

IDAHO STATE HISTORICAL SOCIETY

REFERENCE SERIES

LEGISLATIVE INVESTIGATION OF THE DEFALCATIONS IN THE SECRETARY'S OFFICE, JANUARY 31, 1866

Number 467

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The following report is transcribed from one of two originals which was in the custody of the Secretary of State, August 7, 1942, when this copy was prepared. Punctuation and style of the original is retained in this transcript, which has not been published previously. Some explanatory notes are supplied. The original contained sixteen pages.

To His Excellency Caleb Lyon
Governor of the Territory of Idaho,

The Joint Select Committee appointed by the Legislative Assembly of the Territory of Idaho at the Third Annual Session; in accordance with Council Concurrent Resolutions No 2 & No. 12, directing the appointment of a Joint Committee¹ to investigate the defalcation in the Office of the Secretary of the Territory of funds appropriated by Congress to defray the Expenses of the Legislative Assembly of this Territory, and authorizing said committee to send for persons and papers to assist them in their investigation; and to report the result of their investigation to your Excellency--

would respectfully report--

That in consequence of the season of the year and the delays and difficulties attending communication with distant points, they have been compelled to confine themselves to information obtainable in this territory--

That they found no books and but very little official correspondence in the Office, and nothing to show what amount had been drawn by Ex. Secretary C. Dewitt Smith, deceased, excepting a copy of an unsigned requisition for the Sum of Eighteen Thousand Dollars, bearing date August 6th A. D. 1864, at Washington City--

That your committee are Satisfied from the Evidence that not less than the Sum of Eighteen Thousand Dollars² was drawn by the late Secretary Smith from the United States Depository at Oregon City, on account of the appropriations for Legislative and incidental expenses for this territory for the two years ending June 30th 1865; Said appropriations being for the Sum of Forty two

Thousand Dollars and approved June 25th 1864.

The redeemed vouchers in the office of the Secretary of the Territory, show that Secretary Smith during his administration of the Office, paid out the sum of Nine Thousand, Nine Hundred and thirty Eight Dollars--and there is Evidence that of that Sum, Four Hundred and one Dollars was paid out of his private funds, on account of incidental Expenses of the first and Second Sessions of the Legislative Assembly, and which Secretary Smith stated he was not authorized to pay; but would pay them as he would have the authority from the Department to pay them before he would need the money.

From the evidence of Secretary Gilson,³ Administrator of the Estate of C. Dewitt Smith, deceased and of Judge [Milton] Kelly and J. S. Reynolds, appraisers of said estate, it appears that about the 22nd of September 1865, Secretary Gilson drew from the Safe of Crawford Slocum & Co at Boise City a package marked "C. Dewitt Smith Sect, Idaho" which was by them reported to contain Six Hundred and fifty Dollars in Legal tender notes, and which was also reported by Said Appraisers to the Probate Judge of Ada County I. T. as a part of the Estate of Secretary Smith decd and that most of that amount was applied to the settlement of charges against the Estate.

The Committee after a scrutinizing investigation have been unable to discover any other funds either of a public or private nature appertaining to Secretary Smith--

We would therefore report that there is a deficit in the accounts of the Secretary's office, of not less than Eight thousand and Sixty two Dollars (\$8062.⁰⁰) and the total amount of which depends upon the Sums which may hereafter be shown to have been drawn by Secretary Smith from the Treasury Department.⁴

The Committee are satisfied from the Evidence that Secretary Smith was a very careful business man and at all times Kept a strict supervision over the public funds entrusted to his care and of which he had the disbursement.

That he made no investments in property, and that at no time was he at any uncommon Expense Except while removing the Seal and Archives from Lewiston to Boise City, at which time he Kept an account of Expenses to the amount of Five Hundred and Eighty two Dollars (582⁰⁰) incurred during that time.

That during a large portion of the time, he was in the territory, he was the guest of friends, at which time his Expenses were very moderate, especially during the time he spent at the Officers Quarters at Fort Boise, and in Owyhee and Alturas counties.--and his indebtedness at the time of his death as shown by the report of the administrator upon his Estate was over Eleven Hundred Dollars (\$1100⁰⁰) and his last sickness⁵ was of very very short

duration--

To the above conclusions we are led by all the Evidence with the exception of that of Secretary Gilson and J. S. Reynolds.

