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Report on Salmon-Fisheries

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY-15, 1878.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 97.]

The Committee on Military Affairs, to whom was referred the bill (S. 97) authorizing the Secretary of War to grant permission to the proprietors of salmon-fisheries now located on Three Tree Point military reservation, on the Columbia River, in Washington Territory, to remain on said reservation, have had the same under consideration, and submit the following report:

This is a bill which authorizes the Secretary of War to permit the proprietors of certain salmon-fisheries to remain on the Three Tree Point military reservation in Washington Territory, upon a small portion of which, about an acre in extent, these proprietors have erected buildings for packing or canning salmon at an outlay of several thousand dollars. The record shows conclusively that the original location or settlement upon this piece of land was made in good faith by parties, to whom the present occupants are successors by purchase, about the month of November, 1875, the same having been bought by them of one John Bergmann, a settler upon and occupant of the same. The lands were occupied without knowledge of any existing reservation until some time in May, 1876, when it was rumored and subsequently ascertained to be true that a military reservation had been established thereupon, now known as the Three Tree Point reservation.

It further appears that the purchase of the land and the erection of the buildings thereon were acts of good faith on the part of the proprietors, who in no sense are amenable to the charge of being original trespassers. It was not supposed, nor did any of these parties or their successors have the slightest knowledge at the time of making such settlement or erecting buildings, that said land had been or was intended to be reserved for government purposes.

General O. O. Howard, in a letter dated Portland, Oreg., May 17, 1876, writes to Mr. James Laidlaw that he finds no record of such reservation, and offers to recommend that this land be thrown open to settlement. It also appears that the proprietors endeavored to have the land surveyed at private expense for this purpose; also, that they communicated with the various bureaus of the government in the effort to secure a recognition of their title in some tangible shape.

In the month of November, 1876, Mr. Laidlaw, of Portland, Oreg., agent for Fitzpatrick, Davis & Co.'s salmon-cannery, was informed by Capt. H. Clay Wood, assistant adjutant-general department of the

Columbia, that the proprietors of the cannery were trespassers on the said military reservation, demanding to know by what authority they were so located, and calling their attention to the facts. It may be proper here to append the correspondence with Senator Mitchell, the General Land Office, and with Captain Wood, which will more clearly demonstrate the situation of affairs and the good faith attending them.

A

PORTLAND, July 25, 1876.

DEAR SIR: There is a reservation, marked upon all maps of Washington Territory, situated in Pacific County, and apparently about six miles in extent along the river bank. This land is unsurveyed, and upon it are situated several salmon-canneries, of one of which I am agent.

As no one here or at the land-office, Olympia, seems to know anything about the reservation, which is marked as an Indian reserve, and part of it supposed to be reserved for military purposes, I am forced to trouble you about the matter, and I trust you will kindly excuse my doing so.

The several canneries have appointed me agent to procure a survey and information about the reserve. Some doubt whether the tract has ever been located as a reservation; and if you will kindly procure me all the information you can about its extent, whether Indian or military, when reserved, and whether there is any likelihood of its being thrown open, I will gladly reimburse you for any expense incurred in procuring the information.

I wish to be fully informed before I apply to Mr. McMicken for a survey, which will cost some money.

Trusting you will excuse my troubling you, and awaiting your early reply,

I am, your obedient servant,

JAMES LAIDLAW.

P. S.—If you will kindly forward me the volumes annually published by Congress relating to foreign affairs, which are specially interesting to me as British vice-consul, I shall be much obliged.

Hon. J. H. MITCHELL,

U. S. Senator, Washington, D. C.

B.

PORTLAND, August 25, 1876.

MY DEAR SIR: I thank you for your kind attention to my inquiry about reservation in Pacific County, and fearing that you will have left ere this reaches you, I have returned map to the Commissioner, with fuller information.

Yours, very respectfully,

JAMES LAIDLAW.

Many thanks for volumes on foreign affairs duly received

Hon. J. H. MITCHELL,

U. S. Senator, Washington, D. C.

C.

WASHINGTON, August 5, 1876.

MY DEAR SIR: I beg respectfully to acknowledge receipt of your communication of inquiry in reference to reservation, &c., just at hand. I will give the subject diligent examination and advise you fully at an early day

Very respectfully.

JOHN H. MITCHELL.

Hon. JAMES LAIDLAW,

Vice-Consul, Portland, Oreg.

D.

WASHINGTON, D. C., August 7, 1876.

SIR: In acknowledging the receipt of your letter of the 5th instant, covering one from James Laidlaw, addressed to you under date Portland, Oreg., July 25, 1876, herewith re-

turned, I have the honor to say that, the description given of the land by Mr. L. being vague, I am unable to give him the desired information.

In order, however, to afford your correspondent facility of indicating the locality in question, I inclose herewith a diagram of Washington Territory, whereon Mr. Laidlaw may show the particular township and range embracing the supposed Indian and military reservation, and upon the receipt of the additional description further inquiry and search will be instituted, and such information communicated to Mr. Laidlaw as the records will show.

Very respectfully, &c.,

J. A. WILLIAMSON.

Hon. J. H. MITCHELL,
U. S. Senate.

