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IMPRESSMENT OF PROPERTY, AND INDIAN DEPREDACTIONS
IN FLORIDA, GEORGIA, AND ALABAMA.

MARCH 1, 1837.

Read, and laid upon the table.

Mr. E. WHITTLESEY, from the Committee of Claims, to which the subject had been referred, made the following

REPORT :

The Committee of Claims, to which was referred, on the 14th of December last, "so much of the President's message as relates to the taking of the property of individuals for public use, and the relief of sufferers by Indian depredations, or by the operations of our own troops in Florida, Alabama, and Georgia," report :

That the message, so far as it is embraced in this reference, contains two distinct subjects : 1st. Taking of property for public use ; 2d. The relief of sufferers : 1st, by Indian depredations ; 2d, by the operations of our own troops.

Having received the resolution notifying them of the reference, the committee, by their chairman, with as little delay as was practicable, addressed the following letter to the Secretary of War :

WASHINGTON, December 17, 1836.

SIR : I am directed, by the Committee of Claims, to transmit to you the copy of a resolution passed by the House of Representatives on the 14th instant, referring to the Committee of Claims "so much of the President's message as relates to the taking of the property of individuals for public use, and the relief of sufferers by Indian depredations, or by the operations of our own troops in Florida, Alabama, and Georgia."

That part of the President's message referred to in the resolution, is contained in the following extract :

On the unexpected breaking out of hostilities in Florida, Alabama, and Georgia, it became necessary, in some cases, to take the property of individuals for public use. Provision should be made, by law, for indemnifying the owners ; and I would also respectfully suggest, whether some provision may not be made, consistently with the principles of our Government, for the relief of the sufferers by Indian depredations, or by the operations of our own troops.

I am directed by the committee to ask what kind of property of individuals was taken for public use ; and they will thank you to give such

information as you possess relative to the necessity of taking it; and whether the same was taken by the order of officers who were at the time, or were afterwards, in the military service of the United States; and whether the property so taken was appraised at the time it was taken; and whether receipts or certificates for the property were given to the owner by the person taking it.

If any branch of the military service in the operations referred to was supplied by contract, it is important, in the investigation of matters submitted, to know whether a contractor has obtained a credit for any property so taken as having been furnished by himself, or whether he has vouchers which will enable him to obtain such a credit.

The President suggests "whether some provision may not be made, consistently with the principles of our Government, for the relief of the sufferers by Indian depredations, or by the operations of our own troops."

Congress passed an act, on the 9th of April, 1816, entitled "An act to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes;" to which, and to the acts amendatory thereto, the committee call your attention.

The accounting officers, during the existence of that act, and during the existence of the amendatory acts, were controlled by the provisions of said acts in deciding the numerous cases presented for depredations committed during the late war with Great Britain, whether such depredations were committed by the British or by the Indians.

Many depredations were committed by the Indians after the surrender of the northwestern posts in Michigan, and on the western frontier; and, also, in the southwest, after the fall of Fort Mimms; which have not been allowed, because they did not come within the acts mentioned.

They were cases of great hardship; but in legislating on this subject, whether generally or specially, Congress has thought proper to restrict relief to those cases where the property was taken for the public service; or was necessarily destroyed in the public service; or, having been in the public service, was destroyed in consequence thereof.

The interior frontiers, from the formation of the Government, have been the scenes of Indian wars and depredations. The subject submitted to the committee is of great importance to the United States, and the citizens whose property has been destroyed; and, in its investigation, the committee desire to obtain all the information that can be furnished. If there is any thing peculiar in the depredations spoken of by the President, the committee desire to know in what that peculiarity consists, so that they may be able to determine whether to recommend general or special legislation.

The principles heretofore governing the legislation of Congress appear to have been, that depredations committed by an Indian tribe, during a state of actual hostility with such tribe, did not present proper claims for indemnity, inasmuch as no Government can be expected to protect its citizens from all the calamities and losses of war.

If there is any thing in the cases referred to, in the opinion of the President, to modify or control this general principle, and to discriminate them from those that have existed in other Indian wars, the committee are desirous it should be fully submitted in the answer.

Very respectfully, yours,

E. WHITTLESEY.

Hon. B. F. BUTLER, *Secretary of War ad interim.*

In thus addressing the President through the Secretary of War, as the proper organ for this branch of the public service, the committee supposed they were strictly discharging their duty towards the country and towards the sufferers.

The communication was drawn with an anxious desire to obtain all the information in the possession of the War Department, and which might otherwise have come to the knowledge of the President, relative to the subjects submitted for investigation.

They did not doubt in the least that such information would not only have been given cheerfully, but promptly.

If the property of our citizens was necessarily taken in the common defence of the country, speedy reparation was due to the owners.

If those who had suffered by Indian depredations, or by the operations of our own troops, were to be relieved, it was due to them that aid should be given as soon as was practicable.

