

6-15-1882

Report : Petition of A. Larkin

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IN THE SENATE OF THE UNITED STATES.

JUNE 15, 1882.—Ordered to be printed.

Mr. COKE, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill S. 1861.]

The Committee on Indian Affairs, to whom was referred the bill (S. 1861) for the relief of A. C. Larkin, have had the same under consideration, and report it back to the Senate with a recommendation that it be passed without amendment; and they submit, as the grounds of this recommendation the facts and circumstances set forth in the following correspondence with the Department of the Interior:

DEPARTMENT OF THE INTERIOR,
Washington, May 23, 1882.

SIR: I have the honor to acknowledge the receipt of a letter from your committee of the 17th instant, inclosing S. 1861, "A bill for the relief of A. C. Larkin," with request for information as to Mr. Larkin's losses, and departmental action in the matter.

In reply, your attention is respectfully invited to the inclosed letter of the 22d instant from the Commissioner of Indian Affairs, to whom the subject was referred, and to copy of department letter of January 16, 1882, transmitting Mr. Larkin's depredation claim to the Hon. Speaker of the House.

Very respectfully,

H. M. TELLER,
Secretary.

Hon. HENRY L. DAWES,
Chairman Committee on Indian Affairs, United States Senate.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 22, 1882.

SIR: I am in receipt, by department reference of the 19th instant, of the letter of Hon. H. L. Dawes, chairman of the Committee on Indian Affairs of the United States Senate, inclosing a copy of Senate bill 1861, "for the relief of A. C. Larkin," and requesting such information as the office may have relative to said claim and the action of the department thereon, and in reply have to say that said claim was reported to Hon. Secretary of the Interior on the 22d of March, 1881, with a recommendation that the same be allowed for \$4,875.

It was transmitted to Congress January 16, 1882.

No new evidence has since been filed, and I know of no reason why the action of the office as stated in that report should be modified or changed in any way.

The letter of Senator Dawes, together with the printed copy of the bill, are herewith inclosed.

Very respectfully, your obedient servant,

E. L. STEVENS,
Acting Commissioner.

Hon. HENRY M. TELLER,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington City, January 16, 1881.

SIR: In compliance with the terms of the seventh section of the act approved May 29, 1872, entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1873, and for other purposes," I have the honor to transmit herewith the claim of A. C. Larkin, amounting to \$11,150, for compensation on account of depredations committed by Cherokee Indians.

A letter (copy inclosed) dated the 22d day of March, 1881, from the Commissioner of Indian Affairs, reporting the nature, character, and amount of said claim, is accompanied by the evidence presented in support thereof, and shows the action taken by that officer under the rules and regulations prescribed by this department for the investigation of such claims; all which is respectfully submitted for the consideration of Congress as contemplated by said seventh section of the act aforesaid.

Very respectfully, your obedient servant,

S. J. KIRKWOOD,
Secretary.

The Hon. SPEAKER of the House of Representatives.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 22, 1881.

SIR: I have the honor to submit for your consideration, and such action thereon as you may deem advisable, a claim of Augustus C. Larkin for \$11,150, on account of depredations alleged to have been committed by the Cherokees on the 26th of October, 1874.

The complaint, testimony, and correspondence are very voluminous. The previous proceedings are somewhat irregular and needlessly complicated, by reason of the alleged claim having been under the management of several different attorneys at as many different periods. The claim was originally filed in this office on September 3, 1875, and is for feloniously and forcibly taking and driving away from the claimant's possession, by citizens of the Cherokee Nation, a quantity of live stock belonging to him, and, by false pretenses and promises to release said stock, obtaining from him under such promises, the sum of \$500 in cash, while the claimant and his stock were lawfully in the Indian Territory, and is based upon section 2156 of the Revised Statutes of the United States, and is supported by affidavits of several persons cognizant of the facts set forth in the complaint.

On the 4th of September, 1875, this office, by letter of that date, transmitted this claim to George W. Ingalls, then United States agent at Muscogee, Ind. T., directing him to take action thereon agreeably to the requirements of the department rules and regulations, and report proceedings thereon as early as practicable.

To this letter no reply was received by this office. On December 11, 1876, an office letter was addressed to S. W. Marston, the successor of Mr. Ingalls, calling his attention to the letter of September 4, 1875, and directing him to report what action had been taken in the matter.

By letter from Agent Marston of 22d December, 1875, this office was informed that the papers in the Larkin case could not be found in his office, to which letter this office replied on the 6th of April, 1877, directing further search to be made.

