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Joseph M. Hernandez.

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JOSEPH M. HERNANDEZ.

[To accompany bill H. R. No. 877.]

JULY 6, 1838.

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

REPORT:

The Committee of Claims, to which was referred the petition of Joseph M. Hernandez, report:

That General Hernandez, the petitioner, owned a plantation at St. Joseph's, south of St. Augustine, Florida, at and before the commencement of the war with the Seminole Indians; that he had, at his said plantation, a quantity of corn, supplies of provisions, and forage; much of which, if not all of it, was taken, used, damaged, or destroyed, by the troops in the service of the United States. There were sheds and buildings on said plantation, and a part or all of them were used by the troops, and a part or all of said sheds were removed and used for the construction of a building for an hospital or for other purposes. The plantation was occupied for some time as a military post; and troops, in going south, halted at it, in many instances, to obtain supplies and refreshments. He presents two accounts, marked M and N. The account marked M amounts to \$5,267 80; the items are for corn, for negro-houses, and a blacksmith's shop, torn down and used to construct an hospital; for cattle consumed, and for wood taken by the troops. The account marked N amounts to \$8,721 75; \$8,000 of this amount is for cane, which, it is said, was on the plantation when Colonel Brisbane took possession of it. The cane is represented to have been in banks. The balance of the account is for fodder, carts, and plantation tools, bees, cattle, damage done to buildings, and for wood consumed.

It appears from the deposition of John T. Williams, that General Hernandez's plantation was occupied as a military post from the latter part of December, 1835, to the 27th of January, 1836, when the troops, at the last date, abandoned the post, and returned to St. Augustine. When the troops left, the buildings consisted of a sugar-house, engine-house, boiling-house, corn-house, negro-houses, and other buildings, in good condition. The corn was estimated to be about 3,500 bushels; the cane in banks, it was supposed, would make about fifty hogsheads of sugar and twenty-five of molasses. It was supposed that the fodder was about 80,000 pounds weight; that there were forty-four head of oxen, fifty head of stock cattle, a few hogs, three horses, and about one hundred and forty cords of wood, together with farming utensils and carpenter's tools. The plantation was

not resorted to by white persons between the time it was abandoned, on the 27th of January, 1836, until it was re-occupied by Colonel Brisbane, about the middle of February.

Colonel Brisbane states, in his certificate, that the plantation of General Hernandez was occupied as a military post by Major N. G. Walker, with four companies from his Regiment, from the 20th to the 25th of February. This was probably the first reoccupation of the plantation after the 27th of January; and between its abandonment on that day, and its reoccupation on the 20th of February, Mr. Williams says that the sugar-house, and engine and boiling-houses were destroyed and burnt by the Indians, and that no other injury was done to the property. The buildings burnt had been picketed in by the troops that previously occupied them; that the remainder of the property mentioned was on the plantation when Colonel Brisbane took possession.

There are several certificates for corn and other articles that were taken by the officers when stationed at this plantation, or who were passing or repassing it with their troops. A quantity of corn was taken and put into pits that were dug in the ground, under two or more cattle-sheds. These sheds were afterwards removed by the order of an officer in command, to construct a building for an hospital. The corn in the pits was thus exposed to the wet, and it was suffered to remain there until it became heated and injured, and, finally, a part of it was useless. Some corn was thrown out of the loft of a house, to make room for the sick; cattle were killed for the subsistence of the troops. Whatever property was thus taken possession of, and used, and consumed, or destroyed for the benefit of the service, and under circumstances that forbid the conclusion that the acts were wanton, ought to be paid for at a fair price.

The cane that was used falls under a different principle. It was useless and valueless to the owner. The plantation had been abandoned, and the houses, with their fixtures for the manufacturing of sugar, had been destroyed by the Indians. It is not cultivated as an article of forage, and no officer would be justified to use it, and to subject the United States to pay for it at the price it bears as an article of merchandise. The taking of the cane does not seem to have been done by order of an officer; but it appears rather to have been the act of the soldiers, under the apprehension that it was abandoned, and might be used by the first occupant. The extent to which payment should be made for the cane, if any compensation should be given, is, to pay the price it was worth to the United States as an article of forage. What its value was for that purpose, is not known to the committee. It could not have been used by General Hernandez, as his houses and machinery were destroyed by the Indians before the cane was taken by the troops; and it appears, by the testimony of Mr. Brodnax, that he withdrew again from the plantation about the last of April, because the troops were retiring; and so closely was he pressed, that the Indians captured about a dozen of the negroes as he was in the act of taking them away. The last of the military force at the plantation was Captain Irwin's company of mounted men, which was withdrawn on the 14th of May; and from the circumstance that a fire was seen in the direction of the plantation that evening, it is supposed by Mr. Brodnax that what remained of the buildings was destroyed at that time by the Indians.

Some oxen, carts, chains, &c., were impressed; but the testimony does not show that this property, or a part of it, was not returned.

The petitioner, in making out his account, charges what cattle, farming utensils, &c., were on his plantation; and then he gives credit for such as have been specifically accounted for by the officers, or that are known not to have been used or consumed for the service. This principle is evidently erroneous, as it is based on the assumption that the United States are responsible for all the petitioner's property which he abandoned in consequence of Indian hostilities, and that what they cannot account for they are liable to pay for. The risk of the property is on the owner; and whatever the United States used, they should make a just and reasonable compensation for to the owner.

There was a general conflagration of the houses in May. So far as these houses had been previously used by the troops, and so far as they had been necessarily destroyed for the benefit of the service, and by order of an officer, a compensation should be given; but a removal of the house might not have been its destruction, and thereupon it does not follow, because a house was removed, that its full value should be paid. The committee think the petitioner is entitled to relief to the extent mentioned, and report a bill to embrace the above principles.