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Edward N. Fish and Others

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IN THE SENATE OF THE UNITED STATES.

JANUARY 4, 1894.—Ordered to be printed.

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

REPORT:

[To accompany S. 1055.]

The Committee on Indian Affairs, to whom was referred the bill (S. 1055) to carry into effect the findings of the Court of Claims in the cases of Edward N. Fish and others for supplies furnished the Indian service, submit the following report:

The four claims embraced in this bill are for flour, beef, and other supplies furnished the Indian service in Arizona in the years 1873 and 1874. The facts relating to each case are set forth in the findings of fact of the Court of Claims annexed hereto.

In all the cases vouchers were furnished for the full amount claimed at the time when the property was furnished. These vouchers were presented to the Commissioner of Indian Affairs, but on account of a deficiency in the appropriations, were not at that time paid.

In two of these cases partial payments on account were made in 1876 and 1877, the balance being suspended for want of further appropriation.

A large number of similar claims having accrued in the Indian service, a general act of Congress was passed on August 7, 1882 (22 Stat. L., 255), authorizing their adjudication. The claims embraced in this bill were allowed in full under this law by the Commissioner of Indian Affairs and by the Second Auditor of the Treasury. The Second Comptroller of the Treasury cut down the amount in each claim on the ground that the supplies furnished were not worth the amount charged. It was not alleged that the prices charged were in excess of the contract prices. Upon reconsideration the Second Comptroller allowed an additional amount in each case, less than the full claim.

It is seen by the above statement that the full amount due in these cases had been conceded by the officers who gave the vouchers and by the Indian Bureau when the claims accrued; that after the act of 1882 the Commissioner of Indian Affairs and the Auditor concurred in approving the claims in full, and that it was not until after they reached the Comptroller that any deduction was made. The claimants then appealed to Congress for relief, and the Senate Committee on Indian Affairs, on July 22, 1886, referred the claims to the Court of Claims for a finding of facts in accordance with the act of March 3, 1883 (22 Stat. L., 485).

The claimants then took new testimony upon depositions, subject to cross-examination, to show that the property furnished the Indian service in Arizona was worth the full sum claimed. The Court of Claims finds that in each case the property was worth the full amount claimed, and that there was an agreement between the officers of the Indian Bureau and the claimants to pay these amounts.

Reports have been received from various departments in relation to the cases, and it appears clear to the committee that the findings of the Court of Claims, upon a fair trial of the cases, are correct and ought to stand as final, and that the claimants should be paid the amounts claimed by them, respectively, as set forth in the accompanying bill.

[Senate. Mis. Doc. No. 165. Fifty-first Congress, first session.]

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, June 14, 1890.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings filed by the said Court of Claims in the aforesaid causes, which case was referred to this court by the Committee on Indian Affairs of the Senate, under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. PRESIDENT OF THE SENATE OF THE UNITED STATES.

[Court of Claims. Congressional case No. 1158. E. N. Fish & Co. v. United States.]

At a Court of Claims held at the city of Washington on the 26th day of May, A. D. 1890, the court filed the following statement of case and findings of fact, to wit:

STATEMENT OF CASE.

The claim or matter in the above-entitled case was transmitted to the court by the Committee on Indian Affairs of the Senate on the 22d day of July, 1886.

John Mullan and W. B. King, esqs., appeared for claimant, and the Attorney-General, by Henry M. Foote, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The case having been brought to a hearing on the 7th day of May, 1890, the court upon the evidence and after considering the briefs and arguments of counsel on both sides, finds the facts to be as follows:

FINDINGS OF FACT.

I.

The claimants, Edward N. Fish and Simon Silverberg, were partners, as merchants, doing a general mercantile business in Tucson, Ariz., under the firm name of E. N. Fish & Co., in the year 1873. In the summer of 1873 the Indians at the San Carlos Indian Reservation, in Arizona, were turbulent, and an outbreak was expected, to prevent which it was necessary to furnish them rations regularly. No sufficient flour for issue to said Indians being then on hand, Capt. William H. Brown, Fifth Cavalry, U. S. Army, then acting as Indian agent at that agency, came to the claimants at Tucson, Ariz., in the latter part of August, 1873, and represented these facts to them, and urgently requested them to furnish and deliver, at their own expense, 160,000 pounds of flour at this reservation, and assured them of payment therefor within thirty days, agreeing to pay for said flour, including transportation by wagons to said reservation, a distance of over 200 miles from Tucson, Ariz., for first quality 13 cents per pound, and for seconds 11 cents per pound.

