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William Midkiff.

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WILLIAM MIDKIFF.

APRIL 13, 1888.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BIGGS, from the Select Committee on Indian Depredation Claims, submitted the following

REPORT:

[To accompany bill H. R. 7983.]

The Select Committee on Indian Depredation Claims, to whom was referred the bill (H. R. 7983) for the relief of William Midkiff, beg leave to report:

During the month of August, 1868, the claimant, William Midkiff, was residing on his farm in Cooke County, Tex., where he was engaged in herding and raising mules and horses, and had, at the time of the raid hereinafter mentioned, a herd of 100 horses and mules on and about his premises.

On the 28th day of August, 1868, a roving band of Comanche and Kiowa Indians, who had temporarily abandoned their reservation, for purposes of plunder, made a raid in Midkiff's neighborhood and stam-peded, stole, and carried away a part of his mules and horses.

In 1873 this claim was, conformable to the statutes, duly presented to the Secretary of the Interior for examination and adjustment, and was by him duly referred to the Commissioner of Indian Affairs, whose letter and opinion thereon is hereto appended and made a part of this report.

In 1886 the claim was favorably reported by the Committee on Indian Affairs of the House by Mr. Nelson of Minnesota, allowing \$2,600. But the Commissioner of Indian Affairs, Hon. J. D. C. Atkins, in a letter dated December 1, 1886, which is hereunto appended, finds that claimant is entitled to pay for loss of property actually proven to be in the possession of the Indians, and that, from the testimony, is 13 horses and 1 mule; and allowing \$100 each for horses and \$125 for the mule, makes a total of \$1,425. He, however, fails to take into account the 5 horses killed by the Indians. The claimant is certainly entitled to compensation for those as for the others; so, valuing the 5 horses at \$100 each, \$500 is added, making a total of \$1,925, which amount your committee find is justly due claimant, and recommend the passage of the bill amended as suggested below:

The amendments recommended are as follows: In line 4 of the printed bill strike out the words "five" and "six," and after the word "hundred," same line, insert "and twenty-five," so that it will read, "the sum of one thousand nine hundred and twenty-five dollars, etc." Also

in line 8 fill the blank by inserting "sixty-eight," so that it will read, "in the year 1868."

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., August 26, 1873.

SIR: I have the honor to submit herewith the claim of William Midkiff for \$10,000, the estimated value of 60 horses and mules alleged to have been stolen by Kiowa and Comanche Indians in August, 1868, from the claimant, near his residence in Cooke County, Tex.

The Indians in council deny having committed the depredation. The claimant swears that he was the owner of 60 head or more of "horses and mules"; that they were driven off by the Indians, and that he has recovered but four. Three witnesses testify that there was a raid made by these Indians in that neighborhood at the time designated; that horses were killed and stolen, and they confirm the statement of the claimant as to the number of horses owned by him and driven off by the Indians.

It is thought that the testimony adduced is sufficient to prove the depredation, but the claimant fails to specify the number of mules and the number of horses taken, and the evidence is not specific as to the number of each.

Two of the witnesses value the animals at \$100 each, and this would seem to be a fair valuation, assuming the horses were not of the mustang or pony breed, and that the mules were few. Four horses were recovered by the claimant, and valuing the remainder of the animals, fifty-six, at \$100 each, would give him in the aggregate \$5,600; and it is recommended that the claim be allowed for that amount.

Very respectfully, your obedient servant,

H. R. CLUM,
Acting Commissioner

The Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, D. C., December 1, 1886.

SIR: In conformity with Department opinion of August 27, 1886, I have the honor to present herewith a revision of office letter of May 13, 1886, on the claim of William Midkiff, of Cook County, Tex., for the sum of \$10,000, filed April 1, 1871, on account of an alleged depredation charged to have been committed by the Kiowa and Comanche Indians in August, 1868, and to ask that it be substituted for said former office letter.

