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Report : Claim of W. Beddo et al.

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IN THE SENATE OF THE UNITED STATES.

MAY 22, 1884.—Ordered to be printed.

Mr. FAIR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 804.]

The Committee on Claims, to whom was referred the bill (S. 804) for the relief of William Beddo and others, respectfully report as follows:

These claims arose out of depredations committed by the Kiowa and Comanche Indians in the State of Texas. The claimants are all citizens of Texas, generally engaged in agriculture or stock-raising, quietly and peaceably pursuing their avocations, having nothing to do with trade or traffic with the Indians, and in no way connected with any disturbance between whites and Indians there or elsewhere. They were all citizens of the State of Texas, and while engaged in peaceful pursuits were set upon by bands of Indians (who were supposed to be under the restraint and control of the Government, on their reservations), their stock stampeded and driven off, and other property destroyed or carried away, and in many cases their herders killed or wounded. They have, as the evidence shows, at all times refrained from any violation of law by taking the remedy into their own hands and giving blow for blow, but have, in compliance with the laws which Congress has from time to time passed for their protection and indemnity, made out their claims, supported them by ample proof, both as to quantity and value, and have presented them to the officers designated by the Government to examine into their justness and the truthfulness of their statements; and those officers, after having sent the claims to the agents of the different tribes to be presented to the Indians for their statements in regard to them, and after hearing the reports of those agents and making a careful examination of the proofs offered by the claimants, have allowed them the various sums for payment of which the claimants now ask an appropriation by Congress.

The laws under which these cases are payable are as follows:

By the act of Congress approved March 3, 1802 (4 U. S. Stat. at L., chap. 13, sec. 14, page 143), it is provided that—

If any Indian or Indians belonging to any tribe in amity with the United States shall come over or cross the said boundary line (that is, the line of the reservation) into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse or horses, or other property belonging to any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, and shall commit any murder, violence, or outrage upon any citizen or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney, or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose, who, being duly furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe to which

such Indian or Indians shall belong for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding twelve months, then it shall be the duty of such superintendent, or other person authorized as aforesaid, to make return of his doings to the President of the United States, and forward to him all the documents and proofs in the case, that such further steps may be taken as shall be proper to obtain satisfaction for the injury, and, in the mean time, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the party injured an eventual indemnification: *Provided, always,* That if such injured party, his representative, attorney, or agent, shall in any way violate any of the provisions of this act by seeking or attempting to obtain private satisfaction or revenge by crossing over the line on any of the Indian lands, he shall forfeit all claim upon the United States for such indemnification: *And provided also,* That nothing contained herein shall prevent the legal apprehension or arresting within the limits of any State or district of any Indian having so offended: *And provided further,* That it should be lawful for the President of the United States to deduct such sum or sums as shall be paid for the property taken, stolen, or destroyed by any such Indian, out of the annual stipend which the United States are bound to pay the tribe to which such Indian shall belong.

From the approval of this act down to 1834 it was the custom of the Government to pay for property so taken or destroyed by the Indians out of their annuities. On June 30, 1834, this law was re-enacted, with the further provision that "if no annuity is payable to such tribe or nation, then the amount of the claim shall be paid from the Treasury of the United States." (See 4 U. S. Stat. at L., chap. 161, sec. 17.)

By the act of February 28, 1859, the latter clause of this act was repealed, leaving the payment to be made out of their annuities. (See 11 U. S. Stat. at L., page 401, sec. 8.)

The act of July 15, 1870 (16 U. S. Stat. at L., page 360), provides that—

No part of the moneys which may be appropriated for the current and contingent expenses incurred in Indian affairs to pay annuities due to, or to be used and expended for the care and benefit of, any tribe or tribes of Indians, shall be applied to the payment of any claim for depredations that may have been or may be committed by such tribes or tribe, or any member or members thereof. No claims for Indian depredations shall be paid until Congress shall make special appropriation therefor.

Previous to the passage of this act claims of this character were paid out of the general Indian fund.

By the seventh section of the act of Congress making appropriations for the Indian Department, approved May 29, 1872, it was enacted:

That it shall be the duty of the Secretary of the Interior to prepare and cause to be published such rules and regulations as he may deem necessary or proper, prescribing the manner of presenting claims arising under existing laws or treaty stipulations for compensation for depredations committed by the Indians, and the degree and character of the evidence necessary to support such claims. He shall carefully investigate all such claims as may be presented, subject to the rules and regulations prepared by him, and report to Congress, at each session thereof, the nature, character, and amount of such claims, whether allowed by him or not, and the evidence upon which his action was based: *Provided,* That no payment on account of said claim shall be made without a specific appropriation by Congress.

In compliance with the rules and regulations established by the Secretary of the Interior under this law, these cases have been investigated, and the action of the Department in each case communicated to Congress, and all the papers in each of the several cases included in the bill are now in the hands of your committee.

