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### Report : Petition of Wolff and Brown

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S. Rep. No. 481, 48th Cong., 1st Sess. (1884)

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IN THE SENATE OF THE UNITED STATES.

APRIL 29, 1884.—Ordered to be printed.

Mr. COCKRELL, from the Committee on Military Affairs, submitted the following

REPORT:

*The Committee on Military Affairs, to whom was referred the petition of Wolf & Brown, per John B. Wolff, have duly considered the same, and submit the following report:*

The petition is not dated nor verified by affidavit, is signed Wolf & Brown, per John B. Wolff, and alleges that Col. Thomas Moonlight, commanding military district of Colorado, pressed two horses belonging to them into the service, and that the horses have never been returned or paid for.

The petition was presented to the Senate on the 10th of March, 1884. At the end of the petition is this note: "Copy of proofs on file herewith submitted."

With the petition was also referred to your committee the copy of the proofs. These have been carefully examined, and consist of the affidavits of Jacob H. Brown, one of the claimants, Hiram G. Wolff, Joseph T. Boyd, John Cree, all made in 1879, and Thomas C. Burgen, made in 1882.

Jacob H. Brown says in his affidavit that—

About February 25, 1865, there was taken from him, in Jefferson County, Colorado, by a provost marshal, by the alleged authority of Col. Thomas Moonlight, then commander of Colorado military district, one black horse, taken to headquarters of said Moonlight, and receipted for at \$250, with the assurance that the Government would pay the per diem and full price of the horse if not returned. That on the return and muster out of the First Colorado Mounted Cavalry, he presented his receipt and demanded his horse, and the horse was not among the horses returned. And he has lost the receipt and never received any compensation for said horse, worth \$250.

Hiram G. Wolff says—

There came to the premises of John B. Wolff, a provost marshal, who, by the alleged order of Col. Thomas Moonlight, took from the said premises one black horse. And that the affiant is well informed that the said John B. Wolff pursued and found said horse at Col. Moonlight's headquarters, and obtained a receipt for the same with the promise of per-diem allowance and full pay if not returned. That, on the muster-out of said regiment, said Wolff applied and searched for said horse, and did not receive him.

These facts he alleges from the strength of having been on the premises at the time and having remained there up to September, 1878, and having accompanied the said John B. Wolff when he made search and demand for his horse.

Joseph T. Boyd says that—

He was at Colonel Moonlight's headquarters in Denver when one of the horses, the one appraised at \$250, was taken possession of by the order of Colonel Moonlight and knows that the men were in the United States cavalry uniform who took possession of the same.

John Cree says that—

During 1865, to complete the equipment of the First Mounted Volunteers of Colorado, Colonel Moonlight did press into the service of the United States a number of horses; that among these horses were horses belonging to John B. Wolf and Jacob H. Brown; that these horses were appraised and receipted for by himself and one Mr. Long; that he does not remember the further name of said Long, nor does he know his present whereabouts or residence; that the owners of said horses were told that they would be entitled to the usual Government per diem or the full price of the horses if not returned; that on the return and muster-out of said regiment, public notice was given, and the owners of said horses were allowed to reclaim their horses and return their receipts which had been given them.

Thomas C. Burgen says that—

Col. Thomas Moonlight did press horses to complete the outfit of the Colorado volunteers in 1865, and the county commissioners of Jefferson County, in Colorado, of which he was one, did not supply any horses for the county, and did not use any horses to pay soldiers.

This is all the evidence, and is indefinite, uncertain, and largely based upon hearsay and assumption.

This is not the first appearance of this claim before Congress. In the Forty-second Congress a similar petition was presented and referred to the Committee on Claims of the Senate, and that committee, through Mr. Wright, made the following adverse report:

[Senate Report No. 65, Forty-second Congress, second session.]

Petitioners claim that the horses (two in number and of the value, as they assert, of \$475) were taken by Col. Thomas Moonlight, while in command of the Colorado military district, during the month of February, 1865.

Without undertaking to state all the grounds which lead your committee to report against the prayer of the petitioners, they content themselves with stating the following:

The petition itself is quite barren in its statement of facts and wanting not a little in clearness. Waiving this, however, the material consideration is that there is no evidence submitted in its support. How and under what circumstances these horses were taken; whether they were or were not returned; whether paid for or not; what their value; all these matters, most material, as will certainly be conceded, are left entirely without proof; and to grant the prayer we should have to grope our way in the dark.

We recommend that the petitioners have leave to withdraw their claim.

