

3-25-1836

## John Johnston's administratrix

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JOHN JOHNSTON'S ADMINISTRATRIX.

MARCH 25, 1836.

Read, and laid upon the table.

Mr. BANKS, from the Committee of Claims, made the following

REPORT:

*The Committee of Claims to which was referred the petition of Susan Johnston, administratrix of her late husband, John Johnston, deceased, report:*

That the petitioner states in her petition, as the foundation of the claim presented by her, that the said John Johnston before and during the late war, lived at the falls of St. Marys, in Michigan: that in the summer of 1814, an expedition of American troops, under the command of Major A. H. Holmes, came to the residence of Mr. Johnston, who was then absent: that said soldiers seized and took away the goods in the store, and property in the house, and conveyed the same on board a boat: that Mr. John Holliday, who was the clerk of Mr. Johnston, was present when this was done.

Major Holmes makes an official report of this transaction to Lieutenant Colonel Croghan, under date of 27th July, 1814. He states that about two hours before he arrived there with his men, the northwest agent had received notice of their approach, and had succeeded in escaping with a considerable amount of goods, after setting fire to the vessel at the falls. That the design of this measure was frustrated by the intrepid exertions of Mr. Turner, with his own men and a few of Captain Saunders's company. The vessel was brought down the falls on the 25th, but having bilged, was destroyed by Mr. Turner. That much of the goods which they took, was found in the woods, on the American side, and were claimed by the agent of John Johnston, an Indian trader. That he secured this property, 1st. Because it was lawful prize, according to the law of nations; 2d. Because Johnston had acted the infamous part of a traitor; having been a citizen and magistrate of the Michigan Territory before the war, and at its commencement; and at the time of said seizure discharged the functions of a magistrate under the British Government; 3d. Because his agents armed the Indians from the store-house at his approach; and 4th. Because these goods, or a considerable portion of them, were designed to be taken to Michillmackinac, where Johnston had gone.

Commodore Sinclair, in his report, dated the 6th of August, 1814, to Lieutenant Colonel McDonall, states that Major Holmes, who commanded the troops sent to St. Marys, brought some goods, which he officially reported to Colonel Croghan to be good prize: that as neither of them could

determine or judge of that matter, and as it was officially reported, he gave assurances that the strictest justice should be done the individuals, if it should appear to be such property: that an accurate inventory had been taken of the goods: and that a just and proper representation should be made to the court which should adjudge the case, and an immediate return be made accordingly.

It does not appear that any judicial proceeding was ever had in regard to these goods. The committee believe that no such proceeding was ever had in relation to them.

It does not appear that any part of the avails of these goods ever went into the Treasury of the United States; nor is there any proof of what ultimately became of them.

The petitioner has exhibited proof to us, that Mr. Johnston was not, at the time of this transaction, nor at any other time, the agent of the "North-west Company."

The testimony of John Holliday, who was the clerk of Mr. Johnston, has been taken by the petitioner, and laid before the committee. He states that he was present, and saw the whole transaction: that the seizure, removal, and destruction of the goods took place on the 23d of July, 1814: that the goods had been brought from Montreal the week before; that he showed the invoice of the purchase to the officers; that the goods were intended for the interior trade; that provisions were taken and eaten by the men; that clothes, shoes and hats, were taken and worn by both officers and men.

The testimony of William Keith was also submitted to the committee. He states that the goods were brought on board the United States ship Niagara, on which he then was: that great liberality of appropriation was exercised by all respecting the articles brought on board; pieces of cloths, and other articles, were individually appropriated: that a considerable part of the goods was thus appropriated, or otherwise made way with, before the squadron reached Detroit: that the residue of the goods was sold.

Mr. Hagner, in his letter, which is made part of this report, states that he has caused an examination to be made, and that the records do not furnish any evidence that the property had been sold for the benefit of the United States.

The committee believe that there is no proof which tends to establish the fact, that this property was, by an order of an officer of the army of the United States, in any way applied in aid of the expedition against the enemy in the Michigan country, commanded by Colonel Croghan; nor do they believe that said property was sold, and the avails applied to the use of the Government, or paid into the Treasury of the United States.

