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Jane A. Birckhead and Virginia Campbell. (To accompany bill H. R. 400.).

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JANE A. BIRCKHEAD AND VIRGINIA CAMPBELL.

[To accompany bill H. R. 400.]

APRIL 15, 1872.—Ordered to be printed and recommitted to the Committee of Claims.

Mr. H. B. SMITH, from the Committee of Claims, made the following

R E P O R T :

The Committee of Claims, to whom was referred the bill (H. R. 400) for the relief of the heirs-at-law of Alexander Watson, deceased, having carefully considered the same, beg leave to make the following report :

In 1830, Alexander Watson, the father of the claimants, invested his fortune in the purchase and improvement of a sugar plantation, on the Suwanee River, in Florida, which he called Carleton; erecting thereon an elegant mansion, with extensive and costly sugar-works, cotton-house, corn-house, smoke-house, blacksmith-shop, stables, &c., thoroughly furnished; an itemized schedule whereof accompanies the memorial of said Watson, amounting to \$40,282 50. The appraisement and depositions of a large number of gentlemen of the highest respectability leave no room to doubt that the value of this property is set in the schedule at a reasonable if not a low estimate. The schedule is contained in the appendix hereto.

In the making of this schedule various items were overlooked, which, included, increase the valuation at a fair estimate to the sum of \$42,000.

It is shown, by some of the depositions, that the plantation of Mr. Watson, its buildings and appurtenances, were "the best in Florida."

The Seminole Indians were always kindly treated by Mr. Watson; often visited his place, and were upon very friendly terms with him.

The chieftains who entered into the treaty for the removal of the tribe were only authorized, as the Indians claimed, to view the Arkansas reservation, not to treat for their removal. A large part of the tribe refused to abide by the treaty, and the Government was compelled to remove them by military force. From this cause resulted the Seminole war, so called. During the hostilities which ensued Fort Dabney was erected near the plantation of said Watson, and was occupied by the Government forces, commanded by Major McLemore. Soon thereafter, in 1836, the commanding officer, not for the benefit or protection of said Watson, or of his property, but against his wishes and for military use, took possession of said property, demanding and receiving the keys of his buildings; killed his stock and distributed it, with his corn, bacon, sugar, molasses, &c., for rations, to the troops; occupied his buildings as quarters for the troops, and as a depot for military stores; carried his crockery and some of his furniture into the fort, for use of the troops in the fort, and required said Watson to remove with his negroes into the interior.

That thereafter, and while so occupied by the military forces, and by reason of such occupation, the Indians set fire to and entirely destroyed said buildings, and all the property therein.

Some of the proofs upon this point are abstracted in the appendix hereto.

This claim was prosecuted by Mr. Watson in his lifetime. Its justice seems to have been frequently recognized, and on three occasions bills for his relief passed one House of Congress. The apparent reason why neither of these bills became a law, and the history of the claim, are more fully stated in the appendix.

In 1860, said Watson deceased, intestate, leaving these claimants his sole heirs-at-law.

Your committee are of opinion that this is a just and equitable claim against the Government. It is in nowise anologous to claims for property destroyed by the casualties of war.

The property of Mr. Watson was "private property taken for public use." In *Grant vs. United States*, 1 Nott and H., 46, the court, in a very elaborate opinion, holds that the Constitution is imperative that compensation must be made.

In *Harmony vs. Mitchell*, 13 How., 134, the Supreme Court say: "There are, without doubt, occasions where a military officer, charged with a particular duty, may impress private property into the public service or take it for public use. Unquestionably, in such cases, the Government is bound to make full compensation to the owner."

But, apart from the constitutional requirement, the principle therein embodied has been the law of civilized nations for some centuries, and is so laid down by the publicists. When Mr. Watson's property was taken possession of for military use, and soldiers quartered in his buildings, it was not alone exposed to those dangers to which the property of all citizens in common is subjected in time of war, but it was marked as the special object of attack.

It is believed by your committee that there is no well-considered case analogous to this in which compensation has been denied by Congress. On the other hand, there are many precedents for the granting of the relief prayed for here. Indeed, Congress seems to have established the principle upon which compensation shall be made by the enactment of general laws upon the subject. After the war of 1812, upon very great consideration, Congress enacted a law, approved April 9, 1816, the ninth section whereof is as follows:

And be it further enacted, That any person who, in the time aforesaid, has sustained damage by the destruction of his or her house or building by the enemy, while the same was occupied as a military deposit, under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage: *Provided*, It shall appear that such occupation was the cause of such destruction.

(In the year following this section was amended so as to include buildings occupied as barracks for the military forces of the United States, and providing for a commissioner to examine and report the damages.)

