36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 329.

# CHAUNCEY A. HORR.

[To accompany Bill H. R. No. 563.]

APRIL 2, 1860.

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

## REPORT.

*The Committee on Indian Affairs, to whom was referred the memorial of Chauncey A. Horr, of Nebraska Territory, have considered the case maturely, and submit the following report:*

This is a claim for compensation for a personal injury inflicted upon the memorialist by a party of Omaha Indians, on the Omaha reserve, in the Territory of Nebraska, in June, 1858. The memorialist asks that so much of the annuity which the United States have stipulated by treaty to pay to the Omahas shall be retained and sequestered for his benefit as shall satisfy his just claim for damages.

This committee, having carefully considered the testimony which was submitted by the memorialist to the Indian agents and superintendent for the district in which the Omahas live, are constrained to arrive at a different conclusion as to its force and bearing from that which was adopted by the officers who had the same under consideration.

The Bureau of Indian Affairs, however, having rejected the claim of the memorialist, upon the ground that there *was a want of jurisdiction at the bureau or its agency to award damages to any citizen for a personal injury inflicted by Indians,* it will devolve upon this committee to detail, in a brief space, the reasons for their conclusions in the case.

It appears that in June, 1858, Mr. Horr was living a few miles from the Omaha reserve, in Nebraska, and had lost a bay horse from his farm, which the mail-carrier informed him that he had seen within the lines of the Indian reservation. The memorialist informed the Indian agent of his loss, who then promised to have the Indians find and restore the horse to its owner; that in a day or two Mr. Horr returned, and learned from the agent that the animal had not been found. The agent suggested to memorialist that he should hunt for the animal on "a certain divide" between two creeks inside of the reserve, and Horr went to this locality accordingly, and there saw a horse standing in some timber. As he approached to ascertain

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whether it was his horse, when he was some forty yards from the horse, three Indians suddenly stepped out from the bushes and fired their rifles at him in quick succession. Two of the balls took effect upon his person. He fled; the Indians pursued and tried to cut off his retreat, but he escaped, and was subsequently taken up by a settler and carried to his house, where surgical assistance was procured. One of the wounds he received was of such a character that it has entirely disabled his left arm, and subjected him to great pain. There is no prospect of his being restored to the use of the arm.

Mr. Horr is now in the meridian of life, and finds himself, by this casualty, a disabled man, incapable of maintaining himself by manual labor, on which he had relied for a livelihood.

But he did not resort to violence for revenge; on the contrary, he filed his complaint against the Omaha tribe before the agent, and made his affidavit to his belief that he had been shot by the Omaha Indians. The chiefs of the tribe, by council, filed a denial that the Indians who shot Mr. Horr were Omahas; so that the point between them made an issue *on the identity of the criminals as Omahas.* To render this question free of difficulty, the chiefs interposed with their denial affirmative matter, pointing *to another tribe for the guilty party.* They said the shooting was probably done by a band of Sioux Indians who were lurking about the Omaha reservation to steal. Now, it is plain this affirmative matter was to be proved by the party introducing it. The chiefs *did* show that the Sioux had stolen ponies from the reserve, and had driven them to their villages *in May* of that year; but this does not maintain the presumption that the Sioux were at the same place, at the same business, *in June,* or that they would shoot a white man in the centre of the reserve to prevent his interference with the property they had captured. The suggestion, inculpating the Sioux, is not maintained by proof, and therefore leaves the Omaha Indians with all the presumptions against their tribe. The offence was committed within three miles of one of the Omaha villages, and near the centre of their reserve. Their chief, Jos. La Flesche, speaking of the occurrence afterwards, said "the Indians in that village were mean enough to do such a deed with a fair opportunity." Had the testimony rested here, the committee suppose the preponderance of the evidence would have been against the Indians; but it does not rest here. George Ironsides testifies that, subsequently to the shooting of Horr, he was on the Omaha reserve, and the subject was introduced in a conversation between him and some Omaha Indians by the Indians thus:

"I was then asked if I had found Horr's horse. I told the Indians I did not care a damn for Horr or his horse. The same Indian then said 'if he got Horr he got two horses;' then he said something, making the sign of twenty times upon his fingers, pointing to the moon, and then making the sign as if shooting an arrow, by which, Charley told me, they meant, if they saw Horr upon the reserve within ten years, they would shoot him."

It cannot be doubted, on this testimony, the Indians manifested hostility to the memorialist. The interpretation of the declaration, "if he got Horr he got two horses," is, that had he succeeded in killing

Horr, he should have succeeded in obtaining the horse Horr was riding at the time, as well as the one he was hunting.

