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William M. Shimmins and George H. McPherson

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WILLIAM M. SHIMMINS AND GEORGE H. McPHERSON.

APRIL 28, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Rhode Island, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 2109.]

The Committee on Claims, to whom was referred the bill (H. R. 2109) for the relief of P. H. Doyle, assignee of William M. Shimmins and George H. McPherson, asking for compensation for cutting a quantity of timber in Nevada under a contract with the Indian Department, having had the same under consideration, report as follows:

On the 28th day of November, 1863, James W. Nye, then governor of the Territory of Nevada and *ex officio* superintendent of Indian affairs, acting under authority from the Secretary of the Interior, entered into a contract with William M. Shimmins and George H. McPherson by which the latter were to cut, bank, and run to a mill, to be erected, 1,500,000 feet of logs, with privilege to them to double the amount. They were to be paid for the logs, when delivered at the mill, at the rate of \$12 for 1,000 feet, in coin.

A copy of said contract, with the bond executed by said Shimmins and McPherson for the faithful performance of the same, is hereto annexed and marked Exhibit A.

The contractors placed upon the banks of the Truckee River, about 30 miles above where the mill was to have been erected, enough logs to have made 1,500,000 feet of lumber, but none were floated or otherwise delivered. They were paid \$9,000 in gold as part compensation for so much of their contract. Governor Nye states that one-fourth of the price should be deducted for nondelivery of the logs at the mill, which would leave due on this lot of logs \$4,500.

In addition to this 1,500,000 feet of logs, the contractors cut under the same contract 900,000 feet of lumber which was not banked, but left in the woods; and it appears from the testimony of the witnesses examined in support of the claim before the Court of Claims that the claimants were ready to deliver the same in accordance with their rights under the contract, and that the United States, through its proper officers, about the month of May, 1866, received the said 900,000 feet of lumber and sold the same, and it would seem that said contractors ought to be paid for this work.

It appears further that the claimants in all respects complied, or were ready to comply, with their part of said contract, but that the United States, through Governor Nye, rescinded and terminated the same, whereby the claimants became involved in serious loss.

Extract from letter of H. G. Parker, superintendent of Indian

affairs, Nevada, addressed to D. N. Cooley, Commissioner of Indian Affairs, dated at Carson City, Nev., November 30, 1865, which letter relates to the matter now under investigation, together with letter of said H. G. Parker to Hon. W. G. Taylor, Commissioner of Indian Affairs, Washington, dated at Carson City, Nev., March 24, 1868, are hereto annexed and marked Exhibit B.

The committee have no means of getting at any definite rule by which to measure these damages, but believe that \$4.50 per 1,000 feet, or a little more than one-third the rate to have been paid if delivered, would be about right. At that rate there would be due to the contractors or their representative, P. H. Doyle, assignee, the sum of \$3,825 on the first part of the contract, and upon the whole contract the sum of \$8,325.

Your committee therefore recommend the passage of the bill herewith reported, which proposes to refer the matter to the Secretary of the Interior, giving him authority to award to the assignee such sum, not exceeding \$8,325 in coin, as may seem to him just, the bill being amended in line 15 by striking out "fifteen thousand six hundred dollars" and inserting in lieu thereof "eight thousand three hundred and twenty-five dollars."

EXHIBIT A.

This agreement, made and entered into by and between James W. Nye, superintendent of Indian affairs in and for the Territory of Nevada, and in behalf of the Indian Department of the United States, of the first part, Wm. E. Shimmin and Geo. H. McPherson, of Nevada Territory, of the second part, witnesseth: That for and in consideration of certain undertakings and agreements, hereinafter set forth and specified, the party of the second part agrees to cut, bank, put into the Truckee River, run and deliver in the pond or reservoir at or near the sawmill now being erected by the United States Government for the use and benefit of the Indian Department at or near the lower crossing of the Truckee River, at the upper end of the Truckee River Indian Reservation, above Pyramid Lake, a certain quantity of saw-logs and timber, in such quantities and at such times as hereinafter set forth: The said logs and timber to be cut on the timber reservation recently surveyed as a reservation for Indian purposes, above O'Neal's ranch, on the Truckee River.

The parties of the second part agree to cut, bank, put into the river, and run to said mill, as aforesaid, logs sufficient to make one million and a half of feet of lumber, with the privilege of doubling the amount if they see fit and proper so to do; the logs so cut shall be of the following lengths and dimensions: one-eighth of the whole amount to be twenty feet long, one-eighth to be eighteen feet long, one-fourth to be sixteen feet long, one-fourth to be fourteen feet long, and the remaining one-fourth to be twelve feet long, and no log shall be measured or counted less in diameter than sixteen inches nor more than forty-eight inches; the logs to be cut in a good workmanlike manner and handled in that manner as to produce the least possible injury to them.

