

A. R. S. HUNTER.

[To accompany bill H. R. No. 422.]

JUNE 14, 1844.

Mr. COBB, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to whom was referred the petition of Archibald R. S. Hunter, report:

That the claimant asks to be paid for depredations committed upon his crop of corn, oats, peas, and pumpkins, by the horses belonging to a troop of volunteer militia, in the United States service, stationed at Fort Butler, in the Cherokee country, during the summer and fall of the year 1836.

It appears from the evidence taken by a board of investigation appointed by General Wool, then in command of that portion of the United States army, that for twenty-eight days no forage was furnished the troops; that the fences were pulled down by the soldiers, to enable the horses to get into the fields of the petitioner; that the whole amount of the damage sustained by the petitioner, from the cause aforesaid, was equal to the value of four hundred bushels of corn, and that corn was worth fifty cents per bushel. The committee, therefore, have thought proper to herewith report a bill to remunerate him for the damage he sustained.

Proceedings of the board of investigation relative to A. R. S. Hunter's claim for damages on his crops.

HEADQUARTERS OF THE ARMY, (C. N.)

Fort Butler, June 14, 1837.

SPECIAL ORDER.

A board of investigation, to consist of Colonel Byrd, Major Delaney, and Captain Peak, of the East Tennessee volunteers, will convene at Fort Butler on the 15th instant, at 9 o'clock, to examine into and report their opinion upon the justice of the claim of Colonel A. R. S. Hunter for damages done to his corn, oats, pumpkins, &c., by the East Tennessee volunteers, as set forth in his communication of the 11th of June instant, herewith transmitted.

George W. Rowles, esq., will act as recorder to the board.

By order of Brigadier General Wool.

THOS. C. LYON, A. D. C.

MACON COUNTY, (C. N.) NORTH CAROLINA,
Huntington, June 11, 1837.

SIR: I feel it a duty that I owe myself to ask an investigation for indemnity for depredations committed on my crops of the last year by the horse belonging to your command at this post. I am not actuated in this application from any wish or motive to cast an imputation, or to reflect upon the troops stationed here; for, although in many instances acts of aggression were committed, yet the circumstance of an entire dependence for forage being that of the range of grass on the hills, the horses necessarily running at large, and being impelled by hunger, the immediate contiguity of my fields to the encampment consequently threw or prompted them to break the enclosures.

From the best evidence I can obtain, and estimates I can arrive at, and to the best of my knowledge and belief, I do not hesitate to say that I sustained a clear loss of at least an amount of the value of five hundred bushels of corn, in my various crops of wheat, oats, fodder, peas, pumpkins, corn, and the use of my fields for my stock after the corn was housed, as well as a considerable loss of corn, that I was compelled to gather before it was sufficiently matured, which spoiled and injured much other with which it was mixed, on account of the hurry that I was compelled to use, or sustain a much greater loss.

Estimate of damage, as follows:

Corn, at cost	-	-	-	-	-	300 bushels.
Injury to wheat shocks, oats in field opposite encampment	50	"				
Peas, fodder, and pumpkins, equal	-	-	-	-	-	100 "
Use of fields for my stock	-	-	-	-	-	50 "
						<hr/> 500 bush. corn. <hr/>

Very respectfully,

ARCH. R. S. HUNTER.

Brig. Gen. J. E. Wool,

Commanding Tennessee volunteers.

FORT BUTLER, (N. C.) June 15, 1837.

In pursuance of the above order, the board of investigation convened. Present, all the members of the same.

General Nathaniel Smith was then called.

Question by the board. General Smith, please state what you know in reference to Colonel Hunter's claim for indemnity for depredations committed on his grain by the volunteers at this post, as stated by him in his communication just read?

Answer. Previous to my leaving Fort Butler, about the last of October, 1836, I was informed by Colonel Hunter, Quartermaster Cox, and others, that the public pack-horses, and some of the volunteers' horses, were in the habit of frequently getting into the cornfields near Fort Butler, belonging to Colonel Hunter. I believe I once or twice saw some two or three of the volunteers' horses in the cornfield nearest to the encampment; I imme-

diately had them turned out. It was said that horses belonging to the volunteers were frequently getting into an oatfield of Colonel Hunter's, that lay on the opposite side of the river from where we were encamped. This field I should suppose to contain about twenty or twenty-five acres; the oats were standing in it, not cut, when I arrived with my command—or at least the part which I saw was not cut. The oats in this field, I was informed, were the part destroyed by the volunteers' horses; who my informant was, I do not at this time recollect. Of the extent of damage done I have no knowledge, never having been in the field. Before leaving Fort Butler, I noticed that some of the volunteers were in the habit of going into Colonel Hunter's cornfield and cutting down the dry trees for firewood. This I gave orders to stop, as soon as it was discovered.

