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J. G. Fell et al

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J. G. FELL ET AL.

APRIL 17, 1874.—Ordered to be printed.

Mr. J. B. HAWLEY, from the Committee on Claims, submitted the following

R E P O R T :

The Committee on Claims, to whom was referred a bill (H. R. 63) and memorial for the relief of J. G. Fell and others, trustees of the Walnut Grove Mining Company, have had the same under consideration, and present the following report :

It appears, from the memorial referred to, that the Walnut Grove Gold Mining Company was organized on the 1st of November, 1864, by Joseph G. Fell, Edward Hoopes, and George Burnham, and that previous to this date the mines and lands belonging thereto belonged to George H. Vickroy, who went to Arizona in 1863, and became possessed, by purchase or otherwise, of said mines in the following year.

Mr. Vickroy states that, after he became possessed of the mines, he was urged and encouraged to bring a mill and the necessary machinery to develop them, and that, needing more capital to render the enterprise successful, he started East to procure it; but, as the settlers in that region were constantly harrassed by the Indians, he determined that it would be dangerous to risk much money there, unless he could obtain some guarantee of military protection. With this in view, he called upon General James H. Carleton, who was then in command of the troops in New Mexico and Arizona, and who resided at Santa Fé. At his request, the general wrote the following letter :

Copy of Gen. J. H. Carleton's letter.

HEADQUARTERS DEPARTMENT OF NEW MEXICO,
Santa Fé, N. M., July 11, 1864.

MY DEAR SIR: In answer to your verbal question as to the safety of carrying on mining operations hereafter in Arizona, I will say I have already inaugurated a campaign against the Apache Indians that will result in their complete subjugation, and should you induce friends in the East to join you in erecting a quartz-mill in the newly-discovered gold-regions near Fort Whipple, the enterprise will be fully protected by the military. I am well assured that building a quartz-mill there, and developing some one of the rich mines, will result in such benefit to the Government as to amply compensate for the protection given.

I have the honor to be, very respectfully,

JAMES H. CARLETON,
Brigadier-General, Commanding.

GEORGE H. VICKROY, Esq.

Having this in his possession, Mr. Vickroy proceeded to Philadelphia, Pa., to organize the Walnut Grove Gold-Mining Company. Seventy-seven thousand dollars were subscribed, with which he purchased a

quartz-mill, an engine, wagons, mules, harness, tools, provisions, &c. With these he started from Leavenworth, Kansas, on the 28th of February, 1865. What transpired after this is best told in his own words, taken from the memorial :

About August 1 we were attacked at Navajo Springs, in Arizona, and lost twenty-six mules. The train reached Prescott about September 1, 1865. Arizona had been transferred to the Department of the Pacific during my absence, and General Mason was then in command of the district. He gave me every assurance of military protection. My mill was the first in the Territory, and the whole community, as well as the civil and military authorities, were anxious to see it erected and in operation. I decided to put the mill on the Bully Bueno mine. *General Mason gave me twenty-one soldiers to escort the train to the mine.* The day after they joined the train the Indians attacked us, killed one man, and captured twelve mules. We were about two weeks in reaching the Bully Bueno mine, and had some fighting with these Indians every day.

About the 1st of September, 1865, we reached the mine and unloaded. On that day the Indians captured our entire beef-herd of twenty-two head of cattle. The next day the empty train started for Prescott, the escort accompanying it. When one mile from the mine, at Pine Flat, the Indians attacked us, killed one teamster, captured eight mules, and burned one wagon. The train reached Prescott, where the military escort was withdrawn. The train was then *en route* for Fort Mojave for feed. I applied for an escort, but was refused because of the scarcity of men.

On the road to Mojave the train was attacked at Hualapai Springs, where the Indians captured eleven mules. The next day, at Beall Springs, the Indians captured four mules and one horse. I loaded the train at Fort Mojave with barley and returned to Prescott.

On the military reservation at Fort Whipple we lost seven mules while unloading the train, and while in Camp Prescott, within two weeks of this time, we had about one hundred mules stolen by the Indians, but I cannot give the exact dates or the number taken each time an attack was made, but we lost about one hundred mules between November 15 and December 15, 1865.

At the mine I had started eleven men at work on the mill, who were attacked on the afternoon of October 4 and driven off. Some took refuge at Walnut Grove, and others at Prescott. I then employed a larger force, and again applied for troops to be stationed at the mill during that winter, as but few men could be engaged for that purpose, owing to the extreme danger, at that time, from the Indians.