And that about the last of July 1865 at which time Secretary Smith left Boise City for Rocky Bar in Alturas County, where he died on the 19th day of August following, the unexpended balance of the public funds that had been placed in the hands of Secretary Smith for disbursement--was left in the possession of Crawford Slocum & Co in Boise City, for Safe Keeping, and there is no Evidence to lead the Committee to believe that at that time, any deficiency Existed or defalcation had occurred in the Department of the Secretary of the Territory; And we are led to believe that the funds were taken possession of, and appropriated to their own use by some person or persons having them in their custody or access to them subsequent to that time.⁶

We are led to the foregoing conclusion from the following facts, compiled from evidence taken by us, which is herewith transmitted to your Excellency--

It appears in the testimony of James H. Alvord United States Marshal of this territory that on the 17th or 18th day of September 1865 about one month after the death of Secretary Smith, that Secretary Horace C. Gilson informed him at the Secretarys Office in Boise City, as follows.-- We quote the testimony as given before us, verbatim.

"I asked Mr. Gilson how Smiths affairs stand. Gilson Said he did not Know, he said Some was paid out, I dont think he is short any, he might be \$1500⁰⁰ or \$2000⁰⁰, he said there is no money in my hands, but Said there was about Eleven Thousand dollars in Crawford & Slocum's Safe in Sealed packages.

Gilson was Sent for to come up to South Boise,⁷ Mr. Gilson at the time I came here was acting as Secretary of Idaho Territory, nothing was Said about his being administrator of Smiths Estate, he spoke of showing me the telegraph dispatch of his appointment, he said he thought he could not draw the money in Crawford & Slocums Safe until his Bond was approved, he spoke of the packages being sealed up; I infered from what he said that he knew what was paid out and what money remained, he Said that the money in Crawford & Slocum's Safe was Government funds."

It appears from the testimony of Secretary Gilson Judge Kelly, J S Reynolds and Mr. A. G. Redman the Clerk of Crawford Slocum & co That within one week after the conversation between Secretary Gilson and Mr. Alvord, and about two months before Mr. Gilson forwarded his bond as Secretary, to the proper Department at Washington City--Secretary Gilson did in connection with Judge Milton Kelly & J. S. Reynolds remove from Crawford Slocum & co's, all the Effects left with them by Secretary Smith before going to Rocky Bar, being two packages, one sealed, and one of papers and

vouchers, and a trunk which the Evidence shows Secretary Smith was very careful of, and that he had at least twice before placed in the fire proof cellar of Crawford Slocum & Co. for safe Keeping. And the money reported by them as being found at Crawford Slocum & Cos was returned by Administrator Gilson as private funds of Secretary Smith decd and four hundred Dollars (\$400.⁰⁰) of it used in settling up his affairs, as sworn to by Mr. Gilson.

No reasons have been given for the course pursued, Except that Secretary Gilson was acting under the advice and directions of Judge Kelly; and the mystery which hangs around the affairs of the late Secretary, and the unaccountable disposition, or disappearance of the public funds deposited with Crawford Slocum & Co. is in the opinion of your Committee much increased by the fact that the Examination of Secretary Smith's Effects was carried out in private, with doors locked; a part of his papers burned as worthless; the result of their examination was not made public until long thereafter, and no report made by the Secretary to the Departments at Washington City until required to do so by Governor Lyon, and the conflicting testimony of Gilson, Kelly and Reynolds who alone conducted the Examination

and more especially the following testimony of A. G. Cook Esqr, of Boise City, which we quote as follows.--

"I desired to see Judge Kelly on business pertaining to his office as Judge, and having Seen him go into the Secretarys office, I went there and found the door locked; I shook it for some time and Mr. Gilson came and unlocked it, and I stepped in, stating that I desired to see Judge Kelly; He stated that he and Judge Kelly were examining Secretary Smith's private papers and matters, and were busy, and the Judge would see me Soon, and desired me to say nothing in regard to the Examination of the papers in connection with Judge Kelly, as they did not wish it Known. I stepped to the inside door to see Judge Kelly, Saw papers in a state of confusion; Judge Kelly stated substantially what Mr. Gilson had Said. I went out and they locked the door."