The parties of the second part further agree that in cutting the said logs on the reservation aforesaid they will exercise good judgment and so conduct the same as to commit no waste or unnecessary destruction of the timber, but shall cut all of each tree fallen into logs that is fit or proper for the uses for which they are intended.

The parties of the second part further agree that they will, at their own expense and cost, construct all necessary booms and appurtenances to stop and hold the said logs at such places in said river as prudent management may require, the lower one to be built in the most substantial manner and sufficient in strength to stop and hold all logs, should those above give way, and to be so constructed that persons can walk on it and in sufficient numbers to turn the logs from the river into the race leading to the pond or reservoir above the said mill. The said logs are to be cut, run, and put safely into the pond or reservoir constructed for that purpose, at the expense and risk of the parties of the second part.

The parties of the second part further agree that they will deliver in the said pond or reservoir in good order the number of logs sufficient to make one million and a half of feet of lumber by the first day of June next. The said logs are to be measured in the log on the banks of the river before they are rolled in, and counted and marked, counted again as they pass into the head race from the river to the pond or reservoir,

and it is hereby mutually agreed that the measurement shall be made and governed by the rules laid down by Scribner for the measuring of logs.

The parties of the second part further agree that in the fulfillment of this contract they will not cut any timber lower down the river on the reservation than the fence now inclosing O'Neal's ranch.

The said parties of the second part further agree that if they deliver more than one million and a half of feet under this contract, they will wait for the pay for the same until it can be paid from the sales of lumber at said mill, or take in lieu of money for said surplus over and above that amount of lumber at the mill at such price or prices as may be agreed upon between the parties of the first and second parts.

The party of the second part further agree that they will not require any more money on the delivery of the first-named amount of logs, after the advances herein-after named, than is actually sufficient to pay all the expenses incurred in fulfilling their said contract, and the remainder shall be paid in cash or lumber as soon as the mill can saw enough to pay said amount and sale be made of the same. If the parties of the second part conclude to take lumber for the balance, the price of lumber is to be five dollars per thousand less than the established price at the mill, but in no case are they to sell lumber at the mill at less price than that established at the mill without the written consent of the party of the first part. If they conclude to take the lumber as aforesaid, they shall take and measure it as it comes from the saw and pile it themselves on ground furnished for that purpose.

The party of the first part, for and in consideration of the full performance of all the above agreements, agree to pay therefor to the parties of the second part the sum of twelve dollars per thousand feet in coin, to be paid in the following manner and at the following times, viz: Two thousand dollars to be advanced on the 5th day of December next, and one thousand dollars more when the parties of the second part have cut and drawn five hundred thousand feet to the river bank; three thousand dollars more when they have cut and banked five hundred thousand feet more; three thousand dollars when they have cut and banked five hundred thousand feet more; making in all nine thousand dollars to be paid before the logs are deposited in the pond or reservoir.

The above advances are made upon the condition that the parties of the second part make and execute to the party of the first part a good and sufficient bond in the sum of ten thousand dollars, conditioned that in case of failure to perform the said agreement made by them, or in case they do not cut, run, and drive the said logs and place them safely in the pond or reservoir above the said mill as aforesaid, then the said parties of the second part are to refund all of the money so advanced, and are not to receive any further or other payment upon said contract.

In witness whereof we have hereunto set our hands and seals this 28th day of November, 1863.

JAMES W. NYE, [SEAL.]

Gov. and ex officio Supt. of Indian Affairs for the Territory of Nevada.

[SEAL.] GEO. H. MCPHERSON.

[SEAL.] WM. E. SHIMMIN.

In presence of—
HENRY JOHNSON.
M. D. LARRON.

Bond of Shimmin & McPherson.

Know all men by these presents, that we, William E. Shimmin and George H. McPherson, are held and firmly bound unto the people of the United States, in and for the Indian Department of the United States, in the sum of ten thousand dollars, lawful money of the United States.

The condition of this obligation is such, if the above bounden William E. Shimmin and George H. McPherson shall well and faithfully perform a certain contract or agreement this day made between them and James W. Nye, superintendent of Indian affairs in and for the Territory of Nevada, in behalf of the Indian Department of the United States, for the cutting, banking, and running, and driving saw-logs as agreed in the contract made this day for that purpose, to the amount of one million and a half of feet as agreed, and do all things required in said agreement, then this obligation to be void and of no effect, otherwise to remain in full force and effect.

