

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1890.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 316.]

The Committee on Claims, to whom was referred Senate bill 316, for the relief of the legal representatives of George McDougall, deceased, beg leave to report as follows: That a bill precisely like this was favorably reported by the Senate Committee on Claims in the Fiftieth Congress and passed the Senate at its first session, and was also favorably reported in the House of Representatives by its Committee on Claims at the second session of that Congress, but was not reached on the Calendar of the House.

Your committee recommend the passage of the bill, and adopt as the basis of such action the House report thereon in the last Congress, which is hereto annexed:

House Report No. 3610, Fiftieth Congress, second session

DECEMBER 18, 1888.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. T. J. CAMPBELL, 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:

This case comes before the Committee on Claims, with a finding of facts reported from the Court of Claims to the Senate Committee on Claims, under the provisions of the act of Congress approved March 3, 1883, commonly known as the Bowman Act.

The findings of the court are appended to this report, and clearly show the justice and equity of the claim as submitted. The history of this class of cases and of this one in particular is, however, interesting, and is therefore set out somewhat in detail. Shortly after the acquisition of California gold was discovered in large quantities, and as a natural consequence a flood of emigration was poured into the new-found eldorado. The new comers, in their search for the precious metal, were so indifferent to the rights of the native Indians that the latter had agreed upon a general war. In fact, actual hostilities had begun, in the shape of numerous depredations, and the militia of the State were in the field under the orders of the governor. In the meantime, three commissioners had been sent by the President to treat with the Indians, under the provisions of the act of September 30, 1850. As soon as they reached California and discovered the serious aspect which affairs had assumed, they began negotiations with the various tribes, with a view to the re-establishment of peaceful relations. These instructions were of the broadest and most general character, and acting, as they supposed, under them, they agreed to furnish large quantities of beef, flour, and other provisions, in consideration of the Indians relinquishing their mountain lands to the whites and removing to the reservations provided for them on the plains.

The Indians carried out their part of the agreement, hostilities ceased, never to be resumed, and the United States acquired title to, and took possession of, these lands. The commissioners, in order to keep faith with the Indians and to prevent actual starvation, purchased from various parties the required beef, flour, etc., and delivered it to them. They gave, in payment, drafts on the Secretary of the Interior, upon all of which payment was refused, because Congress had made no appropriation to meet these expenses. In fact, none of these treaties were ever ratified by the Senate. The Government, however, acquired the land

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it coveted, the Indians got their price in beef and flour, and the only ones who suffered were the contractors.

Such, briefly, are the historical facts upon which this claim is based, George McDougall being one of the unfortunate contractors who, by accepting the faith of the Government, contributed largely to these great and inestimable results.

He sought relief from Congress and the Interior Department until 1872, when, worn and weary with long waiting and in despair, he took his own life in the city of Washington. His widow and children now ask for that measure of justice which was denied him.

This claim was referred to the Court of Claims under the Bowman act, on March 29, 1884. Preceding the trial, the Secretary of the Interior referred the claim to the court under the provisions of section 1063, Revised Statutes, which it was thought would give that tribunal authority to render a final judgment in favor of the administrator of the estate. The court did, in fact, after full argument and hearing, render judgment for the sum of \$81,250. An appeal was, however, taken to the Supreme Court, and the decision of the Court of Claims was reversed upon purely technical grounds. Pending this appeal an appropriation to meet the judgment was made in the deficiency bill of August 4, 1886, and now stands to the credit of the administrator upon the books of the Treasury.

After the reversal of the decision of the Court of Claims, the case was again tried under the reference by the Senate committee above referred to, and the annexed finding of facts was made.

The judgment of the Court of Claims was rendered upon the authority of several exactly similar cases, none of which, however, were appealed to the Supreme Court. The following judgments have been at various times rendered by that tribunal and in due course paid as other judgments are paid: John O. Fremont, \$13,333.33 (2 Ct. Cls., 461); Fremont & Roache, \$46,666 (4 Ct. Cls., 252); Belt's Case, \$10,715.19 (15 Ct. Cls., 92); and Samuel Norris's Case, referred by special act, \$69,900 (2 Ct. Cls., 155).