II.

On the 2d day of September, 1873, the claimants delivered flour at said reservation as follows, to wit:

60,000 pounds of seconds, at 11 cents per pound.....	\$6, 600
40,000 pounds of first quality, at 13 cents per pound	5, 200
Total	11, 800

III.

The claimants have received on account from the United States the following sums of money for said flour, to wit:

By draft of July 21, 1884.....	\$5, 750
By draft of May 25, 1885.....	1, 750
By draft of November 3, 1888.....	2, 500
	10, 000
Leaving a balance still unpaid of	1, 800

IV.

The reason for non-payment of the full amount claimed was that the Second Comptroller was not satisfied that the flour was worth the amount claimed per pound.

The claimants have since the reference of this claim to this court taken testimony as to the value of the flour at the date of purchase and place of delivery, stated herein, and the court finds as a fact that said flour was worth the amount herein claimed.

BY THE COURT.

Filed May 26, 1890.

A true copy.

Test this 14th day of June, A. D. 1890.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

[Court of Claims. Congressional case No. 1158. W. B. Hugus, for the use of E. N. Fish & Co., v. The United States.]

At a Court of Claims held in the city of Washington on the 26th day of May, A. D. 1890, the court filed the following statement of case and findings of fact, to wit:

STATEMENT OF CASE.

The claim or matter in the above-entitled case was transmitted to the court by the Committee on Indian Affairs of the Senate on the 22d day of July, 1886.

John Mullan and W. B. King, esqs., appeared for claimant, and the Attorney-General, by Henry M. Foote, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The case having been brought to a hearing on the 7th day of May, 1890, the court, upon the evidence and after considering the briefs and arguments of counsel on both sides, finds the facts to be as follows:

FINDINGS OF FACT.

(1) In the year 1873 the claimant, Wilbur B. Hugus, was a merchant doing a general mercantile business at Tucson, Ariz. In the summer of 1873 the Indians at the San Carlos Indian Reservation, in the Territory of Arizona, were very turbulent, and an outbreak was feared. To prevent this it was necessary to furnish them rations regularly. No sufficient supply of rations for issue to said Indians being then on hand, Capt. William H. Brown, Fifth Cavalry, U. S. Army, then acting Indian agent at said agency, came to this claimant at Tucson, Ariz., and represented to him the condition above stated, and requested him to furnish during the months of July, August, and September, 1873, various necessaries or supplies then required at said agency, and assured him that payment would be made within thirty days, agreeing to pay, including transportation by wagons to said reservation, a distance of over 200 miles, the prices stated in the schedule recited in the next finding

(2) The following-named supplies were delivered by this claimant at said reservation on the dates therein stated:

July 10, 1873, 40,000 pounds flour, at 12 $\frac{7}{10}$ cents.....	\$5,100.00
1,000 pounds soap, at 23 cents.....	230.00
Aug. 15, 1873, 25,000 pounds flour, at 13 cents.....	3,250.00
Sept. 10, 1873, 15,290 pounds flour, at 13 cents.....	1,987.70
300 pounds coffee, at 40 cents.....	120.00
200 pounds soap, at 23 cents.....	46.00
30 pounds tobacco, at \$2.....	60.00
30 pounds candles, at 50 cents.....	15.00
8,000 pounds hay, at 1 $\frac{1}{2}$ cents.....	120.00
Total	10,928.70

(3) The following sums of money have been paid on account by the United States for said supplies:

By draft of July 21, 1884.....	\$5,076.18
By draft of March 16, 1885.....	3,452.32
	<hr/>
	\$8,528.50
Leaving a balance still unpaid of.....	2,400.20

The delay in payment has not been due to any fault or negligence on the part of this claimant. The reason for nonpayment of the full amount claimed was that the Second Comptroller was not satisfied that the supplies were worth the amount charged per pound.

(4) The claimant has since the reference of this claim to this court taken testimony as to the value of said supplies at the date of purchase and place of delivery, as stated, and the court finds as a fact that said supplies were worth the whole amount herein claimed.

