

University of Oklahoma College of Law

University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

4-13-1838

Miller Hallowes

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indigenous, Indian, and Aboriginal Law Commons](#)

Recommended Citation

H.R. Rep. No. 790, 25th Cong., 2nd Sess. (1838)

This House Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact Law-LibraryDigitalCommons@ou.edu.

MILLER HALLOWES.

APRIL 13, 1838.

Read, and committed to a Committee of the Whole House to-morrow.

Mr. E. WHITTLESEY, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to whom was referred the petition of William Hallows, report:

That the petitioner, before and at the commencement of the late Indian war in Florida, in 1835, resided at his plantation called New Switzerland, on the eastern bank of St. John's river, in East Florida. He was absent from his plantation six weeks, in January and February, 1836, at Picolata, whither he fled for safety when the Indians overspread the country after the battle of Withlacoochee. He was attacked on his plantation on the 6th of July, 1836, by a body of Indians, and was himself wounded by a rifle ball in his head. He afterwards narrowly escaped in a boat, and was picked up by a steamboat and conveyed to a place of safety. The Indians immediately destroyed his houses and other buildings, and also a large amount of personal property, a list of which accompanies the petition, and amounts in value to \$15,057 37. From that time to the date of his petition, (which is the 20th of January last,) he says he has not been able to return to his plantation with any prospect of safety.

He urges his claim in language as follows: "As the Florida war evidently grew most unfortunately out of the settled policy of the Government of the United States to remove to lands west of the Mississippi the Indians within the different States and Territories; and as the citizens residing within the theatre of the Indian hostilities cannot be responsible for them, nor prevent them, nor protect either their lives or property from destruction by the hostile Indians; and as it is professedly one of the first duties of every enlightened Government to afford protection in life and property to its citizens, and to indemnify them for loss of property without their fault, caused by the policy of the Government; and as also New Switzerland was for a time during the first part of the Florida war a military post, and occupied by troops in the service of the United States, in consequence of which notice of the enemy may have been attracted to the said place for the purpose of destroying it," he asks to be remunerated for his losses.

The occupation of the plantation by troops spoken of by the petitioner, was in December and February previous to the destruction of the property for which a remuneration is asked. The evidence is voluminous, and the

statement made by the petitioner may be considered as established by the proof.

The question is fairly presented, whether it is the duty of the United States to indemnify their citizens for the loss of property under the circumstances of this case, when said loss is without the fault of the owners, and caused by the policy and by the operation of the Government.

The policy adverted to was the removal of the Indians west of the Mississippi. Several of the States and Territories had within their boundaries one or more Indian tribes, who held large tracts of land from cultivation, and prevented, as was alleged, the increase of the white population and the diffusion of intelligence. It was said the Indians did not possess the soil in fee simple, and that they only had a right to enjoy it for the purpose of hunting; and that even this right ceased when the citizens of the States and Territories wanted the land for cultivation. The Indians were governed by laws of their own; and as they advanced in civilization, their laws conformed to their improved condition. They adopted constitutions, established legislatures and courts of justice, and several of the tribes were rapidly increasing in civilization. This alarmed the fears of the States within whose boundaries they were, and they contended it was an anomaly to have an independent sovereignty within a State, not responsible to its authority, and owing to it no allegiance.

By the 4th article of a convention between the United States and Georgia, held on the 2d of April, 1802, the United States stipulated "to extinguish, at their own expense, for the use of Georgia, as early as the same can be *peaceably* obtained upon reasonable terms, the Indian title to the lands lying within the limits of the State of Georgia."

The State of Georgia urged that the United States were bound to extinguish the Indian title, and complaint was made of the delay on the part of the United States in not extinguishing the title, as it was said they were bound to do by the article mentioned.

A very voluminous and highly interesting document on this subject may be found in the 6th volume of Executive Documents of the 1st session of the 18th Congress, and numbered 127.

The State of Georgia having a deeper interest in the removal of the Indians than any other State, and not doubting the rights of that State were changed, and strengthened by the conventional articles mentioned; that State took the lead in pressing upon the General Government the establishment of a system that should, in its operations, remove all the Indians beyond the boundary of that State.

In a letter addressed to the President of the United States on the 10th of March, 1824, the Senators and Representatives from Georgia used the following strong language: "If the Cherokees are unwilling to remove, the *causes* of that unwillingness are to be traced to the United States. If a peaceable purchase cannot be made in the ordinary mode, nothing remains to be done but to order their removal to a designated territory beyond the limits of Georgia, giving an ample equivalent for the territory left by them, and an ample support to the territory granted to them."

