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Report : Mr. Phelps

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IN SENATE OF THE UNITED STATES.

JANUARY 14, 1847.

Submitted, and ordered to be printed.

Mr. PHELPS made the following

REPORT:

The Committee of Claims, to whom was referred the petition of John P. Baldwin, praying compensation for a vessel burnt upon the coast of Florida during the late Seminole war, by order of a United States officer, report:

That some time in the year 1835 the Spanish brig *Gil Blas* was stranded on the coast of Florida, and was afterwards, with her cargo, apparel, and furniture, sold at public auction at Key West, and was purchased by the petitioner, who immediately made arrangements to save the cargo and vessel, and had succeeded in saving some portion of her cargo and apparel when she was burnt by order of a United States naval officer on that station. She had on board 5 or 6 tons of lead, 5 tons of kentledge, 30 water casks, 3 anchors, 2 chain cables, which, with the hull, sails, and rigging, were estimated to be worth \$1,200. Such part of the above property as was not combustible was lost by being buried in the shifting sands of the coast. For this property the petitioner claims compensation.

The reason assigned by the naval officer was, that he "thought it best for the public service," "to prevent the Indians ever getting from her any lead or other article which would be of any use to them."

The committee are not aware that the opinion of a subordinate officer that a proceeding of this kind "is best for the public service" is conclusive upon the United States, or that a draft upon the public treasury, founded upon no better voucher, is, of course, to be honored. They are rather disposed to look into the propriety and necessity of the act, before they admit the responsibility of the government.

In this case it is proved, by the testimony of all who give an opinion on the subject, that there was not the slightest danger that the vessel would fall into the hands of the Indians. Indeed, those who profess to be familiar with the subject testify that no instance has occurred of Indians interfering with wrecks under similar circumstances. The petitioner himself states, that had it not been for the destruction of the property by the officer, "he could and would have saved it, as he had the means of doing so; and that it was safe and secure on the beach, and might have remained so for a great length of time."

It is difficult to conceive what inducement the Indians could have had to meddle with the wreck. The anchors, chain cables, water casks, kentledge, sails, and rigging, could have been of no value to them. The lead, indeed, may be regarded as a munition of war. But a part of that had been already saved, as appears from the evidence, and removed to Key West; the residue might have been saved, if we can rely upon the testimony. Besides, if there were danger that the lead would fall into the hands of the enemy, it might easily have been removed on board the transport, instead of destroying it. Indeed, it was taken out of the hands of those who were engaged in saving it, and who apprehended no danger from the Indians, and not from the enemy. In short, the whole testimony concurs in establishing the fact, that there was not the slightest necessity for the destruction.

Upon what ground, then, shall the United States be held responsible? It is no part of the officer's commission to destroy the property of the citizen at pleasure; to riot in the exercise of military authority. It must be left to the government to adopt his acts or not in such a case, as it may judge of the merits of the case. The committee is of opinion that the government is not responsible, unless the act was called for by the exigencies of the public service, or at least that the officer had reasonable grounds for so believing. If he cannot justify himself upon this ground, they consider that he, and not the government, is responsible for the consequences. They therefore submit the following resolution:

Resolved, That the prayer of the petition be rejected.