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James Q. Shirley.

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JAMES Q. SHIRLEY.

Letter from the clerk of the Court of Claims, transmitting a copy of the findings of fact by the court in the case of James Q. Shirley, administrator, etc., against The United States.

DECEMBER 11, 1888.—Referred to the Committee on Claims and ordered to be printed.

UNITED STATES COURT OF CLAIMS.

JAMES Q. SHIRLEY AND ESTATE }
of Francis De Long. }
v. }
THE UNITED STATES. }

Congressional case, No. 758.

CLERK'S OFFICE,
Washington, December 7, 1888.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court November 5, 1888, in the aforesaid cause, which case was referred to this court by the Committee on Claims, House of Representatives, under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

HON. JOHN G. CARLISLE,
Speaker of the House of Representatives.

[Court of Claims. Congressional case, No. 758. James Q. Shirley and F. C. De Long, executor of will of Francis De Long, v. The United States.]

FINDINGS OF FACT.

At a Court of Claims held in the city of Washington on the 5th day of November, A. D. 1888, the court filed the following findings of fact, to wit:

The claim in this case was transmitted to the court by the Committee on Claims of the House of Representatives on the 20th day of April, 1886, with the following bill as descriptive of the claim:

[Forty-ninth Congress, first session. H. R. 5913. In the House of Representatives, March 1, 1886. Read twice, referred to the Committee on Claims, and ordered to be printed.]

A BILL for the relief of James Q. Shirley and the estate of Francis De Long.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and instructed to pay, out of any moneys in the Treasury not otherwise appropriated, to James Q. Shirley, of Idaho, and the estate of the late Francis De Long, of California, the sum of forty-six thousand dollars; the same to be in full compensation

to the said Shirley and De Long for the loss and damages, direct and indirect, sustained by them by reason of the United States taking possession of their property, real, personal, or mixed, in Oneida County, Idaho Territory, at what was known as the Fort Hall Stage Station, or Fort Hall Bottom.

J. W. Douglass and C. M. Jennings, esqs., appeared for claimants, and the Attorney General, by Lewis Cochran, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The case having been brought to a hearing on the 22d day of May, 1888, the court, upon the evidence and after considering the briefs and arguments of counsel on both sides, finds the facts to be as follows:

I.

In 1865 Ben. Holladay, a United States mail contractor, was, and for some time previously had been, in possession of a tract of public land of the United States of about 640 acres, then called "Fort Hill Stage Station" and a part "Fort Hall Bottom." He had built thereon one dwelling-house, and several other buildings of "adobe," or sun-burned brick, and a frame stock-yard. The mail route being abandoned, said Holladay made the following conveyance:

"This indenture, made the twenty-fifth day of October, in the year of our Lord eighteen hundred and sixty-five, between Ben. Holladay, proprietor of the Overland Stage Line, by his agent, Paul Coburn, assistant superintendent of said line, of the first part, and James Q. Shirley, John R. Sweetser, Francis De Long, and Josiah S. Sweetser, of the State of California, of the second part. Witnesseth:

"That the said party of the first part, for and in consideration of the sum of five hundred dollars, lawful money of the United States of America, to him in hand paid, by the said parties of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quit-claimed, and by these presents does remise, release, and quit-claim unto the said parties of the second part, and to their heirs and assigns forever, all that certain parcel or tract of land lying and being in Idaho Territory which was owned and occupied by said party of the first part as a stage station of said Overland Stage Line and called Fort Hall Station—embracing an area of one mile square, more or less—together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

"And also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part or parcel thereof, with the appurtenances.

"To have and to hold, all and singular, the above-mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns forever.

"In witness whereof, said party of the first part has hereunto set his hand and seal the day and year first above written.

"Signed, sealed, and delivered in the presence of—

"AARON STEIN,
"W. I. APPLEBY."

"BEN. HOLLADAY, *Prop.*, [SEAL.]
"By PAUL COBURN, *Asst. Supt.*

TERRITORY OF UTAH, *city and county of Great Salt Lake, ss:*

"On this the twenty-fifth day of October, A. D. one thousand eight hundred and sixty-five, before me, the undersigned, clerk of the United States supreme court in and for the Territory of Utah, personally came Paul Coburn, to me known to be the person named in and who executed the within deed of conveyance as the duly authorized agent of the said Ben. Holladay, and acknowledged to me that he executed the same freely, for and in behalf of the said Ben. Holladay, as his voluntary act and deed, for the use and purposes therein expressed.

"Witness my hand and seal of said court at my office in G. S. L. City, U. S., Oct. 23rd, A. D. 1865.

[SEAL.]

"W. I. APPLEBY, *Clerk.*"

II.

The claimants took possession of said property, bought cattle, and commenced raising horses and cattle thereon, using the same and the adjacent public lands as a horse and cattle ranch. The lands so used were heavily grassed and well situated for raising stock, and would easily "carry 20,000 head."

