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James S. Calhoun

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JAMES S. CALHOUN.

[To accompany bill H. R. No. 490.]

JULY 10, 1840.

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

REPORT:

The Committee of Claims, to whom was referred the petition of James S. Calhoun, which was reported on during the 2d session of the 25th Congress, and also his petition presented during this session, and supplementary to the former, report:

That during the year 1836, while hostilities existed between the United States and the Creek and Seminole Indians, it became necessary on the part of the officers and agents of the Government to employ a steamboat and two barges belonging to the petitioner, which was done, and the parties entered into and executed the following contract in writing:

“GEORGIA, *Muscogee county.*

“Articles of agreement made and entered into between Lieutenant D. H. Vinton, acting assistant quartermaster of the army on the part of the United States, and Thomas C. Evans & Co., owners of the steamboat Anna Calhoun, and her barges, the *Mary Eliza*, and *Antoinette*—Witnesseth: That the foresaid Thomas C. Evans & Co. agree to furnish for the service of the United States, completely manned and equipped, and found in every respect suitable for navigating the river between Columbus, Georgia, and the *Appalachicola* bay, in Florida, the said steamboat *Anna Calhoun*, and two barges, *Mary Eliza* and *Antoinette*, to be, from the time of their entering into the service of the United States under this agreement, at all times, until their discharge from the said service, ready, at the exclusive expense of their owners, with their crews, wood, and all things requisite, to move on any part of said waters with troops, provisions, ordnance, and quartermasters’ or any other stores or property, to be by them received, conveyed, and landed, at such times and places as the state of the river will admit, as may be designated by the orders of the commanding officer of the United States forces, or any other officer under him in authority. And it is further agreed, that said owners of said steamboat and barges shall continue them in the service of the United States, unless sooner discharged by the lawful agent of the United States, until the first day of October next. And the said Lieutenant D. H. Vinton, acting assistant quartermaster of the army of the United States, agrees, on the part of the United States, that the said owners of the said boat and barges shall receive from the United States, in con-

sideration of the faithful performance of the above contract for every day so employed in the service of the United States, the sum of three hundred dollars for said steamboat, and fifty dollars for each barge, which shall be paid on the certificate of legal agents of the United States, or other proof to that effect, of the faithful performance, on their part, of the obligations of this contract; which sums, when paid, shall be in full of all demands for said service.

"Witness our hands and seals, this twelfth day of September, 1836.

"THOMAS C. EVANS & Co., [L. s.]

"For Calhoun & Boss.

"D. H. VINTON, [L. s.]

"1st Lieut., and Acting Assistant Quartermaster."

The petitioner, under said contract, and for a violation of it, says, that the United States is justly indebted to him in the following sums of money, which he now claims, to wit:

For the use of the Anna Calhoun from the 14th day of October, 1836, on which day she was discharged at Appalachicola, Florida, to the 22d of December of the same year, the day on which she returned to Columbus—69 days, at \$300 per day	\$20,700
For the Mary and Eliza, discharged on the 17th day of October at Appalachicola, but could not get back before the 7th November—21 days, at \$50 per day	1,050
For the Antoinette, discharged October 9th, and could not get back before the 7th of November—29 days, at \$50 per day	1,450
	<hr/> 23,200
Interest on these sums	5,568
	<hr/> 28,768
Cash paid for cotton boxes, in attempting a compliance with my contracts	\$1,000
Interest on this sum	240
	<hr/> 1,240
Demurrage paid by Ogden, Waddington & Co., on account of the delay, in compliance with charter-parties in favor of the brig Martha and the brig Indiana	\$3,276
Interest on this sum	786
	<hr/> 4,063
	<hr/> 34,071
Absolute loss on 4,381 bales of cotton, bought under contract, without including damages or pay to agents	\$110,448
Interest account from 1st January, 1838, to 1st January, 1840—2 years	17,671
	<hr/> 128,119
Absolute loss on 826 bales cotton, not bought under contract, but loss occasioned by the previous purchases	\$25,630

Interest account from 1st January, 1838, to 1st January 1840—2 years	\$4,100	\$29,922
Whole amount of his claim		<u>191,912</u>