Another witness, Charles McNeany, testifies that he was with the Omahas on their hunt in 1859, and "during said hunt he heard one of them say that he shot at Horr last summer, and that he yet intended to kill him. This conversation was directed to the other Indians, and many other similar remarks were made by the same party. I have heard one other Indian speak of shooting at Judge Horr; I could identify both of them."

To evade the force of this evidence the Indians introduced Ray Harvey, a person in the employment of La Flesche, the Indian chief, to testify that Charley, the person who interpreted for Ironsides, is half-witted, and therefore that no credence should be given to his interpretation of what the Indians said to Ironsides; also, that *Charley told him* (the witness) that Horr had made improper proposals to induce him (Charley) to testify in the case. Thus with one breath he would destroy the force of what Charley interpreted, by proving his incapacity, and in the next he would speak from Charley's mouth to blacken the reputation of Judge Hoor. The signs of the Indians needed no interpreter, and Ironsides does not solely rely on the interpreter. He had a conversation with the Indians before the interpreter joined them, and the committee observe that the bearing of the Indians to the witness was hostile and insolent. The testimony of Ironsides stands unimpeached. The testimony of Ray Harvey is worth nothing, for his own declarations show that his character places him in a position in which he cannot be used to assail the testimony of others. The affirmative testimony which was introduced before the agency sustains the proposition of the memorialist, and fortifies the presumption, which would have possibly been sufficient without affirmative proof, that the perpetrators of the injury to Mr. Horr were Omaha Indians.

The rule of the Bureau of Indian Affairs excluded, however, the consideration of the personal injury to the memorialist as being beyond the jurisdiction of the Commissioner under the intercourse act of 1834.

This committee find no fault with the decision of the Commissioner on the point as to *his* jurisdiction; but the question presents itself very differently when the appeal of the citizen is made *to Congress.* It becomes a powerful government to be distinguished for its humanity to the weak and ignorant; but no government can be excused for failing to protect the lives and personal safety of its own people. The Indians have their rights; so have the citizens of the United States. It would be mistaken philanthropy that could lead the representatives of the power of the United States to close their ears against the complaints of a citizen who is stricken down in the prime of his life, and in the bosom of his country, by the arm of savage violence, lest the government should incur the censure of imposing on the weakness of an Indian tribe. It is absurd to educate the Indian to the idea that the government thinks more of horses and property than of the lives of the citizens of the country; yet such must be the practical effect of the existing rules of intercourse with the Indian tribes should Con-

gress determine that the citizen whose horse is stolen shall be compensated from the Indian annuity or the treasury, but that the citizen who is made, in his own person, a cripple for life is without redress.

The Indians understand the difference between good and bad behavior. They must be taught that while the one purchases kindness and good offices from the whites, the other brings the loss of the annuity primarily, and will ultimately lead to war.

It is a well-settled institute of the public law, that, for injuries done to the citizens of one State by the citizens or subjects of another, the government of the former may demand redress from the government of the latter; and in failure of satisfaction, may resort to reprisals, hostilities, and ultimately to war. Scarcely a year since the flotilla of the United States demanded and received from Paraguay ten thousand dollars as damages for the killing of a hand on an American steamer. The history of every country in Christendom may be appealed to for illustrations of this principle. The Indians are in some sort a foreign people; they make treaties with this government, contracts for land, retain titles in reserve, make demands and reclamations for injuries and losses, and, in a word, vindicate their claims to be considered independent by acts in which they are represented as nations, communities, or tribes. They must be held to corresponding responsibility.

The shooting of Judge Horr by Omahas was a breach of treaty obligation and an express pledge given by the Omahas as a tribe. It may be said the Omahas would surrender the criminals to be punished could they be detected. This would be some redress to the *government* of the United States—none to the *citizen* who has been injured. In this case the Omahas not only have made no redress, but they have denied the guilt of their people, though *a witness declared before the agent* he could identify the individuals who had confessed the shooting, and who threatened to shoot Mr. Horr again on the earliest opportunity, and though this witness was known as a companion of the Omahas on their last year's hunt.

Independently of a treaty, the duty of the United States to Judge Horr, as one of their citizens, is, to see that *he* obtains redress for the outrage committed on him without excuse; the duty they owe to the people generally is to teach the Omahas that such deeds will not pass unnoticed, or be permitted to go without an atonement for them.

The Omahas have an annuity of $30,000 per year, payable by the government for the next ten years. This fund is that from which the satisfaction should be drawn for the injury in this case; the process, a deduction, a sequestration in the nature of a reprisal to the amount of the damages the government believes its citizens to have sustained. The committee are unanimous in the opinion that the surest and best mode of preserving peace on the frontier with the Indians is to hold them to the performance of their duty, while this government treats them with justice and forbearance.

The committee ask leave to report by bill for the relief of the memorialist.