

7-25-1848

## Representatives of Jacob Houseman.

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Rep. No. 798.

## HOUSE OF REPRESENTATIVES.

## REPRESENTATIVES OF JACOB HOUSEMAN.

JULY 25, 1848.

Laid upon the table.

Mr. THOMAS, from the Committee of Claims, made the following  
**REPORT:**

*The Committee of Claims, to whom was referred the memorial of the representatives of Jacob Houseman, deceased, made the following report:*

From the papers submitted to this committee, it appears that, upon the 7th of August, 1840, Jacob Houseman was in possession of an island on the coast of Florida, called Indian Key; that he had erected upon the island quite a village, and had at a great expense cut out in the rock, which composed the island, several cisterns of large dimensions to catch and contain water, and that he was carrying on quite a considerable business of various kinds; that, on the 7th of August, 1840, the Indians attacked the island, murdered some of the inhabitants, and destroyed and carried away all the property; that the buildings, etc., were burnt, and much of the personal property burnt also, and the balance taken by the savages. The estimate of Houseman's loss is \$144,000. The allegation is made that this loss was induced by the United States in making that place a naval or military station, and that, according to the principles established by the government, this sum of \$144,000 is justly due the memorialists.

From the papers submitted, it appears that Houseman solicited protection, and applied to various officers of the government to make this island a station, where the United States forces might defend it. Among other evidences of this, reference is made to a statement of sundry citizens filed by the memorialists in this case, and herewith printed—marked No. 1. This being the case, the injury complained of has resulted from acts done at the request of Houseman; and this committee is not aware of any principle

which will entitle a party in any case, not *malum in se*, to recover damages for an act done at his request.

Further; Houseman kept ship stores for sale, and during this time the United States was a good customer, and purchased from him. A few of the items of this dealing will be found in No. 2, herewith printed.

Whatever may be the real value of the points above stated, in making up the estimate of this case, there are others which are deemed conclusive.

And first, as to the destruction of the real property. What right had Houseman to this property? He had no title from Spain previous to the Florida treaty. This island was first settled in 1823 or 1824, and, in 1825, Houseman procured it from the settlers, (see a letter herewith printed as No. 3.) From that time until the 7th of August, 1840, Houseman occupied it—a mere tenant at *sufferance* of the United States.

But to this it may be said that he was entitled to a *pre-emption* of this island; and that the same never having been surveyed, he could not procure title to said island, by reason of the failure to survey. In view of this committee, these pre-emptions are not granted by the United States as matter of right to the *pre-emptor*, but as carrying out a liberal policy of the government as to the public domain, in advancing the rapid settlement thereof, and in enabling her citizens to secure homes. And this committee can see no grounds for holding the government responsible to any individual because this liberal policy has not been pushed forward with that haste that such individuals may require. Nor does this committee understand that, before such lands are surveyed, any individual can acquire such right to the same as to prevent the government from occupying the same for the defence of the country, and more especially when the individual claiming such land requests such occupation by the government.

From the whole case, it appears that the right of the island was in the United States, and that the right of possession was also in the United States, and that, by permission of the government, Houseman was permitted to occupy; and at most, upon the facts stated by the memorialists, this was but a joint occupancy, and that by consent of parties, and no damage could result—*voluntas non fit injuriam*.

This being true as to the claim for the loss of the realty, the question arises what as to the personal property.

But before we proceed to the consideration of this part of the case, we notice the remarkable fact, that some \$15,000 or \$20,000 of this claim is for the *burning* of cisterns cut in the *solid rock* of the island, and they filled with water at the time. True, that climate has the warmth of a southern sun, but how this was done is not *perfectly plain* to this committee.

If Houseman chose to place buildings of value upon the land belonging to the United States, with the expectation of finally securing a title thereto—but this being upon an exposed frontier, the United States found it necessary to have the temporary use of their

own land to defend the country—it is submitted that for this necessary occupation, and an occupation at Houseman's request, he could claim no damages. And if this be true as to the reality, it is equally true as to the personalty—for Houseman had no *real* rights there whatever.

