

NEHEMIAH GARRISON, ASSIGNEE OF MOSES PERKINS.

[To accompany Bill H. R. C. C. No. 100.]

MAY 2, 1860.—Committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

R E P O R T.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

NEHEMIAH GARRISON, ASSIGNEE OF MOSES PERKINS, *vs.*
THE UNITED STATES.

1. The petition of the claimant.
2. Depositions and other documentary evidence in support of the claim, transmitted to the House of Representatives.
3. Claimant's brief.
4. United States solicitor's brief.
5. Opinion of the court ordering a bill to be reported, allowing claimant \$750.
6. Bill for the relief of claimant.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 1st day of May, A. D.
[L. S.] 1860.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE COURT OF CLAIMS.

NEHEMIAH GARRISON, ASSIGNEE OF MOSES PERKINS, *vs.* THE UNITED STATES.

The petition of Nehemiah Garrison respectfully represents, that he is a citizen of the State of Georgia; that one Moses Perkins, also a citizen of said State, owned a plantation in the county of Cherokee in said State; that in the year 1837 the commanding officer of the United States troops charged with the removal of the Cherokee Indians detached a company of mounted infantry, under Ezekiel Buffington, in command of troops regularly mustered into the service of the United States, under the command of General Wool, to be stationed at the plantation of the said Moses Perkins, where a fort called Buffington was established; that they occupied the said plantation and the tenements thereon in the month of October, 1837, and continued the occupancy thereof until the 3d of July, 1838, with the express understanding that all damages should be paid for; that great damage was done to his plantation by the cutting down, using and destroying the timber for the purpose of building barracks, pickets, and block-houses; that upon applying for payment to the paymaster, he was informed that there was no appropriation to pay for the same; that he presented his petition to the House of Representatives, 26th Congress, 1st session, when it was referred to the Committee of Claims, but no report was made thereon; that it was again referred to said committee on January 15, 1852, and on December 14, 1853, and at the last session of Congress was referred to this court.

Your petitioner claims the amount of \$750, as per annexed account, certified to by Ezekiel Buffington, captain commanding at said fort, together with interest due thereon. Your petitioner is sole owner of said claim, the same having been assigned to him by said Moses Perkins, in the year 1838, for the consideration of (\$750) seven hundred and fifty dollars. He therefore prays that a bill be reported in his favor for the said sum of \$750, together with the interest due thereon.

P. PHILLIPS,
Solicitor for Petitioner.

*The United States to Moses Perkins, for spoiliations at Fort Buffington,
Cherokee county, Georgia, Dr.*

| | |
|---|----------|
| 1838.—To timber for officers' and soldiers' barracks..... | \$175 00 |
| To timber for building stables for 103 horses..... | 150 00 |
| To timber for building three corn cribs..... | 45 00 |
| To timber for building two block-houses..... | 100 00 |
| To timber for building pickets..... | 100 00 |

| | |
|--|---------|
| 1858.—To timber for building forge..... | \$30 00 |
| To timber destroyed by the Indians while under guard. | 100 00 |
| To fuel for officers and soldiers from October 15, 1837, to July 3, 1838..... | 50 00 |
| | <hr/> |
| | 750 00 |
| | <hr/> |

I certify, on honor, that I was stationed on Moses Perkins's land in Cherokee county, Georgia, with a company of mounted infantry at the fort above mentioned, and do believe that we damaged him, the said Perkins's land, seven hundred and fifty dollars, through the damage done by the destruction of his timber for public use.

Given under my hand August 20, 1838.

EZEKIEL BUFFINGTON,
Captain Commanding.

NEHEMIAH GARRISON, ASSIGNEE OF MOSES PERKINS, *vs.* THE UNITED STATES.

Interrogatories to be propounded to Ezekiel Buffington, a witness to be examined in behalf of the claimant.

Interrogatory 1. What is your name, age, occupation, place of residence for the last year? Are you in any degree related to claimant; and are you in any manner interested in the claim?

Interrogatory 2. Look at the certificate dated August 20, 1838, and state whether it was signed by you when the same purports to have been. The said certificate is annexed to this.

Interrogatory 3. Did you sign this certificate as a captain in the service of the United States, and does the account truly represent the amount of damages done to the premises belonging to Moses Perkins?

Interrogatory 4. State under whose orders you occupied the station known as Fort Buffington, and whether the charges in the account were reasonable in their amount, and were necessary for the army of the United States.

Interrogatory 4. Did you make any report of your proceedings at Fort Buffington? If yea, to whom?

Interrogatory 5. Do you know Major Wilbanks, John M. Mullins, Henson Bagwell, and Posey Maddox, whose certificates are written on the back of said paper? What has become of them?

Interrogatory 6. State fully the circumstance under which you took possession of Fort Buffington, how long you occupied it, and your action while there, so far as it concerns taking any of the property of said Perkins.

Interrogatory 7. If you know anything else to benefit the claimant, state the same as though particularly interrogated.

P. PHILLIPS,
Solicitor for Claimant.

By the United States.

1. Was your attention called at any time to the specific items in the plaintiff's account ; and can you speak as to their value in detail ?

2. Were you, as the officer in command, called on to have the damages done to plaintiff's property assessed ?

DANIEL RATCLIFFE,

Assistant Solicitor of the Court of Claims.

The United States to Moses Perkins, for spoliations at Fort Buffington, Cherokee county, Georgia, Dr.

| | |
|--|----------|
| 1838.—To timber for officers' and soldiers' barracks | \$175 00 |
| To timber for building stables for 103 horses | 150 00 |
| To timber for building three corn cribs | 45 00 |
| To timber for building two block-houses | 100 00 |
| To timber for building pickets | 100 00 |
| To timber for building forge | 30 00 |
| To timber destroyed by the Indians while under guard | 100 00 |
| To fuel for officers and soldiers from October 15, 1837, to July 3, 1838 | 50 00 |
| | <hr/> |
| | 750 00 |
| | <hr/> |

I certify, on honor, that I was stationed on Moses Perkins's land, in Cherokee county, Georgia, with a company of mounted infantry, at the fort above mentioned, and do believe that we damaged his, the said Perkins, land seven hundred and fifty dollars, through the damage done by the destruction of his timber for public uses.

