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Report : Mr. Mitchell

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1888.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 570.]

The Committee on Claims, to whom was referred the bill (S. 570) for the relief of P. B. Sinnott, late Indian agent at Grande Ronde Agency, State of Oregon, having had the same under consideration, submit the following report:

A bill for the relief of Mr. Sinnott was before this committee at the first session of the Forty-ninth Congress, at which time the following report was made, which this committee adopts as part of this report in so far as it is applicable to the present bill:

The facts of this case are as follows:

The claimant, P. B. Sinnott, was United States Indian agent at Grande Ronde Agency, Oreg., from April 1, 1872, to December 24, 1885. On July 1, 1874, he reported to the Commissioner of Indian Affairs the appointment of C. D. Folger as superintendent of farms and mills at his agency, at a salary of \$1,000 per annum. This appointment was never confirmed by the Commissioner.

On July 7, 1874, seven days after reporting the employment of Folger to said position, and, as he states, before he was aware of the benefit of Folger's employment, he wrote the Commissioner not to confirm said appointment. The Commissioner then wrote Sinnott, under date of July 25, 1874, in answer to his "report of employes," and letter of the 7th requesting his disapproval, informing him that Mr. Folger's services were not needed.

In the mean time, as appears from the statement of the agent under oath and other circumstances connected with the case, the situation at the agency had changed. The neighboring Indian tribes had taken up arms against the whites. Four of the most savage and cruel tribes on the coast, to wit, the Rogue Rivers, Caw Creeks, Shastas, and Umpquas, were located on the Grande Ronde Reserve, and much exertion, it would seem, was required on the part of the agent to prevent them from joining the hostiles. The different tribes were then living in towns, and the agent deemed it important to immediately allot them lands in severalty, and by that measure in a certain degree break their tribal relations. The preliminary steps had already been taken, the Government had consented to the measure, and the survey had been made some years before. Owing to the nature of the ground this was a most difficult undertaking. The claim corners were mostly in the timber, and it seemed to the agent, as he states, that Mr. Folger was the only one available conversant with the survey. He then again wrote the Commissioner, asking his consent to employ Folger at the salary heretofore mentioned. To that letter he received no answer.

Mr. Sinnott swears positively that the letters from E. P. Smith, Commissioner of Indian Affairs, and H. R. Clum, Acting Commissioner, under dates of September 30, 1874, and March 9, 1875, respectively, alleged to have been mailed to him, were never received; that the first knowledge he had of their existence was the day set for the hearing of the case of the United States against him, hereinafter referred to.

He continued Folger in his employ for about two years. During all that time he quarterly reported his employment, and the Department, as stated by him, never objected, and by its silence he was led to believe appreciated the situation and was satisfied with his employment. The papers in the case also show that during this time Sinnott sent semi-annual estimates for funds for the payment of C. D. Folger as

superintendent of farms and mills at Grande Ronde Agency, and the Commissioner, instead of refusing then to acknowledge the employment, regularly transmitted the funds asked for. The Acting Commissioner's letter transmitting these funds for third and fourth quarters was as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., October 26, 1876.

SIR: I have this day caused a requisition to issue for the sum of \$3,000, to be placed to your credit with the First National Bank of Portland, Oregon, from the appropriations and for the objects designated in the tabular statements herewith—for the proper care and disposition of which sum you will be held to account under your bond—one-half of the appropriation for the Mole Manual Labor School, and pay for yourself and interpreter for the third and fourth quarters. Also, pay for the *superintendent of farms and mills*, for sawyer and miller for the months of July and August, 1876, and for general incidental expenses of the agency and for your traveling expenses are remitted.

Very respectfully,

N. A. GALPIN,
Acting Commissioner.

P. B. SINNOTT, Esq.,
U. S. Indian Agent, Grande Ronde Agency, Oregon.

Whereupon Mr. Sinnott paid Mr. Folger at the rate aforesaid, took his receipt therefor in due form, and quarterly reported such payments, as will be seen by the following copy of voucher No. 2, first quarter 1875:

The United States to C. D. Folger, Dr.

December 31, 1874. For six months' services as superintendent of farms and mills at Grande Ronde Indian Agency, Oregon, from July 1, 1874, to December 31, 1874, inclusive, at \$1,000 per annum.....	\$500
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Received at Grande Ronde, Oregon, January 12, 1875, of P. B. Sinnott, United States Indian agent in Oregon, \$500, in full for the above account.

C. D. FOLGER.

I certify on honor that the above account is correct and just, that I have actually, this 12th day of January, paid the amount therefor.

P. B. SINNOTT,
United States Indian Agent.

The above is one of a series of payments and vouchers on account of such service to which payments the Indian Department made no objection. The knowledge of Folger's employment was brought before the Indian Department each quarter during his employment at the agency, and as no objection was made the agent states he believed his appointment was approved, and he continued to retain him in good faith, and as he supposed, as stated by him, with Department sanction. He states further had the Commissioner notified him of his objections at the first or any subsequent quarter, he would have discharged him regardless of his necessity, and thus payments to which exception was taken would have been avoided.