Mr. Cook further testifies that; "Gilson and Kelly's manner was repulsive and they appeared to be anxious to get rid of me," and also "That the papers were on a trunk and mattress or bed and on the floor."

The committee have had their attention called to the possibility, that Secretary Smith may have used the public funds for his private purposes to the amount of the deficiency Known to exist.

By an Ex-parte statement placed in the hands of the Committee from Hon. Milton Kelly, one of the appraisers & who with Secretary Gilson removed the trunk and packages from the custody of Crawford Slocum & Co to the Secretarys office, and by the testimony of J. S. Reynolds as to a private conversation held between Gilson, Kelly and himself after the Examination at the

Secretary's office, and also the testimony of Mr. Gilson as to the business transactions between Secretary Smith and a friend of his named Peter Hannah late of Washington City, who accompanied Secretary Smith to Rocky Bar a short time prior to his death, your Committee was thereby led to make a careful and thorough investigation as to the possibility and probability of the funds being so appropriated.

Upon this branch of the subject the Committee would report, that from the testimony of Dr. Cochran, United States Army Surgeon and Mr. H. Field Connected with the Commissary department at Fort Boise, it appears that during about one month he spent at the Fort his expenses were quite limited, and from the testimony of Dr. Ephriam Smith who was on intimate terms with Secretary Smith that he was careful about his personal Expenses among other things, pasturing his team instead of Keeping them stabled, and the testimony of Judge Gilmore Hays Auditor and Recorder of Owyhee County as to the correctness of his habits while he was there, occupying the office of Judge Hays, and subject to very small expenses, and the testimony of Major A. G. Brown Auditor and Recorder of Alturas County as to his habits and Small amount of his Expenses there Show that his usual habits were those of Economy, and that he was firmly fixed in his purpose to restrain his Expenses within his personal income, and we are satisfied that if his personal Expenses were, (contrary as it is to Every conclusion we can draw from his habits, character, and principles governing his conduct) paid out of the funds placed in his hands as disbursing officer, they could not have Exceeded the Sum of Twenty five Hundred Dollars; as he very Seldom visited Saloons; never gambled and was a very reserved and strictly moral man, with the Exception of Sometimes drinking to Excess in his own private office, caused with out doubt by his Sufferings from the disease which produced his death.

Upon the Subject of Quartz investments the testimony of the Auditors and Recorders of Owyhee and Alturas Counties are conclusive and their testimony taken in connection with that of Mr. C. Jacobs, of Boise City, that Mr. Hannah, paid him in Portland, Oregon, the Sum of Fifty five hundred Dollars (\$5500⁰⁰) in gold coin for which he took a letter of credit upon the house of C. Jacobs & Co in Boise City., and that the investments of Mr. Hannah were paid by drafts on Jacobs & Co. and went out of the funds placed at their house to his credit.⁹ We therefore dismiss this branch of the subject re-iterating our opinion previously Expressed that the deficit that Exists rests with other parties than Secretary Smith.

There is another portion of the testimony that the Committee would be derelict of duty should they pass unnoticed. It is the frequent statements made by Secretary Smith of the amount of public funds, as shown by the testimony of F. Kenyon, Major A. L. Downer, S. R. Howlett, Ephriam Smith, Col. A. W. Flournoy;

District Attorney A. Heed,¹⁰ and others placed at his disposal by the Federal Government for disbursement in this territory, often qualified by the statement that there must be further action either by Congress or the Departments upon the claims, before he would be authorized to pay them, and the testimony of the Hon H C Riggs of Boise City that he Secretary Smith could not pay the Expenses of the Second Session of the Legislative Assembly until he made a requisition for the money, or received authority from the department at Washington City to pay the Same.

We would report that from the testimony of F. Kenyon, formerly of Lewiston now a resident of Boise City, who accompanied Secretary Smith to Lewiston upon his first visit and returned with him to Walla Walla, Washington Territory. We derive the following.

That Secretary Smith in the presence of Mr. Gilson and himself at the office of Wells, Fargo & Co's Express in Walla Walla, drew from the office a package of money, out of which he took the Sum of Eight Thousand dollars (\$8000⁰⁰) to convey to Lewiston for disbursement, and that the package returned to the Safe of Wells Fargo & Co was larger than the one taken to Lewiston. That all the bills were in large denominations, none less than One Hundred Dollars (100⁰⁰).

