

JAMES B. ESTES.

MAY 24, 1844.

Read, and laid upon the table.

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

REPORT:

The Committee of Claims, to whom was referred the petition of James B. Estes, of Wisconsin, report:

That this claim is for compensation for services performed by the petitioner for the United States, from the 11th day of May, 1832, to the middle of the following August; for a horse furnished a volunteer in the service of the United States; and for wheat in the stack, and oats in the field; and for poultry, bees, household furniture, &c., taken and used, or destroyed by the troops from Michigan and Illinois, in the service of the United States. The petitioner says his loss exceeded \$6,250, and prays relief for that amount.

As it was, very naturally, a matter of surprise that a claim for so large an amount should be permitted to remain dormant for twelve years, instead of bringing it promptly before the War Department or before Congress for payment, a letter was addressed to the Third Auditor of the Treasury, for information throwing light upon it; and his very full reply thereto is appended to, and made a part of, this report.

The committee are of the opinion, that for the services of the claimant the laws of the United States have already made provision. Besides, it is most manifest that he has already been paid; and his receipt therefor is in the possession of the Government. The same remark will apply in relation to the claim set up for the payment for a horse.

It is alleged by the petitioner that he sustained a great loss in the destruction of bees, garden vegetables, poultry, and furniture, said to have been taken by the troops, and used or destroyed.

Without stopping to inquire whether such a depredation was or was not committed by the troops, as specified in this item of the claim, it is sufficient to say that the acts complained of do not appear to have been at all warranted by law, or by the necessities of the public service. The committee regard them as lawless outrages and trespasses upon private property, for which the wrong-doers alone are accountable. The claim against the United States for indemnity could only be allowed upon a principle that would make the Government responsible for the trespasses or other lawless acts of those employed in its service. Such a responsibility, it is believed, has never been recognised or acted upon; nor could the committee, consist-

ently with their sense of public duty, recommend its assumption, even where the wrong is flagrant, and most deserving of rebuke and indignation. But the United States cannot be regarded as the authors of such wrongs and outrages, and all their responsibility must rest upon their perpetrators.

The claim set up for wheat and oats remains to be considered.

The most obvious, distinct, and well-established ground, recognised by this, and by all other civilized nations, is, that, when the private property of the citizen has been taken and used by the nation for the common purposes of all, and, in consequence of such employment, it has been destroyed or endamaged, the Government of the nation is bound to make good the loss. This principle was, in the early history of our Government, deemed so sacred and so just, that it was incorporated into one of the amendments to the federal constitution, where it is, in terms, provided that no private property shall be taken for public use without just compensation.

Were the wheat and the oats of the petitioner taken for, and applied to, public uses? or was the taking a mere wanton and unlawful depredation?

An investigation into the truth of the latter branch of the inquiry is, at this time, unnecessary; for it appears, from the able report before cited, that in April, 1833, he presented a bill for 200 bushels of wheat, at \$1 per bushel, to the quartermaster, and was paid. If he had a valid claim for more than \$6,000 against the United States, it is remarkable, to say the least of it, that he should have allowed *that* to remain unrepresented, and yet to have so zealously prosecuted his claim for the horse, the wheat, and the personal services rendered by himself, and for which he received payment. For the same services, the same horse, and, to all appearance, for the same wheat, (largely multiplied in amount,) he asks, twelve years after they were taken, and when it is difficult to ascertain facts, to be *again* paid. It is also worthy of remark, that the evidence lately taken, and after the lapse of so many years, values the wheat at \$1 25; and is based upon the supposition that, in the summer of 1832, all of the crop of 1831 remained in the stacks unthreshed and unused—and that, too, in a country where wheat is represented as scarce and dear; whereas the claimant, in April of the next year after the war, put in his bill for only 200 bushels of wheat, and at \$1 per bushel. If wheat had been worth more than \$1 per bushel, or if he had furnished or lost more than 200 bushels of wheat, surely the claimant would have rendered his account accordingly.

The committee offer the following resolution for the adoption of the House:

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

TREASURY DEPARTMENT,
Third Auditor's Office, April 17, 1844.

SIR: I have the honor to acknowledge the receipt of your letter of the 30th ult., enclosing the petition and papers of James B. Estes, and inquiring whether there be any evidence in this office to show that he was in the service of the United States in 1832; that he furnished a horse to a volunteer in said service, and for the use of the United States, as charged; that his wheat and his oats were taken and used, and to the amount, or to any amount as claimed; and that his furniture, poultry, and bees were destroyed as set forth; and if so, whether he has received any compensation therefor,

and to what amount; and whether any money has been paid to him for the wheat or the oats, &c., by any officer connected with the Illinois militia at that time in the United States service. And your letter concludes with a request for an early reply to the foregoing interrogatories, and for any *other information* which I may, after examining the papers in the case, deem necessary to enable the Committee of Claims to pass understandingly upon the claim.