It will be perceived that this claim varies from the one annexed to the petition during the 2d session of the 25th Congress only in the item of the interest, which was then made up to 1st of January, 1838, and it is now extended up to the 1st of January, 1840; and one other item, the claim for the nondelivery of the boats at Columbus, which seems to have been omitted accidentally. The petitioner feels deeply, and prays that Congress will examine fairly, fully, and expeditiously, into the equity of his claims; and that they may be tested by the immutable and unalterable rules of justice; and that they may examine the petition, and the evidence in its support, presented and reported upon on the 2d day of July, 1838, in connexion with the additional testimony now presented, drawn from unimpeachable sources, and which the petitioner says he believes will remove every objection heretofore urged against the justice of his claim.

The importance of this claim, and the principles involved in the investigation, demand of the committee a patient consideration. The losses sustained by the petitioner are so great that ruin to his fortune will be, in all probability, the consequence. The petitioner alleges that he most faithfully and honestly fulfilled, in every particular on his part, the contract, but that it was violated on the part of the United States to an alarming and ruinous extent to him in this: that the boats were to be discharged at Columbus, in the State of Georgia, and they were discharged at Appalachicola, in the Territory of Florida. In the next place, that the boats were to be discharged on the 1st day of October, 1836, but were not discharged on that day, but were continued in the service for a much longer time thereafter.

The petitioner states in his petition, the motives which induced him to limit, in his written contract, the employment of the boats to the first of October; says that he ordered the commander of his boat to leave the service of the United States on that day; that his order would have been obeyed; but the commanding officer of the army, who was on board said boat, said she should not leave the service, and that he would enforce obedience to his orders. The reason why he was so particular in directing the captain of his boat to leave the service was, that he had, previous to making said contract with the United States (to wit: in August, 1836), entered into contracts for the purchase of cottons at Columbus, to be shipped to New York; and he had bound himself to deliver at Appalachicola, on board the brig Martha, 500 bales of cotton, and to the ship Indiana 600 bales, by the 1st of November then ensuing; and, in default, to pay to each vessel at the rate of fifty dollars per day demurrage. He further alleges and shows, that, under his contracts to purchase cottons and forward them to New York, he bought forty-three hundred and eighty-one bales; that he failed to deliver the five hundred bales on board the brig Martha, and the six hundred on board the ship Indiana—both vessels lying and being in due time at Appalachicola—and the remaining three thousand two hundred and eighty-one bales were not forwarded agreeably to contract; and these failures, on his part, were caused solely by the detention of the said boat and barges in the service of the United States, in violation of the contract made with Lieut. D. H. Vinton, and the express understanding between his boat agent and

Lieutenant Vinton, that the boat was to be discharged on or before the 1st day of October, at Columbus; but that, contrary to every expectation, and in disregard of the demand to be discharged, said boat and barges were forcibly detained in the service, and finally discharged at Appalachicola.

The petitioner further states, that the officer in command was advised of the necessity of the discharge of said boat and barges, by their respective masters, who were ordered to demand their discharge on the 1st day of October, in order that he might be enabled to comply with his previous contracts; but that the request was refused, and that the officer in command declared that he would place men on board to enforce obedience to his orders; and kept said boat and barges in service, to the great and ruinous injury of the petitioner, unless relief is afforded him by the Government.

It is further urged by the petitioner, that, with an intent to avert the fatal calamity that has befallen his fortunes, by the detention of said boat and barges, he had built, with all practicable speed, cotton-boxes, for the purpose of aiding in the transportation of said cotton. Said boxes cost him \$1,000; that still he was unable to comply with his contract; but merely added to his losses.

The petitioner, having combined interest with his account, as set forth in the preceding part of this report, will now present the amount claimed, independent of interest, as interest cannot be allowed, in any case of the kind, according to the uniform decisions of Congress. The account, then, stands thus:

Amount paid for cotton-boxes	-	-	-	-	\$1,000 00
Demurrage paid	-	-	-	-	3,277 16
Absolute loss on 4,381 bales of cotton, bought under contract, including damages, or pay to agents	-	-	-	-	110,448 55
Absolute loss on 826 bales of cotton, not bought under contract, but the loss occasioned by the previous purchase	-	-	-	-	25,630 00
For the use of the Anna Calhoun, from the 14th of October, 1836, to the 22d day of December, of the same year, the day on which she returned to Columbus—69 days	-	-	-	-	20,700 00
For the Mary and Eliza, discharged on the 17th day of October, at Appalachicola, but could not get back before the 7th of November—21 days, at \$50 per day	-	-	-	-	1,050 00
For the Antoinette, discharged October 9th, and could not get back before the 7th of November—29 days, at \$50 per day	-	-	-	-	1,450 00

