

1-28-1842

Report : Mr. Wright

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Recommended Citation

S. Doc. No. 81, 27th Cong., 2nd Sess. (1842)

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IN SENATE OF THE UNITED STATES.

JANUARY 28, 1842.

Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

The Committee of Claims, to whom have been referred the petition and papers of Henry W. Andrews, report:

That the petitioner represents himself as the owner of a plantation on the Tomoka river, in the county of Moscheto, and Territory of Florida; which plantation is called and known by the name of Caniekerfergus, and which he was compelled to abandon, in the latter part of the year 1835, in consequence of the hostilities prevailing between the Seminole Indians and the inhabitants of the Territory. He puts his abandonment of his buildings and property upon the express ground that there was at that time no competent and efficient force in that portion of country to protect the lives and property of the inhabitants from the Indians, and that he was, in consequence, compelled to abandon his plantation and property, and retreat to a place of safety.

He further states in the petition, that in the early part of the year 1836, and soon after the military force was compelled to retire from that portion of the Territory, the buildings and crops upon his plantation were destroyed by the hostile Indians, and prays that Congress may take his case into its consideration, and grant him relief, in conformity with the provisions of the act of Congress of the 9th of April, 1816, or in such other manner as to Congress may appear to be correct; having thrown into the petition, by an interlineation, and, as it were, as an afterthought, the allegation that the premises had been used as a military post by the troops of the United States.

The papers annexed to the petition, as proofs to support the claim, are marked from A to P, inclusive; but most of them are not material to the view of the case which the committee propose to take, and only such as are will be noticed, and those as briefly as shall be consistent with a full presentation of the points upon which their conclusions are founded.

The paper marked A is a schedule of the property alleged to have been destroyed by the Indians, and for which compensation is claimed; being the dwelling-house, kitchen, steam-engine-house, with the engine, and boiling and cutting-house, and cistern, for sugar-making, a cotton-house, framed ginning-house, stable, carpenter's shop, corn and fodder house, twelve negro-houses, blacksmith's shop, pigeon-house, and dwelling-house

for overseer—all valued at \$17,670—fences on the plantation \$200, and sugar-cane destroyed \$1,066 66; thus, making the amount of the whole claim \$18,936 66.

A variety of evidence is found among the papers to establish the value of the property, as claimed, and to prove the fact of the destruction, which it not proposed to notice, as those facts are not material to the view of the case which the committee have taken; and they are not, therefore, to be considered as admitting, or as contradicting, those portions of the evidence.

The orders for the movements and stationing of the various detachments of the Florida militia—which seem to have been the only troops in service in that part of the country, at this early period of the Florida war, copies of which are part of the papers in this case—together with the testimony of such of the officers as have been examined as witnesses, will, the committee think, fully show that the troops were sent to this plantation, and to other points in its vicinity, purely and solely for the purpose of protecting the property of the inhabitants and their persons from the hostile incursions of the Indians, and not for the purpose of finding quarters or supplies for the troops, or of establishing military posts from which they might carry on an offensive warfare against the savage enemy, any further than such warfare should be in furtherance of the main object of protection and defence of the persons and property of the inhabitants of the country; and if that shall appear to have been the object of the military occupancy of the property of the petitioner, and especially if it shall further appear that the troops did so occupy and defend his property as long as they had the physical ability to do so, and for a long time after the petitioner made up his mind that his own personal safety demanded his abandonment of his plantation, and his retreat to a place of safety, the committee believe it will not follow that the United States should pay for the property because the troops in service were not able successfully to defend it from the incursions of a wily and savage foe in perpetuity.

The first piece of testimony to which the committee refer the Senate, to ascertain the facts upon these points, is the order of Brigadier General Hernandez, of the 2d brigade of Florida militia, and the commanding general in that division of the Territory at the time, to Major Benjamin A. Putnam, of the St. Augustine Guards, under date of the 17th of December, 1835. This paper is marked G, among the papers annexed to the petition in this case. This order directs Major Putnam to proceed as speedily as possible to the Tomoka river, and there establish his headquarters for the present upon a plantation named, specifies other points where small detachments are to be stationed, and says: "The protection of the country lying between Matanzas on the north, and New Smyrna on the south, is intrusted to your own immediate command and these detachments."