It is represented in the petition, dated January 1st, 1843, and not verified on oath, that the petitioner, from 1828 until then, resided in the Territory of Wisconsin; that in the spring of 1832, upon the breaking out of hostilities with the Sac and Fox Indians, (or what is usually called the Black Hawk war,) General Atkinson made a requisition upon Colonel Henry Dodge to raise all the forces in his power to suppress the threatened danger; that upon the requisition of Colonel Dodge, the petitioner, on the 11th May, 1832, volunteered his services for the defence of the country, and immediately, for the safety of his family, removed them from his plantation in Iowa county to Prairie du Chien, where he supported them during the war at his own expense, while the family of almost every other settler in the country was supported during that time at the expense of the Government, out of the public stores; that having provided a safe retreat for his family, he immediately left all his business, and his plantation, upon which were growing seventy-three acres of oats, then worth at least \$1,500, and upon which he had also 2,500 bushels of wheat in the stack, worth at that time at least \$4,000; that he left at his house a valuable lot of household furniture, and, furnishing himself with his own horse and equipments, provisions, arms, and ammunition, he joined Colonel Dodge, and was employed during the war in carrying expresses through the country, from one part to another, which was the most dangerous kind of service; that he continued in this manner until the termination of the war, about the middle of August, devoting his whole time, energies, and means to the service of his country; that while he was thus engaged himself in serving his country, the mounted troops in the service of the United States quartered on his plantation, and turned their horses into his growing crop of oats, and foraged them upon the wheat in the stack, and literally destroyed the whole of both; that the troops also destroyed all of his household furniture, which was appraised, under the direction of Colonel Dodge, at \$650; that he has never received any compensation whatever for his services, or remuneration for his losses; and that he prays to have made to him such an appropriation for his services and losses as shall be reasonable and just. With the petition there is an affidavit of William Davidson, dated 23d January, 1843, and also four other affidavits dated in January of the present year.

William Davidson has testified that he was well acquainted with the petitioner, who lived in the vicinity of Dodgeville, in the Territory of Wisconsin, and had improved an extensive farm; that in the summer of 1831 he had harvested a large crop of winter wheat, which was standing in stacks at the breaking out of the Sac and Fox Indian war, in the spring of 1832, and was considered worth \$1 25 per bushel to deponent's own knowledge, and [had] a large crop of oats sown that spring; that the company from Platteville, then under deponent's command, was ordered to the farm of said Estes, to recruit and rest their horses; that, after a few days, they were ordered to march; that deponent was there several times after, and found the grain was used or de-

stroyed by the troops from the mines and Illinois, ordered there to recruit their horses; and that the average price of flour, in the season of 1832, at Galeua, fifty miles south, the only place it could be had, was from \$8 to \$15. In one of the other four affidavits, signed "James H. Gentry, late captain," the deponent has testified that he has been well acquainted with the petitioner from the year 1828 to the present time; that the petitioner lived in the vicinity of Dodgeville, and had improved an extensive farm; that in the summer of 1831 he harvested a large crop of winter wheat, which was standing in the stacks at the breaking out of hostilities with the Sac and Fox Indians, in the spring of 1832; that deponent commanded a company during the war, and, by order of Col. Dodge, who then commanded the troops of the mining district, he was frequently sent to the farm of the petitioner, for the purpose of recruiting the horses; that grain of all kinds bore a very high price at that time; that the horses belonging to the service were fed on the wheat from the stacks standing on the premises of the petitioner, of which there were a large number; that the petitioner was absent from his farm during the whole of the war, and was actively engaged in procuring horses and arms for the service, and in the carrying of expresses, from the commencement to the termination of the war, thereby rendering great service to his country. Two other of the affidavits appear to have been made by Andrew Whitaker, and who, in one of them, has testified that he has been well acquainted with the petitioner from 1828 to the present time; that petitioner lived in the vicinity of Dodgeville, and had improved an extensive farm; that in the summer of 1831 he harvested a large crop of winter wheat, which was standing in the stacks at the breaking out of hostilities with the Sac and Fox Indians in the spring of 1832; that deponent was at said farm previous and during the Indian war, frequently, and saw numbers of horses, then in the service of the United States, fed upon the wheat taken from the stacks standing on the premises of the petitioner; that there were sown on the said farm, in the spring of 1832, 73 acres of oats, and when said oats were nearly matured, a large number of horses that were then in the service were turned into said oats promiscuously; in consequence of which, the whole crop was entirely destroyed; that deponent is well acquainted with farming in all its various branches, and, as regards the wheat crop, he could not, from the number of acres seeded, and the great yield which followed, estimate it at less than 2,500 bushels, and verily believes it would have turned off 3,000 bushels, the whole of which was destroyed and used by the troops quartering upon the premises; that, in regard to the crop of oats, he would state, that the land was very good upon which they were sown, and well cultivated; and, at the time the horses were turned in, they were fully headed out, and looked very promising; that he should think 30 bushels to the acre would be a very moderate estimate; that grain of all kinds bore a very high price at that time in the country; that deponent knew of a great many sales of oats and wheat from 1832 to 1834; that oats sold readily at 75 cents per bushel, and wheat at \$1 25 per bushel; that petitioner had a large quantity of valuable furniture, all of which was destroyed by the troops then quartering at the house, and was, deponent verily believes, worth not less than \$650; that petitioner had about twenty stands of bees, all of which were destroyed by said troops, as well as all his garden vegetables, and a large quantity of fowls; that, in fact, the whole place was completely robbed of everything valuable upon it; and that the damages, independent of the grain, could not have been less than \$1,000. He