On my arrival at Fort Butler with my command, there were about twenty-eight days that no forage could be obtained for the horses. They were herded on the grass, to keep them up; many of them, in running at large, would get into mischief. A patrol was constantly kept up, but the horses would still frequently get into the cornfields, &c. The extent of injury done by them in the corn, oats, &c., as complained of by Colonel Hunter, I am entirely unable to say, never having been in any of these fields. Colonel Hunter named to me several times before I left Fort Butler, that he was sustaining considerable injury by the horses running loose and getting into his fields, &c. I at all times tried to prevent it in every possible way.

NATH. SMITH.

GEO. W. ROWLES, *Recorder.*

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FORT BUTLER, (N. C.), June 17, 1837.

The board convened pursuant to adjournment. Present, all the members except G. W. Rowles, esq., who was relieved from the duties of recorder by the following order:

HEADQUARTERS OF THE ARMY, (C. N.,)
Fort Butler, N. C., June 16, 1837.

SPECIAL ORDER.

G. W. Rowles, appointed recorder to a board of investigation on the 14th instant, is, at his request, relieved. Lieutenant Montgomery is appointed recorder in his place, and will be respected accordingly.

By order of Brig. Gen. Wool.

W. B. SHAW, A. A. D. C.

The above order having been read to the court, Lieutenant Montgomery, in pursuance thereof, assumed the duties of recorder.

Arthur Orr, a witness adduced by the complainant, having been duly sworn, deposed as follows: "About the 28th of October, 1836, I hauled the baggage of Captain Ellis's company back to this place from Tennessee; I was continued in the employment of Government, at this post, until near Christmas. During this time I think, from what I saw, there were every night from five to twenty horses of Captain Powell's company in Colonel Hunter's cornfield adjacent to the camp. When I first arrived, the corn in

the end of the field nearest the encampment was nearly all destroyed. There was a good stake and rider fence round the field, and Colonel Hunter's hands were constantly employed in putting up the fences thrown down over night; and Captain Ellis, while in command, exerted himself strenuously in preventing the destruction of the corn by the horses of Captain Powell's company. There was only one horse company at the post during the time above alluded to, (Captain Powell's company,) and there were no pack-horses then at this post.

"Captain Ellis, while in command, ordered the mounted volunteers to put those horses which were most prone to commit depredations in a pound formerly used to confine the public pack-horses in. This pound was three or four rods from the field; and, if caution had been used by the volunteers having horses in it, it might have been sufficient to have confined them."

Question by the board. How many acres were in the field of corn adjacent to camp?

Answer. About thirty-five or forty acres.

Question by the board. What would the field average in corn per acre?

Answer. If it was as good throughout as that which I observed particularly, it would average about twenty or twenty-five bushels per acre.

Question by the board. What was the description of the crop of peas and pumpkins in the said field?

Answer. I noticed but few pumpkins, but a finer crop of peas I never saw than that which grew near the road.

Question by the board. Do you know whether the volunteers received their full allowance of corn and fodder from the Government during the time *this* corn was being destroyed?

Answer. Yes, they did; I hauled and delivered it myself. They received about one peck of corn and four binds of fodder to each horse, daily.

Question by the board. Do you know whether any of the volunteers sold the corn issued by the quartermaster for liquor, and left their horses to shift for themselves?

Answer. Yes; I know of one or two who did so; private Elijah Farr, of Captain Powell's company, in particular.

Question by the board. What exertions did Captain Powell make to prevent depredations; and what was the degree of damage incurred by Colonel Hunter, through his corn, whilst Captain Powell was in command, compared with that which he sustained whilst Captain Ellis commanded?