In his declaration, attested August 18, 1870, claimant alleges that on or about the 28th day of August, 1868, he was the owner of a large stock of horses and mules, sixty head or more of horses, geldings, mules, and mares, valued in the aggregate at \$10,000, and that on said date said stock was taken from his premises in said county and driven away by a band of Kiowa and Comanche Indians, and that he has not recovered any of said stock since, "except four head, valued at \$150 each," and has never sought or attempted to seek private satisfaction on account of his loss.

In support of his allegations, the evidence of B. B. Yarborough, a resident of Grayson County, Tex., is presented, whose affidavit attested, bears date of July 14, 1870, and who alleges that he is personally acquainted with claimant, and that in December, 1868, he was at the Fort Sill Reservation, and "saw 8 head of horses, which he recognized at once and identified as the horses of the said William Midkiff; that he saw a Kiowa Indian riding one of said horses, and that he saw 7 more of said horses in the Comanche herd," and that said horses he considers worth in the aggregate \$800, he having been engaged in the stock-raising business several years, and acquainted with the value of such stock. Affiant also alleges that he is not related to claimant and has no interest in his claim.

Isaac M. Hobbs, a resident of Cook County, Tex., whose affidavit was attested August —, 1870, alleges that in the summer of 1868 he was living in the neighborhood of William Midkiff, and was well acquainted with his stock of horses; knows that he had about 100 head on the range near his (affiant's) home, and that on the 28th of August of said year, the Kiowas made a raid into that part of Cook County, killing and stealing horses around said Midkiff's and this affiant's farms; that he saw said drove of horses immediately after the Indians left the neighborhood, and that there were not more than 40 head of said mules and horses left, and that he has every reason to believe that said Indians stole the stock; that subsequently he recovered one of claimant's horses from the Kiowas at Fort Arbuckle. Affiant estimates the value of the stock at \$6,000, and alleges that he is not related to claimant, nor interested in his claim.

Florence Hall, a resident of Cook County, Texas, whose affidavit bears date August 22, 1870, alleges that he is personally acquainted with claimant and his stock of horses, and that in the month of October, 1868, he was at Fort Cobb and saw a mule in the possession of a Kiowa Indian which belonged to the said William Midkiff; that he is certain as to the identity of said mule, and that he was worth at least \$200.

Harper Gunter and William W. Gunter, residents of Cook County, Tex., in a joint affidavit, attested the 16th of August, 1870, allege that they are neighbors of claimant and well acquainted with his stock of horses; that on or about the 28th of August a raid was made through the neighborhood by the Kiowa Indians, during which a number of horses were killed and stolen, and that on the morning after said raid affiants learned that claimant's entire drove of horses and mules had been stolen and driven off; that, at the request of claimant, affiants followed on the trail (crossing Red River) in the direction of Fort Sill, some 50 miles, and discovered that a large number of horses had been driven along said trail; that claimant's horses were missing and have been from that day to this, nor has he within the knowledge of affiants "recovered any of said horses, save the four mentioned by him in his statement." Affiants "estimate the horses lost" by claimant "as worth at least \$10,000 in currency at that time."

The foregoing testimony was regarded by the office as too indefinite in its character, or not sufficiently specific as to the number, species, quality, and value of the animals alleged to have been stolen, and claimant was afforded an opportunity of filing additional testimony. In compliance therewith, he files a second declaration, properly attested, April 22, 1886, in which he alleges that in 1868 he was the owner of about 100 mules and horses which were kept on the range near his farm, and "carefully looked after," the range being about 18 miles northwest of Gainesville, Tex.; that on the 28th of August, 1868, said herd of horses and mules were near his (claimant's) residence, some inside and some outside of the inclosure; that they were seen by himself and others late at night on said day; that early the next morning he found that fully 60 head of his horses and mules had been driven away; that 5 had been killed with arrows and others wounded, and that he and his neighbors immediately took the trail, and pursued the Indians about 40 miles in the direction of their reservation, but did not overtake them, or recover the property. Claimant further alleges that the stock consisted of 20 mules, some broken and others unbroken; 10 horses, some broken and others not; and about 20 mares and 10 yearling colts; that they were the American breed of animals, and worth \$125 per head, and that subsequently he recovered 4 head.

