Disaster At The Colorado

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Chapter 10

The Legal Battle

Having been assured by the army and the citizens of Albuquerque that all the Indians living along Beale’s proposed wagon road were friendly and peaceful, the members of the Rose-Baley wagon train were unable to understand why they had been so treacherously attacked. Lieutenant Colonel Hoffman, in his negotiations with the Mojaves, made no attempt to ascertain from them the motive for their vicious attack. Without an official explanation from the army or other government authorities, it was natural that the emigrants would theorize among themselves why they had been so brutally assaulted, and how they could seek redress.

There was some speculation that perhaps the Mormons stirred up the Mojave Indians against the Americans. Because of the problems that then existed between the Mormons and the U.S. government (the Mormon or Utah War of 1857–58), it is easy to understand why some of the blame might be directed toward that religious group. Fresh in the emigrants’ minds was the Mountain Meadows Massacre in southern Utah in September of 1857, when a group of Mormon militia, Indians, and southern Utah Mormon officials murdered 120 members of a wagon train from Arkansas. Among the victims who were shot, clubbed or knifed to death were men, women, and about thirty-five children.¹

The Mormons had sent agents among the Mojave and other Colorado River tribes in 1857 and early 1858.² Whether these agents encouraged the Mojave and neighboring tribes to attack American emigrant trains is uncertain, but it is a well-known fact that the Mormons sought alliances with various Indians tribes in the Southwest and counseled them to take sides with the Mormons against the Americans.³
In fairness to the Mormons, it should be noted that they faced a desperate situation in their ongoing dispute with the U.S. government. President James Buchanan had sent troops to Utah to install a new governor and other officials for the purpose of enforcing the laws of the United States. The Mormons feared they might be driven from Utah and forced to seek a new haven outside the boundaries of the United States. This was not an unreasonable fear; before settling in Utah, they were driven out of both Missouri and Illinois. If forced to leave Utah, one of the options they were considering was resettlement in northern Mexico. To get there they would travel the Mormon Trail south to a point near present-day Las Vegas, Nevada, and then continue south to the Colorado River, which they would follow all the way to Mexico. To do so, they would have to pass through territory occupied by various Colorado River tribes, including the Mojaves. It made good sense for the Mormons to send envoys among these tribes and attempt to establish good relations with them. Since it has not been proved that the Mormons incited the Mojave Indians to attack the Rose-Baley wagon train, they are at least entitled to the benefit of the doubt.

The only known Mojave account of the attack on the Rose-Baley train is a reminiscence by an old Mojave, Jo Nelson (mature Mojave name—Chooksa homar), who was about fifteen years of age at the time of the attack. In 1903, he told his story of the battle to A. L. Kroeber, a well-known anthropologist. According to this old Indian, the Mojaves were persuaded to attack the emigrants by five young firebrands who had recently returned from Fort Yuma. While there, the young warriors learned something about the ways of the white man. They heard tales from other Indians about the mistreatment of Native Americans by the whites. The five believed that the best way to prevent this from happening to their people was to keep the whites out of Mojave territory, and to attack and annihilate the whites should they be bold enough to enter. The elders and other Mojaves were at first opposed to the attack, according to the old Mojave. They said to the five young warriors: “Well, if you want to fight, go fight. But we will not help you. If you think you can fight them [successfully], go ahead.” The five young warriors answered:

If we let the whites come and live here, they will take your wives. They will put you to work. They will take your children
and carry them away and sell them. They will do that until there are no Mohave [Mojave] here. That is why I want to stop them from coming, want them to stay in their own homes. The eastern Indians, I hear, that is what they [the Whites] did to them there: they took their children and said to them: “You are not to see your parents.” And they keep birds eggs and coyotes and bears and every kind [of animal]: maybe they will keep you all [confined] in a place too. As for me, I do not want them to do that to me. The whites will not listen to the Mohave. If you tell them to do something, they say No.4