Several other cases are brought to our attention where, upon the same state of facts, Congress has given relief. The first session of this Congress passed a bill, reported from the committee, to pay to S. J. Marshall the sum of \$6,598.49, which was approved October 19, 1888. Samuel J. Hensley was also granted relief in the sum of \$96,575 (15 Stats., 347).

The first case of this character, however, in which Congress recognized the justice of these claims was that of Gen. John C. Fremont (10 Stats., p. 804), in which a direct appropriation was made of \$183,025 with interest at 10 per centum per annum: Your committee think it proper to quote with approval from the report in this case (Report No. 289, House, Thirty-third Congress, first session,) and to adopt the following language as applicable to McDougall's claim:

Commissioner Barber, one of the three commissioners, Redie McKee and O. M. Wozeneraff being the other two, 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 *United States v. McDougall's Administrator* (121 U. S., p. 89):

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 of 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.

It is worthy of notice, in conclusion, that in this case the beef was delivered to J. S. Ruckel and Stephen Hutchinson, who were the persons nominated in the contract, and who were in United States service; and also that whilst the contract provides that in the event payment was not made at the pending session of Congress the price per pound should be $15\frac{1}{2}$ cents, this claim is for only $12\frac{1}{2}$ cents per pound, which was the agreed price if immediate payment was made. It was upon this basis that the Court of Claims gave its judgment, which was afterwards reversed, and also made its finding of facts. In this finding the usual price is fixed at 15 cents per pound, and an examination of the reports and evidence in the Court of Claims in the various cases which have been paid show that the price was never lower than 15 cents, and frequently reached 20 cents per pound.

Your committee, therefore, recommend the passage, without amendment, of Senate bill 1171, which provides for the payment to the legal representatives of George McDougall the sum of \$81,250, which has been appropriated, as shown above, but without interest or costs.

COURT OF CLAIMS.

LOUISA S. MCDOUGALL, GEORGE P. MCDOUGALL, AND
 Frank W. McDougall, heirs and legal representatives
 of George McDougall, deceased,
 v.
 THE UNITED STATES. } Congressional case, No. 75.

FINDING OF FACTS.

This case having been referred to the Court of Claims, March 29, 1884, by the Committee on Claims of the Senate, under the act of March 3, 1883 (22 Stat. L. 455), known as the Bowman Act, was heard by said court April 25, 1887, John Paul Jones appearing for the claimant and Robert A. Howard, Assistant Attorney-General, for the United States, and thereafter the court from the evidence finds the facts to be as follows:

I.

Since the reference of this case by the committee of the Senate, John Paul Jones has been appointed administrator of George McDougall, deceased, by the orphans' court for the District of Columbia.

II.

This claim has been pending in the Interior Department and before Congress for many years, but has never been finally disposed of.

III.

Under the act of September 28, 1850 (9 Stat. L., 519), Redick McKee, George W. Barbour, and Oliver M. Wozencraft were duly appointed agents for the Indian tribes within the State of California.

On October 9, 1850, Oliver M. Wozencraft, George W. Barbour, and Redick McKee were appointed commissioners "to hold treaties with the various Indian tribes in the State of California," as authorized by the act of 30th September, 1850.

Upon the passage of the act of February 27, 1851 (9 Stat. L., 586), they were informed that their offices and functions as commissioners were abrogated and annulled. They were at the same time directed not to suspend negotiations, but to enter upon their appointments as agents, and were as such designated, under the act of 1851, to negotiate with the Indians of California, under the instructions already given.

The instructions referred to did not extend to and embrace contracts for the subsistence of the Indian tribes, but only authorized "such commissioners to hold treaties with the Indians."

IV.

