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In the Court of Claims of the United States.

INDIAN DEPREDATIONS.

JOHN A. BANNING

vs.

THE UNITED STATES AND CHEY-
enne Indians.

} No. 2655.

*DEFENDANTS' REQUEST FOR FINDINGS OF FACT—OB-
JECTIONS TO FINDINGS OF FACT REQUESTED BY
CLAIMANT—BRIEF AND ARGUMENT OF COUNSEL FOR
DEFENDANTS.*

L. W. COLBY,
Assistant Attorney-General.

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DEFENDANTS' REQUEST FOR FINDINGS OF FACT AND OBJECTIONS TO FINDINGS OF FACT REQUESTED BY CLAIMANT.

I.

Counsel for defendants objects to the second, third, and fourth findings of fact requested by claimant.

II.

The defendants, considering the facts hereinafter set forth to be proven, and deeming them material to the presentation of this case in the findings of fact, request the court to find the same as follows:

1. The evidence does not show that the defendant Cheyenne Indians committed the alleged depredation.

2. That the Cheyenne Indians were not in amity with the United States in September, 1868, the time of the depredation charged.

L. W. COLBY,
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Cheyenne Indians. } No. 2655.

BRIEF AND ARGUMENT OF COUNSEL FOR DEFENDANTS.

STATEMENT OF CASE.

In September, 1868, the claimant, John A. Banning, was employed as a railroad contractor in building a part of the Denver Pacific Railroad near Greeley, Colo. On the 12th of said month, while claimant was making use of 100 horses and mules upon his grading contract, the Cheyenne Indians made a raid upon his teams, driving off 28 mules and 20 horses. The claimant and his wife are the only witnesses who have any personal knowledge of the depredation. The other witnesses, Lyman H. Cole, Frank Hunter, William M. Roberts, and Philip Riley, testify as to the value of the property lost and their knowledge as to what tribe of Indians committed the depredation.

ARGUMENT.

There is no positive evidence except that of claimant that the Cheyenne Indians committed the depredation charged. As showing the character of the testimony of other witnesses on this point, we call attention to the following :

Mrs. Banning says :

They were generally reported to be the Cheyenne.

L. H. Cole :

The Cheyenne Indians were there or about there at that time. Other Indians told me who they were. I was not acquainted with the Cheyenne Indians.

William M. Roberts :

They were supposed to have been taken by the Cheyenne Indians. I did not see them when they were taken.

Such statements as these would not support the testimony of claimant, upon whom is the burden of proof to show the identity of the Indians who stole and drove off his cattle.

Claimant has failed to show by positive evidence that the Cheyenne Indians were in amity with the United States at the date of depredation charged. In fact, the testimony plainly shows that a large number of Indians were engaged in making frequent attacks upon the inhabitants of Colorado along the line of the Union Pacific and Denver Pacific Railroads.

There is also no proof that there was not just cause or provocation for the attack made upon claimant's property.

It is submitted that claimant must show by clear and undisputed testimony that the number and value of property lost by him is substantially as alleged in his petition. Unless the identity of the depredators, the peaceful relations of the Cheyenne Indians with the United States, and the number and value of property lost are clearly shown, the findings of fact and judgment in this case must be for the defendants.

L. W. COLBY,
Assistant Attorney-General.
C. E. WHITE,
Assistant Attorney.

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