

2-15-1879

On the Relief of H. fuller et al.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1879.—Ordered to be printed.

Mr. DAVIS, of Illinois, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 5822.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5822) for the relief of Henry T. Fuller and others, sureties upon the official bond of William H. Waterman, having had the same under consideration, ask leave to report:

The case shows that William H. Waterman was appointed superintendent of Indian affairs for Washington Territory in 1864; that Henry T. Fuller, Thomas Dickenson, Albert G. Knight, H. T. Taylor, John Elkins, John Heath, and Thomas Falvey were sureties upon his official bond; that on the 6th day of January, 1867, Waterman, then being sick, transferred the papers and property belonging to the superintendency to T. J. McKinney, duly authorized by the government to receive the same, and on the eighteenth day of the same month Waterman died. No notice of his death reached the sureties for about eight months after it occurred. On the 25th day of August, 1875, the government commenced suits against the sureties on the official bond of Waterman, claiming an indebtedness on the part of Waterman of more than eleven thousand dollars.

The sureties aver that until the commencement of the suit they had no notice that the government claimed any balance to be due from Waterman, and there is no evidence in the case controverting that averment. At the time the official bond was executed each of the sureties was living and was in the possession of property worth more than five thousand dollars, exclusive of exemptions. John Heath, one of the sureties, died in 1871 without property. Thomas Falvey died in January, 1875, and died insolvent. Another of the sureties, still living, is now insolvent, and was so at the time suit was commenced.

When the suit was begun the sureties asked to have the account of Waterman reopened, which was done, and, upon a restatement of it by the accounting officer of the Treasury, the amount of deficit was reduced from \$11,656.67 to \$4,977.48, upon evidence collected by the sureties, at great labor and great cost, from the Pacific coast. On the trial in the district court the balance was further reduced in the sum of \$262.96; and in January, 1879, judgment was rendered against the surviving sureties for \$4,714.52, and interest thereon amounting to \$948.40.

It appears that the books and papers belonging to the superintendency were, after the death of Waterman, boxed up and forwarded to the

Indian Bureau at Washington, but were never received at that office. The petitioners aver that it is inequitable and unjust to enforce a claim against them, after the lapse of so many years, after the loss of the papers necessary to show the actual state of his accounts, and after the death and insolvency of so many sureties.

It is also claimed, and a majority of the committee think justly claimed, that the accounts as stated in the Second Auditor's office show that instead of Waterman being indebted to the government, the government is actually indebted to the representatives of Waterman. Waterman is reputed to have been a man of excellent character, of known probity, of correct habits, and good business capacity. During his lifetime he filled various positions of trust, and discharged the duties of all faithfully. In the statement of his official account he claimed a credit against the government of \$6,875 as money paid to James H. Wilbur, an Indian agent, for the use of the Yakama Indians. He also claimed a credit of \$375 paid to said Wilbur for his salary. Both of these disbursements were claimed to have been made on the 31st day of December, 1866, less than three weeks before Waterman died. For both those disbursements the government holds Wilbur's receipts. The first is of the form following:

\$6,875.00.]

Received at Olympia, W. T., December 31, 1866, of W. H. Waterman, superintendent Indian affairs, the following public funds, appropriated for the Indian service in Washington Territory:

For beneficial objects.....	\$2,000 00
For support of schools and repair of buildings.....	125 00
For pay of teachers.....	800 00
For pay of employes.....	2,350 00
For repair of mills.....	125 00
For repair of hospital.....	75 00
For pay of physician.....	350 00
For repair of buildings for employes.....	75 00
For repair of shops, tools, &c.....	250 00
For pay of interpreter.....	125 00
For incidental expenses.....	600 00
	6,875 00

For the proper care and disbursement of which, for the objects above specified, I am accountable to the United States, under my official bond.

JAMES H. WILBUR,
Indian Agent, W. T.

The second is as follows:

THE UNITED STATES TO J. H. WILBUR, DR.

Date.

Dec. 31, 1866. To salary as Indian agent during the fourth quarter ending December 31, 1866..... \$375 00

\$375.00.]

