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In the Court of Claims of the United States.

INDIAN DEPREDACTIONS.

JOSEPH B. MATTHEWS  
*vs.*  
THE UNITED STATES AND THE KIOWA  
and Comanche Indians. } No. 1750.

DEFENDANTS' REQUEST FOR FINDINGS OF FACT.—OBJECTIONS TO  
FINDINGS OF FACT REQUESTED BY CLAIMANT.—BRIEF AND  
ARGUMENT OF COUNSEL FOR DEFENSE.

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 defense objects to the second, fourth, and sixth findings of fact requested by claimant.

#### II.

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

(1.) The value of claimant's property alleged to have been taken or destroyed did not exceed \$1,725.

(2.) It is not shown that the claimant's property was taken or destroyed by Indians.

(3) It is not shown that the claimant's property was taken or destroyed by Indians belonging to the defendant Kiowa and Comanche tribes.

(4) The defendant tribes of Kiowa and Comanche Indians were not in amity with the United States at the time of the depredation alleged.

L. W. COLBY,  
*Assistant Attorney-General.*

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### BRIEF AND ARGUMENT OF COUNSEL FOR DEFENSE.

This is a claim for property alleged to have been taken by Comanche and Kiowa Indians in Eastland County, Tex., during the years 1866, 1868, 1869, and 1871.

Counsel for claimant is in error in supposing that this claim has been allowed by the Secretary of the Interior in the sum of \$2,640, or, indeed, in any sum. The claim was presented in 1871 and recommended for disallowance in September, 1873. It was subsequently returned to the Interior Department by Congress for further investigation under the act of March 3, 1885. After investigation in the field by a special agent the Commissioner of Indian Affairs reported the case to the Secretary of the Interior with the findings "That claimant lost, at the hands of some unknown Indians" 23 horses, of the value of \$1,840,

and "That evidence is not sufficient to hold the said tribes (Kiwias and Comanches) liable for the injury complained of."

In acting upon this recommendation the Secretary concurred in "your finding that claimant lost property as alleged to the value of \$1,840," (omitting the phrase which charged the loss to unknown Indians), and made the additional finding that "the proof is not considered entirely clear that these losses were caused by Indian depredations. Final conclusion of that point is, however, left to the determination of Congress."

It would seem that this was not an allowance of the claim, but merely a finding on the question of the value of property lost, with a finding that the evidence was not sufficient to charge the Indians and an express disclaimer of decision as to whether or not the loss was caused by Indian depredations.

In any event, the finding of loss is in the sum of \$1,840, and not \$2,640, as is stated in claimant's brief. The original claim in this case, which was filed September 25, 1871, is for 23 head of horses at \$100 each, and no claim for a larger amount than \$2,300 was ever filed by this claimant before the Department of the Interior, and none of the evidence shows the loss of more than 23 horses. The claim now first brought for 33 horses, aggregating \$3,300, is evidently a mistake.

That the claimant lost 23 horses, for which he paid from \$60 to \$75 each, seems fairly proven. The evidence that they were taken by Indians is, however, purely circumstantial, and would seem to be insufficient to warrant a judgment. The testimony shows the opinions of wit-

nesses merely, and the only facts alleged to support those opinions are that moccasin tracks, pieces of buffalo hide, etc., were found in the neighborhood of the place where the horses were last seen. If the evidence was not deemed sufficient by the Commissioner of Indian Affairs or the Secretary of the Interior, how can the same evidence be regarded as sufficient in a court of justice? In view of the well-known fact that it was a common thing for horse thieves among the whites to personate Indians and endeavor to throw suspicion upon the Indians—a ruse which they sometimes carried so far as to leave a small portion of the stolen stock within the limits of the nearest reservation—and in view of the further fact that absolutely nothing is shown to charge the particular tribes of Indians against whom the suit is brought, the evidence in this case seems to be insufficient to support a judgment as for an Indian depredation, and the claimant's petition should be dismissed.

#### AMITY.

The defendant tribes of Indians were not in amity with the United States at the time of the commission of the alleged depredations.

The only evidence in the record on the question of amity is found in the report of the Indian agent, who states :

That on the 21st December, 1871, he submitted said claim to a council of Comanche and Kiowa Indians, who say they suppose all of them had a hand in it, as they were on the warpath.

It is a matter of general knowledge and is shown by the reports in the War and Interior Departments for the years named, that armed and predatory bands of Kiowas and Comanches were continually scouring the country where these depredations took place, and that collisions between these bands and the military forces of the United States were of frequent occurrence; while two treaties were signed by them in the years 1866 and 1868, yet the records of the War Department from 1864 to 1870 show a condition of continued war and hostility with the United States and the white settlers, on the part of the Comanche, Kiowa, Apache, Arapaho, and Ute tribes of Indians. The court is respectfully referred to the reports of General Hancock for 1867-8, and of General Sheridan for 1868-9-70, if further proof is deemed necessary on the question of amity.

With these facts in evidence, the case upon all the issues is submitted for decision by the court.

L. W. COLBY,  
*Assistant Attorney-General.*

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