By letter of April 10, 1877, Agent Marston reports to this office that he had found the papers, and had sent them to Mr. Larkin for some necessary amendment, and asks instructions; and in reply thereto office letter of April 16, 1877, was sent to the agent, advising him that upon the return of the claim to him by Mr. Larkin he should carefully examine it, and have it verified by competent witnesses, and present the case to the proper nation or tribe under the rules and regulations of the department, and report the action had thereon.

On the 13th day of November, 1877, the papers setting forth the claim were submitted to the Cherokee authorities, by the agent in person, by handing them to the Cherokee chief, Charles Thompson, at his office in Tahlequah, and while the Cherokee council was in the first week of its session. He then informed Agent Marston that he would at once lay the same before the council and accompany it by a special message, which he did, and the matter was thereupon referred to a special committee for examination and report thereon.

No action appears to have been taken thereon by said committee during the session of the council, which adjourned at the expiration of the thirty days limited by law for holding its sessions.

Owing to this inaction, and the fact that the reasonable time allowed by section 2156 of the Revised Statutes of the United States for making satisfaction for depredations

tions would expire before reparation could be made, and construing such inaction as a neglect and refusal on the part of the nation to make the satisfaction sought for, the agent and Mr. Larkin demanded the return of said claim and accompanying papers, in order that the agent might make report of his action to this office, that such further steps might be taken as should be proper to obtain satisfaction for the injury complained of.

Omitting as unimportant much of the correspondence that ensued between the agent and the chief of the Cherokee Nation and his executive secretary, in the effort of the agent to secure the return of said papers, I herewith submit copies of such correspondence as I deem pertinent, being—

1st. Letter from S. W. Marston, United States Indian agent, to Charles Thompson, February 4, 1878.

2d. Letter from Charles Thompson to S. W. Marston, February 11, 1878.

3d. Letter from S. W. Marston to Charles Thompson, February 23, 1878.

4th. Letter from William Rasmus, executive secretary, to S. W. Marston, February 27, 1878.

5th. Letter from Charles Thompson to L. B. Bell, senate clerk, March 5, 1878.

6th. Letter from S. W. Marston to William Rasmus, executive secretary, March 12, 1878.

7th. Letter from William Rasmus, executive secretary, to S. W. Marston, March 15, 1878.

8th. Letter from Charles Thompson to S. W. Marston, April 30, 1878.

And marked respectively Exhibits 1 to 7, both inclusive.

The papers having been finally delivered to Agent Marston, they again came before this office, and on the 28th of August, 1878, Chief Thompson sent to this office letter of that date (copy herewith, Exhibit 18) requesting a certified copy of the papers relating to said claim, that said certified copy might be used instead of the originals in again placing the matter before the national council, and protesting against any action upon said claim by this department until the council of the nation should have ample opportunity to finish its investigation thereof. Complying with the request of the chief, a certified copy of said papers, which are voluminous, was on November 8, 1878, transmitted by this office to Charles Thompson, chief of the Cherokee Nation.

Nothing being heard from the Cherokee council or the chief of the nation after the transmission of said certified copy, a letter was sent by this office to Chief Thompson, and dated March 19, 1879, of which Exhibit No. 9 (herewith) is a copy, again calling attention to the Larkin claim, and insisting upon final action thereon.

Still receiving no reply to the letter last above referred to, this office, on the 23d July, 1879, again wrote to Hon. Charles Thompson a letter of that date (copy herewith, Exhibit 10), notifying him, as chief of said Cherokee Nation, that unless attention should be given to the matter of said claim, and an answer filed within thirty days from that date, this office would proceed to final action thereon.

Within the thirty days above referred to, a lengthy communication was received by this office, dated June 18, 1879, signed by W. P. Adair and Daniel H. Ross, Cherokee delegates, which is mostly, in effect, a plea to the jurisdiction of this office, protesting against its entertaining such jurisdiction, and again insisting upon the return of the papers to the national council for adjudication; and alleging that "the papers before you" (the Commissioner of Indian Affairs) "relating to this claim show conclusively, without other evidence which we are prepared to produce, that the claimant was in the Indian Territory (Cherokee Nation) in open violation of our treaties and the laws of the United States," &c.

