

3-30-1892

Report : Claim of I. Owen

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IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1892.—Ordered to be printed.

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

REPORT:

[To accompany S. 2386.]

The Committee on Claims, to whom was referred the bill (S. 2386) for the relief of Isham T. Owen, of Missouri, have duly considered the same and submit the following report:

The facts in this case are as follows:

Isham T. Owen, of Altona, Bates County, Mo., was a resident of the State of California in 1851, and during the Indian hostilities in that State, in that year, he volunteered in a military company, to wit, Company B, commanded by Lieut. J. F. Winfrey, constituting a part of the "Gila Colorado Expedition," against said hostile Indians, and served therein in the southern portion of that State.

Serving at the same time in the same company were two other volunteers, to wit: John Lott and Joseph B. McCulloch.

At the date of the termination of said Indian hostilities, all of said volunteer troops so serving were given a certificate showing the amount due each for their military services; and for the use of horses so by them, respectively, furnished.

The two certificates so given to said Lott and to said McCulloch were bought by said Owen.

Upon the presentation and surrender by said Owen of said two certificates, together with his own certificate to William Foster, who had been duly appointed paymaster by the State of California, and who had been supplied with bonds to pay said troops for the purposes as aforesaid, said Owen received from said Foster two California Indian war bonds for \$1,000 each, issued April 9, 1851, under the act of the legislature of California, approved February 15, 1851, which bonds were numbered 107 and 108, respectively, and bore interest at the rate of 12 per cent per annum.

In the month of May, 1851, said Owen, for the purpose of returning to his former home in Missouri, took passage in the steamer *Commodore Stockton*, then engaged in carrying passengers traveling from California to New York, and running between San Francisco and Nicaragua; and when said steamer was in the harbor of Rialijo, Central America, said Owen lost overboard from said steamer his pocketbook, containing said two bonds; and that after using every means at his command, at the place and at the date of said loss, he failed to recover either of said two bonds.

From 1851 until the present time said Owen has continuously made diligent efforts to secure the payment of said two bonds, and now seeks payment from the United States of the principal and of the interest only earned by said bonds up to the date when the same were called in by the State of California, to wit, September 1, 1856, and not thereafter or otherwise.

By the terms of the act of the legislature of the State of California, approved February 15, 1851, under which they were issued, these two bonds were made payable in ten years, or at any period after five years from and after the date of their issue, at the pleasure of the State.

Congress, on August 4, 1854, modified by its act of August 18, 1856, made an appropriation with which to pay bonds of the class to which these two bonds belonged. Under this last act of Congress the State war bond commissioners of the State of California, appointed under the act of the legislature thereof, approved April 19, 1856, published a notice on September 1, 1856, calling in said bonds for redemption, and on which date interest on these bonds ceased to run.

The United States, under the acts recited in said bill, assumed the payment of said two bonds, which have never been paid, either by the State of California or by the United States.

Had these two bonds been in existence on September 1, 1856, then by the very terms of the act of Congress of August 18, 1856, before they could have been redeemed by the Secretary of War or paid by the Secretary of the Treasury as therein provided, they had to be first presented to the State bond commissioners appointed by the legislature of California under its act approved April 19, 1856, and the amount due and payable upon each of said bonds had to be indorsed thereon by said commissioners, which total amount in the case of each bond would have been the principal thereof and interest earned thereon from the date of the issue thereof to the date named in their said notice or call, to wit, September 1, 1856.

Thereafter it was made the duty of the Secretary of War, under said act of Congress of August 18, 1856, upon the presentation to him of any of said bonds so indorsed, to draw his warrant for the amount so found due upon the Secretary of the Treasury, who was directed to pay the same. But as these two bonds were lost prior to September 1, 1856, and have never been found, it was impossible for said Owen to present either of them to said bond commissioners for any of the purposes recited in said act or in their said notice or call, and hence it was equally impossible for the Secretary of War to draw his warrant to redeem or for the Secretary of the Treasury to pay said bonds.

As this statute of Congress of August 18, 1856, could not be conformed to by said Owen in consequence of said loss of said bonds, he made application to the Secretary of the Treasury for the payment of his said claim, based on his ownership of said two bonds, and tendered to said Secretary an indemnifying bond in the sum of \$8,800 to indemnify the United States against any loss therein; but said Secretary returned to said Owen said indemnifying bond and all the papers by him submitted in evidence of his said claim, accompanied with a decision of the honorable Third Auditor of February 4, 1892, wherein it was declared that the Treasury Department was now without jurisdiction to entertain said claim without further legislation by Congress, and that the unexpended balance of the appropriation so made under the aforesaid acts of Congress had been carried to the "surplus fund" in the Treasury.

Your committee has official information from the Treasury Depart-

ment showing that on February 24, 1892, said unexpended balance was \$8,362.16. Therefore said Owen was compelled to petition Congress for relief.

Your committee find that said Owen is entitled to payment of the principal of said two bonds, and interest earned thereon from April 9, 1851, the date of the issue thereof, to September 1, 1856, the date when interest thereon ceased; and that he should be paid the amount thereof whenever he or his heirs, administrators, or legal representatives shall file with the Secretary of the Treasury a bond satisfactory to said Secretary for the purpose of indemnifying the United States against all possible loss in any of these premises.

Your committee therefore report back the bill to the Senate and recommend its passage, with the following amendment:

Add at the end of the bill these words, to wit: "And after such payment the Secretary of the Treasury shall report his action in the premises to the governor of the State of California."