During that winter we had about fifty mules stolen from the mills by the Indians, while our teams, which were freighting on the road from the Colorado River to Prescott, were frequently attacked by them and lost wagons and mules.

From the time I reached Arizona in September, 1865, until March, 1866, the Indians captured, in all, two hundred and seven mules, which had cost from \$200 to \$250 each, in Missouri.

On the 9th of February the Indians attacked our camp at Bully Bueno, drove off the men, killed two, and wounded one. General Mason sent over a surgeon and a company of troops, who remained about one week and were withdrawn. I then increased our force to about forty men and left them, coming to Philadelphia in May, 1866, and returned to Arizona about August 1.

During my absence the Indians had captured about twenty head of animals. In October, 1866, I sent from San Pedro, Cal., a train loaded with provisions, which was captured by the Indians at Agua Frio, ten miles from the Bully Bueno mine. Five teamsters were killed and about forty animals taken.

In November, 1866, I went to Philadelphia, and as all efforts to have a military camp established at our mill had failed, I went to see General Grant, at Washington, to whom I represented our situation, and who promised to instruct General McDowell (then commanding the Department of the Pacific) to extend such aid to us as was possible, and to establish a military camp at our mill. This was never done. During my absence at this period, Maj. E. W. Coffin was superintendent of the company's operations in Arizona.

At Los Angeles, Cal., in June, 1867, I bought about seventy head of mules and horses and six wagons, and loaded them with provisions and merchandise, and started them for Prescott. The train had trouble with the Indians all the way, and reached the mine after losing a number of animals. The day after their arrival the Indians captured every animal belonging to the company, and killed the herders. This caused a total suspension of operations, as we could purchase no teams in Arizona at that time. Major Coffin abandoned the enterprise and returned to Philadelphia, I having in the mean time remained in San Francisco.

On hearing of this disaster, I at once went to Prescott, and applied to General Gregg for soldiers to protect the property, but without result. I employed a force of men to guard the mill, and left them there during that winter, and came to Philadelphia.

During the following March, 1868, I returned to Prescott, and as the men I had left were unwilling to remain longer, I made an application to General Devin (then commanding the district) for soldiers, representing that I could not secure an adequate force of men to protect the property. He could spare no soldiers, so I employed thirteen men, which were all I could obtain for that purpose, and left the mill in their charge. We had about eleven head of mules and horses stolen by the Indians about this time, March 2, 1868, on the Hassayampa, while *en route* to Wickenburgh. The Indian troubles now became so great that we could not carry on operations, and our only object was to guard the property from destruction. These men remained in charge until July 9, 1869, when a large force of Indians attacked the premises and burned the mill, store-house, saw-mill, superintendent's house, boarding-house, blacksmith and carpenter shops, and stables, destroying the machinery, tools, and supplies, together with all the books, papers, and accounts.

The expense incurred by the company up to this time had amounted to \$292,800. I was their general superintendent from the time of its organization up to the time of the destruction of the mill.

I am well assured that this enterprise would have never been undertaken had it not been for the military protection which was promised, and I am satisfied that if that protection had been afforded my operations in behalf of the company would have been entirely successful.

GEO. H. VICKROY.

Subscribed and sworn to before me, January 6, 1872.

[SEAL.]

R. J. MEIGS, Clerk,

By R. J. MEIGS, JR., Assistant Clerk.

This is the gist of the case as presented by the company, accompanied by affidavits of the value, or the supposed value and amount of the property said to have been destroyed; and upon these alleged facts; coupled with the assurance given by General Jas. H. Carleton of military protection, the company base their claim for re-imbursment by the United States of the full value of the property which is claimed to have been destroyed.

The following letter, from the Acting Commissioner of Indian Affairs to the Secretary of the Interior, accompanies the memorial of the company:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., January 7, 1873.

SIR: I have the honor to acknowledge the receipt, by reference from the Department, on the 2d instant, of a letter from George H. Vickroy, dated 2d ultimo, submitting a claim of the Walnut Grove Mining Company, of Arizona Territory, on account of depredations alleged to have been committed by Apache Indians at various times, from August, 1865, to July 9, 1869, the loss being stated at \$292,800.

