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Report : Claim of J. Bulow, jr.

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IN SENATE OF THE UNITED STATES.

JANUARY 20, 1846.

Submitted, and ordered to be printed.

Mr. JOHN M. CLAYTON, from the Committee of Claims, made the following

REPORT :

[To accompany bill S. No. 53.]

The Committee of Claims, to whom were referred the documents relating to the claim of John J. Bulow, jr., deceased, report :

The petitioner, William G. Buckner, as executor of John J. Bulow, jr., late of Florida, deceased, claims compensation for the real and personal property of the deceased on his plantation called Bulowville, in Florida, destroyed by the Indians in January, 1836, during the Seminole war, in consequence of its being occupied as a military post or station by a detachment of the Florida militia under the command of Major Benjamin A. Putnam.

This claim was presented to Congress at the 2d session 24th Congress, and a favorable report made by the Committee of Claims in the Senate, (No. 109,) accompanied by bill No. 173, for the relief of the petitioner, which passed the Senate, but failed in the House to become a law.

It was again favorably reported on by the Committee of Claims in the Senate at the 2d session 25th Congress, accompanied with bill No. 22 for his relief; which was amended, and laid on the table.

At the 3d session 25th Congress, a favorable report (No. 129) was made by the same committee in the Senate, accompanied with a bill; which was recommitted with instructions, and a second report (No. 195) was made at the same session for the petitioner's relief.

Bill No. 109, for the relief of the petitioner, was introduced by the Committee of Claims in the Senate at the 1st session 26th Congress, and laid on the table.

The claim was again brought by petition before the Senate at the 2d session 26th Congress, and bill No. 96 reported. No further action appears to have been had in that body on this subject since that period.

The evidence in support of this claim is printed with, and annexed to, report No. 129, Senate documents, 3d session 25th Congress, and exhibits—

1st. A statement of the property destroyed and taken by Indians on Mr. Bulow's plantation, amounting to \$83,475, (including the crop of the year,) showing the value of each article, made and sworn to by John J. Bulow.

2d. The affidavit of Francis Pelliceer, "That he has been for several years Mr. Bulow's overseer; that he is well acquainted with every transaction that has taken place on the plantation, and is conversant with the quantity, value, and cost of everything thereon; and that he believes the account rendered by Mr. Bulow is correct and just."

3d. The affidavits of Joseph Hunter, William H. Williams, and David R. Dunham, planters and inhabitants of the same county in which Mr. Bulow's plantation was situated, "That they possess full knowledge of the extent, improvements, and resources of Mr. Bulow's plantation, which was laid waste and destroyed by the hostile Indians, and that they believe the annexed account and estimate of losses sustained by Mr. Bulow by the Indians is correct."

In relation to these gentlemen, the United States district attorney gives the following certificate:

"District of East Florida:

"I, the undersigned, Thomas Douglass, United States attorney for the district aforesaid, do hereby certify that I was personally acquainted with Joseph Hunter, (who is now deceased,) one of the persons whose name is signed to the annexed copy of an appraisement of the estate of John J. Bulow, jr., in his life-time, and that he was a very intelligent and respectable planter; that I am also personally acquainted with William H. Williams and David R. Dunham, the other two appraisers; that Mr. Williams is a respectable and intelligent planter, and that Mr. Dunham is a respectable and intelligent man, and judge of the county court of Mosquito county, in which the estate of the said John J. Bulow, jr., is situated; that all three of the gentlemen above named as appraisers must, from having resided in the same county, have been well acquainted with the quality and value of the estate above mentioned, and that from my knowledge of them I believe they would not have made an unfair or extravagant valuation of said estate; that, besides, I have exhibited the same appraisement to several other intelligent and disinterested gentlemen, who were well acquainted with said estate, and duly qualified to judge of and decide upon its value, all of whom considered the said appraisement a just and fair one.

"THOMAS DOUGLASS."

4th. Francis Pelliceer, in his second deposition, gives a description of the size and character of the buildings on said plantation. He says: "An appraisement was made by persons well acquainted with all the estate and buildings thereon; that deponent was at the building of all the houses, &c., mentioned in the appraisement, and considers, if anything, that the appraisement fell short of the real value; that all the cotton that was packed in bales was taken to make breastworks around the house; and that all the boats, canoes, and flats" (which he values separately) "were impressed by Major B. A. Putnam into the United States service and lost, or taken and destroyed by the Indians;" that "two wagons with four horses each, three ox teams with six yoke of oxen each, were impressed into the United States service also by Major Putnam, for the purpose of transporting his troops, baggage, provisions, ammunition, &c., all of which he believes fell into the hands of the Indians on St. Joseph's being abandoned by the troops."

5th. George L. Phillips, in his deposition, amongst other things, says : "That while at Bulowville, deponent, accompanied by the late John J. Bulow, visited every building on the plantation ; that he examined them, and was rather surprised to see everything in such high order ; and that it appeared that no expense had been spared to make the buildings strong and durable. They were all built of the best materials, and much superior to any he had seen in this portion of the country. That when the affidavit was made to the appraisement of the buildings before him as a magistrate, in 1836, he remarked that he considered the appraisement much under the actual value of the buildings:" and again, that while there, "he saw a great many bales of cotton piled up round the dwelling-house and quarters, to form a breast-work for the protection of the station."