has, in his other deposition, testified that he was well acquainted with a bright bay horse, about sixteen hands high, and well proportioned, owned by petitioner; that, at the breaking out of hostilities with the Sac and Fox Indians, said horse was furnished by petitioner to a volunteer of the name of David Shay, then in the service of the United States, commanded by Col. Henry Dodge; that he saw said Shay receive said horse, who left Mineral Point, as was said, on an expedition to Rock river, in the State of Illinois; that, on the return of the troops, said Shay informed deponent that said horse was lost during the trip, which was confirmed by others belonging to the company; and that said horse was worth at that time not less than \$125. The remaining affidavit appears to have been made by Thomas Jenkins, and who has therein testified that he was well acquainted with a bright bay horse about sixteen hands high, well proportioned, and owned by petitioner; that, at the time of the breaking out of hostilities with the Sac and Fox Indians, a volunteer by the name of David Shay rode the above-described horse, and used him in the service of the United States; that said Shay belonged to a company commanded by Capt. James H. Gentry, which belonged to the regiment commanded by Col. Henry Dodge; that Shay rode the horse on an expedition to Rock river; that, on that trip, five or six horses were lost, (supposed to have been stolen by the Indians,) and among them the horse above described; that deponent was one of fifteen or sixteen detailed to pursue said horses, and followed on the trail some fifteen or sixteen miles to Rock river, when it was ascertained that the horses had crossed over, and the pursuit was abandoned; and that deponent believes said horse to have been worth \$125.

With the papers there is also found to be a letter to you from the Hon. Henry Dodge, having appended thereto a statement of the Hon. Augustus C. Dodge. The former represents that the petitioner resided, during the continuance of the Sac and Fox war of 1832, in the immediate vicinity of the residence of the writer; that the inhabitants of that region of country were fortified, and many of them were obliged to leave their stock and other property at their homes exposed to the hostile Indians, as well as to the wants of the mounted troops, then in the service of the United States, who used the stock of the inhabitants, the grain and forage of those who were obliged to abandon their homes from fear and dread of the Indians; that the writer was the commanding officer of the Michigan volunteer mounted troops for the protection of what was then called the mining country; that Capt. Davidson commanded one of the volunteer companies under his command; that he has the most entire confidence in the truth of Capt. Davidson's statement under oath; that the price of wheat at the time it was taken from the farm of the petitioner, for the use of the mounted troops, was \$1 25 per bushel; that the writer had directed Captains Davidson, Gentry, and Rountree, commanding mounted companies of the regiment, to recruit the horses of their companies at the farm of the petitioner, as his was the largest and the only farm in the neighborhood where forage and grain could be procured; that the writer has no hesitation in stating that he believes the affidavit of Mr. Whitaker is true, and that the estimate of his personal property is correct as stated in the petition; and that the petitioner acted under the orders of the writer during the war referred to, and was actively engaged in the performance of public duties, in procuring arms and munitions of war, horses, and provisions for the mounted troops, at the hazard of his life and the loss of his property, and is desirous to be paid