The laws providing for a removal of the Indians met the concurrence of all the States in which the Indians held large tracts of land; and although Florida was not permitted to give a vote on the passage of these laws, there is no doubt the inhabitants of that Territory were anxious that the Indians should be removed from that section of the country.

The policy of removing the Indians was forced on the General Government, to avoid a collision with the States interested.

It is not expedient or proper to discuss in this report the question whether the legislation on this subject was judicious or not; nor is it proper or necessary to notice the treaties made with the Indians, or the manner in which they have been performed by one party or the other; but it is sufficient to say that the policy of removing the Indians was established from a belief that it was best for the people of the United States, and for the Indians themselves, that the Indians should remove and form a community by themselves. The war undoubtedly originated in the progress of carrying out this policy; but it does not follow from thence that the United States are liable for all the losses their citizens have suffered or may suffer. It is not correct, as asserted by the petitioner, that it is the duty of the Government to indemnify its citizens for losses they may have suffered, without any fault on their part, caused by the policy of the Government.

This principle has frequently been urged, but never sanctioned to the extent it is claimed to be applicable in this case. In order to protect the national honor and character, Congress thought proper to pass an act on the 4th of June, 1794, authorizing an embargo; and an embargo was laid afterwards by an act passed on the 22d day of December, 1807. These acts directly affected the entire navigating interest of the country. Business was paralyzed; ships rotted at the wharves; and merchants were reduced from affluence to want. The sufferings caused by those acts were not willingly inflicted, but they were incident to the adoption of measures to carry out the policy of the Government.

After the embargo law of December 22, 1807, had taken effect, sundry merchants and traders of Philadelphia petitioned Congress to permit them to depart with their vessels to foreign ports, laden with flaxseed, a perishable article. They had obtained clearances before the act was passed. The permission was refused to them. The report may be found in Gales and Seaton's State Papers, vol. 1, Commerce and Navigation, page 703; and is referred to as containing a very correct exposition of the duty of a Government and the duty of its citizens.

The Indians, at all times during the settlement of the country, have committed acts of hostility against the persons and property of the frontier settlers, for which no remuneration has been given. The war of 1812 was declared to carry out the policy of the Government to give protection to our seamen and to commerce. The interior inhabitants were not directly or personally interested in the questions that led to the declaration of war, and yet they suffered more severely in the destruction of their property than any other part of our citizens. The losses they met with have not been remunerated, except where the destruction of their property was owing to its having been occupied for military purposes. The sufferers in the Territory of Michigan had peculiar claims on the Government. By the 3d article of capitulation, it was stipulated "that private persons and property of every description will be respected."

This article was immediately violated. The following account is given by the Historical Society of Michigan of the scenes that followed the surrender:

"The Indians, who were numerous, and claimed large rewards for their co-operation, and who were but slightly if at all restrained by the

garrison, carried plunder and devastation into almost every house, and through almost every farm in the Territory. The miserable inhabitants had no other alternative but to submit, or incur the hazard of more aggravated outrage. Most of the citizens of Detroit were sent into exile, and distress and ruin appeared inevitable."

The sufferings of the inhabitants at the river Raisin were as intense as human nature could bear. So thoroughly convinced was the Executive of the violation of the articles of capitulation, that the commissioners were instructed to use their exertions to obtain an indemnity from the British Government, when negotiating the terms of peace. The commissioners were not able to obtain indemnity, and the United States have not given it.

The Northern and Western frontiers were laid waste. Great loss of property was experienced by the inhabitants on the seaboard, and on the rivers and bays in Virginia and in Maryland.

The sufferings of the present war fall most heavily on the citizens of Florida, and they are entitled to the sympathies of their fellow-citizens throughout the country. But losses similar to those now presented cannot be allowed, unless Congress shall establish a new principle; and if it shall do so at any time, relief should be granted to those who have suffered in preceding wars.

The committee have heretofore examined the question whether it was expedient to enlarge the liability of the United States to pay for property destroyed in time of war, and they refer to their reports on that subject:

1st session 22d Congress, vol. 3; rep. No. 386;

1st session 23d Congress, vol. 3, rep. No. 383.

They recommended that the principles laid down in the act of April 9, 1816, and the amendatory acts, be adhered to. Concurring in the opinion heretofore entertained, the committee submit the following resolution:

Resolved, That the prayer of the petition ought not to be granted.