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**Matthew Irwin Keith**

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### Recommended Citation

H.R. Rep. No. 427, 26th Cong., 1st Sess. (1840)

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MATTHEW IRWIN KEITH.

APRIL 24, 1840.

Read, and laid upon the table.

Mr. RUSSELL, from the Committee of Claims, submitted the following

REPORT:

*The Committee of Claims, to whom was referred the petition of Matthew Irwin Keith, make the following report:*

The petitioner states that some time in the year 18— he purchased from General Hernandez, of Florida, one-half of a certain piece of property or plantation, in the Territory of Florida, commonly called "St. Joseph's;" that after making extensive improvements thereon, he sold it to D. J. Griswold, and took from him, in part payment, his bond, with a mortgage covering said moiety of the plantation so sold; that the money, though due on the bond and mortgage, has not been paid; that Griswold has sold and conveyed the moiety of the plantation to John Williams, the son-in-law of General Hernandez, upon which sale Williams agreed to pay the bond and mortgage due the petitioner, which still encumbered the property; but that he has not done it, and has since conveyed the said property back to General Hernandez, who is now in the enjoyment thereof. The petitioner suggests, that if an application should be made for relief of those who are interested in the property destroyed in Florida, that which may be allowed for the injury to this plantation may be directed to be paid to him, in satisfaction of his bond and mortgage.

The amount due him he states to be \$8,286 69. The petitioner prays such relief as the justice of his case demands. There is no proof accompanying the petition; but if the allegations were established by testimony, it is difficult clearly to comprehend upon what principle the legislative aid of the Government can be invoked by the petitioner, even if indemnity should be granted for Indian spoliations, as the petitioner seems to anticipate. By the conveyance of the land, the legal estate passed to Griswold, and the right to possess and enjoy it was the unavoidable consequence. The simultaneous execution of the mortgage by Griswold to the petitioner did not divest Griswold of his right to the rents and profits of the estate, but operated merely as an encumbrance; the title yet remained in Griswold, notwithstanding the mortgage; and though the right to hold and convey was a qualified one, yet it was plenary until the condition was broken and the equity of redemption foreclosed by action. The personal responsibility of Griswold, and the estate conveyed by the mortgage, are the sources from which satisfaction is to be derived for the petitioner's debt.

If the property has been diminished in value by causes for which the Government is liable, and indemnity should be granted, how far a court having competent jurisdiction would feel itself authorized to control the fund, for the benefit of the petitioner, arising from the privity of contract or estate which might be shown between the litigating parties, presents a question which the committee do not feel themselves called upon to decide; the courts of law and equity are open to the petitioner, and his remedy must be sought there. It would be travelling beyond the proper sphere of legislation to legislate upon the claim submitted.

The committee, therefore, offer for the consideration of the House the following resolution:

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

REPORT

The Committee of Claims, to which was referred the petition of *Wm. A. Griswold*, in relation to the land and mortgage, report as follows:

The petitioner states that in the year 18— he purchased from General Hernandez of Florida, one half of a certain piece of property situated in the Territory of Florida, commonly called "St. Joseph's," and after making extensive improvements thereon he sold it to W. A. Griswold, and took from him in full payment for said land with a mortgage, conveying said mortgage to the petitioner as sold; that the money, though due on the bond and mortgage, has not been paid; that Griswold has sold and conveyed the moiety of the plantation to John Williams, the son-in-law of General Hernandez upon which said Williams agreed to pay the land and mortgage due the petitioner, which will encumber the property, but that he has not done it, and has since conveyed the said property back to General Hernandez who is now in the enjoyment thereof. The petitioner prays that if an application should be made for relief of these lands, which are situated in the property destroyed in Florida, that which may be allowed for the moiety of the plantation may be directed to be paid to him, in satisfaction of the bond and mortgage.

The amount due him he states to be \$2,350 00. The petitioner prays such relief as the justice of his case demands. There is no doubt as to the privity of the parties; but if the allegations were established by testimony, it is difficult clearly to comprehend upon what principle the legislative aid of the Government can be invoked by the petitioner, even if indemnity should be granted for his loss, as the petitioner seems to admit. By the conveyance of the land, the legal title passed to Griswold, and the right to possess and enjoy it was the inevitable consequence. The simultaneous execution of the mortgage by Griswold to the petitioner did not divest Griswold of his rights in the land and profits of its sale, but operated merely as an encumbrance; the title yet remained in Griswold, notwithstanding the mortgage; and though the right to hold and convey was qualified one, yet it was clearly with the condition was broken and the equity of redemption foreclosed by action. The personal responsibility of Griswold, and the estate conveyed by the mortgage, are the sources from which satisfaction is to be derived for the petitioner's debt.