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Heirs and legal representatives of Antonio Pacheco, deceased

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HEIRS AND LEGAL REPRESENTATIVES OF ANTONIO
PACHECO, DECEASED.

[To accompany bill H. R. No. 398.]

JUNE 7, 1844.

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

REPORT:

The Committee of Claims, to whom was referred the claim of the administrator of Antonio Pacheco, report:

That this case was fully examined by a committee of the last Congress; and, as the report then made was sufficiently full, the committee of this House append it hereto, and, adopting its recommendations, report a bill for the relief of the petitioner.

APRIL 1, 1842.

The Committee of Claims, to whom was referred the petition of Joseph Elzaurdi, administrator of the estate of Antonio Pacheco, report:

Joseph Elzaurdi, administrator of the estate of Antonio Pacheco, claims for slave Lewis, lost in the Seminole war, and also for the hire of said slave.

The testimony in this case is as follows:

John C. Casey, a captain of the United States army, states upon his oath, that, in December, 1835, he was acting assistant quartermaster at the post of Fort Brooke; and that, by order of the commanding officer, Captain F. S. Belton, 2d artillery, he, John C. Casey, hired a negro man named Lewis from a Mrs. Pacheco, widow of Antonio Pacheco, (a resident of the coast below Tampa,) as an interpreter, to accompany the command of Major Dade, United States army. He (said John C. Casey) hired said negro man Lewis on the 23d December, 1835, at the rate of twenty-five dollars per month, and on that day the negro joined Major Dade, and accompanied his command on the federal road towards Fort King. This deponent did not see or hear anything of said negro until about April or May, 1837, when he came in from the nation with the chief, Jumper, who represented that, after the battle of the 28th of December, 1835, between the Seminole Indians and the command of Major Dade before mentioned, he, Jumper, had saved the life of the negro man Lewis aforesaid, and was therefore entitled to him. The negro Lewis was, by order of Major General Thomas S. Jesup, confined at this post for some time, and sub-

sequently, by the order of the same commanding general, sent to Fort Pike, Louisiana, with the Seminoles and Seminole negroes.

When the party at Fort Pike, Louisiana, was ordered to be removed west of Arkansas, witness stated to the commanding general that the negro Lewis, who was claimed by the chief Jumper as captured property, was the property of the widow Pacheco; nevertheless, the general said that he must accompany the others to Arkansas. This conversation occurred in the spring of 1838, about the time that Lieutenant Reynolds, one of the emigrating agents, was starting with a party, and with orders to take out those then at Fort Pike, Louisiana, among which last party was the aforesaid negro Lewis. Witness further states that he has paid to the estate of the widow Pacheco one month's wages, for services of said negro Lewis, amounting to twenty-five dollars; and that he, John C. Casey, has not paid any other sum for the services of said negro, or his time, nor given any authority to successors in office, or others, to do so.

Captain John C. Casey, being in this city (Washington) on the 31st day of January, 1842, made, at the request of the Delegate from Florida, a statement in writing of the following facts, in addition to his deposition heretofore recited.

The negro man Lewis was hired by him from Captain William Bunce, executor of the estate of Pacheco, deceased, at \$25 per month. He further states that the contract was verbal, and he does not recollect what agreement, if any, was made to cover the event of his death or capture by the enemy, but he presumes there was an understanding on the subject. He recollects that oxen, hired to accompany the same command, and which were killed by the enemy, were paid for. He does not recollect whether the negro was brought in or came in, in 1837, at Tampa Bay; he was subsequently shipped to Arkansas, with a band of Indians and Indian negroes; his owners wished to stop him, but could not. The negro was very intelligent—speaking four languages, and able to read and write; he was an able-bodied, likely negro, in the prime of life, and would be very valuable were he not as bad as he is bright. It would be far better to pay any price for such a man and leave him in Arkansas, or hang him, than to return him to his owners, and let him return to the borders of Florida.

John G. Reynolds, a lieutenant in the United States marine corps, states upon his oath, that he is an emigrating and disbursing agent; that among a party of Indians designated to be removed by witness, was a negro man named Lewis, represented to be a slave, and the property of the estate of Antonio Pacheco, deceased, who had already been sent to Fort Pike, in Louisiana; that this deponent inquired of General Jesup what disposition should be made of said slave, so represented to belong to said estate; that General Jesup replied, "take him to the west, and let the Government pay for him;" that this order was given at Fort Brooke, in Florida, in 1838; and that accordingly, in the month of September following, the said slave was turned over to the receiving agent, in the Indian country west, by witness.

Major James McIntosh, of the army of the United States, certifies upon oath that, some time in the year 1830, he sold to Antonio Pacheco, of Tampa, Florida, a negro man slave by the name of Lewis; that some time in the month of August or September, 1838, he saw the said negro Lewis in the Indian nation, in Arkansas, where deponent understood he had been

sent with the Seminole Indians; that he saw him and spoke to him several times.

General Jesup, under date of the 21st January, 1842, writes to the Dele-gate from Florida to the following effect: That the negro Lewis was cap-tured by a detachment under his command, early in 1837; he was imme-diately claimed by the late Captain William Bunce, of Tampa Bay, as a slave of Pacheco's estate. On investigating the matter, I found that he had been employed as a guide and interpreter to the command of Major Dade, was present at the massacre of that command, and had either joined the Indians or been captured by them. The evidence was almost conclu-sive that he had been in constant communication with the Indians from the time the command marched from Tampa Bay to that of its defeat; and there was abundant evidence that he had, on several occasions afterwards, taken part with the hostiles in their depredations upon the frontier inhabi-tants of Florida. He was claimed in behalf of aliens, and with the inten-tion, as witness was informed by the agent of the claimants, of sending him to Cuba. Believing that a communication was kept up between the hos-tiles and certain persons in Cuba, and that the negro, if surrendered to the claimants, would be immediately employed against us, I (witness) refused to surrender him, and ordered that he should be sent to New Orleans. Whether he was sent to the west or not, witness had no means of knowing. Witness certainly would not have sent him there; but, if the attention of witness had not been diverted from him (the negro) by his numerous and arduous duties, he would have had him tried upon a criminal charge, and there is scarcely a doubt, as witness believes, that he would have been exe-cuted.