This did not seem to satisfy the claimants, and in the Forty-sixth Congress they presented another petition very similar to the one now presented, which was also referred to the Committee on Claims of the Senate, and Mr. Cockrell from said committee made the following adverse report:

[Senate Report No. 166, Forty-sixth Congress, second session.]

The petition of the claimants is addressed to Congress, is not verified by affidavit, was not accompanied by any evidence or papers, and is as follows, to wit:

*To the Senate and House of Representatives of the United States of America in Congress assembled:*

Your petitioners respectfully represent: That on or before February 20, 1865, Col. Thomas Moonlight, being then commander of Colorado military district, and an officer of the United States Army, did, by his authority, enter upon our premises in Jefferson County and Territory of Colorado, and press certain horses, to wit, one sorrel horse and one black horse, into the service, in the name of the United States; that said horses were taken to the headquarters of said Moonlight, appraised, and receipted for—the sorrel at \$250, the black at \$225; that we were promised the regulation price, 40 cents per day, for each horse until returned; that we have exhausted all our legal remedies, and the War and Treasury Departments both refuse to pay us. We therefore pray that Congress order us paid according to the terms of the contract; that our horses never having been returned or paid for, the legal presumption is that they are still in the service, and the bill is necessarily accumulating.

We further respectfully represent that the taking of our horses in the spring time was greatly to our damage, and we have been further damaged by the delay and refusal to pay, by which we have been deprived of the use of our property now fourteen years.

WOLFF & BROWN,  
Per JOHN B. WOLFF.

Your committee addressed a letter of inquiry to the Secretary of War, and received through him the following letter and accompanying papers from the Adjutant-General, to wit:

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,  
*Washington, January 19, 1880.*

SIR: I have the honor to return herewith letter of December 22, 1879, from the Hon. F. M. Cockrell, requesting certain information in the matter of a petition of Wolff & Brown for compensation for horses alleged to have been taken by Col. Thomas Moonlight, in Jefferson County, Colorado, in 1865, and to report thereon as follows:

Col. Thomas Moonlight, Eleventh Kansas Volunteer Cavalry, at the time of the impressment of the horses mentioned in the petition, was in command of the district of Colorado, with headquarters at Denver. He directed Capt. W. H. Evans, Eleventh Ohio Cavalry, stationed at Camp Collins, Colo., to press horses into service, for which, after appraisement by a board, certificates were to be given the owners. There is no record of a report of appraisement having been made by any board or any evidence that receipts were given to the petitioners, Wolff & Brown, on file in this office, or with records of discontinued commands filed here, and no record of any claim in their favor for compensation for the horses alleged to have been seized.

In connection with the matter of seizure by the military of horses in Colorado in 1865, and the necessity therefor, I have respectfully to inclose herewith copies of Colonel Moonlight's orders in the premises.

I have the honor to be, sir, very respectfully, your obedient servant,  
E. D. TOWNSEND,  
*Adjutant-General.*

To the Hon. the SECRETARY OF WAR.

HEADQUARTERS DISTRICT OF COLORADO,  
*Denver, February 6, 1865.*

[General Orders No. 10.]

Hon. SAMUEL H. ELBERT,  
*Secretary of Colorado Territory:*

I. In view of the threatening attitude of the Plain Indians, and the ravages they are committing on the citizens and Territory, as also the cutting off of our lines of communication, the scarcity of troops in this district, and the impracticability of expecting re-enforcements from the General Government until the opening of spring, I respectfully call upon your honor, as the acting chief executive of this Territory, for three hundred and sixty mounted men for ninety days' service, unless sooner discharged, in companies of sixty, under a competent field-officer, to open the overland route as far as Julesburg, and keep the same open, that business may run on in the usual channel, and that the firesides and lives of this people may be spared from the merciless visitations of the inhuman savages, who swear eternal vengeance on all white men.

II. To insure a prompt response to your call, and that all classes of men may feel the importance of this step and the imperative necessity which demands such action, martial law is hereby proclaimed throughout this district, to take effect on the 8th instant, and all labor and business is suspended until the number of men called for be organized and placed under my command, to operate in conjunction with the troops now holding the Indians in check. Each man should come provided with a horse, at least two blankets, and, if possible, a revolver. All other arms and accouterments, including saddles and bridles, camp equipage, forage, rations, ammunition, &c., I will issue on behalf of the Government.