After being harangued by the young firebrands, the elders and the others were gradually persuaded to go along with the plan. Their head chief, Arateve (probably Irreteba), who might have been able to prevent the attack, was away at Fort Yuma at the time. According to this account, the Chemehuevi, neighbors of the Mojaves on the west side of the Colorado River, also were induced to join the Mojaves in the attack. The old Indian stated in his reminiscence that a small number of the Chemehuevis swam the Colorado River and attacked the emigrants from the west, while the Mojaves were attacking from the east. Some of the Chemehuevi arrows, the old Indian stated, overshot their intended targets and landed among the Mojaves, and at least one of the Mojave warriors was wounded by those projectiles. None of the emigrant accounts mentions being attacked from two sides simultaneously, but the arrows were flying so thick and furious that the emigrants might not have observed a Chemehuevi attack. Later, in peace talks with Lieutenant Colonel Hoffman, the Mojaves tried to blame the attack on the Chemehuevis and neighboring tribes.

This account would explain why the Mojaves repeatedly asked the emigrants their destination and if they intended to settle in Mojave territory. The Mojaves knew that the country around them was a vast, barren desert where no crops grew, while their little green strip along the Colorado River grew lush crops without much effort, thanks to the annual spring flooding of the Colorado River. They perceived their little oasis to be the garden spot of the world and the envy of surrounding tribes. Surely such a treasure must be coveted by the white men, whose homeland, as far as the Mojaves knew, might also be a desert. Therefore, it was incumbent on them to defend their little paradise with all their might.
This might have been the first time that the Mojaves had ever seen white women and children. All previous contacts with whites were with soldiers, priests, or explorers. The Mojaves thought that since these new strangers were bringing their families with them, they must be planning to settle in Mojave territory. And weren’t they cutting down trees along the river to use in the construction of their houses?

Regardless of the reason or the motivation for the attack, what the emigrants desired most was to replace their losses and proceed unmolested to their destinations so that they could get on with their lives. They reasoned that since Indian affairs were the responsibility of the federal government, and since they had been advised by the agents of their government that it was safe to travel Beale’s Wagon Road, the United States should indemnify them for their losses.

One of the first things the emigrants did upon returning to Albuquerque was to file claims for their losses against the U.S. government and the Mojave Indians, as specified by Congress. This they did by filing verified petitions before Judge Kirby Benedict, chief justice of the supreme court for the territory of New Mexico, listing the value of each item lost in the attack and the total loss for each claimant. Although the losses occurred in what is now Arizona, this area at that time was part of the New Mexico Territory. Arizona became a separate territory in 1863 and a state in 1912.

Rose was the largest property owner and had suffered the greatest loss. His petition claimed a loss of $27,932.76. The petition of Gillum and William Right Baley totaled $7,400. Joel Hedgpeth’s claim was for $4,340, and that of Thomas Hedgpeth, $1,644. Rose’s petition was supported by affidavits of several of his employees as witnesses. For additional evidence, he presented letters signed by two army officers in Albuquerque on the outward journey testifying to the superior quality of his livestock. The Baley and Hedgpeth petitions were supported by the affidavits of five of their employees. After these petitions and affidavits had been subscribed and sworn to before Judge Benedict, they were forwarded to Washington, D.C., where Congress acted on them in its usual prompt and efficient manner.

Indian depredations had long been a problem on the western frontier of the United States. To deal with the situation, Congress had
passed the Intercourse Act of June 30, 1834, which gave the commissioner of Indian affairs the authority to hear and to award claims in Indian depredation cases. This act states in part:

Any Indian belonging to any tribe in amity with the United States, shall not take or destroy the property of any person lawfully in Indian country or passing through Indian country. Such citizen himself or his agent may make application to the proper superintendent or agent, who, when being furnished with the necessary documents and proofs, shall under the direction of the President make application to the nation or tribe to which the offender shall belong for satisfaction, and if such nations or tribe shall refuse or neglect to make satisfaction in a reasonable time, not exceeding 12 months, it shall be the duty of such superintendent or agent to make return of his doings to the Commissioner of Indian Affairs that such steps may be taken as shall be proper to obtain satisfaction.