The papers in the case have been carefully examined in this office, and the conclusion reached that the claim is not without merit, is justified, it is thought, by the sworn statements of parties who were identified with the operations of the company as employes, and who were personally cognizant, in most instances, of the facts stated by them. What amount of loss the company actually sustained by the direct acts of the Indians is a question difficult of satisfactory reply or determination. The depredations were numerous, and the task of harmonizing the evidence of different parties, as to the particular facts in each and every instance, seems to be impracticable, especially with reference to the loss of mules or "animals." Some of the items in the claim, such as "stock of goods and provisions, \$32,000," are without the support of sufficient proof, and in others the valuation is manifestly excessive. It will be seen by the testimony of G. H. Vickroy, the first superintendent of the company, that the outfit purchased by him, consisting of a 20-stamp quartz-mill, 40 horse-power engine, 26 wagons, 268 mules and harness, provisions, tools, &c., cost about \$77,000. With this amount much material apparently is procured. Referring to the schedule of property, (accompanying the claim,) which, it is alleged, was either captured or destroyed by the Indians, it will be observed that the item of "20-stamp quartz-mil burned" is for the sum of \$118,000. A reasonable doubt arises as to this being the real value of that particular piece of property, for the presumption is that the machinery in the mill was the most important part of it, the cost of which may be estimated by taking Mr. Vickroy's statement as to the \$77,000 expended for quartz-mill and other property, and by allowing for costs of transportation. The charges for houses destroyed are regarded as exorbitant and without support of sufficient proof; and other charges, which should have been

itemized, or an invoice of the same furnished, are deemed to be inadmissible, from the fact that they are not so itemized; in addition, they are not well sustained by proof.

I respectfully submit that the allegation of the depredations having been committed, as set forth in the claim, is sufficiently proven, and recommend that the case be submitted to Congress for its action. In this connection it is proper to remark that, under the limitation provided in the seventeenth section of the law of June 30, 1834, in regard to claims for depredations by Indians, the claim under consideration, not having been presented within three years, is barred.

The letter of Mr. Vickory, and papers submitted by him, are herewith returned.

Very respectfully, your obedient servant,

H. R. CLUM,
Acting Commissioner.

Hon. B. R. COWEN,
Acting Secretary of the Interior.

After a full examination of the claim, the committee are constrained to report adversely, for the following reasons :

First. The claim is expressly barred by section 17 of a law of Congress, approved June 30, 1834, which provides that "unless such claim shall be presented within three years after the commission of the injury, the same shall be barred." This claim was not presented until January, 1872, and then not in a proper and satisfactory form. The last of the damages complained of occurred July 9, 1869, and the first on August 1, 1865; while the working of the mine was really abandoned in 1868, owing, as Mr. Vickroy states, to the increasing Indian troubles.

Second. Much stress is laid by the company upon the assurance of protection given by General James H. Carleton, then in New Mexico, to George H. Vickroy, while on his way to Philadelphia to organize the company. This assurance might have been of great value to Mr. Vickroy in enabling him to dispose of his property to advantage, and doubtless it had considerable influence in procuring subscriptions to the stock of the company; but this officer, or his successors, had no authority to bind the Government of the United States as security for a private enterprise to the amount of a single dollar. General Carleton doubtless intended to render all the protection in his power to the company; and there is every reason to believe that both he and his successors in command did protect their interests so far as the means at their disposal permitted. More than this they could not do, and General Carleton had no authority or power to involve the Government in any responsibility, save such as the laws of the United States recognized. If Mr. Vickroy, or the managers of the company, were ignorant of this fact, or desired to ascertain to what extent they could depend upon the protection of the United States troops, they were within a few hours' ride of Washington, and could easily have received all the information requisite before they issued a single share of stock or expended a dollar.

The committee, in view of the adverse report on the merits of the claim, do not deem it necessary to refer to the gross sum claimed by the memorialists, further than to say that they believe, from a careful examination of the various items, that it is far beyond the real value of the property destroyed.

The committee, therefore, report back the bill H. R. 63, and recommend that it do lie on the table.

J. G. FELL, EDWARD HOOPES, AND GEORGE BURNHAM,
TRUSTEES.

MAY 4, 1874.—Ordered to be printed and recommitted to the Committee on Claims.

