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Louis Volin

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LOUIS VOLIN.

APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LINDSEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2749.]

The Committee on Claims, to whom was referred the petition of Louis Volin for compensation for wood cut under contract with the United States Quartermaster's Department, having considered the same, submit the following report:

The facts submitted in evidence, and about which there is no dispute, are these: On the 25th of May, A. D. 1872, Louis Volin, of Yankton, Dak., entered into a contract with the proper officer of the United States Quartermaster's Department for the delivery of 850 cords of wood within the inclosure of the post at Grand River Agency, Dakota Territory, at a stipulated price of \$4.75 per cord, the wood to be delivered on or before January 1, 1873.

By the VIth article of said contract—

It is expressly stipulated that Louis Volin shall have full and sufficient authority to cut wood upon any part of the military reservation outside of a circle described, with a radius of half a mile from the adjutant's office, or upon any public lands adjoining the military reservations not appropriated by law to any other use.

And by Article VII it is provided that the contractor—

Shall be entitled to military protection whenever from the hostilities of the Indians it shall be deemed necessary by the post commander, whose duty it shall be to furnish such protection to the extent of his power; this stipulation to give no foundation for any claim against the government for damages from Indians, or any detriment arising from their depredations or hostilities.

At the time when the contract was made between the above-described parties, it does not appear to have been known to either of them that the post at Grand River Agency was not situated on a military reservation, but upon the Great Sioux Indian Reservation. Such, however, appears to be the fact; and General Card states in his report that there was no military reservation at the Grand River Agency, and, consequently, no "public lands adjoining the military reservation," upon which the contractor might, by the terms of the contract, enter and cut the wood required.

Opposite the Grand River Agency, about 4 miles distant from the post, and within the Sioux Reservation, a wood lot was found from which 250 to 500 cords of the quantity provided by the contract might have been cut; but it appears that a band of Yanktonais Indians had pre-

viously encamped on this spot and needed this wood for domestic purposes, and that they were thus encamped by permission of the proper authorities of the United States. Captain Collins, the commandant of the military post at the agency, although promising the contractor military protection to the extent of his power while fulfilling his contract, at the same time advised him to go elsewhere to cut the wood, since the Indians, if he persisted in cutting wood near them, would very likely maim his draught animals or do him other damage. Besides, the commandant of that post did not have sufficient force to spare for his protection.

Volin, the contractor, accepted the advice given him by Captain Collins, and proceeded elsewhere to cut the wood for the post. The entire quantity, 850 cords, was delivered, as stipulated in the contract, and the price agreed upon, \$4.75 per cord, paid to the contractor, but the sum of \$1.75 per cord, in addition to the contract rate demanded by him, on account of the increased cost of hauling the wood, was refused. General Card reports that the distance which the contractor was thus obliged to haul this wood is 14 miles, and that the increased cost for this service was \$1.50 per cord.

The theory upon which this claim rests is that the wood cut on the public domain is the property of the United States, and that the contract is simply for labor and personal services. The contractor, at the request of the proper officer of the United States, cuts and hauls the wood. In *Spencer v. The United States* (10 Court of Claims, 255), the chief justice in announcing the opinion of the court, said :

It could, we suppose, hardly be doubted that where a portion of the Army of the United States is quartered upon the public domain, where wood could not be obtained except therefrom, the proper officers might lawfully employ individuals to cut wood from the public land for the use of the military forces so situated. In such case, the persons so employed would be paid, not for the wood, but for cutting and hauling it.

The claim of the contractor for the extra labor thus required, in order to enable him to deliver the whole quantity of wood, is dependent upon this fact, viz: Did the officer of the United States at the Grand River Agency, with full knowledge of the increased cost of the service, assent to the hauling of the wood the distance described? If so, then it is plain that the government is bound to pay for such extra labor.

In *Grant v. The United States* (5 Court of Claims, 72), the court said :

If the changes necessarily imply an increased price, and he [the agent of the United States] expressly authorizes, or silently, but with full knowledge, assents to them, he is bound pay for them.

Upon consideration of all the facts, your committee is of the opinion that the contractor, with the full knowledge and consent of the military commandant, and by his advice, proceeded to cut and haul the wood from the locality mentioned, and that the cost of such extra labor would be in excess of the price stipulated in the contract. Nor does the fact that a portion of this wood might, under certain conditions, have been cut 4 miles from the post on the land where the Indians were encamped prove that the compensation for such extra labor should, to that extent, be reduced, and payment only be made for the number of cords which would thus have been hauled from the distance of 14 miles. Upon this point your committee is of the opinion that good policy, no less than a scrupulous regard for treaty obligations, required the military authorities at the Grand River Agency to protect the Indians in their right to cut wood at the place of their encampment for domestic purposes, and the

evidence shows that the quantity of wood there would be all required by them for such purposes.

In view of all the facts of this case, your committee think the claimant entitled to the increased cost of hauling 850 cords of wood for the distance, and at the rate reported by General Card, amounting to the sum of \$1,275, and recommend the passage of the bill herewith reported.

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