

2-4-1878

On the Relief of G. Hesselberger

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

S. Rep. No. 49, 45th Cong., 2nd Sess. (1878)

This Senate Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1878.—Ordered to be printed.

Mr. PLUMB, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill S. 82.]

The Committee on Military Affairs, to whom was referred the bill (S. 82) for the relief of Gustav A. Hesselberger, have had the same under consideration, and submit the following report:

In 1867 Gustav A. Hesselberger was a first lieutenant in the Army, stationed at Fort Dodge, Kansas, and was on duty as acting assistant quartermaster and acting commissary of subsistence, and was also occasionally absent on duty with his company. He was mustered out of the service January 1, 1871, in pursuance of the act of Congress of July 15, 1870. By a statement from the Third Auditor, to be found among the papers in the case, it appears that Hesselberger is indebted to the United States in the sum of \$3,186.26, from which he asks relief.

The affidavit of Hesselberger sets forth, substantially, that while acting as assistant quartermaster in the year 1867, he was in charge of the construction of the post of Fort Dodge, and had a large number of citizen employés on his rolls, and also had in charge the purchase of construction materials as well as quartermaster's supplies for the troops at the post. As acting commissary of subsistence he also had charge of the issue of commissary supplies to the troops and employés at the post. In addition to these duties he was occasionally sent away on detached service, and upon one occasion, in October, 1867, was ordered to be in attendance upon the commissioners who were negotiating a treaty with certain hostile Indian tribes on Medicine Lodge Creek, one hundred and twenty miles from his post, where he was detained some twenty days. During all his absence he states that he was compelled to intrust the public property for which he was responsible to his clerk. Charged with these manifold duties and the disbursement of large sums of money, he was only allowed one citizen clerk, assigned to him by his superiors, although he alleges that he frequently made application for others, which applications were refused. During the months of July, August, and September the scourge of cholera broke out at the post and prevailed with great fatality. At one period all the commissioned officers of the Regular Army at the post were prostrated, and deaths were of such frequent occurrence that great demoralization ensued, and many of the men deserted. As quartermaster, Hesselberger was charged with the duty of burying the dead, and this, with the care of the sick, consumed the greater portion of his time. He himself was sick with the disease for five days. He states that during this period the soldiers and employés

evinced a disposition to take and use public property in any way that suited their convenience, and the most constant watchfulness was necessary to prevent serious loss. For the reasons stated he found it impossible to exercise that care in the preparation of his returns and reports necessary to prevent error.

Hesselberger states that during the months of July, August, September, and November, 1867, and under the circumstances described, he made certain overpayments, amounting to \$270, and that this occurred by computing the pay accounts for a longer period than the men actually worked. He also states that during the same months his clerk, one John Mullgrove, and one E. P. Wheeler, a subcontractor for furnishing hay to the post, conspired together and issued a number of quartermaster's checks, to which Mullgrove forged his (Hesselberger's) signature, on the assistant treasurer at Saint Louis and the First National Bank of Leavenworth, on which payments were made to the amount of about \$2,800. Hesselberger, as he alleges, was in the habit of paying employes in checks, which were accepted by the traders at and near the post. They passed as current funds in the vicinity, and frequently they were not presented for payment for several months after they were issued. Mullgrove and Wheeler, it is claimed, taking advantage of this state of affairs, forged checks in small amounts, corresponding to the payments made to employes, and paid them out in trade. As many of these checks were current for a long time, and as the monthly bank statement simply gave the amount of the checks paid each day, without furnishing the number of each and the name of the person to whom paid, it was impossible to discover the forgeries from the statements, and they were in fact not discovered until some time during the following year, when the checks were returned to him upon the close of his business. When the genuine checks were presented they were protested for want of funds.

Hesselberger sets forth in his affidavit that immediately upon the discovery of the forgeries he reported the fact to the chief quartermaster of the department, and went before a United States commissioner and procured the arrest of Wheeler, who was, however, discharged upon examination, because of a failure to connect him directly with the crime, although the fact of the forgery was clearly shown. He also went before the grand jury at Topeka, and endeavored to have bills of indictment found against the parties. The clerk, Mullgrove, had fled the country before the discovery of his crime, and is reported to have died soon after in New Mexico. Upon his discharge by the commissioner, Wheeler also left the country.

Hesselberger further states that in 1872 he placed all the papers, including such of the forged checks as had come into his possession, his check-stubs, &c., in the hands of E. N. O. Clough, an attorney of Leavenworth, Kans., whom he had employed to obtain relief for him. These papers are believed to have been lost on the occasion of their hasty removal to escape a fire in a structure adjoining the office of Mr. Clough. At all events, they were not to be found among the papers of Mr. Fitzwilliam, an attorney, to whom the case was afterward confided, and who has since died.

