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Report : Mr. Atchison

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IN SENATE OF THE UNITED STATES.

FEBRUARY 13, 1849.

Submitted, and ordered to be printed.

Mr. ATCHISON made the following

REPORT:

[To accompany bill S. No. 395.]

The Committee on Indian Affairs, to whom was referred Senate bill number three hundred and ninety-five, entitled "A bill to authorize the payment to the State of Georgia of certain sums of money therein specified," report:

That on the 15th of May, 1836, Henry W. Jernigan, of the State of Georgia, being a merchant and warehouse keeper, owned and occupied a large wooden warehouse at Roanoke, on the banks of the Chattahoochee river in said State; that there were at that time deposited in said warehouse large quantities of goods, wares, and merchandise, the property of said Henry W. Jernigan, and of several mercantile firms in which he was the principal partner; that the western border of Georgia being then threatened with Indian hostilities, a battalion of troops, under the command of Major John H. Howard, were stationed at various points on the east bank of the Chattahoochee river, for the protection of the inhabitants of that frontier; that one company of that battalion, under the immediate command of Captain Hoone, was ordered and marched to Roanoke; that said company commenced building a fort, and while engaged therein, encamped immediately around and in the rear of the warehouse of the said Henry W. Jernigan, and took possession thereof, and used the same as a place of deposite and security for their own ammunition, provisions, and other necessary army stores; that on the said 15th day of May, 1836, before the completion of said fort, and while the said warehouse was thus occupied and the troops thus encamped, a party of Creek warriors crossed the Chattahoochee river in the night, attacked and defeated Captain Hoone's command, and burnt up the warehouse and its contents, including among other things the property hereinafter mentioned; that on the third of March, 1837, Congress passed an act authorizing the President to appoint commissioners to inquire and ascertain what depredations had been committed by the Seminole and Creek Indians on the property of citizens of Georgia,

Florida, and Alabama; that the said commissioners reported on the twenty-eighth day of November, 1837, the amount of depredations committed upon the property of H. W. Jernigan & Co., Jernigan, Gatchet & Co., Still, Jernigan & Co., Asaph R. Hill, and Henry W. Jernigan, the same being designated in said report in "list A, third class," by the numbers "eight hundred and five," "eight hundred and fifty-four," "eight hundred and fifty-five," "eight hundred and fifty-six," and "eight hundred and sixty-four;" that the sums awarded in the above stated cases were for property destroyed in said warehouse; that subsequently the State of Georgia, on account of the meritorious services of the said Henry W. Jernigan, as a partizan officer in the subsequent Indian war, and the great losses he had sustained in connexion therewith, and the justice of his claim on the government, the delay of which being likely to prove utterly ruinous to said Jernigan, allowed him the full amount of said claims, and took an assignment thereof from said Jernigan, and now applies to Congress for payment thereof. The statement of Major Howard is full, clear, and conclusive, that the warehouse of Jernigan, in which the goods were deposited, was taken possession of by a detachment of his command, and was used by it "as a depository of arms, ammunition, and provisions;" that Captain Hoone "encamped at the warehouse and was in possession of it at the time he was attacked by the Indians, when the warehouse and goods therein were burnt by them." The other evidence submitted sustains the same point, which your committee consider fully established.

Such being the case, the obligation of the government to pay the losses resulting from such occupation, is an admitted and well settled principle. It has been uniformly acknowledged and practiced upon from the beginning of the government, and distinguishes it from claims simply founded upon destruction of property by the public enemy, the liability to pay which this and all other governments have uniformly denied.

Your committee, therefore, recommend the payment of said claims, as herein designated.