These claimants are, and through the war were, loyal to the Union, as was Mr. Watson in his lifetime.

Your committee do not believe that \$30,000 is a fair compensation for the property actually destroyed or consumed by the troops. Neither do they allow interest, nor consequential damages, though there are several precedents in which Congress has allowed for the rent of lands rendered useless to the owner by causes closely, if not precisely, analogous; and the proof shows that the crop of 1836 would have been of the value

of \$20,000. Nevertheless, as the claim, when it last passed the Senate was liquidated at the sum of \$30,000, your committee recommend that the bill be amended by inserting thirty in place of sixty, and that so amended the bill do pass.

APPENDIX.

The deposition of Lieutenant Alexander Martin states that his company was "quartered at the buildings of Alexander Watson; * * * that Captain McLemore considered the occupation of his place by the command and the possession of the stores of provisions thereon as necessary and important for the interests of the service. * * * Captain McLemore took full and entire control of the place before Mr. Watson left; * * * that most of the supplies used by the troops were drawn from the sugar-house of Mr. Watson; * * * that said buildings at the time they were destroyed were occupied as a place of depot for the troops; * * * that said buildings were new, built in the first style, and were very costly."

The deposition of Lieutenant Henry R. Cannon states that his company, upon arriving at Fort Dabney, "immediately took possession of the sugar-house; * * * that during his stay at Fort Dabney a large flat, heavily loaded with corn from the sugar-house, was taken away with the expedition to the Withlacoochee, commanded by Major McLemore."

The deposition of Captain Daniel Bell states that L. G. Ragland was quartermaster of the military post at Fort Dabney, and had the keys of Mr. Watson's buildings; * * * that "there was a large quantity of provisions stored in the buildings on said plantation, which was used by the troops as they required; * * * that the crockery, knives, forks, and spoons were taken from Mr. Watson's pantry, and the pots and other utensils from the kitchen, and were carried to Fort Dabney to be used by the troops, and generally that everything upon the plantation which was needed by the troops was taken and used, and some of the kitchen furniture and carpenter's tools from the sugar-house were carried to the Withlacoochee;" * * * also a yawl-boat and two flats, one of which was very large, new, and well-built, with anchor and cable, all of which belonged to Mr. Watson, and with them about 500 bushels of corn, a quantity of sugar and molasses, and a barrel of pork were carried away from the sugar-house on the expedition to the Withlacoochee.

The deposition of Commissary L. G. Ragland states as commissary he issued rations to the troops from the property of Mr. Watson; that all the property in said buildings not used by the troops was destroyed by the fire; that he subsequently became quartermaster, and as such, by order of Major McLemore, he ordered the killing of Mr. Watson's beeves for the use of the troops.

The deposition of John Miller states:

There were no supplies of forage or provisions, however, in that region to be got for the troops, and they could not be procured and sent there readily. * * * Accordingly Major McLemore and his officers took possession of them for that purpose. * * * They used his houses as depots and as quarters. * * * I know, personally, he was promised his place should be taken care of and protected by the troops. It was in the exclusive use and possession of the troops when burned, 18th June, 1836. * * * The destruction of Mr. Watson's buildings was in consequence of their occupation by the troops. * * * The fort was sickly, and the men used Mr. Watson's buildings as more comfortable and healthy quarters.

Major Joseph McCants testifies that the buildings were used by the

troops as a depot for provisions which could not be conveniently kept in the fort.

The deposition of John C. Pelot states that Captain McLemore, in his presence, "demanded of Mr. Watson possession of his buildings and the keys of the same, as he intended to use them as places of depot for provisions and forage for the troops; * * that he also stated he should use the stores and forage at said place for the troops; * * that said Watson gave him his keys and possession of his buildings, but with some reluctance."

All the points in the testimony above quoted are established by the depositions of other witnesses not named herein.

The following is an itemized schedule of this claim :

APPRAISEMENT.

Schedule of property belonging to Alexander Watson, destroyed by the hostile Seminole Indians at his plantation, called Carleton, on the Suwanee River, Madison County, Territory of Florida, at noonday, the 18th of June, 1836.