The usual procedure was for the superintendent or agent to submit and read the claim to the defendant Indians in council. If the defendant Indians sitting in council rejected the claim, the superintendent or agent reported this fact in writing to the commissioner of Indian affairs. If the commissioner still thought such claim was justifiable after hearing the response of the Indians in council, he was empowered to withhold the amount of the claim from the annuities or other monies owed to the tribe by the United States, or to withhold other rights to the land they had ceded. In many instances, Indians received food rations from the government for living on reservations and giving up their ownership of hunting rights to certain lands. These benefits could be reduced to settle a claim against the group. A state of amity was usually interpreted to mean that a treaty existed between the United States and that tribe or nation. There were no provisions in this act for the United States to pay these damages if said Indians had no annuities or other monies due them. Indian tribes or nations with whom no treaty existed were not covered by this act.

Another treaty that applied to Indian depredations was that of July 1, 1852. Article 7 provided for free and safe passage for the people of the United States through the territory of the Apache Indians in the Southwest. The problem with this treaty was that it did not adequately identify just who the Apaches were, nor did it precisely delineate the
boundaries of their territory. The Apaches at that time were a large group of closely related Indians divided into several tribes and sub-
tribes. They had no chief or council who could speak for or bind all of
them. The Apaches primarily gained their sustenance by hunting and
gathering, though they also raided other Indian villages and sometimes
plundered the settlements of Mexicans and Americans. They were
noted for being superb horsemen. The Apaches ranged over a large part
of the territories of New Mexico and Arizona as well as the Mexican
states of Sonora and Chihuahua. No anthropological studies had yet
been made of the Indians of this area; their linguistic, ethnic, and cul-
tural backgrounds were poorly understood by most Americans. There
was a tendency to lump together under the term Apache all Indians liv-
ing in the Southwest who could not be assigned to any other known
tribe. Even less was known about the Indians living along the Colorado
River. It was a common practice for government authorities in the
1850s to include these Indians under the Apache umbrella, although
they had little in common with the Apache.

Despite their reputed fierceness, some of the Apache tribes
entered into treaty relationships with the United States. Knowing this,
and knowing that the Mojaves had sometimes been included under the
Apache label, the members of the Rose-Baley wagon train had every
reason to believe their petitions came under Article 7 of the Treaty of
July 1, 1852. They also believed the Mojave Indians were in amity with
the United States. After all, hadn’t army officers in Albuquerque
described these Indians as friendly? Hadn’t they recommended this
route to the emigrants as a safe road to travel? And hadn’t Beale him-
self described the Mojaves as “fat and jolly?” But convincing the gov-
ernment and collecting damages would prove to be a different matter.

The emigrants’ petitions were presented to the Thirty-fifth
Congress (1857–59), second session. No action was taken on these
claims by this congress before its term expired in 1859. The first ses-
sion of the Thirty-sixth Congress (1859–61) took up the matter of the
emigrants’ claims, referring them first to the House Committee on
Claims and then to the Senate Committee on Indian Affairs. The
Committee on Indian Affairs sent the claims to the commissioner of
Indian affairs for an investigation and a written report. Commissioner
A. B. Greenwood made a written report on February 3, 1860, to the
Honorable W. K. Sebastain, chairman of the Senate Committee on Indian Affairs, in which he stated:

The practice of this department seems to have required the existence of a treaty between the government and a tribe of Indians before they could, under its construction, be considered in amity. The Indian tribes are treated in many respects as if they were independent nations, and if so considered, they certainly could not be termed strictly and legally in amity with us without these formal steps. If that view be a correct one then of course I can have no jurisdiction, as no articles of agreement and convention were ever entered into with these Indians [Mojaves].