Among the instructions given the said commissioners under date of October 15, 1850, were the following:

"As set forth in the law creating the commission and the letter of the Secretary of the Interior, the object of the Government is to obtain all the information it can with reference to tribes of Indians within the boundaries of California; their manners, habits, customs, and extent of civilization, and to make such treaties and compacts with them as may seem just and proper.

"On the arrival of Mr. McKee and Mr. Barbour in California they will notify Mr. Wozencraft of their readiness to enter upon the duties of the mission. The board will convene and, after obtaining whatever light may be within its reach, will determine upon some rule of action most efficient in attaining the desired object, which is, by all possible means, to conciliate the good feelings of the Indians, and to get them to ratify those feelings by entering into written treaties, binding on them, towards the Government and each other. You will be able to judge whether it is best for you to act in a body or separately in different parts of the Indian country."

Again, on May 9, 1851, the Commissioner of Indian Affairs wrote to the commissioners, using the following words:

"What particular negotiations may be required it is impossible for this office to foresee; nor can it give any specific directions on the subject. Much must be left to the discretion of those to whom the business is immediately intrusted."

V.

When the commissioners arrived in California they found open hostilities existing between the Indians and the whites, and a general war had been agreed upon by the Indians. The governor of California had, at the request of Adam Johnston, the Indian agent, called out a portion of the militia of the State, and had organized a military force to operate against the Indians.

To avoid the threatened and quell the actual hostilities, the commissioners at once began to negotiate treaties with the Indians, by which they were required to leave their mountain resorts, to abandon their lands to the whites, to descend to the plains, and reside peaceably upon a tract of land selected for them. In return, the commissioners promised the Indians that the United States would give them seeds to plant and implements to work with, establish schools, and appoint persons to teach them how to cultivate their lands and provide for their own wants.

The policy adopted by the Commissioner included the "subsistence" of the Indians, and large quantities of beef and other provisions were stipulated for in the various treaties, and the office was notified that the same policy would have to be pursued throughout the whole State, and that this system was thought much better than the system of annuities.

The letters in which these statements were made were written on May 1, 1851, and May 13, 1851.

On June 27, 1851, the Indian Office wrote to the commissioners, suggesting to them "that when the appropriation of \$25,000 for holding treaties was exhausted, they should close their negotiations and proceed with the discharge of their duties as agents simply, as the Department could not feel itself justified in authorizing anticipated expenditures beyond the amount of the appropriation made by Congress."

On 16th July, 1851, the office wrote to Barbour, one of the commissioners, saying: "In the copies of treaties made with the several Indian tribes heretofore transmitted to this office there are provisions for delivering them sundry articles in 1851, which can not be complied with, as Congress will not be in session in time to make the necessary appropriations. Should you conclude other treaties, you will fix the time and payments, under any stipulation, at a period sufficiently in the future to allow of Congressional action to meet the requisitions;" and on 9th July, 1851, the office wrote to Wozencraft, speaking of the "treaties you have concluded or may hereafter negotiate," and directing him to transmit in every case the estimate of money that will be required, etc. On August 9, 1851, after the Indian Office had notified the commissioners that the "appropriation for holding treaties" was exhausted, the Commissioner wrote to Redick McKee acknowledging the receipt of the joint letter of the commissioners, in which they stated that the policy of furnishing "subsistence must be pursued throughout the whole State;" and in this letter of acknowledgment he made no complaint and gave no advice or instruction to the contrary. And on September 15, 1851, he wrote to Wozencraft acknowledging copies of treaties "and return of expenditures, contracts, and disbursements."

On May 17, 1852, the Indian Office wrote Agents McKee and Wozencraft, saying: * * * "I have therefore to request that, at the earliest practical period, you make a full and detailed report directly to this office of all contracts, debts, and liabilities made and incurred by the agents of the Department in California."

Agent Wozencraft negotiated over one hundred treaties.

No disapproval or complaint of the actions of the commissioners, agents, or sub-agents, who were connected with the foregoing transactions, either by the President, Secretary of the Interior, or Commissioner of Indian Affairs, appears.