The next reference is to the paper marked E—being the affidavit of Joseph S. Sanchez, the colonel commanding the 2d regiment, 2d brigade, of Florida militia. This witness says:

"A portion of his regiment, viz: the St. Augustine Guards, being company A, also companies B and C, and a troop of mounted volunteers under the command of Lieutenant Matthew Salana, were all placed, by order of Brigadier General Joseph M. Hernandez, commanding the eastern district of Florida, under the command of Major Benjamin A. Putnam, of the St. Augustine Guards, and ordered south; to protect the property and persons on the To-

moka, Moscheto, and Matawagus rivers; that after the battle of Dunlawton, which took place on the 18th January, 1836, the enemy in numbers exceeded so much that of our forces—they having been reduced from the number wounded at said battle—that it was deemed prudent to withdraw the forces, and return to St. Augustine. A few days after this step was carried into execution, the buildings and property on the plantations were supposed to have been burnt and destroyed, as fires, and of a very great extent, were seen in that direction, and that it has been since ascertained that *every description of property* had been destroyed by the enemy.”

The paper marked D is the deposition of Major Putnam, who says :

“He was in command of several companies of volunteers and militiamen of the 2d regiment, 2d brigade, Florida militia, stationed south, at Matanzas, Tomoka, and Moscheto, on the commencement of the war in 1835 and 1836; that he continued in command of these forces until the battle of Dunlawton, on the 18th January, 1836, with the Indians, when he received a wound which made it necessary for him a short time to return to St. Augustine; that while in command of these forces he saw it necessary for the good of the service to occupy the plantation called Canieckfergus, on the Tomoka river, and accordingly stationed a troop of mounted volunteers, under the command of Lieutenant Matthew Salana, at that place; that when Brigadier General James M. Hernandez, commanding the eastern district of Florida, visited the stations south, he approved of his having established a military post at Canieckfergus, and ordered that Lieutenant M. Salana should continue in occupation of it until further orders; that a short time after, the troops took up a position at Matanzas, owing to the increased numbers of the enemy, and the loss sustained in his command at the battle of Dunlawton, many of whom were severely and otherwise wounded. He believes the buildings at Canieckfergus, and upon almost the whole of the settlements south to Bulowville, were destroyed by the Indians.”

The paper marked F is the affidavit of George L. Phillips, who, after stating that he was, on the 31st of December, 1835, appointed to command the escort of General Hernandez's brigade, and in that capacity visited the posts at the south in company with the general, says :

“During this excursion south, he, with his command, and escorting the commanding general, visited, about the 4th or 5th day of January, 1836, the plantation of Canieckfergus, on the Tomoka river, which was then occupied as an advance military post by a troop of mounted volunteers, under command of Lieutenant Matthew Salana, of the 2d regiment, 2d brigade, Florida militia; that the buildings were then standing on the plantation as enumerated in the schedule (A) annexed to this affidavit, and that, by orders from General Hernandez, they had been occupied *for the good of the service, as a depot for the reception of the provision from the different plantations in the neighborhood, to prevent its falling into the hands of the enemy*; that when deponent was there with General Hernandez, a very great quantity of corn, which had been removed from the plantations, was then in store in most of the buildings, and *guarded by the said troop of horse* under the command of Lieutenant Salana.”

The paper marked I is an order issued at Canieckfergus, dated on the 4th of January, 1836, directed to Lieutenant Salana, and is in the following words :

“Instead of removing the provisions and other moveable property at this

place to Rosetta, as directed by a previous order, you will, with all possible despatch, remove them to the plantation of Colonel Thomas H. Dummett; and you will place the provisions, and other property removed from this place, in the sugar-house at Colonel Dummett's. You will, whenever this is done, remove the provisions, and other valuable moveable property at Rosetta, to Colonel Dummett's, placing them with the property mentioned above, into the sugar-house there, keeping the property brought from the different places separate, if practicable. When the provisions are all collected at Colonel Dummett's, you will post your detachment there *for its protection*, till further orders."