CASE OF WILLIAM BEDDO.

The evidence in the case of William Beddo shows that he is a citizen of the county of Coleman, in the State of Texas; that the claimant had a herd of one thousand and twenty head of beef cattle and fifty-five

American horses herded at what is known as "Elm Pens," in Coleman County, State of Texas; that on the 1st of June, 1871, at about 11 o'clock in the forenoon, about two hundred Comanche and Kiowa Indians charged the herd, when a fight ensued, in which two of the herders were killed and scalped, and the entire herd of one thousand and twenty beeves and fifty-five horses were driven off by the Indians, none of which were ever recovered. The evidence also shows that a portion of this stock was afterward captured by the soldiers at Fort Bascom, and killed and issued to the soldiers, but no part of it was paid for.

The value of this stock, in the opinion of the claimant, was \$30 per head for the beeves, and \$100 each for the horses, making a total of \$36,100, but the officers of the Department have placed the value of the beeves at \$15 per head, and the horses at \$60 each, making a total of \$18,600, for which they recommend an allowance.

CASE OF L. W. VAUGHN.

The claim of L. W. Vaughn is for \$1,670, on account of depredations committed by the Kiowa Indians July 9, 1870. The claim, as itemized, is for the value of two horses, estimated at \$85 each; gold coin \$23; and blankets worth \$77, and damages of a consequential character to the amount of \$1,400, aggregating the sum of \$1,670.

It appears from the evidence that the claimant was on his way to Kansas, in company with others, with a drove of cattle; and that, at a place known as Victoria Park, in Montague County, Texas, they were attacked by Kiowa Indians, who killed two of the party, captured one, and took from the claimant the property above named. It is claimed by the claimant that in consequence of this depredation he could not proceed with his drove, and was consequently compelled to sell his stock at a sacrifice of \$1,400, and he claims indemnity for that amount, as well as for the property actually taken.

The Department, after a full examination of the claim, has disallowed the claim for \$1,400 consequential damages, and has allowed the sum of \$247 for the property taken, the \$23 of money being satisfactorily proven to have been lost as alleged in said claim.

CASE OF R. VAUGHN.

The claim of R. Vaughn, of Palo Pinto County, Texas, is for depredations committed by the Kiowa Indians on the 9th day of July, 1870, at a place called Victoria, in Montague County, Texas. This claimant was one of the party who were on their way to Kansas, in company with L. W. Vaughn, when they were attacked, as stated in regard to that claim, and the evidence shows that this claimant lost at that time five American horses, valued at \$75 each, and two Spanish horses, valued at \$60 each, and about \$200 worth of other property. The claimant, however, as in the former case, claimed large consequential damages, aggregating the sum of \$2,295.

The Department has disallowed the claim for \$1,600 consequential damages, and allowed the sum of \$695 for property actually taken.

CASE OF J. H. BAKER.

The claim of J. H. Baker is for \$1,760, on account of depredations alleged to have been committed by Kiowa Indians. This claimant is a resident of Palo Pinto County, Texas, and claims indemnity for a Span-

ish horse, valued at \$60, clothing and blankets, and injury done to work-oxen, \$108, gold stolen to the amount of \$42, and consequential damages to the amount of \$1,500.

The circumstances under which this claim arose are as follows:

This claimant was one of a party who were attacked by the Indians while on their way to Kansas with a drove of cattle. The evidence shows that on the 9th day of July, 1870, when at a place called Victoria Park, in Montague County, Texas, a party of Kiowas, under the chief Kicking Bird, attacked the party, stampeded their cattle, and took one Spanish horse and one mule, and ham-strung one yoke of oxen.

The Department deems the evidence sufficient to sustain the claim for the horse and mule, and have allowed the sum of \$110 for both, and have disallowed all the other claims, \$1,500 of which is for consequential damages, and the evidence not being satisfactory as to the loss of gold, clothing, and blankets, &c., the claim for these items is disallowed.

CASE OF J. G. HALSELL.

The claim of J. G. Halsell is for \$24,860, for the loss of forty-nine horses and fifteen hundred head of cattle taken from the claimant by the Comanche and Kiowa Indians, as follows: February 7, 1872, fifteen American horses, valued, by the claimant, at \$140 each; on September 17, 1873, eleven American horses, valued, by the claimant, at \$140 each; October 8, 1873, four American horses, valued at \$140 each; October 26, 1873, ten American horses, valued at \$140 each; and same date, fifteen hundred head of cattle, valued at \$12 per head; November 2, 1873, five American horses, valued at \$140 each, and on March 2, 1874, four American horses, valued at \$140 each, making a total of \$24,860.

