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Dent, Vantine & co

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DENT, VANTINE & CO.

MARCH 3, 1855.—Laid upon the table and ordered to be printed.

Mr. ORR, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the petition of Dent, Vantine & Co., to be paid for supplies furnished Indians, report:

That the amount of the account alleged by the petitioners to be due is \$54,858 93, made up of the following items, to wit: 205,994 lbs. beef, at 20 cents. \$41,198 80
 47,279 lbs. flour at 16 cents. 7,564 64
 Interest from the 1st December, 1852, to 1st March, 1854, at 10 per cent 6,095 94

54,858 93

It is alleged that the beef and flour charged in the above account was furnished to certain Indians in the middle district of the State of California, and that it was furnished upon the separate orders of Agent Wozencraft and sub-agent Adam Johnston. A treaty was negotiated by Agent Wozencraft, on the 28th day of May, 1851, with the chiefs, captains and head men of the Tuolumne, We-chilla, Succaach, Co-topla-ne-mis, Chap-pah-sing and Sage-wam-nas tribes of Indians; and by the fifth article of the treaty, it was stipulated that the United States should furnish the said tribes with 400 head of beef cattle, 500 pounds each, and 200 sacks of flour, 200 pounds each. It is further alleged that 35,094 pounds of the beef was furnished the Indians while the treaty was being negotiated, and from the 31st August, 1851, to 31st August, 1852, the balance of the beef charged in the bill and all the flour was furnished these Indians. Monthly accounts are rendered, and Agent Wozencraft certifies that they are correct, and were for the United States. This certificate is the only evidence furnished your committee to establish the delivery of the beef and flour to the Indians in California. When the treaty already referred to was submitted to the Senate of the United States for ratification, it was rejected, and all the stipulations therein contained were consequently disavowed and repudiated by the United States. Agent Wozencraft had authority to negotiate treaties with the California Indians, but they were not obligatory upon the government until regularly ratified in conformity with the Constitution of the United States. This treaty having been reject-

ed, there is no legal obligations to pay any demands growing out of any of its articles. The claim of these petitioners must consequently, if admitted, depend solely upon equitable grounds arising out of the circumstances of the transaction.

Neither Wozencraft or Johnston had any right to enter into a pecuniary obligation to charge the government, in virtue of the offices they held, and if they made such contracts, those with whom they contracted must submit to have their claim for remuneration determined by the rule pursued by the government, that when its agent exceeds the authority confided to him, or contracts an obligation when no appropriation has already been made by Congress to pay the same, that the payment is to be determined by an inquiry as to whether the contract inured to the benefit of the government, and was made under such circumstances as would authorize the reasonable inference that Congress would, if possessed of the facts of the case, have given authority such as had been usurped. On the 24th June, 1851, the Indian Department at Washington, through Mr. Mix, acting commissioner, informed Agent Wozencraft that Congress had "only appropriated \$25,000 on account of holding treaties with the various Indian tribes of California." The agent's contract commenced in the May preceding, and when he received that intelligence it was his duty to have suspended further supplies under the contract. The default, however, would be waived by your committee, if Agent Wozencraft had conducted himself in such manner as to have secured the confidence of your committee in his integrity. If the contracts had been made in good faith with the petitioners, the provisions had been proven to have been delivered, and it had appeared that it was for the benefit of the public service, your committee would recommend the payment of the account; but from the evidence which your committee find, in a report of the Secretary of the Interior, in answer to a resolution of the Senate, (See Senate document, special session, 1853,) your committee do not feel justified in assuming that his action was in good faith, or that the government ever received any benefit from his contracts with the petitioners. The disbursements which he made from 28th May, 1851, to 25th September, 1852, a period of sixteen months, according to his own certificate, amounted to the enormous sum of \$392,040, nearly the whole of which sum, he alleges, was disbursed for beef and flour furnished the Indians in his district. One of the items for beef "furnished to Indians while making five treaties," is \$101,998. Can it be possible that there can be good faith in this transaction, certified to by Agent Wozencraft himself?

He also certifies to the monthly accounts rendered by the petitioners, and yet, in another part of his correspondence, on the 28th May, 1852, whilst the provisions in the account were said to have been delivering, in a letter to Hon. Luke Lea, he says: "The Indians throughout my district are quiet, with the exception of some few thefts. I have apprehended that they would commence stealing through necessity. There has been difficulty and consequent delay in furnishing them with the *meagre amount of beef allowed them*. Indeed the *majority of them in my district have not had a mouthful for several months past*, but I will forbear troubling you with many difficulties which I have to contend with," &c. Senate doc., special session, 1853.

