3-17-1886

Report : Claim of W. Shimmins and G. McPherson

49TH CONGRESS, 1st Session. | SENATE. | REPORT No. 232.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1886.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 836.]

The Committee on Claims, to whom was referred the bill (S. 836) for the relief of William M. Shimmins and George H. McPherson, have considered the same, and respectfully report:

The claimants state their case as follows:

In 1863 they contracted with Hon. James W. Nye, superintendent of Indian affairs for the Territory of Nevada, as a representative of the United States, to cut, bank, and float to a Government saw-mill 1,500,000 feet of lumber, with the privilege of doubling the amount if they saw fit. By the terms of the contract they were to receive $12 per 1,000 in coin.

The claimants under the contract had cut and banked 1,500,000 feet, and had cut 900,000 feet more under their privilege of doubling the amount, and were prepared to run the logs, and so to complete the contract, when they were instructed not to float any of the logs, as no saw-mill had been built.

The claimants were paid in all $14,358.44 in legal-tender notes, as appears by the receipts. A claim for additional pay was presented to the Department of Indian Affairs. The Commissioner, by a report made in 1868, allowed the claim for $8,850, but it was not paid in the Department. In 1871 the claimants brought suit in the Court of Claims. The court held that they were barred by the statute of limitations. They then presented their petition to Congress, and a favorable report was made in the Senate, in the second session of the Fortieth Congress, recommending the payment of $8,325, since which time there has been no action.

There were two lots of lumber, 1,500,000 feet that were cut and banked, and 900,000 feet that were cut only. The Commissioner of Indian Affairs recommended that the claimants should be paid $9.50 per 1,000 instead of $12 per 1,000 for the first lot, and $4 per 1,000 instead of $12 per 1,000 for the second lot, so that the total amount that they were entitled to receive would be:

1,500,000 feet, at $9.50	$14,250
900,000 feet, at $4	3,600
	17,850

They have actually received, according to the receipts, $14,358.04 in legal-tender notes.

Not taking into consideration the fact they, by the terms of the contract, were to be paid in gold, there would then be $3,491.96 due to the

claimants. It is claimed, however, that the $14,358.04 in legal-tender notes was a payment of $9,000 in coin. On this theory there would be due the claimants $8,850.

It is further claimed that this payment of $14,358.04 (or $9,000 in coin) was a payment on the first lot of lumber only; that nothing was paid on the second lot. They were entitled to $14,250 (in coin?) on the first lot. If this payment was made in legal tender notes, and they were bound to receive them at their face value in discharge of the obligation of the United States, then they have already been overpaid for the first lot, and the unpaid balance of their claim for the second lot is but $3,600.

If it is regarded as a $9,000 part payment in coin on the first lot, they are entitled to a balance on the first lot of $5,250 plus the amount on second lot, making $8,850 on the two lots. There is nothing in the receipts to show that the payments made were intended to be payments on the first lot only. The claimants then would be entitled to one of the three sums, $3,491.96, $8,850, or amount on second lot, $3,600.

But it seems to the committee that the claim is barred by the statute of limitations, and that there is no sufficient reason for waiving that bar. The claim accrued in 1864, when the claimants were notified to proceed no further under the contract. The Court of Claims rejected the demand on this sole ground.

We cannot regard the fact that a claim was prosecuted in a Department, taken alone, as a sufficient excuse for not seasonably prosecuting it in court. It may be, however, that such prosecution in a Department, accompanied by proof that the representatives of the Government gave to a claimant reason to believe that there was no question of the validity of his claim, and that payment was delayed solely by pressure of business, or other cause affecting the convenience of the Government, might be regarded as a good reason for not putting both parties to the expense of a suit. We should inquire further as to the circumstances of the present case in this particular before finally rejecting it, if it turned upon this point alone; but the claim was not presented to the Court of Claims until May, 1871, seven years after the right of action accrued, and three years after the last action upon the matter in the Department.

Your committee recommend that the bill be indefinitely postponed.

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