

JOHN McCARTNEY.

APRIL 5, 1836.

Committed to a Committee of the Whole House to-morrow.

Mr. E. WHITTLESEY, from the Committee of Claims, to which was referred the bill from the Senate, (No. 9) for the relief of John McCartney, reported the same, with a detailed report, recommending that the said bill be rejected.

*The Committee of Claims, to which was referred the bill from the Senate for the relief of John McCartney, report :*

That the case was first examined by the Committee of Claims, of the House of Representatives, at the 2d session of the 16th Congress, and an adverse report made thereon, which is recorded in book 5, page 8, to which this committee refer.

At the 1st session of the 19th Congress, the case was referred to the Committee on Indian Affairs, and a bill was reported by that committee which passed the House.

In the Senate, Mr. Cobb, a member of the Committee of Claims, made a detailed report, which concluded with the recommendation that the bill be rejected.

At the 1st session of the 23d Congress, the Senate passed a bill for the relief of the petitioner, which was referred to the Committee of Claims in the House, and a report was made by that committee recommending that the bill be rejected.

This committee have examined the reports of the Committee of Claims in both Houses, and concur in them.

The simple question is presented, whether the United States are holden to pay for trespasses committed by their officers or agents, without law, and when the acts are not connected with the defence of the country, and when the public treasury has not received the avails of the trespass.

This committee think it is both unjust and unwise to impose any such obligation on the United States.

The following resolution is submitted :

*Resolved,* That the bill from the Senate for the relief of John McCartney be rejected.

DECEMBER 15, 1820.

*The Committee of Claims, to which was referred the petition of John McCartney, of the State of Alabama, report :*

The petitioner represents that in the year 1817, he resided in Madison county, of the then Territory of Alabama ; that his cattle would frequently

and unavoidably run off to range upon the Indian lands; that during this time Lieutenant Houston of the army of the United States, was ordered to remove intruders from the Indian lands, and to take all the stock; that, under this order, he forcibly took and carried from the aforesaid eighteen head of the petitioner's cattle, whereby he has sustained considerable loss, and for which he asks Congress to make him compensation.

It appears, by information the committee have received from the War Department, that General Jackson, at the time aforesaid, was ordered to cause to be removed by military force all persons who should be found upon the Indian lands, and to destroy their houses and improvements.

In executing this order General Jackson gave directions to Lieutenant Houston to destroy, not only their houses and improvements, but also to seize their stock, and deliver it over into the hands of the marshal.

Pursuantly to order, Lieutenant Houston delivered to the agent of John Childers, marshal for the district of West Tennessee, fifty-one head of cattle, and one horse creature, which were advertised and sold according to the laws and customs of that State. Other cattle besides these were subsequently taken, but the marshal refused to receive them. There is no evidence in the Treasury Department that any money arising from the sale had been paid to the United States.

Such were the proceedings under the order from the War Department, to remove intruders from the Indian lands. The order extends only to the destruction of their houses and improvements, not to the confiscation of their property.

The committee are of opinion that if General Jackson exceeded the order, when he caused to be seized and delivered over to the civil authority the stock which belonged to individuals, he would, according to the laws and usages of Government, be personally and individually responsible for any invasion of private rights, committed without authority.

The following resolution is therefore submitted:

*Resolved*, That the prayer of the petitioner ought not to be granted.

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FEBRUARY 15, 1826.

*The Committee on Indian Affairs, to which was referred the memorial of John McCartney, have had the same under consideration, and submit the following report:*

That in the year 1817, an order was issued by Major General Jackson, commanding Lieutenant Houston, of the army of the United States, to take a competent force, and enter into the country claimed by the Cherokee nation of Indians, and remove all intruders off the lands within the same, and also to drive all the stock he could find on the lands of the Cherokees. In the execution of this order, Lieutenant Houston took, and carried away, eighteen head of cattle, the property of the petitioner, and placed them, with others, into the possession of the marshal for the district of West Tennessee, who sold said eighteen head of cattle, with a number of others, and notified the proper Department of the facts. It is proved, to the satisfaction of the committee, that John McCartney, the petitioner, was not an intruder on the Indian land; that his residence was near the boundary line, but within that

section to which the Indian title had been extinguished, but from the contiguity of his residence to the said boundary, his stock ranged on the Indian side, where they were found, and driven off with the stock of intruders. It also appears he applied to the officer for the restoration of his cattle, but was informed they had been sent to Nashville, near one hundred and twenty miles distance, where they were afterwards sold. From the evidence before the committee, they believe the eighteen head of cattle, when taken, were worth \$200. They, therefore, report a bill for his relief.