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

MINORITY REPORT:

The Committee on Claims, to whom was referred the bill (H. R. 63) and memorial for relief of J. G. Fell and others, trustees of the Walnut Grove Gold-Mining Company, ask leave to make the following minority report:

The memorialists, Joseph G. Fell, Edward Hoopes, and George Burnham, men of high standing and of untarnished reputation, of Philadelphia, state under oath that they invested in the purchase of goods, supplies, machinery, and necessary outfit, wagon-trains, and in the employment of men in the erection of buildings for store-rooms, business offices, dwelling-houses, mining-machinery, and in the purchase of material for said buildings, and in opening the mines in Arizona, and working the same, amounting in the aggregate to \$426,000. They further state that they would not have made this investment, or any part of it, had not ample military protection been guaranteed, which said guarantee is as follows:

Copy of General J. H. Carleton's letter.

HEADQUARTERS DEPARTMENT OF NEW MEXICO,
Santa Fé, N. Mex., July 11, 1864.

GEORGE H. VICKROY, Esq.:

MY DEAR SIR: In answer to your verbal question as to the safety of carrying on mining operations hereafter in Arizona, I will say I have already inaugurated a campaign against the Apache Indians that will result in their complete subjugation, and should you induce friends in the East to join you in erecting a quartz-mill in the newly-discovered gold-regions near Fort Whipple, the enterprise will be fully protected by the military. I am well assured that building a quartz-mill there, and developing some one of the rich mines, will result in such benefit to the Government as to amply compensate for the protection given.

I have the honor to be, very respectfully,

JAMES H. CARLETON,
Brigadier-General Commanding.

They further state that on account of the failure of protection repeatedly promised, but never given, they lost by depredations committed by Apache Indians in Arizona Territory a large part of said property, between August 1, 1865, and July 9, 1869, amounting in the aggregate to \$292,800. This amount they swear is the actual cost paid for the property destroyed. They show that, in accordance with rule 4, adopted by the Secretary of the Interior, under the act of May 29,

1872, and estimating the price of the property where destroyed instead of where purchased, in accordance with said rule, that their losses would be \$410,099, instead of \$292,800, as stated.

They further state that on the 2d day of January, 1873, they made application to the Interior Department for compensation for said losses, and after a thorough examination, the following reports were made:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, D. C., January 7, 1873.

SIR: I have the honor to acknowledge the receipt, by reference from the Department, on the 2d instant, of a letter from George H. Vickroy, dated 2d ultimo, submitting a claim of the Walnut Grove Mining Company, of Arizona Territory, on account of deprecations alleged to have been committed by Apache Indians at various times, from August, 1865, to July 9, 1868, the loss being stated at \$292,800.

The papers in the case have been carefully examined in this office, and the conclusion that the claim is not without merit, is justified, it is thought, by the sworn statements of parties who were identified with the operations of the company as employes, and who were personally cognizant, in most instances, of the facts stated by them. What amount of loss the company actually sustained by the direct acts of the Indians is a question difficult of satisfactory reply or determination. The deprecations were numerous, and the task of harmonizing the evidence of different parties as to the particular facts in each and every instance seems to be impracticable, especially with reference to the loss of mules, or "animals." Some of the items in the claim, such as "stock of goods and provisions, \$32,000," are without the support of sufficient proof, and in others the valuation is manifestly excessive. It will be seen by the testimony of G. H. Vickroy, the first superintendent of the company, that the outfit purchased by him, consisting of a 20-stamp quartz-mill, 40 horse-power engine, 26 wagons, 268 mules and harness, provisions, tools, "&c.," cost about \$77,000. With this amount much material apparently is procured. Referring to the schedule of property, (accompanying the claim,) which, it is alleged, was either captured or destroyed by the Indians, it will be observed that the item of "20-stamp quartz-mill burned is for the sum of \$118,000." A reasonable doubt arises as to this being the real value of that particular piece of property, for the presumption is that the machinery in the mill was the most important part of it, the cost of which may be estimated by taking Mr. Vickroy's statement as to the \$77,000 expended for quartz-mill and other property, and by allowing for cost of transportation. The charges for houses destroyed are regarded as exorbitant and without support of sufficient proof; and other charges, which should have been itemized, or an invoice of the same furnished, are deemed to be inadmissible, from the fact that they are not so itemized; in addition, they are not well sustained by proof.

I respectfully submit that the allegation of the deprecations having been committed, as set forth in the claim, is sufficiently proved, and recommend that the case be submitted to Congress for its action. In this connection it is proper to remark, that, under the limitation provided in the seventeenth section of the law of June 30, 1834, in regard to claims for deprecations by Indians, the claim under consideration not having been presented within three years, is barred.

