

J. G. FELL, EDWARD HOOPES, AND GEORGE BURNHAM.

JUNE 22, 1886.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LA FOLLETTE, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 9643.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 3209) for the relief of John G. Fell, Edward Hoopes, and George Burnham, surviving trustees of the Walnut Grove Mining Company, have had the same under consideration, and present the following report:

This is a claim for the value of a quartz mill and mining camp outfit, consisting of buildings, machinery, shops, stores, goods, merchandise, provisions, wagon trains, &c., destroyed by the Apache Indians of Arizona, in that Territory, between the 1st day of August, 1865, and the 9th day of July, 1869. The claimants place the total value of the property so destroyed at \$292,800. The depredations complained of were all committed upon this property within the dates last above named at or near one of the mines belonging to the Walnut Grove Gold Mining Company, the claimant represented by its trustees, Fell, Hoopes, and Burnham. The mines belonging to this company in Arizona were discovered and located by George H. Vickroy, who organized said company in Philadelphia and became its superintendent.

The evidence filed in the Indian Office by claimants, which has been carefully examined by your committee, presents the case in detail, and in our opinion establishes the following facts:

George H. Vickroy settled in Arizona Territory in 1863, where he continued to live until his death, and where his family now resides. He was one of the first white men to engage in mining there on an extensive scale. As early as 1864 he had secured several valuable mines, one of which was located within fifteen miles of Prescott, the capital of the newly organized Territory. Mr. Vickroy was desirous of developing these mines, but doubted the prudence of investing heavily in the necessary improvements in the unsettled condition of affairs in the Territory. Government then had been but recently organized, and was under control of the military authorities, General James H. Carleton exercising supreme command. For the purpose of ascertaining whether he might not receive some encouragement from the military government, Mr. Vickroy laid before General Carleton his plans for establishing mining camps, opening and working mines, erecting mills, shops, &c., and asked whether the authorities could be relied on to protect property if the investments were made. General Carleton, recognizing the importance of these agencies as factors in settlement and growth to the new Territory, gave Mr. Vickroy every assurance of protection, and as an earnest of the favor with which the Government regarded the establishment of a

quartz mill in this new mining region, he gave to Mr. Vickroy the following guaranty in writing:

HEADQUARTERS DEPARTMENT OF NEW MEXICO,
Santa Fé, N. Mex., July 11, 1864.

MY DEAR SIR: In answer to your verbal question as to the safety of carrying on mining operations hereafter in Arizona, I will say I have already inaugurated a campaign against the Apache Indians that will result in their complete subjugation, and should you induce friends in the East to join you in erecting a quartz mill in the newly discovered gold regions near Fort Whipple, the enterprise will be fully protected by the military. I am well assured that building a quartz mill there, and developing some one of the rich mines, will result in such benefit to the Government as to amply compensate for the protection given.

I have the honor to be, very respectfully,

JAMES H. CARLETON,
Brigadier-General, Commanding.

GEORGE H. VICKROY, Esq.

In this connection, bearing directly upon the effect of General Carleton's letter to Mr. Vickroy, and as showing, too, the condition of affairs in Arizona at this time, the affidavit of Hon. John N. Goodwin, first governor of Arizona, is given herewith:

John N. Goodwin, being duly sworn, deposes as follows:

Before leaving Washington, in the spring of 1863, for Arizona Territory, as its first governor, I, with other civil officers of that remote Territory, called upon President Lincoln to ascertain whether adequate military protection could be afforded for the maintenance of the civil government about to be established there, and whether adequate protection would be afforded to emigrants from Indian depredations. The President assured us that General Carleton had *supreme command* there, with ample force at his disposal, and with authority from himself and the Secretary of War to act as the emergency might require; that the policy of the Government was to encourage the settlement and development of the resources of its Western Territories, and we would find General Carleton fully prepared to co-operate with us in establishing a stable civil government.

It was the intention at first to establish the seat of government at Tucson, but General Carleton induced me to locate it at Prescott, 260 miles distant, he regarding that the best point from which to conduct his military operations. Emigration set in and thriving settlements were soon formed in that vicinity.

About sixteen miles from Prescott some rich and extensive gold mines were discovered, and worked with such primitive appliances as could be improvised in that country. The astonishing results thus obtained created a desire throughout the Territory that improved machinery should be brought in to aid in their development, that emigration might receive a new impetus, and capital be induced to seek investment in similar enterprises there.

Mr. Vickroy conferred with me upon the subject. He felt confident of his ability to secure sufficient capital in the East to establish extensive reduction works, provided he could have full assurance of military protection. Without such guarantee he would not risk such a large investment.