Having assumed jurisdiction of this matter by reason of the long-continued delay and neglect of the Cherokee council to take proper action in the matter, as authorized so to do by section 2156 of the Revised Statutes, control of the claim and the right of this office to adjudicate it was retained; and on the 10th of September, 1879, in reply to the said last-mentioned communication, a letter was addressed to W. P. Adair and Daniel H. Ross, delegates, &c., requesting them to forward the "other evidence" referred to in their communication within forty-five days. The answer to this request, dated October 4, 1879, is from Charles Thompson, chief of the Cherokee Nation, and contained a letter from Hon. W. H. Clayton, United States district attorney for the western district of Arkansas, addressed to Chief Thompson, in reply to a letter written by him to said Clayton, and containing his *ex parte* statement, from recollection only, of the testimony given by Larkin on the trial in said court of three of the persons engaged in said depredation, who were indicted and tried on a criminal charge as instigators and parties concerned in the depredation, and two of whom were convicted and imprisoned.

This statement, under the established rules of evidence in court, is not only inadmissible as testimony, but is objectionable as expressive of an opinion formed from a collection of matters testified to on said trial.

Under all the facts and circumstances hereinabove stated, I have the honor to report that after an examination of the testimony on file in this office in support of the

said claim of Augustus C. Larkin against the Cherokee Nation for compensation for the depredation alleged in his complaint, and having declined to remit the papers therein to the national council, I herewith submit, for your consideration and action, the following finding of fact, and my conclusion of law thereon:

1. I find from the evidence that said Augustus C. Larkin is a white man and a citizen of the United States.

2. I find from the evidence that on or about the 26th day of October, 1874, the date of the depredations hereinafter referred to, he was the owner of the following described personal property, to wit: 24 calves (Durham); 21 yearlings (Durham); two-year-old half-breeds; 33 cows; 3 yoke of oxen; 1 thoroughbred bull; 2 Dog-bulls; 1 span mules; 1 two-year-old mule; 1 horse; 1 mare; and \$500 in money.

3. I find from the evidence that all of said property was wrongfully and feloniously taken and driven away from the possession of said claimant by James M. Bell, Andrew Barker, James Barker, and others, their confederates (whose names are unknown), all of whom are members of the Cherokee Nation and reside therein.

4. I find from the evidence (authenticated copies of records of the United States district court for the western district of Arkansas) that said James M. Bell, Andrew Barker, and James Barker were severally arrested, indicted, and tried in said court for the larceny of the above-described property of said Larkin, and that said Andrew Barker and James Barker were duly found guilty and sentenced by the court as follows: The said Andrew Barker to confinement for one year in the penitentiary, West Virginia, and the said James Barker to the penitentiary of Arkansas for the term of one year.

5. I find from the evidence that after said property was so feloniously taken away, the said James M. Bell, Andrew Barker, and others, members of the Cherokee Nation, falsely claimed to be acting as deputies under authority of one Joseph Lynch, sheriff of one of the districts in the Cherokee Nation, and, under a promise to restore said property, compelled said claimant to pay to one William Booth the sum of \$500, under pretense that the same was for the use of the Cherokee Nation. That said claimant paid said sum of \$500 under protest, but that his property was never restored to him.

6. I find from the evidence that the said Augustus C. Larkin was rightfully and lawfully residing in the said Indian Territory at the date of said depredations, and for four years previously had been such resident, and that he had paid his tax up to and including the year 1874 to the proper officer of said nation, which went into the treasury of the nation.

7. I find that the headmen of the Cherokee Nation were repeatedly called upon in reference to said depredations, as well by the proper Indian agent as by the claimant, and they were urged to take the necessary action thereon for settlement thereof; and that although it is now more than five years since the committing of said depredations, they have refused and neglected, and still neglect and refuse, to take any steps in the matter, notwithstanding section 2156 of the Revised Statutes of the United States requires such settlement within one year from the date of complaint.

8. I find that the value of the stock at the time it was taken was the sum of \$4,375, which added to the amount of \$500 previously taken from said claimant make together the sum of \$4,875.

9. As a conclusion of law, I find that the said Augustus C. Larkin is entitled to recover from the said Cherokee Nation, in consideration of the foregoing facts, the sum of \$4,875; and should provision be made therefor by Congress as contemplated in section 2098, Revised Statutes, the amount should be charged to any fund in the Treasury of the United States standing to the credit of the said Cherokee Nation.

The papers in this case are herewith transmitted.

Very respectfully, your obedient servant,

THOM'S M. NICHOL,
Acting Commissioner.

The Hon. SECRETARY OF THE INTERIOR.