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John A. Sims. (To accompany bill H.R. no. 462.).

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JOHN A. SIMS.

[To accompany bill H. R. No. 462.]

JULY 19, 1856.

Mr. WILLIAMS, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs having had under consideration the memorial of John A. Sims, surviving partner of Leroy Sims and Brother, submit the following report:

On the 23d day of August, 1855, at Memphis, Tennessee, the said Leroy Sims and Brother entered into contract with Lieutenant M. R. Stevenson, acting assistant quartermaster United States army, to furnish twenty-four wagons, with four or six mules and a driver, for the purpose of transporting supplies to Fort Arbuckle, Choctaw nation. The wagons were to be ready, in good order, on the Arkansas shore opposite Memphis, on the 4th day of September, capable of carrying, each, two thousand pounds, and to be under the entire control of Lieutenant Stevenson. For each wagon, team, and teamster, the government agreed to pay fourteen dollars per day, furnishing also the necessary forage and provisions.

On the 5th September, 1855, the same parties made a similar contract for five additional wagons, to be ready on the following day, for which sixteen dollars per day were to be paid.

Each of these contracts contained the following clause, to wit: "The conditions of this contract are to be subject to the approval of the Quartermaster General United States army."

The contractors, L. Sims & Brother, having had no intimation of the disapproval of the contract by the Quartermaster General, went on in good faith to perform it. They made the trip to Fort Arbuckle and back to Memphis, to the entire satisfaction of the officers concerned; and their account of thirty-two thousand four hundred and eighty-eight dollars is certified by the said Lieutenant Stevenson, and also by Captain J. M. Jones, of the 7th infantry, who was in command of the detachment of the army for which the supplies were transported. The correctness of this account, upon the terms of the contracts, is not disputed at the War Department.

After the return of the contractors, upon their application for the money due, they were first informed that the Quartermaster General disapproved the terms of the contract. The Secretary of War con-

curred in this disapproval, and refused to allow the prices stipulated in the contracts, as being unusual and unreasonably high. In accordance with this decision the Department has allowed and paid \$13,622 90, leaving unpaid a balance of \$18,866 10, which the memorialist claims, with interest.

Upon this state of facts, about which there is no dispute, the memorialist insists that, upon strict legal principles, he is entitled to the full compensation stipulated in his contracts. It does not appear that the Department ever disapproved the contracts until after they had been completely fulfilled—certainly, the contractors had no notice of any disapproval until their return from Fort Arbuckle.

The Department insists that the contracts were not valid until approved; and, having disapproved them, refuses to pay more than what it considers a reasonable compensation. The contractors, on the other hand, contend that it was the duty of the officers concerned to procure the prompt action of the Quartermaster General, and to notify them of his decision in the case. That, not having received any such notice, they were justified in believing the contract had been approved, and that the acquiescence of the Department and its officers until the service had been fully performed, was equivalent to an actual ratification of the contracts. The memorialist further alleges, that the officer with whom he contracted has not been censured, or in any manner called to account for any alleged misconduct in reference to these contracts, but that the same were fairly and honestly made, and the terms were as favorable to the government as could have been obtained at the time and under the circumstances.

In their consideration of this subject the committee have not found it necessary to decide the legal question above stated, upon which the Department and the contractors are at issue. Conceding the power of the Quartermaster General to set aside the contract, and disregard its provisions, after the contractors had been induced, upon the faith of it, to expend their means and give their services in the full performance of its stipulations, the committee are of opinion that the proof submitted establishes the fairness and reasonableness of the terms agreed upon. A brief summary of the evidence will be sufficient to show the entire justice of this conclusion.

Lieutenant Jonas P. Holliday, of the 2d dragoons, states that he was "on sick leave" at Memphis, when Lieutenant Stevenson was trying to make a contract for wagons and teams to move the command of Captain Jones from Memphis to Fort Arbuckle. That the said Stevenson was industrious in procuring every possible information as to the price of hire of mules, horses, and wagons; that witness was cognizant of all his efforts, and of all the stipulations of the contracts with L. Sims & Brother, and was satisfied that no better terms could have been obtained from any other person. He went with the detachment as far as Little Rock, and witnessed the fidelity with which the contractors performed their duty.

Copies of a correspondence in 1854, between the Post Office Department and its agents, are submitted, to show the character of the roads on the route from Memphis to Little Rock. This correspondence, held prior to the transactions in question by another department of the

government, establishes very satisfactorily the great difficulties of the road, which tended to increase the cost of transportation, and to render citizens unwilling to engage in such a service without very high compensation. The Post Office Department declined to have the mail carried in coaches, on account of the impracticability of the route.

Upon the exact question involved many persons of experience have given their direct testimony. D. Cockrell, Newly, and May, J. C. Holland, and R. Whitney, all engaged in the livery business, and well acquainted with the customary rates of hire for mules and wagons at Memphis, state, that the prices stipulated in the contracts aforesaid were reasonable and fair.

To the same effect is the testimony of William D. Gilmore, sheriff of Shelby county, Tennessee, R. W. Smith, J. Correy, jr., and G. B. Dean.

David C. Cross, of Arkansas, testified that he met the train of wagons on its way to Fort Arbuckle in the fall of 1855. He says, that in some instances the wagons had double teams; that they were heavily loaded, and made slow and difficult progress; that the labor, wear and tear of wagons, and injury to teams, must have been very great. He thinks the price stipulated was no more than a reasonable compensation under the circumstances.

Finally, numerous citizens of Memphis, merchants, attorneys, judges, and others, certify to the integrity, credibility, and experience of the several witnesses aforesaid.

Upon this testimony, without reference to the approval or disapproval of the contract by the Department, the committee are of opinion that the memorialist is entitled to the amount claimed, and they report a bill accordingly.