DS: G.C. Sibley

Additional remarks on compensation of the Commissioners for the Mexican Road. (File copy)
A brief recital of the facts is here proper.

The point in dispute was referred by the 3d Auditor to the Secretary of War for his decision in July 1832. The Secretary declined giving an opinion on the merits of the question, and referred it to Congress. And in January 1833 it was so referred accordingly. The House of Representatives instructed the Committee of Ways and Means to inquire into the subject, which was done, and with a special reference to the disputed point. The Committee by way of deciding said point, provided for the payment of a balance claimed by the late Commissioners. This decision was adopted and confirmed by both Houses of Congress, & on the 2d March 1833, became law. Afterwards, in April 1833, the 3d Auditor again presents the very same point to the Secretary of War for his decision. The Secretary again refers it to the Attorney General, who gives an opinion the actual effect of which has been for the decision of Congress, and to set aside so much of the law as relates to this subject.

It is not the province of the undersigned to offer any explanation of the cause of the above strange procedure. They knew nothing of them. And they know and feel the effects. It having added another year to the preceding 6½ of delay, in refunding them a sum of money which they advanced in good faith, for the Public Service. The act of appropriation above alluded to, was founded upon a fair and full investigation and consideration of the whole subject connected with the accounts in question. The point disputed by the 3d Auditor (as to the pay of the Commissioners,) was necessarily brought for review, for upon that entirely depended the decision whether the balance claimed upon the accounts was really due or not. In deciding that the balance was due, and directing
It to be said, Congress did, without doubt, sanction and allow the per diem charge by the Commissioners, as fully, as if it had been specifically inserted in the original Act.

And it may be presumed they arrived at this conclusion, by reasoning somewhat this: - "If, as is said by the 3d Auditor, Mr. Secretary Barbour thought the Commissioners would derive $8 a day each, while lying in camp negotiating treaties with the Indians, or as they most probably would do, or probably at St. Louis, negotiating Indian treaties: he surely could not have desired to reduce their pay for the time they might be employed in executing the main object of their appointment, with so much additional labor, privation, exposure and responsibility, as they must necessarily be subjected to in locating, surveying, marking out a road through a desert of a thousand miles, which was intended to be, as Mr. Senator Benton declared, "the Grand or State Road, but a highway between Nations, which when once fixed, cannot be altered for ages, centuries, to come."

But whatever may have been the meaning of the Secretary on this point, the different interpretations it has received have certainly fixed upon it the character of ambiguity - the Commissioners, solemnly affirm, that when the Secretary undertook the duties assigned them, they understood, without a shadow of doubt, that their compensation was to be at least what they were charged to do, and that they would not have accepted their appointments, if they had supposed it was to be any less. They thus interpreted the Secretary's meaning, from a consideration of his two letters of instructions, taken in connection with the well-known fact that such was the uniform rate of pay for similar services, which it was unreasonable to suppose, with the well-known practice of the Court, in all similar cases, which authorizes the conclusion that such could have been afforded them for services that every one knew, to be greatly more arduous as they were, not only from their understanding of his two letters of instructions, but from facts within their own knowledge, that as such was the uniform allowance for similar services, nothing less could be expected to be satisfactory or acceptable, for those who executed.
concurred in pronouncing much more than ordinary
sedanvity and responsibility. Under such circumstances
the Service, having been faithfully rendered, is entitled
to be paid by the Government. Any portion of
the pay therein claimed, under a due and final survey,
was not, in the opinion of some, the question whether
construction of a very ambiguous power, to devolve
upon them, Commerce, or any portion of what the
Government may, by reasonable grounds, claim for their
land and earnings. If their instructions
were communicated in vague terms, or such as might
admit of different constructions by persons at
a distance from the seat of their business, and by
such as had not been furnished with a full
understanding of all the circumstances
presented at the time of their acceptance, and performed
the duties required under the construction, that they were
concerned in their interpretation, which then in some
degree to doubt the case, the claims presented ought
to be allowed and paid."—

The undersigned will not further engage on the subject
at this time. It is not found necessary to place it in
its true light. The events refer to the Notes appended by M's
Sibley to the B'no. No. 2. and to their Commencing from there
in the hand of J. Jenay, 3d, the claims of the person belonging to the Subject of
Washington—

G. S. Tidley for himself

in behalf of B. H. Crooker and
Thos. Mather

John Conant.

[Signatures and dates]
Additional Remarks on the opinion of the Attorney General as it affects the accompanying Paper, Maryland, B.C. to which are appended the affidavits of B. F. Pearson, of G. C. Helby, and F. H. Payton, Sheller.

February 1834.