

HEIRS OF DANIEL LANDON.

JANUARY 30, 1852.

Laid upon the table, and ordered to be printed.

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

REPORT :

The Committee of Claims, to whom was referred the memorial of the widow and heirs of Daniel Landon, praying that indemnity and relief might be extended to them on account of the great hardships and exposure endured by their ancestor at the settlement of Fort Wayne, Indiana, make the following report :

That it appears from the memorial, and papers accompanying it, that the United States, in the year 1796, established a military post at Fort Wayne, in the State of Indiana. That Daniel Landon, induced by assurances of support and protection by the officers of the government, in the year 1802, purchased of James H. Audrain his improvements on a tract of land on the St. Mary's river, about one and a half mile from the garrison, designated as "Blue Jacket's Place," for which he paid the sum of eight hundred and twenty dollars. The title to the land was in the United States, it having been ceded by the Indians at the treaty of Greenville, in 1795, and Audrain sold the improvements only. Landon resided upon the land until August, 1813, and during this period erected a mill on the St Mary's, and made various improvements upon the property, and raised stock and grain for the supply of the post, acting in the character of contractor's agent or issuing commissary. His mill and improvements were considered necessary appendages to the agency and military station, with reference to subsistence; and it is stated in the deposition of Francis Johnston, that "the distance of the fort from any other mill, or any white settlement, surrounded by savages, with one road thereto, and that nearly impassable, and the consequent extravagant price of provisions, rendered all the operations of Landon absolutely necessary to the government, and was so considered by all the public authorities of the place."

Thus advantageously situated, Landon supplied the post with provisions, and found a ready market at home for the entire produce of his farm and earnings of his mill, and undoubtedly at the extravagant prices consequent upon his position, until September 12th, 1812, when the fort was besieged by the British and Indians, and the mill and all the buildings and produce on the farm destroyed, and the cattle and horses killed or driven off by the Indians. During the siege he was a volunteer, and did active service in the defence of the post. It is for this property, thus destroyed, that the heirs now claim the sum of \$4,120. The destruction and value of the property is clearly proved, but the committee cannot admit the correctness of the principle upon which it is alleged the claim should be allowed.

It is stated, by way of argument, first; "that the improvements were made for the benefit of the United States, as they are from fifty to seventy miles from any white settlement, and thereby became necessary for the garrison, and for the Indian agency established at that place."

To this it may be answered, that, although the improvements of Landon may have been of benefit to the government, because it enabled the officers to purchase his produce with less trouble, yet his position gave him the advantage at all times, supplying the garrison to the extent of his ability, at the extravagant prices resulting from the locality of the fort, making the "benefit" to the government a great advantage to himself, and not creating, in the opinion of the committee, any obligation to protect his interest against the risks or calamities of war. His business and profits must have justified the risks.

2d. "All the improvements were made at the instigation of the United States officers and agents, and with a fair assurance of protection."

To this it may be answered, that the proof is too indefinite and insufficient to bring the case within the provisions of any law authorizing payment for losses by the acts of our enemies in war, or, under all the circumstances, to create such an equitable claim for payment as to separate this case from many others of a similar character which have been rejected.

3d. "The United States violated the assurances of protection in allowing the post to be insufficiently manned, for more than a year after the Indians had become hostile in their character."

The committee cannot admit that, if a garrison proved too weak to protect the property of citizens in its vicinity, an obligation arises on the part of government to indemnify the loss resulting from hostile attacks.

4. "The destruction ought not to be considered as destruction occasioned by invasion, but should be regarded in the same light as the destruction of a building, which by being taken possession of, draws the attack of the enemy upon it and causes its destruction."

Applying this principle to the case under consideration, and it would be necessary to show that the property was destroyed while the same was occupied as a military deposite or barrack, a post under the authority of an officer or agent of the United States, and that such occupation was the cause of the destruction; and the proof must be the certificate of the officer or agent of the United States, under whose authority such building or house was occupied; and before any other evidence as to this fact will be received, the claimant must name the person under whose authority such house or building was occupied, or show that it is impracticable to procure such certificate, and that the evidence which he offers is the best he is able to obtain.

The claim, if allowed, must rest entirely upon the depositions of Francis Johnston, for there is no other evidence that the improvements were connected with the government or made by its authority. He states "that the purchase made by said Landon, and all the improvements made by him, including the erection of the mill, was induced by the government officers and agents, as a necessary appendage to the agency and military station with reference to subsistence; and the stock and grain raised on said premises was all with reference to the same object, and all under the direction and advisement of said officers, at the cost of said Landon;" and that "the settlements at Fort Wayne were made under the protection of the United States forces at that place." On the other hand, John Johnston, who was

United States factor and Indian agent during the whole period of Landon's residence there, and who certifies to the destruction and value of the property, does not say or even intimate that the government was in any way connected with Landon's improvements or business, or ever held out any inducements to him to locate there, or that there existed any obligation on the part of government to indemnify him for the loss he sustained. There are also certificates of the surgeon's mate ; of the army agent ; of the acting quartermaster's sergeant ; of a captain of the spies ; and of an adjutant of a regiment of the militia, as to the fact of the loss, but no evidence as to the alleged assurances of protection by the officers of the government.

The committee do not conceive this evidence so connects the government with the business operations of Landon, as to create any obligation on its part to pay for the loss thus sustained.

The destruction of the property may have been caused by its connexion with the fort ; but not being occupied by the troops, or by any military authority of the United States, it does not come within the operations of any principle authorizing payments for property destroyed by the enemy ; and, as before stated, the circumstances do not show the existence of such an equitable claim on the government, as would justify any innovations on the established principles applied to such cases. Before indemnity could be claimed, it must be shown that the act of the government had imparted to this property such a military character as, by the usages of civilized warfare, would have justified its destruction. The destruction in this case was the unjustifiable wanton act of savage warfare, which clearly carries the case beyond the reach of the principle which has been invariably applied where payments for losses have been made.

The committee, therefore, report the following resolution :

Resolved, That the prayer of the petitioners ought not to be granted, and that they have leave to withdraw their papers.