What disposition then could have been made with nearly four hundred thousand dollars worth of beef which was furnished within the date of this letter, if a majority of the Indians in Wozencraft's district had not received a "mouthful for several months past?" How did he dispose of it? Was it disbursed for the benefit of the public service? What Indians received it, or did any of the California Indians receive any portion of it?

The Indians who, it is alleged, were the recipients of the beef furnished by the petitioners, resided principally upon the Stanislaus river, at the reserve of that name; and Agent Wozencraft certifies at the end of each month, from May, 1851, to August, 1852, that a particular quantity of beef and flour was furnished these Indians. He, however, resided in San Francisco, and could not have known that any of the beef and flour was delivered, unless by making frequent visits to the reserve. Did he make such visits? Agent Beale, in a letter to Commissioner Lea, dated at San Francisco, September 30, 1852, only a few weeks after the last delivery of beef by the petitioners, says:

"For reasons which I will hereafter give, I do not feel authorized to employ Agent Wozencraft on that service. I regret to say that the confident anticipations you indulged that I would, on conference with the agents here, (McKee and Wozencraft,) be placed in possession of much valuable information, was misplaced, *as neither of them has been to the Indian country for some six months.*"

How was it possible for Agent Wozencraft to know whether the beef and flour had been delivered at the end of each month, when he had not even visited the Indian country for six months? and what weight can your committee attach to his certificate as furnishing evidence that the Indians ever received one pound of beef or flour from the petitioners?

But your committee find further evidence in Senate document, special session, 1853, that Agent Wozencraft had no personal knowledge of the facts which he has certified on honor to be correct. Agent Beale had a conversation with Wozencraft, which was reduced to writing and subscribed by the latter. The following are some of the questions propounded by Beale and Wozencraft's answers:

"Question 2. By whom were (your contracts to supply beef) they issued to the Indians?

"Answer. By the traders appointed by myself.

"Question 3. What proof had you that they were issued to the Indians?

"Answer. No other proof than the word of the traders themselves.

"Question 4. How were the weights estimated?

"Answer. By asking any person who might be on the ground to say what they thought the average weight of the drove to be.

"Question 5. Have you any further proof than the mere word of the traders that the Indians ever received the beef without paying for it?

"Answer. None. I have not any. I generally saw the beef which was issued during the negotiation of the treaties. It was not weighed.

"Question 6. Have you not given drafts on the government for cattle which are not yet delivered?

"Answer. Yes.

"Question 7. Have you not ordered beef to the amount of fifteen hundred head, to be delivered between the Fresno and Four creeks, without ever having been in the Four creek region?"

"Answer. I have never been in the Four creek region, but have ordered the beef.

"Question 8. How many Indians do you suppose the Four creek country to contain?"

"Answer. I do not know.

"Question 9. If you did not know, how could you determine the amount of cattle necessary for their subsistence?"

"Answer. From what the treaties promised them.

"Question 10. How do you know that the Indians of the Four creeks ever received any of that beef?"

"Answer. Nothing further than that I was told so by the traders at Fresno. I have no proof of it.

* * * * *

"Question 12. Do you not know that in some instances the traders who issued and the contractors for the supply of the beef were the same?"

"Answer. I do.

* * * * *

"O. M. WOZENCRAFT, U. S. Indian Agent,"

and the correctness of it certified by Agent Beale.

This memorandum illustrates Agent Wozencraft's manner of doing his official business, and your committee are of opinion that this extract, as well as those preceding, require that other evidence should be furnished of the delivery of the beef, and the necessity for the public service, than the mere contract with Wozencraft or his certificate that it had been faithfully executed.

General Hitchcock, United States army, in a letter to R. McKee, (see same volume as before,) one of the California agents, says: "Lieutenant Stoneman paid *thirteen* cents per pound for beef for *his* escort with Doctor Wozencraft, though Lieutenant Stoneman informed me that Doctor Wozencraft was paying *thirty* cents per pound at the *same time* for beef issued to Indians."

Your committee are, therefore, constrained to recommend the rejection of this claim, until it can be sustained by evidence to which suspicion cannot justly attach.

Nor does the contract made by Sub-agent Adam Johnston strengthen the claim of the petitioners. He seems, from the document already referred to, to have had a roving propensity, and contracted for supplies of beef in various directions, without the authority of the agents, or even without ever consulting them. It is not pretended that he had any authority to negotiate treaties with the Indians, much less to exercise his discretion in contracting debts in the name of the government. He was vested with no extraordinary power as were his superiors, the agents, and, consequently, his acts cannot be recognized.

The committee recommend that the claim be rejected.