for his losses. In the statement of the Hon. A. C. Dodge, he has expressed himself to be acquainted with most of the facts and circumstances set forth in the letter, and has declared that he bears evidence to their truth; that he knows the price of wheat to have been at the time as it is therein stated; that he knows nothing of the quantity of the articles furnished, but does know that they were furnished; for he was several times at the farm of the petitioner during the continuance of the Black Hawk war, (so called,) and saw the mounted volunteers in the service of the United States using his grain to feed their horses upon; that the petitioner was not a squatter nor an intruder on the public lands; that he was invited, as were all other persons settled in that district of country, by proclamation of an authorized agent and officer of the Government, to make his settlement; that a lease was granted to him by the before-mentioned officer for his premises, and one-tenth in the first instance, and a sixth in the second, of all the lead made by him was paid to the Government of the United States; and that the writer, at any moment, is ready to make oath to the truth of the above statement.

In the searches in relation to this case, it has been found that on the rolls of one of the companies of Colonel Dodge's regiment of Iowa mounted volunteers, the petitioner was mustered as a private therein, from the 11th May to the 9th October, 1832, (4 months and 28 days;) that on the receipt roll his pay and allowances are thus made up:

Pay	-	-	-	-	-	-	-	-	\$32 65
Use of horse at 40 cents per day	-	-	-	-	-	-	-	-	60 00
Rations and forage at 25 cents per day	-	-	-	-	-	-	-	-	38 00
									<hr/>
									130 65
Stoppage	-	-	-	-	-	-	-	-	34 75
									<hr/>
									\$95 90

and that the balance of \$95 90 is received for by him. A general remark on the roll, as to the stoppages, shows them to have been for one ration per day for the company throughout; forage received in kind; horse-shoeing for the company, done by order of Colonel Dodge, and paid by quartermaster's department, &c., &c. Many of the members of the company are shown to have had no horses of their own, but to have been furnished with horses belonging to other persons; and as to these, the stoppages extended to the sums payable for the use of them, and payments thereof were made by the quartermaster's department to the owners, upon a separate roll. The rolls of Captain Gentry's company contain entries evincing a private to have served therein, of the name of David Shay, and the sum entered for stoppage against his name included the amount of the allowance for use of the horse he rode; thus indicating that it was not his own. But there is no remark expressing it to have been furnished by the petitioner; nor does the roll of payments by the quartermaster's department to the owners of horses furnished for the use of volunteers of the company, show the petitioner to have either been, or sought to be, paid for the use of a horse furnished by him to either Shay or any other of the volunteers belonging to it.

In 1834, several claims appear to have been received at this office from R. W. Brush of Galena, and amongst them one in the name of James B. Estes. The letter to Mr. Brush, returning them, appears by the record to

have been dated 21st August, 1834, and to have contained as follows: "As to the claim of James B. Estes, there are duplicate accounts and receipts purporting to have been signed by him, for \$110 for a bay horse, saddle, and bridle, expressed to have been lost in the service of the United States during the late war, accompanied by certificates of Colonel Dodge and Captain James H. Gentry. The certificate of Colonel Dodge, dated 19th August, 1832, states that Estes had a bright bay horse, saddle, and bridle, valued in the service of the United States at \$110; and that the horse was lost on one of his [the colonel's] mounted expeditions to Rock river. At what time or in what manner the loss happened, his certificate does not explain, and the loss of the horse only is therein mentioned. Captain Gentry's certificate is dated 10th October, 1833, and states that he knew the horse certified to by Colonel Dodge; that he was appraised at \$110; and that he served in his company, and was taken by the Indians at Hickory point on the 8th of June, about 29 miles from Rock river. His certificate is also silent as to the loss of the saddle and bridle; and for the loss of a horse in the way described, the law does not provide. Had it done so, Captain Gentry's certificate (it not having been given till after he had ceased to be in the United States service) would have had to be sworn to before it could have been received as evidence; and a deposition, too, from the claimant, such as the regulations call for, would have been needed." Captain Jouett, of the United States army, appears to have presented the claim to me again, with others, in February, 1835, and when the same were returned to him, in a letter referring to the one addressed to Mr. Brush. No new testimony accompanied them, and no further trace thereof can be found.

A voucher for a payment of \$110 to James B. Estes, by Major J. B. Brant, quartermaster, for a "sorrel horse delivered to Colonel H. Dodge, for the use of the Iowa county (Michigan Territory) militia in the service of the United States," has been met with in Major Brant's accounts, and annexed to which there is a certificate of Colonel Dodge, wherein he has stated that Captain James B. Estes, about the 20th April, voluntarily furnished to him a sorrel horse for the public service of the United States; that he would estimate its value at \$110; that it had remained in the public service since that period; and that he [the colonel] rode him, while in his possession, between 600 and 700 miles, the greater part of the time forced marches; and at the bottom of the certificate there is a memorandum signed "W. W. Woodbridge, late adjutant Iowa militia," expressing the horse to have been retained by Colonel Dodge, and turned over to dragoon service. The certificate of the colonel is dated 19th August, 1832, and the receipt for the \$110 on the 19th September, 1833.