Given under my hand August 20, 1838.

EZEKIEL BUFFINGTON

Captain, commanding Georgia Soldiers.

GEORGIA, Cherokee county :

Personally came and appeared before me Major Wilbanks, John M. Mullins, and Henson Bagwell, who, after being duly sworn, on oath saith, that they were frequently at Fort Buffington while the United States troops were stationed at that place, and know that they were on the land of Moses Perkins, and believe that the amount claimed by him for damage done the land by the troops and Indians is reasonable.

MAJOR WILBANKS.

JOHN M. MULLINS.

HENSON ^{his} + BAGWELL.
mark

Sworn to and subscribed before me this 31st day of December, 1838.
 RANDOL McDONALD, *J. P.*

GEORGIA, *Cherokee county* :

I, Posey Maddox, clerk of the inferior court for said county, do hereby certify that Randol McDonald, whose name appears to the foregoing affidavit, was at the date of the same an acting justice of the peace, and that full faith ought to be had and given to his official acts as such.

Given under my hand and private seal, there being no seal of
 [L. S.] office provided, this the sixteenth day of July, 1839.

POSEY MADDOX,
Clerk Inferior Court.

GEORGIA, *Cherokee county* :

I, Reuben F. Daniel, one of the justices of the inferior court for the county and State aforesaid, do hereby certify that Posey Maddox, whose name appears to the above certificate is clerk of the inferior court for said county, and that full faith and credit ought to be had and given to his attestation as such.

Given under my hand and seal this the sixteenth day of July, 1839.
 [L. S.] R. F. DANIEL,

Justice Inferior Court.

IN THE COURT OF CLAIMS.

NEHEMIAH GARRISON, ASSIGNEE OF MOSES PERKINS, *vs.* THE UNITED STATES.

STATE OF GEORGIA, }
County of Hall, } ss :

On this the sixteenth day of November, A. D. eighteen hundred and fifty-eight, I, E. M. Johnson, ordinary and ex-officio clerk of the court of ordinary within and for the county and State aforesaid, have caused Ezekiel Buffington, a resident of said county, to me well personally known, to come before me, and after being duly sworn true answers to make to certain interrogatories issued in the above-stated case, he, the said Ezekiel Buffington, deposes and answers as follows, to wit :

To the first direct interrogatory he answers, his name is Ezekiel Buffington ; he is about fifty-nine years of age, a farmer, and resides in Hall county, and has for a number of years. He is in no way related to claimant, and has no interest whatever in said claim.

To the second direct interrogatory he answers, he has examined the certificate attached to the interrogatories ; it was signed by him, and at the time the same bears date.

To the third direct interrogatory he answers, he signed the same as a captain in the service of the United States, and that he did be-

lieve at the time that the account presented truly represented the damages done to the lands of Moses Perkins.

To the fourth direct interrogatory he answers, he was in command of a company of mounted volunteers stationed at New Echota, when he was directed by the commanding officer (General John E. Wool, as well as he now remembers) to remove his command to some place in the neighborhood of Canton to select a site and build a fort; that he marched accordingly, selected the site on the lands of Moses Perkins, and erected the fort thereon called Fort Buffington; that he believed the charges in said account for damages were reasonable and just, and that the same were necessary for the use of the United States.

To the second fourth direct interrogatory he answers that he made a report to the commanding officer at New Echota that he had selected a site and gone to work.

To the fifth direct interrogatory he answers that he knew Major Wilbanks, John M. Mullins, Henson Bagwell, and Posey Maddox; that Henson Bagwell now resides in this county, (Hall;) that he does not know what has become of the others except from report.

To the sixth direct interrogatory he answers that he has already stated in his answer to the first fourth interrogatory the circumstance of taking possession of Fort Buffington; that he occupied it with his troops from some time in October, 1837, (the precise date not now remembered, but believes to be about the 15th day,) until July 3, 1838, and that while there the troops used the timber of said Moses Perkins promiscuously, as if it belonged to the United States.

To the seventh direct interrogatory he answers, he knows nothing further to benefit the claimant without this: that the fort was occupied a part of the time by an additional company of infantry, and that he had as prisoners under his command, a portion of the time, about thirteen hundred Indians.

To the first cross-interrogatory, or interrogatory by the United States, he answers that his attention was called to the various items of the account before he gave the certificate, and that he certified to the same, considering it in detail, and believing it to be just.

To the second cross-interrogatory he answers that he was not called on, as the officer in command, to have the damages assessed, other than to assess and certify the same himself.

EZEKIEL BUFFINGTON.

Answered, sworn to, and subscribed, this 16th day of November, 1858, before me.

E. M. JOHNSON,

Ordinary and Ex-officio Clerk of the Court of Ordinary.

STATE OF GEORGIA, }
County of Hall, } ss:

I, E. M. Johnson, ordinary and ex-officio clerk of the court of ordinary within and for the county and State aforesaid, do hereby certify that the above and foregoing answers of Ezekiel Buffington were taken by and before me on the day of the date thereof, and that said

Ezekiel Buffington, having been duly sworn, subscribed the same in my presence.

[L. s.] Given under my hand and seal of office, at my office in Gainesville, this 17th day of November, 1858.

E. M. JOHNSON,
Ordinary and Ex-officio Clerk of the Court of Ordinary.

IN THE UNITED STATES COURT OF CLAIMS.