The letter of Mr. Vickroy, and papers submitted by him, are herewith returned.

Very respectfully, your obedient servant,

H. R. CLUM,
Acting Commissioner.

Hon. B. R. COWEN,
Acting Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 14, 1873.

SIR: I have the honor to transmit herewith, as required by the seventh section of the act making appropriations for the Indian Department, approved May 29, 1872, the claim of the Walnut Grove Mining Company, of Arizona, amounting to \$292,800, on account of deprecations committed by Apache Indians between August 1, 1865, and July 9, 1869.

The seventeenth section of the trade and intercourse act of 30th of June, 1834, requires that application for compensation for deprecations shall be made to the proper superintendent, agent, or subagent within three years after the commission of the injury, otherwise the claim shall be barred.

The peculiar condition of affairs in Arizona, it is alleged, prevented a compliance with the requirements of said section.

From an examination of the papers, this Department is satisfied that the claim possesses merit, and it is respectfully submitted with the recommendation that it receive the favorable consideration of Congress.

Very respectfully, &c.,

B. R. COWEN,
Acting Secretary.

HON. JAMES G. BLAINE,
Speaker of the House of Representatives.

They further state that at the time they presented their claim for settlement they were, on account of the destruction of their books and papers, and their inability to find many of their employés, unable to make a complete statement of their losses, but have since learned that they greatly understated their absolute losses to the amount of \$117,299.

Your committee, after a careful examination of the various items, and the gross amount claimed, believe and state that they are fully sustained by the proof, every statement made pertaining to them being made under oath, and made by persons cognizant, and living witnesses of the facts stated by them; that the proof of items reported by the Commissioner as insufficient, has subsequently, at great expense, been furnished, so that your committee are fully satisfied that the proof of the losses sustained is ample.

The act of June 30, 1834, referred to by the Secretary of the Interior in his report, requires that application for indemnity shall be presented to the superintendent, Indian agent, or subagent within whose jurisdiction the tribe committing the depredations belongs, and the reference in said report that the peculiar condition of affairs in Arizona prevented a compliance with the requirements of said law, means, as stated by the memorialists, under oath, that "there was no officer in Arizona before whom their claims could have been presented within the specified time;" and the law of May 29, 1872, provides that the Secretary of the Interior shall prepare and publish rules and regulations for the presentation of claims; and the Secretary did not promulgate rules in pursuance of said law until July 13, 1872. Therefore, there being no officer in Arizona to whom the claim could be presented within the time specified, before the passage of the act of May 29, 1872, and the claim having been presented January 2, 1873, and the Secretary not having promulgated the rules until July 13, 1872, your committee submits that the claimants cannot be considered *in laches*.

Your committee calls the attention of Congress to the fact that, at the time this great enterprise was undertaken, the Territory of Arizona had been recently organized, and the great desire and anxiety of the inhabitants of the sparsely-settled country, and of all the officers of the Territory, civil and military, was expressed in its favor; that the mines were known to be fabulously rich, and it was confidently believed that the introduction and successful prosecution of such an enterprise would induce a large emigration, rapid growth and development of the country. And your committee calls the attention of Congress to the fact that at this time the Territory was under martial law; that General Carleton, then in command, exercised supreme control over that whole country, and was the recognized authority there. He made war and peace with Indian tribes, built military posts and forts, and carried on the whole machinery of the civil and military government, and every act of his was indorsed and approved by the General Government, and while thus exercising supreme control, he announced officially that he had inaugurated a campaign against the Apache Indians that would result in their complete subjugation, and that this enterprise should be fully protected

by the military; and they made this large expenditure of money, and went to Arizona to prosecute this great enterprise at the invitation of the Government, and with this guarantee of protection.

But, instead of protecting this large property, as he promised to do, and which he had a perfect right to do, and as it was his solemn duty to do, he permitted the Indians to kill the employés and to destroy more than \$292,800 worth of their property.

On a rigid examination of the case, your committee are unable to find any dereliction on the part of the company, or where they were in a single instance at fault; and your committee considers it in bad faith on the part of the Government, and unjust to the claimants, to refuse compensation for the losses sustained, and therefore recommended the passage of the accompanying bill.

W. E. LANSING.
M. H. DUNNELL.
D. A. NUNN.