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John H. Robinson.

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JOHN H. ROBINSON.

JANUARY 8, 1834.

Read, and laid upon the table.

Mr. E. WHITTLESEY, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to which was referred the petition of John H. Robinson, report:

That the petitioner claims the United States should pay him for three horses, whose value was two hundred and thirty dollars, which were stolen from him in the month of October, 1813, while he was transporting a load of flour from Upper Sandusky to Lower Sandusky, in the State of Ohio. He states that he went to Upper Sandusky with a load of oats for sale, when the quartermaster, Hughes, impressed him with his wagon and horses into the service of the United States, to go to Lower Sandusky with a load of flour; that on the second night three of his horses were stolen by the Indians, and never recovered again; that they were carefully tied to his wagon, and were lost without any neglect on his part; and he says he has never received any pay for the use of his wagon, although the flour was taken by the United States team to Lower Sandusky. He says he attempted to present his claim to the commissioner of claims, but was not able to do so until after the law expired, under which the commissioner acted, and that he has not been enabled to ascertain where the quartermaster resides.

The papers referred to by the petitioner are before the committee. The claim was presented to Congress on the 20th of January, 1820, and an adverse report was made on the 11th of February, 1820, to which the committee refer.

In the affidavit made by the petitioner in preparing his papers for the commissioner of claims, he states that his team was impressed by Sims, who was a quartermaster. In that affidavit he refers to the depositions of Joseph Cunningham, George Wilshorn, and John Elgar.

Joseph Cunningham and George Wilshorn testify, among other things, that they were at Upper Sandusky in October, 1813, on their way to Lower Sandusky, with their own private property, and, on being informed the said Robinson was about to take a load of United States property, they assisted in helping him to load his wagon with flour, and on their way to Lower Sandusky three of said Robinson's horses were stolen or captured, and supposed to be by the Indians; the reason why said Robinson's

horses were stolen in preference to theirs, in the opinion of these witnesses is, that they were considerably further from the fire than theirs. They think the loss was without any fault or negligence on the part of the petitioner.

John Elgar was acquainted with the horses, and thinks they were worth \$230.

Richard Thompson testifies that the petitioner, being at Upper Sandusky with a load of oats of his own property, was told by one Johnston, who was principal wagon master, that he must go to Lower Sandusky with a load of flour for the United States army, and, if he would not go willingly, he (the said Johnston) would make him go; upon which the said Robinson agreed to go. He says Hughes was quartermaster at Upper Sandusky. That in about two days Robinson came back, and stated that three of his horses were lost, upon which Hughes requested he would take the United States' horses and take his load on, but he does not know whether he went on or not.

Isaac Painter testifies that he was at Upper Sandusky at the time, and that Mr. Hughes, the quartermaster, employed John H. Robinson to haul a load of flour to Lower Sandusky, and some days after he came back and said he had lost his horses, and while he staid there he drew his rations as being in the United States service.

There is considerable discrepancy in the testimony relative to who was the officer who impressed or employed the petitioner. The testimony of that officer is essentially necessary if he is in existence, and, if he is alive, it has been and now is in the power of the petitioner to ascertain to what corps he belonged, and very likely he might easily ascertain his residence even at this period.

The committee cannot come to any other rational conclusion from this evidence, than that the team and wagon were taken into the service by contract, and not by impressment. There is not one of the witnesses who speaks of impressment. If the horses were in the service by contract, the United States did not become the guarantors against thefts and accidents. This has been the construction put upon the acts of 1816 and 1817 at the department and by Congress. The committee think it is very likely the petitioner is entitled to a compensation for the hire of himself, team, and wagon until his horses were stolen, and for the use of his wagon, and for his own services afterwards; but there is no evidence before the committee of the time for which an allowance should be made, nor is there any evidence relative to the price to be paid. The committee submit the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.