On the 27th of December, 1865, said Shirley leased to C. W. Walker, first lieutenant First Oregon Infantry, U. S. Army, for quarters and hospital barracks the building at said Fort Hall Station from October 6, 1865, at \$100 a month, for a period not to exceed eight months. The buildings were so occupied under said lease for six months, and the claimants admit that payment was made therefor.

After the expiration of said lease the claimants again took possession of said buildings and continued the raising of cattle until January, 1869, when they had upon the lands a large number of horses and cattle.

IV.

On the 14th of June, 1867, the President set apart as reservations for Indians a tract of land nearly 60 miles long and 40 miles wide, comprehending Fort Hall, on the Snake River, within its limits, now called Fort Hall Reservation. This embraced all the land used by claimants for their ranch.

V.

No steps were taken by the Government officers to occupy said reservation for the purposes for which it was set off until on or about January 1, 1869. At that time the claimants received notice from Governor Ballard, of Idaho (*ex officio* Indian agent), and Charles F. Powell, the local agent of Indian affairs, that, in pursuance of orders from the United States Government, they had located an Indian reservation which embraced the said premises or lands ("Fort Hall Bottom"), and that the claimants would have to move all of their live stock and effects off of said lands on or before the 1st of April (1869) following.

Said Shirley met Governor Ballard and Agent Powell at the time appointed, April 1, 1869, and was again informed that the claimant's ranch and the adjacent lands occupied by them had been located as an Indian reservation, and that they (the governor and agent) were acting in behalf and under the orders of the United States, and that the claimants must surrender the lands without delay and remove the stock at once.

VI.

On the 2d day of April, 1869, in compliance with the orders of the Government officers, the claimants started to remove all of the stock, consisting of about 1,200 head of cattle, estimated to be of the value of about \$45 each, and 500 head of horses, estimated to be of the value of about \$70 each, to the nearest available point where food and water could be procured. The point journeyed to was to Elko, Nev., about 330 miles distant from "Fort Hall Bottom."

There was also upon the land a quantity of hay, which had been cut by the claimants from the land aforesaid and abandoned by them, of about 180 tons.

At the time of the removal the grass had not begun to grow upon the plains or in the valleys, and by reason of being obliged to leave the hay which had been made upon the reservation and for want of proper shelter about 60 head of the cattle perished by the way, and the balance of the horses and cattle became so much reduced that the loss on them was not less than \$20 per head. Such food as was procured on the journey was scarce and poor, the hay procured costing on an average \$20 per ton.

Had the removal been postponed until June of the same year it might have been effected without loss or damage to the claimants, or the cattle might have been sold at a profit; but how much the difference would have been does not appear. The claimants acquiesced in the order for removal and made no objection to complying therewith.

VII.

The defendants took possession of the lands set off as a reservation about April, 1869, and have ever since held them as such.

The buildings on the premises when abandoned by the claimants were of no value for removal, on account of the material of which they were built, and for other reasons, and it does not appear that they were of any use or value to the defendants.

It does not appear that the hay abandoned by the claimants on the premises was taken possession of by the defendants nor that it was of any value to them. It was soon after destroyed by fire.

BY THE COURT.

Filed November 5, 1888.

A true copy.

Test, this 7th day of December, A. D. 1888.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

[In the Court of Claims, December term, 1885. Congressional case No. 758. James Q. Shirley and the estate of Francis De Long v. The United States.]

To the honorable the Court of Claims of the United States:

1. The claimants are citizens of the United States and reside, respectively, in Idaho and California.

2. James Q. Shirley, of Idaho, and Francis De Long, deceased, of California, acquired, in July, 1865, by contract from one Ben Holladay, a certain tract of land situated in Oneida County, Idaho Territory, consisting of about 640 acres, being what was then called "Fort Hall Stage Station," and a part of "Fort Hall Bottom." This is now known as the "Fort Hall Indian Reservation."

The claimants took possession of the said property in October, 1865, and occupied the same from that date until in April, 1869, with adjacent lands, as a horse and cattle ranch. Part of this time, however, from December 27, 1865, to April 1, 1866, the land with the building and other improvements was leased to the United States for the monthly rental of \$100. At the expiration of this lease the agent of the United States redelivered the property to the claimants. Upon repossessing the property, the claimants engaged in the business of raising and dealing in horses and cattle, using the said lands for grazing purposes, cutting hay for the stock, and for the private residence of James Q. Shirley, one of the claimants, and also for the residence of the employes on the ranch.

3. That during the period that the claimants held possession of the said lands they made the following improvements:

One two-story dwelling-house, 60 feet by 30, containing 5 rooms.

One frame barn, 30 feet by 40.

One frame blacksmith shop, 40 feet by 22.

One coach-shed, 32 feet by 22.

One warehouse, 40 feet by 20, and also frame stock-yards and other out-buildings sufficient to shelter 200 head of cattle.

That the buildings and improvements owned and placed by the claimants upon the land were worth not less than \$12,000.