1. Dwelling-house built in 1835, on pillars five feet from the ground, one story high, framed of the best materials, lathed and plastered, piazzas front and rear, size of the building fifty feet by fifty-four feet, mullion doors, and painted in the best manner.....	\$4,500 00
2. Kitchen, built on the ground, one-story high, weather-boarded with one-inch plank, floored with one and one-quarter inch tongue and grooved plank, shingle roof, brick chimney, and well finished, size fifteen feet by thirty feet, built in 1835.....	500 00
3. Smoke-house, built on the ground, one-story high, weather-boarded with one-inch plank, floored with one and one-quarter inch tongued and grooved plank, shingle roof, and well finished, built in 1835, size fifteen by fifteen feet.....	350 00
4. Cotton-house, one and one-half stories high, plank floor, built of logs hewed square, shingle roof, size twenty by twenty-two feet, built in 1830.....	800 00
5. Corn-house, built of logs, plank floor, clapboard roof, size sixteen feet by twenty-four feet, and built in 1835.....	250 00
6. Stables one and one-half stories high, built of hewed logs and squared, plank floor for loft, shingle roof, size twenty-four feet by twenty-eight feet, built in 1830.....	550 00
7. Blacksmith's shop, built of logs, clapboard roof, built in 1830, and fixtures.....	300 00
8. Eight negro-houses, built of logs, clapboard roofs, and plank floors in part.....	500 00
9. Sugar-house for boiling and curing, thirty feet by one hundred and ten feet, one story high, fifteen feet from floor to plates; boiling-house floored with two-inch plank, and curing-house floored with two-inch plank, grooved and guttered, built in 1835 of the best yellow pine, weather-boarded with one and one-quarter inch plank, shingle roof; molasses cistern fifteen feet by fifteen feet, four feet deep; eight coolers and two raw juice clarifiers five feet by seven feet, and one raw juice cistern ten feet by ten feet, all built in the best manner and oil-painted; sugar mill of cast-iron rollers, three in number, twenty-two inches diameter, composition boxes entirely new and put up fall of 1835, made in the best manner at West Point foundery, with iron grate bars, copper kettles, five in number, measuring each 700 gallons, 500 gallons, 350 gallons, 200 gallons, and 90 gallons; copper elevator and copper pump, weighing 3,837½ pounds; two copper basins, four copper ladles, four copper skimmers, and charging cock and pipe; one iron craue and chain, setting kettles in boiling-house with English patent furuace brick, and building chimney with double flues thirty-five feet high and eight feet diameter at the base; one copper still and copper worm, two worm tubes, two pounds composition nails, and two hundred pounds hoop-iron.....	14,250 00
10. Engine-house thirty feet by thirty feet, one story high, fifteen feet from floor to plates, weather-boarded with one and one-quarter inch plank, shingle roof, built of best yellow pine in 1835; wooden frame for mill on posts, ten feet from the ground, forty feet diameter, platform six feet wide all round, with railing.....	2,049 00

11. Twenty-three hogsheads sugar, 18,900 pounds in the curing-house	\$2, 673 50
12. Fourteen hundred gallons molasses in cistern	560 00
13. Eighteen hundred pounds sea-island cotton in the seed and stored in curing-house	2, 340 00
14. One yawl-boat, kedge anchor and cable for flat, one bale oakum	90 00
15. Ten plows, six carts and wheels, farming utensils, carpenter's tools, two whip saws, one cross-cut saw, 1,400 oak staves and 480 heading stored in curing-house	900 00
16. Household furniture, new and in good order	350 00
17. One set new harness for one horse, hames, leather, one set grain measures, two sets turners' tools, one barrel pork, one barrel sirup, four ox-chains, one cart saddle in curing-house	112 00
18. Sixty acres seed sugar cane	4, 500 00
19. Seventy-five acres ratoon sugar-cane	3, 750 00
20. Three cows and calves, two yearlings	40 00
21. Twenty-nine head of oxen	870 00
22. Eight head of hogs and pigs	48 00
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	40, 282 50
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Attested by Ambrose Cooper.

TERRITORY OF FLORIDA, *Saint John's County :*

We, Joseph S. Sanchez, Donglaft Dummett, and George Center, of the Territory of Florida, being called on by Alexander Watson to appraise the losses sustained by him by the destruction of his property by the hostile Seminole Indians, do certify that we have carefully made out the foregoing appraisement, and find the amounts to the several items therein contained according to our belief of their actual worth and value at the time of their destruction, and in said estimate and appraisement we have not included any charge for incidental losses or consequential damages resulting from said destruction. We are well acquainted with the value of the species of property we have appraised, and believe said Watson's works and buildings were equal, if not superior, to any in Florida. His losses, by being obliged to abandon his place, must be great. We estimate his probable crop of 1836 at \$20,000, if he had had good success.

JOS. S. SANCHEZ.
D. DUMMETT.
GEO. CENTER.