Answer. I don't know that Captain Powell made any attempts to prevent the spoliation. If he had made the exertions Captain Ellis made, I should have known it, being almost constantly in camp; but neither of the officers could have controlled the men, for when Captain Ellis's patrol turned out the horses at one place, they got in immediately at another.

Question by the board. Were the fences sufficient to keep out the horses, if they had not been thrown down purposely?

Answer. I think so; they were well staked and ridered when I came here.

Question by the board. Do you know whether Captain Ellis's patrol were ever insulted for discharging their duty in protecting Colonel Hunter's crops?

Answer. I found a patrol one night, composed of men of Captain Ellis's company, guarding a gap in the field, and a number of men belonging to

Captain Powell's company abusing them about the nature of their service, and threatening to whip them for guarding the field.

Question by the board. Did you believe at the time that the men of Captain Powell's company threw down the fences, and let their horses into Col. Hunter's enclosure?

Answer. I believe there was something wrong about it.

On motion of Major Dulaney, the board adjourned to meet again on Monday, the 19th instant, at 9 o'clock, a. m.

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FORT BUTLER, (N. C.) *June 19, 1837.*

The board convened pursuant to adjournment. Present, all the members; and having called upon Colonel Hunter for further testimony, he adduced Captain John Ellis, of the East Tennessee volunteers, who was accordingly sworn, and proceeded to give the following statement:

"With regard to the destruction of Colonel Hunter's field of oats, I know nothing. The public pack-horses destroyed Colonel Hunter's crop of corn some little during the time Colonel Smith was in command. Colonel Hunter's crop of corn, peas, and pumpkins, suffered very little damage while Colonel Smith was in command, compared with the injury sustained after he was relieved, which happened about the 25th of October, 1836. There were about eight or twelve pack-horses at the post until Colonel Smith was relieved, when they were sent with the troops to Calhoun, Tennessee. I started to march to Calhoun with part of Colonel Smith's command, on or about the 25th of October, but was overtaken on the Unika mountain by an order ordering my company back to this post. I arrived here on the 28th, in the evening, and assumed command—the detachment consisting of Captain Powell's company and my own. The next morning I saw about twenty or thirty horses of Captain Powell's company, in, and coming out of, Col. Hunter's cornfield near the camp, and the fences were down in several places. This was the first time after my return that I noticed any horses in the said cornfield, and I immediately ordered out a patrol, with instructions to drive all the horses out, and to put up the fences. This patrol I kept on duty during the time I commanded, which was about ten days. By this course I arrested the destruction of the crops in a great degree, so that not more than one or two horses, and sometimes none, were found in the field in the mornings. I also issued an order that the horses should be tied up, and instructed the officers to see that the order was conformed to. About the 8th or 10th of November, 1836, I was relieved from command by Capt. Powell. During all this time, the horses of Captain Powell's company were receiving plenty of forage from the Government. Captain Powell remained in command about six or seven days, when he was relieved by Major Cunningham. I don't believe that either of these officers used any exertions to protect Colonel Hunter's crops—at least there was no longer a patrol on duty for that purpose. During the time I commanded, I incurred a good deal of ill-will from the men of Captain Powell's company, for my course in protecting the said crops, and was frequently told by them that I was making myself officious, for that I should not have to pay for the damages."

Question by the board. What amount of corn, peas, and pumpkins, do you suppose was destroyed before the pack-horses were sent off, and what after?

Answer. Previous to marching for Calhoun, I was one day walking through the cornfield alluded to, and, from what I observed, I think that the destruction of corn, peas, and pumpkins, was equivalent to about fifty bushels of corn, which was destroyed by the pack-horses, together with the other horses of the command. After the departure of the troops for Calhoun, there were no other horses at the post, except Captain Powell's company horses, and some wagon horses, which latter were constantly employed, and I believe were never known to be found in the field. The whole amount of injury sustained by Colonel Hunter, from the destruction of corn, peas, and pumpkins, in this field, would be equivalent, perhaps, to 250 or 300 bushels of corn.

Question by the board. What was the condition of Colonel Hunter's fences during this time?

Answer. When we first came here, the fences were not sufficient to protect the crops; but before there was any damage done of any moment, the fences were repaired by Colonel Hunter, and patrols were kept guarding the crops until this was accomplished.

Question by the board. What was the average produce of the cornfield alluded to?