The first communication received from the Secretary of War, in answer to the inquiries contained in the foregoing letter, was dated on the 18th of February. It commenced by acknowledging the receipt of a letter from the chairman of this committee, dated the 16th of December, 1836, on the subject of the payment of certain Tennessee volunteers, and of other equitable claims growing out of the services of the militia; and on the subject of property impressed, he said: "In addition to numerous claims for property impressed into the service, and consumed, or retained by the United States, some have been presented for damages done to property impressed, but retained only for a season. I have decided that claims for such damages stand on the same ground as claims for property impressed and kept, and equally require the sanction of Congress."

On the 23d of February, the committee received the following communication:

WAR DEPARTMENT,
February 22, 1837.

SIR: In my communication of the 18th instant I had the honor to notice that part of your letter of the 17th of December last which related to claims for property impressed into the service of the United States, or taken for its use, during the recent Indian hostilities. In the same letter you asked for information as to the kind of depredations referred to by the President in that part of his annual message in which he suggests, as a subject of legislative inquiry, "whether some provision may not be made, consistently with the principles of our Government, for the relief of the sufferers by Indian depredations, or by the operations of our own troops;" and you particularly invite a full statement of the views of the President, as well as of the department, in respect to the propriety of making such provision for property destroyed during the late Indian wars.

Official avocations of a more direct and imperative nature have hitherto prevented me from replying to this part of your communication, and they compel me at this time to confine myself to a very brief and imperfect examination of the subject referred to me by the committee.

It is not in my power to enter into a minute specification of the kinds of depredations referred to in the passage above quoted from the President's message. The cases which are known to the department consist generally of the destruction of houses and other buildings, and their contents, by

fire; the destruction or carrying off of slaves, cattle, and other moveable property; and the ordinary depredations attending Indian warfare.

The damages ascribed to the operations of our own troops, and complained of to the department, were alleged to have been occasioned by the temporary occupation of plantations and buildings for military purposes.

The principles which have governed the legislation of Congress in former Indian wars, and to which you have alluded, were no doubt founded on the well-established general rule, that a nation is not bound to make good to its citizens the losses they may sustain by the depredation of their property in war.

To this rule, however, the usage of modern times has introduced an important exception; and it is now considered the duty of the Government, when it has the requisite ability, to make compensation for private property destroyed by the enemy, whenever such property has been attacked and destroyed in consequence of its having been used or occupied for military purposes. This latter principle has been repeatedly acted upon by our own Government. The "act to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes," approved April 9, 1816, and referred to in your letter, proceeded on it.

The ninth section provides that the owners of houses occupied by any officer for the military service of the United States, and destroyed by the enemy during the late war with Great Britain, shall be paid the value of such house, "provided it shall appear that such occupation was the cause of its destruction."

The same principle was recognised in several special laws subsequently passed for the relief of particular individuals. The reason for excepting cases of this sort from the general rule evidently is, because the property in question has been made, by the act of the Government, a *peculiar object of hostile attack*, so as to expose it, above the property of other citizens of the nation, to the special depredations of the enemy.

The dwellings and other private property of the inhabitants of Florida during the recent hostilities with the Seminoles, appear to me to have been placed, by the acts of the Government of the United States, in a condition analogous to that of the property above referred to.

Those hostilities undoubtedly had their chief origin in the unwillingness of the Indians to leave the territory over which they had formerly exercised or claimed dominion, and to remove to the new homes assigned to them in the west.

The policy of removals, though agreeable to the wishes of the white inhabitants, was yet established by the Government of the United States, to which the Territory was exclusively subject, and on which it was dependant for protection. However blameless the conduct, or efficient the exertions of the General Government may have been, the hostilities of the Indians, when once resolved on, would necessarily fall on the neighboring white inhabitants and their property, not only from their contiguity to the Seminoles, but also from their occupation of the lands from which the Indians were obliged to depart.

In these respects, the situation of the inhabitants of Florida was entirely different from all the other citizens of the United States. Besides, from the very limited force of the Indian enemy, it was impossible that his ravages could be extended to any other part of the United States; and, therefore, the property of all the inhabitants of the other States was necessarily exempt from all exposure in this respect.

It is true that, in common with the inhabitants of Florida, other citizens

were liable to bear their proportion of the pecuniary charges occasioned by the war; and such of them as were employed in the military service were also liable to engage in the defence of the country. But so far as it respects the exposure of private property to the hazard of destruction by the enemy, there was no room for such exposure except where the war broke out, or in its immediate vicinity; and the property of every white person in those quarters was, for the reasons above stated, peculiarly exposed to such hazard, and that by the direct agency of the General Government.

It is also to be observed, that, on the removal of the Seminoles, the land ceded by them will become subject to sale as a part of the national domain; and the inhabitants of the Territory whose property has been destroyed by the Indians would, on this ground, and for the other reasons already stated, seem to have a strong equitable claim on the proceeds of those lands, to indemnify them for their losses.