E.

PORTLAND, OREG., August 25, 1876.

SIR: The Hon. Mr. Mitchell has inclosed to me copy of your letter 7th instant to him regarding a supposed Indian and military reservation in Pacific County, Washington Territory, regarding which I had made inquiry. I return herewith the map therein inclosed, and have noted upon it the position of the land in question, in township 9 north, range 7 west.

No one in this section seems to know anything about this reservation, and I would be thankful if you would cause inquiry to be instituted and give me all the information in your power.

I have the honor to be, your obedient servant,

JAMES LAIDLAW.

Hon. J. A. WILLIAMSON,
Commissioner General Land Office, Department of Interior, Washington, D. C.

F.

DEPARTMENT OF INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., September 8, 1876.

SIR: Referring to my letter of the 7th ultimo to Hon. J. H. Mitchell, on the subject of a supposed reservation of some kind on the north bank of the Columbia River, in Washington Territory, and referring to your letter dated the 25th ultimo, inclosing a diagram on which you have indicated the situation of such supposed reservation as in township 9 north, range 7 west, of Willamette meridian, I have to inform you that an examination of the records of this office fails to show that any reservation by the government of any kind exists in the township indicated, which township is yet unsurveyed.

Very respectfully,

U. J. BAXTER,
Acting Commissioner.

Hon. JAMES LAIDLAW,
British Vice-Consul, Portland, Oreg.

G.

HEADQUARTERS DEPARTMENT OF COLUMBIA,
Portland, Oreg., November 24, 1876.

SIRS: Investigation has shown that several buildings, known as a salmon-cannery, and alleged to be owned by Fitzpatrick, Davis & Co., have been erected upon the Three Tree Point, military reservation, on the right bank of the Columbia River, in Wahkiakum County, Washington Territory.

It is the duty of the department commander to remove by force squatters or trespassers from this reservation. Before, however, resorting to extremities, the department commander desires me to call your attention to the subject, and to request information by what authority, if any, these buildings have been there erected. It is presumed the owners erected these buildings with a full knowledge that the land was reserved, and if there without due permission, they are squatters and trespassers, and the improvements belong to the United States. Early attention must be given to this matter.

I have the honor to be, very respectfully, your obedient servant,

H. CLAY WOOD,
Assistant Adjutant-General.

JAMES LAIDLAW & CO.,
Portland, Oreg., Agents Fitzpatrick, Davis & Co.'s, Salmon-Cannery, Fisherton, W. T.

SALMON-FISHERIES.

HEADQUARTERS DEPARTMENT OF THE COLUMBIA,
Portland, Oreg., December 20, 1876.

SIR: I am instructed by the department commander, in reply to your communication of the 29th ultimo, to inform you that, pending action by the War Department or superior authority in the premises, the buildings erected by you upon the Three Tree Point military reservation will not be disturbed; but this permission gives you no authority to cut timber or fire-wood upon said reservation, which is hereby expressly prohibited; nor, by virtue of this permission, do you gain any rights as against the United States.

You are also prohibited from making any additional improvements upon the reservation. Any action had by the War Department will be duly communicated to you.

Very respectfully, your obedient servant;

H. CLAY WOOD,
Assistant Adjutant-General.

Messrs. JAMES LAIDLAW & Co.,
Agents Fitzpatrick, Davis & Co.'s Salmon-Cannery, Fisherton, W. T.

H.

PORTLAND, OREG., November 29, 1876.

SIR: We have received your letter of 24th inst., and in reply thereto have to say, that about December, 1875, Fitzpatrick, Davis & Co., looking for a suitable site for a salmon-cannery, bought from one John Bergmann, then residing at the place since called Fisherton, sufficient ground whereupon to erect the necessary buildings, and thereafter proceeded to build. They were aware that the land was unsurveyed, but not that it was a military reservation, and they received no warning that they were trespassing. Some time afterward, we, their agents, heard some rumors to the effect that there was a reservation of some kind or other in the township in which their cannery was built, and proceeded to inquire into the matter, but could get no definite information as to whether there was or was not a reservation there. Mr. Laidlaw, through Senator Mitchell, communicated with the General Land Office, at Washington, D. C., and was informed, in a letter from Mr. Baxter, Acting Commissioner, that "an examination of the records of this office fails to show that any reservation by the government of any kind exists in the township indicated, which township is yet unsurveyed." Upon receipt of this intelligence, Fitzpatrick, Davis & Co. proceeded to make further improvements, feeling assured that they were justified in doing so.

As the value of these improvements is not less than \$15,000, and as it would be a grievous loss to all parties concerned were they interdicted from carrying on the business at present, we beg to request permission to continue the business at Fisherton for at least one year, or until some definite arrangement can be made with the authorities.

We have the honor to be, sir, your obedient servants,

JAMES LAIDLAW & CO.

Assistant Adjutant-General H. CLAY WOOD,
Portland, Oreg.