6th. It is shown by the certificate and deposition of Joseph M. Hernandez, commanding the forces east of St. Augustine ; the certificate and deposition of Major B. A. Putnam, the commander of the forces at Bulowville ; the depositions of J. G. Andrews, Capt. Geo. L. Phillips, Capt. D. Dummett, Francis Pelliceer, Col. Jos. S. Schanchez, and others, that the plantation of the said J. J. Bulow, jr., was selected and occupied as a military position by order of the proper officer, and made the headquarters of Major Putnam's command. That the houses of every description were used as quarters for the officers and soldiers, for military stores, and hospitals ; that a fortification was erected with materials obtained on the place ; that the dwelling-house was barricaded with bags of cotton taken on the plantation ; and that expeditions were fitted out from it against the Indians, both by land and water, from early in December, 1835, till late in January, 1836 ; that after the battle of Dunlawton the sick and wounded were carried to the hospital on said plantation, and that it was so occupied after that event until it was decided to be untenable against the increasing force of the Indians in the neighborhood, when it was abandoned, and immediately afterwards destroyed by the enemy.

In addition to this evidence, which has all been submitted to committees of one or the other House of Congress heretofore, the following letter from Major Benj. A. Putnam is now for the first time presented in support of the claim, and is important, as it completely establishes, among other things, the fact of the military occupation, against the will and in despite of the *resistance* of the owner of the property destroyed.

" WASHINGTON, D. C., February 6, 1843.

"SIR: In answer to your inquiries, in relation to the military operations by the troops under my command in the fall of 1835 and winter of 1836 at Tomoka, and the occurrences during my occupation there, I have to refer you to statements already made by me in the claims of Joseph M. Hernandez and William Buckner, executor of John J. Bulow, deceased. In addition to what I have already stated, there are some facts, which I will now mention. I would, however, here repeat, that the plantation of Mr. Bulow was not occupied by me merely for the defence of that property, but because it was an eligible position, and better suited than any other for conducting our military operations. I took possession of this place for the good of the service, and without consulting Mr. Bulow or obtaining his consent.

"He objected to the troops occupying his place, and manifested his op-

position in a very decided manner. On our approach to his place, he continued to fire upon us with a four-pounder, charged with powder, with the expectation, I presume, of preventing our going to his place. When, afterwards, I occupied his plantation, I had a large breast-work constructed, about forty feet square, with angles at the corners; this was about ten feet high, and made of large heavy cabbage logs. For getting out the materials and hauling them to the place, I made use of the ox and horse teams of Mr. Bulow and his negroes, and had them thus employed for ten days and upwards. We were obliged to haul the logs from a distance. If I could have obtained any place as eligible as Mr. Bulow's, I would not have occupied his on account of his strong aversion to our doing so. It was a large plantation, and quite open for a considerable distance all around, and the enemy could scarcely approach without being seen. We were also better enabled to keep open our communication with St. Augustine.

"After the battle at Dunlawton, we had every reason to think the Indians would pursue us by land, and occupy positions on the side of Smith's creek, through which we were obliged to pass with our boats. This creek is about ten miles in length, and very winding and narrow; and the west side might have been occupied very advantageously by the Indians; and if they had done so, they must have destroyed my whole detachment, as there were no means of escape, and we could have offered but a very feeble resistance in our very disabled condition; and the most of our arms, being wet, were unfit for service. I therefore made every exertion to get through this dangerous pass before the Indians could reach there; and fortunately did so. I believe, and had the best of reasons for so believing, that the Indians followed us up and were afterward about our encampment. They were in large force, only twenty five miles south of us, when we had the engagement with them; their success against us inspired them with boldness; the post at Bulow's was the head-quarters of my command, and from this place all the military expeditions were fitted out, and that which had the engagement with the Indians at Dunlawton. It must necessarily, then, have been a place of particular annoyance to them, and the particular object of their vengeance; and I believe they laid it in ashes as soon as they discovered they might do so with safety. We left the post, when we abandoned it, after dark, as it was deemed more safe to do so at that time than by day. We left the place in a fortified condition; and, as we left after dark, they might not have supposed the place to be entirely abandoned that night, though I believe, for the reasons I have stated, they did not delay its destruction longer than was necessary to ascertain that the troops had left it, which they might have certainly done the next day.

"I am, very respectfully, &c.

"BENJ. A. PUTNAM."

By the act of Congress of 1816, it is provided "that any person who has sustained damage by the destruction of his or her house or building by the enemy, while the same was occupied as a military deposite by authority of an officer or agent of the United States government, shall be allowed and paid the amount of such damage, provided it shall appear that such occupation was the cause of its destruction."

