

Reporters' statement of the case.

ROBERT PAINTER v. THE UNITED STATES, HUMBOLDT, EEL RIVER, YAGA CREEK, REDWOOD, MAD RIVER, AND KLAMATH INDIANS.

[Indian Depredations 29. Decided December 6, 1897.]

*On the Proofs.*

In Humboldt County, Cal., in 1859, 1860, 1861, and 1862, the defendant Indians kill the stock and burn the houses of claimant and his decedent. While the military have many conflicts with different bands of Indians and take many of them prisoners, no engagements that can be called battles take place.

- I. The Humboldt, Eel River, Yaga Creek, Redwood, Mad River, and Klamath Indians were not in amity with the United States from 1859 till after March, 1862.
- II. The cause of a lack of amity is immaterial under the Indian depredation act if there was a condition of hostility between the tribe or band and the United States. The history and conditions of the Humboldt County Indians examined and reviewed.

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The following are the facts of the case as found by the court:

I. The claimant and decedent at the time of the depredations were citizens of the United States, residing in Humboldt County, State of California, and in the years 1859, 1860, 1861, and 1862 the said Indians destroyed property belonging to claimant and decedent consisting of houses, horses, and cattle which, at the time of the destruction, was worth more than the sum of three thousand dollars (\$3,000). The property was destroyed without just cause or provocation on the part of the owner or the agent in charge, and has not been returned or paid for.

II. The circumstances and manner of the destruction were as follows:

In December, 1859, January and February, 1860, November and December, 1860, and February and March, 1861 and 1862, the defendant Indians killed the stock and burned the houses of claimant and decedent, amounting in value as set forth in finding I. A considerable part of the cattle were driven over a precipice and killed; others were "hamstrung," and others shot. In March, 1862, the Indians killed a mare and colt belonging to claimant and decedent.

The cattle were generally destroyed wantonly and not for the purpose of being used as beef.

In 1862, being threatened by the Indians, the claimant and his family made their escape from their home; were followed

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by the Indians into the town of Arcata, where two men were killed by the Indians. In about a week thereafter the Indians burned the dwelling and outhouses of claimant and decedent.

III. The following extracts from public documents are applicable to the condition of the Indians on the question of amity.

Testimony of Austin Wiley, formerly superintendent of Indian affairs for California, is in substance as follows:

"It is extremely difficult to convey an idea of the social divisions that exist among these strange beings. Unlike tribes of the East, they are divided into small bands, who build rude houses on the banks of some river or mountain creek and seem to live within themselves, almost a separate people. \* \* \* (Report of Joint Special Committee on the Condition of the Indian Tribes, 1867, p. 497.)

"The Indians living on the banks of a river generally take the name of the stream. \* \* \* They do not form a distinct tribe, each rancheria having its head, and often being arrayed against another in quarrels and open fights. It is a remarkable fact that a separate and distinct language is spoken by the Indians on these different rivers, or nearly all of them. \* \* \* The fact of this complete division, and of there being no recognized head, either to the northern coast Indians as a body or to the seminited tribes on a river, renders it exceedingly difficult to treat with them or to successfully colonize them on reservations. When placed together they do not harmonize, retaining their petty divisions and being distrustful of one another. (Ibid., p. 498.)

"In 1856 the Indians on Redwood Creek, Upper Mad River, Grouse Creek, and head waters of Eel River began to express bitter hostility; and now commenced a war that ere its close resulted in the loss of many valuable lives, the destruction of an immense amount of property, and the killing of a large number of Indians. (Ibid., p. 498.)

"Matters went on from bad to worse until, in 1858, in response to frequent petitions from the people, Governor Weller called out a company of volunteers to serve for three months. \* \* \* They, however, gained but little advantage over the Indians, as the natives resorted to their usual modes of warfare—way-lay, shoot, and run. Before the close of this campaign Captain Messic succeeded in taking quite a number of prisoners, and finally induced quite a number of Indians to come in. These numbered in all some 900, and were taken to the Mendocino Reservation by water, by order of the superintendent and against the earnest protest of the people of Humboldt, who were well aware that by such a course the fruits of the campaign would be entirely lost. These Indians remained to enjoy the care and protection of the Government but a very short time. Nearly all of them found their way back to their old home, more embittered and hostile than ever before. But fifty of these prisoners now remain on the reservation; a small por-

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tion of the remainder are among those now at Hoopa Reservation, but the majority of them have passed away during the sanguinary war lately brought to a close.

"The peace that succeeded the removal of the prisoners taken in the Messic campaign was of short duration, and when war again commenced it was waged with revengeful desperation on the part of the Indians, all of the tribes of the north participating excepting the Klamaths and the Indians on Lower and Eel rivers.

"The Hoopas, second in number and strength to the Klamaths, and the shrewdest and bravest as well as best armed of any of the tribes, pretended to be friendly to the whites, but evidently furnished ammunition and harbored the Indians who were at war. Many white men were killed, the Indians seeming bent on the extermination of all the settlers, killing their best friends as soon as their worst enemies. The stock of the settlers was shot down in malicious mischief, their houses burned, and the country laid waste. The deeds of the whites in retaliation were scarcely less inhuman—a war of extermination being openly talked of, which, although it was opposed by all the more respectable and influential citizens, culminated on the 3d of April, 1859, in the disgraceful massacre at Indian Island of about 150 Indians, principally women and children. This barbarous proceeding so incensed the authorities that the settlers of that section were left almost to the mercy of the Indians, being principally dependent on their own exertions for protection. (Ibid., p. 499.)

