

University of Oklahoma College of Law
University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

1-11-1847

Report : Mr. Phelps

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

S. Doc. No. 52, 29th Cong., 2nd Sess. (1847)

This Senate Document is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

IN SENATE OF THE UNITED STATES.

JANUARY 11, 1847.

Submitted, and ordered to be printed.

Mr. PHELPS made the following

REPORT:

The Committee of Claims, to whom was referred the memorial of Henry Wright, administrator of William Bunce, deceased, respectfully report :

That the memorialist states that the said William Bunce, in the year 1834, was the owner of a *rancho*, or fishery, on the coast of Florida, near Tampa Bay, where he had made erections for the prosecution of his fishery, at an expense of about eight thousand dollars. Upon the breaking out of the Seminole war, Bunce, considering his position unsafe, as being exposed to incursions from the Indians, removed his establishment to an island called Palm island, in Tampa Bay, where he erected temporary accommodations for his fishery, at an expense of from ten to fifteen hundred dollars.

Some time in October, 1840, the buildings were burnt by a party of United States troops, by the command of the officer commanding at Fort Brooke.

The reason assigned by the officer for their destruction was, that they were, at the time they were destroyed, "a cover and hiding place for a party of renegade Spaniards, who had previously, and at that time, intercourse with the savage band my troops had to contend with." This statement of the officer is the only evidence before the committee of the inducement to destroy the buildings in question.

The committee find the facts stated in the memorial to be substantially true. The decision of the Senate upon this claim must, however, turn upon the inquiry how far the government will hold itself responsible for the acts of a military officer in its service.

Upon principle, it would seem that the responsibility of the government for the acts of its agent must be commensurate with, and cannot transcend, the authority conferred. No reason is discerned by the committee why the analogy shall not hold good, in this particular, between a public and a private [individual,] nor why the rule which applies in one case should not apply in the other, to wit: that the principal is responsible for the acts of the agent only so far as those acts are within the scope of the latter's employment. The responsibility of the government for the acts of its military officers, if admitted at all in such cases, the committee think, should be confined to this limit, whether the United States should hold themselves responsible for the destruction of property which becomes necessary for the effectuating of some military purpose—for the purpose of attack or defence; and if so, how far.

and under what circumstances, are questions which the committee do not deem it necessary to decide. Certain it is, in their judgment, that the United States are not responsible for every unnecessary, arbitrary, or wanton act which a subordinate officer, in the plenary consciousness of his power, may choose to perpetrate. For such acts the officer himself should be held civilly responsible. This is the surest safeguard against the abuse of power. And certainly the government should never admit its responsibility, except when the officer has a just claim upon it, to assume the consequences of his acts. Cases may, and often do occur, where he is driven by the exigencies of war to do acts which, however excusable they may be by the necessities of the State, yet are not strictly justifiable in a civil forum. In such a case, if he exercise a reasonable discretion, and is actuated by a sense of duty, a liberal policy should be extended to him; and, if he subject himself to civil remedies, the government may well interpose to make amends. But whatever indulgence is extended to him, it should be strictly limited to his military duties. The committee are not disposed to concede to him a jurisdiction over this newly devised and undefined offence of moral treason, nor to allow him to take cognizance of the crime of giving aid and comfort to the enemy, unless it consist of overt acts; and even then his jurisdiction should be confined to prevention, instead of punishment.

The committee are at a loss to discover upon what principle the act of the officer in this instance can be justified. It is not stated that the intercourse of these "renegade Spaniards" with the Indians was of a criminal character. If it was so, the consequences should have been visited upon their own heads, and not upon the innocent. The officer had before him an eminent example of summary justice meted out by military hands in a similar case. It is not stated that the owner of this property (Bunce) was implicated in any unlawful or improper correspondence with the Indians; indeed, the contrary appears from the evidence before the committee. Nor, indeed, does it appear, if this establishment was "a cover and a hiding place for these renegade Spaniards," that the owner was aware of the fact; or if he was, that he had the power to prevent it. Where, then, was the stringent necessity for destroying his property to prevent an evil which not unlikely was imaginary? If it were a reality, the remedy was ill adapted to its purpose. Let the offenders be arrested, convicted, and punished. To permit a military officer to burn the dwelling of a citizen over his head because it may be resorted to by persons who have incurred *his* displeasure or suspicion—because, in *his* imagination, "moral treason" lurks within it—is placing the citizen too much in the power of a class of men who, in every age and in every country, have been too prone to feel power and forget right. The house which shelters the citizen may, at some future period, shelter an enemy, and the comforts and conveniences which the citizen has gathered around him may, by possibility, afford "comfort to the enemy." But shall it be destroyed? Shall those who are sent to defend a country become its devastators, in order to prevent the infliction by an enemy of the evils which, under this system of prevention, they are sure to inflict themselves?

In this case it is apparent that no military purpose could have been answered by the destruction of the buildings; and, in the judgment of the committee, the benefit to be derived to the service from the proceeding was too remote and contingent to justify it. To indemnify the officer in such a

case, or, what is the same thing, to hold the government responsible to the individual sufferer for the injury sustained, would be to encourage a spirit of wantonness, which needs rather to be repressed, and would be, in the opinion of the committee, a dangerous precedent. They therefore recommend the following resolution :

Resolved, That the prayer of the petition be rejected.