

FRANCES GARDINER.

[To accompany bill H. R. No. 47 ]

DECEMBER 14, 1837.—Reprinted.

APRIL 27, 1836.

Mr. E. WHITTLESEY, from the Committee of Claims, made the following

REPORT:

*The Committee of Claims, to which was referred the petition of Frances Gardiner, report :*

That the petitioner is the widow of the late Captain Gardiner, of the second artillery, who was in Major Dade's command, and was killed in the engagement with the Indians on the 28th of December last. The petitioner had been with her husband for some time in camp, and had followed his positions in the army, at Fort Jackson, at Fort Pickens, and at Fort Brooke. On his repairing to Fort King, the petitioner proceeded to Key West, whither her father-in-law had preceded her with her children. Lieutenant Duncan, she says, was requested to forward her furniture and effects to Key West, but was prevented from complying by order of the commanding officer at Fort Brooke. She has been informed by Doctor Nourse that the barracks at Fort Brooke had been burnt to prevent them from falling into the hands of the Indians, wherein they would find shelter should they attack the stockade ; and that her furniture and effects cannot be found, with the exception of a few chairs and some carpets. The carpets were used to cover the tents.

A list of the furniture and effects is made out, and is certified by the oath of John Gardiner, amounting to three hundred and thirty-eight dollars. She prays to be paid the value of the property, and to be remunerated her travelling expenses, at the rate allowed to officers for the transportation of their baggage. She represents her condition to be—without health, from the disease contracted at Fort Jackson ; without funds, having exhausted them in defraying the expenses of herself and children to Connecticut from Key West ; and that she now resides under the protection of a widowed mother, formerly the wife of an officer who recently died on his passage from New Orleans, and is without a pension from the Government.

There is no positive testimony as to the destruction of the property, although the presumption is strong that it is destroyed. The evidence is not sufficiently satisfactory to prove how much of the property was in the military occupation of the United States. They are not the insurers of

the property of their officers, unless such property was in their occupation, and lost or damaged in consequence thereof. It is said that the carpets were used for covering tents; if so, and they were destroyed, or have not been returned, the United States are liable to pay for them; or if they have not been destroyed, but have been returned in a damaged state, then the United States should pay such damage.

It is further said, that the reason why Lieutenant Duncan did not send the property to Key West, was from an order of the commanding officer at Fort Brooke. Such an order may, or may not, subject the United States to pay for the goods, according to the circumstances and the use made of them, and their being lost in consequence of such order. Without further testimony, the committee is not able to decide in favor of the petitioner, so as to report a bill for specific relief.

A bill is herewith presented, empowering the Secretary of War to pay for such property as has been destroyed in the military service; and to pay the damage done to property occupied, but not destroyed; and for such property as was necessarily prohibited from removal, and destroyed in consequence thereof.

The claimant, by the agency of her friends and the military friends of her late husband, will, very probably, be able to obtain the necessary evidence during the pendency of the bill.

The case is one of great hardship, but the committee should not depart from well-established principles to meet it.