

33d CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 127.

FELIX ARGENTI.

FEBRUARY 23, 1855.—Laid upon the table, and ordered to be printed.

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

REPORT.

The Committee on Indian Affairs, to whom was referred the "petition of Felix Argenti, for relief on account of supplies he furnished the government for the Indians in the State of California," report:

That they have examined into the facts set forth in the petition, and now present them for the consideration of the House.

It is alleged that several drafts, amounting in all to the sum of forty-nine thousand dollars, were drawn on the Hon. A. H. H. Stuart, late Secretary of the Interior, in favor of John C. Fremont, by one Adam Johnston, late an Indian sub-agent in the State of California. These drafts were endorsed by J. C. Fremont, and perhaps others, and were presented to Secretary Stuart for payment by the petitioner or his agent. Payment was refused by Secretary Stuart, and the drafts were all protested. The petitioner now asks Congress to pay these drafts, exchange, damages and interest. Payment was refused at the Department of the Interior, because no appropriation had been made by Congress subject to the order or draft of Johnston, nor did the department then, or subsequently, recommend an appropriation for these drafts, as Johnston had no authority, express or implied, to contract any such liability.

It is further alleged, that the consideration for which these drafts were drawn was for beef furnished Johnston by Colonel Fremont for certain Indians in the San Joaquin valley.

Is the government liable on these drafts now presented by the petitioner? Johnston, as sub-agent, had no authority to make any such purchase; but waiving this, did the then condition of the public service justify him in taking the responsibility? The purchase was made, it appears, prior to November, 1851, and not long preceding that date. Johnston himself says, (see Senate documents special session 1853,) "in the absence of authority, and in view of the best interests of the government, I took the responsibility of furnishing *greater supplies* of beef to the Indians than was *stipulated* in the *treaties*, relying upon the government for its payment in future."

Was Mr. Johnston justifiable in taking this responsibility on himself? President Fillmore had sent out three commissioners to make treaties with the Indians. They arrived about the 1st of January,

1851, and entered upon their duties. Soon after they dissolved the board, wherein they were acting jointly, and divided the State into three districts. The district of Colonel G. W. Barbour included the San Joaquin valley and all the limits of Johnston's sub-agency. Barbour negotiated some forty treaties with various bands of Indians, and stipulated, in most of these treaties, to supply immediately the Indians with beef to subsist upon. The Indians would not consent to treat unless their pressing necessities for food were at once relieved; and although the treaties had not been ratified, Barbour, in the exercise of a certain discretion in his instructions from the Commissioner of Indian Affairs, proceeded, on the 28th day of May, 1851, to contract with Colonel Fremont to supply the beef which the treaties stipulated to be furnished the Indians in the years 1851 and 1852; and on the 28th of August, 1851, the delivery of the whole number of cattle stipulated for was completed, as appears from Johnston's receipt to commissioner Barbour. Colonel Fremont received drafts on the Interior Department, drawn by Barbour, for \$183,000 in full payment for all the beef he furnished, and at the last session of Congress the contract of Barbour, under the circumstances, was recognised, and Fremont was paid his whole demand. What necessity existed for this additional supply of beef contracted for by Johnston? Barbour was the agent—Johnston only a sub-agent; the former supplied all the food he thought necessary; why, then, should Johnston undertake to say that more was needed, when his superior was amongst the same Indians, and was not even consulted by his inferior officer? Can there be a liability on the part of the government for such unauthorized acts of one of its agents, when it is apparent that there was no necessity of his taking any responsibility? It does not appear from the evidence that he ever appropriated one pound of the beef, for which this claim is set up, to feeding the Indians. How, then, can the government be held responsible for Johnston's unauthorized contracts, when it is not proven that the service was directly or remotely promoted thereby? If the beef said to have been purchased by Johnston had been honestly appropriated to feeding the Indians, and thereby prevented them from murdering and robbing the settlers, there might be some obligation to recognise and pay the contract, when it shall have been shown that the supplies provided by Barbour were insufficient.

Your committee, therefore, conclude that agent Johnston exceeded his authority in making the purchase; that there was no necessity for making it; and if there was, there is no evidence to show that the cattle were ever used to advance the public service.

There is, in the judgment of your committee, another fatal objection to this demand of the petitioner. There is no privity between the petitioner and the government. When he received the drafts, they were endorsed to him; and when payment was refused, and the drafts protested, his recourse was upon the endorsers first, and then upon the drawer.

It does not appear to your committee that the petitioner has ever sought a remedy against either drawer or endorsers. It was his duty to have instituted his suit against them. All of them are responsible

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to him; and if Johnston were now the petitioner for relief, your committee do not perceive upon what ground he could be entitled to it. Can the present petitioner claim any higher equity than the drawer of the draft? If the first endorser of the draft were the applicant for relief, how could he answer the fact that at the last session of Congress he was paid the full sum he claimed for beef furnished the Indians in California?

The petitioner is a banker in California; he advanced money on the drafts and received his profits; the drafts were not honored—it was by no default of the government. The laws of Congress were accessible to him, and he should have informed himself what appropriation had been made to meet such a draft. Suppose the draft had been a forgery; would he, although he had advanced his money, have any claim upon the government? and where is the difference in principle, or remedy, when an agent exceeds his authority, and draws drafts unauthorized by law? The agent makes himself personally responsible, and your committee are of opinion that the only remedy left the petitioner is to enforce his claims against the drawer and endorsers of the draft. They recommend that the prayer of the petitioner be not granted.