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## Report : Memorial of J. Fell et al.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1885.—Ordered to be printed.

Mr. GORMAN, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill S. 1963.]

*The Committee on Indian Affairs, to whom were referred a bill (S. 1963) and memorial for the relief of John G. Fell, Edward Hoopes, and George Burnham, surviving trustees of the Walnut Grove Mining Company, have had the same under consideration, and present the following report:*

The memorialists, men of high standing and untarnished reputation, of Philadelphia, show by numerous affidavits of persons of unimpeachable character that they invested in the purchase of goods, supplies, machinery, and necessary outfit, wagon trains, and in the employment of men in the erection of buildings for store-rooms, business offices, dwelling-houses, mining machinery, and the purchase of material for said buildings, a very large amount of money.

They further show that they would not have made this investment or any part of it had not protection been guaranteed, which said guarantee is as follows:

HEADQUARTERS DEPARTMENT OF NEW MEXICO,  
*Santa Fé, N. Mex., July 11, 1864.*

MY DEAR SIR: In answer to your verbal question as to the safety of carrying on mining operations hereafter in Arizona, I will say I have already inaugurated a campaign against the Apache Indians that will result in their complete subjugation, and should you induce friends in the East to join you in erecting a quartz-mill in the newly-discovered gold regions near Fort Whipple, the enterprise will be fully protected by the military. I am well assured that building a quartz-mill there, and developing some one of the rich mines will result in such benefit to the Government as to amply compensate for the protection given.

I have the honor to be, very respectfully,

JAMES H. CARLETON,  
*Brigadier-General, Commanding.*

GEORGE H. VICKROY, Esq.

They further show that, on account of the failure of protection repeatedly promised, but never given, their mill, machinery, houses, wagons, and supplies were destroyed, and their stock captured and driven off by the Apache Indians in Arizona Territory, between August 1, 1865, and July 9, 1869.

They show that, in accordance with Rule 4, adopted by the Secretary of the Interior, under the act of May 29, 1872, and estimating the price of the property where destroyed instead of where purchased, in accordance with said rule, their losses would be greatly increased.

They further state that on the 2d day of January, 1873, they made application to the Interior Department for compensation for said losses, and after a thorough examination, the following reports were made:

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, D. C., January 7, 1873.

SIR: I have the honor to acknowledge the receipt, by reference from the Department on the 2d instant, of a letter from George H. Vickroy, dated 2d ultimo, submitting a claim of the Walnut Grove Mining Company of Arizona Territory, on account of depredations alleged to have been committed by Apache Indians at various times from August, 1865, to July 9, 1869, the loss being stated at \$292,800.

The papers in the case have been carefully examined in this office, and the conclusion that the claim is not without merit is justified, it is thought, by the sworn statements of parties who were identified with the operations of the company as employes, and who were personally cognizant, in most instances, of the facts stated by them. What amount of loss the company actually sustained by the direct acts of the Indians is a question difficult of satisfactory reply or determination. The depredations were numerous, and the task of harmonizing the evidence of different parties as to the particular facts in each and every instance seems to be impracticable, especially with reference to the loss of mules or "animals." Some of the items in the claim, such as "stock of goods and provisions, \$32,000," are without the support of sufficient proof, and in others the valuation is manifestly excessive.

It will be seen by the testimony of G. H. Vickroy, the first superintendent of the company, that the outfit purchased by him, consisting of a 20-stamp quartz mill, 40-horse power engine, 26 wagons, 268 mules and harness, provisions, tools, &c., cost about \$77,000. With this amount much material apparently is procured. Referring to the schedule of property (accompanying the claim), which, it is alleged, was either captured or destroyed by the Indians, it will be observed that the item of "20-stamp quartz-mill burned is for the sum of \$118,000." A reasonable doubt arises as to this being the real value of that particular piece of property, for the presumption is that the machinery in the mill was the most important part of it, the cost of which may be estimated by taking Mr. Vickroy's statement as to the \$77,000 expended for quartz-mill and other property, and by allowing for cost of transportation. The charges for houses destroyed are regarded as exorbitant and without support of sufficient proof; and other charges, which should have been itemized, or an invoice of the same furnished, are deemed to be inadmissible, from the fact that they are not so itemized; in addition, they are not well sustained by proof.

I respectfully submit that the allegation of the depredations having been committed as set forth in the claim is sufficiently proved, and recommend that the case be submitted to Congress for its action.

In this connection it is proper to remark that, under the limitation provided in the seventeenth section of the law of June 30, 1834, in regard to claims for depredations by Indians, the claim under consideration, not having been presented within three years, is barred.