After relating the conversations I had with the President and General Carleton, I advised him to confer with the general, which he did. General Carleton, being fully alive to the interests of the Territory and the importance of the enterprise, readily gave his official guarantee of protection by the military under his command, which fact was communicated to the settlers at the time, causing many who were on the eve of abandoning the country to remain, and inducing the influx into that district of many new settlers. Had the enterprise received the promised protection, it would have aided the settlement and development of the Territory more than any other available agent.

While Delegate in Congress from Arizona, in 1866-'67, I had occasion frequently to discuss General Carleton's action in assuming entire control and ignoring the civil authority. In all cases he was fully sustained in his course by the authorities here in Washington, notwithstanding the frequent protests of the Delegate.

I have carefully read the case of the Walnut Grove Gold-Mining Company (Mis. Doc. No. 16).

I am personally acquainted with many of the parties whose names are appended to affidavits therein, and their statements are entitled to the highest credit. Many of the circumstances I know are true from my own personal knowledge.

JOHN N. GOODWIN.

Subscribed and sworn to before me this 2d day of May, 1874, at Washington City.

[SEAL.]

J. M. KENNEDY,
Notary Public.

Resting on the foregoing pledges of protection, Mr. Vickroy organized within a few months the "Walnut Grove Mining Company," in Philadelphia, and raised the sum of \$77,000. This money was expended in the purchase of a 20-stamp quartz mill, engine, tools, wagons, mules, &c., all of which was transported to the mines in Arizona by about September 1, 1865.

Just prior to this time Arizona had been transferred to the Department of the Pacific, and General Mason was then in command, and he likewise assured Mr. Vikroy that the security of their property should be cared for. It appears from the evidence that this quartz mill was the first one taken to the new Territory, and the military and civil authorities, as well as the few residents, were anxious that it should be erected and put in operation. The building which inclosed the mill was 160 by 200 feet; and the company also erected at their mines and near the mill five other buildings, to wit, a storehouse 26 by 58 feet, a superintendent's house 30 by 40 feet, a boarding-house 26 by 60 feet, a blacksmith shop, a carpenter shop, and an office.

Although the military authorities on two or three different occasions sent troops to aid the company in repelling the attacks of the Apache Indians, yet during most of the time from 1865 to 1869 the company were dependent on their own resources in their struggle to preserve their property; and in this, with their best efforts spent in maintaining heavy guards for their mining camps, mills, and supply trains, their losses of mules, horses beef cattle, wagons, provisions, &c., from the depredations of the Apache Indians were from time to time very heavy.

After their first investment and the erection of their mill and buildings under the encouragement extended to them, they very naturally felt impelled to go forward with their enterprise to protect their plant. And in furtherance of this they purchased and transported to Arizona at different times machinery, tools, supplies, stock, and provisions, all together of the value of \$303,330. This is established by the sworn testimony of men of high character and undoubted honesty. Indeed, an examination of the proof in this case cannot leave in the mind of any fair man reasonable doubt of the merits of the case. The principal witnesses are vouched for by men many of whom are well known to the country, several of whom have been and are now members of the House of Representatives.

This evidence shows that after repeated depredations on the property of these claimants, the Apache Indians on the 9th of July, 1869, in large force attacked the men that the company had employed to guard their property, drove them to surrounding military posts for protection, burned the mill and all buildings, destroyed most of the machines, and ran off their mules and stock.

Such property as was not totally destroyed (being parts of the machinery) was afterwards appraised at \$10,000, leaving a balance, including the other property owned by this company, and destroyed at different times by the Apache Indians in Arizona, aggregating in value a sum total of \$292,800.

It appears further from the proof in this case that this company, its agents, or employés, did not at any time commit any offense against said Indians, and that they have never at any time attempted to obtain private redress, satisfaction, or revenge from said Indians, and that they have never been compensated for the damages sustained or any part thereof.

A searching examination of the testimony in this case fails to disclose to your committee any foundation in fact on which to rest a reasonable

doubt that this company lost by the depredations of these Indians property fairly valued at \$292,800 named. It is true that with reference to some of the property the "best evidence" has not been filed by claimants, but in every such instance secondary evidence supporting the claim in that particular has been submitted. And we are convinced that the claimants make such proof of the essential facts as would sustain their case in any court of justice.

