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**George Chorpenning.**

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H.R. Rep. No. 55, 39th Cong., 1st Sess. (1866)

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## GEORGE CHORPENNING.

[To accompany H. Res. No. 123.]

APRIL 27, 1866.—Ordered to be printed.

Mr. A. W. HUBBARD, from the Committee on Indian Affairs, made the following

## REPORT.

*The Committee on Indian Affairs, to whom was referred the petition of George Chorpenning, submit the following report :*

The committee have carefully reviewed the facts as set forth by the proofs in the case, fully concurring in the views expressed by the respective Committees on Indian Affairs of the 35th, 37th and 38th Congresses, and report that it is fully established that George Chorpenning and Absalom Woodward were contractors for carrying the United States mails from California to Salt Lake, in Utah Territory; that they were the *first* persons ever engaged in transporting the mails through that country, commencing as early as May 1, 1851, and connecting at Salt Lake with the line east, formed the *first* "overland mail line" ever established across the continent; that in the performance of these duties they were compelled to pass regularly through the Indian haunts of the country; that the mail parties, or trains, were repeatedly attacked, men killed and wounded, mules, horses, and other property stolen and destroyed by them; that in November, 1851, Absalom Woodward with his escort of four men were attacked and murdered by those Indians, and all the property in their charge destroyed. The petitioner, Chorpenning, continued to carry the mail for Woodward and Chorpenning down to the 30th of June, 1852, and on his own account since.

The proof is sufficient to establish that, from the commencement of the service down to the 30th of June, 1852, eighty-three (83) mules and horses and other property, valued at three thousand two hundred and seventy-five dollars, (\$3,275,) were killed and destroyed by the Indians, together with a large amount of money on the person of Woodward when he was killed. The proofs also establish that, from June 30, 1852, to April 1, 1856, eighty-six (86) mules and horses were killed or stolen, and property of the value of five hundred and seventy dollars (\$570) destroyed by the Indians. For this property George Chorpenning and Absalom Woodward are entitled to indemnity from the government.

It has been the policy of the government to regard the Indians within its limits, and not subjected to the legislation of any of the States, as distinct but imperfectly organized political communities, under the control and protection of the government of the United States.

The intercourse of the whites with the Indians is regulated by law, and all persons going among them in the service, or by the special license, of the United States are under its protection. If such persons are injured by the Indians they have no redress by resort to judicial tribunals, for none such exist among the Indians; and such persons are *strictly prohibited* from obtaining redress by reprisals, *but the government promises to pay their losses.*

It is unnecessary to review the series of laws passed to effect these objects. The act of 30th of June, 1834, (5th Stat. at Large,) is the last of the general series, and is now in force. By the 17th section of this act it is, among other

things, enacted that if any Indian or Indians shall, within the Indian country take or destroy the property of any person lawfully within such country, such person may make application to the superintendent, agent, or sub-agent, who, on being furnished with the necessary proof, shall, under the direction of the President, make application to the nation or tribe to which such Indian or Indians belong for satisfaction; and if such nation or tribe shall refuse satisfaction in a reasonable time, not exceeding twelve months, such superintendent shall make return of his doing to the Commissioner of Indian Affairs, that proper steps may be taken to obtain satisfaction for the injury; and, in the mean time, the United States *guarantee to the party so injured an eventual indemnification*: provided, first, if the party seeks personal satisfaction or revenge he forfeits his claim for indemnification; second, if the claim is not presented in three years it is barred. If the Indians receive an annuity, the claim is to be paid from the annuity; if the Indians *do not* receive an annuity, *it is to be paid from the treasury*. The 7th section of the Indian appropriation bill, passed the 27th of February, 1851, is as follows, viz:

*"Be it remembered, that all the laws now in force regulating trade and intercourse with the Indian tribes, or such provisions of them as may be applicable, shall be, and the same are hereby, extended over the Indian tribes in the Territories of New Mexico and Utah."*

Woodward and Chorpenning were lawfully in the Indian territory. They were there by authority, and in execution of the laws of the United States, and in the actual service of the government. As such they were entitled to rely on its promises of indemnity.

They did not seek private satisfaction or revenge for injuries sustained by the Indians, but cultivated, as far as was in their power, a friendly feeling with them. They made known their losses to the superintendent and agent. Brigham Young, the superintendent, reported the death of Woodward; J. H. Holeman, the agent, in his affidavit gives an account of the murder of Woodward; says the Indians admitted their attacks on Hanson's and other mail trains because they had first been attacked by the whites, *but did not pretend that the persons in charge of the mail trains had attempted to injure them*. Says he could not attempt to state the number of mules killed, or the amount of property taken from the mail trains, but the Indians themselves admitted they had killed many. In the letter of 13th February, eighteen hundred and fifty-eight, written by the Commissioner of Indian Affairs to an attorney of the parties, the Commissioner says "that Messrs. Chorpenning and Woodward were lawfully in the Indian country where and when their property was lost is admitted. But then the tribes to which the offending Indians belonged cannot be said to have been in amity with the United States; the petition itself styles them as hostile Indians. When the intercourse act was passed, it was with reference to the Atlantic tribes, but few of whom were west of the Missouri; and treaty stipulations were necessary to place them technically upon a footing of amity, and, in addition to that, it was required that they must be on terms of actual friendship. This law, inapplicable as it is in many respects, has been extended, without amendment, over the tribes of the Pacific coast by the act of February 27, 1851, and in regard to them the same construction must be given as in the case of those for the government of which it was originally intended.