4. That on or about January 1, 1869, the claimants received notice from Governor Ballard, of Idaho (*ex officio* Indian agent), and Charles F. Powell, the local agent of Indian affairs, that, in pursuance of orders from the United States Government, they had located an Indian reservation which embraced the said premises or lands ("Fort Hall Bottom"). That the claimants would have to move all of their live stock and effects off of the said lands on or before the 1st of April (1869) following.

That Shirley, one of the claimants, met Governor Ballard and Agent Powell at the time appointed, and was again informed that the claimants' ranch and the adjacent lands occupied by them had been located as an Indian reservation, and that they (the governor and agent) were acting in behalf and under the orders of the United States. That the claimants must surrender the lands without delay and remove the stock at once.

At this time (April 1, 1869) the claimants had on the said ranch and adjoining land between twelve and thirteen hundred head of large, choice cattle, and between six and seven hundred head of horses. They had also on hand at the same time about 220 tons of good hay, which would have been sufficient to have kept the said stock for two months and until the grass for grazing made its appearance. The said hay was worth \$4,400, or \$20 per ton.

Possession of the premises was taken by the United States agents aforesaid at once (April 2, 1869), including the buildings heretofore enumerated, with the other improvements and the 220 tons of hay, which could not be mowed. And all of the property left by the claimants, buildings, hay, etc., were used by the United States officials. And the claimants are informed and believe that the location of the said reservation as aforesaid was ratified and confirmed by the proper authorities of the United States.

5. On the said 2d day of April, 1869, in further compliance with the orders of the Government officers, the claimants started to remove all of the stock, consisting of 1,200 head of cattle, of the value of about \$45 each, and 600 head of horses, of the value of about \$70 each, to the nearest available point where food and water could be procured. The point journeyed to was at Elko, Nev., about 330 miles distant from "Fort Hall Bottom."

At the time of this removal the grass had not begun to grow upon the plains or in the valleys, and by reason of being obliged to leave the hay which had been made upon the reservation, and for want of proper shelter, a large number (about 60 head) of the cattle perished by the way, and the balance of the horses and cattle became so much reduced that the loss on them was not less than \$20 per head. Such food as was procured on the journey was scarce and poor, the hay procured costing, on an average, \$20 per ton.

That the necessary and unavoidable cost and expense of the said removal of the

horses and cattle was something over \$5,000, and the loss, damage, and reduction in value of the said stock was over \$25,000.

6. When the claimants delivered the property over to Governor Ballard for the United States he gave them a receipt for the same, but it has been mislaid and is apparently lost. After the most diligent search among their papers the receipt can not be found.

7. Wherefore, all things considered, the claimants have suffered loss and damage, by reason of the aforesaid facts; to the aggregate amount of \$46,000.

The claimants have never been re-imbursed or compensated by the United States or by any person for or on account of the loss and damages sustained as aforesaid, but the same is due and unpaid. And they pray a favorable finding and report for the sum of \$46,000.

F. C. DE LONG,
Executor of the last will of Francis De Long, deceased, Petitioner.
J. W. DOUGLASS,
Attorney for Petitioner.

STATE OF CALIFORNIA, *Marin County, ss :*

Personally appeared before me, a notary public in and for the county aforesaid, F. C. De Long, he being personally known to me, who made oath, in due form and according to law, that the statements made in the foregoing petition are true, and that no assignment of the claim aforesaid has ever been made, to the best of his knowledge and belief.

Witness my hand and seal this 13th day of October, A. D. 1886.

[SEAL.]

JAMES L. KING,
Notary Public.

STATE OF CALIFORNIA, *City and County of San Francisco, ss :*

I, Jas. J. Flynn, county clerk of the city and county of San Francisco, State of California, and *ex officio* clerk of the superior court thereof (which court is a court of record, having a seal), do hereby certify that Jas. L. King, esq., whose name is subscribed to the annexed jurat, was, at the time of signing the same, a notary public in and for said city and county, duly commissioned and qualified, and authorized by law to administer oaths, etc., and full faith and credit are due to all his official acts as such notary.

And I do further certify that I am well acquainted with the handwriting of the said notary public, and verily believe that the signature to the said annexed jurat is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court at my office, in said city and county, this 16th day of October, A. D. 1886.

[SEAL.]

JAS. J. FLYNN,
County Clerk and ex officio Clerk of the Superior Court.

APPENDIX.

UNITED STATES HOUSE OF REPRESENTATIVES,
Committee on Claims, April 20, 1886.

At a meeting of the Committee on Claims of the House of Representatives of the United States, held on the 20th day of April, A. D. 1886, the following order was made by that committee:

Ordered, That bill (H. R. 5913) for the relief of James Q. Shirley and the estate of Francis De Long, which was referred to the committee by order of the House of Representatives and is now pending before said committee, be transmitted (in accordance with the provisions of an act entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," approved March 3, 1883) to the Court of Claims of the United States, together with the vouchers, papers, proofs, and documents thereto.

ALEX. J. JONES,
Clerk Committee on Claims.