NEHEMIAH GARRISON, LESSEE OF MOSES PERKINS, *vs.* THE UNITED STATES.

Interrogatories to be exhibited to John H. Wood and N. J. Perkins, of Cherokee county and State of Georgia, witnesses for the plaintiff in the above-stated case :

First interrogatory to John H. Wood. Look upon the account hereto attached in favor of Moses Perkins, for spoliation at Fort Buffington, in Cherokee county, Georgia, in the years 1837 and 1838, and say whether or not you think the account reasonable.

Second interrogatory. Are you acquainted with Captain Ezekiel Buffington? If so, look upon the certificate attached to the above-named account, and say whether or not the signature thereto, purporting to be Captain Buffington's, is genuine.

Third interrogatory. Did you or not belong to Captain Buffington's company at the time specified in said account? If so, state whether or not you held any office ; if so, what office did you hold ?

First interrogatory to Newton J. Perkins. State whether or not you were a member of Captain E. Buffington's company in the years 1837 and 1838 ; if so, state where said company was stationed at the time above specified.

Second interrogatory. Look upon the account hereto attached in favor of Moses Perkins against the United States for spoliation at Fort Buffington, and say whether or not said account is reasonable.

Third interrogatory. Were you acquainted with the handwriting of Captain Buffington? If so, state whether or not the signature to the certificate attached to said account, purporting to be Captain Ezekiel Buffington's, is genuine.

Fourth interrogatory. State if you know anything about Moses Perkins having transferred his claim to Nehemiah Garrison, whether or not it was for a valuable consideration, and whether or not the consideration has been paid ; if so, how long since ?

STATE OF GEORGIA, *Cherokee County, ss :*

On this eleventh day of February, A. D. one thousand eight hundred and fifty-seven, personally came John H. Wood and Newton J. Perkins, the witnesses within named, and after being first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witnesses ; and the

answers thereto were written down by the commissioner in the presence of the witnesses, who then subscribed the deposition in the presence of the commissioners. The deposition of John H. Wood and N. J. Perkins, taken at the request of the claimant, to be used in an investigation of a claim against the United States now pending in the Court of Claims in the name of Nehemiah Garrison, lessee of Moses Perkins.

The notice to the adverse party being waived by the solicitor for the United States, and P. Philips, solicitor for claimant.

JAMES JORDAN,
Commissioner.

GEORGIA, Cherokee County :

To the foregoing interrogatories John H. Wood makes the following answers :

To the first interrogatory he answers that he believes the account mentioned in said interrogatory, for spoliation on the land of Moses Perkins, amounting to seven hundred and fifty dollars, is reasonable and just.

To second interrogatory he answers that he is well acquainted with the handwriting of Captain Ezekiel Buffington, and that the signature to the certificate attached to the above account purporting to be his is genuine.

To third interrogatory he answers that he was a member of Captain Buffington's company all the time they were stationed at Fort Buffington, Cherokee county, Georgia ; that they remained at said place from the 15th day of October, 1837, until the next July, and that he held the office of quartermaster and commissary during all said time said company was stationed upon the land of Moses Perkins.

The witness states that his name is John H. Wood ; he is deputy postmaster at Canton, Georgia ; is about fifty-six years old ; resided at Canton, Cherokee county, Georgia, for the last year ; has no interest, either direct or indirect, in this claim, and is no ways related to the claimant. He further states that he knows of no other matter relating to the matter in question.

JOHN H. WOOD.

NEWTON J. PERKINS answers :

To the first interrogatory he answers that he was a member of Captain Ezekiel Buffington's company ; that said company was stationed at Fort Buffington in Cherokee county, Georgia, on the land belonging to Moses Perkins, from the 15th day of October, 1837, until about the 3d day of the next July.

To second interrogatory, he answers that the account now shown him in favor of Moses Perkins against the United States, for spoliation of timber, &c., amounting to seven hundred and fifty dollars, is reasonable and just.

To third interrogatory he states that he has frequently seen Captain Buffington write, and from his knowledge of the handwriting of

¶ Captain Ezekiel Buffington he believes the handwriting to the certificate attached to said account purporting to be his is genuine.

To fourth interrogatory he answers that he was present when the trade was made between Moses Perkins and Nehemiah Garrison for the claim specified in said account ; that the same was transferred to Nehemiah Garrison for a valuable consideration ; that Moses Perkins has long since told witness that the same was fully paid.

Witness states that his name is Newton J. Perkins ; his occupation a farmer ; is in his forty-second year of age ; is a resident of Cherokee county, Georgia, for the last twelve months ; has no interest, either direct or indirect, in this claim ; is the step-son of Moses Perkins, and is in no way related to Nehemiah Garrison.

He does not know anything more in relation to the claim in question.

NEWTON J. PERKINS.

GEORGIA, Cherokee County :

This indenture, made and entered into this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and thirty-seven, between Edward Pass, of the county of Cwoeeta and State aforesaid, of the one part, and Moses Perkins, of the county of Cherokee and State aforesaid, of the other part, witnesseth : That the said Edward Pass, for and in consideration of the sum of sixty dollars to him in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and does by these presents grant, bargain, sell, and convey, all that tract or lot of land situate, lying, and being in the county of Cherokee, known by the number 933, (nine hundred and thirty-three,) in the third district of said county, containing forty acres, more or less, to have and to hold the said bargained premises unto him, the said Moses Perkins, his heirs and assigns, to his and their own proper use, benefit, and behoof forever in fee-simple ; and the said Edward Pass, for himself, his heirs, executors, and administrators, the said bargained premises unto the said Moses Perkins, his heirs and assigns, will warrant and forever defend the right and title thereof against themselves and against the claim of all and of every other person or persons whatever.