The agent, Wozencraft, without specific instructions so to do, made and entered into the following articles of agreement with the late George McDougall, who died May 14, 1872, and whose administrator now brings this suit:

Articles of agreement entered into this fifth day of April, A. D. eighteen hundred and fifty-two, between O. M. Wozencraft, United States Indian agent for California, of the first part, and George McDougall, of San Francisco, of the second part.

The said party of the first part agrees to contract with the party of the second part for two thousand and five hundred head of cattle, to be delivered as follows, viz, one thousand head to be delivered to Stephen Hutchinson, U. S. Indian trader, resident at San Geronimo, for the Cohaula tribe of Indians; five hundred head to be delivered to J. T. Ruckle, U. S. Indian trader, resident at Tamacula, and one thousand head to be delivered to the Indians at Aqua Callienti, near Womer's Rancho.

In consideration for which the party of the first part is to pay the party of the second part at the rate of twelve and one-half (12½) cents per pound (weight net), the weight to be estimated and agreed upon between the U. S. Indian traders and the party of the second part.

It is further understood that if there should be no appropriation by Congress this present session for the payment of this contract then the parties of the second part are to receive fifteen and one-half cents per pound.

It is also further understood that one-half of the cattle contracted for may be "torones," at the option of the party of the second part; and it is further understood the cattle are to average five hundred pounds in weight each; if not, the weight to be made up by additional cattle, so that the original estimate may be complete.

It is further understood that the delivery of the cattle is to commence on the first of May next ensuing.

San Francisco, April 5, 1852.

O. M. WOZENCRAFT, [SEAL.]

U. S. Indian Agent.

GEORGE MCDOUGALL. [SEAL.]

Witness:

J. T. RUCKLE.

VI.

In pursuance of this contract decedent delivered to J. S. Ruckle and Stephen Hutchinson, United States Indian traders, 6,000 head of cattle, averaging 650 pounds each, and took from them the following receipt:

LOS ANGELES, May 17, 1852.

Received of George McDougall, the contracting party for supplying the "Cow-we-ha," "San Louis," and "Dieganian" tribes of Indians with beef cattle, one thousand head of cattle, averaging six hundred and fifty pounds weight each.

J. S. RUCKEL,

United States Indian trader for the "San Louis" Indians and "Dieganians."

STEPHEN HUTCHINSON,

United States Indian trader for the Cow-we-has tribe of Indians.

The parties to whom the property was delivered were those nominated in the contract, and were licensed United States Indian traders, and the weight of the beef was agreed upon by the parties designated by the contracting parties, viz, McDougall and Ruckle & Hutchinson. It was customary at this time to estimate the weight of cattle, and not to sell them by actual weight.

The price of beef at this time was about 15 cents a pound.

VII.

Claims similar to the one at bar have been paid by the United States Government as follows: John C. Frémont (Stats. 10, p. 804), \$183,025, with interest at 10 per centum per annum from June 1, 1851; Samuel J. Hensley (Stats. 12, p. 847), \$96,575; Samuel Norris, \$69,900 (2 Ct. Cls., 155); Frémont's case, \$13,333.33 (2 Ct. Cls., 461); Frémont & Roache's case (4 Ct. Cls., 252), \$46,666; Belt's case (15 Ct. Cls., 92), \$10,715.19.

The drafts upon which Samuel Hensley recovered were drawn by Wozencraft upon the Secretary of the Interior, and were dated February 11, 1852, and the agreement under which the said drafts were drawn was dated February 10, 1852. The contract with Samuel Norris was made by same party on December 31, 1851. The contracts upon which Belt & Co. recovered were entered into between Belt and Subagent Johnston at various times from August 5, 1851, to January 31, 1852, and on August 12, 1851, the Interior Department approved "of the motive which prompted him (Agent Johnston) to furnish additional subsistence to the Indians," and informed him that an appropriation would be made.

Wozencraft reported the amount of the Government's indebtedness to McDougall as amounting to \$101,500.

VIII.

