47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 16.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 21, 1881.—Ordered to be printed.

Mr. TELLER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 271.]

The Committee on Claims to whom was referred the bill (S. 271) for the relief of Frank D. Yates and others, having had the same and accompanying papers under consideration, respectfully submit the following report:

That the committee find the facts to be as stated in Senate Report No. 875, Forty-sixth Congress, third session, which said report is hereto annexed and made part of this report, and is as follows:

[Senate Report No. 875, 46th Congress, 3d session.]

The Committee on Claims, to whom was referred the bill (S. 2059) for the relief of Frank D. Yates and others, having considered the same, make the following report:

Under date of January 22, 1881, your committee transmitted said bill (S. 2059) to the Commissioner of Indian Affairs for report, who replied as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 25, 1881.

SIR: In compliance with your request of the 22d instant, I have examined Senate bill No. 2059, for the relief of Frank D. Yates and others, for compensation for transportation furnished in the removal of Indian property and supplies belonging to the Whetstone Agency from White River, Dakota, to their new reservation in Dakota, in 1872 and 1873. I have also examined the papers in the case on file in this office, and find that the statements set forth in the report No. 1637, House of Representatives, Forty-sixth Congress, second session (copy herewith), are substantially correct. I am of the opinion that the alleged contract between Indian Agent Risley and Graves was made for improper purposes, and that Yates and others, who actually performed the work of removal under the direction of Risley, have an equitable claim, and I recommend the passage of Senate bill No. 2059.

Copies of all the evidence in this case are on file with the Committee on Indian Affairs, House of Representatives.

Very respectfully,

E. M. MARBLE,
Acting Commissioner.

Hon. JAMES B. GROOME,
United States Senate.

The House report which accompanies the letter of the Acting Commissioner of Indian Affairs is as follows:

[House Report No 1637, Forty-sixth Congress, second session.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 1282) for the relief of Frank D. Yates and others, have had the same and accompanying papers under consideration, and submit the following report:

This is a bill which authorizes the Secretary of the Treasury to pay said Yates and others the sum of $14,675.85 for transportation furnished and money paid for transportation furnished in the removal of Indian property and supplies belonging to the Whetstone Agency from White River, Dakota, to their new reservation in Dakota, in the years 1872 and 1873. The following are the substantial facts of the case:

The files of the Department of the Interior show that Agent R. D. Risley, of the

Whetstone Agency, executed a contract November 5, 1872, for said removal, with Henry Graves, physician at the agency, who had resigned for that purpose. The contract was not forwarded from the agency until December 24, same year, and reached the department on the 13th of January, 1873, and was, on the 15th of the same month, returned to the agent not approved, for the reason the department was of the opinion that the agency could be removed with greater advantage in the spring.

Agent Risley returned said contract, under date of February 20, 1873 (he being in the city at that date), with advice that the move commenced on the 28th December, 1872, and that it was utterly impossible at that time to stop the movement of the agency, for the reason that the Indians insisted on said move, and were then at the new location, for which reason he requested an approval of the contract in question. No further action was taken by the Indian Office to cause said contract to be approved.

The removal, the agent alleged, and doubtless truthfully, to be an urgent necessity.

In the month of June, 1873, the department received a voucher, amounting to $33,541.89, in favor of Henry Graves, for the removal of the Whetstone Agency.

The evidence shows that the contractor, Graves, performed none of the work of removal himself, but that said Yates and others were employed by the agent, and did the work in good faith, and at one cent per pound, which is shown to be a fair price, the actual distance between the old and the new reservation being fifty miles; they received due-bills from the agency clerk, which bills show the number of pounds each man freighted; they supposed themselves to be acting directly for the agent under authority from the department. When the removal was completed the agent informed said Yates and others, for the first time, that he had, previous to the removal, concluded a contract with Henry Graves, and that he had given to him a good and sufficient voucher covering the amount due them for their services; said Graves corroborated the statement of the agent, and informed them that he had forwarded the voucher to Washington for payment, and upon receipt of the money he would pay them, severally, the amount as per due bills.

It transpired that the agent and Graves were in collusion with each other to defraud the government; the due bills on file show that 1,467,585 pounds were transported, while the voucher represents 3,354,188 pounds had been removed. If the voucher had been paid upon presentation, the contractor, Graves, after having settled with Yates and others, would have had a balance of $18,886.03 to divide between himself and Agent Risley. The department refused to pay the voucher, on the ground that the charge was excessive, and, believing there was an attempt at fraud, ordered an examination into the matter.

Under date of May 4, 1874, the Department of the Interior notified the Right Rev. William H. Hare, chairman special Indian commission, that said commission was continued, and its members directed to revisit the Red Cloud and Whetstone Agencies for certain objects. On the 7th of the same month the department instructed said commission to visit the Whetstone Agency and make a thorough investigation of the facts and circumstances connected with the removal of said agency; what in their opinion should, in justice and equity, be paid, and to whom; also, what sum each person is entitled to receive for transportation or other labor connected with the removal.

