

6-4-1844

Report : Petition of Heirs of J. Kennedy

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IN SENATE OF THE UNITED STATES.

JUNE 4, 1844.

Submitted, and ordered to be printed.

Mr. WHITE made the following

REPORT :

[To accompany bill S. 167.]

The Committee on Indian Affairs, to which was referred bill No. 167, "to provide for the payment to the legal representatives of Joshua Kennedy, of Alabama, for the losses sustained by the destruction of his property, in the year 1813, by the hostile Creek Indians, in consequence of its having been occupied as a fort or garrison by the troops of the United States," report :

That this claim has been alternately the subject of favorable and unfavorable consideration and decision, both by committees of Congress and by the proper auditing officer of the Government.

The facts, as stated by the petitioner, and substantially verified by his proofs, are : "That in 1810 he was the owner of land on the Tensaw river, south of latitude 31° north, which country, by proclamation of President Madison, was declared to be under the protection of the United States, and was taken possession of by them; that, under this assurance of the Government, petitioner improved his land by building his dwelling-house, a saw mill, cotton gin, cotton press, &c. ; and, as a trading post, he had on hand, during the war with Great Britain, and in the year 1813, large quantities of cotton, rope, cordage, baleing rope, and lumber ; that said mill and a portion of said premises were stockaded and occupied by the troops of the United States, under the military orders of an officer of the Government. In 1813, after the massacre of Fort Mimms, (which was distant about fourteen miles,) in the panic which followed that event the troops were hastily withdrawn from his premises, which were shortly thereafter entered by the hostile Creeks, and all the buildings and personal property aforesaid were destroyed by fire.

"He presented his claim in January, 1818, to the Hon. Richard B. Lee, special commissioner appointed under the act of 1816, for allowance, but no report was made thereon ; and about the year 1830 he petitioned Congress for the allowance, upon which no final action of the two Houses has been hitherto had."

The committee are of opinion that this claim comes within the provisions of the " Act to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States,

and for other purposes," passed in 1816, and of the acts amendatory thereto. The reasons heretofore given by the Third Auditor and by committees of the Senate for its disallowance are—that, from the lapse of time between the military abandonment of the post and its destruction, an inference cannot be drawn that the destruction was *in consequence* of the military occupation; and because the premises were not in the actual occupancy of the troops at the time of their destruction.

Upon the first point, the proof, being properly weighed, renders it probable that the property was burnt within a period of from two to four weeks after its desertion; and from the impunity of other similar property in the neighborhood, as well as from the direct proofs of the witnesses, the committee cannot doubt that its military occupation and aspect were the provocatives of its burning by the hostile Creeks.

Upon the other point, the committee are equally satisfied that this property was "in the military occupation of the United States" at the time of its destruction, within the meaning of the statute; it never having been surrendered to the owner by the United States, who are still in constructive possession. If too technical and strict a construction be given to this clause of the act, it destroys its virtue. The buildings and personal property not within the stockade were distant only a quarter of a mile, and, sharing the same fate with the mill, should be the subjects of the same remedy.

An additional argument for this allowance is found in the treaty made between the United States and the Creek Indians on the 9th of August, 1814, and ratified February 16, 1815, in which the country where the petitioner's premises were situated was purchased. This treaty (article 1) recites that, prior to the conquest of that part of the Creek nation hostile to the United States, numberless aggressions had been committed against the peace, the property, and the lives of citizens of the United States and those of the Creek nation in amity with her, at the mouth of Duck river, Fort Mimms, and elsewhere, contrary to the national faith," &c. * * * "wherefore, 1st, the United States demand an equivalent for all expenses incurred in prosecuting the war to its termination by a cession of all the territory belonging to the Creek nation" within the limits therein specified—which article was then and there ratified by the contracting parties. It is deemed by the committee that this treaty imposes upon the United States an equitable obligation to remunerate those who lost property by the aggressions of the Creeks therein alluded to, beyond the terms of the several acts hereinbefore referred to. It remains to inquire, what is the value of the property destroyed? The petitioner has presented rather a confusion of proof upon this point, estimates being made in the aggregate, and somewhat at random, without any specification of details, and without distinguishing the real and personal property. One witness states that there was on the premises one lot of cotton for which Kennedy paid \$2,400 in cash and negroes, "and a great quantity besides." Another witness estimates the whole property, real and personal, at from \$15,000 to \$20,000; another values it at \$15,000; another at from \$20,000 to \$25,000. But none of them specify the amount of personal property on hand, further than is above stated of the first-named witness; nor do they characterize the quality of the buildings or their value.

In this looseness of the testimony as to the value of the burnt property, if the committee resort to the sworn statements of the petitioner, they are equally at fault. In his petition to Congress he states that his "improvements" cost him \$10,851, and his cotton \$11,740 ; but he affixes no estimate of value to the cordage, &c. In his memorial to the commissioner, Mr. Lee, he states, that "the property destroyed, belonging to your memorialist, actually within the pickets, was worth \$9,000, though more property adjacent to the same, of the value of \$2,000 or \$3,000, was at the same time destroyed." It is suggested by the petitioner's representatives, (Joshua Kennedy being now dead,) that this estimate must have referred to the *real* property alone. There is nothing to convince the committee of this, or that satisfaction was not sought before the commissioner as well for the personal as for the real property destroyed. The committee, therefore, are of opinion that the heirs are estopped by this first admission of their ancestor from asserting a value for the *whole* of the lost property beyond \$12,000, with which amount the committee have agreed to fill the blank in the bill ; and with this amendment they recommend that the bill be passed.