The records show that the last two months of Mr. Folger's employment were allowed. (See copy of letter of Acting Commissioner N. A. Galpin, dated October 26, 1876, before referred to.) The agent asserts, under oath, he had no intimation of disapproval of prior payments made to Folger until some years after his (Folger's) discharge. The last payment made by Sinnott, as agent, to Folger, as superintendent of farms and mills, was made December 23, 1876. The amount was \$155.55 for services as such superintendent of farms and mills at said agency from July 1 to August 25, 1876, at \$1,000 per annum, \$155.55.

This payment was allowed by the Department and paid. The sum total of the amounts paid by Sinnott, as such agent, to C. D. Folger, for and on account of such services, and for which his vouchers were suspended by the Department, was \$1,565.14.

Subsequently, in the fall of 1885, suit was brought against Sinnott and his bondsmen on his official bond as such agent in the United States district court for the district of Oregon. A statement of the character of that suit and the amounts in controversy will be seen from the certificate of Hon. James F. Watson, late attorney of the United States for the district of Oregon, who, on behalf of the United States, prosecuted the action against Sinnott and his sureties, as follows:

"As attorney of the United States for the district of Oregon, I prosecuted the case

of the United States against P. B. Sinnott to recover balances alleged to be due on his official bonds. The principal items of difference between Mr. Sinnott and the Government arose upon his claim to be allowed moneys paid for salary for C. D. Folger, superintendent of farms and mills. Mr. Sinnott claimed, and I think in good faith, that the services of Mr. Folger were necessary upon the reservation, but that he would have been discharged had he known that it was the wish of the Department that he should be discharged, but that having written and requested a revocation of the order disapproving his first appointment and having received no answer to that letter, he believed it had been revoked, or at least his continued employment sanctioned; and Mr. Sinnott testified, and I think truly, that he did not receive the last two letters from the Department persisting in the disapproval of the appointment of Folger, and suggested that probably Folger, who was his clerk, may have taken and suppressed those letters. I think this theory is quite probable from all the circumstances in the case.

"The court in deciding the case refusing to allow Mr. Sinnott in his accounts the moneys paid Folger, acted upon the theory that the first letter disapproving of Folger's appointment was enough, and that thereafter Sinnott, no matter what he may have written to the Department, to which he received no answer, had no right to think he was authorized to continue to employ Folger. I think this theory is strictly correct and that the court, in trying the strict legal rights of the parties, could not well have adopted any other, but I think that equitably, Sinnott having acted under a mistake as to his rights and duties in the premises, and the Government having had the benefit of the employment and services of Folger, this is a proper case for relief, not through the courts but through legislation.

"Mr. Sinnott, I am satisfied, has been a very honest officer and very faithful in the discharge of his duties, and in this case he has been guilty only of a mistake as to his rights and duties in the premises.

"Very respectfully,

"JAMES F. WATSON."

As bearing upon the integrity and faithfulness of Mr. Sinnott, Hon. R. H. Lamson, formerly a lieutenant in the United States Navy, now clerk of the United States courts for Oregon, submits the following certificate:

[Office of the clerk of the United States courts for the district of Oregon.]

PORTLAND, OREGON, *March 15, 1886.*

I hereby certify that I have known Mr. P. B. Sinnott, late United States Indian agent for the Grande Ronde Reservation, during the last fifteen years; that I resided for several years in the vicinity of the reservation while Mr. Sinnott was Indian agent; and I know of my own personal knowledge that Mr. Sinnott was considered by the people living in the vicinity of the reservation and having knowledge of the character of his administration to be an efficient, honest, and faithful agent, who discharged all his duties to the best of his knowledge and ability, and to the general satisfaction of all concerned.

R. H. LAMSON,
Clerk United States Courts, Oregon.

The following affidavits of Hon. W. K. Kuykendall, Hon. G. C. Litchfield, H. C. Rowell, and A. D. Babcock will show the necessity for the employment of some such person as Mr. Folger in the capacity in which he was employed:

STATE OF OREGON, *County of Polk, ss:*

I, W. H. Kuykendall, being first duly sworn, say I am a resident and property holder of Polk County, Oregon, and have been for the past thirty-two years; that my residence is situate $2\frac{1}{2}$ or 3 miles distant from the Grande Ronde Indian Agency, and that I am a farmer and cattleman, and as a result of said avocations I have been thrown in daily contact with the Indians of said Grande Ronde Agency, buying and trading cattle with them, and became thoroughly acquainted with them, their dispositions, requirements, and necessities; that it is and always has been necessary to employ a competent man to assist the agent in performing the duties devolving upon him in the capacity of agent of said reservation, and C. D. Folger was employed as such competent person to render the aforesaid assistance in the capacity of superintendent of farms and mills; that I believe that the employment of the said C. D. Folger was a necessity for the welfare of the Indians on this the aforesaid Grande Ronde Reservation.