(5) The vouchers issued for said supplies were indorsed and assigned by the claimant, W. B. Hugus, to the firm of E. N. Fish & Co., consisting of E. N. Fish and Simon Silverberg, merchants, then doing business at Tucson, Ariz., partly in payment of an indebtedness of said Wilbur B. Hugus, the claimant, to said E. N. Fish & Co., and partly in cash at their face value. At the time when said vouchers were thus indorsed it was customary in the Treasury Department and in the Indian Bureau to recognize similar assignments and indorsements of vouchers as valid. All payments which have so far been made upon this claim have been paid over by this claimant to said assignees, E. N. Fish & Co., and said Hugus has always fully recognized the right of E. N. Fish & Co. thereto. He has filed a formal petition expressly requesting that the balance found due herein may be paid by the Government to E. N. Fish & Co., the assignees herein, and not to him.

Filed May 26, 1890.

BY THE COURT.

A true copy.

Test this 14th day of June, A. D. 1890.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

[Court of Claims. Congressional case No. 1158. James M. Barney, for the use of Bowers & Richards, vs. The United States.]

At a Court of Claims held in the city of Washington, on the 26th day of May, A. D. 1890, the court filed the following statement of case and findings of fact, to wit:

STATEMENT OF CASE.

The claim or matter in the above-entitled case was transmitted to the court by the Committee on Indian Affairs of the Senate on the 22d day of July, 1886.

John Mullan and W. B. King, esqs., appeared for claimant and the Attorney-General, by Henry M. Foote, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The case having been brought to a hearing on the 7th day of May, 1890, the court, upon the evidence and after considering the briefs and arguments of counsel on both sides, finds the facts to be as follows:

FINDINGS OF FACT.

1. A written contract was made between the claimant and the United States on the 28th of June, 1873, the United States acting through Edward P. Smith, Commissioner

of Indian Affairs, whereby the claimant agreed to furnish to the United States 2,000,000 pounds, more or less, of fresh beef, to be delivered on the hoof to various Indian reservations in Arizona, during the fiscal year ending June 30, 1874, at the rate of 5 cents per pound. The material clauses of said contract are as follows:

"Articles of agreement made and entered into this 28th day of June, A. D. 1873, between Edward P. Smith, Commissioner of Indian Affairs, for and in behalf of the United States, of the first part, and James M. Barney, of Arizona City, Yuma County, Arizona Territory, of the second part, witnesseth:

"(1) That the said party of the second part, for himself, his heirs, executors, and administrators, hereby covenants and agrees with said party of the first part to furnish and deliver to the United States Indian agencies situated at the Colorado River, Camp Verde, Chiricahua and White Mountain, San Carlos and Camp Apache divisions, Indian reservations, in Arizona Territory, 2,000,000 pounds, more or less, of fresh beef on the hoof, hides and all refuse included, during the fiscal year ending June 30, 1874, at such times and in such quantities as the said agents may require.

"(3) In consideration of the faithful performance of this contract on the part of the party of the second part, the said party of the first part agrees to pay, or cause to be paid, to the said party of the second part, his heirs, executors, or administrators for all the beef received under this contract, the sum of 5 cents per pound gross weight, in United States currency, on the presentation at the office of Indian Affairs, in Washington, D. C., a proper receipt for the same, signed by the United States agents stationed at the aforesaid Indian reservations, respectively."

2. Large deliveries of beef, amounting to nearly 2,000,000 pounds, more or less, were made under this contract, and all the beef so delivered was paid for by the United States at the rate of 5 cents per pound, excepting two deliveries at the Rio Verde Indian Agency, one in May, 1874, of 139,427 pounds, amounting to \$6,971.35, and one in June, 1874, of 140,000 pounds, amounting to \$7,000, a total of..... \$13,971.35

3. Payment was not made for said last-named deliveries at said time only because of the exhaustion of appropriation of money therefor. The following payments of money have been made on account by the United States for the said deliveries of beef, to wit:

By draft of January 8, 1877.....	\$4, 520. 24
By draft of May 5, 1877.....	5. 34
By draft of July 21, 1884.....	3, 500. 00
By draft of July 21, 1884.....	1, 893. 01
By draft of July 21, 1884.....	518. 00
Total.....	10, 436. 59
Leaving a balance still unpaid of	3, 534. 76

The delay in payment was not due to any fault or negligence on the claimant's part.

The reason for nonpayment of the full amount claimed was that the Second Comptroller was not satisfied that the beef delivered was worth the price charged per pound, as agreed to be paid in said contract.

4. The claimant has, since the reference of this claim to this court, taken testimony as to the value of beef at the time and place of delivery as stated, and the court finds as a fact that it was worth fully the whole contract price, as herein claimed.