Answer. I reckon it would have produced thirty bushels to the acre, had it not been destroyed.

Question by the board. What do you suppose was the number of acres in the field?

Answer. About thirty-five or forty acres.

Sergeant Elijah Cagle, a witness adduced by the complainant, having been duly-sworn, deposed as follows:

I belong to Captain Ellis's company, and was doing duty as first sergeant in the company when it was stationed here last summer and fall. I was frequently ordered on patrol duty by Captain Ellis, to protect the corn, &c. in Colonel Hunter's field adjacent to the camp. While on this duty, I frequently found the horses of Captain Powell's company in the field alluded to, and turned them out, and put up the fences, as instructed by Capt. Ellis. I have seen, at different times, from eight to ten horses in the field. Before the pack horses went away, I saw them in the field several times. I don't recollect of ever seeing more than two pack horses in the field at one time. There were always other horses belonging to the command in the field with them. The greatest damage was done after the return of our company from Tennessee, and by the horses of Captain Powell's company.

I have never seen any of Captain Powell's company throw down the fences; but I have seen where the fences must have been let down, the horses taken out, and the fences put up again. While going my rounds, I have frequently found the fences thrown down, as if by hand, and not by horses, which were up the night before.

While Captain Ellis commanded, he used every exertion to protect Colonel Hunter's property; but after he was relieved, and Captain Powell assumed command, the patrol was discontinued, and I never knew of any more steps being taken to prevent spoliations.

Question by the court. Why were the men of Captain Powell's company never detailed to guard the field? and why were Captain Ellis's men always detailed for this duty?

Answer. It was the opinion of most in camp that Captain Powell's men would not perform that duty faithfully.

Question by the board. Were Colonel Hunter's hands frequently employed in putting up the fences which had been thrown down over night?

Answer. Yes.

Question by the board. What number of acres were in the field adjacent to camp?

Answer. About forty-five or fifty acres.

Question by the board. What would the field have produced per acre, had the crop not been injured?

Answer. Between twenty-five and thirty bushels.

Question by the board. What proportion of the corn, peas, and pumpkins in that field, do you suppose were destroyed?

Answer. About one-third—perhaps more.

Question by the board. Was there any other corn belonging to Colonel Hunter injured by the horses of the volunteers? and by what horses was the damage, if any, done?

Answer. There was another field of corn, of about five acres, which was injured while Captains Williams's, Powell's, and Rogers's mounted companies were stationed here. This field would have produced about one hundred and twenty-five bushels of corn; and I think there were about one hundred bushels destroyed in it by the horses of the above-mentioned companies, and the pack-horses.

Question by the board. Did you ever see any other horses, hogs, or cattle, in Colonel Hunter's cornfields?

Answer. Yes. I frequently saw cattle and hogs in the fields above mentioned, which I supposed had gained entrance through the gaps the horses or men had made in the fences. The cattle, I think, belonged principally to Edward Christian.

On motion of Major Dulaney, the board adjourned until to-morrow at 10 o'clock, a. m.

FORT BUTLER, (N. C.) June 20, 1837.

The board convened pursuant to adjournment,—present all the members,—and proceeded in the investigation as follows:

Ensign Robinson, of the East Tennessee volunteers, a witness on the part of the complainant, having been duly sworn, desposed as follows:

I was absent from the post when the oats were destroyed. The corn in Colonel Hunter's field, near the encampment, and in a small field above the camp, was partially injured while Colonel Smith retained command; but the injury was nothing, compared to that which took place after he was relieved. There was more damage done the said crops during the interval between the departure of Captain Ellis's company for Tennessee and its return, and while there was no company here except Captain Powell's, than was ever done at any other period. The principal damage was done during that time. After our return to Valley river, I heard one of Captain Powell's company say, that, during our absence, the company turned their horses loose, and never pretended to restrain them from getting into Colonel Hunter's fields. Immediately on Captain Ellis's return, he ordered out

a patrol to guard the crops. On this account, he obtained the ill-will of the North Carolina officers and privates of Captain Powell's company, who said that Captain Ellis had no right to interfere; that it was a matter which did not concern him, and that he would not suffer for the spoiliations committed by their horses.