"From 1859 to 1861 disturbances were continually occurring, depredations being committed by the Indians, and mountain Indians being killed by the whites wherever found. Two companies of volunteers at different times made short campaigns against the Indians, but gained no material advantage over them. In 1861 General Wright sent a full regiment of troops (the Second Infantry, California Volunteers) to the Humboldt military district, and the citizens were led to hope that the war would be brought to a close.

"The campaign inaugurated by Colonel Lippitt proved, generally speaking, a failure. Quite a number of prisoners were taken in the Eel River country, and in all a considerable number of Indians were killed, but the extent and daring of hostilities increased rather than diminished. Men were murdered and houses burned under the very eyes of the troops, and the citizens of such towns as Arcata were shot down in daylight while pursuing their customary avocations.

"After more than a year of unsuccessful and expensive operations this regiment was relieved by a battalion of mountaineers, consisting of six companies of infantry, raised principally in the counties suffering from the war, and commanded by Lieut. Col. S. G. Whipple. The Hoopa Indians about this time openly took the field, and were the leading spirits among the savages in the bloody hostilities that ensued. All the settlers

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from the mountains were driven in and their improvements burned. The vast herds of stock that ranged on the fine grazing land back from the coast were swept away. Their depredations extended to the Salmon River and into the adjoining county of Trinity. The mail carrier on the route to Weaver-ville was killed, and also the postmaster at Albeville. Travel was entirely stopped, except at night, or under guard of a heavy escort. The business interests of the country were well-nigh destroyed, and gloom supplanted the peace and prosperity that had previously rendered that district among the most attractive in the State.

"The war was carried on with varying success for nearly two years, many Indians falling before the well-directed blows of the troops, while they in turn suffered not a little. A large number of prisoners were taken in the southern portion of Humboldt and in Mendocino County and the hostile Indians in that region effectually suppressed. The Hoopa, Redwood, South Fork, and Grouse Creek bands were the remaining foe, and it was found impossible to take them prisoners. Skilled in the use of arms, naturally intelligent, and perfectly at home in the rough country they roamed over, it would have been the work of years to have thoroughly subdued them by the force of arms alone—even by the unmerciful policy of extermination which it would have been necessary to resort to. They suffered much during the winter of 1863, and were finally induced to come into Hoopa Valley and be fed by the military authorities as a condition of peace, but persistently refused to surrender their arms, and would not consent to be removed to any reservation then established. In this condition I found them in August, 1864, and through the cooperation of the military authorities arranged the terms of a permanent peace, the main conditions of which were a surrender of their arms and a return to peace on their part, and the establishment of the Hoopa Reservation on the part of the Government. (Ibid, pp. 499 and 500.)"

Witness Brown, who was the sheriff of the county at the time, says:

"In the year 1862, when the said property was burned, that whole section was in the possession of and at the mercy of the Indians, and no person could travel in the daytime without danger of being shot; \* \* \* it was not safe for a white man at that time to travel in the daytime. \* \* \* And the Indians were daily killing or wounding the white settlers and destroying their stock."

Charles Porter, captain, United States Army, and acting Indian agent, reported as follows:

"That Humboldt County, Cal., was at different times from 1861 to 1865 the scene of extensive Indian depredations is established beyond any question by the indisputable and contempora-

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neous evidence of both State and Federal records. \* \* \* How or why the Indian depredations originated is of no consequence in this connection. Most probably the causes of the outbreak were merely a repetition of the old story in Indian history. From small isolated raids the troubles increased until the county became the scene of widespread hostilities. The county was then but sparsely settled, rendering a common defense against Indian depredations impossible. Life and property were safe only in the largest settlements. Even there, or in their vicinity, murders were committed and property destroyed. Men were killed by Indians within a few miles of Arcata. Travel was suspended unless men went in large bodies, or under the protection of a military escort. In these murderous predatory Indian raids the Klamath, Hoopa, Mad River, and Redwood Indians acted conjointly or separately, as circumstances required."

On page 348 of Bledsoe's *Indian Wars of the Northwest*, the historian says:

"The disbanding of the volunteer guides was followed by most serious results. In the vicinity of the Kneeland Prairie, Big Bend of Mad River, on the Redwood, and through to the Trinity, hostile demonstrations were of daily occurrence. The regular soldiers could not fight without the aid and encouragement of the volunteers, and the Indians knew it. They feared the volunteers only. When the volunteer guides, therefore, were dismissed from service, the hostile tribes were apprised of it by their friendly neighbors of the valleys, and, fearing no other enemy, they commenced a reign of terror which left death and devastation as its visible results. During the six months from July 1, 1861, the community was perpetually in mourning for good and industrious citizens who were killed, some at their houses, some on the lonely trails and in the woods, but all by Indians. It was a carnival of death terrible to contemplate, even at this distant day."

The historian continues:

"At the beginning of 1863 the hostile tribes had complete possession of all the Mad River and Redwood country back as far as Hoopa. Every channel of traffic between Humboldt, Trinity, and Klamath counties was effectually blockaded. The only farmhouse saved from the torch the year before—on Minor's ranch—was now burned and all other improvements on the place were destroyed. On the north side of Mad River, from the head of Redwood to its mouth, not a single dwelling had been saved from the general ruin." (Ibid., p. 400.)