Moreover, it does not appear that these claims were ever submitted to the Indians in council, that they might be heard in their defense. It may be said that in the condition of affairs, that would have been mere formality, resulting in nothing, if there were no obstacles to prevent its being done altogether, but the law demands that it be done, and as an executive officer, I have no equity power to give relief against its positive requirements.

There is another requirement that seems not to have been fulfilled, it no where appearing that the parties claimant have ever sought private satisfaction or revenge for the injuries inflicted upon them. Believing as stated above, that I have no jurisdiction over these cases, as presented, I beg leave herewith to return the papers.6

With this adverse report from the commissioner of Indian affairs, the emigrants’ claims never got out of committee. On February 19, 1861, the Senate Committee on Indian Affairs discharged the claims from further consideration, thus dooming any chance for them to be voted on by the Thirty-sixth Congress. Lacking the financial resources to hire legal counsel, the Baleys and the Hedgpeths could take no further action on their claims at that time. Rose, however, was in a more favorable position to press his claim. He had a brother-in-law, Harvey K. S. O’Melveny, an attorney in Cairo, Illinois, who could keep him informed on legal matters affecting his claim. This was the same O’Melveny who had lent Rose the money to purchase the La Fonda Hotel in Santa Fe.

In 1864 Rose again submitted his claim to Congress. Again it was referred to the Senate Committee on Indian Affairs and again sent to the commissioner of Indian affairs for his recommendations.
the commissioner gave an unfavorable report and the claim was discharged from committee and no further action was taken.

Nothing more happened on Rose’s claim until January, 1870. At that time, O’Melveny wrote a letter to his congressman, T.W. McNeely of Illinois, asking if there now existed any treaty or law by which redress could be obtained. Congressman McNeely forwarded O’Melveny’s letter to E. S. Parker, the new commissioner of Indian affairs. Commissioner Parker replied to McNeely that there was no other law except the one on which the Senate Committee on Indian Affairs, headed by W. K. Sebastain, based its decision of February 3, 1861 (the Intercourse Act of June 30, 1834), and that the Mojave Indians had no annuities or other monies from which the claim could be paid, even if found true and admitted by the Mojaves.\(^7\)

In early May of 1870, O’Melveny addressed a letter to Governor Anson P. K. Safford of the territory of Arizona, requesting any help he might be able to offer on Rose’s claim. This action was probably taken by O’Melveny to satisfy Commissioner Greenwood’s criticism that no private satisfaction had been attempted to satisfy the claim. Governor Safford replied that the Mojaves probably committed the depredations (a fact that O’Melveny and Rose already knew) since they lived along the Colorado River, and that O’Melveny should contact George L. Andrews, superintendent of Indian affairs for the Territory of Arizona, as he lived near these Indians and was well acquainted with them.\(^8\) Andrews replied that he was powerless in the matter.\(^9\)

These negative responses in no way discouraged Rose in his quest for justice. An act passed by Congress in 1872 gave him new hope. This was an act of Congress approved on May 29, 1872 (Stat. 17, p. 190). This act provided for a reexamination of Indian depredation claims that had been before Congress and were rejected, or had not been acted upon by that body. The act provided for the filing of Indian depredations directly with the Department of Interior, rather than with Congress. The secretary of interior would then send the claim to the commissioner of Indian affairs, his subordinate, for his recommendations. If approved by the Interior Department, the claim would then be sent to Congress for its approval. The method of collection and the requirement that the defendant Indians be in amity with the United States remained unchanged.
Rose took advantage of this act and withdrew his claim from Congress, where it had been gathering dust, and filed it with the Interior Department on February 17, 1873. To press his claim more vigorously, Rose hired a Washington, D.C. attorney, A.T. Britton, of the law firm of Britton and Gray. Rose’s brother-in-law and previous legal counsel, Harvey K.S. O’Melveny, had moved to California and was elected county judge in Los Angeles County. It was probably O’Melveny who advised Rose to hire a Washington, D.C. attorney. A lawyer who knew his way around government circles and could deal with bureaucrats was in a much better position to press a claim against the government than was an attorney in a distant location.