In witness whereof, the said Edward Pass hath hereunto set his hand and seal the day and year above written.

EDWARD PASS. [L. s.]

Signed, sealed, and delivered in the presence of—

ISAAC McCONNELL,

JAMES JORDAN,

Justices of the Peace.

GEORGIA, *Talbot County* :

This indenture, made and entered into on the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and thirty-four, and in the fifty-eighth of the independence of the United States of America, between Simeon Mote, of the county Talbot, of the one part, and Moses Perkins, of the county of Cherokee, of the other part, and both of the State aforesaid, witnesseth : That the said Simeon Mote, for and in consideration of the sum of one hundred and twenty-four dollars to him in hand paid by the said Moses Perkins at or before the sealing and delivery of these presents, doth grant, bargain, sell, release, convey, and confirm unto the said Moses Perkins, his heirs and assigns, all that tract or parcel of land situate, lying, and being in the county of Cherokee, known and distinguished by lot number nine hundred and thirty-nine, in the third district and second section, containing forty acres, more or less, reserving to himself all the mowing privileges on said lot, to have and to hold, together with all and singular the rights, members, and appurtenances thereof whatsoever, to him, the said Moses Perkins, his heirs and assigns, to the only proper use, benefit, and behoof of the said Moses Perkins, his heirs and assigns forever ; and the said Simeon Mote and his heirs the tract or lot of land and premises aforesaid, and every part thereof, unto the said Moses Perkins, his heirs and assigns, against him, the said Simeon Mote, and his heirs and all and every other person or persons whatsoever, shall and will warrant and forever defend by these presents the right and title thereof.

In witness whereof, the said Simeon Mote hath hereunto set his hand and seal on the day and year first above written.

SIMEON MOTE. [L. s.]

Signed, sealed, and delivered in presence of—

JOSEPH BUCHANAN,

GEORGE BUCHANAN,

Justices of the Peace.

GEORGIA, *Morgan County* :

This indenture, made and entered into this second day of July, one thousand eight hundred and thirty-eight, between Early W. Thracher, of the county and State aforesaid, of the one part, and Moses Perkins, of the State aforesaid and county of Cherokee, of the other part, witnesseth : That for and in consideration of the sum of one hundred and sixty dollars to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, sold, and doth by these presents grant, sell, convey, and confirm, unto the said Moses Perkins, his heirs, executors, administrators, and assigns, all that tract or lot of land situate, lying, and being in the second section and third district, known by number nine hundred and forty, (940,) in Cherokee county, containing forty acres, more or less, to have and to hold the same,

with all and singular the rights, members, and appurtenances thereof whatsoever, unto the said Moses Perkins, his heirs and assigns, to his and their own proper use, benefit, and behoof forever in fee-simple; and said Early W. Thracher, for himself, his heirs, executors, administrators, and assigns, doth warrant and forever defend the right and title thereof unto the said Moses Perkins, his heirs and assigns, and against all and every other person or persons whatsoever.

The said Early W. Thracher doth hereunto set his hand and affix his seal the day and date above written.

EARLY THRACHER. [L. s.]

Signed, sealed, and delivered in the presence of—

DRURY J. BRADLEY,

DANIEL MAJOR,

Justices of the Peace.

GEORGIA, *Walton County:*

This indenture, made this sixteenth day of January, in the year of our Lord one thousand eight hundred and thirty seven, between William Palmer, of the county and State aforesaid, of the one part, and Moses Perkins, of the county of Cherokee and State aforesaid, of the other part, witnesseth: That the said William Palmer, for and in consideration of the sum of fifty dollars to him in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and doth by these presents grant, bargain, sell, and convey, unto the said Moses Perkins, his heirs and assigns, all that tract or parcel of land situate, lying, and being in the third district of the second section of Cherokee county, known by lot No. 941, to have and to hold said tract or parcel of land unto him, the said Moses Perkins, his heirs and assigns, together with all and singular the rights, members, and appurtenances thereof to the same in any manner belonging, to his and their own proper use, benefit, and behoof forever, in fee-simple; and the said William Palmer, for himself, his heirs, executors, and administrators, the said bargained premises unto the said Moses Perkins, his heirs and assigns, will warrant and forever defend the right and title thereof against themselves and against the claim of all other persons whatsoever.

In witness whereof, the said William Palmer hath hereunto set his hand and seal the day and year above written.

WILLIAM PALMER. [L. s.]

Signed, sealed, and delivered in the presence of—

ELIJAH PALMER,

JOHN SUMMONOR,

Justices of the Peace.

GEORGIA, *Cherokee County* :

This indenture, made this the seventh day of January, in the year of our Lord one thousand eight hundred and thirty-seven, between Thomas Minyard, of the county of Hall and State aforesaid, of the one part, and Moses Perkins, of the county of Cherokee and State aforesaid, of the other part, witnesseth : That the said Thomas Minyard, for and in consideration of the sum of forty-five dollars to him in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath bargained, sold, and conveyed, and by these presents doth bargain, sell, and convey, unto him, the said Moses Perkins, his heirs and assigns, all that lot or parcel of land situated, lying, and being in the county of Cherokee and State aforesaid, known by lot No. 1004, third district and second section, forty *ackerkers*, be the same more or less, to have and to hold the said lot of land unto him, the said Moses Perkins, his *ares* and assigns, in fee-simple forever, together with all and singular the rights, members, and appurtenances *tharuntoe* belonging or in anywise appertaining; and I, the said Thomas Minyard, for myself, my heirs, executors, and administrators, do forever warrant and defend the right and title of the *foresaid* tract of land to the said Moses Perkins, his heirs and assigns, against the claim of all persons whatever.

In testimony whereof, I have hereunto set my hand and seal this the seventh day of January, in the year of our Lord *ateen* hundred and thirty-seven.