"There is nothing to show that the requirement of the law, that the proofs of the losses should be submitted to an agent to be laid before the Indians, was ever complied with. It is true that reports to this office from the governor and *ex officio* superintendent of Indian affairs for Utah and from Agent Holeman show that they were cognizant to some extent of the losses complained of, and it is admitted that it would, under the circumstances, have been perhaps impossible to identify the tribes to which the offenders belonged, and impracticable as well as useless, had they known, to have adopted the regular and exact courses prescribed.

or to have submitted the matter to them, but the law is imperative that it should be done."

Your committee are of opinion that only so much of the law of eighteen hundred and thirty-four as was applicable to the Territory of Utah was extended over it by the 7th section of the act of February, eighteen hundred and fifty-one. At that date the Territory of Utah was unexplored. What Indian tribes inhabited or made it a place of resort was then, and for a long time afterward, unknown to the government, and no treaties of peace and amity had yet been made. So much of the law as looked to a regular course of transactions with them as known to savage communities under the regular treaties of peace was wholly inapplicable.

The preparation of documents stating the losses and the tribes to which the assailing Indians belonged was not, in the opinion of the committee, applicable to these Indians, and was impracticable. All the sufferers could do was to report the injuries to the superintendent and agent, and claim the protection of the government. This, the committee are satisfied, has been done.

But the committee are further of opinion that so much of the law of eighteen hundred and thirty-four as prohibited the injured party from seeking private satisfaction or redress for his wrongs did apply to the Territory of Utah, and also so much as promised payment by the government did apply. The party was restrained from seeking private redress to preserve the country from an Indian war, and this restraint was the consideration of the promise of indemnity. The government, by this law, took the matter in its own hands. It restrained the injured party from seeking redress, and promised to make good his losses.

Your committee are of opinion that George Chorpenning and the widow of Absalom Woodward, deceased, are entitled to compensation for the losses sustained, and as no annuities are payable to these Indians, the parties are entitled to payment from the treasury.

The number of mules and horses lost, as stated above, is eighty-three (83) mules and horses of Woodward and Chorpenning, killed prior to July one, eighteen hundred and fifty-two, and eighty-six (86) mules and horses of George Chorpenning, killed from July one, eighteen hundred and fifty-two, to April one, eighteen hundred and fifty-six.

By the proofs in the case, as well as the corroborating statements of the honorable senators and representatives in the 35th Congress from the State of California, these animals are proved to have been worth from two hundred dollars (\$200) to five hundred dollars (\$500) each. These prices, upon first impression, may seem extravagant. But when your committee take into consideration that this was in the days of fabulously high prices for everything in California, together with the strong array of proofs upon the subject, they cannot but regard it as fair and reasonable. Besides, the route lay over the mountains and through the barren deserts between California and Salt Lake, and none but the very best stock could endure the severe hardships incident to the service. For, in addition to the length of the trip, there were changes of grass, water, and climate, which would soon break down the constitution of *any* but superior animals; and when such were obtained, they were doubtless worth to the contractors from two hundred dollars (\$200) to five hundred dollars (\$500) each.

Your committee, therefore, think it reasonable and just to take the sum of three hundred and fifty dollars, (\$350), the difference between two hundred (\$200) and five hundred dollars, (\$500,) as the average value of each animal, and thus ascertain the eighty-three mules and horses lost by Messrs. Woodward and Chorpenning to be worth twenty-nine thousand and fifty dollars, (\$29,050.) To this must be added three thousand two hundred and seventy-five dollars (\$3,275) for other property lost. This does not include the money lost when Woodward and his party were killed.

On the eighty-six (86) mules and horses lost by George Chorpenning indi-

vidually from July one, eighteen hundred and fifty-two, to April one, eighteen hundred and fifty-six, they place the same average value of three hundred and fifty dollars, (\$350.) making this loss thirty thousand one hundred dollars, (\$30,100.) to which must be added, for the loss of other property, five hundred and seventy dollars, (\$570.) making thirty thousand six hundred and seventy dollars, (\$30,670.)

Your committee, therefore, recommend that the sum of thirty-two thousand three hundred and twenty-five dollars (\$32,325) be paid to George Chorpenning and Elizabeth Woodward, wife of Absalom Woodward, and that the further sum of thirty thousand six hundred and seventy dollars (\$30,670) be paid to George Chorpenning.

To these ends your committee report the accompanying joint resolution, and recommend its passage.