

3-22-1884

Estate of George Maxwell

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Recommended Citation

H.R. Rep. No. 971, 48th Cong., 1st Sess. (1884)

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ESTATE OF GEORGE MAXWELL.

MARCH 22, 1884.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. S. W. PEEL, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 3943.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 3943) for the relief of George Maxwell, for depredation committed on his property by the Cheyenne Indians, beg leave to submit the following report:

The claimant, George Maxwell, on October 17, 1868, filed his demand, properly verified, before the Commissioner of Indian Affairs, against the Government of the United States, for the sum of \$13,100, in which demand claimant alleged that on August 19, 1868, he was in the employ of the Government of the United States, freighting Government goods to Fort Union, N. Mex., and that at a point on the Arkansas River known as Cimarron Crossing his train was attacked by a large band of Cheyenne Indians. He shows by his said complaint that said Indians took from him by force at said time fifty-two head of mules, of the value of \$200 each, and ten head of mules of the value of \$250 each, and one horse of the value of \$200, aggregating \$13,100. It appears that afterward, to wit, on March 20, 1869, said claimant filed a supplement, or rather an amended complaint, in which he avers that said Indians, on said occasion, stole and drove off from him as follows:

Sixty-two head of mules at \$209.03½ each.....	\$12,960 06
One horse of the value of.....	200 00½
Three saddles of the value of \$18 each.....	54 00
Three bridles and picket ropes, worth.....	15 00
Wages and board of 12 hands for two months guarding train.....	1,200 00
Loss from proceeds of said train for two months.....	3,200 00
Total.....	17,629 06½

It also appears from the affidavits on file with this claim that claimant and several other witnesses testify directly and positively that said depredation was actually committed, and claimant and several witnesses, to wit, Charles Blanchard, Martin Baca, Jose Sait, and Urbane Garcia, testify that the number of mules taken were sixty-two, and one horse; that the mules were worth from \$200 to \$225 each. Claimant alone testifies that the horse was worth \$200. Claimant and several witnesses testify to the two months' hire and board of 12 hands, and that it was worth the sum of \$1,200. Claimant alone testifies to the loss on train for two months of \$3,200. It also appears from the letter of the Hon. B. Darlington, United States Indian agent of said Indians,

of date February 2, 1871, addressed to the Hon. Enoch Hoag, the then superintendent of Indian affairs, that said Indians, in council assembled, admitted the depredation alleged by claimant, and that as such agent he demanded satisfaction of said Indians therefor. Said agent in said letter further says that said claim is just, and ought to be paid, which letter, or a copy thereof, is hereto appended as a part of this report.

It further appears that Hon. H. R. Clum, the then Commissioner of Indian Affairs, in a letter to the Secretary of the Interior under date of March 4, 1871, "said that there appeared a discrepancy in the two several accounts of claimant in regard to items and valuations, and that the evidence fully established the alleged depredation, but failed to prove the number of mules taken and their true value; also stated that the item of hire and board for the 12 hands, two months, was consequential and ought not to be paid." Said letter is hereto appended as a part of this report. It further appears that the Secretary of the Interior, under date March 10, 1871, refers this matter to Congress under fourth section of act making appropriation, which letter is also appended hereto as a part of this report.

From all of which your committee, after a careful investigation, are of the opinion that the depredation was actually committed as alleged, and that said Indians took from the person of claimant, by force, the number of mules alleged, and one horse, but that claimant and all of his witnesses overestimate the value of the mules and the horse, and that \$150 each for the mules and \$150 for the horse would be a fair and just value thereof; and that George Maxwell ought to recover for said property the aggregate sum of \$9,450.

Your committee are further of the opinion that the charge of claimant for two months' hire and board of the twelve hands, and the loss of proceeds of trains for two months is consequential, and the latter very remote and ought not to be allowed.

Therefore your committee recommend that said bill be amended by striking out \$17,629, and insert in lieu thereof \$9,450 as the full compensation for said depredation, and as amended that it pass.