THOMAS ^{his} + MINYARD. [L. s.]
mark.

Signed, sealed, and delivered in the presence of—

JOHN KIRKEE.

JOHN WHEELER.

GEORGIA, *Cherokee County* :

Personally came before me John Wheeler, and, after being duly sworn, deposeth and saith that he was a subscribing witness to the above deed, and that he saw John Kirkee sign the same as a witness.

JOHN WHEELER.

Signed and sworn to before me April 3, 1838.

WILLIAM WHELEKE,

Justice of the Peace.

GEORGIA, *Cherokee County* :

Whereas, in obedience to a writ of *feri facias* issued out of the justices' court of the county of Henry at the suit of E. Brown against William F. Bowden, I, Samuel C. Candler, sheriff of the county aforesaid, did seize the lot hereinafter described as the property of said William F. Bowden, and after being duly and publicly advertised,

agreeable to law, did, on the 2d day of September, in the year eighteen hundred and thirty-four, at the place of public sales in said county of Cherokee, expose the same to public outcry, when, Moses Perkins being the highest bidder, the same was knocked off to him at the price or sum of thirty-one dollars and fifty cents: Now, this indenture, made this 27th day of October, in the year of our Lord one thousand eight hundred and thirty-four, and in the fifty-ninth year of the independence of the United States of America, between the said Samuel C. Candler, sheriff as aforesaid, of the one part, and the said Moses Perkins, of the other part, witnesseth: That the said Samuel C. Candler, sheriff as aforesaid, for and in consideration of the sum of thirty-one dollars and fifty cents to him in hand paid by the said Moses Perkins at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and bargained and sold, and by these presents doth grant, bargain, and sell, so far as the office of sheriff authorizes him, unto the said Moses Perkins, his heirs and assigns, all that tract or lot of land known by the number one thousand and six, in the third district and second section of now Cherokee county, containing forty acres, more or less, together with all and singular the rights, members, and appurtenances thereof unto the said tract or lot of land being, belonging, or in anywise appertaining, and also all the estate, right, title, interest, property, claim, and demand of the said William F. Bowden, his heirs, &c., in law, equity, or otherwise, whatsoever of, in, or to the same, to have and to hold the said lot of land and premises, and every part thereof, unto the said Moses Perkins, his heirs and assigns, to the only proper use, benefit, and behoof of the said Moses Perkins, his heirs and assigns forever, in fee-simple, in as full and ample manner as the said William F. Bowden or his heirs and assigns did or might have held or enjoyed the same had it not been seized and sold under the execution aforesaid.

In witness whereof, the said Samuel C. Candler hath hereunto set his hand and affixed his seal the day and year first above written.

SAML. C. CANDLER, [L. s.]

Sheriff Cherokee County.

Signed, sealed, and delivered in the presence of—

M. J. CAMDEN.

D. H. BIRD.

GEORGIA, *Cherokee County*:

Personally appeared before me Daniel H. Bird, who, being duly sworn, deposeth and saith that he saw Samuel C. Candler subscribe his name to the within deed for the purposes therein mentioned, and that he saw M. J. Camden subscribe the same as a witness, and the deponent did so likewise.

D. H. BIRD.

Sworn to and subscribed before me this 29th October, 1834.

FELIX MOSS, J. P.

GEORGIA, Cherokee County :

This indenture, made and entered into the 25th day of May, in the year of our Lord one thousand eight hundred and forty-two, between Moses Perkins, of the one part, and Nehemiah Garrison, of the other part, both of the county and State aforesaid, witnesseth : That I, Moses Perkins, for and in consideration of the sum of two thousand dollars to me in hand paid at and before the signing, sealing, and delivering of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and doth by these presents grant, bargain, sell, and convey, unto the said Nehemiah Garrison, his heirs and assigns, six tracts or lots of land situate, lying, and being in the third district and second section of Cherokee county, containing forty acres each, be the same more or less, and known and distinguished in the plan of said district by numbers nine hundred and forty-one, nine hundred and forty, nine hundred and thirty-three, nine hundred and thirty-nine, one thousand and four, and one thousand and six, reserving to the grantee all mining privileges on lot number nine hundred and thirty-nine ; to have and to hold all and singular the above-described tracts or lots of land unto the said Nehemiah Garrison, his heirs and assigns, to their own proper use, benefit, and behoof forever, in fee-simple ; and I, the said Moses Perkins, the above bargained premises will warrant and forever defend the right and title of the same, and every part thereof, from myself, my heirs and assigns, and also from the claim of all and every other person or persons whatsoever.

In testimony whereof, I, the said Moses Perkins, have hereunto set my hand and affixed my seal the day and year above written.

MOSES PERKINS. [L. S.]

Signed, sealed, and delivered in the presence of—

WILLIAM HUBBARD,
TILMAN CHAMLEE, J. G. C.

STATE OF GEORGIA, Cherokee County :

I, Jasper L. Keith, clerk of the superior court within and for the State and county aforesaid, do hereby certify that the attached seven copy deeds of conveyance for lots of land Numbers 933, 939, 940, 941, 1004, and 1006, in the third district of the second section, executed to Moses Perkins for the several separate lots aforesaid, and the said several lots by a single deed to Nehemiah Garrison, are true and perfect copies of the same taken from the records of the clerk's office of the superior court of said county, which is the proper office for the records of land titles, the said lots being situate in said county of Cherokee, and that no adverse claim or record to the said lands appears in my office.

To certify which, I hereto subscribe my name officially, and affix [L. S.] the seal of my office, in Canton, this October 29, 1858.