In January, 1863, the grand jury of Klamath County, in its report, said:

"The jury finds that that portion of Klamath County bordering on Humboldt County is entirely deserted, many of the houses and other improvements of our citizens in that region

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having been burned and laid waste as well as many valuable lives being sacrificed to the brutal savages that infest that section."

The report continues with references to the California volunteers, and concludes:

"We recommend that the proper authorities make another effort with the governor of this State to call out a sufficient body of resident citizens of these two counties to chastise and expel forever, if possible, the hostile Indians from that portion of these counties at present made utterly untenable by their presence and depredations." (Ibid., pp. 401, 402.)

On April 10, 1862, Brigadier-General Wright reports:

"The Indian difficulties in the 'district of Humboldt' have become so aggravated that I have determined to throw additional troops into that country and close up that war for the last time. (Senate Ex. Doc. No. 70, Fiftieth Congress, second session, p. 57.)

"The Indian difficulties in the Humboldt district have been growing worse and worse for years, and I am determined to settle them now for the last time. \* \* \* Allow no citizens, unless employed by your order, to accompany the troops in the field. (Ibid., p. 58.)

"In the district of Humboldt our Indian difficulties have assumed a more serious aspect. Colonel Lippitt, the commander, is active, energetic, and zealous, and with the additional troops I am sending to him I am confident of his ultimate success." (Ibid., p. 60.)

On May 13, 1862, the same officer reports:

"Colonel Lippitt, Second Infantry California Volunteers, commanding the district of Humboldt, is at work energetically bringing those Indians under subjection."

In May, 1862, Colonel Lippitt reports as follows:

"During a scout of Company F, Second Infantry California Volunteers, commenced April 2 by Lieutenant Flynn, 3 Indians near Trinidad, going toward the mouth of Redwood Creek, where it was reported there was a band of some 200 hostile Indians, were captured by him.

"On the 27th of April, Captain Keatcham, of Company A, Third Infantry California Volunteers, returned to Fort Baker from a scout to the southward of Van Duzen Fork with 24 Indian prisoners, all women and children, except two young bucks.

"On the 7th of May Lieutenant Flynn, with a detachment of 20 men, \* \* \* then on a scout near Mad River, a few miles below Fort Lyon, received a volley from a band of Indians in ambush.

"On the 14th of May, on Mad River, near Angels Ranch, Lieutenant Flynn, then having 15 men with him, \* \* \*

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“found a band of Indians about 7 o'clock a. m. They fought me about one hour. I killed 6 of them. None of my men received a wound.” (Ibid., p. 70.)

On June 12, 1862, the same officer reported:

“I have this morning received reports from Colonel Lippitt, commanding the district of Humboldt. The colonel has ten companies of infantry and one of cavalry actively engaged in subduing the Indians in his district. Nearly 300 Indians have been collected and brought into Fort Humboldt preparatory to their removal to their reservation. Still there is a strong band of Indians well armed who are constantly attacking small parties and isolated settlements. This band must be subdued and captured before we can have peace throughout that region. The country presents almost insurmountable obstacles to the movements of the troops; the dense forests with obscure trails, with which the Indians are well acquainted, offer them every advantage. Nevertheless, Colonel Lippitt and the troops under his command have exhibited a zeal, energy, and perseverance which must ultimately result in success.” (Ibid., pp. 72, 73.)

On June 28, 1862, the same officer, writing of the Humboldt district, said:

\* \* \* “The Indians still continue to commit depredations, and Colonel Lippitt, the commander, is actively engaged with his troops in protecting the inhabitants and collecting the Indians preparatory to their removal to the reservation.” (Ibid., p. 78.)

On September 15, 1862, Governor Nye, in a letter to General Wright, said:

“I will inclose a copy of a letter from my Indian agent from Humboldt showing the state of things there, and I have to-day heard of much more bloody butchery. If I can procure arms I can put a thousand good men in a condition to render good and efficient aid in any emergency.” (Ibid., p. 96.)

On October 4, 1862, General Wright again reports:

“In the district of Humboldt the Indian difficulties still continue. However, nearly 1,000 Indians have been captured or induced to surrender to the military authorities, and have been transferred to the reservation.” (Ibid., p. 98.)

Major McGarry, on November 6, 1862, reports difficulties with the Indians in the Humboldt district. (Ibid., p. 125.)

On January 21, 1863, General Wright applied to Governor Stanford, of California, requesting him to organize for use in the Humboldt district four companies of infantry to be mustered into the service of the United States, to which Governor Stanford immediately consented. (Ibid., pp. 132, 133.)

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On January 26, 1863, General Wright again reported:

"The Indian difficulties in the district of Humboldt, I regret to report, still exist. During the past year Colonel Lippitt, of the Second Infantry, California Volunteers, has been in command of the district with his entire regiment. The untiring zeal and activity of the colonel, his officers, and men are highly praiseworthy, but the fact is, I doubt much whether we can ever have peace there until all the Indians are removed entirely out of the country. \* \* \* The troops under Colonel Lippitt have been in the field and suffered many hardships and privations during the past eighteen months, and I shall withdraw the headquarters and active portion of the regiment early in the spring. \* \* \* I have requested the governor to organize four companies which, with a like number of companies now in service, will, after the withdrawal of Colonel Lippitt, constitute the active force in that quarter." (Ibid., p. 135.)

On February 5, 1863, General Wright again called upon Governor Stanford for six companies of infantry for special service in the district of Humboldt. (P. 137.)

