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Report : Petition of J. Getty

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IN THE SENATE OF THE UNITED STATES.

JANUARY 11, 1871.—Ordered to be printed.

Mr. PRATT, from the Committee on Claims, submitted the following

R E P O R T .

The Committee on Claims, to whom was referred the petition of Jerome J. Getty, of Minnesota, praying compensation for certain property destroyed by the United States troops during the winter of 1864-'65, submit the following report :

The petitioner states that in the year 1856 he settled as a præemptor on a certain quarter section of the public lands of the United States, in Stearns County, in the State of Minnesota, about 60 miles west of the Mississippi River, and during the same year built and with his family occupied a log house on the same having in the mean time duly entered and paid for his land; that he subsequently erected and completed, at a cost of \$1,200, a substantial, durable, and comfortable dwelling-house on the same land, moved into it in the year 1857, and continued to occupy it until the year 1861, when he removed temporarily to Minneapolis, intending to return the following year to his farm with 1,000 head of sheep, but on account of the outbreak of Indian hostilities in August, 1862, he was prevented from returning. He, however, did have a tenant on his farm up to the 1st of July, 1864. He states that during the winter of 1864-'65 a company of United States volunteers (Captain Slaughter's Company E, Second Minnesota cavalry) was on duty, with detachments at Sauk Centre and Lake George, and had patrols marching frequently between said posts in a course about north and south and on a route that passed not far from his house; that on a rainy night on or about the 15th day of December, 1864, seven men of said company quartered in his house, which was at the time vacant, and on the following morning the house was discovered to have been burned to the ground, and his opinion and belief are that it was destroyed in consequence of the neglect and carelessness, or other wrong-doing, of some one or more of these soldiers. He further states that the house was not insured; that he cannot learn the names of the soldiers who occasioned his loss; that he has received no compensation therefor; that he has been obliged to expend \$1,600 in rebuilding the house, and has sustained certain other consequential losses. He limits his prayer, however, to compensation for the loss of his house alone.

The claim of the petitioner, as thus stated, is substantially proved, except as to the extent of his damages. That is shown to be \$700. He is also shown to be a loyal man, and an enterprising and worthy citizen.

For the purposes of this case the committee assume the facts to be precisely as stated by the petitioner, and the question is whether they entitle him to any relief at the hands of the Government.

The evidence of the lieutenant of the company shows that several houses of the settlers, on the route patrolled by this cavalry company between Sauk Centre and the Lakes George and Johanna, were vacant because of apprehended peril, and that in uncomfortable weather the patrols halted and took shelter in them. No orders prohibited them from doing so. Supplies from Sauk Centre to the posts on the lakes mentioned were, during this period, and, indeed, as late as the fall of 1865, sent forward under escort.

For the time being the whole frontier region was in danger from the savages. It was the theater of their incursions and outrages. The lives and property of the settlers were not safe with all the protection the Government was able to extend. Hence they fled. Had the Indians, during this period of hostility, burned Mr. Getty's house, no legitimate claim for compensation could have been set up by him. Had the Government, by its military authorities, burned it as a war measure by way of precaution against its being used by the Indians, or for other purpose lawful by the usages of war, the petitioner would have probably been entitled to compensation under the constitutional prohibition against taking private property for public use without compensation. But this was not an act of the Government. The soldiers who did the act had no power to bind it. So far as the evidence shows, not even an officer accompanied them. They had no more power to bind the Government by their tort or negligence than any other employés in its service. It was no part of their duty to enter this house. They entered it without authority, and were clearly trespassers.

Upon what principle, then, is this claim founded? If it be recognized, how shall this case be distinguished from other trespasses committed by soldiers, whether in war or peace? How from trespasses committed by any servant of the Government, whether in the military, naval, or civil service? Why may it not be claimed in all cases, with equal reason, that the Government shall be made to respond in damages for the wrongs of those who happen to be in its employment?

The true inquiry in all cases should be, was the act complained of done in the lawful discharge of a duty imposed by law, resulting in injury to a private person. If so, the agent is protected and the liability of the Government is fixed.

In Story on Agency, at section 319, it is said :

It is plain that the Government itself is not responsible for the misfeasances or wrongs or negligences or omissions of duty of the subordinate officers or agents employed in the public service; for it does not undertake to guarantee to any persons the fidelity of any of the officers or agents whom it employs, since that would involve it in all its operations in endless embarrassments and difficulties and losses, which would be subversive of the public interests; and, indeed, laches are never imputable to the Government.

Apply the above inquiry to this case. Was it a part of the duty of this squad of soldiers to enter the private dwelling of a peaceable citizen in his absence? Was it a duty imposed by any law or order to take possession of that house, kindle a fire, disturb its arrangements, and remain there during the night, conducting themselves so negligently as to burn up the house? Were they as soldiers clothed with any more rights in this respect than private citizens? Clearly not. In so acting they went beyond any authority, and were outside of the protection guaranteed to them while in the line of duty, and made them-

selves liable as trespassers. It is not to be doubted that if Mr. Getty could discover the authors of the injury, he could hold them liable in a court of law for the damages he has sustained.

This case, in its substantial features, was before this committee at the second session of the fortieth Congress, when an adverse report was made by Mr. Willey, one of its members.

The committee, therefore, are of opinion that the relief prayed for by Mr. Getty ought not to be allowed, and recommend that his petition be indefinitely postponed.