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James Preston Beck.

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Recommended Citation

H.R. Rep. No. 74, 39th Cong., 1st Sess. (1866)

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JAMES PRESTON BECK.

[To accompany H. R. C. C. No. 109.]

JUNE 15, 1866.—Ordered to be printed.

Mr. DELANO, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred H. R. C. C. No. 109, for the relief of James Preston Beck, administrator of Preston Beck, jr., deceased, late surviving partner of the firm of Brent & Beck, together with the report of the Court of Claims, having had the same under consideration, report :

That this bill was reported to the thirty-seventh Congress by the Court of Claims, appropriating the sum of six thousand five hundred and sixty-five dollars to satisfy a judgment of said court in favor of said James Preston Beck, administrator of said Preston Beck, jr., deceased.

The claim on which this decision was made is for a herd of mules, horses, and asses forcibly captured and taken possession of by a band of Navajo Indians on the 12th September, 1849, in the vicinity of Santa Fé, New Mexico.

The 17th section of the act of Congress of June 30, 1834, provides "that if any Indian or Indians belonging to any tribe in amity with the United States shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from the Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal or destroy any horse, horses, or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative or attorney or agent, may make application to the proper superintendent, agent or sub-agent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians belong for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding twelve months, it shall be the duty of such superintendent, agent or sub-agent to make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction; and in the mean time the United States, in respect to the property so taken, stolen or destroyed, guarantee to the party so injured an eventual indemnification."

By this act it will be seen that the liability of the United States does not occur until the person claiming to have been injured by Indian depredations shall have applied for damages to the proper agent or superintendent of the offending Indians. And when such application is made, and the necessary "documents and proofs furnished," such superintendent or agent is, under the direction of the President, to make application to the proper nation or tribe of Indians for satisfaction. If the offending Indians refuse for twelve months to make satisfaction, the agent is to report to the Commissioner of Indian Affairs,

in order that further steps may be taken, and then, and not till then, does the "United States guarantee to the party injured an eventual indemnification." These things having all been done, the United States is authorized to deduct such damages out of any annuity thereafter payable to such Indians.

The committee, after carefully examining this case, are clearly of the opinion that there never was any presentation of this claim to the *Navajoes*, under the act of Congress referred to. Without such a presentation, the United States had no right to reserve the damages out of annuities due said Indians, and without such presentation the United States did not guarantee in the language of the aforesaid act "*to the party so injured an eventual indemnification.*"

In this view of the case, therefore, the committee are of the opinion that the claim should be disallowed.

A further objection to the claim is, that the *Navajoes* were not in "amity" with the United States when the injury was committed.

The facts clearly show that there was no actual "amity." A treaty with this tribe was signed on the 9th of September, 1849, three days before the injury complained of was committed.

Is *amity* to be presumed from the treaty?

The evidence shows that friendship did not follow this treaty. It also appears that the Indians who committed the damage complained of on the 12th of September, 1859, were some 270 miles from the place where the treaty was made, and could not have known of the treaty. It is not a fair presumption, therefore, that the signing of the treaty on the 9th of September, and before it could have been known to the nation, did of itself produce such a condition of affairs as is intended by the 17th section of the act of 1834, wherein it refers to Indians "*belonging to any tribe in amity with the United States.*"

But to this it may be added that this treaty was not ratified by the Senate until long after the injury complained of was committed; and if amity is to be presumed as a necessary result of a treaty, when the fact is that hostilities still exist, certainly the treaty should be made complete and binding by its formal ratification before this legal presumption in violation of the established fact is permitted to arise.

On both points the committee believe the claim is defective, and therefore report adversely, with recommendation that the bill be laid upon the table.