The information transmitted by the War Department to your committee shows that this military reservation has never been occupied by troops, and is embraced in a list of unoccupied military posts and reservations, being classed among the military reservations in charge of engineers or used for light-house purposes. The reservation was originally made upon the recommendation of an engineer officer, and it is the inference of the War Department that its present importance, if any, is as a site for defensive works, being included in a system of defenses for the mouth of the Columbia River. The original reservation contained $802\frac{61}{100}$ acres; but the excess of $162\frac{81}{100}$ acres was taken therefrom and the tract reduced to 640 acres. There have been no defensive works, nor works of any character, erected or built upon the reservation; nor does it appear any such works are contemplated to be erected by the military authorities.

General McDowell recommended, at one time, that these proprietors be permitted to lease the small tract of land occupied by them for fishery and canning purposes, which is a mere point of rocks, and approachable only by water; but the recommendation was not approved by the

General of the Army, because such lease would be an infringement upon and in derogation of an opinion of the Attorney-General, that the Secretary of War had no authority so to do except in pursuance of an express act of Congress. (Opinions 13, page 46.) But in view and in consideration of the good faith shown by these proprietors in their original settlement and occupation, and the attendant facts and circumstances as to their efforts to secure title and avoid trespass upon government property, the military authorities have granted them permission to remain upon the premises until August 30, 1878, the close of the salmon-canning season for the current year, when they will be required, unless Congressional action be had to the contrary, to take down and remove their buildings and property and vacate the premises.

The record nowhere shows that in any exigency of war these buildings and the occupancy of the piece of land by these proprietors will interfere with the speedy erection of defensive works. Should such exigency arise, and any dispossession of these proprietors be required for the purposes of military operations, then the same must necessarily be at their risk; and if they be willing to incur the attendant consequences, the government can in no wise be injured.

The question, then, naturally arises whether it would be just and equitable, under all these circumstances, to compel these proprietors to vacate and remove their property on August 30th, next, as required by the military authorities, with the consequent injury and expense which such removal would necessarily entail upon them and the industry in which they have invested large capital, particularly when they appear to have acted in the best possible faith through all their transactions in these premises? The following correspondence between Mr. Spencer, chairman of your committee, and Mr. Mitchell, Senator from Oregon, respecting the probabilities of the reservation being used for military purposes, the value of improvements, and the capital invested in the salmon-fisheries in that locality, is herewith appended:

UNITED STATES SENATE CHAMBER,
Washington, February 8, 1878.

SIR: Referring to S. 97, bill to allow the proprietors of the salmon-fisheries to remain on the Three Tree Point reservation, now pending before the Committee on Military Affairs for report, please advise the committee, if you are apprised of the facts, whether this occupancy will interfere with any erection of defensive works, if such be contemplated hereafter. Also, what is the aggregate amount of capital invested, and the value of the branch of industry known as salmon fishing and canning in that section, together with such suggestions as may be pertinent to the issue.

Very respectfully,

GEO. E. SPENCER,
Chairman.

Hon. J. H. MITCHELL,
Senator in the Congress of the United States.

UNITED STATES SENATE CHAMBER,
Washington, February 11, 1878.

DEAR SIR: I beg respectfully to acknowledge receipt of your letter of the 8th inst., calling my attention to Senate bill No. 97, to allow the proprietors of the salmon-fisheries to remain on the Three Tree Point reservation, which bill is now pending before your committee, and in which you ask me to advise the committee, if I am apprised of the facts, whether this occupancy will interfere with any erection of defensive works, if such be contemplated hereafter; and also making inquiry as to the aggregate amount of capital invested and the value of the branch of industry known as salmon fishing and canning in that section, together with such other suggestions as may be pertinent to the issue.

Being familiar with the location of this military reservation, I think I may safely say that it is not within the range of probability that any defensive works will be erected at that point by the government in the next fifteen or twenty years, if indeed then. And even should commercial aids be established there, such as light-house, &c., which is not probable for some years at least, I cannot see that the present fisheries would interfere. I under-

stand the aggregate amount of capital invested in the erection of these fisheries within the limits of this reservation, and all of which I believe to have been erected in good faith and without any knowledge of the fact that the same was on a military reservation, is about \$30,000. The salmon-fishing industry on the Columbia River is one of great importance. The value of the catch this coming season will doubtless be between three and four million dollars.

It seems to me that no injustice whatever would be done the government by permitting these parties to remain at present and for some reasonable time to come where they are now located.

Very respectfully,

JOHN H. MITCHELL.

Hon. GEORGE E. SPENCER,

Chairman Military Committee, U. S. Senate.

In view of the facts that this reservation is not occupied nor utilized for military or commercial purposes, and the probability of such occupancy in the future appears to be very remote, your committee are of opinion that no wrong or injury can possibly accrue to the government by permitting these proprietors to remain upon the premises, at least pending the non-occupancy thereof by the military arm of the public service.

Large capital has been invested by them and an industry developed which adds materially to the commercial wealth of that locality and necessarily to the general benefit of the country. To injure or impair this special industry under the circumstances presented would seem unnecessary, if not wanton. A large number of people are employed by these proprietors in catching and canning salmon, who, if driven from the premises, would doubtless suffer injury and deprivation in many ways by loss of their occupation. Your committee, therefore, recommend the passage of the bill, with amendment, providing for a lease with these proprietors by the Secretary of War.