The acting commissioner of Indian affairs, H. R. Clum, returned the papers to his superior, the secretary of the interior, with the following comments:

This claim has been heretofore the subject of action by this office and the Interior Department, and it has also been adversely reported upon by the Committee on Indian Affairs of the U.S. Senate. There being no additional or new testimony submitted, this office is of the opinion that the case cannot be taken up and again reported to the Department of Interior.10

With a recommendation like this, Secretary of the Interior Columbus Delano had little choice but to return the papers to Rose’s attorney.

Undaunted by this rebuff, Rose and his attorney on June 20, 1874, resubmitted the claim, along with additional evidence, to the Interior Department. Acting Commissioner Clum this time accepted the claim and put the proper legal machinery into motion. The first step was to submit the claim to the Mojave Indians gathered in council. The claim never went this far before. In a letter from the Colorado River Indian Reservation to the Commissioner of Indian Affairs dated February 12, 1875, U.S. Indian Agent J. A. Tonner reported:

I have submitted the case to the Mojave Indians on this reservation assembled in council and have fully explained to them the nature of the claim and all its particulars; they assure me that the depredation was committed by the branch of the tribe resident in the neighborhood of Fort Mojave and that there are but two persons now on the reservation who were
present at its occurrence. These latter inform me that they were boys at the time and that they recollect the attack of their people upon a large train, presumably that of the claimant, that a good many Mojaves were killed, that one horse was captured and several cattle killed, not many they say, but when further asked admitted that probably many other animals were stampeded. This is all the information I could obtain on the matter. I did not demand any satisfaction for the claimant as the people (with the exception of those two individuals) denied any participation in the outrage complained of by Mr. Rose.

Commissioner Clum recommended to his superior, the secretary of the interior, that the sum of $13,819.88 should be enough to fully indemnify Rose for his losses. This amount turns out to be exactly one-half the requested sum of $27,639.76. Clum justified his Solomonic solution on the grounds that Rose presented no clear proof in his petition as to the superior value of his livestock. Knowing claimants sometimes have a tendency to overvalue their property, Clum probably figured fifty percent would be about the right amount. The secretary of the interior must have felt the same way for he sent the claim to Congress without making any changes. Again Congress failed to act on Rose’s petition.

Rose’s claim remained dormant until some minor changes were made to the law covering Indian depredation claims by an act of Congress approved March 3, 1885 (Stat. 23 p. 326). This act provided the sum of $10,000 to the secretary of the interior for the purpose of investigating certain Indian depredation claims. It further directed the secretary of the interior to make a complete list of all claims previously filed with the Interior Department which had been approved in whole or in part and remained unpaid, and those which had not yet been examined. These would be presented to Congress at its next session. The act still retained the provision that the Indian nation or tribe whom the claim was against be in a treaty relationship with the United States. The act also empowered the secretary of the interior to make additional investigations and take further testimony as deemed necessary to determine the value of the property taken or destroyed. Since Rose’s claim had been approved in part by the Interior Department in 1875, he was eligible by this act to submit his claim for reexamination, which he did in July of 1885. This time, however, the Interior Department viewed his claim
much differently than it had in 1875. Acting Commissioner of Indian Affairs A. B. Upshaw (there seems to have been a high turnover of acting commissioners in those days) rejected the claim in whole on the grounds that the Mojave Indians were not in amity with the United States at the time that the depredation occurred. He was sustained in his opinion by the secretary of the interior who sent the claim to Congress with the recommendation it be disallowed, which it was.