III. While I regret the existence of a state of affairs which demands action of this kind, I earnestly call upon all men to drop private animosities and strife, and join hands together in a work of humanity, which will redound to the honor and glory of Colorado. If horses cannot be procured voluntarily I will be compelled to press them into service wherever found. Horses furnished for service will be appraised by a board, hereinafter appointed, who will give the owner a certificate of appraisement, so that, in case of loss or injury, remuneration may be claimed and obtained.

IV. As soon as a county has furnished the quota of men and horses apportioned by the acting chief executive, martial law will be suspended in that county and business again resumed.

V. The assistant provost-marshal-general of the district will take such steps as will insure a faithful execution of this order; to him, and such deputies as he may appoint, is intrusted the work of seeing that all houses of business, drinking saloons, places of amusement, &c., be kept closed, except between the hours of two and three each afternoon. This refers only to merchandising; drug-stores, eating-saloons, hotels, butcher-stalls, and bakeries will be allowed to continue their business; but saloons of hotels must be kept closed until martial law is suspended and the civil officers again invited to resume their duties.

VI. The following are the officers and citizens appointed to appraise the horses furnished for service under Paragraph III of this order:

1. Capt. C. L. Gorton, A. Q. M., U. S. Volunteers.
2. Mr. W. G. Long, master of transportation, Denver.
3. Mr. John Cree, Denver City.

T. MOONLIGHT,  
*Colonel Eleventh Kansas Cavalry, Commanding.*

Official copy:

R. C. DRUM,  
*Assistant Adjutant-General.*

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE, *January 19, 1860.*

HEADQUARTERS DISTRICT OF COLORADO,  
*Denver, Colo., February 7, 1865.*

Capt. W. H. EVANS,  
*Eleventh Ohio Cavalry, commanding Camp Collins, Colo. :*

SIR: I have found it necessary to proclaim martial law in this district, to enable me to raise men and horses to go out and open the overland road.

It will be pretty difficult to obtain the number of horses, and I understand that there are a good many in your section of country.

I therefore respectfully request that you press into service and send down here, with their owners, from thirty to fifty horses fit for service. They will be received under General Order No. 10, from these headquarters.

This is merely a loan of horses for ninety days, unless sooner discharged, and is a work of necessity for the salvation of this country.

I shall look for the horses in a few days.

Respectfully, your obedient servant,

T. MOONLIGHT,  
*Colonel Eleventh Kansas Cavalry, Commanding.*

HEADQUARTERS DISTRICT OF COLORADO,  
*Denver February 12, 1865.*

WALT. ST. CLAIR,  
*Detective and Scout :*

SIR: You will proceed to-morrow morning in the direction of Cañon City and press into service fifty horses, fit for cavalry service, for the purpose of mounting the militia now called into service, as it is impracticable to obtain a sufficient number of horses from the counties called on by the governor to fill a quota.

The owners of horses pressed can accompany them to this place, if they desire, so as to obtain a certificate from the board of appraisers.

Care will be taken to have the pressure fall equally, if possible, on all men in the neighborhood where the horses are found.

Should disloyal men be found, take their horses in preference to the loyal, and where you find a number of horses or few, leave sufficient to carry on the work of the farm, or as the case may be.

A squad of soldiers will accompany you to assist in carrying out these instructions.

Respectfully,

T. MOONLIGHT,  
*Colonel Eleventh Kansas Cavalry, Commanding.*

HEADQUARTERS DISTRICT OF COLORADO,  
Denver, Colo., April 9, 1865.

Capt. GEORGE F. PRICE,  
*Acting Assistant Adjutant-General, District of the Plains, Denver, Colo.:*

CAPTAIN: In obedience to instructions from Brigadier-General Connor, commanding District of the Plains, I submit the following statement as to how the First Regiment Colorado Mounted Militia was raised:

\* \* \* \* \*  
On the 8th of February I proclaimed martial law, as per General Order No. 10, herewith inclosed, and called for six companies of mounted militia, of sixty men each, to open communications with the East, and keep it open, as well as to protect the lives and property of citizens. Some of these companies were enlisted in a few days, as militiamen for home protection; but to enable me to issue quartermaster, commissary, and ordnance stores to the officers commanding companies, and to impress upon the minds of the officers and soldiers that they were under the orders only of the Government of the United States, I directed the assistant commissary of musters of the district, Capt. J. C. Anderson, to verify the presence of the men by calling the roll, and certifying on that roll that they were duly mustered in, as set forth on the dates.

This I considered prudent and necessary, both to insure justice to the men and protect the Government.