CHEYENNE AND ARAPAHO AGENCY, *February 2, 1871.*

SIR: The inclosed claim of George Maxwell for alleged depredations and damages sustained thereby were investigated by the Cheyenne tribe in council assembled. They admitted that the depredations therein set forth were committed by the Cheyenne Indians. I demanded satisfaction therefor. I believe that they were sincere in what they said, and that the aforesaid claim of George Maxwell for sixty-two head of mules, one horse, three saddles, bridles, and lariat ropes is just and should be paid.

Respectfully,

BRINTON DARLINGTON,
United States Indian Agent, Cheyennes and Arapahoos.

ENOCH HOAG, *Superintendent of Indian Affairs.*

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 4, 1871.

SIR: I have the honor to submit herewith a claim of George Maxwell on account of a depredation committed in August, 1868, by Cheyenne Indians.

Claimant adduces the testimony of several persons to show that on the 19th day of August, 1868, while he was engaged in freighting military stores to Fort Union, in New Mexico, his train was attacked at a point known as Pawnee Fort, on the Arkansas River, by a band of Cheyenne Indians, who stole then and there from him a number of mules and other property.

The claim was for the first time presented to this office on the 18th October, 1868, by Hon. C. P. Clever, and the claimant, under oath, then represented his loss to be as follows:

52 mules, valued at \$200 each	\$10,400
10 mules, valued at \$250 each	2,500
1 saddle-horse	200
Total	13,100

This statement of the claimant is sworn to, in a general way, as being true and correct, in a joint affidavit by Charles Blanchard and five other persons, appended to which is a certificate, without date, of E. W. Wynkoop, as United States agent for the Cheyennes and Arapahoes, to the effect that he examined into the circumstances connected with the claim and is satisfied the claim is just, and that the price charged for the property is reasonable.

Subsequently, in 1869 and 1870, further testimony was filed in the case by claimant's attorneys, John Watts and Charles Ewing, with another statement by Mr. Maxwell, showing his loss to have been to the amount of \$17,629, the claim now setting forth that the Indians stole and carried away the following property, viz:

62 head of mules, valued at \$209.03½ each	\$12,960 06½
1 horse valued at	200 00
3 saddles, valued at \$18 each	54 00
3 bridles and picket-ropes	15 00
Wages and board of 12 men as guards for two months	1,200 00
Loss from proceeds of said train for two months	3,200 00
Total	17,629 06½

That the case might take the course prescribed by the seventeenth section of the intercourse act of June 30, 1834, applicable to claims of this character, it was transmitted to Superintendent Hoag in June last, with instructions to have the same presented to the Indians, and demand made upon them for satisfaction. This was done and the claim returned with a report thereon by Agent B. Darlington, a copy of which is herewith, dated February 2, 1871, by which it will be seen that the Cheyennes admitted the charge against them.

I have carefully examined the papers in the case and am of the opinion that the fact of the depredation as charged is fully sustained; but I do not think the testimony sufficiently establishes the claim as to the *actual* number of mules that were taken, nor as to their just value. The items of \$1,200 for wages and board of guards, and \$3,200 for loss by reason of delay in claimant's business arising from the act of the Indians, being in the nature of consequential damages, are not considered admissible.

I respectfully suggest that the claim be reported to Congress under the fourth section of the act making appropriations for the Indian Department, approved July 15, 1870.

Very respectfully, your obedient servant,

H. R. CLUM,
Acting Commissioner.

Hon. C. DELANO,
Secretary of Interior.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 10, 1871.

SIR: I have the honor to transmit herewith a copy of a communication, dated the 4th instant, from the Acting Commissioner of Indian Affairs, reporting the claim of George Maxwell on account of a depredation committed in August, 1868, by Cheyenne Indians, which is herewith respectfully submitted to Congress, under the fourth section of the act making appropriations for the Indian Department, approved July 15, 1870, for such consideration and action as may be deemed appropriate by that body.

Very respectfully, your obedient servant,

C. DELANO,
Secretary.

Hon. JAMES G. BLAINE,
Speaker of the House of Representatives.