

JOSHUA KENNEDY—LEGAL REPRESENTATIVE OF.

[To accompany bill S. No. 73.]

JANUARY 31, 1854.

Mr. ORR, from the Committee on Indian Affairs, made the following

REPORT.

*The Committee on Indian Affairs, to whom was referred Senate bill No. 73, for the relief of the legal representative of Joshua Kennedy, deceased, report :*

That the memorialist (now deceased) prior to 1813 settled a plantation on Tensaw river, in Alabama, and erected several buildings, among which was a valuable grist and saw-mill. It was contiguous to the Indian country, and a large majority of the Creek warriors were at war with the United States. The permanent and substantial character of the mill-house, and perhaps other considerations, induced General Claiborne to station a detachment of United States troops therein. A few days before the massacre at Fort Mims, Major Beasley ordered the mill to be entrenched, which order was executed, and the mill converted into a temporary fort. After the fall and horrible butchery of Fort Mims, Lieutenant Montgomery, who commanded a detachment of troops in its vicinity, retired to Kennedy's mill, and, taking the soldiers stationed there, made a precipitate retreat to Mobile. The whole country also sought safety in flight to the same place. The hostile Creeks, flushed with the success of their carnage at Fort Mims, scoured the country in search of new prey, and in a few days reached Kennedy's mill. Their passions were inflamed by the signs of the recent occupation of the mill as a fort and place of defence by their "pale enemies," and they immediately set fire to and burned down the mill and all the other buildings on the premises; the value of which buildings has been estimated at more than twenty thousand dollars.

However strongly the committee may be inclined to the opinion that none of the buildings would have been destroyed but for the recent occupancy of the mill by the troops of the United States, they do not feel warranted in pursuing the uniform practice of the government to recommend the payment of a larger sum than may be an adequate compensation for the mill alone, which is proven to be six or seven thousand dollars.

The officers of the United States, in the exigencies surrounding them, ordered the troops to occupy and intrench the building of a private citizen for public military purposes, and when it was found incompatible with the safety of the troops to remain, the building was abandoned; but the evacuation had scarcely been consummated when the hostile

savages made their appearance, and seeing this fortification in their power, determined to save themselves future annoyance therefrom by its immediate and total destruction. The citizen under such circumstances may, with as much propriety, claim indemnification for the destruction of his property as if the troops were actually occupying it at the moment of its destruction.

The petitioner presented his claim for adjustment and payment to the board created by the act of 1817, but it was not acted on until the commission expired. The committee are of opinion that the claim is founded in justice, and recommend the passage of the Senate bill.