Officers and men distinctly knew from the beginning that they would receive no pay from the Government directly, but that the Territory would pay them and be reimbursed by the Federal Government on the action of Congress, who will undoubtedly legislate in favor of my action and in justice to the Territory.

The general order proclaiming martial law prescribes what the Government would do in the way of arming and equipping, and the tenor of that order has been strictly observed by me.

The companies were mustered in for three months' service. The horses belong to the Territory. The arms and accouterments for men and horses belong to the Government, except the pistols, which belong to individuals. No clothing of any description has been issued to officers or men. The camp and garrison equipage belongs to the Government.

In conclusion, I would say that the Territory responded promptly to the call for troops, and to this promptitude is the country westward indebted for the free, open lines of communication.

I am, with respect, your obedient servant,

T. MOONLIGHT,  
*Colonel Eleventh Kansas Cavalry, Commanding.*

Official copy:

R. C. DRUM,  
*Assistant Adjutant-General.*

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE, January 19, 1880.

Your committee then addressed a letter of inquiry to the Secretary of the Treasury and received through him the following letter from the honorable Third Auditor, wit:

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,  
Washington, D. C., January 24, 1880.

Hon. H. F. FRENCH,  
*Assistant Secretary of the Treasury:*

SIR: I herewith return the communication addressed to the Secretary of the Treasury, on the 21st instant, by the chairman of the Senate Committee on Claims, and also the petition by Wolff & Brown for compensation for two horses. Their claim is now pending in this office. It has not been finally disposed of, because the attorney through whom it was presented asked delay. But as nothing has been heard from him, relative to the case, for a long time, I purpose now to decide it, and transmit the papers to the Second Comptroller.

These parties seem to have no just claim against the United States. If they have not been paid for the horses, or did not receive them back, or receive others as equivalents, their claim would seem to be against either the Territory of Colorado or the county of Jefferson, of said Territory.

In some emergency, early in 1865, the governor of Colorado called out the Territorial militia, and put their services at the command of Col. Thomas Moonlight, then commanding United States forces in that region. The arrangement by the Territorial authorities was that each county, through its commissioners, should procure from the citizens of the county or as they could the horses to mount the county's quota of militia. The commissioners of Jefferson County seem to have obtained two horses from Wolff

& Brown, and these they turned over to the Territory with the others as the quota of that county, and the Territorial authorities mounted militiamen thereon.

During the service of the militia, all horses so used remained in the hands of the militia, and when the service terminated the horses went into the custody of the Territorial authorities.

The two horses of Wolff & Brown were never in the custody of the United States, nor were they ever in the military service of the United States, in any other way than as ridden by militia which, without being mustered into the service of the United States, were acting as an auxiliary force.

The commissioners of Jefferson County made claim upon the Territory for the value of the two horses, and the Territory satisfied the demand in full, so that the commissioners receipted to the Territory for the payment, November, 1866, of \$655, as the value of three horses—one in the name of J. H. Brown, and two in the name of J. B. Wolff.

The Territory made claim upon the United States for reimbursement of expenses connected with raising such militia, which claim was adjusted under the provisions of the deficiency act of July 28, 1868. (See under head of "Rock Island Arsenal.")

Inasmuch as none of the horses used by the militia passed into the custody of United States officers, but were retained by the Territorial authorities when the militia were discharged, the Territory was not allowed the value of these two horses, but was allowed 40 cents per diem for the use and risk of each for the period of service.

Very respectfully, your obedient servant,

E. W. KEIGHTLEY,  
Auditor.

The act of Congress referred to in the foregoing letter is entitled "An act making appropriations and to supply deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1868, and for other purposes," and was approved July 25, 1868, and the clause referred to is as follows, to wit:

"For the payment to the Territory of Colorado for the services of the first regiment of the Colorado mounted militia, called into the service of the United States on the requisition of Col. Thomas Moonlight; and for the services of any other militia forces of the said Territory which were employed in the service of the United States, on the call of the governor of the Territory, in the year eighteen hundred and sixty-four, the sum of fifty-five thousand two hundred and thirty-eight dollars and eighty-four cents, being the amount found to be justly due and recommended to be allowed on the account as presented by Thomas M. Vincent, assistant adjutant-general, in his letter to the Secretary of War, dated Washington, October thirty-first, eighteen hundred and sixty-seven: *Provided*, That said amount shall be taken and deemed to be in full satisfaction of the claims of the said Territory: *And provided further*, That no money shall be paid from the Treasury on said account until the public property issued to the forces shall have been properly accounted for to the satisfaction of the proper officers of the Treasury."