Received at Olympia, December 31, 1866, of W. H. Waterman, superintendent Indian affairs, three hundred and seventy-five dollars in full of the above account.

JAMES H. WILBUR,
U. S. Indian Agent, W. T.

[First indorsement.]

I certify on honor that I have examined the accompanying account, that I believe the same is correct and just, and that I have no doubt the money has been paid as stated.

T. J. MCKENNY,
Superintendent Indian Affairs, W. T.

[Second indorsement.]

I certify on honor that the above account is correct and just, and that I have actually this 31st day of December, 1866, paid the amount thereof.

C. A. HUNTINGTON,
Chief Clerk to W. H. Waterman, Superintendent Indian Affairs, W. T.

Both these items were disallowed by the Second Auditor. The only authority upon which these items were disallowed is contained in a letter from the Commissioner of Indian Affairs to the Second Auditor, dated on the 14th of August, 1868, seven months after Waterman's death. Referring to the first voucher for \$6,875, the Commissioner says:

This voucher having been given on a draft which was protested at the sub-treasury at San Francisco on account of there being no funds to meet it, the amount thereof will stand until Agent Wilbur shall be placed in possession of the money.

Referring to the second item of \$375, the Commissioner directs its suspension, and refers to the remarks made touching the voucher of the first-mentioned item.

There is not in the case, and there cannot be found in the office of the Second Auditor, any evidence whatever that the two receipts were given upon a check drawn upon the subtreasury at San Francisco. No such check is produced. There is evidence, on the contrary, that at that date there was a balance standing to the credit of Superintendent Waterman on the books of the subtreasury at San Francisco, amounting to many thousand dollars.

The Second Comptroller reports that on the 13th of December that balance amounted to \$69,943.45. How much was paid out between the 13th and 31st does not appear, but in June following the death of Waterman there was still a balance standing to his credit on the books of the subtreasury of \$1,240.11, which was duly transferred to the government.

It does not appear upon what pretense the Commissioner instructed the Second Auditor that those receipts were given for a check drawn on the subtreasury. It does appear that in 1875, eight years after the death of Waterman, Agent Wilbur wrote to the Commissioner a letter of the following tenor:

WASHINGTON, D. C., *January 16, 1875.*

SIR: I have the honor herewith to inclose checks drawn by late Superintendent W. H. Waterman, deceased, which checks when presented to the assistant treasurer of the United States were protested. I request your early attention to said non-payment, that the Yakama Agency of Washington Territory may have the funds which were due them in December, 1866.

I am, sir, your obedient servant,

JAMES H. WILBUR,
United States Indian Agent, Wyoming Territory.

Hon. E. P. SMITH,
Commissioner of Indian Affairs.

That letter did not inclose a check drawn on the 31st of December for the amount of the two items disallowed, and which were protested, but, on the contrary, inclosed four checks, signed by Waterman, dated on the 13th of December instead of the 31st, three of them for the sum of \$2,000 each and the other for \$1,238.75. Neither of the checks were indorsed by Wilbur; neither of them appears to have been presented at the subtreasury or to have been protested for non-payment. Each of them, on the contrary, is marked "canceled" in red ink on the back of the several checks.

How these checks came into the possession of Mr. Wilbur does not appear, and, owing to the death of Waterman, cannot well be made to appear. That they were not delivered to Wilbur at the time of their

date seems evident from the fact that they were not charged, either at that date or at any time, to the government. It is evident, also, from the fact that they were not receipted for at that date.

Weeks afterward the agent did receipt for different sums, which were charged to the government. It is not credible that those canceled checks were the consideration for the receipts given on the 31st of December for moneys which belonged either to Mr. Wilbur for salary or to the Yakama Indians under the appropriations for the tribe. It is not credible that the agent would be kept out of his own salary from January, 1867, to January, 1875, or that he could have permitted the Yakama Indians to go without the moneys appropriated to their use for that length of time.

The committee therefore report back the House bill without amendment, and recommend its passage.