This committee will, in the investigation of the several items composing this claim, adopt the manner pursued by the former committee, influenced only, in results by the additional testimony now furnished by the petitioner. It will be perceived, that the petitioner claims to be reimbursed by this Government, for the amount paid for cotton-boxes \$1,000; for demurrage \$3,277 16; for loss on 4,381 bales of cotton \$110,448 55; and for loss sustained on 826 bales of cotton \$25,630, which losses, he alleges were actually sustained in consequence of the violation of the contract made with him by the officers of the Government.

The first item, to wit, \$1,000 for boxes to carry cotton to Appalachicola, from Columbus, Georgia, is established by the testimony of Jacob Barrow, who says, that he was the agent of Calhoun & Boss, as to their interest in boats on the Chatahoochie river, and directed Thomas C. Evans & Co. to make a contract with Lieutenant Vinton, for the use of the Anna Calhoun and her two barges from the 12th of September, to the 1st of October, 1836; that they were hired at Columbus, and were to be dis-

charged at the same place; that he had been directed by said Calhoun, to hold said boats in readiness to take down his cotton to Appalachicola, by the 1st of November, and he adverts to the contracts made to purchase and to deliver the cotton; that finding the boats were detained, Mr. Calhoun ordered *four cotton-boxes to be constructed that cost two hundred and fifty dollars each*; he further testifies, that he has been more than eight years as master of steamboats, barges, &c., upon said rivers Chatahoochie and Appalachicola, and that he is well acquainted with them, and their navigation; and does know, and unhesitatingly declares, that 1,100 bales of cotton could have been taken down the said rivers and delivered at Appalachicola in time to meet the engagements made by Mr. Calhoun, if the boats had been discharged at Columbus, at the expiration of the time for which they were hired, or within five or six days thereafter; and that it was not possible to meet said engagements after the boats reached Columbus, after their discharge at Appalachicola, which was not done until the 15th of October; that, from the lateness of the time when said boats reached Columbus, and the fall of the water, 3,281 bales were prevented from being delivered at Appalachicola until thirty or forty days afterward, by which said Calhoun suffered a heavy loss; and the barges arrived at Columbus on the 7th of November, and the steamboat on the 22d December. The character of Mr. Barrow is sustained for accuracy and integrity by eleven gentlemen, and is personally known to a member of the committee, as also the gentlemen who sustain him.

Boyd M. Grace, testifies, that he was captain of the steamer Anna Calhoun, while in the employ of the United States by contract up to the 1st of October, 1836, and that said steamer was detained by order of the officer of the United States army in command, for fifteen days or more after the contract expired.

Jasper S. Smith, testifies, he was master of the boat Antoinette on the 1st day of October, 1836, and previous to that time, and he requested the officer of the United States in command of the boats, to be discharged on the 1st of October, from the service of the United States; that the said officer not only refused to discharge the said boats, but declared he would place men on board to prevent her from going away, and enforce obedience to his orders; and said officer so kept the deponent's boat and crew, until the 15th of October.

Col. Stanton states that he was quartermaster of the United States army, and gave a certificate on the 17th of October, 1836, stating the time of discharge of each boat, &c., and gives a recommendation, &c.

On the 2d of November, at Columbus, Georgia, Lieut. Heintzelman, acting assistant quartermaster of the United States army, paid to Thomas C. Evans & Co., for Calhoun & Boss, the following sums for the use of said boats:

The Anna Calhoun, from 13th of September to the 14th of October (32 days), at \$300 per day	\$9,600 00
The Mary and Eliza, from the 13th of September, at noon, to the 17th of October, inclusive (34½ days), at \$50 per day	1,725 00
The Antoinette, from the 15th of September to the 9th of October (24 days), at \$50 per day	1,200 00
	12,525 00

The petitioner also presents charter-parties for the brig Martha and for the ship Indiana, dated in August, 1836. These vessels were to proceed from New York to Appalachicola, and return back to New York by the 1st of November, 1836. Demurrage agreed on was \$50 a day for each vessel.

