

2-2-1858

Report : Court of Claims

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

REBEKAH HEALD vs. THE UNITED STATES.

1. The petition of the claimant.
2. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, this first day of February,
[L. s.] A. D 1858.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

To the honorable the United States Court of Claims :

The petition of Rebekah Heald, the widow of Major Nathan Heald, late of St. Charles county, in the State of Missouri, most respectfully represents :

That on the 15th day of August, 1812, her husband, then Captain Heald, an officer in the United States army, commanded Fort Dearborn, in or near Chicago ; that she, your petitioner, resided there with him, and that they were possessed of considerable personal property, all of which was lost at the destruction of said Fort Dearborn, on the said 15th day of August, 1812, by the Indians, and by whom they were taken prisoners.

That an inventory or schedule of the property thus lost is herewith annexed, together with its supposed valuation.

Your petitioner further states that, after the death of her husband, she, in the month of December, 1847, petitioned Congress for payment and remuneration for the property so destroyed by the Indians and lost to them.

That her petition was forwarded to the Hon. Thomas H. Benton, then a senator in Congress from Missouri, and was accompanied by

936

the depositions of two ladies of Chicago, who were well acquainted with all the facts in relation to their capture and the destruction of their property; that by some strange fatality the petition and testimony were lost or mislaid, and were never presented to Congress; that both of the ladies at Chicago are now dead; that their testimony, duly taken, was full and complete; that her said petition was furthermore accompanied by the additional testimony of Colonel John O'Fallon and Colonel John Ruland, of St. Louis, Missouri.

Your petitioner prays that her claim may be examined and adjudicated upon in such manner as may be conformable to the rules and regulations of your Court; and, if necessary, that a commission may be granted to take the depositions of witnesses in St. Louis, Missouri, to substantiate her claim.

The major part of the property lost was her own, and over which her husband exercised no control; but, perhaps, when legally considered, the title was in him. If such be the construction, then I appeal in the name of his legal representatives for pay.—(Relies upon 5th article of amendments to the Constitution, 3 U. S. St., 261; sec. 6, 397; sec. 6, 465, chap. 124; and general principles of public law.)

REBEKAH HEALD.

UNITED STATES TO REBEKAH HEALD, DR.

For loss of property (personal) taken and destroyed by Indians on the 15th day of August, 1812, at Fort Dearborn, on the destruction of the fort, viz:

One negro woman, Cicily, and her child, valued at.....	\$1,000 00
One side-saddle, bridle, and martingale.....	35 00
Three horses.....	500 00
Two cows and calves.....	50 00
Household furniture.....	200 00
Silver spoons and tumblers.....	75 00
Table furniture complete.....	75 00
Clothing.....	600 00
Jewelry.—Ear-rings, breastpins, rings, &c.....	50 00
	<hr/>
	2,585 00
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STATE OF MISSOURI, }
County of St. Charles, } ss.

I, Rebekah Heald, do swear that the facts stated by me in the petition, so far as they are of my own personal knowledge, are true; and, so far as they depend upon the information of others, I believe to be true; and that the schedule annexed is a true account of the property lost, and the estimated value, say two thousand five hundred and eighty-five dollars.

REBEKAH HEALD.

Subscribed and sworn to before me, the undersigned justice, this 9th October, 1855.

JOSIAH B. COSBY, *Justice of the Peace.*

STATE OF MISSOURI, }
 County of St. Charles, } ss.

I, John K. McDearmon, clerk of the county court of St. Charles county, certify that Josiah B. Cosby, esq., before whom the foregoing affidavit of Rebekah Heald was made, and whose genuine signature is thereunto attached, is now, and was at the time of so doing, an acting justice of the peace, duly commissioned, sworn, and qualified within and for said county; and that all his official acts, as such, are entitled to full faith and credit.

In testimony whereof, I have hereto set my hand and seal of [L. s.] said court, at office, this 11th day of October, 1855.