When the patrol was first appointed, some of Captain Powell's men were detailed, together with some of Captain Ellis's. But the men soon quarrelled; for when Captain Ellis's men would attempt to turn the horses out, the others would insist that the horses should not be turned out, but should remain where they were, until their owners should think proper to take them out themselves.

There were about thirty or thirty-five acres in the large field, which would have averaged twenty-five or thirty bushels of corn per acre. There was about one-half of the corn crop destroyed. The pumpkins were nearly all destroyed, or carried out of the field by the men of Captain Powell's company, who gave them to their horses. About one half of the crop of peas (which was a very fine one) was destroyed.

The volunteers had been drawing forage nearly a month before the principal damage was done. And when the depredations were most serious, the horses were drawing full rations of corn and fodder; and the men of Captain Powell's company were constantly selling the corn received from Government to officers and others about camp.

The small field, containing about four acres, was as good as the other, and about one-half of it was destroyed. There were peas in it, but no pumpkins. The fences were in tolerably good order when we first arrived, and were afterwards made very good—sufficient to turn any horse.

Question by the board. Did you ever know any of the fences to be thrown down by the men?

Answer. I never saw them do so; but one night when on guard, and patrolling round the cornfield for the second time that night, I found where the fence had been thrown down since my first tour. The fence in this place seemed to have been thrown down by hand; and, on examining the field twice, to ascertain if there were any horses in it, I found none. I concluded, from these circumstances, that some person had thrown down the fences to admit loose horses.

Private James B. Housely, a witness for the complainant, having been duly sworn, deposed as follows:

While the volunteers were lying in the vicinity of Colonel Hunter's fields, about the 1st of August, I saw horses belonging to Captain Williams's company in an oatfield belonging to Colonel Hunter, on several occasions, before the oats were cut; and I saw the men of the same company carrying oats out of the same field into camp. With regard to the corn, I must say that our company (Captain Powell's) did certainly destroy nearly all that was injured. There were about twenty or twenty-five acres in the oatfield, and the crop was very fine.

Private Jesse Holmes, of Captain Powell's company of East Tennessee volunteers, a witness for the complainant, having been duly sworn, stated as follows:

I saw the men of Captain Williams's company carrying oats out of Colonel Hunter's field last summer; and, on inquiring how they obtained them,

they said Colonel Hunter had given them permission to take oats out of the field, and to put their horses in. I heard Colonel Hunter afterwards say that he had not given them permission to do so. I saw Colonel Hunter's wagon hauling in oats, after I saw these men carrying oats into camp.

The night before Rogers's company went away, the fence around the large cornfield was thrown down in three places, and nearly all the horses of Captain Rogers's company, and some of Captain Powell's, were in the field in the morning.

A. R. S. Hunter having been duly sworn, the following questions were asked him by the board :

Question by the board. How many acres did your oatfield contain?

Answer. I should say about twenty-five acres.

Question by the board. How many bushels would it have yielded per acre, if it had not been injured?

Answer. I should have supposed that the part injured would have produced thirty or forty bushels per acre.

Question by the board. What proportion of the field was destroyed?

Answer. There were about six acres destroyed, which I have estimated in my complaint to be equivalent to a loss of at least one hundred bushels of oats, or fifty bushels of corn. In my complaint I have estimated two bushels of oats to be equivalent to one bushel of corn.

Preston Starritt, having been called upon by the complainant, submitted the annexed statement, in writing, to the correctness of which he was duly sworn:

A statement made by Preston Starritt respecting damages done by the volunteers to the property of Col. A. R. S. Hunter.

I came to this place with the volunteers, and remained with them some time. During my stay, I saw many of the volunteers carrying oats in the sheaf across the river from towards Edward Cristy's. The names of the soldiers thus employed I do not now recollect, as I then thought they were getting the oats from Cristy. It was not for some time that I knew the oats belonged to Colonel Hunter. I saw a great many oats brought over; but the amount or value of the oats I cannot now say, as, at the time, I did not expect to be called on to give a statement about them.

