48TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 2176.

RICHARD FITZPATRICK.

DECEMBER 17, 1884.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LORE, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 7760.]

The Committee on Claims, to whom was referred the petition of T. M. English, administrator of the estate of Richard Fitzpatrick, deceased, praying for payment of a judgment of the Court of Claims, rendered in favor of said Richard Fitzpatrick during his lifetime, have considered the same, and submit the following report:

Col. Richard Fitzpatrick was a citizen of Florida at the breaking out of the Seminole war, and owned a large plantation at the mouth of the Miami River, in that State. The Indians took possession of the plantation at the commencement of hostilities and destroyed his houses, crops, &c. The military and naval forces soon thereafter took possession and established two military posts on the land owned by Fitzpatrick, viz, Fort Dallas and Fort Lauderdale; the former was military headquarters. These posts were occupied by the military for several years and large quantities of wood were cut from the lands of Fitzpatrick and used by the Army, as shown by certificates of Generals Harney and Jessup.

Colonel Fitzpatrick first presented his claim to Congress by bill in the Senate during the first session of the Thirty-second Congress, and claimed $60,320 as compensation for the use and "occupation of his premises by United States troops and for wood and other property taken by said troops." The Committee on Claims reported a bill for his relief (S. 431, report No. 234, that session), which passed the Senate, but was not acted on by the House.

A bill for his relief was again introduced in the Senate, and again reported back favorably by the Senate Committee on Claims during the Thirty-third Congress (S. 141, Report 49), and again passed the Senate.

This Senate bill, together with all the papers in the case, was referred by resolution of the House of Representatives to the Court of Claims for adjudication on the law and facts.

The Court of Claims reported their findings of fact and conclusions of law to the Thirty-fifth Congress, first session, and gave judgment in favor of claimant for $12,000, as compensation for rent and use of wood for fuel for the troops and steamboats in the United States service.

The court made no allowance for damage. The court recommended to Congress the passage of a bill appropriating the amount found due

and allowed, and upon which the judgment of the court was unanimous. (See volume 3, Court of Claims Reports to Congress, first session Thirty-fifth Congress, Report No. 175, made May 8, 1858.)

The Committee on Claims of the House of Representatives reported the bill recommended to the House for passage by the Court of Claims at the first session of the Thirty-sixth Congress (House Report No. 86). No action was taken.

The bill recommended by the court to pay its judgment was passed by the Senate during the first session of the Thirty-fifth Congress (S. 393). This bill was not reached in the House.

The Senate Committee on Claims again reported a bill to pay the judgment of the Court of Claims during the first session of the Thirty-sixth Congress (S. 130). This bill passed the Senate April 6, 1860, and was reported back without amendment and a recommendation for passage by the Committee on Claims of the House April 20, 1860, but was not acted on by the House. This bill was the same as the one recommended by the Court of Claims. This is the history of the claim in Congress up to the present session.

The reports and action of both houses of Congress were numerous, and *all* favorable. Four bills for his relief passed the Senate. Colonel Fitzpatrick was unable to pay his counsel to further prosecute the judgment after the last action in Congress, and he was unable to do so himself, being then a resident of Texas. He died soon thereafter, and now comes T. M. English, who has given evidence to your committee of his appointment as administrator of Fitzpatrick's estate, and asks that an appropriation be made to pay this judgment.

Congress having by special action sent Fitzpatrick's claim to the Court of Claims for adjudication, and that court having cut down the claim to less than one-fifth of the original sum claimed, and the court being unanimous in its opinion, your committee would be disposed to recommend the payment on the authority of the findings of the court alone; but after a careful examination of the facts and the law, and in view of the favorable action of the House and the Senate since the judgment of the court was rendered, and in view also of the fact that no interest is claimed, your committee has no hesitation in recommending that the judgment for $12,000 be paid; and as Congress ratified the action of the Committee on Appropriations, which inserted a clause in the deficiency appropriation bill to pay a similar judgment in favor of Selmar Seibert (Stats. at L., Vol. 22, page 260, act approved August 5, 1882), your committee report back the petition to the House, with a recommendation that the amount necessary to pay this judgment ($12,000) to T. M. English, administrator of the estate of Richard Fitzpatrick, deceased, be inserted in the deficiency appropriation bill, and ask a reference of this report, together with the accompanying papers, to the Appropriation Committee for that purpose.

The report of the Court of Claims is herewith appended and made a part of this report.

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 Richard Fitzpatrick *vs.* The United States:

1. The petition of the claimant to the Court of Claims.
2. Claimant's memorial to Congress and accompanying documents, referred by the House of Representatives and returned to that House.

3. Interrogatories to the Hon. S. R. Mallory, and answers thereto, transmitted to the House of Representatives.

4. Agreement of the United States assistant solictor and claimant's counsel to admit the foregoing documents (Nos. 2 and 3) as evidence in this case, transmitted to the House of Representatives.

