

J. PRESTON BECK.

MARCH 2, 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. 4554.]

The Select Committee on Indian Depredation Claims, to whom was referred House bill No. 4554, beg leave to report the same favorably and to recommend its passage.

This claim is based on the following opinion and judgment of the Court of Claims, to wit:

IN THE COURT OF CLAIMS.

J. Preston Beck, administrator, vs. The United States.

LORING, J.:

The petitioner is administrator *de bonis non* of Preston Beck, who was surviving partner of Brent & Beck, merchants of Santa Fé, in the Territory of New Mexico. The petitioner claims indemnification by the United States for a herd of mules, etc., of which Brent & Beck were plundered by the Navajo Indians on the 12th of September, 1849, and the claim is made upon the statute of 30th June, 1834, as that is explained by the joint resolution of June 25, 1860.

The facts shown are, that about the 12th of September, 1849, a band or herd of mules, mares, etc., belonging to Brent & Beck, were pastured by them under the charge of herdsmen on the plains or mesa in the county of Santa Fé, and about 12 miles from the city of Santa Fé; that a body of Navajo Indians seized them and drove them off into the Navajo country. That on the 29th of November, 1851, Brent & Beck made application to the Superintendent of Indian Affairs, and filed with him their claim for indemnification for the animals stolen, and the proofs of their loss, under and according to the seventeenth section of the Statutes of 1834. The claim was not paid or allowed, and since it accrued no annuity has been granted to the Navajo Indians. The petitioner claims to be paid out of the Treasury of the United States the sum of \$8,710, with interest thereon from one year after filing his proof.

The act of June 30, 1834 (4 U. S. L., 729, sec. 1), defines the Indian country, and the seventeenth section provides that if any Indians in amity with the United States shall pass from the Indian country into any State or Territory inhabited by citizens of the United States, and there steal horses or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, or his representatives, may make application to the proper superintendent, who, being furnished with the necessary documents and proof shall, under the direction of the President, make application to the nation or tribe to which the Indians shall belong for satisfaction; and on refusal or neglect of the Indians to make satisfaction for a reasonable time, not exceeding twelve months, the superintendent is to make return 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 for the injury. 'And in the meantime, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the party so injured an eventual indemnification.'

The section then provides that the injured party shall not seek private satisfaction or revenge, and that his claim shall be deducted from the next annuity, if any, payable to the Indians; and, if none, then be paid from the United States Treasury.

We think the claim of the petitioner is within this section.

It is true that New Mexico was not comprehended within the Indian country, as was defined in the act of 1834, for New Mexico was not acquired by the United States until the treaty of Guadalupe Hidalgo, February 2, 1849, when it became the property of the United States and subject to its jurisdiction.

But after that, and on the 9th of September, 1849, a treaty was made between the United States and the nation of Navajoes, in which it was recited that by the treaty of Guadalupe Hidalgo those Indians were placed under the exclusive jurisdiction and protection of the United States, and then provided that the laws regulating the trade and intercourse with the Indians should be extended over the Navajo country.

We think the purpose and effect of this was to make the Navajo country Indian country.

Then the treaty declares that "perpetual peace and friendship" shall exist between the contracting parties, and we think this placed the Navajoes "in amity" with the United States, and that this relation thus created between the nations could not be altered by the depredations of individuals of either of them, for which indeed the treaty provides.

Thus the Navajoes committed the depredation when their tribe was in amity with the United States, and passed from the Indian country into a territory inhabited by the citizens of the United States, and this brings the claim of the petitioner within the seventeenth section of the act of 1834.

That the mules and animals taken belonged to Brent & Beck is admitted in the brief of the solicitor, and, we think, is shown by the evidence, pages 7, 8, 9. As to the number of animals taken at Montalla, says page 8, "I think there was a hundred head;" Duval, who had charge of the herd, says, page 9, "there were about eighty mules, sixteen mares, and a few horses, colts, and jackasses." He thus enumerates ninety-eight animals, and a phrase, "a few horses and colts," taken, as it should be, at its least extent, adds three to the enumeration, making one hundred and one animals in all.

Then, as to the average value of the animals. Duval and Estes state it at \$75 per head. J. L. Collins, a deponent for the petitioner, says the general range of prices for mules that year was about \$60 to \$80, and the petitioners, in proof filed by them before the superintendent in support of their claim, and which they produce here, stated the value of the animals to be \$65 per head, which we think the fair conclusion as to their value from the evidence; and 101 animals, at \$65 per head, give a total of \$6,565.

