

IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1888.—Ordered to be printed.

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

REPORT :

[To accompany bill S. 728.]

The Committee on Claims, to whom was referred the bill (S. 728) for the relief of William J. Martin, of Oregon, have considered the same, and respectfully report :

That the facts in this case are fully set forth in the report made by this committee upon a similar bill at the second session of the Forty-ninth Congress, which report is as follows, with the exception of a clause relating to interest, the claimant in the bill under consideration not asking for interest.

The evidence on file tends to establish the following facts :

That in the year 1849, First Lieut. G. W. Hawkins, acting quartermaster United States Army, stationed at Oregon City, Oregon Territory, entered into a contract, in 1849, with the claimant for the delivery of 96,000 pounds of beef at Fort Hall, Idaho Territory, for the use of what was known as the Rifle Regiment, en route to said fort, under command of Colonel Loring, agreeing to pay therefor 12 cents per pound on foot, and assuming unavoidable losses which might be sustained on the trip by reason of the depredations of Indians; that the said lieutenant, as agreed, advanced on the contract the sum of \$2,500 to assist in the purchase of the beef cattle, and further advanced, by way of payment to drivers and herders, \$1,500; that the claimant, proceeding under the contract, purchased 122 head of cattle of one A. J. Embrie, of Yamhill County, in the Territory of Oregon, and employed to assist in driving the same William Rogers, E. Horner, and G. W. Garrison, the latter being killed by Indians en route; that the expedition when ready consisted of the beef cattle, twenty-two wagons loaded with quartermaster stores, under one Joel Palmer as wagon-master, and a large number of loose horses, the whole being under the supervision of the claimant, with Lieutenant Hawkins as commander; that the expedition set out from Yamhill County on the 4th of July, 1849, reaching Fort Hall the last of September of said year; that the cattle were stampeded en route by the Indians and twenty-two head were lost; that twelve head were ordered by Lieutenant Hawkins to be killed for the use of the expedition and for destitute emigrants; that the remainder, eighty-eight head, were turned over immediately on the arrival of the expedition at Fort Hall to Lieutenant Russell, acting quartermaster at said fort; that at the time of the delivery of the cattle neither Lieutenant Hawkins nor Lieutenant Russell had funds with which to pay for them; that Lieutenant Hawkins gave claimant an order on Judge Bryant, then Territorial judge, residing at Oregon City, for the amount; that upon presentation of said order to Judge Bryant claimant was informed that Lieutenant Hawkins had deposited no money with him for that or any other purpose, and that he could not, therefore, pay the order; that winter came on, and claimant was unable to do anything toward collecting the claim until spring, and in the mean time learned that Lieutenant Hawkins had become insane; that the lieutenant was brought to Oregon City in May, 1850, where claimant went to see him; that his mental condition was such that no business could be transacted with him. He was afterwards removed to Vancouver, but was and continued to be hopelessly insane, having no remembrance either of the expedition or the

contract. He was in 1853 stricken from the Army rolls for not presenting for settlement his accounts, and died insane at or near Buffalo, N. Y.; that the condition of the country was such as to the labor supply and danger of attack from Indians, remoteness of settlement, etc., that no one would undertake the delivery at a distance of cattle or stores for the Government except upon an agreement on the part of the Government to sustain unavoidable losses, and that such was the custom; that the written contract was entered into in the lieutenant's office in Oregon City, in the presence of Dr. Hayden, United States Army surgeon, and Orderly Sergeant Humphreys, Regular United States Army; that the total amount due under the contract was \$11,520, on which there were paid by the lieutenant, as wages and advance to claimant to enable him to purchase the cattle, \$4,000, leaving a balance due of \$7,520; that the written contract was destroyed by fire, together with other public and private papers, at the residence of claimant, in Douglas County, State of Oregon, in the year 1863.