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APRIL 30, 1834.

*The Committee of Claims, to which was referred a bill from the Senate for the relief of John McCartney, report :*

That this claim was examined by the Committee of Claims, at the 2d session of the 16th Congress, and an adverse report was made thereon, which is recorded in book 5, page 8, to which the committee refer, and make the same a part of this report.

During the 1st session of the 19th Congress, a bill was reported by the Committee on Indian Affairs, which afterwards passed the House; and was referred to the Committee of Claims in the Senate: Mr. Cobb, a member of that committee, reported against the claim, on the 26th of December, 1826, to which this committee refer. The claim may have been presented at other times, but the committee do not think it is necessary to resort to the journals for the purpose of ascertaining what has been the further action of either house of Congress upon it previous to the present session. It appears from the proceedings of the Senate, at the present session, that the Committee of Claims recommended that this bill, referred to them, be rejected. It will be perceived by the reports referred to, that the claim arises from an illegal act of an officer, in seizing the property of the petitioner, and selling it at public sale. The property was not applied to public use, which might lay the foundation of a just claim against the United States. It seems to have been an inquiry by the Committee in the Senate at the present session, whether the avails of the property had been paid into the Treasury, or any way accounted for; and the answer from the War and Treasury Departments is, that the money has not come into the Treasury in any manner; nor has it in any way been accounted for. The question is then presented: Are the United States liable for the trespass of an officer, committed on the property of a citizen, which property has not in any way enured to the benefit of the United States, and in a case where the United States have not ordered or recognised the act? The committee think they are not so liable, and any precedent establishing a contrary principle, would be mischievous in its consequences. They believe this to have been the decision of both houses of Congress, whenever the question has been submitted in a manner that was understood. The committee submit the following resolution:

*Resolved,* That the bill from the Senate for the relief of John McCartney, ought to be rejected.

IN SENATE, JANUARY 17, 1834.

*The Committee of Claims, to which was referred a bill for the relief of John McCartney, report :*

That at the second session of the nineteenth Congress, a bill making provision for the payment of the petitioner's claim passed the House of Representatives, and, in the Senate, was referred to the Committee of claims, which made a report thereon. This report the committee have examined, and adopt as a part of their report, and recommend that the bill be rejected.

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 DECEMBER 26, 1826.

Mr. COBB, from the Committee of Claims, to which was referred the bill from the House of Representatives, entitled "An act for the relief of John McCartney," report :

That, from an examination of the petition and documents submitted to them with the bill, it appears that, in the year 1817, the petitioner was a citizen of Madison county, in the Territory of Alabama, residing (whether on his *own* or the *public land*, does not appear) near the Cherokee boundary line. That his stock of cattle ranged over the boundary line upon the Cherokee lands; that, in that year, they were found by a Captain Houston, of the army of the United States, upon the Cherokee lands, and, under the circumstances hereafter detailed, were there seized by him, and delivered, to the number of *eighteen*, as supposed, to the marshal of the district of West Tennessee, by whom they were advertised and sold at public outcry, with a number of others belonging to other persons. It does not appear that the proceeds of sale were ever paid into the Treasury of the United States. The petitioner asks to be compensated for the eighteen head of cattle thus seized and sold.

In order to present a full view of the merits of this claim, the committee deem it proper to give the Senate the following detail of the law, and the facts in relation thereto.

