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William Hurt.

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IN THE SENATE OF THE UNITED STATES.

APRIL 26, 1894.—Ordered to be printed.

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

REPORT:

[To accompany S. 1623.]

The Committee on Indian Affairs, to whom was referred the bill (S. 1623) for the relief of William Hurt, having duly considered the same, report as follows:

This bill is to authorize William Hurt to make proof before the Secretary of the Interior of an item of improvement for grubbing and clearing land in the Round Valley Indian Reservation, which the commissioners unintentionally overlooked or omitted in making appraisement of improvements under the first section of the act entitled "An act to provide for the reduction of the Round Valley Indian Reservation in the State of California, and for other purposes." The facts with regard to the claim and its omission from the appraisement are fully set forth in the letters of the Secretary of the Interior and the Commissioner of Indian Affairs, hereto attached and made a part of this report. From the facts appearing from these letters the committee recommend the passage of the bill with an amendment limiting the claim for improvement to an amount not exceeding \$25 per acre.

The letters of the Secretary of the Interior and the Commissioner of Indian Affairs are as follows:

DEPARTMENT OF THE INTERIOR,
Washington, March 12, 1894.

SIR: I have the honor to acknowledge the receipt, by your reference, of S. 1623, "A bill for the relief of William Hurt," the owner of certain improvements on the Round Valley Indian Reservation in California.

In response thereto I transmit herewith copy of a communication of 10th instant from the Commissioner of Indian Affairs, to whom the matter was referred.

The Commissioner states in view of the facts presented that he believes Mr. Hurt is entitled to pay for the grubbing done by him, and that reasonable allowance for those improvements should have been made by the commission, and he suggests that the bill be amended by inserting in line 8, section 1, after the word "improvement," the words "not to exceed twenty-five dollars per acre for the quantity of land duly proved to have been so improved."

I concur in the suggestion of the Commissioner and see no objection to the passage of the bill, if so amended.

Very respectfully,

HOKE SMITH,
Secretary.

The CHAIRMAN OF THE COMMITTEE ON INDIAN AFFAIRS,
U. S. Senate.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 10, 1894.

SIR: I am in receipt, by Department reference for report, of a communication from the Senate Committee on Indian Affairs, transmitting with request for the opinion of the Department thereon, Senate bill No. 1623, Fifty-third Congress, second session, entitled "A bill for the relief of William Hurt." The bill recites in the preamble that the commission appointed under the provisions of section 1 of the act of Congress approved October 1, 1890, entitled "An act to provide for the reduction of the Round Valley Indian Reservation in the State of California, and for other purposes" (26 Stats., 658) omitted to appraise all of the improvements made by William Hurt upon his land purchased from the State of California, viz, the value of grubbing and putting the land in a state of cultivation at \$25 per acre, as appears from the appraisal by said commission of grubbing and clearing other land in the same condition.

The bill therefore recites:

"That the Secretary of the Interior be, and he is hereby, authorized and directed to permit said William Hurt to make due proof of the value of said improvements which were not appraised by said commission, and cause payment to be made to said William Hurt, his heirs or assigns, of the amount found to be justly due for said improvement out of the appropriation made for the purchase of said lands and improvements, as required by the second section of said act, and said payment shall be reimbursed to the United States out of the proceeds of the sale of said reservation lands, under the provisions of section 4 of said act."

The report of said Round Valley Commission, dated March 10, 1891, approved by the Department July 8, 1891, shows that a notice was served upon all persons who were known to have any improvements on land purchased from the State of California within townships 23 north, ranges 12 and 13 west, Mount Diablo Meridian, included in said reservation, to furnish to the commission a full list and description of their several improvements and the value thereof.

In response to said notice the commission received detailed statements from William Hurt and others, which detailed statements were submitted by the commission in a package of original papers marked Exhibit A. The said Exhibit A contains a statement in detail by the said William Hurt, showing the amount of his claim for 50 acres and improvements. The amount so claimed by him was \$8,960 and included the item "grubbing, clearing, and seeding alfalfa, \$4,000." The commission, in its appraisal of the lands and improvements of the several owners, as shown by Schedule B of its report, allowed Mr. Hurt the sum of \$5,161.80 for 50 acres of land and improvements, and included the item "24 acres alfalfa, \$144," but made no allowance for grubbing.

