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Durfee and Peck

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IN THE SENATE OF THE UNITED STATES.

MAY 9, 1872.—Ordered to be printed.

Mr. BUCKINGHAM submitted the following

REPORT:

[To accompany bill S. 1028.]

The Committee on Indian Affairs, to whom were referred the claims of Messrs. Durfee & Peck for reimbursement for losses sustained by the destruction of their property in Montana Territory, report as follows:

Messrs. Durfee & Peck were licensed traders at Fort Union, Montana Territory.

First. They claim \$13,500 for damages sustained by the destruction of their fort and trading-post at that point.

Mahlon Wilkinson makes affidavit that he was United States Indian agent and ordered to Fort Union, Montana Territory, the headquarters of his agency; that up to the summer of 1867 he had been supplied with quarters for himself and family, and for an interpreter and other employés in the old fort belonging to the Northwest Fur Company, but as they were about to leave, their fort was sold and torn down. As the Government had no building of any kind there, he authorized Durfee & Peck to erect a fort for the use of his agency and for storage of goods and for the accomodation of himself and family. It was virtually built under his supervision and in accordance with his plans. Very early in the following winter they were ordered (on account, as he states, of threatened hostilities by the Sioux Indians) to abandon the fort, and its destruction followed. Also, that the buildings were erected under his authority as a Government officer, he presuming that the Government expected to provide him with shelter and means of protecting Government property; that an order was issued by the military officer in command at Fort Buford, compelling them to leave Fort Union and remove their stock down to Fort Buford. He further states that the commanding officer at Fort Buford gave him personal notice that he had issued such an order.

No proof is submitted as to how or by whom the destruction of the buildings was caused. Their claim is based upon the fact that the United States Indian agent gave directions for the building and that they were ordered to abandon them by a United States military officer.

If orders were given for the erection of the fort they appear to have been given without sufficient authority. The committee feel that the Government is competent to judge what buildings are necessary for the protection of its officers and property, and cannot permit its agents to enter into contracts that will bind the Government, without special authority.

There is no proof, other than the statements of the claimants and the

Indian agent, that the order was issued by the commander of the post at Fort Buford for the abandonment of their post at Fort Union.

The second claim which they make is for \$3,085, for hay and other articles destroyed and for cattle killed and stolen by a war party of the Indians at Fort Peck, Montana Territory, September, 1868.

There is no sworn testimony to sustain this claim. The claimants, however, present two certificates in the same handwriting, one of which certifies that the signers were in the employ of Durfee & Peck, at Fort Peck, when an attack was made by a war party consisting of warriors belonging to the Unca Papas, Yanktons, Cut-heads, and others, and that they were aware of the destruction of the property charged.

It is signed by Abel Farwell, together with the book-keeper, interpreter, and employés.

The second certificate is signed by the master and pilot of the steamer Fannie Barker, who state that they chanced to be tied up at Fort Peck at the time of the attack; that the battle lasted several hours, in which their crew participated, and that the Indians were repulsed, but not until they had killed cattle and destroyed property as named in the bill.

The third claim is one of E. H. Durfee, for merchandise taken and destroyed on the 24th day of May, 1868, by the Comanche Indians, and for a building destroyed on the 16th day of June, in the same year; the total amount being \$7,541.75.

This claim is sustained by affidavits of Philip McCasker, United States interpreter, and two other men by the name of Shirley, who state that the "Ten-bear" band of Comanche Indians came to the trading-post and took and carried off merchandise to the amount of \$4,921.75, and that, on or about the 16th day of June, the Nokomee band of Comanches, without any provocation, burned a trading-house built and owned by the said Durfee, the cost of which was \$2,620.

All the losses referred to above appear to have been incidental to and such as all Indian agents are liable to suffer in the prosecution of their business. They would have been taken into account by all prudent men and regarded as the risk which they run, and for which they expect to be compensated by prices sufficiently high to cover such risks. It cannot, therefore, be held that the Government should be responsible as an insurer against the losses sustained.

The Comanche Indians, it appears, acknowledge having committed the depredations alleged, and at the times and places specified. That does not, however, render the Government any the more liable.

The fourth claim, amounting to \$17,920.97, is made for supplies furnished in the winter of 1869, to the Crows, Gros Ventres, and Assiniboines, of Montana, to prevent starvation and hostilities. These they claim to have been issued by authority of Hon. James Tufts, acting governor and *ex-officio* superintendent of Indian affairs of Montana Territory, who, in a letter of December 5, 1868, to Durfee & Peck, said:

"I have just received your letter of the 23d ultimo, calling my attention to the destruction and suffering among the Indians in your vicinity. The several tribes to which you refer, I am aware, are needy, and I confess and believe they have suffered much from the neglect of the Government. I regret to inform you, however, that I have no means in my hands to relieve them. I think I should feel authorized to relieve them from actual starvation, and if, during the winter, you should find them in great want, you can supply them with necessary provisions. I have no doubt the Department will allow anything just and reasonable.

You can render your bill, and I will indorse and recommend its payment."

The bill is certified to be correct and just, and that the articles were necessary to prevent starvation among these Indians. The United States agent, Wilkinson, also says:

"Many of these Indians belong to his agency, and were in a destitute condition, and he was aware of their committing depredations by killing stock belonging to the traders; that Durfee & Peck applied to the commanding officer at Fort Buford for military protection, which could not be afforded; and that he has no doubt that the furnishing of the above supplies was absolutely necessary to save life and property and prevent starvation among the Indians."

J. A. Viall, superintendent of Indians in Montana, says, from the best evidence he can get upon due investigation, he is satisfied that the provisions furnished prevented great suffering and trouble with the Indians, as stated in their certificates.

But no receipts were taken for the delivery of any of these supplies, and the evidence aboved stated is the only proof that any have been delivered. Messrs. Durfee & Peck appear to have distributed their goods, while there was no one to check their distribution or regulate their charges.

The testimony is too meager for an allowance of this claim in full, and yet there is sufficient evidence that supplies were necessary and that some were furnished.

As it may now be impossible for the memorialists to furnish full proof as to the quantity of supplies delivered to the Indians, the committee recommend that the Secretary of the Interior be authorized to settle their claims upon satisfactory proof as to the quantity of supplies so furnished, and to pay such sum as he shall think just, not exceeding \$13,440.73; which amount is regarded as compensation for as many articles as have been charged in their account.