Lieut. Heintzelman states also the detention of the boats and barges. The committee admit the evidence fully sustains the item of \$1,000 paid for cotton-boxes, made necessary by the violation of the contract on the part of the Government, and that said boxes were of little value to the petitioner—perhaps of no value whatever.

The second item for demurrage paid to the ship Indiana and brig Martha (\$3,277 16) is clearly proven to have been lost by the petitioner, in consequence of the non-delivery of the cotton, according to contract, at Appalachicola; and that that failure was produced by the detention of the boats and barges on the part of the Government, in violation of the express written agreement.

The third item, \$110,448 55 absolute loss on 4,381 bales of cotton, including damages, or pay to agents. The proof establishes this immense and overwhelming loss, and demonstrates the fact that the detention of the boat and barges of the petitioner by the agents of the Government, in violation of the contract, produced this loss.

The fourth item (\$25,630), which the petitioner charges to have been a loss on 826 bales of cotton, not bought under contract, but the loss occasioned by the previous purchase. This loss is also established, and seems to have been consequential to the retention, by the agents of the Government, of the boats and barges.

The foregoing items amount to \$140,355 71, a tremendous and ruinous loss to the petitioner, and, no doubt, will, from the facts found in his petition, reduce him to utter and hopeless insolvency. The committee, after a full examination of the testimony, and allowing the credit due, cannot resist the conclusion, that the foregoing losses for which the petitioner claims indemnification, are the result of the detention of the boat and barges, in violation of a solemn contract; or perhaps it would be more just to say it was a detention without the warrant of a contract—a detention wholly unanticipated, and still guarded against by instructions, so far as practicable to do so. It is equally true that the dreadful consequences resulting therefrom could not be avoided by anything the petitioner could have done which he did not do. The petitioner says he is utterly and for ever ruined; that his property has been sacrificed; his creditors without their dues; his family brought from affluence to dependance by no imprudence of his, but all to have resulted from the detention of his boat and barges by the Government of the United States. And the petitioner, under the influence of deep and solemn feelings, might ask if it can be possible that the representatives of a people eminently wise and just can resolve that it is the duty or policy of the Government to reject his claim? A claim which seems to be the result of an unlawful interference, by an authorized agent of the Government of the United States with private property—an interference which can only be sustained, or excused, by being deemed necessary for the benefit of the military service of the Government—perhaps absolutely necessary. Under such circumstances, a private citizen may well ask, Is not the Government bound to pay for any and all damages resulting therefrom?

The committee find much difficulty and embarrassment in relation to this claim. They feel a deep and abiding sympathy for the petitioner; for they are honestly convinced that the losses are the result, in a great measure, of the acts of Government agents. To admit this fact, and to deny restitution, would seem to deny justice. The committee will leave this part of the petitioner's claim open: they will make no recommendation thereon.

The fifth item which the petitioner claims, is for the use of the Anna Calhoun from the 14th of October, 1836, to the 22d day of December of the same year—the day on which she returned to Columbus—69 days (at the rate agreed on, viz: \$300 per day), \$20,700.

The sixth item is for the Mary and Eliza, discharged on the 17th day of October, at Appalachicola, but could not get back before the 7th November—21 days, at \$50 per day, \$1,050.

For the last item: the Antoinette, discharged October the 9th, and could not get back before the 7th of November—29 days, at \$50 per day, \$1,450.

These items make an aggregate sum of \$23,200, and if sustained by proof, should be allowed.

The committee who reported on this claim during the last Congress, referred to a letter from J. Cross, acting quartermaster general, dated Washington, June 12, 1838, enclosing a report from Lieutenant Staunton, of January 31, 1838. Major Cross states that Mr. Calhoun seems to misapprehend the terms and conclusions of the contract, and adds: "Now, there is no provision in the contract that the boats should be sent home before they were discharged from service, nor that they should be restored to any particular place." This item in the claim involves a question as to time, and rests chiefly on the obligation implied to discharge the boats on the 1st day of October. It will be perceived that the stipulation is not that the United States shall discharge the boats on the 1st of October, but that the owners shall continue them in service *up to that date*, unless sooner discharged. The words of the contract are not that the boats shall be sent home; but the testimony of Thomas C. Evans, and the proposition submitted by him, preparatory to the contract, that the clear intention of the contract (and any other intention can scarcely be presumed) was, that the boats should be returned to Columbus, and there discharged from the service by or before the 1st day of October, 1836.