The evidence shows that this stock was taken from the ranch of the claimant, in Clay County, in the State of Texas, at the times above stated; that it was properly herded and cared for; that at the time the cattle were taken the Indians stampeded and drove off the entire herd, numbering twenty-five hundred, and at that time they took ten of the horses and killed one of the herders; that the Indians were pursued, and one thousand head of the cattle were recovered. The testimony shows that the horses were of a superior kind, "American breed," and that the cattle were what is known as "mixed cattle."

The Department has reported that the evidence fully sustains the claim, so far as the number of horses and cattle is concerned, but think that the value placed on both is too high, and have allowed the claimant \$125 each for the horses, and \$9 per head for the cattle, aggregating the sum of \$19,625.

CASE OF JAMES MARTIN & BROTHERS.

This claim is for \$3,160, for depredations alleged to have been committed by the Comanche Indians, in Llano County, Texas, at five different times, as follows:

The first, on the 20th of August, 1869, when the claimant was living at Cedar Mountain, in said county; the Comanches took from him fifteen horses, valued at \$75 each; the second was in December, 1870, when they took seven horses, valued at \$65 each; the third was in March, 1871, when they took one horse and killed another, valued at \$45 each; the fourth was in July, 1871, when they took three horses, two of them valued

at \$55 each, and the other at \$50; and the fifth was on the 20th of July, 1872, when they took from him two good horses, worth \$65 each.

The evidence in the case fully sustains the statements of the claimant as to the actual loss, and the Department, believing him to be entitled to pay for his loss, at a fair estimate, have recommended an allowance of \$1,960, estimating fifteen of the horses at \$65 each, two at \$55 each, and one at \$50, and disallowing the claim for consequential damages.

CASE OF E. C. FULLAR.

The evidence in the claim of E. C. Fullar shows that in the month of November, 1873, the Comanche Indians stole from the premises of the claimant, in Clay County, Texas, two Illinois mules (so called), valued by the claimant at \$250 each, and four American horses, valued at \$175 each, aggregating \$1,200.

It is in proof that these horses and mules were fastened with lariats, near the house of claimant, and were taken by these Indians on the night of the 26th of November, 1873; that the stock was all brought from the State of Illinois, and was first class; that no part of it was ever recovered, or in any manner paid for.

The Commissioner of Indian Affairs has reduced the claim from \$1,200 to \$800, and recommends an allowance for that sum.

CASE OF JOHN HENSLEY.

The claim of John Hensley is for five American mules, sixteen American horses, \$1,000; for gathering one thousand head of stock, stampeded when the horses and mules were stolen, and \$1,000 for loss of crops in consequence of the horses being taken, which prevented the claimant, who was a large farmer and stock-raiser on Carroll Creek, Jack County, Texas, from carrying on his farm, aggregating \$5,450.

The evidence in this case shows that the horses and mules were taken by the Comanche Indians in August, 1873, and taken to the Fort Sill Reservation; that two of the horses were returned to the claimant by the agent, through the influence of one of the chiefs, but the Indians refused to surrender any more.

The Commissioner of Indian Affairs has reduced the price of the stock to \$150 each for the mules, and \$100 each for the horses, and disallowed the claim for gathering up the stock, and also for labor expended and loss of crops, and allowed the sum of \$2,350.

CASE OF WILLIAM M. HARDIN.

The claim of William M. Hardin is for \$2,885, on account of depredations committed by the Comanche Indians, \$1,500 of which is for consequential damages, resulting, in the opinion of the claimant, from the actual loss of his property.

The evidence presented to the Indian Department shows that in the months of March and June, 1866, while the claimant was residing at Saline, in the county of Kimble, in the State of Texas, a party of Comanche Indians took from him five horses, one of them valued at \$80, another at \$75, and three others valued at \$50 each.

The claimant alleges that the Indians annoyed him to such an extent at that place that he left that part of the country and settled in Llano County, in the same State; that on or about the 15th of October, 1871, a party of Comanches took from him two horses of the value of \$65 each,

three horses, valued at \$50 each, and eleven young horses, valued at \$35 each, and that on the 5th of August, 1872, they again took two horses, worth \$75 each, and one worth \$125, and another worth \$60.

The evidence submitted to the Department fully sustains the statement of the claimant as to the stock taken, and the officers of the Department certify that they believe the estimates to be fair, and recommend that the claimant be allowed the sum of \$1,385, and disallow the claim for consequential damages.

CASE OF A. J. HENSON.

The claim of A. J. Henson, of the county of Jack, in the State of Texas, is for the value of ten horses, at \$125 each, making the sum of \$1,250.

The evidence in this case shows that four of the horses were taken from this claimant, in his own county, on the 10th of August, 1873, and the others from the adjoining county of Clay on the 1st of November, 1873, and that all of them were taken by the Comanche Indians.

The evidence also shows that the Indians admitted to the agent that they took the property, but refused to return it or to give the claimant any satisfaction.

