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Report : Petition of J. Blaze

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IN THE SENATE OF THE UNITED STATES.

JANUARY 16, 1883.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill S. 2229.]

The Committee on Indian Affairs, to whom was referred the bill (S. 2229) for the relief of Joseph H. Blazer, have examined the same, and report as follows:

The claimant, in his declaration of December, 1881, on file in the Office of Indian Affairs, states that he is a citizen of the United States, and a resident of the county of Lincoln, New Mexico; that he is now, and was during the years 1879, 1880, and 1881, engaged in the business of farming, stock-raising, and saw-milling, on the stream known as the Rio Tularosa, within the limits of the Mescalero Apache Indian Reservation; that he occupied and improved the property on which he carries on his business as set forth, previous to the said reservation being set apart from the public domain, and alleges that during the year 1879 the Mescalero Apache Indians committed depredations upon his property, damaging him to the amount of \$4,582.45; that during the year 1880 said Indians committed depredations upon his property, damaging him to the amount of \$2,823.75, and that during the year 1881 said Indians committed depredations upon his property amounting to \$1,621.25, as shown by the schedule accompanying the declaration, amounting in the aggregate to \$9,027.45; that the property above described has never been recovered by or for him, or any portion thereof; that he has never sought or endeavored to obtain private satisfaction or revenge on account of the losses as above set forth; that said losses were not caused by any negligence or carelessness on the part of dependent or his employés, and that all proper precautions were taken to protect and care for the property described.

In support of his declaration he files the affidavits of George W. Maxwell, Jabez Hedges, David M. Easton, and Andrew Wilson, who corroborate the statements in the declaration.

Under date of December 31, 1881, United States Indian Agent William H. H. Llewellyn, of Mescalero Agency, reports that the Indians in council acknowledge to have unavoidably depredated upon the claimant's property in crossing to and from their farms, claiming, however, that the land occupied by Mr. Blazer, and on which the crops alleged to have been stolen or destroyed were growing, belonged to them, and that when the government located them on this reservation it was with the understanding that they were to be the sole occupants thereof.

Agent Llewellyn also reports that the prices charged by the claimant are fair and reasonable, and that the credibility and standing of the witnesses are good in the community in which they live.

A summarized statement of the claim as presented would stand thus:

136,000 pounds of corn "stolen by said Indians during the growing and immediately after the maturing thereof," at 4 cents per pound	\$5,440 00
75 tons top fodder, at \$20 per ton	1,500 00
Amounts paid for labor on irrigating acequias and mill ditches	750 00
1,310 cedar posts, at 25 cents each	327 50
13,388 feet lumber, used in repairs of fences, at \$25 per M	459 70
770 pounds nails, used in repairs of fences, at 12½ cents	96 25
Paid for 126 days' labor of one man in making repairs, at \$1.50 per day	204 00
10 tons gramma hay, at \$25 per ton	250 00
Total	9,027 45

It will be observed that the loss alleged to have been sustained by the claimant consisted in the destruction of growing corn and corn just matured, and the United States Indian agent for the Mescalero Indians verbally stated to the Commissioner of Indian Affairs, as appears by a communication from the Commissioner, that this destruction accrued while the corn was standing, and without its having been harvested. It is apparent, therefore, that the quantity of corn and top fodder must have been estimated, and your committee are unable to see how the quantity could be accurately ascertained. The claimant swears, however, that the amount of corn alleged to have been stolen and wantonly destroyed by the Mescalero Apache Indians caused him "a greater loss than the actual, intrinsic value as claimed for it by him," and that "he was compelled by the loss of the corn, as set forth" in his declaration, "to purchase corn at Las Vegas and freight the same to this point" (the Mescalero Indian Reservation) "by ox and mule teams, a distance of 220 miles, in order to fulfill his obligations to the United States Government," he being a "forage agent of the United States in the Fort Stanton district in the Military District of the Territory of New Mexico."

The claimant avers, and the records of the Indian Office, aside from the papers in the case, show that he resided there for several years prior to the setting apart by Executive order of the Mescalero (or, as it was then called, the Fort Stanton) Indian Reservation. Said reservation was withheld from entry and settlement as a reservation for the Mescalero Apache Indians by Executive orders dated May 29, 1873, February 2, 1874, and October 20, 1875, which will be found printed in the Annual Report of the Commissioner of Indian Affairs for 1878, on pages 263 and 264. No lands within the exterior limits of the reservation were excluded except the lands embraced in the Fort Stanton military reservation, although it was known that there were several persons who occupied portions of the region proposed to be reserved, and after the Executive order was issued in 1875, Hon. John McNulta was appointed a commissioner to appraise the value of the improvements of such persons. The improvements of Messrs. Blazer and Abbott (then in partnership) were appraised by him at \$12,799.59, which appears not to have been satisfactory to them, and they have never been removed from the reservation; on the contrary, some of the buildings erected by them have been used for the storage of Indian supplies, and they have been paid rent for the same. The failure of the government to remove them, however, gave them no legal right to occupy any portion of the reservation after it was created. The Commissioner of Indian Affairs has uniformly held that the land therein was reserved for the

exclusive use and occupation of the Indians, and by act of August 15, 1876, Congress directed that—

The Commissioner of Indian Affairs shall direct that said Indians [the Apache Indians in Arizona and New Mexico] shall not be allowed to leave their proper reservations, and it shall be the duty of the War Department to aid the Indian Office in seeing that the orders of the Commissioner are executed. (19 Stat., p. 195.)

It is possible that Mr. Blazer has an equitable claim for losses sustained by him in the years 1879, 1880, and 1881, but the committee are unable from the evidence presented to determine the amount of such loss. There are no funds under any treaty with the Apaches out of which the claim can be paid, and any amount found due would therefore, if appropriated for, have to be appropriated from public moneys.

We recommend that the claim be not allowed, and that the bill be indefinitely postponed on two grounds:

First. The evidence is not sufficiently definite to enable the committee to determine the amount of loss, if any, sustained by Mr. Blazer.

Second. The United States does not admit and never has admitted that it is liable to compensate persons who have sustained loss from Indian depredations, and such losses, as a rule, have not been paid by the government.