On March 2, 1863, General Wright, renewing the application, wrote Governor Stanford as follows:

"Apprehensive that there may be some misunderstanding as regards the raising and organizing the volunteer companies for special service in suppressing Indian hostilities in the military district of Humboldt, I deem it important to say that when I called upon your excellency for those six companies it was understood that they were to be called out, not under the laws calling for volunteers to suppress the rebellion, as for that purpose I had no power, but simply for service in their own neighborhood, and for their own safety and protection against the Indians." (Ibid., p. 151.)

In March of the same year the Secretary of War, on the recommendation of Governor Stanford, gave authority to organize the six companies required. (Ibid., p. 153.)

On January 26, 1864, General Wright made the following report:

"With the exception of occasional Indian difficulties, I have nothing special to report within the limits of my department. The district of Humboldt is still the theater in which predatory bands of Indians commit their depredations. Lieutenant-Colonel Whipple, of the Mountaineer Battalion, is in command of that district, embracing the northwestern portion of California. He has, besides his own battalion, raised in the district six companies of the Second Infantry California Volunteers and one company of native California cavalry. He is doing all that is possible to kill or capture those Indians and restore



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peace to the country. He encounters innumerable difficulties; it is impossible to strike a decisive blow; the Indians prowl about in small parties and make sudden raids through the sparse settlements, and, being well acquainted with the mountain trails, make their escape. The troops have been active and bold, and whenever an opportunity has offered have done themselves credit, and with the additional force I have given to Colonel Whipple I am in hopes of restoring peace throughout the district in a few months. But to maintain it those Indians must be removed out of that country." (Ibid., pp. 206, 207.)

On April 9, 1864, the same officer reports:

"In the district of Humboldt Colonel Black, Sixth Infantry California Volunteers, is prosecuting vigorously the war against the hostile Indians." (Ibid., p. 223.)

Again, on May 9, 1864, General Wright reports as follows:

"Tranquillity prevails throughout the department except in the district of Humboldt, where the Indian war is being prosecuted vigorously and successfully. Col. H. M. Black, Sixth Infantry California Volunteers, has been zealous and indefatigable in pursuing the enemy, and his officers and men have endured the hardships and exposures of that inhospitable region, amidst the snows and rains, with the greatest cheerfulness. The whole country is covered with our scouting parties, and already between 30 and 40 of the hostile Indians have been killed and wounded, with but trifling loss on our side. Some of the principal chiefs have surrendered, and Colonel Black expresses the opinion that the war will soon cease." (Ibid., p. 225.)

On June 23, 1864, General Wright refers to the campaign of Colonel Black against the Indians of the Humboldt district. (P. 232.)

Sergt. R. B. Harris, of Company E, First Battalion Mountaineers, California Volunteers, reports the details of a scout by a detachment under his command, continuing from April 13 to May 24, 1864. (Ibid., pp. 233, 234.)

On December 6, 1865, Major-General McDowell, as to the Humboldt district, stated:

"A long and expensive Indian war was waged in that section which required from two to three regiments. A large number of the hostile Indians were made prisoners and sent to the Round Valley Reservation, and others have been located on the Hoopa Valley Reservation. I do not think it prudent at this time to withdraw the volunteer companies from those reservations." (Ibid., p. 301.)

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The superintendent of Indian affairs for California, on September 1, 1864, made the following report:

"The condition of Indian affairs in the counties of Humboldt, Klamath, and Trinity most earnestly demanded my attention upon my entering upon the discharge of my duties. This section of the country had been cursed for years with a destructive Indian war, which had well-nigh ruined its business interests and promised to end only with the extermination of the Indians. A vigorous campaign, accompanied with great loss of life, had been waged during the past year, and the Indians, though severely dealt with, were still unsubdued, but, through the efforts of the district commander, had ceased hostilities and come into Hoopa Valley, the home of most of the warriors, where, with their arms still in their possession, they were waiting some action on the part of the Government toward establishing a treaty.

"It had been the hope of the people of this section, as well as the military authorities, that these Indians might be removed to some point south of San Francisco, as sad experience and a knowledge of their character convinced all that they would not remain on any reservation unless its natural situation rendered it utterly impossible for them to return. In this hope I earnestly shared, and in letters to the Department urged in the strongest terms that such a course be adopted; but permission to carry out this policy having been denied, it only remained to adopt the next best course, and I at once went to Hoopa Valley to treat with the Indians. Of my action there, resulting in the establishment of a reservation in Hoopa Valley and the surrender of their arms by the Indians, you were fully advised in my letter of the 29th ultimo." (Report Sec. Int., 1864, pp. 260, 261.)

The Commissioner of Indian Affairs also reports in the same year:

"In Mr. Wiley's communication of June 1 he had alluded to the war still in progress with the Klamath, Redwood, and Trinity Indians, and which was referred to in my last annual report. Several hundred of these Indians had been taken prisoners and were held in safe-keeping at Humboldt Bay by the United States military authorities." (Ibid., p. 157.)

In the report of the Commissioner for 1864, at page 271, the superintendent for California says, under date of June 1, 1864:

"There is a large number of Indians between Smith River and Round Valley that I have not included among those that could be kept on the Round Valley Reservation or any other reservation north of San Francisco. I refer to the Klamath, Redwood, and Trinity Indians, with whom we are now at war.  
\* \* \* At present there are about 300 of these Indian prisoners at Humboldt Bay, held and fed by the military depart-

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ment. \* \* \* My experience enables me to assert positively that no means can be devised which will bring peace to that distracted district except the removal of the Indians to some point south of San Francisco."