Notwithstanding the fact that the loss of all this property through the depredations of these Indians is well established by the evidence, we are disposed to acquiesce in the judgment of the committee of the Forty-eighth Congress, that the equity of this claim as against the Government is clear only as to the amount of the first investment, to wit, \$77,000. That investment was encouraged by, and was made under what substantially amounted to, a guaranty of protection by the Government.

While it is undoubtedly true that Mr. Vickroy was eager to open the mines he had located, yet one cannot, after the most searching scrutiny of all of the evidence, believe that his manifest prudence would have led him to the hazard of the first investment but for the assurance of Government protection. There is little doubt that had this been fully accorded, the mill erected, and those which would certainly have been added, with the complements of men and shops and stores, a powerful impetus would have been given to the new civilization. And it was a just appreciation of the importance of this force in the work before him that led General Carleton to promise the support of the Government, giving the unqualified pledge that the enterprise would "be fully protected by the military," because, as he said—

I am well assured that building a quartz-mill there, and developing some one of the rich mines, will result in such benefit to the Government as to amply compensate for the protection given.

And in this plan of encouraging the development of the resources of the Territory it is plainly manifest that General Carleton was in line with the announced policy of President Lincoln.

But the best laid plans miscarry, and General Carleton and his successors found that the "campaign already inaugurated against the Apache Indians to accomplish their complete subjugation" failed in the accomplishment of its projector's designs, as did several campaigns which succeeded it. And by the time Mr. Vickroy had organized this company and freighted the quartz-mill, machinery, &c., to the mine, fighting his way several times under fire of the Indians before he reached his destination, and after the erection of the mill when he was compelled to import and maintain a guard to save the company's property, because the Government neglected to furnish military protection, after all this it must have become apparent that either the authorities had not the power or the disposition to control the Indians, and that any investment made in Arizona at that time and place must be made at great peril to life and property.

In view of this, your committee is constrained to adopt the judgment of a prior committee of this House, and in their language say—

That all subsequent investments by this company were made at its own peril, and therefore your committee can only recommend the payment of \$77,000, notwithstanding the evidence shows that the company lost at least \$292,800.

Apart entirely from the special pledges given, which induced the investment in this particular case, your committee hold that there rests upon this Government the solemn obligation to protect its citizens in

life and property against the savage raids of its Indian wards. Every inducement is made upon its part to settle the public lands and develop the agricultural and mineral resources of the country; and when the pioneer—the miner as well as the farmer—leading civilization, goes out into the great West, he has a right to expect that the nation's laws and the nation's honor will be maintained.

If the citizens of this Government measured back their patriotism and devotion to it in the same tardy, paltry, stingy fashion that it pays its just dues to them, it would be compelled to float its flag with the aid of a hired foreign soldiery. Justice long delayed is justice defeated. That government is strongest with its subjects which is wisely and swiftly just to them.

Out of the thousands of bills for relief, in cases of this kind, presented to Congress from time to time, comparatively few have received consideration.

Still an examination of those which have been passed and paid by special acts will disclose the fact that they are with rare exceptions precedents for the allowance of the claim herewith presented.

The sum total paid on account of Indian depredations out of the funds of the Indians is only \$197,716.37, while there has been paid by the Government directly from the Treasury for Indian depredations the sum of \$1,604,028.25.

There have been more than thirty special acts to pay for the destruction of property by Indians, not from annuities and installment moneys, but from the Treasury of the United States, thus recognizing the obligations of the Government to make good the trespasses and ravages of its wards.

This case is in line with all of these acts, and is further commended to favorable and speedy consideration by the special guaranty and pledge of protection given by the representatives of the Government. Not that these pledges be necessarily regarded as increasing the legal liability—that has been too many times recognized in like cases to repudiate it now—but as investing it with exceptional and peculiarly strong equities, which prompt your committee to urge the payment of this just claim without further delay.

The bill before your committee provides for the payment of this claim out of the annuities or installment money due to the Apache and Hualpai Indian tribes. In its present form the bill is objectionable for two reasons: First, there is no proof whatever that any tribe of Indians other than the Apache tribe participated in any manner in the depredations upon the property of claimants. Second, there are no annuities or installment moneys due or to become due to the Apache Indians of Arizona Territory.

You committee therefore recommend the passage of the following as a substitute for House bill No. 3209:

A BILL for the relief of J. G. Fell, Edward Hoopes, and George Burnham.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to J. G. Fell, Edward Hoopes, and George Burnham, trustees of the Walnut Grove Gold Mining Company, the sum of seventy-seven thousand dollars, on account of depredations committed by the Apache Indians in Arizona Territory, which shall be in full discharge of all claims against the Government on account of said depredations.