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### Report : Petition of the Heirs of J. Kennedy

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S. Rep. No. 100, 32nd Cong., 1st Sess. (1852)

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IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1852.  
Ordered to be printed.

Mr. ATCHISON made the following

REPORT:

[To accompany bill S. No. 257.]

*The Committee on Indian Affairs, to whom was referred the petition of the heirs of Joshua Kennedy, respectfully report:*

That they have examined the case with great care, and find the facts to be in exact accordance with the narrative contained in the report of the Committee of Claims of the House of Representatives at the first session of the thirtieth Congress, herewith filed and intended to be made a part hereof. On entering upon the examination of this case, the committee felt a distrust of its justice, occasioned by the length of time during which it had been permitted to remain unsettled, and the fact that a commission had been appointed for the express purpose of deciding upon this and similar claims. The prejudice which had thus arisen soon passed away, however, on a careful examination of the facts as stated in the evidence, particularly when it was ascertained that there had been no laches on the part of the petitioner in presenting his claim, which had been left unsettled owing to the shortness of the time for which the commission was appointed, to wit: two years. The destruction for which the petitioners ask indemnity did not take place "while" the troops occupied the property; but there can be no doubt that "such occupation was the cause of its destruction;" so that the case, in the opinion of the committee, comes clearly within the spirit, if not the letter, of the act of 1816, and the supplement thereto. If the military occupation be the exciting cause of the destruction, it is difficult to imagine what difference the precise moment at which the destruction took place can make. It is the feeling of hostility, created on the part of the enemy by the act of the government in erecting a source of annoyance in their neighborhood, which makes the government liable for the consequences of its own act, and not the particular time chosen by the enemy to satisfy its vengeance. In the case under consideration, the petitioner had originally erected his buildings and other improvements under the assurance given in the President's proclamation that the persons and property of settlers should be protected. Subsequently these buildings were converted into a temporary fort by an officer of the government, and as such became the point of assault to the Indians immediately after their successful attack on Fort Mimms and the massacre of its garrison. It is

true, the party of troops which had occupied the premises had, in their panic, occasioned by the destruction and slaughter at Fort Mimms, retired; but immediately after that destruction, and whilst the military defences were still in existence, the premises were attacked and destroyed by the enemy.

Your committee, therefore, recommend the passage of the accompanying bill.