J. L. KEITH,
Clerk of the Superior Court, Cherokee county, Georgia

STATE OF GEORGIA, *Cherokee County* :

Before me, James R. Burns, a justice of the peace in and for said county, personally came John Wheeler, John W. Henson, W. W. Worley, N. J. Perkins, and Major Wilbanks, who, being duly sworn, depose and saith that they were well acquainted with the tract of land owned by and occupied by Moses Perkins in the third district of the second section of Cherokee county, Georgia ; that said tract of land was composed of numbers 933, 940, 941, 939, 1004, and 1006 ; and that Fort Buffington, in the year 1837 and 1838, was built and situated upon said tract of land at that time owned and in the possession of the said Moses Perkins, and that the timber necessary for building said fort was taken off the said land of the said Moses Perkins.

JOHN WHEELER.
JOHN W. HENSON.
W. W. WORLEY.
N. J. PERKINS.
MAJOR WILBANKS.

Sworn to and subscribed before me this 25th day of October, 1858.
JAMES R. BURNS, *J. P.*

STATE OF GEORGIA, *Cherokee County* :

I, John B. Garrison, do hereby certify that James R. Burns, whose name appears to the within affidavit, is an acting justice of the peace in and for said county, being duly elected and qualified, and was at the time of signing the within, and full faith and credit ought to be allowed his official acts and doings.

Given under my hand and the seal of my office this October
[L. s.] 29, 1858.

JOHN B. GARRISON,
Deputy Clerk of the Superior Court, Cherokee county, Georgia.

STATE OF GEORGIA, *Cherokee County* :

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The memorial of the undersigned humbly sheweth to your honorable bodies that during the year eighteen hundred and thirty-seven the commanding officer of the United States troops charged with the removal of the Cherokee Indians detached a company of mounted cavalry, commanded by Captain Ezekiel Buffington, to be stationed in the county of Cherokee, and some time in the month of October of the year aforesaid Captain Buffington pitched his quarters on the land and tenements of your memorialist, with the express understanding that all damages would be fairly settled for and paid for by Department. Your memorialist further shows, that great damage was done to his land, by cutting and destroying the timber in building

barracks, pickets, block-houses, stables, corn and fodder houses, and other necessary buildings for the use of said company, and that they remained in the said barracks until early in the month of July, eighteen hundred and thirty-eight. Your memorialist, relying upon the government to indemnify him for such damage as had been done, demanded of the paymaster satisfaction for the same, when he was informed that such charges were not paid by him, &c. Now, your memorialist humbly prays your honorable bodies to take the subject into consideration, that such action may be had thereon as in your wisdom shall seem reasonable and just. As in duty bound, your memorialist will ever pray.

MOSES PERKINS

TREASURY DEPARTMENT,
Second Auditor's Office, October 4, 1858.

SIR: In reply to yours of the 20th ultimo and of the 2d instant, I have to inform you that Captain Ezekiel Buffington, of the Georgia volunteers, (1836, '37, and '38,) was mustered into the service of the United States, and paid for his services by Paymaster Bennett.

Very respectfully, your obedient servant,

T. J. D. FULLER,
Auditor.

H. C. SPALDING, Esq.,
Present.

QUARTERMASTER GENERAL'S OFFICE,
Washington, September 23, 1857.

SIR: The case of Moses Perkins was referred here on the 18th day of January, 1839, by Hon. Joel R. Poinsett, Secretary of War, and on the same day returned to him, with a report that its payment was not warranted by any existing laws.

"In regard to its merits, there is nothing on file in this office throwing any light upon it in addition to the papers submitted by the claimant, which are herewith returned."

On the 5th of October, 1857, the following was endorsed on letter of Daniel Ratcliffe, esq., enclosing petition of N. Garrison, filed in Court of Claims, presenting account of Moses Perkins for spoliation at Fort Buffington, Cherokee county, Georgia, in 1838:

"There is nothing in this office on the subject of this claim. The charge is reasonable and should probably be paid, provided the land from which the timber was taken belonged to the claimant, and was not Indian land."

The foregoing is all the information on file in this office.

Very respectfully, your obedient servant,

E. F. SIBLEY,
Major and Quartermaster.

H. C. SPALDING, Esq.,
*Agent in the claim of Moses Perkins,
 Washington, D. C.*

IN THE COURT OF CLAIMS.

NEHEMIAH GARRISON *vs.* UNITED STATES.

Interrogatories to be propounded to Newton J. Perkins and John B. Garrison :

Interrogatory 1. In your evidence heretofore given in this case you were asked : "State if you know anything about Moses Perkins having transferred his claim to Nehemiah Garrison, whether or not it was for a valuable consideration, and whether or not the consideration has been paid. If so, how long since?" To which you replied : "I was present when the trade was made between Moses Perkins and Nehemiah Garrison for the claim specified in said account ; that the same was transferred to Nehemiah Garrison for a valuable consideration ; that Moses Perkins has long since told witness that the same was fully paid." Be good enough now to state particularly what was the character of the consideration, whether it was money or other thing, the amount of it if in money, and the time when the assignment took place.

Interrogatory 2. State what you know of the assignment of this claim to Nehemiah Garrison, what time it was made, what was the character of the consideration, and its amount.

P. PHILLIPS,

Solicitor for Complainant.

DANIEL RATCLIFFE,

Assistant Solicitor of the Court of Claims.

IN THE COURT OF CLAIMS.

NEHEMIAH GARRISON *vs.* UNITED STATES.

CLERK'S OFFICE SUPERIOR COURT, CANTON,
Cherokee County, Georgia, March 12, 1860.