By the second section of the act of Congress "to regulate trade and intercourse with the Indian tribes," &c. passed 30th March, 1802, any citizen of the United States is subjected to a forfeiture of one hundred dollars, and imprisonment not exceeding six months, who shall cross over or go within the Indian boundary line to hunt or destroy game, or who shall drive or otherwise convey "any stock of horses or cattle to range" on Indian lands. By the fifth section of the same act, persons making a "settlement" on Indian lands are subjected to a forfeiture of one thousand dollars, and twelve months' imprisonment; and, by the same section, the President is authorized to employ the military force to remove persons making such settlements; and, by the sixteenth section of the same act, the military force of the United States is authorized to apprehend "every person who may be found in the Indian country, in violation of the act,

and deliver them to the civil authority to be prosecuted." (See 3d vol. L. U. S. p. 460.)

Under this act of Congress, on the 27th January, 1817, the Secretary of War issued to General Andrew Jackson an order, which, after directing the removal of intruders upon the *public lands* within his command, and the destruction of their habitations and improvements, proceeds to say, "intrusions upon the *lands of the friendly Indian tribes* is not only a violation of the laws, but [is] in direct opposition to the policy of the Government towards its savage neighbors. Upon application of any *Indian agent*, stating that intrusions of this nature have been committed, and are continued, the President requires that *they* (the intruders) shall be equally removed, and their *houses and improvements* destroyed by military force, and that every attempt to return shall be repressed in the same manner."

No copy of the orders from General Jackson to Captain Houston having been furnished, the committee have no means of knowing the tenor or extent of such orders, except from a letter from General Jackson to the then acting Secretary of War, of the 22d July, 1817, in which, after stating his opinions with regard to the laws and treaties with the Indians, he says: "under these impressions, I ordered Captain Houston to *seize* and deliver all intruders over to the civil authority, *and their stock into the hands of the marshal*, and if he refused to receive *them*, to note it before evidence, and let them go. The marshal in one instance *received*, and, being perishable property, sold them at *public sale*. This, on legal principles, I have no doubt can be justified; but with his duty I have nothing to do. My orders still are, to take all *persons and stock* found trespassing on Indian territory, and deliver them over to the civil authority for prosecution," &c. From this extract the committee infer that Captain Houston was ordered to *seize cattle* found on Indian lands. They presume that the petitioner's cattle were among those seized by him, and delivered to the marshal, by whom they were sold as before mentioned.

From this view of the law and the facts, the committee are of opinion that the petitioner, John McCartney, is *not* entitled to relief at the hands of Congress.

1st. Because the act of Congress referred to, gives no authority to employ the military force for any other purpose than the removal of the *persons of the intruders*, upon whom a penalty is to be inflicted by prosecution at law. So far from directing the *confiscation* and sale of the property of the intruders, it does not even direct its *seizure or removal*.

2d. Because the orders from the War Department to General Jackson, of the date of 27th January, 1816, before quoted, did not direct him to *seize or sell* the property of the intruders on Indian lands. He was only ordered to remove the *persons* of the intruders, and destroy their houses and improvements. General Jackson, therefore, had no authority to order Captain Houston to "take all persons and *stock* found trespassing on Indian territory;" nor would the act of Congress in question have authorized the President of the United States to issue any order operating on any thing but the *persons* of the intruders.

3d. Because, in the opinion of the committee, Congress are under no obligations, either *legal or moral*, to remunerate individuals for injuries done them by the military officers of the United States in cases where the act complained of was not authorized by *law*. In the case under consideration, the seizure of the petitioner's cattle, so far from being authorized

by law; was not authorized by any order of the President of the United States. The proper course for the petitioner to have pursued, would have been to have sued Captain Houston in the civil courts, in trover or trespass, for his property; or he might have sued the marshal in trover, or for money had and received for his use. That he had his remedy in some shape; at law, either against Captain Houston, or the marshal, or General Jackson, the committee have no doubt; and they have as little that, in such action, neither the act of Congress, or the orders from the War Department, could have afforded the defendant any justification.

4th. Because the property of the petitioner has not been taken for public use. It was neither seized or sold by the authority of law, nor does it appear that the proceeds of its sale ever came into the Treasury of the United States.

The committee, therefore, report the following resolution:

That the bill from the House of Representatives, entitled "An act for the relief of John McCartney," be rejected.