The Indians who were dispossessed of their lands under these treaty stipulations ceased their warfare and ever after remained peaceable, but never recovered possession of their lands, although the treaties were not ratified by the Senate; but the United States assumed title to said lands and disposed of them in the same manner as other portions of the public domain have been disposed of.

BY THE COURT.

Filed May 9, 1887.

A true copy.

Test this 6th day of December, 1887.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

[United States Court of Claims. Congressional Case No. 75. Filed March 29, 1884.—J. R. Louisa S. McDougall, George P. McDougall, and Frank W. McDougall, heirs and legal representatives of George McDougall, deceased, vs. The United States.]

To the honorable the Judges of the Court of Claims :

The petition of Louisa S. McDougall, George P. McDougall, and Frank W. McDougall, all of the city of Indianapolis, in the State of Indiana, respectfully shows to your honors :

That they are the identical persons referred to in the Senate bill No. 604, first session Forty-eighth Congress, as "the heirs and legal representatives of George McDougall, deceased, late of Indianapolis, Indiana," and that the facts in relation to the claim which this honorable court is directed to examine and report upon by the Committee on Claims of the Senate, under the provisions of the act of Congress approved March 3, 1883, commonly known as the "Bowman act," are as follows, to wit :

(1) That by the acts of Congress approved September 30, 1850 (Stats., 9, p. 558), and February 27, 1851 (Stats., 9, p. 572), it was provided that eight treaties should be negotiated between the United States and certain Indian tribes in California, and an appropriation was made thereby for the expenses of "holding" such treaties ; and it was further provided by an act approved February 27, 1851 (Stats., 9, p. 586, sec. 3), "that hereafter all Indian treaties shall be negotiated by such officers and agents of the Indian Department as the President of the United States may designate for that purpose," etc.

(2) That in obedience to the provisions of said acts the President appointed three commissioners, to wit, Redick McKee, George Barber, and O. M. Wozencraft, to negotiate treaties with the said Indians in California.

(3) That in view of the then unsettled condition of affairs in California (that Territory having been but recently acquired by the United States), and the fact that a general Indian war was threatened, if not in actual existence, these said commissioners were given, collectively and individually, the widest discretion in supervising the Indian affairs in California and negotiating treaties with said tribes, by the instructions issued to them by the honorable Secretary of the Interior.

(4) That after their arrival in California the said commissioners separated (as they were authorized to do by their instructions), each taking a certain portion of the State as his exclusive territory in which to conciliate the said hostile Indians ; and, finding that these hostilities were largely the result of the starving condition of said Indians, they having been driven from their homes by the invasion of American citizens, who were then flocking to California in search of gold, the said commissioners, exercising that discretion which was given them by their instructions, as aforesaid, adopted the policy of supplying them (the said Indians) with provisions, relying upon the Government to sustain them and to fulfill their contracts, etc.

(5) That for the purpose aforesaid O. M. Wozencraft, one of the said commissioners, entered into the following contract with George McDougall, now deceased, to wit :

"Articles of agreement entered into this fifth day of April, A. D. eighteen hundred and fifty-two, between O. M. Wozencraft, United States Indian agent for California, of the first part, and George McDougall, of San Francisco, of the second part.

"The said party of the first part agrees to contract with the party of the second part for two thousand and five hundred head of cattle, to be delivered as follows, viz: One thousand head to be delivered to Stephen Hutchinson, U. S. Indian trader, resident at San Geronia, for the 'Cohaula' tribe of Indians ; five hundred head to be delivered to J. S. Ruckel, United States Indian trader, resident at 'Tamacula ;' and one thousand head to be delivered to the Indians at 'Aqua Callienti,' near Warner's Ranch.

"In consideration for which the party of the first part is to pay the party of the second part at the rate of twelve and one-half (12½) cents per pound (weight net), the weight to be estimated and agreed upon between the U. S. Indian traders and the parties of the second part.