By the act amendatory of that act, passed 3d of March, 1817, that sec-

tion was construed "to extend only to houses or other buildings occupied, by an order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the military forces of the United States;" and by the fourth section of this last mentioned act, this principle was extended to embrace cases "of property lost, captured, or destroyed in the wars with the Indian tribes subsequently to the 18th of February, and prior to the 1st day of September, 1815, in the same manner as if captured or destroyed in the late war with Great Britain." This act established the distinction between property destroyed by the Indian tribes in time of war, and property taken or destroyed by the Indians in their predatory excursions amongst the white frontier settlers at all times, commonly called Indian depredations. And it was *exclusively* upon the assumption that this claim was based upon losses by Indian depredation as such, that the report No. 176, adverse to it, was made by the Committee of Claims of the House of Representatives at the 2d session 27th Congress. Had it been such, no doubt the principle assumed in that report would have been sustained, as Congress, it is believed, have never recognised a mere Indian depredation as forming the basis of a proper claim on the government; but this is not a case of that kind.

It is well known the Indians in Florida were at peace with the white inhabitants of that Territory, and that the most friendly intercourse existed between them when the policy of removing them west of the Mississippi was adopted by the United States government; and to carry out this policy, the United States army was ordered into Florida, to enable the government to remove this people from the walks and homes of their childhood, the lands and graves of their forefathers, *peaceably*, it is true, if it could be done, but forcibly if necessary, while it was well known that the great body of the Indians were opposed to being removed; and although no formal declaration of war was made, yet the government, in carrying out this measure of forcible removal, could have expected nothing less than what followed—a war. The acts, therefore, of attack or retaliation on the part of the Indians under such circumstances, when viewed impartially, must be deemed natural if not legitimate acts of self-defence. They cannot be properly considered as mere acts of Indian depredation; and although the conduct of the Indians may not have been governed in many respects by those rules which should govern civilized nations in time of war, yet it does appear, by the deposition of General Hernandez and others, that they did discriminate between private and public property. He says, "I do not know an instance in which they did not destroy buildings which were fortified, but I know a great many in which they did not destroy those which were not fortified. I believe all the buildings on Mr. Bulow's plantation were occupied for military purposes."

The destruction of such a military post as this at Bulow's was a matter of the utmost importance in the estimation of the Indians. A post from which they had been so long and so often annoyed by expeditions terminating in the fiercest contests, such as the battle of Dunlawton, in which they lost so many of their people, must have excited the most determined hostility to this military post, and the strongest determination to destroy it the moment it could be effected with any degree of safety to themselves. Perhaps no case of military occupation of private property for public use, by authority of the proper officer, during the late war with Great Britain, has been more clearly established by testimony than this; nor can there

be a reasonable doubt entertained, that its military use and occupation was the cause of its destruction by the enemy.

It is respectfully submitted that this case is brought by the testimony within the principles of the acts above recited, as well as the interpretation given of those acts by Mr. Madison to the Commissioner of Claims. See his instructions 5th and 6th class of cases, page 493, Am. State Papers, vol. Claims.

Nor can there, it is believed, be a case more strongly supported by the practice of the government in paying for property lost, captured, or destroyed by the enemy for its military use or occupation during the late war, along the northern frontiers of New York, on the Chesapeake bay, and on the banks of the Potomac river, in the States of Virginia and Maryland, as well as other parts of the country exposed to the ravages of that war.

Among the many acts for the relief of the Niagara sufferers, see the act for the relief of Gabriel Godfroy and Jean Baptiste Beaugrand, at French mills, on the river Raisin, for house burnt by the British and Indians, vol. 8, page 759, Laws United States;—act for the relief of Samuel Mims, for house burnt by the Indians at Fort Mims, in 1813, while occupied by the troops of the United States, vol. 7, page 247, Laws of the United States;—act for the relief of William T. Nemmo, Virginia, for house destroyed by the British for its military occupation by the United States troops in late war, vol. 7, page 248, Laws United States;—act for the relief of Mottrond Ball, Virginia, for house destroyed by British, vol. 6, page 364, Laws United States;—act for the relief of Henry and Robert Sewall, Maryland, page 156; Benjamin H. Mackall, page 724, and Michael Fenwick, page 1034, vol. 9, Laws United States. See also acts for the relief of Peter Ford, for his team of oxen, sled, and chains, impressed into the United States service and lost on the retreat of the guard having charge of the same at the river Raisin, vol. 8, page 247;—acts for the relief of Benjamin Clark, vol. 8, page 247, Laws United States.

The items in the appraisement of the petitioner's estate destroyed by the enemy, which it is believed come indisputably within the principles of the laws and practice above referred to, are as follows:

The buildings occupied by the United States troops and destroyed by the Indians for their military use, the harness, ox carts, and oxen, wagons, boats, flats, sails, and oars, impressed into the service of the United States and lost or captured by the Indians, with 22 bales of packed cotton used for breast-works, and destroyed with other property used in building fortifications.

For the loss of these, it is believed, the petitioner is entitled to relief; but the committee have no means of ascertaining satisfactorily the amount which should be paid on account of these losses of Mr. Bulow. They therefore desire to leave that matter to be ascertained and settled by the proper accounting officers of the Treasury; and for that purpose they report a bill.