5. Opinion of the court.

6. Bill for the relief of claimant.

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 fourteenth day of May, A. D. 1858.

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

To the Court of Claims:

The petition of Richard Fitzpatrick, of Brownsville, Texas, respectfully represents:

That at the commencement of the war by the Seminole Indians, in Florida, he was the owner and in actual possession of a valuable plantation on the Miami River, in Dade County, in the southern district of Florida; and that on or about the 6th day of January, 1836, his overseer, James Wright, who was in charge of his plantation and negroes, was obliged to abandon the plantation, leaving everything behind except the negroes, whom by great exertions he removed, and thus prevented them from falling into the hands of the Indians. That the plantation aforesaid was well stocked and provided with everything, and had a great variety of valuable fruit trees on it, which were procured from the West India islands at great trouble and expense—all of which were destroyed; and that the valuation hereto annexed is a very low and reasonable one, and that the losses of the articles were really sustained; and that the compensation for the occupation of the plantation by the United States troops is reasonable; and that the quantity of wood charged to have been cut from his land at the Miami River, and at New River, is less than the real quantity cut and consumed by the steamboats in the service of the United States; that he has never received any compensation whatever for any losses sustained by him, and that none of his slaves have ever received any aid or subsistence from any officer of the United States Government.

This claim was first presented to Congress (House of Representatives) at the second session of the Twenty-sixth Congress. Several reports have been made upon it, and will be found in the volumes of reports as follows: House Report No. 279, Twenty-ninth Congress, first session; Senate Report No. ——, Twenty-second Congress, first session; Senate Report No. 49, Thirty-third Congress, first session; House Report No. 72, Thirty-third Congress, second session. Your petitioner states, by way of amendment, that he is the sole owner of the claim, and that the same was referred to this honorable Court by the House of Representatives at the second session of the Thirty-third Congress.

The petition is further amended by averring that the plantation was occupied by the United States troops from the commencement of hostilities in 1836 to the close of the war, some time in 1842, during all of which time large quantities of wood and other property was taken and used by the Government troops for Governmental purposes.

The account annexed was made up to April, 1840, when the claim was first presented to Congress.

P. PHILLIPS,
Solicitor for Claimant.

ESTIMATE.

The following is an estimate of the losses and damages sustained by Richard Fitzpatrick, at his plantation on Miami River, near Cape Florida, by the Seminole Indians, and for the occupation of said plantation by the United States forces in Florida; and for wood cut on the lands owned by said Fitzpatrick, to the 1st day of April, 1840.

The Indians drove off the overseer and negroes on the 6th day of January, 1836; which said plantation was in the possession and occupation of the troops of the United States for three years, up to April, 1840.

One hundred acres of sugar-cane, worth $100 per acre	$10,000
Thirty acres of corn and pumpkins, worth	1,200
Five acres of sweet potatoes, worth	500
Four thousands plantain and banana trees	4,000
Twelve acres of Bermuda arrow-root	500
Lime grove destroyed	2,000
One hundred cocoa-nut trees destroyed	500
Nursery of tropical fruit trees destroyed	2,500

Six hundred bushels of flint corn	$1,500
One hundred head of hogs	1,000
Poultry, viz: ducks, fowls, turkeys, and guinea fowls	200
One large flat boat, 60 feet long (cost)	1,300
One clinker-built boat	120
One cedar boat	60
One schooner	1,500
One framed house	2,300
Two corn cribs	200
One kitchen	50
One poultry house	50
One hewed-log house	100
Twelve negro houses	1,600
One framed house, south side Miami River	300
One framed house, smaller	100
Two framed houses and out-buildings, purchased from Lewis	2,500
Plantation tools, blacksmiths' tools, carts, plows, axes, hoes, grubbing-hoes, cooking utensils, &c., &c	500
Furniture, bed clothes, books, &c	2,000
Three years' occupation of my plantation by the United States troops at Fort Dallas, Miami River	18,000
Forty thousand shingles	240
Three hundred cords of wood cut from my land, to the first of April, 1840, for the use of the United States steamers employed on the coast of Florida, at $6 per cord	1,800
Two hundred cords of wood cut from my land, at New River, for the United States steamboats, at $6 per cord	1,200
House and improvements, including fruit trees, wharf, &c., purchased of William Cooley, on Little River	2,500
	60,320

Evidence on file in Congress.

Affidavits of William F. English, R. W. Cussans, John Costen, Reason Duke, John Thompson, and John Dubose.

Certificate and statement of Col. William S. Harney.

Letter of Hon. S. R. Mallory.

Report of General Jesup.

Statement of specific losses, with testimony of William F. English and W. Cooley.

