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William P. Yonge.

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Report No. 600.

[To accompany bill H. R. No. 481.]

HOUSE OF REPRESENTATIVES.

WILLIAM P. YONGE.

MAY 16, 1848.

Mr. FLOURNOY, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to whom was referred the petition of Wm. P. Yonge, report:

That this claim is fairly stated by the petition, and sustained by the evidence submitted therewith. They are added hereto.

Government agreed, through a responsible and legally authorised agent, to pay the petitioner such damages as his cotton sustained during its use upon the boat. And until the amount of those damages had been ascertained, the petitioner was not entitled to interest upon that amount. But after government has *ascertained* the amount of damages which it had agreed to pay, and it chooses for any reason to *retain* such ascertained amount due by contract, justice and equity unite in proclaiming its responsibility to pay legal interest on the money thus withheld from the government creditor.

Appraisers, as had been agreed upon before the cotton was delivered to the United States for use, valued the damages sustained by the cotton, and that valuation was approved of and confirmed on the 17th June, 1836, by the officer who had taken the cotton from the petitioner. From this date until the damages were paid, October 7, 1847, the petitioner, in the opinion of this committee, ought to be allowed interest; and they, therefore, report a bill in accordance herewith, allowing the petitioner \$214 96.

A.

To the honorable the Senate and House of Representatives of the United States of America:

The petition of Wm. P. Yonge, late of the firm of Yonge & Cobb, of Columbus, Georgia, and sole owner of the effects of said firm,

RESPECTFULLY REPRESENTS:

That during the Creek war, in May, 1836, an expedition against the Indians was fitted out at said town of Columbus, to descend the Chattahoochie river; that by virtue of an order of the commanding officer, Major J. H. Howard, issued upon the recommendation and advice of Major General Jesup, twenty-one bales of cotton, the property of the said firm, were taken by Captain Thomas Hoxey to construct a breastwork on board the steamboat Hyperion, to protect the United States troops on board said steamboat from the fire of the Indians in descending said river; that said cotton was furnished by the said owners thereof, with the understanding and express agreement that the government of the United States would pay for whatever damage said cotton might sustain in consequence of being used for the purpose mentioned; that the damage thus sustained was ascertained, as had been agreed upon, by appraisers, who valued it at fifteen dollars per bale, or \$315; which appraisement was approved of and confirmed by Captain Hoxey, as per his certificate, dated June 17, 1836, a copy of which is hereto annexed, marked No. 2, the original being on file in the office of Indian affairs.

Your petitioner further represents that, on presenting his claim, payment was refused for the reason, as your petitioner believes, that cotton was not considered an article which the quartermaster's department was authorized by any existing law to contract for, and it was thought by the accounting officers that there was no appropriation out of which said claim could be paid, and that "legislative action" was necessary for your petitioner's relief. Whereupon, commissioners having been appointed under the second section of the act of 3d March, 1837, to examine into and report upon losses occasioned by the Creek and Seminole hostilities, your petitioner, on the 5th August, 1837, presented his claim to said commissioners, who approved the same, and reported it as coming within the provisions of the act of Congress of April 9, 1826, and the acts amendatory thereto. See their report.

Since that time your petitioner has anxiously awaited the action of the honorable Congress, in the premises. But though a bill was reported for the relief of your petitioner and others, it was not acted on, and your petitioner has failed in all his efforts to obtain payment of his acknowledged just claim, until recently, to wit: on the 24th November, 1847, on a review of the case, the accounting officers of the treasury finally recognized your petitioner's claim as

one provided for, and which ought to have been long since paid out of the appropriation made by act of the 2d July, 1836, for the "suppression of Indian hostilities," and accordingly directed payment to be made out of that fund, excluding interest, which was done on the 24th November, 1847, as before stated.

See papers annexed. No. 1, Major Howard's statement; No. 2, Captain Hoxey's affidavit; No. 3, Major General Jesup's report, and the report of the Second Comptroller; the originals of which are now on file in the office of the Third Auditor; and No. 4, copy of the testimony submitted to the commissioners appointed under the the second section of the act of 3d March, 1837, and by them filed in the office of Indian affairs.