Mr. Gilson also testified to the Same facts with the Exception that the bills were tens and twenties and upwards:

Mr. Kenyon further States that Secretary Smith after returning from Lewiston to Walla Walla, En route to Boise City, drew his package of funds from Wells Fargo & Co's Safe in presence of Mr. Gilson and himself and took therefrom a legal tender note for One thousand Dollars (\$1000⁰⁰) to get changed for smaller notes. The Committee are fully Satisfied that while at Walla Walla Secretary Smith had a large amount of public funds, which he removed to Boise City.

We are also led to this conclusion by the testimony of the Hon Epprm Smith, Mr. H Field and others-- and are fully convinced that the funds were first deposited with DuRell & Co. And from there removed to the Custody of Crawford Slocum & Co. and that but a few hundred dollars were disbursed by Secretary Smith at Boise City.

Mr. Fields testifies as follows "I bought about one hundred dollars of him at Eighty five cents, I went to DuRells at one time to buy a large amount of Greenbacks and Mr. Allen their clerk told me that they had not the Greenbacks, but that Governor Smith (Sect smith) had, and they were deposited in Du Rell's safe.¹¹ I then went to him Smith to buy a large amount and he told me he had very little money Except public funds which he would not sell." The foregoing testimony not only proves that the money was at Boise City but is another evidence of the scrupulous

Exactness with which he protected the public funds.

From the testimony of Mr. Howlett it appears that Secretary Smith during his first visit to Lewiston redeemed some vouchers which the secretary informed him he paid out of his private funds stating at the time that the public funds were at Walla Walla and that the package had never been opened, which declaration is Sustained by the testimony of Frank Kenyon.

That at the time of the procuring from the package at Walla Walla the funds required by Secretary Smith amounting to Eight thousand dollars (8000⁰⁰); the package left in the office of Wells Fargo &co., at Walla Walla by him was larger than the package taken therefrom and conveyed to Lewiston, and after their return from Lewiston a note or bill for One thousand dollars was taken from the package which remained at Walla Walla for the purpose of getting the same changed for Smaller bills or bills of a smaller denomination.

In the Ex-parte statement placed in the hands of the Committee, from the Hon Milton Kelly, in which a labored effort is made to sustain the hypothesis that Secretary Smith may have used the public funds to the amount of the deficiency, for his private Expenses; the Judge calls in question the authority of the Legislature to appoint this committee and confer upon them the power to make this investigation--

We quote from his letter a statement, as follows: "I don't understand that the Committee are making the investigation by the authority of the Government, his Father or Bondsmen But inasmuch as they have assumed the investigation &c, &c," We will state that the Legislative Assembly in ordering this investigation, felt that it was of vital interest to the territory that the funds appropriated by Congress to carry out our Territorial Government should be received at the proper time and honestly disbursed; and that they would be unfaithful public servants if they did not do all in their power to protect the interests of the people; The people of our territory freely and willingly pay the Excise and internal revenue taxes imposed on them by the Federal Government, and pay annually to the general Government much more than the amount of the appropriations made by Congress for our benefit and that of the Sixty three Thousand dollars (\$63000⁰⁰) which Congress has appropriated of Legislative and incidental Expenses in our Territory but the paltry Sum of Nine thousand Nine hundred & 38 Dollars has Ever been disbursed within the territory during the three years of our territorial Existence. It is felt that a gross injustice has been inflicted upon the people of our territory and the Federal Government by the delays in receiving and the misapplication of funds appropriated by Congress for the use of the territory.

That the funds Sent to be disbursed to our benefit have been

plundered and the committee feel that it was their duty to make as thorough an investigation as the means at their command would permit, and discover if possible who were the plunderers.

The committee would further state that from the testimony of Judge Kelly, as also from his letter, and the testimony of A. G. Cook Esqr. we have every reason to believe that the removal of the Effects of Secretary Smith deceased, from the possession of Crawford Slocum & Co. and their examination at the Secretary's office by Mr. Gilson, Judge Kelly, & J S Reynolds, was some time prior to the 22nd day of September 1865, and prior to the conversation of Mr J. H. Alvord with Secretary Gilson.