Letter of S. Churchill.

In the Court of Claims.

RICHARD FITZPATRICK *v.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

In the year 1836, when the war with the Seminole Indians, in Florida, commenced, the petitioner was the owner of a plantation on the Miami River, in that State. Some time in that year the plantation was occupied by a part of the naval forces of the United States, under the command of Lieutenant Powell, who built block-houses, pickets, &c., thereon of timber taken from the petitioner's land, and called the post Fort Dallas. The block-houses, &c., were subsequently destroyed by the Indians; but how long the plantation was thus occupied does not appear from the evidence.

Afterwards, in February or March, A. D. 1838, by order of the Quartermaster-General of the United States, Fort Lauderdale, on New River, and Fort Dallas, on the Miami River, were established on the same plantation, and they, together with the entire plantation, were occupied by the troops of the United States from that time till the year 1842. Whilst the plantation was thus occupied, timber for building and wood for fuel for the use of the troops and of steamboats in the service of the United States were taken therefrom. How much timber and wood were thus taken cannot be ascertained from the evidence, but the quantity was large.

Immediately upon the breaking out of hostilities, the petitioner was obliged to abandon his plantation and remove his slaves from it. Under the pressure of the danger which then threatened him he left his other personal property on the plantation, and soon afterwards the whole of it, together with all his buildings, was destroyed by the Indians.

The petitioner claims compensation for the wood and timber which were taken for the use of the United States, and for the occupation of his land by their troops.

James Wright testifies that the estimate of $6,000 a year for the use of the plantation is less than the same, with the force employed on it, would have produced to the owner. William Cooley concurs in this statement.

The Quartermaster-General, in his report to the Secretary of War, dated January 13, A. D. 1841, says: "As the petitioner could make no use of the land himself, and as the fuel was cut and hauled by the troops, from $2,000 to $3,000 a year would, I should think, be ample compensation for both."

S. R. Mallory (senator), in answer to the question "What would be a fair annual allowance by the Government for the use of said plantation during the period of their occupation," said: "I cannot estimate the value of the use of the plantation to the United States while thus occupied. It is quite certain, however, that its occupation was of great importance, and was the best, if not the only, point in that vicinity available for the purpose to which it was put. I can refer to the opinion of General Jesup, on file in this case, and say, that the use of the place, with the wood used upon it, ought, in my judgment, to be worth $3,000 per annum, but I have no accurate data to arrive at this estimate. I know the place well; was there frequently while it was occupied by Fitzpatrick as a plantation, and by the troops as a military post; and I state this gross sum as what strikes me as being fair, though to the United States, in the prosecution of the war, it must have been regarded as an important station." Afterwards he stated as follows: "In my reply to the fifth interrogatory touching the value of Fitzpatrick's place to the United States while occupied by them, I said that the 'use of the place, with the wood used upon it, ought, in my judgment, to be worth $3,000 per annum.' This estimate is, I believe, a very moderate one, and is formed exclusively on my own judgment. I know the place well. The Government was compelled to establish a post in that vicinity on Key Biscayne Bay, and had it selected any other than this particular place, occupying both sides of the river Miami, a very considerable outlay and continual expenditure would have been entailed upon it, exceeding this $3,000 per annum.

"In my judgment, it was worth to private enterprise $3,000 per annum; and private enterprise, too, that would have preserved, and not have destroyed, the valuable fruit trees, &c.

"It is the only place in the whole bay where steamers can go alongside the shore and land cargo. At all other places they are compelled to anchor at a great distance from the shore, and the saving in dollars and cents which the Government made by selecting this point above others was very large.

"I have stated what I regarded as the value of the rent. I am confident that the owner would not have rented it for this sum.

"I cannot say what the place would have rented for in open market, for it was the only plantation within a hundred and fifty miles of it, and there were no planters near it able to rent it."

We are not justified by the evidence in saying that the petitioner's plantation was occupied by the United States for a longer period than four years.

Our opinion is, that the petitioner's claim is well founded. This private property was taken for public use, and he is entitled to a just compensation therefor.

As to the amount of compensation, a general estimate made by a witness, who knows the premises well, and frequently visited the " whilst in the occupancy of the United States, is all that can justly be required of the petitioner. Such a witness is Senator Mallory. We adopt his estimate.

We shall, therefore, report to Congress a bill in favor of the petitioner for the sum of $12,000, as compensation for the wood and the rent.

A BILL for the relief of Richard Fitzpatrick.

Be it enactd by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, directed, out of any money in the Treasury not otherwise appropriated, to pay to Richard Fitzpatrick the sum of twelve thousand dollars, in full for the use and occupation of his plantation as a military post of the United States between the years 1836 and 1842, as also for the damage done to said plantation in the cutting of wood and lumber during such occupation.