There being no commissioner of this court for the purpose of taking Interrogatories, I, the undersigned, clerk of said court, have this day caused Newton J. Perkins and John B. Garrison, the witnesses named in the annexed interrogatories, who, after being duly sworn, make oath and say, in answer to said interrogatories, as follows :

1. Newton J. Perkins says : That he is the step-son of Moses Perkins, and that he was present with his step-father in the field building a rail fence, about the first of March, in the year eighteen hundred and thirty-eight, (1838,) when John B. Garrison, the son of plaintiff, Nehemiah Garrison, came to where they were at work in the field to confirm the contract for the purchase of the land about which they, the said plaintiff and said Moses Perkins, had been negotiating, being the same premises of which spoliation is claimed from the govern-

ment; and the said John B. Garrison then and there, as the agent of his father, accepted of the terms of the trade as proposed by said Moses Perkins, and as an inducement to make the purchase at the price agreed upon, the said Nehemiah Garrison was to have the benefit of the spoliations that might be allowed by the government, which was estimated then to be about five hundred dollars, at the time of making the trade, say March 1, 1838, the troops having taken possession of the fort about the first of October, eighteen hundred and thirty-seven; and the said Garrison was to have and receive, also, what additional damage that might accrue thereafter, then unknown, as the troops were still in fort, and continued there until about 1st July, 1838.

2. Witness further states that, in pursuance of the agreement made for the land and claim for spoliations, the said Nehemiah Garrison executed his promissory notes to Moses Perkins for two thousand dollars, and took from Perkins his obligation for titles of conveyance of the premises when the purchase money should be paid. Witness further states that the last note or instalment for the land and spoliations was paid about the year 1841 or 1842, and a deed was executed, pursuant to the contract and obligation, which, however, may not express any transfer of spoliations, but it was understood and agreed this should follow. The consideration for the land and spoliations was embraced in the same notes, and all have been paid off in money.

John B. Garrison, answering, says: That he was agent for his father, Nehemiah Garrison, the plaintiff, and confirmed the contract which was carried out for the purchase of the premises and spoliations thereon, purchased from Moses Perkins, and that the said Perkins agreed that he would take the sum of fifteen hundred dollars for the land alone, or two thousand dollars including the spoliation accrued up to the time of the trade, which was about the 1st of March, 1838, and the troops continued on the premises, and he was to have the damage for the remainder of the time they should stay, (then indefinite,) which ended about 1st July, 1838; and the purchase was concluded for the sum of two thousand dollars, as the purchase paid for the premises and claim that might be allowed for spoliations. The said Nehemiah Garrison executed his notes for the sum of two thousand dollars, in instalments, and all of them have been paid off and discharged in money, the last one of which was transferred and paid to the bearer; to the best of his recollection, it was in the hands of W. W. Smithwick when paid, about the year 1841 or 1842.

NEWTON J. PERKINS.
JOHN. B. GARRISON.

The foregoing depositions read to the witnesses, Newton J. Perkins and John B. Garrison, and sworn to and subscribed by them before me March 12, 1860.

J. H. WOOD, J. P.

I certify that the foregoing depositions were carefully read to the witnesses, who, with a full knowledge of the facts therein stated, after being duly sworn, subscribed the same in my presence before John H.

Wood, esq., a justice of the peace for said State and county, who is authorized by law to administer oaths and take depositions for general purposes.

To certify which I hereto subscribe my name and affix the seal of my office, in Canton, this 12th day of March, 1860.

[L. s.] J. L. KEITH,
Clerk Superior Court, Cherokee Co., Geo.

| | |
|---|--------|
| Clerk's fee for taking depositions..... | \$2 50 |
| N. J. Perkins, witness, one day..... | 75 |
| J. B. Garrison, witness, one day..... | 75 |
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IN THE COURT OF CLAIMS.

NEHEMIAH GARRISON vs. THE UNITED STATES.

Petitioner's Brief.

The premises of Moses Perkins were taken possession of by the United States, in 1838, by Captain Ezekiel Buffington, who says in his deposition, (p. 7 :)

"He was in command of a company of mounted volunteers, stationed at New Echota, when he was directed by the commanding officer, General John E. Wool, as well as he now remembers, to remove his command to some place in the neighborhood of Canton, to select a site, and build a fort ; that he marched accordingly, *selected the site on the lands of Moses Perkins*, and erected the fort thereon called Fort Buffington ;" that "the charges in the account for damages were reasonable and just, and that the same were necessary for the use of the United States."

He also states that he had made a report of these proceedings to the commanding officer at New Echota.

At page 8 he deposes that "his attention was called to the various items of the account before he gave the certificate, and that he certified to the same, considering it in detail, and believed it to be just."

The certificate referred to is to be found at page 6, and is dated August 20, 1838, certifying on honor that the troops of the United States were "*stationed on Moses Perkins's land*," and that the damage done on "*Moses Perkins's land*" was \$750 by the "destruction of his timber for public uses."

The affidavits of Major Wilbanks, John M. Mullins, and Henson Bagwell, made on 31st December, 1838, and attached to the account, (p. 6,) are to the same effect.

The same facts are also sustained by the depositions of John H. Wood and Newton J. Perkins, (p. 10,) who were members of Captain Buffington's company at the time of the occupation of Perkins's land.

The assignment of the claim by Perkins to Garrison is proved by the

deposition of Newton J. Perkins, the step-son of Moses, at p. 10, who says that "he was present when the trade was made between Moses Perkins and Nehemiah Garrison for the claim specified in said account; that the same was transferred to Garrison for a valuable consideration; that Moses Perkins has long since told witness that the same was fully paid."

A deed from Perkins to Garrison for the premises on which the damage in question was committed is to be found at p. 15, dated 25th May, 1842.

The claim was referred by Mr. Poinsett, while Secretary of War, on the 18th of January, 1839, and was not paid by the quartermaster general, because "not warranted by existing laws." (p. 18.)

On the 23d of September, 1858, the quartermaster writes: "The charge is reasonable and should probably be paid, provided the land from which the lumber was taken belonged to the claimant and was not Indian land."