On reading the petition of claimants it would seem that they had made strenuous efforts before the Treasury and War Departments for payment of their claims. The truth is, according to the letter of the Adjutant-General, they never have presented any claim to the War Department; and according to the letter of the Third Auditor, the claim was still pending in his office when your committee made inquiry for the facts in the case, and had not been finally disposed of "because the attorney through whom it was presented asked delay," and as nothing had been heard from this attorney relative to the case for a long time, the auditor has just made his decision, which is that "these parties seem to have no just claim against the United States. If they have not been paid for the horses, or did not receive them back, or receive others as equivalents, their claim would seem to be against either the Territory of Colorado or the county of Jefferson, of said Territory." It further appears from the letter of the auditor that "the commissioners of Jefferson County made claim upon the Territory for the value of the two horses, and the Territory satisfied the demand in full, so that the commissioners receipted to the Territory for the payment, November, 1866, of \$655, as the value of three horses; one in the name of J. H. Brown, and two in the name of J. B. Wolff. The Territory made claim upon the United States for reimbursement of expenses connected with raising such militia, which claim was adjusted under the provisions of the deficiency act of July 25, 1868." "Inasmuch as none of the horses used by the militia passed into the custody of United States officers, but were retained by the Territorial authorities when the militia were discharged, the Territory was not allowed the value of these two horses, but was allowed forty cents per diem for the use and risk of each for the period of service."

Your committee concur with the Auditor in his decision. The petitioners have no ground for any claim against the United States. Congress cannot properly assume jurisdiction to audit and adjust claims of the character set forth in this petition. Your committee, therefore, recommend that the claim of these claimants be not allowed, and that your committee be discharged from its further consideration.

Again they come to Congress with substantially the same petition, and this time the claim is referred to the Committee on Military Affairs. While your committee, under the rules of the Senate, could have asked to be discharged from the further consideration of this claim, or could have reported it back to the Senate and had it referred to the Committee on Claims, it was thought best to make a thorough re-examination of the case, and if it were just allow it, and if not try to put a permanent quietus upon it.

Your committee addressed the Secretary of the Treasury, asking for a full report of any and all action which may have been had in his Department, and any and all papers which may have been filed therein touching this claim, and received from him the following letter, inclosing the letter of the Third Auditor :

TREASURY DEPARTMENT, *April 7, 1884.*

SIR: In reply to your communication of the 1st instant, addressed to the Third Auditor for information and papers in the claim of Wolff & Brown, for compensation for two horses, No. 47,829, I have the honor to forward herewith copy of report of Third Auditor, of the 5th instant, in the case, together with papers in the claim, which show the action by the Third Auditor, the Second Comptroller, the Secretary of the Treasury, and in the United States Senate.

In order that the files of the Department may show the disposition of these papers, I will thank you to acknowledge the receipt of the same to this office.

The inclosures to your letter are returned herewith as requested.

Very respectfully,

CHAS. J. FOLGER,  
*Secretary.*

HON. F. M. COCKRELL,  
*Of Committee on War Claims, United States Senate.*

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,  
*Washington, D. C., April 5, 1884.*

SIR: I inclose a communication addressed me, on 1st instant, by the chairman of the Senate Committee on Military Affairs, respecting a claim of Wolff & Brown, for compensation for two horses.

I transmit the papers in the claim. They show the action by the Third Auditor, the Second Comptroller, the Secretary of the Treasury, and in the United States Senate.

The grounds on which this claim has been so often disallowed are as stated in the Auditor's decision of January 26, 1880, viz :

The governor of Colorado called the militia into active service as an auxiliary force to the United States troops then in the Territory. It was arranged between the Territorial and the county authorities that the commissioners of each county should procure, in whatever manner they might find best, horses to mount the county's quota of militia. Under that arrangement the commissioners of Jefferson County procured the two horses from Wolff & Brown—on what terms it is wholly immaterial to ascertain, and turned them, with others, over to the Territorial authorities, as the county's quota of horses. When the service of the militia had ended, the Territorial authorities, in lieu of returning the two horses, paid their value to the commissioners of Jefferson county, taking the receipt of the commissioners for \$655, as paid for *three horses*—one in the name of J. H. Brown, and two in the name of J. B. Wolff. If the commissioners have not paid Wolff & Brown, their remedy would seem to be against the county. Clearly they have no claim upon the United States, as the latter never received the two horses.