Commissioner Robert B. Lines, of said commission, was especially charged to investigate the matter and report the result of such examination to the full commission, which he did by examining the several persons under oath who were employed in said removal, and inspected their certificates or due-bills, which represented the number of pounds of freight the holder had transported. He concludes the department had acted quite properly in refusing to recognize the Graves contract, and that the contractor had no legal or equitable claim. The said commission recommended that the men who actually did the work were certainly entitled to their pay, whom they mention by name, as follows:

Frank D. Yates, entitled to	$9,650 92
Todd Randall, entitled to	2,400 10
E. W. Raymond, entitled to	2,213 90
Stephen F. Estes, entitled to	224 00
Total	14,488 92

Which is correctly stated except in the case of F. D. Yates. The due bills filed in his name show that he is entitled to $186.93 more than the amount mentioned, which changes the total to $14,675.85.

March 18, 1874, the Commissioner of Indian Affairs communicated the facts relative to said removal to the Secretary of the Interior, and recommended that the Graves contract be ignored, as he had no just claim against the government, and that the men who actually transported the supplies, &c., may receive their just dues; that they be allowed the rate of one cent per pound for the entire distance, payment to be made to

the respective claimants; to which the Secretary replied, under date of March 30, same year, as follows:

"By the evidence submitted it is shown that the work of removing the agency was *not* done by Graves, but by 'men of the country,' to whom he had agreed to pay one cent per pound for transporting the freight the entire distance from White River, which did not exceed fifty miles. * * *

"The transaction between Agent Risley and Graves, as disclosed by the testimony, is not free from suspicion of fraud, and will be treated as null and void, and the voucher issued to Graves by Risley in the sum of $33,541.89 will be rejected. He, having performed no services in connection with the removal of the agency, has no claim against the government."

By reference to Executive Document No. 151, Forty-fourth Congress, first session, which document is a letter from the Secretary of the Treasury, transmitting estimates of appropriations required by the various departments for the fiscal year ending June 30, 1876, and prior years, under the head of Interior Department, is the following item from the Indian Office: "Fulfilling treaty with Sioux of different tribes; amount due to various parties for transportation furnished in the removal of the Indians of Whetstone Agency from White River, Dakota, to their new reservation in Dakota, in 1872 and 1873, being a deficiency for the fiscal year 1873 and prior years, $14,488.92."

July 14, 1875, a second commission was created to investigate affairs of the Red Cloud Indian Agency, of which Gov. Thomas C. Fletcher, of Missouri, was chairman; he refers to the removal of the Whetstone Agency as follows:

"Yates and the men who actually did the work of moving the agency acted in good faith, so far as I was able to learn from my examination of the men who were about there at the time. They took their teams and hired and paid their men to do the hauling; this they did relying upon the authority of the agent to employ them. The agent represented the government, and the men who did the actual work knew that he had contracted with Graves only *after* they had completed the work of moving the agency to the mouth of Beaver Creek. They thought they were working directly for the government. The evidence I had satisfied me that only *after* the work was done were they informed that Agent Risley had let the entire contract to Graves, and that a voucher had been given Graves for the whole work, and perhaps more too, and that they must look to Graves for their pay. F. D. Yates, Todd Randall, Raymond, and others, who did the hauling, worked in good faith for the government, and the government got the benefit of their labor, and at a price which was shown to be reasonable and fair. The department refused to pay Graves, and properly refused to pay him. But Yates and the men who did the work would be able to recover all they claim in any court upon a *quantum meruit* as against an individual standing in the place of the government. The denial of their legal and equitable rights to Yates and the men who worked there for the government is not only a wrong of which the government ought not to be guilty towards its citizens, but is a policy which has cost millions. What wonder that no man will work for the government as cheap as for a citizen when he is liable to be treated as these men have been? The government never paid anybody for this work."

Representative B. W. Harris, a member of the Fletcher commission, says on the subject of the removal of the Whetstone Agency:

"It was admitted on all hands that the work had been done promptly, expeditiously, and satisfactorily. Yates and his associates, it was said, supposed they were doing it for the government, and would be paid by the government. Yates being the post trader, and then having money at his command to a greater extent than any of the others, paid the others, taking their bills, approved by the agent, Risley, as his security, and thereby assumed the whole risk.

"When the work had been done and the liability incurred, and when payment was asked and expected, Risley informed Yates that he had made a contract for the whole work with one Graves, and that in asking him, Yates, and his associates to do the work he had simply acted at the request of Graves; that Graves would pay them, as he had given him approved bills for the whole amount at contract price.

* * * * * * *

"The commissioners became satisfied that the pretended contract between Risley and Graves was a fraud, and entered into with the intent to get out of the government for their mutual advantage a large profit on the work done by Yates and others. There can be no doubt that the department acted wisely in rejecting the claim of Graves and refusing to pay one dollar thereon. The contract was not only fraudulent, and therefore void, but nothing was ever earned by Graves under it. Yates and others did all the work and earned all the pay, and were employed by the agent, Risley, without notice that he was acting otherwise than on behalf of the Government of the United States. * * *"

In view of the foregoing facts, your committee are forced to the conclusion that the claim for removal of the Whetstone Agency is just, and should be paid; they therefore report back a substitute for the bill, with recommendation that it pass.

Your committee adopt the House report as their report, and agree with the Commissioner of Indian Affairs that the said Frank D. Yates, Todd Randall, E. W. Raymond, and Stephen F. Estes have an equitable claim against the government, as set forth in said House report, and they report back said bill (S. 2059), and recommend that it do pass.

The committee, therefore, adopt said Senate report as the report of this committee; and finding the claim for the removal of said agency is valid in law and should be paid, the committee recommend the passage of bill S. 271.