Further; this committee apprehend that the United States did not occupy this Indian Key as the naval station, but that Tea Table Key was the station, and that Indian Key was a place of storing supplies, and that really Houseman was a bailee of the United States for hire—believing this to be true from the correspondence in the whole case. If Houseman chose to *contract* with the government to store goods which attracted the cupidity or other passions of the Indians to their destruction, it was his risk and not that of the United States. If this place, Indian Key, was already a naval station, why did Houseman, upon the day or two days after the destruction of the Key, contract with Lieutenant McLaughlin to make it a naval station. This shows that, up to that time, Houseman retained the control of the place. Upon this subject this committee invite attention specially to the correspondence between said McLaughlin and the Navy Department, which is herewith printed, marked No. 4. The papers in this case are voluminous, but it is respectfully submitted that the foregoing embrace the points material to be considered; and the committee recommend the adoption of the following resolution:

*Resolved*, That the prayer of the memorial of the representatives of Jacob Houseman be not granted.

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No. 1.

We, the undersigned, inhabitants on the coast of South Florida, do certify, that at the commencement of the Florida war, Jacob Houseman, the proprietor of, and resident on, Indian Key, applied to the governor of this Territory for protection against the hostile Seminole Indians; he also applied to the commanding officer of Tampa Bay for the same protection, but received none from either. Application was then made to the Secretary of War, who paid no attention to his request. At this time the Indians were committing murders, and destroying property in the immediate neighborhood. Captain Houseman found it necessary, for the protection of the inhabitants and property of Indian Key, to employ forty men, which were kept at his expense for eighteen months. At the expiration of this time, Captain Rudolph, of the cutter Dexter, came to his assistance, and the forty men were discharged. After Captain Rudolph remained a length of time at Indian Key, he was relieved by Lieutenant Commanding McLaughlin, of the United States schooner Wave, who made Indian Key a place of deposite, for about one year, by storing his provisions, powder, armory, &c.; after which he was relieved by the United States steamer Poinsett, Captain Mayo, who also made Indian Key a military post, by de-

positing stores, ammunition, &c., as well as stationing troops on the Key, for the protection of the inhabitants and government property. There was also a hospital for the sick United States sailors and soldiers: Captain Mayo was relieved by the return of Lieutenant McLaughlin, commanding expedition, who established a naval post at Tea Table Key, a small island near by Indian Key, on the other side of its small bay, or harbor, which he considered would afford the inhabitants of Indian Key equally the same protection as if he had kept his post on Indian Key; and the inhabitants themselves considered that they were as much under the protection of the naval post as they could be if said post was actually on Indian Key; otherwise they would have relied upon their own resources for protection, as they did at the commencement of the war. Immediately after the massacre of the inhabitants, and burning of Indian Key by the savages; the post was again removed from Tea Table Key to Indian Key, [at] which latter place it still remains.

|  |  |
|--|--|
| Henry B. Goodyear  | Alexander P. Scott   |
| Charles Howe   | Latham Fitch   |
| Levin Lawson   | John Wood  |
| G. F. Beiglet  | Henry Brown, (pilot United States schooner Otsego, Flirt, and Wave.) |
| John H. Glanders   | Andr. Anderson   |
| Benjamin Archer  | Saml. Sanderson  |
| John Gould   | D. Platts, M. D.   |
| Thomas Adams   | C. C. Lanpher  |
| George Stafford,   | John H. Sawyer   |
| Edward Griffiths, (late commander of the United States mail boat.) | Robert Clark   |
| W. C. Greene   | John Walter  |
| W. S. Rigby  | James M. Curry   |
| David M. Cold  | Thos. Brown  |
| Mitchell Brewer  | W. H. Von Pfister  |
| Gilbert Beebe  | Crawford Thompson  |
| John Klotz   | J. L. Blodgett   |
| Leonard Sistare  | James Dukore   |
| Lemuel Otis  | Edwin V. Wage  |
| R. L. Hicks  | Samuel T. Vail   |
| Samuel Harris  | Reason Dukes   |
| William H. Bethell   | Wm. T. Atkins  |
| James Egan   | John S. Page   |
| W. C. Maloney  | R. D. Killgore.  |

April 12, 1841.

No. 2.

FOURTH AUDITOR'S OFFICE,  
January 29, 1848.

