

5-13-1874

Report : Memorial of D. and D. Sanford

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

S. Rep. No. 345, 43d Cong., 1st Sess. (1874)

This Senate Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

IN THE SENATE OF THE UNITED STATES.

MAY 13, 1874.—Ordered to be printed.

Mr. BUCKINGHAM submitted the following

REPORT:

[To accompany bill S. 735.]

The Committee on Indian Affairs, to whom were referred the bill (S. 735) for the relief of D. G. and D. A. Sanford, and the memorial and other papers accompanying the same, report:

Messrs. D. G. and D. A. Sanford have been engaged for years as cattle-drivers, and on or about the 12th day of June, 1872, they started from the county of San Saba, in Texas, with two thousand seven hundred and eighty-two head of cattle for California. They also had with them thirty-eight horses and mules, four yoke of oxen, and two wagons, which contained their provision and outfit.

On the 8th of July, they applied to Maj. John P. Hatch, commanding United States troops at Fort Concho, for a military escort across the plains. That officer advised them to proceed with their herd, and, as one of the petitioners asserts, promised them an escort which would overtake them on the 13th. They drove their herd about twelve miles, when, at about 1 o'clock on the morning of the 14th, they were attacked by a large body of Indians, a part of whom drove in the herders while the others drove off the stock.

One of the memorialists proceeded at once to the camp, reaching there before daylight, and a force was immediately put under the command of Lieut. W. C. Hemphill, which reached the camp about 10 o'clock in the forenoon. They followed the Indians two days and were obliged to return for want of provisions. They afterward gathered eight hundred and thirty head of their cattle, three yoke of oxen, and twenty horses and mules.

The memorialists state that they were not on any Indian reservation, but were passing through the county of Bexar, in Texas, and that they believe the depredations were committed by Comanche and Kiowa Indians, and estimate their loss at \$34,808.

These statements, except as to the promise of Major Hatch, are sustained by public records which show that they purchased the number of cattle stated by the herders, and by affidavits of others who had more or less knowledge of the memorialists, of their herd, and of the robbery. There are also affidavits which show that the memorialists are men of integrity and entitled to confidence.

A letter dated May 7, 1873, nearly a year after the depredation, addressed to the memorialists, and said to have been written by F. C. Taylor, superintendent of El Paso Mail Company, states that the mail-coach coming east with the El Paso mail was attacked by Indians the

same day that the cattle were taken, that the driver was shot, the mail robbed, and two mules taken, and that he has no doubt both acts were perpetrated by the same party of Indians, who were, as he believes, Kiowas and Comanches from the reservation at Fort Sill.

In a letter dated July 19, 1873, the same party states that he had seen two mules in the hands of the assistant quartermaster of the post at Fort Concho that were the lead-mules of a team that was captured by Indians about thirty-three miles west of Fort Concho, on the El Paso mail-road, on the morning of the 14th of July, 1872, and that he is informed by the post quartermaster that the mules were sent to him from Fort Sill.

There are also copies of invoices of ordnance and ordnance stores turned over by Captain Coxie, Twenty-fifth Infantry, to Lieut. F. A. Kendall, Twenty-fifth Infantry, at Fort Davis, Texas, on the 22d of June, 1872, accompanied by a certificate from George O. Parker, first lieutenant Fourth United States Cavalry, stating that they were made from the originals which were found in an Indian camp on the North Fork of the Red River, which was destroyed by Col. R. S. McKenzie's command on the 29th of September, 1872.

This is a summary of the facts, which prove that the memorialists have sustained a great loss. They ask for remuneration. If granted it must be from the Treasury of the United States, or from funds in the possession of the Government which belong to the Indians who committed the depredation.

We should first inquire whether the Government is under obligations to indemnify the memorialists for their loss. The petitioners were engaged in a lawful but hazardous business. They understood the perils to which they were exposed when they were engaged in it. Under a consciousness of danger they appealed to a military officer in the service of the Government for protection. Under his advice and promise of an escort they proceeded to carry out their plans for a successful business. In this they failed, and charge the cause of their failing to a non-fulfillment of the promise of that officer and endeavor to hold the Government responsible for their loss. There is no doubt but the promise of the officer, if made, was made in good faith, and no evidence but that he made every reasonable effort to fulfil it. There is no proof of negligence on the part of this officer, and no evidence but he used all the means at his command in a manner that would best serve the interests of his Government. If this is true, the trader can make no claim that the loss was sustained through his neglect.

Nor is the Government under obligations to indemnify its citizens for losses sustained by Indian depredations. In 1859 it repealed an act which implied such obligations, and ever since that time it has exercised its powers, as best it might, to protect all its citizens in the pursuit of lawful enterprises, but left it for them to determine whether or not they would pursue any particular business and assume the risks, whether greater or less, incident to its prosecution. In the prosecution of their business it appears to your committee that the petitioners and not the Government assumed the risk which resulted in their loss.

There is still another question involved in this claim. Shall the Government make indemnification and remunerate itself out of funds which belong to the Indians? This has been done, but can never be justified unless the wrong-doing has been proven against a tribe or nation. The only evidence that fastens this robbery upon any particular Indians is found in a letter written by a mail-agent about a year after the occurrence, which speaks of a robbery of a mail and of the identifi-

cation of mules that were on the mail-coach when it was robbed, (by the Kiowas and Comanches as he believes,) and in a certificate from a military officer that the original invoice of ordnance and ordnance stores were found in an Indian camp on Red River in September, 1872; from which we are to infer that these invoices were in the mail at the time of the robbery, that the robbery of the mail and of the memorialists was by the same party, and that that party was the Indians in whose camp the invoices were found. To what tribe they belonged does not appear.

This evidence is too feeble to justify the Government in holding any particular tribe responsible for the loss of the memorialists.

Your committee therefore report adversely upon the passage of the bill.