

KREEL & MILLER.

JANUARY 10, 1873.—Ordered to be printed.

Mr. DONNAN, from the Committee on Military Affairs, made the following

REPORT:

[To accompany bill H. R. 1526.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 1526) for the relief of Kreel & Miller, having had the same under consideration, respectfully submit the following report:

On the 6th day of May, 1870, Messrs. Kreel & Miller entered into a contract with Francis B. Jones, first lieutenant, United States Army, and acting chief commissary of subsistence, District of New Mexico, whereby they agreed to deliver to said commissary, at Fort Selden, in New Mexico, 18,000 pounds of bacon and — pounds of pork, the first delivery of 6,000 pounds of bacon and — pounds of pork to be made not later than January 31, 1871, and subsequent ones as said commissary should direct.

The agreement further specifies the quality of provisions, the length of time the contract shall be in force, the price of 28 cents per net pound of bacon, the payment therefor on delivery, the stores to be rigidly inspected, and, "6th, That in case of failure or deficiency in the quantity or quality of bacon or pork, or both, stipulated to be delivered, then the chief commissary, or such other officer as he may designate, shall have power to supply the deficiency by purchase, and the said firm of Kreel & Miller will be charged with the difference of cost."

For reasons stated below, said Kreel & Miller failed to deliver the provisions contracted for on the 31st of January, 1871, and, under the 6th paragraph of said contract, became indebted in the sum of \$160.38 for difference in price of bacon purchased in open market at Fort Bayard, and \$322.32 for difference in price purchased in open market at Fort Cummings, New Mexico; and this bill is to authorize the Government officers to settle with them, allowing them the sum of \$582.70, assessed against them, as above stated.

The chief commissary of subsistence in New Mexico, as also the Commissary-General of Subsistence, admit the truth of the facts set forth in affidavits furnished by claimants, viz: that their train laden with 14,000 pounds of bacon, *en route*, January 13, 1871, for Fort Bayard, was attacked by hostile Indians, and driven back into the town of Janas, in Chihuahua, Old Mexico, and was, in consequence, inevitably detained twenty-two days, and thus was unable to reach Fort Bayard on the 31st of January, 1871, to comply with the terms of delivery specified in said contract; that the remaining deliveries of provisions under said contract were satisfactory to the Government officers, and that one of said firm,

Mr. Kreel, his wife, and five other persons belonging to said train, were killed by the Indians at the attack above referred to.

The Commissary-General of Subsistence recommends to the Secretary of War that claimants be relieved from liability for difference in price, because the failure to deliver was through no fault of the said contractors, but because of a great and distressing misfortune.

This was not done, however, because, on reference to the Judge Advocate-General, he advises the Secretary of War, that no executive officer, in the absence of express statutory authority, can release a specific pecuniary obligation to the Government. This officer adds:

Congress alone can take such action, and it would seem that, under all the circumstances, that body, should the parties apply thereto, could hardly fail to act favorably in the premises.

These views are concurred in by the Secretary of War.

The committee recommend the passage of the bill.