Of any services by the petitioner, other than as a private of Captain Gentry's company, no evidence whatever could be found; and had he performed any entitling him, either by law or regulation, to additional compensation, I am not aware of any cause which could have prevented its obtainment, as disbursing officers were on duty with funds for the payment of all proper expenses, during and for a considerable time after the expiration of the campaign; and in 1833 a board of commissioners for receiving and examining claims growing out of the campaign, sat for many weeks at Galena, and to which a claim of the petitioner of \$110 for a horse (the one, it is presumed, already shown to have been paid) appears by the register of the board, now on file in this office, to have been presented.

With the accounts of Major Brant, the disbursing officer before named, a bill has been found, in which the United States are debited \$200 "for two hundred bushels of wheat, furnished as forage for the use of Captain James H. Gentry's company of Iowa mounted volunteers, in the service of the United States, at \$1 per bushel." At foot of it there is an affidavit of James B. Estes, expressed to have been sworn to by him on the 27th of April, 1833, before "J. Brisbois, justice of the peace," in and for the county of Crawford, Territory of Michigan; wherein he has declared that the bill is accurate and just, and that he had not given receipt for the same, or any part thereof, nor by power of attorney, or otherwise, authorized any person to receive the same for him, or in his name. And below the affidavit there is a receipt of Estes for the \$200 from Major Brant, dated 25th of May, 1833.

To this voucher another is annexed in this form, and as corroborative of what appears therein:

" United States,	To James P. Estes, <i>Dr.</i>
To 200 bushels of wheat, at \$1 per bushel, for the use of the Iowa mounted volunteers	\$200

July 1, 1832.

I certify that the above wheat was furnished as above stated, and the charge is moderate.

JAMES H. GENTRY,
Captain of Iowa mounted volunteers, M. T."

No evidence of any other payment of this nature to the petitioner has been discovered on the searches; nor could any be found of the obtainment from him, for military purposes, of further supplies of any description.

He appears to have, with his family, moved away from his plantation; but whether or not he left any manager, or other person, in charge of it, the papers do not evince. If he did, the name of such manager, or other person, would need to be known; in order to ascertain whether any payments were made to him. If additional supplies of any kind were duly procured for public use from the plantation of the petitioner, and not paid for to any manager or other person on his behalf, I can imagine no adequate reason for his omitting to insert a charge for them in the bill already shown to have been verified by him in April, 1833, and afterwards paid.

On resort to the rolls of the regiment of Iowa volunteers in service of the United States in the summer of 1832, under the command of Colonel Dodge, there does not appear to have been in it any company commanded by an officer of the name of Wm. Davidson. A volunteer of that name is shown, by the aforesaid rolls of the company of Captain James H. Gentry, to have been mustered and paid therein as a private, from the 17th of July to the 9th of October, 1832; and a volunteer of the same name is found to have been mustered and paid as a private, on the rolls of Captain J. H. Rountree's company, from the 17th of May to the 17th of June; and on the rolls of Captain J. H. Dixon's company, from the 17th of June to the 17th of July, 1832. The entries on these rolls, as well as on those of Captain Gentry's company, include money allowances for forage of the horses of all the members, for the entire periods of service; and the pay-

ents, except so far as the stoppages for forage in kind extend, appear to have been made accordingly.

The aggregate amounts of the stoppages for forage so furnished are set down on the rolls thus: as to Gentry's company, \$945 93; Rountree's, \$43 82; and Dixon's, \$23 68.

In the same degree as the volunteers received the money allowance for forage, they, of course, were bound to provide it themselves at their own expense.

No remuneration could have been paid by the disbursing officers, nor could any allowance have been made by the accounting officers, in respect of any depredations of the soldiery, or any unauthorized taking or destruction of the property of the petitioner by them.

He is observed to have assigned no reason in his petition for permitting a claim of such a magnitude as is therein indicated to remain dormant for more than ten years. Any proper claim, duly vouched, presented at the time, might have been readily paid.

The petition and papers are returned.

With great respect, your most obedient servant,

PETER HAGNER, *Auditor.*

Hon. JOSEPH VANCE,

*Chairman of the Committee of Claims,
House of Representatives.*