To this statement of facts the claimant positively swears. He is supported in material particulars by the affidavits of Henry Clay Hill, S. S. Fuller, Henry Warren, J. W. Rogers, Emanuel Horner, M. J. Litten, and Mark Hatton, drivers, herders, and teamsters, who were with the expedition, several of whom testify to statements made by Lieutenant Hawkins as to the existence of the contract and as to the terms of it.

The affidavits of Dr. Hayden, United States Army surgeon, and Sergeant Humphreys, alleged to have been present at the time of the execution of the contract, are not produced, and no reason is disclosed by the papers for their non-production.

Judge Matthew P. Deady, United States district judge for the district of Oregon, makes affidavit, by which it appears that he crossed the plains to Oregon in 1849, at which time he met at Cantonment Loring, near Fort Hall, the claimant, and traveled with him thence to The Dalles, Oregon; that he has known claimant well in Oregon ever since, and that from what he saw and heard on the trip, and has since learned as a part of the early history of the country, he firmly believes and states that in the summer of 1849 Martin and a party of Oregonians, whom he hired, were employed by Lieutenant Hawkins, on the plains, to supply the Rifle Regiment, then crossing the plains to Oregon, with beef, and that the cattle were delivered to a detachment of the regiment that was left near Fort Hall, and formed the camp called Cantonment Loring; that Martin took charge of the men employed by him at that point, and brought them back to Oregon, while Lieutenant Hawkins remained at Cantonment Loring until the next season, when he came down with the detachment to Vancouver; that he became mentally deranged from the effects of drink, and was unable to and did not make out the account of the expenditures of the expedition, and therefore Martin and the men employed by him were never paid for their services.

It should be noticed that the affidavit of Judge Deady does not assert or recognize the existence of a contract with the claimant for the purchase of cattle, but refers to his claim as being one for *services*.

The papers show that the claim was presented to the War Department in 1884, and was in 1885 rejected because of the great delay in its presentation, not only before and during the rebellion, but since its close. The claimant afterwards, in 1885, made affidavit, by which he seeks to explain and excuse the delay, which shows that in 1850 he wrote to General Wool, at San Francisco, then commanding the division, stating his case and asking for settlement, and was advised to wait until Lieutenant Hawkins recovered; that he sent his brother to Oregon City to see the regimental quartermaster; that in 1852 he employed David Logan, an eminent lawyer of Oregon, to prosecute the claim; that Mr. Logan corresponded with parties in Washington and pressed the matter until 1860, when he notified claimant that nothing further could be done, unless a relief bill could be got through Congress; that the Indian wars of 1852, 1853, 1855, and 1856 came on, in which claimant was personally engaged; that the war of the rebellion then came on, and claimant was advised by leading men, in whose judgment he had confidence, that it would be no use to undertake the collection of the claim in the then condition of the country, and that his attorney, Mr. Logan, informed him that there was no statute of limitations against a Government claim, and that it could be as well collected at one time as another; that after the war was over he wrote to several law firms in Washington, soliciting information and attempting to get terms for its collection; that the best offer he was able to get was a fee of 10 per cent. in advance and half of whatever might be collected; that he had met with reverses in business, and was not able to advance the 10 per cent. required; that when Colonel Nesmith was Congressman from his State he went, at claimant's request, to see the Quartermaster-General at Washington upon the subject, and was informed by that officer that he would receive evidence in support of the claim; that at that time he was not able to find the parties whose testimony was required, except Mr. Mark Hatton.

The committee is of the opinion that while the evidence, being by affidavit, and therefore *ex parte*, is perhaps not such as to justify an appropriation by Congress of the

amount claimed, it is nevertheless sufficient to entitle the claimant to a hearing in the Court of Claims. The committee is also of the opinion that the claimant should not, considering the character of the country in which he lived, and its remoteness from Washington, the illness of the officer with whom he dealt, the consequent want of vouchers, the Indian wars, and the rebellion, and the efforts he made, be deprived of his day in court because of the staleness of his claim.

The bill refers the claim to the Court of Claims for adjudication and provides for the entry of judgment for such amount as may be found due under the contract.

Your committee therefore recommend that the bill pass.

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