The contract is found in the first part of this report. A comparison of the contract and proposition relieves the committee from doubts as to the intentions of the contending parties. The language of the proposition is, "the Anna Calhoun and barges engage in the service of the United States until the 1st day of October;" the contract, that "said owners of said boat and barges shall continue them in the service until the 1st day of October, unless sooner discharged;" retaining to the officers of Government the power or right of discharging at an earlier day, but not the right to continue them in service for a longer period. The question with great propriety may be here asked, why was not the right to continue them longer stipulated for in the contract? The reason has been fully anticipated. It was then known to both parties that Mr. Calhoun's orders were, that the boat and barges were to be at Columbus by the 1st of October. The testimony is full, ample, and satisfactory, on this point, that the petitioner had entered into heavy contracts to deliver cotton at Appalachicola by a given day.

In the former report made by the Committee of Claims it is said, "that the parties treated the time the boats were in service subsequent to the 1st of October as being an extension of the contract, and payment was made accordingly." Since that report was made, proof very satisfactory has been laid before the committee, demonstrating that such was not the understanding of the parties. It is only necessary to refer to the testimony of Thomas C. Evans, which states that the boats and barges had the alternative to receive the amount paid by Captain Heintzelman, or nothing, at the time. He also corroborates and sustains Captain Burrow's statement that he was not authorized to engage the boat and barges for a longer period than the 1st of October; that he so informed Lieutenant Vinton, who made the contract, and other officers with whom he conversed; that, in his proposition submitted September 10, 1836, his purpose was to carry the idea that the boat and barges were to be returned back to the city of Columbus, and discharged *there*, on or before the 1st of October, 1836, and payment to be made up to that time; that he is perfectly satisfied that the officer contracting with him so understood it; and that he was not aware that "*at Columbus*" was not distinctly set forth until he was so informed by the petitioner.

Captain Heintzelman says: "I certify, on honor, that, on the 2d November, 1836—the day on which Captain T. C. Evans receipted to me (being then acting as assistant quartermaster at Columbus, Georgia), on a contract for the charter of the steamboat Anna Calhoun, and barges Mary and Eliza and Antoinette, made between Lieutenant D. H. Vinton, acting assisting quartermaster United States army, and Thomas C. Evans & Co., agent for Calhoun & Boss,—J. S. Calhoun, senior partner of the firm, was present, and then claimed compensation per diem for the steamboat and barges until they should be returned to Columbus, Georgia. That I declined paying the additional compensation, because it was not expressed in the final contract; leaving it open for the decision of the proper officers in Washington. The contract on which I paid, is dated 12th day of September, 1836. I enclose, annexed, the original memorandum on which the agreement was founded;" which is the same, verbatim, set forth in the preceding part of this report. It therefore seems evident that the boats and barges were to have been discharged at Columbus; it would be great injustice to decide to the contrary.

But to show that such was the opinion of the officers of the Government at the time, the committee will here insert the testimony of Captain James E. Glern, who states that, "during the year 1836, he was captain of the steamer Georgian, then owned by Seaborn Jones and Samuel K. Hodges; that, for a time, said boat was in the service of the United States under a contract with some officer of the Government, whose name he does not recollect; that, at the time the officer in authority communicated his intention to discharge said boat from said service, they were at Roanoke, on the Chatahoochie river; that, agreeably to instructions, he protested against being discharged at Roanoke, and insisted that, inasmuch as the boat was hired at Columbus, Georgia, she should not be discharged, and it would be unjust to the owners to discharge her, elsewhere. The officer in authority yielded the point, and he was permitted to ascend the river with the boat to Columbus, Georgia, and there receive the discharge."

The committee, from all the facts, have come to the conclusion that the boats and barges should have been discharged at Columbus, Georgia; and therefore report a bill to compensate the petitioner for their detention, &c.