Nor does the property appear to have been taken by public authority, for the use or subsistence of the army. The property was taken by the order of an officer, but not for the use or subsistence of the army. This appears evident from the report of the officer who ordered the goods to be taken. This report is official, and made at the time; and is therefore entitled to credit. He states the reasons which induced him to make the seizure, and the purpose for which it was made. His entire report negatives all and every pretence that the goods were taken by his order for the use or subsistence of the army.

That the goods were afterwards, in part, consumed or used by the men, does not vary the case. This consumption or use was not by the order of an officer, for the use or subsistence of the army. It was not taken for and

in lieu of rations, and a credit given to the Government for the same; nor was the cloth and clothing taken in lieu of clothing to be furnished by the Government to the soldiers, and a credit given to it by them for that which was used. This appropriation and use was improper, and probably illegal, but it was not such an use or application of the goods as brings the Government under any obligation to pay their price. It is not every taking or use of the goods of an individual by the officers or soldiers of the army, that fastens upon the Government an obligation to pay. The goods must be taken by public authority, for the use or subsistence of the army, or no liability is incurred by the Government. In this case the goods were not so taken and used, and the Government ought not to pay for them.

If the goods were the property of an enemy at the time of seizure, the Government would not be bound to pay for them. From the report of the officer it would appear that this was his opinion, at the time he took them into his possession. He has, in his report, given in detail the reasons upon which this opinion was formed. Some consideration is certainly due to the official reports of our public officers. They are made at the time of the transactions, which may be the subject matter of their report. They are made in strict discharge of their public duties: and form an important part of the recorded history of the country.

The petitioner has furnished us with a letter from the Hon. Lewis Cass, in which he states that the petitioner is a highly respectable lady, and that the family of Mr. Johnston was well educated, and also highly respectable. He also states that he found Mr. Johnston the active and ardent friend of this country, and that he rendered him valuable services when in that quarter of the country. The letter is made part of this report.

This case was presented at the 1st session of the 21st Congress, and referred to the Committee of Claims. A report was then made against the claim.

The committee have now examined that report, which is made part of this report, and fully concur in the principles there laid down, and the conclusions to which the committee then came.

Under this aspect of the case, and for the reasons stated in this report, the committee believe that the petitioner has not made out a case entitling her to relief, and submit the following resolution:

*Resolved*, That the claim should be rejected.

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MARCH 2, 1830.

*The Committee of Claims, to which was referred the petition of Susan Johnston, report:*

That the petitioner states her late husband, John Johnston, was a resident of St. Marie, in the county of Chippewa, in the Territory of Michigan, in the year 1814, and carrying on a trade in such goods as found a market there: that the place was visited by Major Holmes in that year, at the head of a detachment of American troops, and the dwelling-house and store-house of said Johnston, was, by the said detachment, and by the order of the said Holmes, sacked, and the goods and property of the said Johnston, not excepting small articles of household furniture and family clothing, car-

ried off or destroyed, under a pretence that said Johnson was an agent for the Northwest Company.

A schedule of the property said to have been taken or destroyed, accompanies the petition, amounting to £9,035 14s, Halifax currency. Several depositions were taken to prove that the goods did not belong to the Northwest Company. It appears, however, that they had been then lately purchased or brought from Montreal.

The committee have endeavored to ascertain from the Treasury Department, whether the goods were libelled and condemned, or any account rendered of them at the Treasury; and the answer of the Secretary is, that no information of the kind is found.

A letter was addressed to Captain St. Clair, who was in the expedition, but he has no recollection of the transaction. The committee has been furnished with the copy of a letter from Lieut. Turner to Capt. St. Clair, making a report of his proceeding, wherein it appears that the property taken was Indian goods, and he says that all private property was respected.

If the goods were private property, and not subject to capture, the party owning them had his remedy against the officer taking them, for the trespass.

If they were public property they were liable to seizure: in no event would the United States be liable, unless the seizure was unlawful, and the Treasury had been enriched thereby.