Your petitioner further represents, that the amount of damages allowed by the appraisers was not equal to the extent of his loss upon said cotton, in consequence of its being used as aforesaid; and that in consequence of the payment of that sum having been so long refused or withheld, he has sustained a loss much greater than would be covered by legal interest at six per cent. per annum. He therefore prays this honorable Congress to authorize and direct that he should be paid interest at six per cent. per annum on the amount of his claim, from the date of Captain Hoxey's certificate, to wit: from the 17th June, 1836, to the 24th November, 1847, when his account was allowed and the principal of his claim paid.

And your petitioner, &c., will every pray.

W. P. YONGE.

B.

Report of the Third Auditor of the Treasury on the claim of William P. Yonge.

TREASURY DEPARTMENT,
Third Auditor's Office, November 23, 1847.

Dr. THE UNITED STATES

To W. P. Yonge,
of the late firm of Yonge & Cobb, of Columbus, Geo.

To damages on twenty-one bales of cotton, furnished for the protection of the United States troops on board the steamboat Hyperion, in an expedition down the Chattahoochie river in May, 1836, against the Creek Indians, under a contract with the acting quartermaster of the United States, for the payment of whatever damage said cotton might suffer, in consequence of its being used.

Fifteen dollars per bale.....	\$315 00
Interest on \$315, from 26th May, 1836; to date.....	214 96

529 96

WASHINGTON, October 7, 1847.

The foregoing claim was reported upon by the accounting officers of the treasury on the 5th October of this year, and was *then* considered to be of such a nature, "that the accounting officers of the treasury had no legal authority to allow the claim," and that the same "required legislative action."

The quartermaster general in his letter addressed to the Second Comptroller, under date of the 5th instant, (whose letter is herewith,) says: "In regard to the claim of W. P. Yonge for payment for cotton made use of in the Creek war of 1836, I have to report, that I was at Columbus at the time the boats were fitted out for the expedition under Major Howard. The cotton was necessary to fit the boat, not for the purposes of a transport, but as a defence against the rifles of the Indians. As quartermaster general, I have nothing to do with that which relates to defence; but as the commander of the army, of which Major Howard's battalion (including Captain Hoxey's company) made a part, the matter has been properly referred to me, and I have no hesitation in saying that the cotton was necessary for the purpose for which it was used. I remember advising Governor Schley at the time, (I was not then in command,) to have the boats fitted so as to protect the men. Captain Hoxey had a perfect right to make the contract which he made, and the damage should be made good by the United States."

This claim may, therefore, be admitted in accordance with the opinion of the Second Comptroller, who, in his letter of the 22d instant, (also herewith,) transmitting to this office the papers in relation to said claim, says: "I am, therefore, of the opinion that upon the new evidence from the major general commanding, the claim may be admitted, excluding the charge for interest."

All the papers in the foregoing case are herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

Messrs. Duff and B. E. Green are the attorneys in the case.

PETER HAGNER,
Auditor.

To ALBION K. PARRIS, Esq.,
Second Comptroller.

TREASURY DEPARTMENT,
Second Comptroller's Office, November 23, 1847.

The foregoing decision of the Third Auditor is confirmed.

ALBION K. PARRIS,
Comptroller.

No. 1.

COLUMBUS, GA., *September 11, 1847.*

I certify that in the year 1836, I was in command, as major, of a

detachment of troops, and ordered Captain Hoxey to fit up the boat Hyperion for the purpose of descending the Chattahoochie river with his and other companies.

JOHN. H. HOWARD.

No. 2.

STATE OF GEORGIA, *Muscogee county.*

Before me, John J. McKendree, a justice of the peace in and for the county aforesaid, personally came, Thomas Hoxey, (late Captain of the Independent Artillery Company stationed at Columbus, Ga., in May, 1836,) who being duly sworn, deposeth and saith: That in conformity with orders received by him from Major John H. Howard, twenty-one bales cotton were received from Messrs. Yonge & Cobb on board the steamer Hyperion, for the protection of the troops embarked on board said steamer Hyperion, on an expedition down the Chattahoochie river, with the understanding that whatever injury or damage was sustained in the use of the cotton, the same should be paid to the owners thereof; that the use of the cotton was deemed indispensable for the protection of the troops on board said steamer; and deponent further saith, that the said cotton was materially injured in the use aforesaid.