The proof of the value of the animals fully sustains the claim of the claimant, and the Department has recommended an allowance of the full amount of the claim, viz, \$1,250.

CASE OF C. W. COOPER.

The claim of C. W. Cooper is for \$7,690, growing out of the stealing and carrying away of twenty-one horses and mules, of the value of \$150 each, by the Comanche Indians, from the premises of the claimant, in the year 1873, while he was residing near the town of Jacksborough, in Jack County, Texas: Claimant also alleges that the Indians stampeded four thousand head of cattle, which cost him \$1 per head to recover. He also claims \$540 for additional labor, board of hands, &c. It appears from the evidence, that the Indians were pursued by the claimant and others, but without success. Subsequently, on visiting Fort Sill, he found three of his horses in possession of the agent of the Kiowas and Comanches; these were delivered up to him, but so badly used that they were not worth half as much as when taken by the Indians. The claimant learned while there that the remainder of his stock was in the possession of the Indians, but none of it was ever recovered.

Under these circumstances, the Department has deemed it right to allow the claimant \$125 each for the animals, making the sum of \$2,250, and have disallowed the entire claim for consequential damages.

THE CASE OF DANIEL E. MOORE.

This claim is for \$66,085 on account of depredations alleged to have been committed by the Comanche Indians, \$62,000 of which is for consequential damages. The actual damage is for fifty-one horses and other property stolen by the Indians, as appears by the evidence, at different periods and under the following circumstances:

On the 1st of October, 1872, while the claimant was residing at a place known as Legion Valley, Clano Lounty, in the State of Texas, a party of Comanches took from him one fine stallion and one race mare, valued a

\$200 each, twelve brood mares, valued at \$75 each; that he subsequently removed to Gillespie County, on Willow Creek, when, on or about the 8th of July, 1873, another party of Comanche Indians took from him two stallions, worth \$200 each; two mares, worth together \$190, and thirty-three brood-mares with foal, valued at \$65 each; that on the 20th of February, 1871, while on his way from Fredericksburg, in company with others, where they had all been for supplies, they were attacked by the Comanches, who killed one of his companions and wounded him so severely that he is crippled for life; that they took his team and the valuables from his wagon. The evidence clearly establishes the losses and the wounds inflicted on the claimant.

The officers of the Department have disallowed the entire claim for consequential damages, and damages for injuries to the person of the claimant, and have allowed the claim for actual losses, estimating the three stallions and the superior mares at \$125 each, and the forty-five brood mares at \$50 each, making the sum of \$3,000, in which allowance your committee concur.

CASE OF HENRY A. WHALEY.

The claim of Henry A. Whaley, of Clay County, Texas, is for \$2,300, on account of depredations alleged to have been committed by a band of Kiowa and Comanche Indians in the taking from the claimant's farm, known as the "Whaley ranch," in Clay County, in the State of Texas, ten head of horses and nine head of mules. The horses are valued by the claimant at \$106 each, and the mules at \$140 each.

The evidence submitted is regarded by the Department as sufficient to establish the claim as to the number of animals, but not as to the value as estimated by the claimant. The Department has deemed \$60 each for the horses and \$100 each for the mules a fair estimate, from the evidence, and has therefore estimated them upon that basis and allowed the claimant the sum of \$1,500.

CASE OF JAMES P. LINDSEY.

The claim of James P. Lindsey is for \$6,150, on account of depredations alleged to have been committed by Comanche Indians, under the following circumstances:

The claimant was the owner of a ranch in Jack County, Texas, where he kept a lot of horses, cattle, and calves. On the 1st day of October, 1873, a band of Comanche Indians attacked the ranch and took the horses, and turned the calves loose, and in consequence they were lost, and the cattle they stampeded. The number of horses lost is stated to be twenty-one, and they are estimated by the claimant at \$150 each. The number of cattle is stated to be five hundred unmarked and unbranded calves, turned loose and lost, and five hundred beef cattle, under herders, stampeded; on account of which the claimant claims \$1 per head for gathering in.

The Department considers the evidence as to the loss of the horses satisfactory, but considers the value placed on them too high and has estimated the twenty-one horses at \$125 each, and has allowed the claim for the full number of horses at that rate, making the sum of \$2,625, and disallowed the balance of the claim.

It appears from the papers transmitted to Congress in these cases that they have each and all been referred to the agent of the tribes

charged with the depredations, and that through the agent they have been submitted to the Indians in council and otherwise fully investigated by him, and his doings reported to the Department.

As stated in your committee's report upon the claim of Overton and Love, there are a large number of these claims, equally meritorious, on file in the office of the Commissioner of Indian Affairs. No good reason can be given for paying the claims under consideration without paying them all. This committee cannot recommend the passage of such claims until Congress adopts some general policy of dealing with all these claims.

Your committee therefore report back the bill and recommend that it do not pass.

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