To some extent the foregoing observations apply also to the losses sustained by the inhabitants of Georgia and Alabama during the late hostilities of the Creeks. It appears, however, from the reports of the commissioners appointed by the President in pursuance of the resolution of the House of Representatives of the 2d of July last, that those hostilities were, in part, at least, to be ascribed to frauds practised on the Indians by the white persons residing in their vicinity; and it must also be remarked, that the lands ceded by the Creeks within the State of Georgia are to become the property, not of the United States, but (under the compact between it and the State of Georgia) of that State.

On the other hand, there are other circumstances, well known to form a part of the history of those hostilities, which may perhaps counterbalance the circumstances just stated.

The Creeks, after the treaty of 1832, were under the exclusive care of the General Government; and though every thing was done by it which prudence or good faith suggested, yet the inhabitants of the States of Georgia and Alabama would seem to have some ground for charging the war to what has proved to be the inadequate provision made by the General Government to enforce the execution of the treaty. Whether the particulars in which the case of the sufferers in Georgia and Alabama differs from that of the people of Florida are such as to justify a less favorable rule of treatment, and whether, indeed, any of these cases should be made the subject of legislative provision, are questions on which it is the exclusive province of Congress to decide.

In the annual report from this department, I thought it my duty to call the attention of the President to the subject; and he so far concurred with me in opinion as to lay the subject before Congress in his message. Strictly speaking, the duties of the Executive Department ended with the making of those suggestions; but, as I was very desirous to afford all the aid in my power to the committee, I retained your letter in my hands, in the hope that I might be able in due season to give the subject a thorough examination.

Having been disappointed in this, nothing but the desire just mentioned would have induced me to offer to the committee, on so important a subject, the imperfect remarks contained in this communication.

Very respectfully, your most obedient servant,

B. F. BUTLER,

Secretary of War ad interim

Hon. E. WHITTLESEY,

Chairman Committee of Claims, H. R.

The committee asked for facts on which they might base a report ; but instead of facts, after a lapse of more than two months, they are furnished with an argument.

The reason why buildings which were destroyed by the enemy, and other property in the military service of the United States, during the war with Great Britain, were paid for, under the act of April 9, 1816, and the acts amendatory thereto, is, that the enemy was justified in such destruction.

No compensation has been made, by either general or special legislation, where the destruction was wanton.

If the destruction of the property in Florida, Georgia, and Alabama, is analogous to the cases provided for by the acts mentioned, as is supposed by the Secretary of War *ad interim*, then the Indians are justified.

The British were justified in the destruction of buildings, because, being used down to the time of destruction as public property, so far as the enemy was concerned, they were public property, and became legitimate objects of destruction.

The committee would recommend relief in all cases of the same character as those where relief has been granted ; and it was for the purpose of knowing whether they were of the same character, that information was desired.

They are not able to see the force of the argument, that, because the land in Florida will be brought into the market as a part of the public domain, therefore, the people of Florida have any claims superior to the people of Georgia and Alabama ; nor are they able to discriminate between the destruction of property in the present war, and the losses that the inhabitants in Michigan, Indiana, Illinois, and in other places, suffered during the war of 1812, and during other hostile movements of the Indians. This remark is made from what are supposed to be the facts, but without any prejudice to the claims ; as to which, the committee will come to no conclusion until the proof shall be produced. Then, and not till then, can it be known whether the cases come within either the general or special legislation of Congress.

The Secretary of War *ad interim*, towards the close of his letter, says : " I thought it my duty to call the attention of the President to the subject ; and he so far concurred with me in opinion, as to lay the subject before Congress in his message. Strictly speaking, the duties of the Executive Department ended with the making of those suggestions ; but as I was very desirous to afford all the aid in my power to the committee, I retained your letter in my hands, in the hope that I might be able, in due season, to give the subject a thorough examination."

The President called the attention of Congress to the depredations spoken of, in his annual message, under the third section of the second article of the constitution of the United States, which is as follows : " He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient."

It will be seen by the remarks of the Secretary of War *ad interim*, that he holds that the duty of the Executive Department ends with the act of recommendation.

The committee say, " with the act of *recommendation*," because they

consider the President's "*suggestion*," in the manner it was made, to be a recommendation, and that he so intended it.

Against that doctrine, the committee, with all the respect due to the public and private character of the officer making this declaration, enter their solemn protest. The Executive of the United States, from the station he occupies, necessarily receives information on all subjects of national concernment. Such information is the basis of his recommendations to Congress; and the doctrine is as unsound as it is new, that he is not bound by official duty to communicate it to Congress, when it shall become necessary for the purposes of legislation.

The committee have not such information on the subject of the impressment of property, nor on the subject of the destruction of property by the Indians, or by our own troops, as will warrant them in recommending legislation at this time. They submit the following resolution:

Resolved, That the Committee of Claims be discharged from the further consideration of so much of the President's message as relates to the taking of the property of individuals for public use, and the relief of sufferers by Indian depredations, or by the operations of our own troops in Florida, Alabama, and Georgia; and that the same do lie on the table.