The petitioner claims interest on the ground that the seventeenth section of the act of 1834 provides for the party injured "an eventual indemnification;" but by the express terms of the statute such eventual indemnification is to be "in respect to the property so taken, stolen, or destroyed."

These words must have some meaning, or they would not have been used; and if any effect is allowed them, it must be restrictive, and then the whole sentence does not of its own force indicate more than the value of the property taken, etc., or create an obligation on the part of the United States to pay interest for the default or delay of the Indians in satisfying, or of the officers of the Government in enforcing, the claims of the parties injured.

On the whole case we are of opinion that the petitioner is entitled to relief in the sum of \$6,565, for which a bill will be reported to Congress.

It will be observed that all the facts are alluded to in the opinion of the court, hence the committee has been relieved of the necessity of recapitulating them here.

A copy of the last will and testament of Preston Beck, jr., is hereto attached.

The testator died soon after executing this will, and the estate has been administered upon and all debts paid, so that the allowance of the Court of Claims is due to the heirs in the manner provided by the will.

This committee therefore recommend the passage of the bill.

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#### LAST WILL AND TESTAMENT OF PRESTON BECK, JR.

Know all men by these presents, that I, Preston Beck, jr., a resident of the city and county of Santa Fé, and Territory of New Mexico, having in view the uncertainty of life and the liability to sudden death, do judge it best to make, and accordingly do hereby make and declare this to be my last will and testament:

It is my will that all my just debts be paid and discharged as soon as conveniently my executor can pay and discharge them after my death, and I leave all the charge and manner of so doing to my executor hereinafter named.

My interests in business of the firm of S. and P. Beck, lately conducted at Boonville, Missouri, and Lexington, Missouri, is that of one-third only, and my interest in the business of S. and P. Beck, in the Territory of New Mexico, is that of two-thirds; and the said firm of S. and P. Beck, both in Missouri and New Mexico, was composed solely of my brother, Simpon Beck, deceased, and myself.

Before any division of the profits of the firm of S. & P. Beck, in the Territory of New Mexico, are made, as above stated in third parts, the estate of Simpson Beck is to have five thousand dollars and I am to have five thousand dollars, which said sums of five thousand dollars are to be drawn out of each of us immediately after the debts of said firm are paid and before any division of the profits.

I give, devise, and dispose of my estate, real, personal, and of whatever description it may consist (except what shall be necessary to pay my just debts), in the following manner:

I will and devise that all my estate, real, personal, and of whatever description, shall be given to, received, and enjoyed by the following-named persons, share and share alike, that is to say, to my nephew, James P. Beck, and my niece, Elizabeth C. Beck (children of my brother, Lewis Beck), and my nephew, William P. Beck, and my nieces, Anna D. Beck and Elizabeth Beck (children of my brother, Simpson Beck), and my brother, John Jeffrey Beck, and my cousin, Preston H. Lee, and my nieces, Mary Ann Cracraft and Elizabeth Cracraft (children of my sister, Martha Beck), all taking share and share alike and enjoying the same without any dispute or difference after my just debts shall be paid.

I hereby nominate, constitute, and appoint John Jeffrey Beck to be my sole executor of this my last will and testament, reposing in him every trust and confidence that he will execute it according to my intention and desire as herein expressed.

In testimony whereof I have hereunto set my hand and seal, and publish and declare this writing to be my last will and testament, at the city of Santa Fé, this first day of April, one thousand eight hundred and fifty-four.

PRESTON BECK, Jr. [SEAL.]

Signed, sealed, published, and declared by the said Preston Beck as his last will and testament in presence of us, who have hereunto subscribed our names as witnesses thereof, at the request of the testator and in the presence of the testator and in the presence of each other; and the testator acts with freeness of will, soundness of mind, and entire judgment.

R. H. THOMPkins  
J. M. GIDDINGS.  
H. W. SMITH.

Recorded by me in accordance with an order of the probate court given on the 9th day of April, A. D. 1858.

C. P. CLEVER,  
*Probate Clerk.*

TERRITORY OF NEW MEXICO, *County of Santa Fé:*

I, the undersigned, clerk of the probate court and *ex officio* recorder in and for the county and Territory aforesaid, do hereby certify that the foregoing is a true and correct copy of the last will and testament of Preston Beck, jr., as appears of record in book "C" of wills and testaments, pages 59 and 60.

Witness my hand and official seal at Santa Fé, N. M., this 11th day of November, A. D. 1857.

[SEAL.]

MARCELINO GARCIA,  
*P. C. and Recorder, Santa Fé Co., N. M.*