In the same report it is stated that in 1858 900 Indians from the northern part of California were removed to Mendocino, and in 1860 1,100 were sent to Smith River; but that "it is safe to say that not one of those Indians remained where they were placed longer than two months." (Report Sec. Int., 1864, p. 271.)

On August 17, 1864, Major-General McDowell reports as follows:

"In the expeditions made after hostile Indians many are taken prisoners, and, as is the case in the Humboldt district, several hundred have to be fed from the military supplies. \* \* \* The Indian Department decide that they can not feed Indians who are prisoners in the hands of the military; that the military have always fed their own prisoners; \* \* \* that if Indians are turned over to them at their reservations they will be provided for. \* \* \* We have now several hundred Indians in our custody. Some were brought in; some came in and surrendered. \* \* \* We have been obliged to feed them till the Indian Department receives them. To refuse to do so would drive them to the necessity of committing fresh depredations, and thus reopen the war.

"IRVIN MCDOWELL,  
"Major-General, U. S. Army."

(Senate Ex. Doc. No. 70, second session Fiftieth Congress, p. 237.)

On August 2, 1864, Superintendent Wiley reports as follows:

"The hostile Indians, with whom we have been so long at war, live principally in Hoopa Valley. The warriors, some 75 in number, are now there, with arms still in their hands, waiting to see what is to be done. Hoopa Valley is about 5 miles in length and 2 in width, with Trinity River in the center. \* \* \* I regret that the statements of the former superintending agents should induce you to think that these hostile Indians could, either by being subdued or by treaty, be kept on any of the northern reservations. \* \* \* The treaty of which you speak, with the Indians of northern California and northern Oregon, \* \* \* can not possibly have any effect upon the military operations now in progress in the Humboldt district. The Klamath Lake and Modoc Indians are distant several hundred miles from the Indians in this district, and are as entire strangers to each other as the Cherokees and Flat-heads." (Rep. Sec. Int., 1864, p. 277.)

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The hostilities were finally terminated, for the time being at least, by a so-called treaty proposed to them by the superintendent of Indian affairs for California and accepted by them. In a letter dated August 29, 1864, transmitting this agreement to the Commissioner of Indian Affairs, Superintendent Wiley says:

"On the 2d ultimo [July 2] I informed you that I would start for the north for the purpose of making some kind of a settlement with the hostile Indians in the Humboldt district. The headquarters for the Indians who have been engaged in the war in that portion of the State for five years past is Hoopa Valley, on the Trinity River. I arrived there on the 10th ultimo and found most of the hostile Indians in the valley with their guns still in their hands awaiting my arrival." (Rep. Sec. Int., 1864, p. 278.)

[Rebellion Record, vol. 50, part 1.]

"Fort Humboldt, *March 23, 1861*, Captain Lovell, and *February 9, 1861*, Lieutenant Lynn:

"They [the Indians] have no principal man exercising any control. \* \* \* They avoid combat and run on all occasions. \* \* \* A scouting party has been out almost every day. \* \* \* Whole country for many miles all around in all directions has been thoroughly scoured \* \* \* and no Indians have been found." (Pp. 6 and 7.)

"Lieutenant Lynn reports, Fort Humboldt, Cal., *March 28, 1861*:

"From the camp near Kneelands Prairie [claimant's ranch was at Kneelands Prairie] but one party was sent out. This was under Sergeant Weidmer. The sergeant on his return reported no Indians." (P. 10.)

"Special Orders, No. 309, assigning Brig. Gen. George Wright to the command of the Department of the Pacific, dated Washington, *November 19, 1861*. (P. 730.)

"Special Orders, No. 233, assigning Col. Francis J. Lippitt to the district of Humboldt, dated *December 12, 1861*, *San Francisco Cal.* (P. 760.)

"General Wright to George M. Hanson, superintendent Indian affairs, north district of California, Maysville, Cal., dated San Francisco, Cal., *December, 24, 1861*:

"The Indian disturbances in the northwestern part of this State render it absolutely necessary to take prompt measures to collect all the Indians in that quarter and *place them on the reservations set apart for their homes.* \* \* \* Colonel Lippitt will be instructed to act promptly and vigorously in removing those Indians to the reservations, and I trust that the Indian Department will be prepared to receive them when collected together." (P. 786.)

"Assistant Adjutant R. C. Drum, in letter to Colonel Lip-

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pitt, dated San Francisco, Cal., *January 6, 1862*, states: 'The General desires to visit all the posts in your district and take early measures to remove the Indians to the reservations as soon as the superintendent is prepared to receive them.' (P. 795.)

"Department Orders, No. 1, Fort Humboldt, *January 9, 1862*, Colonel Lippitt assumes command of the district of Humboldt. (P. 800.)

"Colonel Lippitt to Adjutant-General Drum, Fort Humboldt, *January 12, 1862*, reports the situation and condition of the Indians committing depredations; are not divided into tribes with responsible chiefs; that many of the whites are constantly killing the Indians (p. 803), and adds, 'the Indians must all be removed, for their own sake and for the sake of the whites, and the sooner they are removed the better.' (P. 804.)

"General Wright to Adjutant-General Thomas, San Francisco, Cal., *January 18, 1862*, states: 'With regard to the military operations in this country, they are at present suspended. My troops, except in the district of Humboldt, have generally escaped the overflow.' (P. 812.)