In conclusion, the committee would state that the Evidence before us is very voluminous and we have embodied in our report, and referred to herein, only such portions of the testimony as were necessary to show the reasons for the conclusions to which the Committee have unanimously arrived--

That we regret exceedingly that we could not place ourselves in communication with the Departments at Washington City and the United States Depository at Oregon City, owing to the great distance and the inclement season of the year, rendering communication very slow and tedious--

as with official information that could have been obtained from such quarters, our labors would have been much less arduous, and the result much more satisfactory.

And we can but repeat that what we have previously Expressed, that we are fully convinced from the Evidence that Secretary Smith was innocent of the misappropriation of the funds, and express the hope that the Federal Government with the official Evidence in their possession assisted by that obtained by this committee, will be able to bring the guilty parties to justice. and that it may be the means of protecting our territory from similar depredations in the future. Should this desirable end be accomplished we shall feel that our labors have been well rewarded.¹²

All of which with a full copy of the evidence is respectfully submitted. In duplicates.

Boise City, I. T.

Jany 31, 1866

The original from which this transcript was copied contained signatures of members of the committee. They were S. S. Fenn, S. B. Dilly, and A. E. Callaway from the Council (appointed December 22), although George Ainslie replaced Dilly, December 28, prior

to this investigation, and C. D. Sayrs, J. A. Ripson, and J. W. Carter from the House of Representatives. This committee was as bi-partisan as could be managed, considering that the only member of either house who was not a Democrat was J. A. Ripson, a Union party member from Idaho County.

FOOTNOTES

¹After the legislature learned December 18, 1865, of a deficiency of \$8,062 in Secretary C. Dewitt Smith's accounts, the following Council concurrent resolution was adopted unanimously:

Resolved, by the council, the House of Representatives concurring therein, that a joint committee, of three from each House, be appointed to investigate into the defalcations of funds appropriated by Congress to defray the expenses of the Legislature of Idaho; and that said committee be empowered to send for persons and papers to assist them in their investigation, and that such committee be instructed to report as early day as practicable.

The Council acted December 19 (Journal, p. 63), and the House concurred (Journal, p. 77) the same day.

²This \$18,000 total proved to be the entire amount that Smith obtained in Oregon City.

³Horace C. Gilson, whom Clinton DeWitt Smith had met in a San Francisco bar, was described by Smith's predecessor as of "doubtful Moral antecedents," but he gained an appointment as Smith's successor regardless of this suspicion.

⁴H. C. Gilson had provided this information to the legislature in a report reproduced at the end of this material. Gilson should have known the exact total, because he stole the money. Later audits verified this amount as correct.

⁵Smith Suddenly expired after playing chess in Rocky Bar: This illness did not last more than a brief moment and incurred no medical expenses.

⁶This assumption proved correct, although Gilson managed such a clever deception that his partisan associates did not discover his theft until a year later.

⁷Rocky Bar's mining area was known then as South Boise.

⁸Milton Kelly had a gift for making even his most innocent actions appear as a great conspiracy to defraud or deceive, and

Gilson managed to capitalize upon Kelly's undeserved reputation.

As part of this episode, the legislature exiled Kelly from Boise to Lewiston while assigning district judges. This action helped to encourage North Idaho to return to Washington Territory or to join a new territory. Explanatory Council reports appear at the end of this material.

⁹Cyrus Jacobs, like Crawford, Slocum and Company, began business in Boise the day the town was founded, and offered banking services also.

¹⁰Albert Heed

¹¹B. M. DuRell, another Boise merchant, provided banking services and founded The First National Bank of Idaho the next year. Field was trying to purchase regular United States currency (greenbacks) at a discount: during most of the Civil War--and on through 1878--the United States was off the gold standard, and gold commanded a premium which Smith would not pay from government funds.

¹²This legislative exposure of the problem proved counter productive: Within two week's Gilson fled with Smith's funds to Oregon City (where he picked up an additional \$33,000) and to San Francisco, where he arranged to have Idaho's session laws printed. Then he escaped to Hong Kong. Eventually he was pursued about Europe (Paris and Vienna by one of his bondsmen) before returning to New York. At that point, all efforts to proceed against Gilson failed because the Ada County grand jury had neglected to indict him for stealing the entire treasury. Gilson thus engineered the largest theft of federal territorial funds in the history of the United States, a total of \$41,062.