The letter of Mr. Vickroy and papers submitted by him are herewith returned.

Very respectfully, your obedient servant,

H. R. CLUM,  
*Acting Commissioner.*

Hon. B. R. COWEN,  
*Acting Secretary of the Interior.*

DEPARTMENT OF THE INTERIOR,  
Washington, D. C., January 14, 1873.

SIR: I have the honor to transmit herewith, as required by the seventh section of the act making appropriations for the Indian Department, approved May 29, 1872, the claim of the Walnut Grove Mining Company of Arizona, amounting to \$292,800 on account of depredations committed by Apache Indians between August 1, 1865, and July 9, 1869.

The seventeenth section of the trade and intercourse act of 30th of June, 1834, requires that application for compensation for depredations shall be made to the proper superintendent, agent, or subagent within three years after the commission of the injury, otherwise the claim shall be barred.

The peculiar condition of affairs in Arizona, it is alleged, prevented a compliance with the requirements of said section.

From an examination of the papers, this Department is satisfied that the claim possesses merit, and it is respectfully submitted with the recommendation that it receive the favorable consideration of Congress.

Very respectfully, &c.,

B. R. COWEN,  
*Acting Secretary.*

Hon. JAMES G. BLAINE,  
*Speaker of the House of Representatives.*

The act of June 30, 1834, referred to by the Secretary of the Interior in his report, requires that application for indemnity shall be presented to the superintendent, Indian agent, or subagent within whose jurisdiction the tribe committing the depredations belongs, and the reference in said report that the peculiar condition of affairs in Arizona prevented a compliance with the requirements of said law means, as stated by the memorialists under oath, that there was no officer in Arizona before whom their claims could have been presented within the specified time; and the law of May 29, 1872, provides that the Secretary of the Interior shall prepare and publish rules and regulations for the presentation of claims; and the Secretary did not promulgate rules in pursuance of said law until July 13, 1872. Therefore, there being no officer in Arizona to whom the claim could be presented within the time specified, before the passage of the act of May 29, 1872, and the claim having been presented January 2, 1873, and the Secretary not having promulgated the rules until July 13, 1872, your committee submit that the claimants cannot be considered in laches.

Your committee call the attention of Congress to the fact that at the time this great enterprise was undertaken the Territory of Arizona had been recently organized, and the great desire and anxiety of the inhabitants of the sparsely settled country and of the officers of the Territory, civil and military, was expressed in its favor; that the mines were known to be fabulously rich, and, as it was confidently believed, that the introduction and successful prosecution of such an enterprise would induce a large emigration, rapid growth, and development of the country. And your committee call the attention of Congress to the fact that at this time the Territory was under martial law; that General Carleton, then in command, exercised supreme control over that whole country, and was the recognized authority there. He made war and peace with Indian tribes, built military posts and forts, and carried on the whole machinery of the civil and military government, and every act of his was indorsed and approved by the General Government, and while thus exercising supreme control he announced officially that he had inaugurated a campaign against the Apache Indians that would result in their complete subjugation, and this enterprise should be fully protected by the military; and they made this large expenditure of money, and went to Arizona to prosecute this great enterprise at the invitation of the territorial government, and with this guarantee of protection. But instead of protecting this large property, as he promised to do, and which he had a perfect right to do, and should have done, the Indians were permitted to kill the employés and to destroy the property.

Your committee, after a careful examination of the various items and the gross amount claimed, believe and state that they are fully sustained by the proof, every statement made pertaining to them being made under oath, and made by persons cognizant and living witnesses of the facts stated by them; that the proof of items reported by the Commissioner as insufficient has subsequently, at great expense, been supplied, so that your committee are fully satisfied that the proof of the

losses sustained is ample; but after the expenditure of the \$77,000, as shown by Mr. Vickroy, it must have become evident by the failure of the military authorities to furnish troops that the company would not have the military protection that had been guaranteed, and all subsequent outlay was made by the company at its own peril; and therefore your committee can only recommend the payment of \$77,000, notwithstanding the evidence shows that the company lost at least \$292,000.

On a rigid examination of the case, your committee are unable to find any dereliction on the part of the company, or where they were in a single instance at fault; and your committee consider it unjust to the claimants to refuse compensation for the losses sustained, and therefore recommend the passage of the accompanying bill, amended so as to conform to the recommendation of the committee; that is, appropriating \$77,000 in full satisfaction of claimant's demand, instead of \$292,800 demanded in the bill.