"Captain Moore to Colonel Lippitt, Fort Bragg, Cal., *January 29, 1862*, says:

" 'You will therefore readily perceive that the stories of Indian depredations in this vicinity are all bosh, and, as I before informed you, I really believe if the Indians were properly treated by the white men they would not, in scarcely any instance, trouble them,' etc. (P. 835.)

"Colonel Lippitt to Assistant Adjutant Drum, Fort Humboldt, *February 4, 1862*:

" 'MAJOR: Since my former letter the routes have become more impracticable. It has been raining almost without intermission, stopping for three or four days, only to cover the mountains and fill up the ravines with snow, in some places to a very great depth. \* \* \* I have heard of an instance of Indian depredations upon stock.' (P. 842.)

" 'The few old residents here I have conversed with agree in the opinion that neither these Indians nor any of the others can be brought in willingly to go upon reservations. Nothing short of actual force will do this, unless it be an impressive exhibition of it,' etc. (P. 845.)

"Colonel Lippitt to Assistant Adjutant Drum, *Fort Humboldt, February 24, 1862*, states:

" 'By a ten days' tour of reconnaissance I have become convinced, first, that the statements made to me in respect to the Indians in Hoopa Valley were erroneous, and that it would be very unwise to attempt to remove them from their present settlements, where they are living in peace and amity with the whites, etc. (P. 889.)

"Assistant Adjutant Hanna to Colonel Lippitt writes Cap-

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tain Heffernan, of Company K, Second California Infantry, Fort Humboldt, March 8, 1862:

“ ‘The purpose for which the military force in this district is to be employed is *not to make war upon the Indians* nor to punish them for any murders or depredations hitherto committed, but to bring them in and place them permanently on some reservation, where they can be protected against all outrages from hostile whites. *The end in view in all your expeditions will be, therefore, a friendly one,*’ etc. (Pp. 916, 917.)

“ San Francisco, March 10, 1862, General Wright to Adjutant-General Thomas:

“ ‘Colonel Lippitt, Second Infantry California Volunteers, commanding the district of Humboldt, will, as soon as the waters subside and the trails become passable, make expeditions throughout his district for the *purpose of gathering up those Indians and placing them on the reservations.*’ (P. 917.)

“ Hanna, of Lippitt’s staff, to Captain Akey, Company E, etc., Fort Humboldt, March 13, 1862:

“ ‘The purpose for which military force in the district is to be employed is *not to make war upon the Indians* nor to punish them for any murders or depredations hitherto committed, but to bring them in and place them permanently on some reservation where they can be protected from all outrages from hostile whites; *the end in view, therefore, in all your expeditions will be a friendly one,*’ etc. (P. 924.)

“ San Francisco, March 31, 1862, General Wright to Adjutant-General Thomas:

“ ‘In the district of Humboldt, Colonel Lippitt, the commander, is in the field with most of his troops *making every effort to collect all the Indians and placing them on the reservations.*’ ”

IV. At the time of said destruction and theft the said Indians were not in amity with the United States; and inasmuch as other cases were argued and submitted with this case, covering depredations at other times, the court finds that the want of amity continued until the 10th of July, 1864.

Mr. T. H. N. McPherson for the claimants.

Mr. W. H. Robson for the defendants.

WELDON, J., delivered the opinion of the court:

The amended petition, filed by leave of the court on the 13th of February, 1897, is in the name of Robert Painter, for himself and as administrator of Herman Painter, deceased.

The findings show that the plaintiff and the decedent were the joint owners of the property destroyed in the county of Humboldt, State of California, by the defendant Indians. The

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case is contested on two grounds: First, that the evidence is not sufficient to establish the ownership of the property and the identity of the Indians; and, second, that at the time of the alleged depredations the defendant Indians were not in a state of amity.

We have found that the Indians committed the depredations, and that the property was worth more than \$3,000. While the identity of the Indians may be in some doubt, we consider that a preponderance of the evidence shows that the depredations were committed by the alleged Indians, and that the reasonable value of the property was more than \$3,000.

The plaintiff and the decedent at the time of the depredations were citizens of the United States, having been born in the State of Ohio, from which they emigrated to California several years before the time of the first depredation. The only question to be considered is the question of amity, upon which the defendants have placed their principal reliance in defending themselves against liability.

The property destroyed consisted of dwellings, outhouses, oxen, horses, cows, and stock cattle. Most of the cattle were destroyed by being driven from a precipice into the river; the horses were killed and the houses burned after the claimant and his family had been driven by the Indians some distance to a settlement, where two men were killed by the Indians. The findings show that it was a wanton destruction of property and not a theft for the purpose of deriving a benefit from the possession and use of the property. By reference to the map it will be seen that the county of Humboldt is situated in the western part of the State, and for many miles is bounded on the west by the ocean; that it abounds with streams, mountains, and valleys, affording a safe retreat for Indians in carrying on a war for the purpose of preventing the country from becoming a peaceful and permanent home for white settlers. The findings upon the question of amity show that the Indians were actuated by a common purpose of hostility in attempting to prevent the settlement of white men and the successful establishment of an Indian reservation. While many persons were killed by the Indians during the period embraced within the limits of these depredations, and while the State and National troops killed many of the Indians, the policy of the Indians was not to fight, but the destruction of property and the desolation of settlements. As to the inception and cause of the

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troubles in the Humboldt district, Captain Porter, of the United States Army and acting Indian agent, says, "How or why the Indian depredations originated is of no consequence in this connection. Most probably the causes of the outbreak were merely a repetition of the old story of Indian history. From small isolated raids the troubles increased until the country became the scene of widespread hostility." The condition from which the court has deduced the legal conclusion that the Indians were not in a state of amity commenced in the year 1859, before the date of the first depredation, and continued long after March, 1862, the time of the last raid, when the home and houses of the plaintiff were destroyed, which resulted in the necessity of an abandonment of the settlement.

