
IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1888.—Ordered to be printed.

Mr. WILSON, of Maryland, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 1171.]

The Committee on Claims, to whom was referred Senate bill 1171, do make the following report:

The material facts upon which this claim is based are fully set forth in the findings of fact made by the Court of Claims in Congressional case No. 75. That case was referred to the court from this committee, and a petition was filed in the names of Louisa S., George P., and Frank W. McDougall, under the provisions of the act of March 3, 1883. Afterwards, on December 1, 1884, the same case was referred to the Court of Claims by the Secretary of the Interior, under the provisions of section 1063 of the Revised Statutes, which authorized in certain cases the rendition of a final judgment, whilst under the former reference only the facts could, in any event, be found. The latter reference became case No. 14507, John Paul Jones, administrator, etc., vs. The United States. The petition was filed on December 13, 1884, and on the 3d day of May, 1886, judgment was rendered in favor of the administrator for \$81,250.

From this judgment the Attorney-General, on May 25, took an appeal to the United States Supreme Court, which came on for hearing at the following term, and on March 28, 1887, the judgment was reversed and the cause remanded, with instructions to dismiss the petition. Congressional case No. 75, which was still pending, was then tried, and the same findings of fact made, upon which the Supreme Court rendered their opinion. In the mean time an appropriation of the amount necessary to pay the judgment of the Court of Claims had been included in the deficiency bill of August 4, 1886 (24 Stat., L., 280), and now stands to the credit of the administrator on the Treasury books.

This is not, as shown by the findings of the Court of Claims, the only case of this character which has been presented to Congress. Before the present jurisdiction of the court was conferred, this case, with several others, in which all the material facts were identical, were presented to the court and reports made to Congress against their payment, upon the ground that there was no legal liability on the part of the Government. This view of the law has been sustained by the Supreme Court in the case of the United States vs. Jones, above referred to. After jurisdiction to render final judgments was conferred a different theory of law was adopted by the court, and in numerous cases, all of which depended on exactly similar statements of fact, judgment was given for the claimants.

(Fremont's case, 2 C. Cls. R., 461; Fremont and Roache's case, 4 C. Cls. R., 252; Belt's case, 15 C. Cls. R., 92.)

In none of these cases was an appeal taken to the Supreme Court, but the money was appropriated, in due course, as all other judgments of the Court of Claims are appropriated for and paid.

Three other cases are brought to our attention, all of which received careful and favorable attention by Congress.

Samuel Norris's case (2 C. Cls. R., 155) was referred there by special act of Congress after a report had been made by the court under its former jurisdiction, and judgment was given for \$69,900, which was also paid.

Samuel J. Henley was paid by special act (12 Stat. L., p 847) the sum of \$96,575.

The first person, however, who was relieved by Congress, under the same circumstances, was Gen. John C. Fremont. Congress appropriated \$183,025, with 10 per cent. interest, to pay him for supplies furnished under identical circumstances, and at the same time (10 Stat. L., p. 804).

The facts in the present case are set forth with particularity in the report from the court, and need not be referred to at length here, but we think it proper to quote with approval from the report in the Fremont case (Report No. 289, House, Thirty-third Congress, first session), and to adopt the following language as applicable to McDougall's claim:

Commissioner Barbour, to execute the stipulations of the treaties, made a contract with Col. J. C. Fremont to furnish the requisite amount of beef. This contract, however, was not concluded until the commissioner ascertained that Fremont's proposals were the lowest of all those offered. There was no express authority of law to make the contract, and yet the general authority with which he was clothed to treat, coupled with the emergencies of the occasion, fully justified him in assuming that the legislative and executive departments would sanction his purchase, which was to terminate the war and save the Indians from perishing. The emergency was too pressing for him to await instructions from the Department, or for the Congress to meet and make the necessary appropriation, and your committee believe that the Government should recognize the act of this agent, when it is manifest that he acted in good faith, and as most humane, discreet men would have done under similar circumstances.

The liability was incurred before the treaties were submitted to the Senate, and yet it was not for the personal benefit of the agent. The Government derived great benefit from the purchase; it secured our citizens in the unmolested enjoyment of the rich "gold diggings," and it saved from ruin and death the Indians whom our citizens had despoiled of their homes, and destroyed their only means of subsistence. Having derived all these advantages from the purchase which made this liability, would it be generous or just to one of our agents or citizens to refuse its payment because an appropriation had not been previously made? Or will it be pretended if Congress had been in session at the time, and had been made fully acquainted with the emergency, that it would have refused the appropriation?

It would be unjust to our national reputation to suppose that the Congress would have allowed those Indians to perish from hunger after our own citizens had despoiled them. It was cheaper to feed than fight these starving savages, and the food furnished by Barbour was better economy than to have maintained battalions and regiments to subdue the Indians. Was Barbour trustworthy? For upon this, in a measure, depends the answer to the question whether he acted in good faith, and from a laudable desire to advance the interests of the public. Your committee attached so much consequence to this point in the case, that they sought, by inquiries directed to persons who were acquainted with him, for information which would enable them to speak positively upon that subject.

The eighth finding of the court and the history of this and the other similar claims show that but for the prompt action of the claimants in furnishing to the then hostile Indians large quantities of beef and provisions, a long and bloody war must have ensued. It shows further that the only title which the United States Government has ever acquired to the Indian lands of California was by virtue of the treaties of which the supplies, for which payment is now sought, was the most

material and important element. In this connection the Supreme Court say, in Jones's case :

That such a policy was, under all the circumstances, vital to the ends which those in charge of Indian affairs desired to accomplish may be conceded under the facts found by the Court of Claims; and it may be that information of the proceedings of Wozencraft and his colleagues in making contracts for the supply to the Indians with provisions, beef, etc., and in all other respects, was given to the proper Department at Washington; and that what they did was either approved or was not repudiated. While all this may be admitted, the question comes back upon us, what statutes, in express words or by necessary implication, vested Wozencraft with power to bind the United States by such a contract as that made with McDougall, even had he been previously directed or authorized by the Interior Department to make contracts of that character in holding treaties with the Indians.

It will thus be seen that whilst the Supreme Court recognized the vast benefits which have accrued to the United States they deny relief upon technical grounds. The Court of Claims had not, at the time this action was brought, equity jurisdiction. Claimants were required to show a strictly legal liability upon the part of the Government, and this could not be done in this case.

The Supreme Court in discussing this question and in speaking of the general policy pursued by the commissioners in California say :

That the policy pursued by Wozencraft and his colleagues was the only one that would have given peace to the inhabitants of California; that the Indians were induced by promises of subsistence held out to them to abandon their lands to the whites and settle upon reservations selected for them, and that the United States thereby acquired title to the land so abandoned, are considerations to be addressed to Congress in support of a special appropriation to pay the administrator of McDougall. They do not, in our judgment, establish or tend to establish a claim against the United States enforceable by a suit.

So far as your committee knows this is the only claim of this kind remaining unpaid. All the rest have long since been paid by special act or by judgment of the Court of Claims. The money to pay this claim in full is appropriated and now stands to the credit of the administrator upon the books of the Treasury.

Your committee, therefore, recommends the passage of the accompanying bill, which authorizes the payment to the legal representative of the late George McDougall of this said sum, with the following amendments: After the word "administrator," in the eighth line, insert the following words to wit, "eighty-one thousand two hundred and fifty dollars," and by inserting at the end of the bill the words "but without interest or cost."