Rose’s claim appeared dead, but again a bill passed by Congress breathed new life into his claim. This piece of legislation was an act of March 3, 1891, titled, “An Act to Provide for the Adjudication of Payments of Claims Arising from Depredations,” (Stat. 26 pp. 851–854) This act made major changes in the way Indian depredation cases were to be handled. It allowed those with unpaid claims to sue the United States and the Indian tribe or nation responsible for the depredation in the U.S. Court of Claims. If judgment were obtained by plaintiff and the defendant Indians had no annuities or other monies due them from the United States, the claim would be paid from the United States Treasury. The judgment, or the balance thereof, would then become a lien against any future annuities or monies owed to the defendant Indians by the United States. This act also waived the statute of limitations for claimants, allowing Rose and the other emigrants the right to file suit in the Court of Claims even though their claims were now thirty-three years old.

Rose filed his petition in the U.S. Court of Claims on June 3, 1891, claiming damages of $27,639.76 (Case No. 21760). In his petition Rose listed his address as San Gabriel, California. Because of the long time that had elapsed since the filling of his original claim, he was able to list the name and address of only one of his witnesses. This witness was Gillum Baley, who was living in Fresno, California. All his other witnesses were either dead or had drifted away to places unknown. Later, Rose’s attorney was able to locate Major D. H. Rucker, one of the two officers who had inspected Rose’s livestock in Albuquerque on the outward journey in 1858 and who had given Rose a letter attesting to the excellent quality and fine condition of the animals Major Rucker had survived the Civil War and was now a retired brigadier general living in Washington, D.C. He was past eighty years of age and his memory had begun to slip, making his deposition of limited value.
It is unknown whether Rose persuaded Gillum Baley to also file an Indian depredation suit in the Court of Claims or whether Baley filed his suit independently of Rose. What is known is that Gillum Baley filed a suit in the Court of Claims (Case No. 8214) in 1892, claiming damages of $7,400. He listed himself and his deceased brother, William Right Baley, who died in 1881, as plaintiffs. Also filing suit at the same time and place was William Pleasant Hedgpeth. He filed as the administrator of his father’s estate, Joel Hedgpeth Sr. (Case No. 8373), who died in 1874. The Hedgpeth suit sought damages of $4,340. William Pleasant Hedgpeth gave his address as Tollhouse, Fresno County, California. The heirs of Thomas Hedgpeth, who died in 1877, did not file a suit.

The legislative act of March 3, 1891, allowed for depositions to be taken locally. Gillum Baley, William Pleasant Hedgpeth, and Joel Hedgpeth Jr. journeyed to Tulare, California, by train in July of 1893 to give their depositions in support of the Baley petition. Gillum Baley and Joel Hedgpeth Jr. then gave depositions in support of the Hedgpeth petition. Their counsel was Edward Warren Holland. Counsel for the government was Thomas Ball. As it was in Rose’s case, all of the witnesses who had signed affidavits for the Baley and Hedgpeths claims back in Albuquerque in 1858, were now either dead or their whereabouts unknown.

Holland had been a member of the Baley company of the Rose-Baley wagon train, although he was only three years old at the beginning of the trip. Holland was a son of Isaac Taylor Holland and Amanda Melvina Daly Holland. He was now a successful attorney in Tulare, California. This was the reason why Gillum Baley and the two Hedgpeths traveled fifty miles from Fresno to Tulare rather than giving their depositions in Fresno before an attorney who had no first-hand knowledge of the case. In Edward Warren Holland they knew they would be represented by counsel who had actually shared the hardships of the wagon train with them. To represent them in the Court of Claims, both Gillum Baley and William Pleasant Hedgpeth hired the Washington, D.C. law firm of John Wedderburn to represent them as attorney of record. Wedderburn selected A. L. Hughes, one of his law partners, to prosecute the case.