5. The beef furnished and delivered to the United States under this contract between James M. Barney and the United States was supplied by George W. Bowers and Hugo Richards, partners, then doing business at Tucson, Ariz., under the firm name of Bowers & Richards, as subcontractors. Barney assigned and indorsed the vouchers issued in settlement of these claims to said Bowers & Richards in payment of an indebtedness due them from him, with the expectation on both sides that said assignment would be recognized by the United States and payment immediately be made. At that time similar assignments and indorsements of vouchers were recognized as valid by the Indian Bureau and by the Treasury Department, and payments were made to assignees and indorsees. The first payments hereinbefore recited, aggregating \$4,525.58, were made by the Department by warrants and drafts drawn in the names of and paid to said assignees, and all other payments since made have been paid over by said Barney to said Bowers & Richards, the assignees. Said Barney has filed a formal petition expressly requesting that the balance found due herein may be paid by the Government to Bowers & Richards, the assignees, and not to him.

BY THE COURT.

Filed May 26, 1890.

A true copy.

Test: This 14th day of June, A. D. 1890.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

[Court of Claims. Congressional case, No. 1153. William B. Hooper & Co., for the use of Sutro & Co., vs. The United States.]

At a Court of Claims held in the city of Washington on the 26th day of May, A. D. 1890, the court filed the following statement of case and findings of fact, to wit:

STATEMENT OF CASE.

The claim or matter in the above-entitled case was transmitted to the court by the Committee on Indian Affairs of the Senate on the 22d day of July, 1886.

John Mullan and W. B. King, esqs., appeared for claimant, and the Attorney-General by Henry M. Foote his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The case having been brought to a hearing on the 7th day of May, 1890, the court, upon the evidence and after considering the briefs and arguments of counsel on both sides, finds the facts to be as follows:

FINDINGS OF FACT.

1. In the years 1873 and 1874 the claimants, William B. Hooper and James M. Barney, were merchants doing business in Tucson, Ariz., and elsewhere as partners under the firm-name of William B. Hooper & Co.

Under the authority of the Commissioner of Indian Affairs and the direction of Julius W. Mason, major of the Third Cavalry, U. S. Army, acting Indian agent at the Rio Verde Indian Agency and Reservation in Arizona, and in order to meet an exigency then existing, said firm delivered certain supplies at said Indian reservation or agency on the dates named and described as follows, to wit:

On April 26, 1874:

50,000 pounds flour, worth 11½ cents per pound.....	\$5, 875. 00
9, 900 pounds barley, worth 7.43 cents per pound.....	735. 57
	<hr/>
	6, 610. 57

On May 29, 1874:

57,000 pounds flour, worth 11½ cents per pound.....	6, 697. 50
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Total	13, 308. 07
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The prices above stated were agreed upon by the Commissioner of Indian Affairs and the claimants.

2. The following sums of money on account have been paid by the United States for said supplies, to wit:

By draft of June 10, 1876	\$2, 500. 00
By draft of July 21, 1884	4, 172. 25
By draft of March 16, 1885	3, 156. 50

Total.....	\$9, 828. 75
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Leaving a balance still unpaid of.....	3, 479. 32
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The delay in payment was not due to any fault or negligence on the claimant's part. The reason for nonpayment of the full amount claimed was that the Second Comptroller was not satisfied that said supplies were worth the amount charged per pound.

3. The claimant has, since the reference of the claim to this court, taken testimony as to the value of flour and barley at the time and place herein stated, and the court finds, as a fact, that it was worth fully the price claimed.

4. The vouchers for said supplies, so issued by the United States, were indorsed and assigned by the claimants at the time of their issue. At that time it was customary in the Treasury Department and in the Indian Bureau to recognize similar assignments and indorsements of vouchers as valid. All amounts of money received from the United States have been paid over to the assignees, and the claimants, William B. Hooper & Co., have always recognized the right of the assignees thereto. Subsequent assignments and indorsements have been made, finally resulting in an assignment of the rights of all parties to Gustave Sutro, Emile Sutro, and Charles Sutro, partners doing business under the firm-name of Sutro & Co., San Francisco, Cal. By petition filed in this court the firm of William B. Hooper & Co., through James M. Barney, the member of said firm charged with the conduct of this business, have requested that payment, when made by the United States, be made to said Sutro & Co., as assignees.

BY THE COURT.

Filed May 26, 1890.

A true copy.

Test: This 14th day of June, A. D. 1890.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.