OFFICE UNITED STATES DISTRICT ATTORNEY,
Saint Augustine, East Florida :

I hereby certify that Joseph H. Sanchez, esq., Donglaft Dummett, esq., and George Center, esq., who have given the foregoing certificate, are citizens of Florida, of the most respectable character and standing. The destruction of Mr. Watson's plantation-houses and sugar-works on the Suwanee River by hostile Seminole Indians, and that he suffered great loss thereby, is a fact notorious in Florida, and his improvements were generally reported as among the best and most valuable in the Territory. But I cannot state from my own knowledge what they should be estimated at, but the testimony of the above-named gentlemen is, in my own opinion, entitled to full credit.

THO. DOUGLAS,
United States Attorney.

The fairness of this appraisement is confirmed by numerous witnesses; among them the master mason, the plumber, and the master carpenter, who erected these buildings, who testify (one of them upon reference to various original bills relating to the cost and expenses of said improvements) that said buildings are set down in this schedule at less than cost, and less than their value.

Accompanying the memorial of Mr. Watson is a certificate signed by the president and seven members of the Florida senate, and nine members of the house, vouching for the "credibility and respectability of the witnesses, whose depositions are annexed to the memorial of Alexander Watson, esq., above enumerated; Colonel Joseph S. Sanchez, and John C. Pelot, esq., are senators from the eastern district, and D. Bell, esq., is a representative from Hamilton County. Some of the other witnesses are known to all of us, and all of them to some of us. The claim of Mr. Watson is well known in Florida, and it is regarded as a claim

of most meritorious character, and demanding the speedy and just attention of the Government."

Mr. Watson was allowed by the War Department \$4,061 for corn, fodder, and bacon sold to the troops. It seems, before his place was taken possession of, (no part of which is included in this claim or in the schedule herein contained,) his fortune was very nearly if not wholly swept away in this disaster, his land being sold for debt thereafter. He never had means to come to Washington to prosecute his claim. His memorial was, however, presented to Congress, and on 22d July, 1842, the Senate in response to said memorial passed a bill, as follows:

AN ACT to provide for the settlement of claims for losses of property, by reason of its military occupation, in the Territory of Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War cause to be audited and adjusted the claims of all persons who have sustained damage by the loss, capture, or destruction of property in the Territory of Florida, since the commencement of Indian hostilities in eighteen hundred and thirty-five, according to the provisions and principles of the act entitled "An act to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes," approved the ninth of April, one thousand eight hundred and sixteen, as amended by the act of the third of March, one thousand eight hundred and seventeen. And that the said Secretary shall have full power and authority, in all cases when it may be deemed expedient, to cause testimony to be taken, by awarding commissions for that purpose to such discreet commissioners as he shall designate; and, after auditing and adjusting such claims, as aforesaid, upon careful examination and investigation, the report of the facts in each case, and the adjudication thereon, shall be transmitted to Congress as soon as may be, that such provisions may be made for the relief of the respective claimants as shall be just and proper: *Provided,* That whenever compensation has been heretofore allowed, either by general or special laws, for any such damage, the same shall be deducted before any further compensation shall be allowed under this act.

SEC. 2. *And be it further enacted,* That the following claims heretofore favorably reported upon by committees of Congress, namely, of Joseph M. Hernandez, of General D. L. Clinch, of the heirs of J. J. Bulow, of the heirs of James Williams, of Gad Humphries, and of John H. McIntosh, may be audited and adjusted in the manner and upon the principles herein prescribed, and the amount found due paid out of any money in the Treasury not otherwise appropriated: *Provided,* That the amount paid shall in no case exceed the sum heretofore sanctioned by one House of Congress, or a report of a committee thereof, for the injury in question.

Passed the Senate July 22, 1842.

Attest:

ASBURY DICKINS,

Secretary.

This bill was sent to the House of Representatives and referred to the Committee of Claims, which reported the same back to the House, recommending that the second section be stricken out; but it does not appear that any final action was taken thereon.

The memorial was again referred in January, 1844, and on the 29th of January, 1844, Mr. Wright, from the Committee of Claims, reported the following bill, which was read and passed to a second reading:

A BILL to provide for the settlement of claims for losses of property, by reason of its military occupation, in the Territory of Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War cause to be audited and adjusted the claims of all persons who have sustained damage by the loss, capture, or destruction of property in the Territory of Florida, since the commencement of Indian hostilities in eighteen hundred and thirty-five, according to the provisions and principles of the act entitled "An act to authorize the payment for property lost, captured, or destroyed by the enemy while in the military service of the United States, and for other purposes," approved the ninth of April, eighteen hundred and sixteen, as amended by the act of the third of March, eighteen hundred and seventeen. And that the said Secretary shall have full power and authority, in all cases when it may be deemed expedient, to cause testimony to be taken, by awarding commissions for that purpose to

such discreet commissioners as he shall designate. And after auditing and adjusting such claims as aforesaid, upon careful examination and investigation, the report of the facts in each case, and the adjudication thereon, shall be transmitted to Congress as soon as may be, that such provision may be made for the relief of the respective claimants as shall be just and proper: *Provided*, That in all cases where the claim, or any portion thereof, shall be for the damage or destruction of buildings, inquiry shall be particularly made whether the occupancy of such buildings was at the request of the owners or was ordered and intended for the protection of the buildings and property of the owners against Indian depredations, or whether such buildings were voluntarily occupied by the United States officers and agents, for the convenience, benefit, and protection of the troops and property of the United States; and in all cases where the occupancy was at the request of the owners of the buildings, or had for its object the protection of the buildings and property of the owners from injury and destruction by the Indians, the facts shall be reported, but no allowance for any such buildings shall be made in the statement of the account of the claimant. And in all cases where partial compensation has been made to any claimant, either by general or special laws, the said Secretary shall cause the statement to be so made as to embrace and exhibit the whole original claim, and the amount of such partial compensation shall be brought into the account, and presented as so much paid upon the claim.

It does not appear that this bill was acted on by the Senate.

The memorial was again referred to the Senate on the 16th December, 1846; and on the 11th January, 1847, Mr. Butler, from the Committee on Claims, reported a bill identical with that last above recited, accompanied by a written report. This bill was not acted on. The report is as follows:

The Committee on Claims, to whom was referred the memorial of Alexander Watson, praying to be indemnified for property destroyed by hostile Indians in Florida, have had the same under consideration, and beg leave to report a bill, upon the statement of facts hereunto annexed:

It appears in evidence in the case of Alexander Watson, who prays for indemnity for property destroyed by hostile Indians in Florida, that said claimant was, during the late Seminole war, the proprietor of a large cotton and sugar plantation on the Suwanee River, on which he had erected extensive and costly improvements for planting purposes. It further appears that Major McLemore, a militia officer in command of Fort Dabney, a post within three or four hundred yards of said improvement, took possession of them, and occupied them as places of deposit of stores and for hospitals for the accommodation of his men. It is also in evidence that the above-mentioned occupation did not take place at his solicitation, nor for the protection of the claimant's property, he being averse thereto in consequence of the friendly relations which had always existed between himself and the Indians, and the belief that he could repel any attack that might be made with his own slaves and such other armed force as he could procure with his own resources. The occupation, as shown in the testimony, took place for the prevention of hostile aggression beyond the Suwanee River and the protection of Middle Florida. The immediate cause of the destruction of the claimant's property arose, as stated in the evidence, in a skirmish which had taken place a day or two previous thereto, in which several Indians were killed. As the battle was fought in the immediate neighborhood of the buildings, the witnesses are of opinion that the Indians were actuated by motives of revenge for the loss of their friends, and would not, under other circumstances, have attacked the premises.

The claimant has already received indemnity for the loss of a portion of his property, consisting of *corn, bacon, &c.*, consumed by the troops during their stay in the neighborhood, but claims further remuneration for *sugar, molasses, and other articles*, distributed among them by the quartermaster of the station, for which the Comptroller of the Treasury did not think proper to make allowance, as, in his opinion, they did not come within the provisions of the law then existing. (See letter of General Gibson, Commissary General of Subsistence, filed with the papers and marked A; also the letter of Captain Hetzel, of the Quartermaster's Department, marked B.)

The fact of the occupation of the premises having taken place at the suggestion of the military officer in command, and in opposition to the wishes of the claimant, is set forth in the depositions of his subalterns, that officer having died soon after the occurrence took place. (See the depositions of John C. Pelot, John H. Paterson, Francis Broward, Alexander Martin, William B. Hooker, and John Miller.)

The respectability of the claimant is attested by a large portion of the members of the legislature of Florida, who express in strong terms their belief in the justice of his claim.

The memorial was again referred in December, 1847, and also again in January, 1849; but it does not appear that it was considered.

The said Watson having died, the claim was revived by Jane Allen Birckhead and Virginia Campbell, his heirs, and a bill reported from the Committee on Claims passed the Senate in the last Congress directing the payment of \$30,000 to these claimants, but at too late a date for a report from the committee of the House.

Your committee believe that justice would have been done Mr. Watson many years ago, but there were many claimants who had suffered damages under different circumstances, and the attempt to group them all into a general bill, and Mr. Watson's inability to give his claim the attention it required, seem to have been the reasons of its miscarriage. The other claimants who had means to press their claims seem to have obtained relief by private bills.