THOS. HOXEY.

Sworn to and subscribed before me, this 9th day of September, 1847.

JOHN J. MCKENDREE, J. P.

No. 3.

QUARTERMASTER GENERAL'S OFFICE,
Washington city, November 5, 1847.

SIR: In regard to the claim of W. P. Yonge for payment for cotton made use of in the Creek war in 1836, I have to report, that I was at Columbus at the time the boats were fitted out for the expedition under Major Howard. The cotton was necessary to fit the boat, not for the purposes of a transport, but as a defence against the rifles of the Indians. As quartermaster general, I have nothing to do with that which relates to defence; but as the commander of the army, of which Major Howard's battalion (including Captain Hoxey's company) made a part, the matter has been properly referred to me, and I have no hesitation in saying, that the cotton was necessary for the purpose for which it was used. I remember advising Governor Schley at the time, (I was not then in command,) to have the boats fitted so as to protect the men. Captain Hoxey had a perfect right to make the contract which he made,

and the damages should be made good by the United States. There is or was an appropriation, not for the quartermaster's department alone, but for all expenses incident to Creek hostilities, from which this claim ought to have been paid at that time.

The enclosed papers are herewith submitted for your examination.

I remain, sir, &c.,

THOS. S. JESUP,
Quartermaster General.

ALBION K. PARRIS, Esq.,
Second Comptroller, Treasury Department.

TREASURY DEPARTMENT,
Second Comptroller's Office, November 22, 1847.

SIR: I herewith transmit the papers relating to the claim of W. P. Yonge, together with a letter from Major General Jesup, commander of the army, of which Major Howard's battalion (including Captain Hoxey's company) made a part; from which it appears that the fitting up the boat with the cotton as a breastwork was necessary, and in accordance with the advice of the major general commanding.

General Jesup states that this claim ought to have been paid out of the appropriation for the suppression of hostilities by the Creek Indians, act May 23, 1836; but on inquiry it is ascertained that this appropriation has been fully expended, and hence I gave an opinion that the claim could not be allowed.

On further examination, I find that the appropriation for the "suppression of Indian hostilities," &c., act 2d July, 1836, section second, is properly applicable to claims of this nature, and that there is a balance of this appropriation unexpended and now available.

I am therefore of the opinion, that upon the new evidence from the major general commanding, the claim may be admitted, excluding the charge for interest.

I am, very respectfully, your obedient servant,

ALBION K. PARRIS,
Second Comptroller.

PETER HAGNER, Esq.,
Third Auditor.

No. 4.

Copy.—Original on file in Indian office.

COLUMBUS, May 26, 1836.

We, the undersigned, having been called upon by Messrs. Yonge & Cobb to examine the situation and the damage, which had ac-

crued to twenty-one square bales cotton, which (by order of Major Howard) had been taken on board the steamer Hyperion, for the protection of the troops embarked on board said steamer, on an expedition down the Chattahoochie river, after examining said cotton, do hereby assess the damage which it has sustained, in consequence of its being removed and used for the purpose aforesaid, at the sum of three hundred and fifteen dollars, or fifteen dollars per bale.

JOHN FONTAINE.
H. K. HILL.
BEN. P. TARVER.

JUNE 17, 1836.

I certify that the above cotton was used for the purpose therein mentioned.

THOS. HOXEY,
Captain, Col. Ind't Artillery.

Memorandum filed in the Indian office by commissioners appointed under second section, act 3d March, 1837.

Yonge & Cobb.—Additional testimony:

John Fontaine was called upon to estimate the damage done to the cotton described by claimant; has no doubt the real damage was equal to fifteen dollars a bale; describes its appearance.