JOHN K. McDEARMON, *Clerk.*

To the honorable the Court of Claims of the United States:

Rebekah Heald, a petitioner to the Court of Claims, begs leave to file this supplementary petition, to make certain amendments which she is advised are necessary to her original petition.

Your petitioner founds her claim on the implied contract which exists between the government and its citizens to afford them protection against all hostile depredations, and the repeated recognition of their liability in cases similar to this of your petitioner.

No one is interested in the said claim but the petitioner, and the legal representatives of her late husband, in whose behalf she petitions, who are Darius Heald, (son of the petitioner and her late husband, Nathan Heald,) and Nathan Heald McCausland and Alexander A. McCausland, (grandsons of the petitioner and her late husband, Nathan Heald.)

Your petitioner desires that her petition may be so amended as to include the above statements, and prays leave to amend the schedule thereunto annexed, by adding thereto a watch and a gun that were lost at the same time, and in the same manner set forth in the petition, and that were of the value of one hundred and fifty dollars.

REBEKAH HEALD.

STATE OF MISSOURI, }
 County of St. Charles, } ss.

This day personally appeared before me, Josiah B. Cosby, a justice of the peace duly authorized by law to administer oaths within and for the county aforesaid, Rebekah Heald, whose name is subscribed to the foregoing petition, and who being by me duly sworn, upon her oath says that said petition and the facts therein set forth are true.

Sworn to and subscribed before me this 4th day of January, 1856.

JOSIAH B. COSBY,

Justice of the Peace.

STATE OF MISSOURI, }
 County of St. Charles, }

I, John K. McDearmon, clerk of the county court of said county, certify that Josiah B. Cosby, esq., whose proper signature appears to the above affidavit of Rebekah Heald, is now, and was at the time

of so doing, an acting justice of the peace within and for said county, duly commissioned and qualified, and that, as such, his acts are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and seal of said [L. S.] court, at office, in the city of St. Charles, this 7th day of January, 1856.

JOHN K. McDEARMON, *Clerk.*

IN THE COURT OF CLAIMS.

REBECCA HEALD *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

The petition states the following facts:

The petitioner is the widow of Captain Heald, deceased.

On the 15th of August, 1812, her husband was a captain in the army of the United States, and then resided with the petitioner, his wife, at Chicago.

At that time Captain Heald was commander of Fort Dearborn, in or near Chicago, where he and the petitioner then had personal property of the value of \$2,585.

The Indians, on the said 15th of August, 1812, destroyed Fort Dearborn, when all said personal property was lost, and Captain Heald and the petitioner, his wife, were taken prisoners. The greater part of the personal property so lost belonged to the petitioner.

The object of the petitioner is to recover the value of said personal property either for herself or for the legal representatives of her said husband.

At the time of said destruction of Fort Dearborn the United States and the Indians were at war; and the claim, therefore, is for the value of private personal property destroyed by an enemy in time of war.

We think that there is no difficulty in this case. The government is not bound to pay for the property in question. No doctrine is better settled than that the government of an invaded country is not liable to pay for private property destroyed by the enemy. This subject was before us in 1856, in the case of Casius M. Clay, and the decision was against his claim. In the opinion in that case, the authority of Vattel is relied on. That author, speaking of the damages caused to individuals by acts of the enemy, says: "All the subjects are exposed to such damages; and woe to him on whom they fall! The members of a society may well encounter such risk of property, since they encounter a similar risk of life itself. Were the State strictly to indemnify all those whose property is injured in this manner, the public finances would soon be exhausted; and every individual in the State would be obliged to contribute his share in due proportion—a thing utterly impracticable. Besides, these indemnifications would be liable to a thousand abuses, and there would be no end of the particulars. It is therefore to be presumed that no such thing was ever intended by those who united to form a society."—(Vattel's Law of Nations, book 3, chap. 15, sec. 232.)

Our opinion is, that the petition shows no cause of action.