I boarded, while with the volunteers, at Colonel Hunter's. Almost every morning, for a considerable length of time, I heard the colonel's servants complaining to their master that the horses of the volunteers were in his cornfield the night before. The colonel, I think, as many as three times, asked me to go and see the officers, and request that they prevent, if possible, the intrusions of the horses. I did so. The officers informed me they were doing all they could to prevent his property from being destroyed; but that the horses were suffering for want of forage, having had none for fifteen or twenty days, and were, of necessity, turned in the woods to subsist on grass, and would break in the field. I was several times in the cornfield; I always found fresh signs of horses, with great destruction of corn, peas, and pumpkins—what amount of damages I am greatly at a loss to say; I know it was considerable. I am fully of opinion that one-third part of the crop then standing on the ground, immediately adjoining the

camps, was destroyed on the ground, or so bitten that it rotted before gathering into the house. I have not taken such notice of the fields as that I could say, with certainty, how many acres were in cultivation, or what it would produce per acre; but distinctly recollect that, at the time, I was of opinion one-third, at least, of the crop was destroyed, or would rot before gathering time. The corn was young when first broken into—perhaps not in full roasting ear; bitten in that state, it would be sure to rot before it would ripen.

I remained here from the time the volunteers first came, until about the 12th of September. During all that time scarce a night passed that there were not some of the horses belonging to the volunteers breaking into the fields, lots, and stack-yards of Colonel Hunter. Corn and oats at that time were remarkably scarce and high. Corn, when the volunteers came first to this place, sold at from \$1 50 to \$2 per bushel, and was not to be had even at that price; oats were from 75 cents to \$1 per bushel, and not a supply to be had at that price. I know that it was with great difficulty and at great expense that Colonel Hunter could get a sufficient supply to furnish his customers with forage for their horses.

I returned to the mountain about the 1st of October, and was occasionally about the camp, and still saw the horses belonging to the troops trespassing on Colonel Hunter's fields; I believe they still did, until the crop was gathered. The fencing round the fields was tolerably good when we came, but was greatly improved shortly afterwards by the colonel. They were made sufficiently good to keep out any but very unruly horses, such as some belonging to the service.

I must say, in conclusion, that every officer connected with the service manifested a disposition to prevent the horses from trespassing on the fields of any person whatever.

PRESTON STARRITT.

The board adjourned to meet on the 23d.

FORT BUTLER, (N. C.) June 23, 1837.

The board convened pursuant to adjournment. Present, all the members: when Lieut. J. A. Powell, East Tennessee volunteers, having been duly sworn, the following questions were asked him by the board:

Question by the board. Were you acting adjutant to the detachment stationed here, after Colonel Smith marched to Calhoun?

Answer. I was.

Question by the board. Who commanded previous to the return of Captain Ellis with his company, and when only your own company was here?

Answer. I commanded myself.

Question by the board. What steps were taken during this time to prevent spoliation of Colonel Hunter's crops?

Answer. I told my men to keep their horses tied up, but I ordered out no patrol for this purpose.

Question by the board. What steps did Captain Ellis take, on assuming command, with regard to this matter?

Answer. I don't know of any.

Question by the board. Was there a patrol ordered out immediately on his return?

Answer. I think not—I am sure of it.

Question by the board. During the time Captain Ellis commanded, was there any party of men guarding Colonel Hunter's cornfield in the vicinity of the camp?

Answer. Not to my recollection.

Question by the board. Were any instructions given the guard to that effect? or did you never know the horses of your company to be turned out of the field alluded to, by Captain Ellis's order, or by the guard?

Answer. Not to my recollection.

Question by the board. Were you generally in camp during this time?

Answer. Yes.

Question by the board. Were you ever in Colonel Hunter's corn or oat fields? and if so, to what extent were they damaged?

Answer. I don't recollect ever being in Colonel Hunter's enclosures in my life—at least not while there was anything in the fields.

Question by the board. Were details ever made, without your knowledge, for patrols, &c.?

Answer. Yes. Details were made for purposes I knew nothing of.

Lieutenant Montgomery being duly sworn, the board inquired what was the price paid for corn last fall by the department?

Answer. I paid fifty cents for corn in the crib, and about \$5 for the delivery of every thirty-five or forty bushels at the post; making the total cost about 60 cents or 62½ cents per bushel.

The court, being satisfied with the testimony already adduced, adjourned *sine die*.

JOSEPH BYRD, *President*.

JOHN R. DELANEY, *1st Major*.

J. PEAK, *Captain*.

A. MONTGOMERY,

Lieut. 7th Infantry, Recorder.