Signed with our hands and sealed with our seals this 28th of November, in the year of our Lord 1863.

G. H. MCPHERSON. [L. s.]

WM. E. SHIMMIN. [L. s.]

A. D. ROBINSON. [L. s.]

P. D. HAMBLIN. [L. s.]

EXHIBIT B.

[Extract from letter of H. G. Parker, superintendent of Indian affairs, Nevada, addressed to D. N. Cooley, Commissioner of Indian Affairs, dated at Carson City, Nev., November 30, 1865.]

In reply to your inquiries in relation to the saw mill, as to "how nearly it is completed," and what it will cost to finish it, I desire to say that there is no part of a superstructure or any machinery whatever for a mill upon the ground.

There has, however, been a race cut from the river and a reservoir partly constructed, which, judging from the amount of work done, must have cost several thousand dollars. I am not informed as to the reasons why the work was suspended.

In the meantime, however, large quantities of saw logs were cut on the timber reservation above, which still remain there, and are now, in consequence of decay and rot and the ravages of worms totally unfit for the purpose of making lumber.

OFFICE SUPERINTENDENT INDIAN AFFAIRS,
Carson City, Nevada, March 24, 1868.

SIR: I have the honor to acknowledge the receipt of yours of the 6th ult., in answer to which I have to state that Mr. Leet has not sold any logs from those cut on the Truckee timber reserve, nor has he attempted, to my knowledge, to dispose of any such timber under any contract whatever.

In reference to the timber cut on said reserve by Shimmin & McPherson, I have to state that on the 1st of this month, in company with Mr. Shimmin, I proceeded to the Truckee reserve in order to fully investigate the matter, agreeably to your instructions.

During the time I was gone there was a severe snow storm, and I found that in most places on the reserve it was impossible to make an examination, the snow being from 2 to 10 feet deep.

I gathered such information as I was able to obtain from persons in the vicinity of the reservation. It is now impossible to tell how many logs were cut by the parties already mentioned, of those now remaining, for the reason that some two or three years ago the greater portion of the logs cut and banked on the river were burned, together with many that had not been hauled there.

From the best information I could obtain, I find that Messrs. Shimmin & McPherson cut about 24,000,000 feet of logs on the reserve; that 1,500,000 feet of these were banked on the river side. That during the year 1864, on account of the low stage of water in Truckee River, it was impossible to run the logs to the place designated. I will state in this place that 1864 has been the only year in which such a state of things existed on that stream. The low stage of the water also prevented the completion of the necessary ditches at the point selected for the saw mill.

In the spring of 1865 the parties referred to were prepared to run the logs, but as there was no mill constructed they were instructed by Mr. Leet (agent for Governor Nye) not to do so. I am informed by the parties that they could have contracted to have the logs run for \$2.50 per M.

From my knowledge of the expense attending such an undertaking, I think they could have made such a contract. I think it fair that the Government should pay them the full price per thousand feet as per contract, less the cost of running them, which on 1,500,000 feet, at \$9.50 per M, would amount to \$14,250.

I also find that they cut about 900,000 feet that were not banked on the river, for which they say Government ought to pay them.

I recommend that they be allowed \$1 per M for that amount, being satisfied that \$8 per M would have been sufficient to have put the logs in the river and to have run them.

The contract to take lumber on certain conditions for a certain portion of the amount which might become due them, should not bar them from receiving the money, inasmuch as Government failed to comply with its portion, and the timber of that time could have been turned into money; besides, I have no doubt the parties lost money by reason of such failure. I do not believe, however, that Government should pay them for such loss.

I respectfully recommend they be paid \$17,850, less \$9,000, already leaving \$8,850, which at present rate of gold in New York would be about \$11,203 in currency.

With reference to the value of the logs cut by them on the reserve, I have to state that those remaining are utterly worthless, being all badly decayed.

When I wrote to your predecessor relative to the propriety of cutting them into firewood (November, 1865), I could have made some money by the operation, though they were much decayed even then. Some two years and a half having elapsed without any reply, and the logs having very improperly yielded to the ravages of time, they are at present absolutely worthless.

I have the honor to be, sir, your obedient servant,

H. G. PARKER, *Sup. Ind. Affairs, Neb.*

Hon. N. G. TAYLOR,
Commissioner Indian Affairs, Washington.