The circumstances of the depredations indicate that they were not perpetrated for the purpose of gain, but as the result of the malevolence and hostility of Indians toward the white settlers of that portion of the State of California.

Mr. Wiley, former superintendent of Indian affairs for California, in speaking of the condition and character of the Indians inhabiting what is known as the Humboldt district, says: "It is extremely difficult to convey an idea of the social divisions that exist among these strange beings. Unlike tribes of the East, they are divided into small bands, who build rude houses on the banks or some river or mountain creek and seem to live within themselves almost a separate people.

"The name of a river or stream was generally adopted to designate the Indians without any distinct tribal organization, but having a head or leader of sufficient authority to form a band, each band speaking a language peculiar to itself."

It is said by the same authority that as early as 1856 the Indians on Redwood Creek, Grouse Creek, and the head waters of Eel River commenced a war which before its close resulted in the loss of many valuable lives, the destruction of an immense amount of property, and the killing of a large number of Indians.

In 1858, in consequence of the disturbance and troubles, Governor Weller, in answer to frequent petitions from the people for protection, called into the service of the State a company of volunteers to serve for three months, the result of which was that a large number of Indians were taken prisoners and placed on the Mendocino Reservation against



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the protestations of the people of Humboldt County. They remained but a short time; nearly all of them found their way back to their old haunts more embittered and hostile than they were before their capture. Many white persons were killed, and, as the superintendent said in his report, the Indians "seemed bent on the extermination of all the settlers, killing their best friends as soon as their worst enemies." In 1861 General Wright sent a regiment of troops to the Humboldt military district and the citizens were led to hope that the war would be brought to a close. Speaking of the campaign of Captain Lippitt, the report characterizes it as a failure. "Quite a number of prisoners were taken in the Bel River country, and in all a considerable number of Indians were killed, but the extent and daring of hostilities increased rather than diminished. Men were murdered and houses burned under the very eyes of the troops, and the citizens of such towns as Arcata were shot down in daylight while pursuing their customary avocation."

After more than a year the regiment was relieved and a battalion of mountaineers of six companies raised in the counties suffering from the war and placed under the command of Colonel Whipple. The Hoopa Indians about this time took the field and participated in the hostilities which ensued. All the settlers of the mountains were driven in, and their improvements burned. In January, 1863, the grand jury of Klamath County, in recognition of the condition of the country, said, in substance, in their report, that that portion of Klamath County bordering on Humboldt County had become entirely deserted, that the improvements of the citizens had been burned and many valuable lives lost by the brutal savages who infest that section, and recommended that the authorities make another effort with the Government to call into service a sufficient force to expel forever the hostile Indians from that part of the two counties.

In February and March, 1861, Captain Lovell and Lieutenant Flynn say "the Indians have no principal man exercising any control. \* \* \*. They avoid combat and run on all occasions." They were unable to find any Indians at that time. The extracts from the Rebellion Record, as set forth in the findings, indicate that the main purpose was to remove the Indians to the reservation with as little bloodshed and trouble as possible, the removal being for the sake of the Indians and

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whites, and that the condition was as much due to the fault of the white man as the Indian; but it is wholly immaterial from what cause the condition arose, if it was a state of hostility and a want of peace. While it is said that it was not the purpose of the military "to make war on the Indians," but to bring them onto the reservation, the execution of that policy destroyed the condition of amity and peace.

It is not necessary to refer further to the condition of the Indians as shown in the findings, except to quote the material portions of the letter of Major-General McDowell, who was in charge of the military district of California during a portion of the time when the most serious trouble existed in the Humboldt district, and to the letter of the Commissioner of Indian Affairs, dated August 2, 1864.

The letter of Maj. Gen. Irwin McDowell in its material parts is as follows:

"SAN FRANCISCO, August 17, 1864.

"In the expeditions made after hostile Indians many are taken prisoners, and, as is the case in the Humboldt district, several hundred have to be fed from the military supplies. \* \* \* The Indian Department decide that they can not feed Indians who are prisoners in the hands of the military; that the military have always fed their own prisoners; \* \* \* that if Indians are turned over to them at their reservations they will be provided for. \* \* \* We have now several hundred Indians in our custody. Some were brought in; some came in and surrendered. \* \* \* We have been obliged to feed them till the Indian Department receives them. To refuse to do so would drive them to the necessity of committing fresh depredations, and thus reopen the war."

The letter of the Commissioner in its material parts is as follows:

"The hostile Indians, with whom we have been so long at war, live principally in Hoopa Valley. The warriors, some 75 in number, are now there, with arms still in their hands, waiting to see what is to be done. Hoopa Valley is about 5 miles in length and 2 in width, with Trinity River in the center. \* \* \* I regret that the statements of the former superintending agents should induce you to think that these hostile Indians could, either by being subdued or by treaty, be kept on any of the northern reservations. \* \* \* The treaty of which you speak, with the Indians of northern California and northern Oregon, \* \* \* can not possibly have any effect upon the military operations now in progress in the Humboldt district. The Klamath Lake and Modoc Indians are distant several hundred miles from the Indians in this district, and

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are as entire strangers to each other as the Cherokees and Flatheads."