Henry Inman, who was captain and brevet-lieutenant colonel in the Quartermaster's Department of the Regular Army from July, 1867, to 1869, and who was chief quartermaster of the district of the Upper Arkansas, which district included the post of Fort Dodge, states that Lieutenant Hesselberger reported to him, and that all requisitions for funds and supplies, and for authority to employ civilians, were made

directly to him. He corroborates the testimony of Hesselberger as to the general condition of affairs at Fort Dodge, the construction of the post, the prevalence of cholera, &c. He states that the duties were much too laborious for him to perform with the aid of a single clerk, and that Hesselberger frequently asked for additional clerical aid in making up his returns and reports, which, under existing orders, could not be furnished. He also testifies as to the frequent absence of Lieutenant Hesselberger on detached service, leaving the public property in charge of his clerk. He regarded Hesselberger as one of the most efficient officers in the service, and testifies that Generals Hancock, Davidson, Sully, and Gibbs, who successively visited the post on inspection service, spoke of him in the highest terms of praise. Colonel Inman states that Lieutenant Hesselberger reported to him the fact of the forgeries as soon as they were discovered, and made every effort to bring the guilty parties to justice.

John W. Hall and Capt. David L. Payne, who were somewhat familiar with affairs at Fort Dodge in 1867, corroborate the general statement of those affairs by Lieutenant Hesselberger, especially as to the construction of the post, the cholera epidemic, the arduous labors of the quartermaster, and both bear testimony to the good conduct, zeal, efficiency, and fidelity of that officer.

Lewis Hauback, the commissioner before whom Wheeler was brought, certifies to the fact of the examination, and that the check upon which the prosecution was founded was clearly proven a forgery, but that there was not sufficient evidence to connect Wheeler with the crime. He asserts that Lieutenant Hesselberger was very active in ferreting out the matter.

A. L. Williams, then assistant United States attorney for the district of Kansas, and afterward attorney-general of the State, also certifies to Hesselberger's zeal in the endeavor to bring the guilty parties to justice.

Henry Douglass, lieutenant-colonel Fourteenth Infantry, also furnishes a statement in behalf of Lieutenant Hesselberger. He commanded the post during the time when Hesselberger was stationed there. He commends his zeal, efficiency, and integrity, and generally corroborates his statements. He caused the arrest of Wheeler for forgery, and states that though there was no doubt of Wheeler having uttered a forged check, there was no evidence to connect him with the forgery. He saw several checks which were palpable forgeries, and states that it was generally conceded that the clerk in the post adjutant's office was the criminal. This clerk had deserted prior to Wheeler's arrest. He thinks that Lieutenant Hesselberger did all he could to bring the guilty parties to justice.

General Sherman, who was at Fort Dodge in the autumn of 1867, states that he recollects that Lieutenant Hesselberger had been down to the Kiowa camp, more than a hundred miles south of the post, and brought in two young women named Box, white captives in the hands of the Kiowas. The General says: "I saw the girls and a delegation of the Kiowas at the time. All the officers at the post gave Lieutenant Hesselberger great credit for courage in rescuing these captives, who must still be living in Texas."

Among the papers are exemplified copies of orders taken from the post records at Fort Dodge, showing the frequent absences of Lieutenant Hesselberger from that post on official duty. Also, a letter, dated December 27, 1867, from Brevet Maj. Gen. J. W. Davidson, acting inspector-general to General D. H. Rucker, then acting Quartermaster-General, recommending Lieutenant Hesselberger for an appointment as

assistant quartermaster in the Army, stating that he regarded him as excellently qualified for the position, and commending, in the highest terms, his personal character and his conduct while acting assistant quartermaster at Fort Dodge.

The evidence submitted to the committee is entirely of an *ex parte* character, and is not so exact and complete as would be necessary to substantiate a claim in a court of justice. The nature of the facts and circumstances alleged in behalf of the claimant is such, perhaps, as to make the absolute proof of them practically impossible. The absence of the material papers, the alleged forged and fraudulent checks, is to be noted, and the committee are not entirely satisfied that their loss or destruction has been properly established.

The committee are satisfied that while the evidence is by no means conclusive, it furnishes probable grounds for belief that the claim preferred is an equitable one. Upon the testimony before them they are not prepared to find that any specific sum should be credited to the account of Lieutenant Hesselberger, but they are of opinion that he should be given such a status before the department as will enable him to present his evidence there and receive such benefit from it as its nature may entitle him to.

The bill makes provision for this further investigation, and the committee recommend its passage, with an amendment.

○