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Report : Claim of T. M. English

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IN THE SENATE OF THE UNITED STATES.

MARCH 19, 1884.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, 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 T. M. English, administrator of the estate of Richard Fitzpatrick, deceased, have considered the same, and submit the following report :

At the commencement of the Seminole Indian war said Richard Fitzpatrick was the owner and in the actual possession of a plantation on the Miami River, in Dade County, in the southern part of Florida.

Some time during that war, at what time does not definitely appear, a small part of the plantation was occupied by the naval forces of the United States, under the command of Lieutenant Powell, who built block-houses, pickets, &c., thereon of timber taken from Fitzpatrick's land, and called the post Fort Dallas. The block-houses and the other buildings were subsequently destroyed by the Indians. It does not appear how long the plantation was occupied by the naval forces of the United States.

Afterwards, in February or March, 1838, by order of the Quartermaster-General of the United States, Fort Lauderdale, on New River, and Fort Dallas, on Miami River, were established on the same plantation, and they were occupied by the troops of the United States from that time till the year 1842. While the plantation was thus occupied, timber for building and wood for fuel for the use of the troops and of steamboats in the service of the United States were taken therefrom. The evidence does not show definitely the quantity of wood and timber thus taken, but it was probably from one to three thousand cords.

In 1836, and immediately upon the breaking out of hostilities, Fitzpatrick abandoned his plantation and removed his slaves from it. He was not able to remove his other personal property then on the plantation, and soon afterwards, and before the naval forces appeared, the whole of the personal property and all his buildings on the plantation were utterly destroyed by the hostile Indians.

Fitzpatrick first presented his claim to Congress (House of Representatives) at the second session of the Twenty-sixth Congress. In his petition he claimed compensation for his buildings and for all his personal property destroyed, as well as for the use or rent of the plantation and the wood and timber used by the military and naval forces of the United States. The amount he then claimed was \$60,320. The claim was reported to the House of Representatives from the Committee on Military Affairs, March 27, 1846, by Mr. Brinkerhoff.

The conclusions reached by the committee, were as follows, viz :

(1) That the petitioner is entitled to no compensation for the de-

struction of his property by the Indians; for if there be a principle well established in all the past legislation of Congress, it is that the citizen is entitled to no compensation for property destroyed by public enemies.

(2) That he is entitled to no compensation for the *occupancy* of his plantation by the troops of the United States; for, in the first place, there is no evidence that he could or would have occupied it himself had said military post not been established there, nor, in the second place, that the presence of the troops prevented his own occupancy of the plantation.

(3) There is evidence that a considerable quantity of wood was cut and carried off the plantation by and for the use of the troops and steamers of the United States; but the quantity is altogether uncertain, and the absurdly enormous price (\$6 per cord for standing timber) which he charges for this uncertain quantity indicates a fraudulent disposition on the part of the claimant, and throws at least some doubt over the whole claim. * * *

The committee declined to report any bill for claimant's relief.

The claim was next reported from the Senate Committee on Claims by Mr. Brodhead, May 25, 1852. In this report the statements made by Colonel Harney and General Jesup are recapitulated, and the committee state that they concurred in opinion with General Jesup that the claimant is entitled to compensation for the use of his land, and for fuel, timber, and other property taken and used by the United States troops. * * *

The committee further stated that there was no sufficient evidence before the committee by which a judgment could be formed of the amount and value of the property taken and used by the troops.

The committee further said that the quantity of wood is estimated at from 1,200 to 3,000 cords, and the price is fixed by one of the witnesses at \$6 per cord, the price charged in the account. "The price appears to the committee to be evidently extravagant."

The committee reported back a bill directing the Secretary of War to ascertain the amount and value of the timber taken, and the value of the occupation of the plantation.

A similar report was made by the Senate Committee on Claims, January 18, 1854, and a similar bill reported. This bill passed the Senate and went to the House of Representatives. The bill was favorably reported from the House Committee on Military Affairs, by Mr. Faulkner, February 2, 1855, with the following amendment, viz:

And provided the amount so paid shall not exceed \$10,000.

This bill, together with all the papers relating to the claim, was sent by the House of Representatives to the Court of Claims.

The Court of Claims, under the law at that time, could not enter judgment; but the practice of the court was to recommend bills to Congress for passage, giving force and effect to its findings.

There was no trial, in any proper sense, of the case in the Court of Claims. It was examined by the court solely upon the *ex parte* statements submitted by claimant to Congress, and some additional statements, not under oath, made in 1858 by Stephen R. Mallory, then a Senator from Florida.

On the 14th of May, 1858, the Court of Claims submitted its report upon the claim to the House of Representatives. The report is No. 175, reported in volume 3, Reports of Court of Claims, 1st session Thirty-fifth Congress. The report contains all the evidence, so called, submitted to the court in favor of the claim. The evidence was all upon

the part of claimant. No evidence was submitted upon the part of the United States. The court reported a bill to Congress in favor of Fitzpatrick for \$12,000, as compensation for the wood and rent. During the Thirty-fifth Congress this bill passed the Senate, but was not acted on by the House. A similar bill passed the Senate during the Thirty-sixth Congress, but was not acted on by the House.

The Court of Claims, in its finding, bases its conclusion on the statements of Mr. Mallory. Mr. Mallory, in answer to the question, "What would be a fair annual allowance by the Government for the use of said plantation during the period of its occupation?" said:

I cannot estimate the value of the use of the plantation to the United States while thus occupied. * * * I can refer to the opinion of General Jessup, on file in this case, and say that the use of the place, with the wood used upon it, ought, in my judgment, to be worth \$3,000 per annum, but I have no accurate data to arrive at this estimate.

In another statement made by Mr. Mallory, he speaks of his estimate of \$3,000 per annum for the wood used and the use of the plantation, and says:

This estimate is, I believe, a very moderate one, and is formed exclusively on my own judgment. I cannot say what the place would have rented for in open market, for it was the only plantation within a hundred and fifty miles of it, and there were no planters near it able to rent it.

In an unverified statement made by Mr. Mallory February 12, 1858, he says that he cannot specify the quantity of wood cut, and that the wood cut ought to be worth a dollar a cord.

The court found that the plantation was occupied by the United States for four years; that claimant's private property was taken for public use, and that he was entitled to just compensation therefor.

Fitzpatrick's plantation was situate in a hostile Indian country, where flagrant wars existed between the United States and the Seminole Indians for nearly four years. Fitzpatrick's property was not taken possession of, nor used under or by virtue of article 5 of the Amendments to the Constitution, which provides that just compensation shall be made for private property taken for public use. This amendment was not intended to apply to or to regulate the operations of war. The property was taken possession of, occupied, and used under the war power of the Government, as a military necessity. The taking possession of and occupying the property was a lawful act of war, and must be presumed to have been proper and necessary, as the officer in command so determined.

The rule, as we understand it, is that for property within an enemy's country taken or destroyed in time of war, as a military necessity, the owner, whether an enemy or a friend, is not entitled to compensation. (The Gray Jacket, 5 Wall., 342.)

The claim was referred by the House of Representatives to the Court of Claims to find the facts, not to determine the law governing the case. Congress is not bound by the finding of facts made by the Court, nor by its conclusions of law.

We do not concur with the Court of Claims that the Government is liable for its occupation or use of Fitzpatrick's property.

We therefore recommend that the claim be not allowed.

There is no evidence before the committee that the present petitioner, English, is administrator of the estate of Fitzpatrick, but suppose this omission of proof could be supplied.