McFarland and his brother James were Indian traders at Prairie du Chien: they complained of depredations committed on their property by the Winnebago Indians in the year 1812 or 1813, to the amount of some \$20,000. The acts complained of occurred during the war. This fact is clearly made out by the evidence furnished by McFarland in support of his claim. The 14th section of the intercourse law of 1802, as well as the 17th section of the law of June 30, 1834, in regard to claims for depredations, and their presentation to the tribes by whose members they may have been committed, confine a recourse to the mode prescribed in case of depredations inflicted by *Indians at peace and in amity with the United States*. McFarland presented his claim for indemnity against the spoliation complained of, for the first time, about twenty-five years after the period of the alleged depredation. It is supposed that a knowledge of the laws referred to, prevented his application to the government for indemnity until about the time of the treaty with the Winnebagoes of the 1st of November, 1837; for, on the 9th of November, 1837, the chiefs of the tribe, when they arrived at Pittsburg, on their way home, gave McFarland a written agreement to pay him \$12,000, their proportion of the damages he claimed for depredations committed as aforesaid. By the terms of the treaty \$200,000 were set aside for the payment of the debts of the tribe, providing, however, "*that no claim for depredations shall be paid out of said sum.*" The nature of McFarland's claim was not changed by the obligation taken at Pittsburg. No department of this government had any power to go behind or beyond the terms of the treaty in the distribution of the money due under it to the Winnebagoes. At the instance of the late Hon. J. Lawrence, of Pennsylvania, the claim of McFarland was presented, in the fall of 1841, to the Winnebagoes in council assem-

bled, and they rejected it, alleging that "the depredation said to have been committed was done during the war with England, that the Indians there present had no knowledge of it, and that the nation should not be held responsible for deeds of that kind, perpetrated in time of war."

On the 23d of July, 1840, the Hon. T. H. Crawford, then Commissioner of Indian Affairs, (whose indefatigable industry, acknowledged integrity, and legal learning, qualified him so eminently for the discharge of the arduous duties of that office,) after full consideration, made a report to the then Secretary of War, adverse to the claim of McFarland; and afterwards, to wit, on the 18th day of March, 1843, submitted to the Hon. James M. Porter, at that time Secretary of War, another lucid and elaborate report against the same claim, which continued to be urged on the government with such unceasing assiduity. But under a misapprehension of the law and the facts, as understood by your committee, and against the repeated decisions of the Commissioner of Indian Affairs, the Hon. James M. Porter, Secretary of War, did, on the 23d of March, 1843, allow the said claim of \$12,000 to McFarland's representatives, (he being dead at that time,) and directed the same to be paid out of the annuities of the Winnebagoes, and the claim was accordingly paid by the government out of the funds of this tribe. Your committee do not desire to cast any censure on the Hon. James M. Porter; they cannot, however, but believe that his decision was erroneous, and that the payment of McFarland's claim out of the Winnebago annuities was a wrong on the tribe, and it is therefore that they respectfully recommend the passage of the resolution to refund that amount to the Winnebagoes.