I do not find in the settlements of the accounts of Lieutenant J. T. McLaughlin, while in Florida, that any voucher for money paid to Jacob Houseman, for rent of buildings at Key West, was presented. The following are all the bills in the name of Jacob Houseman, found in the accounts of Lieutenant J. T. McLaughlin, viz:

|                         |            |
|-------------------------|------------|
| For water.....          | \$24 47    |
| water.....              | 58 28      |
| rattling, &c.....       | 24 48      |
| hospital stores,.....   | 2 50       |
| water.....              | 8 40       |
| copper, &c.....         | 101 01     |
| timber.....             | 120 13     |
| fishing lines, &c.....  | 54 34      |
| halyards.....           | 7 05       |
| whiskey, &c.....        | 23 57      |
| beef, &c.....           | 685 45     |
| salt.....               | 1 00       |
| rope, &c.....           | 43 87      |
| water.....              | 5 83       |
| water.....              | 5 57       |
| medicines.....          | 24 00      |
| candles.....            | 50         |
| candles and oil.....    | 7 00       |
| black books.....        | 2 25       |
| wood.....               | 6 00       |
| candles.....            | 2 00       |
| duck, &c.....           | 46 95      |
| repairing arms.....     | 7 00       |
| boards, screws, &c..... | 193 01     |
| labor, &c.....          | 207 87     |
| medicines.....          | 11 75      |
|                         | <hr/>      |
|                         | \$1,674 28 |

J. E., Clerk.

No. 3.

WASHINGTON CITY,  
March 17, 1848.

DEAR SIR: In reply to your several inquiries in regard to Indian Key, I will briefly state I have resided upon Key West since the month of March, 1822.

No Indians have resided upon the Island of Indian Key, since my knowledge of the place.

The island was settled in 1823 or 1824, by two men by the names of Fletcher and Prince, who made some improvements upon it, and soon afterwards sold out to Jacob Houseman, who took possession of the same immediately, and continued to reside there until the place was destroyed by the Indians in 1840.

The Island is now owned and occupied by Messrs. Lawton and Mowry, of Charleston, S. C., who acquired their title to the same from Jacob Houseman.

Very respectfully, your obedient servant,

J. W. SIMONTON.

JOSEPH T. WALKER, Esq.

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No. 4.

NAVY DEPARTMENT,  
March 9, 1848.

SIR: In compliance with the request contained in your letter of the 21st ultimo, I have the honor to enclose, herewith, copies of letters from Lieutenant John T. McLaughlin, of the United States navy, addressed to the department, under dates of August 11th and 21st ultimo, 1840, and March 25, 1842, with their respective enclosures, in relation to the capture of Indian Key by the Indians, on the 6th of August, 1840, and the arrangement existing, at that time, in regard to the occupancy of the Key as a government depot of naval and military stores.

I have the honor to be, very respectfully, your obedient servant,

J. Y MASON.

Hon. JAMES H. THOMAS,  
Of the Committee of Claims,  
House of Representatives.

—  
UNITED STATES SCHOONER FLIRT,  
Key Biscayno, August 11, 1840.

SIR: Captain Houseman, the proprietor of Indian Key, having called upon me for a garrison for the island, I entered into arrangements with him for the cession of the whole Key to the United States, except a small portion of it for his store and dwelling. This arrangement cedes the Key to the United States, for a military post, during the continuance of the Florida war, or for so long as the United States may think proper to hold it for that purpose, during the continuance of the war.

The Key being thus placed under military control exclusively, I have ordered the removal of my hospital and depot from "Tea Table Key" thereto. Abundance of water, with good wharves and storage in three out-houses, which escaped the flames, have been the inducement to make the transfer, whilst, at the same time, it

saves me the necessity of further dividing my small force to furnish another garrison for this place.

I have the honor to enclose you a copy of the arrangement entered into with Captain Houseman.

Respectfully, sir, I have the honor to be,

J. T. McLAUGHLIN,

*Lieutenant, commanding.*

HON. J. K. PAULDING,

*Secretary of the Navy,*

*Washington, D. C.*

This instrument testifies to an agreement between the undersigned contracting parties. The first, named John T. McLaughlin, in behalf of the United States, and the second, Jacob Houseman, of Indian Key, yields all right and claim to his property and possessions on Indian Key, to John T. McLaughlin, for the United States, to be used as a military post, during the continuance of the Florida war, or for so long a period as the government of the United States may think proper to occupy it, during the war, reserving to himself, for his personal uses, only that portion of it to be by him enclosed, which shall be hereafter defined by the contracting parties.

Signed, this 9th day of August, 1840, at Indian Key:

JOHN T. McLAUGHLIN,

*Lieutenant, commanding "Flirt."*

JACOB HOUSEMAN.