By communication dated August 18, 1891, U. S. Indian Agent Willsey, Round Valley Agency, submitted a statement dated August 12, 1891, from said William Hurt, claiming that the commission overlooked the item of grubbing and clearing in the appraisal of his property and that it took more work to clear his land than it did that of his neighbors who were allowed \$25 per acre for clearing. In support of his statement Mr. Hurt submitted the affidavits of L. B. Hurt, William Rhoads, and John Stemmons, who swore that, they performed part of the work of grubbing and clearing said land and that said work was worth from \$65 to \$100 per acre.

By letter of August 31, 1891, Agent Willsey was informed that the commissioners appeared to have carefully investigated all the claims of owners of improvements in said reservation and to have come to a unanimous conclusion as to their value; that their report had been approved by the Secretary of the Interior, whose action in the matter was final, and that the case could not then be reopened, and Mr. Hurt should be so advised.

Under date of April 9, 1892, the Department approved the deed given by Mr. Hurt for the property in question and authorized the payment of the purchase money, \$5,161.80, which was subsequently done.

On February 28 last Mr. Luther R. Smith, attorney at law, this city, filed in this office the affidavits of two members of the said commission (the third being dead), and asked that the same may be considered in connection with the claim of William Hurt, for whose relief H. R. bill No. 5683 was introduced by Hon. T. J. Geary. The said affiants are Mr. Luther R. Smith and Mr. Henry C. Hunt, who declare substantially that they were members of the commission duly appointed under the act of Congress approved October, 1, 1890 (26 Stats., 658), to appraise the agricultural lands purchased by individuals from the State of California, and the improvements thereon, within the limits of the Round Valley Indian Reservation; that William Hurt was one of said purchasers of a part of the northwest quarter of section 30, township 23, range 12, containing about 50 acres; that in his written statement to the commission he claimed for "grubbing, clearing, and seeding alfalfa, \$4,000;"

that said commission allowed said Hurt only \$144 for seeding 24 acres of alfalfa, but omitted to allow him anything for grubbing; that this omission was owing to the fact, as affiants believe, that when the commission viewed said improvements Mr. Hurt failed to mention at that time the claim for grubbing; that the affiants did not intend to disallow the claim of said Hurt for grubbing, but would have allowed him \$25 per acre therefor, which was the amount allowed by the commission for similar work on lands adjoining Mr. Hurt's which were in the same condition.

Section 4 of said act of October 1, 1890, provides:

"That the funds arising from the sale of said reservation lands, after paying the expenses of survey, appraisement, and sale, and reimbursing the United States for payment of lands and improvements, as provided in section two of this act, shall be placed in the Treasury of the United States to the credit of said Indians, and the same shall draw such rate of interest as is now or may be hereafter provided, by law, which income shall be annually expended for the benefit of said Indians, under the direction of the Secretary of the Interior: *Provided*, That an amount not exceeding one-tenth of the principal sum may be also expended for their benefit during any fiscal year, if deemed necessary by the Secretary of the Interior."

Upon review of the facts before me I believe that Mr. Hurt is entitled to pay for the grubbing done by him, and that reasonable allowance for those improvements should have been made by the commission. Two members of said commission now declare under oath that the omission of the item was apparently an oversight and that it was not their intention to disallow it. There is no way at present by which Mr. Hurt can be compensated except by special act of Congress. The bill under consideration will serve that purpose, but I am inclined to the opinion that it is too liberal in its terms, in that it permits him "to make due proof of the value of said improvements which were not appraised by the commission" and directs the Department to pay to him "the amount found to be justly due for said improvements."

It will be observed that Mr. Hurt in his detailed statement above mentioned claims for "grubbing, clearing, and seeding alfalfa, \$4,000." In his claim subsequently transmitted by Agent Willsey as aforesaid, he submits affidavits of three men to the effect that the work was worth from \$65 to \$100 per acre. The two commissioners in their affidavits state that they would have allowed him \$25 per acre for the grubbing, which was the amount allowed on adjoining lands. The lands in question were appraised and bought at the uniform price of \$50 per acre. While it is true that the preamble of the bill makes reference to the sum of \$25 as being the cost of grubbing and clearing these lands, such reference is not thought to be sufficient to limit or control the express provisions of the bill.

I have therefore the honor to suggest, in returning the bill, the advisability of amending it as follows: In line 8, section 1, after the word "improvement," insert the words "not to exceed twenty-five dollars per acre for the quantity of land duly proved to have been so improved."

Very respectfully, your obedient servant,

D. M. BROWNING.
Commissioner.

The SECRETARY OF THE INTERIOR.