To further confirm his statements, claimant files the testimony of G. A. Slaven, a resident of Cook County, Tex., whose affidavit was attested April 22, 1886, and who alleges that he was an employé of claimant in 1868, and that it was a part of his duty to look after and take care of the mules and horses of said claimant, numbering about 100; and that on the afternoon of the 28th of August, 1868, he (affiant) saw said stock on the range near claimant's residence, and that the next morning 60 head of the horses and mules were missing; that on an examination they found 5 horses had been killed and others badly wounded; that affiant and others then followed the trail about 40 miles in the direction of the Kiowa and Comanche Reservation, but did not overtake the Indians or recover the property. The description of the stock and its valuation are the same as given in claimant's declaration.

The acting United States agent of the Kiowas and Comanches, December 26, 1871, reports that this claim was presented to the Indians on the 21st of said month, and that they denied all knowledge of the depredation, and refused satisfaction.

On the 26th of August, 1873, a report was made by the office to the Department upon this claim, embracing a very brief summary of the evidence and containing a recommendation for an allowance of \$5,600. It was transmitted to Congress January 17, 1874, but no final action was had thereon.

The foregoing comprises a history of the case and a very full abstract of the testimony in support of the same.

It will be observed that in claimant's first declaration his estimate of the value of the property lost is \$10,000.

When recently required to furnish more specific evidence of the various kinds or descriptions of animals alleged to have been stolen, the estimated value of each, etc., he complies by furnishing a statement, and evidence to sustain it, that the Indians stole "fully 60 head" of said horses and mules; that he recovered 4 head, leaving 56 animals, according to his statement, in the hands of the Indians, the estimated average value of which he places at \$125 per head, which would make his loss much less than his first estimate of \$10,000.

That a depredation was committed by the Kiowa and Comanche Indians at the time indicated is undoubtedly true, but that they stole the number of horses and mules for which indemnity is claimed is a matter of inference and not established by positive testimony. Claimant and his witnesses are not positive as to the number of horses and mules upon the range prior to the depredation; it was "about 100 in number" he

alleges, and after the deprecation "fully 60 head," he infers, "had been driven away," and from the appearance of the trail the Indians are supposed to have taken possession of them. The evidence shows that 5 of claimant's horses were killed, that 8 were discovered in the possession of the Indians by one of the witnesses, Yarborough, and fully identified and valued by him at \$800.

Another witness (Hall) discovered one of claimant's mules in the possession of a Kiowa Indian at Fort Cobb, which he is "positively certain" was claimant's property, and valued at \$200. It is believed, therefore, from the testimony, that claimant has established his right to indemnity for the loss of 13 horses and 1 mule. Estimating the horses at \$100 each, and the mule at \$125, I respectfully recommend that the claim be allowed for \$1,425, in full satisfaction of claimant's account; and it is further submitted that claimant at the date of said deprecation was a citizen of the United States; that said Indians were in treaty with the Government (see 15 Stats., 581), and that under the provisions of the first and eleventh articles of said treaty said Indians are chargeable with said \$1,425, damages committed by them on the property of claimant.

Very respectfully,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, December 1, 1886.

SIR: Your report of the 1st instant, submitting the claim of William Midkiff, of Cook County, Tex., amounting to \$10,000, for compensation for depredations alleged to have been committed in 1868 by Kiowa and Comanche Indians, has been considered, and your finding, viz, that claimant lost property as alleged to the value of \$1,425, with your recommendation that that amount be allowed in full satisfaction of the claim, is concurred in.

This letter is substituted for one of May 14, 1886, on this case.

The claim is hereby returned to be included by you in the list of deprecation claims to be submitted to Congress as required by law.

Very respectfully,

H. L. MULDROW,
Acting Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.