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John McClenahan [to accompany bill H.R. no. 85].

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H.R. Rep. No. 78, 23rd Cong., 1st Sess. (1833)

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JOHN McCLENAHAN.

[To accompany bill H. R. No. 85.]

DECEMBER 24, 1833.

Mr. DICKINSON, of Tennessee, from the Committee on Indian Affairs, made the following

REPORT:

*The Committee on Indian Affairs, to which was referred the petition of John McClenahan, make the following report:*

The petitioner alleges that, in the year 1818, Joseph McMinn, Esquire, Governor of the State of Tennessee, acting as agent under authority from the Secretary of War, sold a certain Indian improvement, known as David Gentry's improvement, to Moses H. Swann, who was the highest bidder, at public auction, for the sum of one thousand dollars, on lease for the term of three years, or until the State of Tennessee should exercise dominion over the same; that the petitioner procured the lease from Swann, and moved upon the premises in February, 1819; that he made considerable improvements upon the premises, and commenced a crop of forty-two or forty-three acres of corn, two acres of cotton, two acres of oats, one and a half acres of sweet potatoes, and half an acre of cabbages and other vegetables; that the crop was well cultivated, and promised a profitable production; that, after the crop was matured, and before the harvest, the lease was declared void by the Secretary of War, and the crop totally destroyed by order of the Government.

The committee are of opinion the material facts alleged in the petition are satisfactorily sustained by the evidence submitted to them.

The Government, by its agent, Joseph McMinn, Esq., assumed the right to dispose of the improvement. Swann, induced by the assurances of the agent that there was no hazard, became the purchaser. The Government, by its agent, required of Swann an obligation for the payment by him to the Government of the sum of one thousand dollars, for the three years' lease. Neither party could rescind the contract without the consent of the other.

The Government was therefore bound to protect Swann in his possession, according to the terms of the contract; and, if forcibly, or otherwise legally dispossessed without his consent, to respond to him in damages. The petitioner, relying on the good faith of the Government, purchased the lease from Swann, for the consideration of one hundred and eighty bushels of

corn, as appears from the testimony adduced. It does not appear that Swann, at any time, rescinded the contract in favor of the Government. The sale of the improvement from Swann to the petitioner, for a valuable consideration, vested in the petitioner all the rights and estate which attached to Swann in virtue of his contract with the Government. The committee are therefore of opinion that the petitioner is entitled to receive from the Government the value of the crop which was destroyed by order of the Government. The evidence submitted estimated the promised production of the corn crop at from forty to fifty bushels per acre; and it is proven that corn, about the time of the destruction of the crop, was, in that section of country, selling at one dollar per bushel. Assuming, in reliance upon the evidence, that there were forty-two acres in corn, which, but for the destruction of it, would have yielded forty bushels to the acre, and that it was worth one dollar per bushel; the claim of the petitioner against the Government, for the corn crop, may be fairly estimated at sixteen hundred and eighty dollars. The means of arriving at a reasonable estimate of the value of the other part of the crop are too doubtful to be relied on. This item in the claim, with the value of the labor bestowed on the improvements of the premises, may, perhaps, be safely considered as compromised by the liberal allowance proposed to be made for the loss of the corn crop. The committee herewith report a bill for the relief of the petitioner.