Rose, Baley, and Hedgpeth all based their claims on the Intercourse Act of June 30, 1834, and the July 1, 1852, treaty, which
provided for safe passage of white settlers through Apache territory, and on the act of March 3, 1891, which provided for the adjudication and payment of claims arising from Indian depredations. Proving that the attack took place and was committed by the Mojave Indians, and proving the amount of the damages, could be done by the affidavits and depositions of witnesses. But proving that the Mojave Indians were a branch of the Apaches and were in amity with the United States would be a different matter. In an attempt to show that the Mojaves were a branch of the Apaches, claimants in their petitions quoted from the reports of Indian agents dating back to the 1850s in which the Mojaves had been referred to as a “Branch of the Apaches in blood and belonging to them generally.” In an attempt to prove the Mojaves were in amity with the United States at the time of the attack, claimants quoted statements made to them by army officers and citizens in Albuquerque on the outward trip in June of 1858, in which they were assured that all Indians living along Beale’s Wagon Road were friendly and peaceful. Claimants also stated in their petitions they had done nothing to provoke the Mojave Indians or give them cause for the attack. Quite to the contrary, they stated they had acted in a friendly manner toward the Mojave Indians at all times and had distributed gifts valued at between one hundred and two hundred dollars to these Indians.

The interest of the United States was defended by the office of the U.S. Attorney General. Acting Assistant Attorney General Charles W. Russell and Assistant Attorney W. H. Robinson were assigned to the case. The Mojave Indians did not hire separate counsel but relied upon Russell to represent them. The United States, in a brief filed July 1, 1891, in answer to the claimants’ petitions, quoted in part from a report written by Special Agent Bailey who stated in his report, “The term ‘Apache’ seems to be generic and is applied indiscriminately to all the tribes living on or near the thirty-fifth parallel from the Tontos on the west to the Mescaleros on the east.” (Senate document, 2nd session, Vol. I, 1858–59, pp. 557–58)

The brief goes on to recite the reports of previous commissioners of Indian affairs who had rejected the claims on the grounds that the Mojave Indians were not in a treaty relationship with the United States at the time of the attack, and therefore the Interior Department
had no jurisdiction in the matter. The government contended that the Mojaves were a separate and distinct tribe and were not in amity with the United States at the time of the attack on the Rose-Baley wagon train on August 30, 1858. The government claimed that the Mojaves were not brought into a treaty relationship with the United States until the conclusion of military operations which Lieutenant Colonel Hoffman began on January 9, 1859, a full six months after the attack. The brief concluded with the following statements:

> From all the evidences which have been cited it appears that at the time of the depredation these Indians [the Mojave] were nothing more and nothing better than the most savage wild Indians, caring nothing for the Government of the United States, not dependent upon it, not cared for by it, in no way subject to its control and to be feared just as a man might fear a wild beast, and to be slain without compunction just as one would kill a rattlesnake or a mountain lion.

> It is therefore respectfully submitted that this plea must be sustained and the suit dismissed for want of jurisdiction.

Charles W. Russell
Acting Assistant Attorney General

W. H. Robinson
Assistant Attorney

The Court of Claims took its time in deciding the case. More briefs were filed and more motions were put forward by both sides. Finally, on March 21, 1898, the court announced its decision. It rendered a judgment of dismissal in all three suits (Rose, Baley, Hedgpeth) on the grounds that the defendant Indians (the Mojave) were not in amity with the United States at the time of the attack, and that the Court of Claims lacked jurisdiction in these cases. Section 7 of the act of March 3, 1891, stated that the judgment of the Court of Claims on Indian depredations was final and could not be questioned unless a new trial or a hearing was granted.

Rose, Baley, and Hedgpeth filed motions to set aside the judgments and grant new trials on the grounds that the court erred in dismissing the cases and that the findings of fact were contrary to the evidence. The motions for new trials were all dismissed. The only legal remedy left to the claimants was to appeal to the U.S. Supreme Court. Rose filed an appeal with the Supreme Court in 1899, but because of
financial constraints, Baley and Hedgpeth did not. The U.S. Supreme Court in 1900 refused to hear Rose’s appeal, thus ending one of the longest Indian depredation cases in United States court history.

By then, all the original claimants were dead.