The paper marked M is the deposition of Lieutenant Salana; and all the material fact stated in it, which is not found in the preceding extracts from the testimony, is, that all the buildings upon the plantation of Caniekerfergus which were standing when he established his post there, were left standing when his command quitted the station.

In these portions of the testimony in the case, we have the *objects* of this military occupancy of the property of the petitioner; as well as the fact of that occupancy. The petitioner states that he abandoned his plantation in the latter part of December, 1835—whether before, or after the troops reached the country, does not appear; but the presumption is that it was before, as he puts his abandonment upon the ground of imminent danger, and the want of a force adequate for the defence of himself and his property. The order of the commanding general shows that the troops were sent, not for the purpose of attacking the Indians, but for the *protection* of the country. The testimony of Colonel Sanchez, from whose regiment the troops were taken which proceeded to this part of the Territory, shows that they were sent there to protect the *property* and *persons* of the inhabitants. The testimony of Major Putnam, the officer in immediate command, shows that he ordered this property to be occupied, in pursuance of the order, and with the approbation, of the commanding general, and of course in pursuance of the objects of the commanding general, in sending him with his command into the country; and both the lastnamed witnesses prove that the property of the petitioner was protected, notwithstanding his abandonment of it, so long as Major Putnam was able to maintain a military force there; but that, when the increased concentration of the enemy upon his line, and his losses by the battle of Dunlawton, compelled him also to concentrate his force, and, as a consequence, to leave Caniekerfergus, then, and not long after that time, not merely this property of the petitioner, but all the property of every description, almost as far south as Bulowville, was destroyed by the Indians. The testimony of Mr. Phillips states that Caniekerfergus was occupied "for the good of the service;" and goes on to show what that was, viz: "as a depot for the reception of the provision from the different plantations in the neighborhood; to prevent its falling into the hands of the enemy;" and he states that large quantities of corn had been so collected, and were in store at Caniekerfergus, when he was there with the commanding general, on the 4th or 5th of January, 1836. The order of the general issued on the 4th of January, and while he was at Caniekerfergus, shows that he then foresaw the necessity of an abandonment of that position, and is for the removal to the plantation of Colonel Dummett of all the provisions, and *valuable moveable property*, there and at Rosetta, to the sugar-house on that plantation, and for guarding and protecting it there. And the testimony of Lieutenant Salana, the officer in actual command at

Caniekerfergus, and who was to execute this order, shows that the buildings of the petitioner were standing, and safe and well, when his command left them.

Upon this state of facts, the only question which the committee think they are called upon to decide is, whether, after these faithful and persevering efforts to protect the property of the petitioner, when the dangers which surrounded it had overcome his attachments for it, and induced him, to use his own language, "to retreat to a place of safety;" whether holding the buildings under protection as long as the force in the field was physically able to hold them; and whether, after that force became so much weakened by losses and wounds sustained in battles with the enemy as not to be able to maintain a post at the plantation of the petitioner, the removal of all the "valuable moveable property" thence to a place of safety, and guarding it there,—is to make the United States liable for the subsequent destruction of the property by a savage and revengeful enemy, whose laws of warfare respect neither the rights of property nor of humanity, but who visit their vengeance equally upon all classes of persons, and all descriptions of property?—And whether the United States has become liable to bear this loss, too, not for being unable to defend the property after a stern effort to do so, *but for having made that effort*, and sent a military force to the property to accomplish it? These seem to the committee to be the questions presented, and they cannot hesitate as to the just decision of them.

To their minds, nothing is more clear than that this case not only does not come within the language of the provision in the law of 1816, but that it does not come within its spirit or its equities. So far from the destruction of this property having been a consequence of its military occupation, it seems clear to them that the destruction proceeded from the absence of a military force adequate to its defence; and the abandonment by the petitioner himself, and the indiscriminate destruction of all the property in the vicinity as soon as the military force was withdrawn, seem to the committee to be unanswerable facts to support this conclusion.

In any view of this case which the committee have been able to take, they cannot see that any just claim for compensation from the United States is sustained. They therefore present to the Senate, and recommend the passage, of the following resolution:

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