Very probably Colonel Moonlight, of the United States forces, did impress some horses, but he certainly did not impress the two in question.

Very respectfully,

A. M. GANGEWER,  
*Acting Auditor.*

HON. CHARLES J. FOLGER,  
*Secretary of the Treasury.*

With these letters was transmitted a large bundle of papers, which have been from time to time filed by these claimants in the Treasury Department.

Your committee have examined all the papers, and the only evidence—copies of which were not referred to your committee—found among all the papers sent from the Treasury Department consists of two affidavits made by the claimant, John B. Wolff, one in April, 1880, and the other in May, 1881, and an affidavit of William M. B. Sarell, made in 1882.

In the affidavit of April 8, 1880, Mr. Wolff says—

That he and Jacob H. Brown were the owners of the two horses. That about February 20, 1865, the horses were taken from their premises on the order of Col. Thomas Moonlight, to his headquarters in Denver, and appraised and receipted for to the owners, one at \$250 and one at \$225. That they would be paid 40 cents per day for services of the horses until returned, and the horses have never been returned. That said horses were never credited to the county of Jefferson with the knowledge or consent of the owners; nor did they know by whom, or what authority, and they disclaim all responsibility for the action of the authorities, joint and several, and for the deposition of the horses from the moment they were seized by military authority. That on the return of the said regiment the impressed horses were placed in a corral, and public notice given to the owners to come forward and identify their horses, and immediate and diligent search was made and said horses were not found among the returned horses, and therefore said horses could not have been turned over to the county of Jefferson, and if they were it was not with their consent or knowledge.

In the affidavit of May, 1881, Mr. Wolff says—

That by order of the said Col. Thomas Moonlight soldiers in the uniform of United States troops came upon the premises of the aforesaid claimants, in the said Jefferson County, and did, in the name and by the authority of the United States, impress and remove from their said premises two horses; that said horses were removed to the headquarters of the said Moonlight, and there appraised at \$225 and \$250, respectively, and receipted for by commissioners appointed for this purpose; that said horses were of the full value of the appraisement; that the owners were promised 40 cents per day for each horse until returned; that no definite day of return was fixed; that the claimants have never been advised what disposition was made of their property after it went into the possession of the said Moonlight; that said horses were never returned to them, though they made formal application and diligent search for them; that they have not received compensation, in whole or part, for the appraised value of the same, nor for the per diem expressed in the contract (*ex parte*) made at the time; that one of the claimants, J. B. Wolff, had two other horses in the same service, but not impressed (volunteered), and that for the whole \$80 (\$81.60, he thinks) per diem allowance was made in connection with the claims of Colorado Territory as audited by General Vincent, in accordance with resolution of Congress.

That said horses were never, with the knowledge or consent of claimants, in the possession of the civil authorities, and if there, they were so placed by said Moonlight, and not by them; that all the complications, abstrusities, and difficulties of this claim are due wholly to public functionaries, and not in any degree to the claimants; that application is now made in good faith for the payment of this claim, in strict accordance with the contract as set forth in the appended account, believing the same to be just, inasmuch as the default in payment for the horses does not lie against the claimants, and does lie against the Government; and the claimants have lost the use of their money during all this time, besides the loss of time and money in prosecuting their claim.

The account which the affiant thinks so just, and appended to his affidavit and thereby verified, is as follows:

*United States to Wolff & Brown, Dr.*

|  |                |
|--|----------------|
| To per diem, 40 cents each, for two horses, from February 20, 1865, to February 20, 1881, 16 years, 5,840 days, at 80 cents per day .....  | \$4,672 00     |
| Credit, by per diem allowance (see Ex. Doc. No. 7, Fortieth Congress, second session, page 16, voucher 9), for use of three horses (there were, in fact, four), \$81.60, one-half of which is due to these horses..... | 40 80          |
|  | <hr/> 4,631 20 |

This account is an expression of what the claimant considers equitable and just.

The affiant Sarell says—

That he is well acquainted with said claimants, and that it was a matter of neighborhood information that their horses were impressed by order of Moonlight, as alleged.

All the evidence of the claimants wholly fails to establish any liability on the part of the United States to them for the per diem allowance or value of these horses.

Your committee therefore report this petition, and the claim therein made, back to the Senate, adversely, with the recommendation that the prayer of the petition be not granted, and that the claim of the claimants therein made be not allowed, and that this report be agreed to.

S. Rep. 481—2