Superintendent Wiley, on August 29, 1864, writes to the Commissioner of Indian Affairs as follows:

"On the 2d ultimo I informed you that I would start for the north for the purpose of making some kind of a settlement with the hostile Indians in the Humboldt district. The headquarters for the Indians who have been engaged in the war in that portion of the State for five years past is Hoopa Valley, on the Trinity River. I arrived there on the 10th ultimo, and found most of the hostile Indians in the valley with their guns still in their hands, awaiting my arrival."

The consternation and alarm in the public mind during a portion of the time covered by the troubles from which the many depredations complained of in the different causes pending in the court arose may be realized from what is said by Superintendent Wiley, who says:

"The vast herds of stock that ranged on the fine grazing land back from the coast were swept away. \* \* \* The mail carrier on the route to Weaverville was killed, and also the postmaster at Albeville. Travel was entirely stopped, except at night or under guard of a heavy escort."

"The business interest of the country was well-nigh destroyed and gloom supplanted the peace and prosperity that had previously rendered that district among the most attractive in the State."

The findings show many other facts founded on the official history of the times, tending to prove a state of chronic and determined hostility between the Indians and the inhabitants of Humboldt and adjoining counties. While the military, both State and Federal, had many conflicts with the different bands of Indians and took many of them prisoners, it does not appear that any engagements took place between them having the proportions of what might be called a battle.

In reporting the campaign of Captain Messic, who commanded the troops called into service by Governor Weller, Superintendent Wiley says: "They gained but little advantage over the Indians, as the natives resorted to their usual modes of warfare—waylay, shoot, and run."

The findings have many other extracts from public documents tending to show the condition of the Indian tribes who are defendants in this proceeding, and the relations existing between them and the inhabitants of Humboldt and the adjacent counties; but it is not necessary to refer to them further

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in detail. The whole record tends to establish a determined state of hostility on the part of the Indians toward the inhabitants and a settled purpose on the part of the Indians to prevent the appropriation of the country by the settlement of the white man. There was an absolute want of peace, friendship, and amity between the parties. It is true, as has been said, that no engagements were fought amounting in their importance to the dignity of battles, but there was a continued state of epidemic hostility. Whenever the parties met it was a signal for bloodshed, which could only be avoided by the successful flight of the Indian or the white man. Applying the rules of law as they have been established by the Supreme and this court on the question of amity the result in this case is relieved from doubt and perplexity. "Tribes, bands, or nations who raid on their neighbors, wage war upon them, and commit depredations can not be held to be in amity with the country whose citizens are thus injured." (*Valk's Case*, 29 C. Cls. R., 62.)

Amity means "a state of peace and good fellowship between the Indians upon the one side and the United States upon the other, and if such a state does not exist," the court is without jurisdiction. (*Marks's Case*, 28 C. Cls. R., 147.) The amity required by the act of 1891 is that of the band, tribe, or nation, and it means not treaty relations but a condition of peace and friendship. (*Leighton's Case*, 29 C. Cls. R., 288, syllabus.) In the same case the Supreme Court say, "It is true, counsel suggest that the Indians were carrying on hostilities for only a special purpose, to wit, resisting the opening of a military road. We fail to appreciate the argument that because hostilities were carried on for only a single purpose, and not for the mere sake of fighting generally, the tribe engaged in such hostilities was nevertheless still in amity." (161 U. S. R., 295.) In the case of *Marks* (161 U. S. R., 301) the Supreme Court, in discussing the questions of peace and war as they are affected by principles of international law in contests between independent nations, says: "Without questioning these declarations and decisions as applied to the relations between independent nations, we think they avail but little in the solution of the question here presented. That question is, what limitation did Congress intend by the words 'in amity with the United States.' The word 'amity' is not a technical term. It is a word of common use, and such words when found in a statute must be given their ordinary meaning unless there be

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something in the context which compels a narrower or a different scope. Webster defines it 'friendship, in a general sense, between individuals, societies, or nations; harmony; good understanding, as a treaty of amity and commerce.' The last part of this definition shows that the phrase 'in amity' is not equivalent of 'under treaty.' A 'treaty' implies political relations; 'amity' signifies friendship, actual peace."

The relations between the Indians and the inhabitants of the district of the country in which the depredations were committed were deficient in all the elements of friendship, peace, and harmony, so that whatever violence or injury was committed on either side resulted from the spirit of hostility, hatred, and ill will, and not from the ordinary motives which actuate persons in the commission of wrong for the purpose of gain and profit.

The mental and moral condition on both sides was that of hostility, and from that condition originated the purpose which actuated the defendants in doing what they did in the destruction of claimants' property. Underlying the purpose of the Indians was the general policy of resistance to the encroachment of the whites and the maintenance of their right to go where they pleased in the enjoyment of their hunting grounds. They objected most seriously to being placed and kept on a reservation, and that objection assumed the form of a hostile resistance to the plan and policy of the United States.

The question of amity being a mixed question of law and fact, we have, as in former cases, set out in detail the circumstances of the depredations, the reports and correspondence of public officers, both civil and military, and extracts from public documents which have, in the judgment of the court, a bearing upon the inquiry as to whether during the time covered by the several depredations the defendant Indians were in a state of amity, and have deduced from such evidence the ultimate conclusion that the Indians were not in a state of amity within the meaning of the act of 1891.

We therefore dismiss the petition for want of jurisdiction.