Witnesses:

WM. S. DRAYTON,  
*United States Navy.*

GEO. H. TERRET,  
*Lieutenant of marines.*

UNITED STATES SCHOONER "FLIRT,"

*Key West, August 21, 1840.*

SIR: I have the honor to advise you that the express despatched to Lieutenant Commandant Rodgers, advising him of the attack on Indian Key, reached him at Cape Roman, on the 9th instant, at 10 p. m.

In his report he states: "Immediately on its receipt, I sent for the canoes and the marines, who were on shore guarding them; owing, however, to the wind, the high sea, and distance, it was 8 o'clock in the morning before they got on board, having been pulling all night. At 9 o'clock, I got under way for Indian Key; but did not arrive at Cape Sable until the morning of the 11th, having had light airs and calms. Thence I started immediately in the canoes, with sixty officers and men, for Indian Key, where

I arrived next morning at 9 o'clock, having been pulling nearly twenty-four hours without stopping, except half an hour for meals.

"The wind and tide were both ahead, with a heavy sea running, which swamped one of the canoes with the marines. Their arms, &c., were lost, but the men and boat were saved."

The course pursued by Lieutenant Commandant Rodgers was the most judicious that could have been followed. There was every hope that his speedy return would intercept the Indians on their passage back from Indian Key to the main, and furnish us with, at least, a clue to their haunts. His well directed exertions, however, failed in their intention.

Respectfully, sir, I have the honor, &c.,

J. T. McLAUGHLIN,

*Lieutenant, commanding.*

J. K. PAULDING,

*Secretary of the Navy, Washington.*

FLIRT AT KEY BISCAYNO,

*March 25, 1842.*

SIR: Herewith I have the honor to enclose you a letter addressed to me by O. O. Hara, esq., agent for Mr. Joseph Lawton and others, of Charleston, mortgagees of Indian Key, and my reply thereto.

The arrangement I entered into with Houseman, the late proprietor, for the possession of the island, I had the honor to transmit to the department on the 10th August, 1840; this was made under the impression that the island was included in one of the many Spanish grants which covered the territory, and had become Houseman's by right of purchase. I have since ascertained that this is not the case, and that Houseman purchased the right of a squatter upon the Key, which remains to this day an unsurveyed portion of the public domain. Seeing in the pretension set up by persons claiming to be mortgagees, the first step towards claims upon the government for its further occupancy, I have denied the right of all parties concerned, and shall retain the Key as a reservation for military purposes, until otherwise instructed by you.

Respectfully, yours, &c.,

J. T. McLAUGHLIN,

*Lieutenant, commanding naval forces, coast of Florida.*

Hon. A. P. UPSHUR,

*Secretary of the Navy.*

KEY WEST, *March 19, 1842.*

SIR: I am the agent for Joseph Lawton and S. Murry, esqs., of Charleston, South Carolina. These gentlemen are mortgagees of Indian Key, and the mortgage expired during the last month.

The object of this communication is, to apprise you that I, as agent of these mortgagees, have this day taken possession of the mortgaged premises, in their name and behalf. The object is not to disturb you, or the United States, in the use and occupation of the island; but to enable the mortgagees to claim the rents and profits, if the same shall become necessary to liquidate their claims.

I respectfully request you to apprise the head of your department of this fact: of possession being taken by the mortgagees.

I have the honor to be, respectfully, &c.,

O. O. HARA.

To Captain J. T. McLAUGHLIN,  
*Commanding U. S. naval forces, &c., &c.*

“FLIRT,” AT KEY BISCAINO,  
*March 25, 1842.*

SIR: I have received your communication of the 19th instant, advising me that, as agent for Mr. Jos. Lawton and others, you had taken possession of Indian Key, by virtue of a mortgage held upon it by these gentlemen.

I beg you distinctly to understand that I do not recognize you as having taken possession; that I deny the validity of Mr. Lawton's mortgage, or the right of the late proprietor to any fixed or permanent interest in the island, upon which he could grant a mortgage. His property upon the island was destroyed by fire, and the island itself, among the unsurveyed lands of the territory, is not yet open to pre-emption; but is reserved, for the present at least, for the military uses of the government.

Your letter has been enclosed to the honorable the Secretary of the Navy.

Respectfully, sir, I have the honor to be,

JOHN T. McLAUGHLIN;

*Lieutenant com'g forces, coast of Florida.*

Colonel O. O'HARA.

U. S. SCHOONER “FLIRT,”  
*Key Biscayno, August 11, 1840.*

SIR: I regret to inform you that whilst at anchor here, on the morning of the 8th instant, an express reached me from Midshipman F. K. Murray, bearing a letter of which the enclosed is a copy, advising me of the capture of Indian Key by the Indians.