This is the whole of the testimony given in the case that is deemed rele-vant and material to a decision of it.

The committee deem these facts in the case to be well established:

1st. That the negro Lewis was hired by a competent agent of the United States, to be employed in the service of the United States, at the rate of \$25 per month, for an indefinite period; and that the negro was *delivered* to this competent agent of the United States.

2d. That from Dade's defeat, which took place on the 28th day of Decem-ber, 1835, the negro remained with the Seminoles Indians, either voluntari-ly or as a captive, until April or May, 1837, when he was recaptured by a detachment of the United States army.

3d. Upon his recapture, his former owners demanded him, and requested that he might be delivered to them, which the commanding general refused to do.

4th. He was finally sent with the Indians to the Indian country beyond the Arkansas, and entirely lost to his owners.

The contract was a verbal one, and hastily made; and it is not ascertain-ed, from the testimony, whether the United States stipulated to remunerate the owner of the slave upon his death or capture by the enemy. The agent of the United States, who made the contract with the owner of the slave, states that "he does not recollect what agreement, if any, was made to cover the event of his death or capture by the enemy; but he presumes there was an understanding on that subject." The committee, however, do not deem this question very material in this case. The slave having been recaptured by the troops of the United States, he was immediately placed, as regards the contracting parties, *in statu quo*; and the contract being for an indefinite

period, either party had a right to put an end to it. The United States might have redelivered the slave to his owner, and he would have been bound to accept him; and, on the other hand, the owner or his agent had a right to demand him of the Government of the United States, or of its agents who had him in possession, and they were bound to deliver him, unless the sovereign power, acting through her ministerial officer, deemed it a necessary precaution to the safety and security of the country and citizens to withhold him from his owner. This phase of the case will be presently examined, although it is believed not to affect the question of remuneration under the facts of this case. This demand was made, and the United States, by her agent, refused to deliver him. We are, therefore, clearly of opinion, upon this view of the case alone, the United States are bound to pay the owner of the slave his full value. If the slave had been captured from his owner by a civilized power, and a right to the slave had vested in the captors, upon his being recaptured by the United States, they were bound to redeliver him to his original owner. This doctrine, we think, is clearly laid down by an eminent writer upon international law. That writer declares, in his definition of the right of *postliminium*, "the sovereign is obliged to protect the persons and goods of his subjects, and to defend them against the enemy; therefore, when a subject, or any part of his substance, is fallen into the hands of the enemy, should any fortunate event bring them again into the sovereign's power, it is certainly incumbent on him to restore them to their former state: he is to re-establish the persons in all their rights and obligations; to give back the effects to the owners; in a word, to settle all things as they were before they fell into the enemy's hands. The justice or injustice of the war makes no difference here—not only because, according to the voluntary law of nations, the war, as to its effects, is reputed just on both sides; but likewise because war, whether just or not, is a national cause; and if the subjects, fighting or suffering for it, when fallen themselves (or their effects) into the enemy's hands, are by some fortunate incident returned under the power of their own nation, there is no reason why they should not be restored to their former condition: it is as if they had never been taken. If the war be just, they were unjustly taken; and thus nothing is more natural than to restore them as soon as it becomes possible. If the war be unjust, they are not bound to bear the calamities of it more than any other part of the nation; the evil falls on them in being taken, and by their escape or release are delivered. Here, again, it is as if they never had been taken; neither their sovereign nor the enemy has any particular right over them. The enemy has lost by one accident, what he had gained by another. Persons return, and things are recovered, by the right of *postliminium*, when, after being taken by the enemy, they come again under the power of their own nation. Thus this right takes place as soon as such persons or things taken by the enemy fall into the hands of soldiers belonging to the same nation, or are brought back to the army, the camp, their sovereign's territories, or the places under his command." (See Vattel's Law of Nations, book 3, chapter 16, and pages 359-60.)

The only remaining question arising in the case, and which presents itself to the consideration of the committee, is, whether General Jesup, as one of the ministerial officers of the United States, had a right to withhold the slave Lewis from his rightful and proper owners; and, if so, are the United States bound to remunerate the owners? We are clearly of opinion

that, if the sovereign power of the United States deemed it necessary for the safety and security of the Government, and the citizens thereof, to withhold said slave from his lawful owners, and to send him out of the country beyond their reach, they had the unquestioned right to do so. It is believed to be every day's practice, among belligerent nations, upon this principle, so well recognised, of necessary precaution, to pull down houses, drive off herds of cattle, and even to cut down and destroy fields of standing corn, if necessary to weaken or retard the adversary, or to prevent him from sustaining himself in the country. We deem it at this day wholly unnecessary to go into an investigation of facts to see whether General Jesup, the acknowledged and authorized agent of the United States, was warranted by facts in supposing that it was a *necessary precaution* to withhold the slave Lewis from his rightful owners, and to send him out of the country; it is sufficient for us to know that he did make the allegation of necessity, and that he did exercise the power, and that the sovereign power of this Government acquiesced in it. The presumption is, at least, that they have been benefited by the exercise of this necessary precaution, and we think most clearly that they should make a just and full recompense to the owners of the property so taken and used; and that recompense we consider to be the value of the slave at the time of his conversion, (which was twelve hundred dollars,) with interest on that sum until the money is paid. To that end, we herewith report a bill.

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