4-17-1858

M. M. Marmaduke and others

Follow this and additional works at: https://digitalcommons.law.ou.edu/indianserialset

Part of the Indian and Aboriginal Law Commons

Recommended Citation

This House Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.
Mr. Woodson, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the memorial of M. M. Marmaduke and others, beg leave to report:

In 1824-'25, an act was passed by Congress to establish a public highway from Fort Osage, on the Missouri river, near the western boundary of the State of Missouri, through the Indian territory, to the nearest settlements in New Mexico. Commissioners were appointed to survey and mark out said road, and to treat with the Indian tribes along the same for the safety and protection of citizens of the United States who might travel upon it. Accordingly, in 1825-'26, the commissioners did survey and mark out the road, and made treaties with the Osage, Kansas, and Pawnee tribes of Indians, providing for the safety and protection of the citizens of the United States who might travel over it. About the same time consuls were appointed in several of the northern towns of New Mexico, and every inducement offered by the United States to encourage and foster trade with New Mexico over the route so established.

In the spring of 1828 the memorialist and others, encouraged and invited by the facilities thus furnished, provided themselves with goods and the necessary transportation, and associated themselves together as a travelling company for mutual assistance and protection. They travelled together to Santa Fé, in New Mexico, and after having disposed of their goods, chiefly in exchange for horses, mules, and asses, they again associated themselves together to aid and assist each other in driving their stock to Missouri over the road so established by the United States. On their return to Missouri with their stock, numbering about 1,200, on the night of the 28th of August, 1828, whilst they were encamped on the north bank of the Arkansas river, near the mouth of the Pawnee fork, they were attacked by a large body of Indians, who drove off some 600 head of their stock, notwithstanding every effort was made on the part of the memorialists to prevent it, two of their party being killed and several wounded.

At that time it was not certainly known what tribe had committed
the robbery, but from the testimony of persons well acquainted with
the habits, customs, dress, and instruments of war of various Indian
tribes, taken in connexion with the testimony of Miguel Lujan, a
Mexican, who, at that time, was a prisoner among the Pawnees at their
village, and who states that a day or two after said robbery, a party
of Pawnees returned from the mouth of the Pawnee fork with a large
number of horses, mules, and asses, corresponding in number and de-
scription with those taken from the memorialists, stating that they
had stolen them from a party of whites returning from New Mexico,
there can be no doubt that the robbery was committed by the Pawnees.

In May, 1829, one of the memorialists, M. M. Marmaduke, wrote
to the Secretary of War, informing him of the robbery, claiming in-
demnity therefor, and asking to be advised how to proceed to estab-
lish his claim; and subsequently made a similar application to the
superintendent of Indian affairs, General Clark, thus showing a
knowledge of their rights, and a determination not to abandon them.
At this time the memorialists were informed that Thomas Talbott, and
others, were prosecuting before Congress a claim for a similar robbery
committed by the same Indians on the same road in the year 1827;
and not being in possession at that time of sufficient evidence to fix
the robbery upon the Pawnees, and desiring to know the action of
Congress upon the question of liability involved in the case of Talbott
and others, before incurring the trouble and expense of prosecuting
their claim, they were induced to defer the same.

By the intercourse act of 1802, which was in force at the time of
the robbery, Congress guaranties "eventual indemnity" to citizens of
the United States for all losses sustained whilst lawfully in the Indian
country, by reason of robberies committed by Indians. By the treaty
with the Pawnees made in 1825, above referred to, they stipulate that
they will not molest or interrupt any citizen or citizens of the United
States who may be passing from the United States to New Mexico, or
returning thence to the United States, and by the treaty of 1833 they
are entitled to $1,300 annually; so that they are, by their own treaty
engagements, bound not to molest or disturb the citizens of the United
States who are lawfully in their territory, and the United States holds
in its own hands the means of indemnifying all losses sustained by
their acts.

The memorialists were lawfully in the Indian territory at the time
of said robbery, travelling along the highway established by the
United States, for the purpose of encouraging and facilitating the
commerce in which the memorialists were engaged. The robbery was
committed within the jurisdiction of the United States and within the
Indian territory, and from all the facts abundantly proven, and in
view of the precedent in the case of Talbott and others above referred
to, as well as the uniform action of Congress in numerous cases since,
your committee are of opinion that the memorialists are entitled to
indemnity for the value of the animals so lost by them, respectively,
according to their cash value at the time of said robbery, and there-
fore report the accompanying bill.