The wind and tide being both adverse, and the channel way very narrow and intricate, I immediately transferred all the marines and crew of this vessel, but such as were required to navigate her, to the Otsego, and started for Tea Table Key, where we arrived during the night; leaving this vessel to follow at the change of tide. On our arrival there, we found that the Indians, who proved to be the Spanish Indians, having loaded their boats

with supplies, of every description, from the store of Mr. Houseman, the proprietor of the Key, had destroyed the town by fire, and retired without molesting our hospital and depôt at Tea Table Key, distant but one mile, for which the most serious apprehensions were entertained. Midshipman Murray had, however, made every preparation for its defence which his limited means would allow. That the Indians were conducted to this attack by some person or persons acquainted with the localities of the Key, cannot be doubted. Their landing was effected on the outside of the Key, at a point most remote from their approach, yet at a corner of the town uninhabited, whilst every consideration, if ignorant of this fact, would have induced them to have landed at a point directly opposite. Landing where they did, their retreat was liable to be cut off; and, but for the loss of his guns, there is every reason to believe that Mr. Murray would have effected this, in the destruction of their canoes; whilst by landing at the opposite point of the Key, their retreat could have been securely effected on the approach of any danger. Again, negroes were seen among them, who, with others, were heard to speak English, and these last not in the dialect of the negro. This information is gathered from the sufferers by the attack. Lieutenant Commandant Rogers, in the Wave, had left there but the day before for Cape Roman, carrying with him from Tea Table Key every man, capable of doing service, but five. That his departure was communicated to or looked for by the Indians, there cannot be a doubt. In the presence of his force, their invariable policy forbids the belief that they would have ventured upon the attack.

In so serious a disaster, when so great a loss of life was to be looked for, it is gratifying to know that it was small. Doctor Perrine, Mr. Motte, his wife and two young children, and a lad named Turdy, were killed; the latter drowned in a cistern in which he had concealed himself. Mr. Otis was wounded, and the missing are a negro woman, with her two children, belonging to Mr. Howe, and a negro child belonging to Mr. Houseman. These were carried off by the Indians. They retired at 2 p. m., of the 6th ultimo, in thirty-four boats, six of which had been taken from the Key. In some of the boats, six, seven and eight people were counted; in none, less than four; so that their number could not have been short of one hundred and thirty-four persons.

Those who escaped from the Key found refuge in the schooner Medium, then lying in the harbor. Every convenience and comfort which it was in the power of the officers of this expedition to furnish them, in their destitute condition, has been extended to them. I have also furnished them such supplies from the public stores as were necessary.

The widow and family of Doctor Perrine have taken shelter in this vessel, awaiting transportation to the north.

Respectfully, sir, I have the honor to be,

JOHN T. McLAUGHLIN,  
Lieutenant Commandant.

The Hon. J. K. PAULDING,  
Secretary of the Navy, Washington, D. C.

TEA TABLE KEY,  
*August 7, 1840.*

SIR: I have the honor to report that Indian Key was last night taken by the Indians, of which fact I was apprised from the "Medium" at daylight this morning. Our force here consisted of five men, with whom, joined to seven or eight of the sick, who volunteered readily, but were too weak to be of much service, I started for the Key, at first with the intention of landing, which, however, was opposed by the enemy, who had taken refuge in every house, and opened a heavy fire, which fell thick around us, striking our boats, and wounding one man severely and dangerously in the thigh. They appeared also in great numbers on the beach, yelling and firing; which firing we returned with three discharges of our four-pounders in the barges. At the third discharge, being obliged to fire them athwart ships, our guns rebounded overboard. Being deprived of the means of cutting off their retreat, I returned to Tea Table Key, to make preparations for the attack, which I think more than probable it is their intention to make upon us, being assured that our amount of force and means rendered us of no assistance to the inhabitants of Indian Key, if any survived, which is not to be supposed.

The families of Messrs. Houseman and Howe and too seamen have alone escaped.

I have the honor, &c.,

FRANCIS K. MURRAY

*Midshipman U. S. Navy.*

Lieut. Commd'g J. T. McLAUGHLIN, &c.

P. S. SIR: The Indian force, at the lowest estimate, judging from the number of canoes, is fifty or sixty. I am obliged to write in great haste. The Indians used the long guns on the key, firing them at us repeatedly, with good aim.