W. H. KUYKENDALL.

Subscribed and sworn to before me this 27th day of February, 1886.

[SEAL.]

J. T. SIMPSON,
Notary Public.

STATE OF OREGON, *County of Polk, ss :*

I, G. C. Litchfield, being first duly sworn, say I am a resident of Grande Ronde, Polk County, Oregon; that I am engaged in a general merchandise business in said place; that my place of business is situated 2½ miles distant from Grande Ronde Indian Agency; that I have been engaged in said business in the aforesaid place for more than twenty years; that the Indians traded at my store, and I was and am personally acquainted with them, their habits, dispositions, and necessities; that it is and always has been necessary to employ a competent man to assist the agent in performing the duties devolving upon him in the capacity of agent of said reservation, and that C. D. Folger was employed as such competent person to render the aforesaid assistance in the capacity of superintendent of farms and mills; that I believe that the employment of the said C. D. Folger was a necessity for the welfare of the Indians on the aforesaid reservation.

G. C. LITCHFIELD.

Subscribed and sworn to before me this 27th day of February, 1886.

[SEAL.]

J. T. SIMPSON,
Notary Public.STATE OF OREGON, *County of Polk, ss :*

I, A. D. Babcock, being first duly sworn, say I am a resident and property-holder of Polk County, Oregon, and have been for the past thirty-three years; that my residence is situated 2½ miles from the Grande Ronde Indian Agency; that I am a farmer and stock-raiser, and as a result of being so located I became thoroughly acquainted with the Indians, their dispositions, requirements, and necessities; that it is and always has been necessary to employ a competent man to assist the agent of the aforesaid agency in discharging the duties devolving upon him as said agent; that C. D. Folger was employed as such competent person to render the aforesaid assistance in the capacity of superintendent of farms and mills; that there is now and has been a person to perform said duties, but under a different name, and I believe that the employment of the said C. D. Folger was a necessity for the welfare of the Indians on this the aforesaid Grande Ronde Indian Reservation.

A. D. BABCOCK.

Subscribed and sworn to before me this 27th day of February, 1886.

[SEAL.]

J. T. SIMPSON,
Notary Public.STATE OF OREGON, *County of Polk,*

I, H. C. Rowell, being first duly sworn, say I am a resident and property-holder of Polk County, Oregon, and have been for the past ten years; that my residence is situated 3 miles distant from the Grande Ronde Indian Agency, and that I am a farmer and lumberman, and as a result of being so located I became thoroughly acquainted with the Indians, their dispositions, requirements, and necessities; that it is and always has been necessary to employ a competent man to assist the agent in performing the duties devolving upon him in the capacity of agent of said reservation, and C. D. Folger was employed as such competent person to render the aforesaid assistance in the capacity of superintendent of farms and mills; that I believe that the employment of the said Folger was a necessity for the welfare of the Indians on the aforesaid reservation.

H. C. ROWELL.

Subscribed and sworn to before me this 4th day of March, 1886.

[SEAL.]

D. W. SEARS,
County Clerk.
By D. T. SEARS, Deputy.

As a result of said suit a judgment was obtained in said circuit court of the United States for the district of Oregon on January 15, 1886, in favor of the United States of America, plaintiff, v. Claimant Patrick B. Sinnott, and Luzerne Besser and E. Cahalin, sureties on his official bond, for the said sum of \$1,565.14, being the amount of money paid by said Sinnott, as such Indian agent, to said C. D. Folger, and which amount was disallowed in the settlement of his accounts in the Departments and also by the court on the trial of said case.

Wherefore, in view of all the circumstances of this case, your committee are of the opinion that in justice and equity neither Mr. Sinnott nor his sureties should be compelled to pay this judgment or any part of it, save and except for costs and disbursements of the action.

Wherefore your committee report back Senate bill 2000, and recommend its passage with an amendment inserting in the blank the following words: "Fifteen hundred and sixty-five dollars and fourteen cents."

It appears from the records of the circuit court of the United States for the district of Oregon that these transactions led to two suits against said Sinnott and his sureties in said court on two different bonds, one being against said Patrick B. Sinnott as principal, and Luzerne Besser and E. Cahalin as sureties, and in which, on January 15, 1886, judgment was rendered in said court for the sum of \$1,565.14, together with costs and disbursements; and the other being against said Sinnott as principal, and Nicholas B. Sinnott, Daniel Handley, and W. W. Page as sureties, and in which, on January 15, 1886, a judgment was rendered for \$581.25 and costs and disbursements.

The bill reported at the last Congress passed the Senate. Subsequently, executions having been issued on these judgments, Mr. Sinnott paid the whole of each thereof, principal, interest, and cost, to the United States, and the same, excepting costs, has been covered into the Treasury. The sum total of the principal alone so paid was \$2,146.39.

Your committee are clearly of the opinion this money should be refunded to Mr. Sinnott. They therefore report the following bill as a substitute for S. 570, and recommend its passage.

S. Rep. 365—2