"It is further understood that if there should be no appropriation by Congress this present session for the payment of this contract, then the parties of the second part are to receive fifteen and one-half cents per pound.

"It is also further understood that one-half of the cattle contracted for may be 'Torones' at the option of the party of the second part, and it is further understood the cattle are to average five hundred pounds in weight each ; if not, the weight to be made up by additional cattle, so that the original estimate may be complete.

"It is further understood that the delivery of the cattle are to commence on the first of May next ensuing.

"San Francisco, April 5th, 1852.

"O. M. WOZENCRAFT, [SEAL.]

"U. S. Indian Agent.

"GEO. MCDOUGALL. [SEAL.]

"Witness :

"J. T. RUCKLE."

(6) That in pursuance of said contract, the said George McDougall did at various times and places deliver to certain agents of the Government 1,000 beeves, averaging in weight 650 pounds each, in all 650,000 pounds of beef, and that said amount of beef was receipted for by the agents of the Government, J. S. Ruckel and Stephen Hutchinson, and that said beef was actually converted to the use of the Indians.

(7) That in payment for said beef O. M. Wozencraft drew two certain bills on the Hon. Luke Lea, Commissioner of Indian Affairs, payable "upon an appropriation by Congress to fulfill treaty stipulations in southern agency of California," both bearing date May 26, 1852; one for the sum of \$41,000, and the other for the sum of \$30,250, and both payable to the order of George McDougall, and that the said bills were duly presented to the drawee thereof and payment refused, no appropriation having been made by Congress to carry into effect the treaty stipulations.

(8) That by the terms of said contract the said McDougall was to receive 12½ cents per pound for the beef delivered, provided the same was appropriated for during the then pending session of Congress, and if not, then he was to receive 15½ cents per pound for the same; and that the necessary appropriation not having been made within the time specified, the said O. M. Wozencraft drew his third bill in favor of George McDougall, bearing date 20th September, 1852, on the Hon. Luke Lea, Commissioner of Indian Affairs, for the sum of \$19,500, the same being the difference between the price of said beef at 12½ cents per pound and 15½ cents per pound, and that said bill was likewise duly presented for payment and payment thereof refused.

(9) Your petitioners further represent that the said George McDougall throughout acted in good faith, and that, whilst the treaties which were being negotiated by the said commissioners were never ratified by the United States Senate, it was largely owing to the timely assistance rendered by the said McDougall, and others who acted under similar contracts, that quiet was restored and peaceable possession of California assured; and, further, that of the others with whom similar contracts were made by the said commissioners, all have been paid by the Government, as follows: John C. Fremont, by act of Congress (Stats. 10, p. 804), \$183,025, with interest at 10 per cent. per annum from June 1, 1851; Samuel J. Hensley, \$96,575, by act of Congress (Stats. 12, p. 847); and Samuel Norris, by judgment of Court of Claims, under a joint resolution of June 22, 1866, giving that court jurisdiction, \$69,900 (2 Ct. Cl's Rep's).

Your petitioners further show that neither they nor the said George McDougall, or either of them, ever bore arms against or voluntarily aided, abetted, or gave encouragement to the rebellion against the United States Government, and that they are the owners of this claim.

Wherefore, they pray that this honorable court will examine this case and make such report to the Committee on Claims of the United States Senate, and recommend such relief, as the facts herein will warrant.

J. W. DENVER,
Solicitor of Claimants:
JOHN PAUL JONES,
Of Counsel.

DISTRICT OF COLUMBIA, County of Washington:

James W. Denver, being duly sworn, deposes and saith, that he is the agent and attorney for the claimants named in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made; that said claimants are justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true.

J. W. DENVER.

Subscribed and sworn to before me, this 28th day of March, A. D. 1884.

[SEAL.]

JOHN T. C. CLARK,
Notary Public.

Post-office address of claimants: Indianapolis, Ind.

Post-office address of attorney: 1115 Pennsylvania avenue, Washington, D. C.

Post-office address of counsel: 458 Louisiana avenue, Washington, D. C.