The evidence seems, therefore, to establish clearly:

1. That the damage was done to Moses Perkins's land by the use of it for the United States troops.
2. That the damage amounted to \$750.
3. That the claim is now the property of Garrison, the petitioner.
4. Twenty years have elapsed since the first presentation of the claim, and the payment to indemnify the claimant should include interest.

P. PHILLIPS,
Solicitor for Petitioner

JUNE 8, 1859.

IN THE UNITED STATES COURT OF CLAIMS.

NEHEMIAH GARRISON, ASSIGNEE OF MOSES PERKINS, vs. THE UNITED STATES.

Solicitor's Brief.

The petition of the plaintiff alleges that in the year 1837 General Wool was in command of the United States troops, charged with the removal of the Cherokee Indians; that Ezekiel Buffington was captain of a company of mounted infantry, and was detached to take station at the plantation of one Moses Perkins, where a fort called Buffington was established; that they occupied the said plantation and tenements from October, 1837, until the 3d of July, 1838; that timber for barracks, &c., was cut and taken for the public service, amounting to the value of seven hundred and fifty dollars. The United States object to this claim upon the following grounds:

1. It does not appear from the evidence that the commanding officer (General Wool) authorized the property charged for in the

petitioner's account to be taken and used. He alone had the power to bind the United States, being in command, as alleged in the petition.

2. It is not shown that Ezekiel Buffington was a captain in the service of the United States. He certifies himself to be so, but this is not proof of the fact. If his certificate were received by the court as evidence of that fact, still it does not appear that he had authority from his superior officer (General Wool) to take and appropriate the petitioner's property.

3. If Buffington was a captain in the service of the United States, his certificate would not be evidence of the fact, because it is not the best that the case is susceptible of, nor has said certificate been officially made.

4. The evidence is too general and indefinite to enable the court to say whether the acts charged are such as the United States are liable for. The witnesses do not state facts, but merely give their opinion as to the damage sustained by the petitioner. They do not say that the petitioner's property was taken.

5. It does not appear that the claim has been presented to the proper department (War) for settlement. This we think should be done by the petitioner before coming into this court for relief.

DANIEL RATCLIFFE,

Assistant Solicitor of the Court of Claims.

IN THE COURT OF CLAIMS.

MARCH 23, 1860.

NEHEMIAH GARRISON, ASSIGNEE OF MOSES PERKINS, vs. THE UNITED STATES.

LORING, J., read the opinion of the court.

In the year 1837 a company of mounted infantry, under the command of Captain Buffington, and in the service of the United States, entered on the plantation of Moses Perkins, in the county of Cherokee, in the State of Georgia, and erected a fort there, and occupied it until the 3d of July, 1838. The timber for the erection of the fort and its barracks, sheds, &c., and the wood used for fuel, were cut from the plantation, and for this and for the destruction of timber by Indians detained at the fort as prisoners, \$750 are claimed according to the specification in the account annexed to the petition.

The evidence shows that Moses Perkins was in possession of the plantation at the time of the entry, &c., and such possession, coupled with the deeds of conveyance to him shown in the record, is sufficient evidence of his title; none other having been put in evidence by the United States. The evidence from the Treasury Department shows that Captain Buffington was in the service of the United States. His own deposition shows he was directed by the commanding officer

(" General John E. Wool, as well as he now remembers,") to remove his command to some place in the neighborhood of Canton, to select a site and build a fort; that in the execution of these orders "he marched accordingly, selected the site on the lands of Moses Perkins, and erected the fort thereon called Fort Buffington." (p. 7, ans. 4.)

That he made a report to the commanding officer at New Echota, that he had selected a site and gone to work. (p. 7, ans. 2d and 4th.) That he occupied it with his troops from some time in October, 1837; ("the precise date not now remembered, but believes it to be about the 16th day,") until July 3, 1838, and that while there the troops used the timber of said Moses Perkins as if it belonged to the United States. (p. 8, ans. 4.)

That the fort was occupied a part of the time by an additional company of infantry, and that he had as prisoners under his command a portion of the time about thirteen hundred Indians. (p. 8.)

At the time of the transaction, August 20, 1838, Captain Buffington certified to the correctness of the account which the petitioner now claims, and in his deposition in this case, being asked on the part of the United States, 1st, was your attention called at any time to the specific items in the plaintiff's account, and can you speak as to their value in detail? (p. 5) he answered, "that his attention was called to the various items of the account before he gave the certificate, and that he certified to the same, considering it in detail and believing it to be just." (2, p. 8.)

The testimony of Captain Buffington is corroborated by that of John H. Wood, quartermaster at Fort Buffington, and of N. J. Perkins, a soldier there; these witnesses speak of matters within their personal knowledge, and there is no conflicting testimony. (Record, pp. 7, 8, 9, 10.) And the communication from the quartermaster general's office, Washington, September 23, 1858, states that "*the charge is reasonable.*"

The orders given to Captain Buffington authorized the entry on the land, the construction of the fort, &c., and the use of the timber for that purpose, and for fuel, and the manner of doing all this was committed to his discretion. His acts, therefore, in these matters are the acts of the United States.

The timber so cut and used was private property taken for public use, and the United States are bound to pay Moses Perkins for it at its fair value.

The testimony of Captain Buffington as to the items of the account, with the general affirmation of the account by the other witnesses, is evidence of the fact stated in the account that timber was destroyed, Indian prisoners. The United States carried and kept the Indians there, and it was their duty, therefore, so to keep them that they should not injure others; and on this obligation they are liable to repair the injury done by the Indians.

The witnesses concur in the statement that the amount claimed in the account (seven hundred and fifty dollars) is a reasonable charge, and the correctness of their estimate is admitted at the office of the quartermaster general.

We are of opinion that the evidence proves that the United States

were indebted, in the sum of seven hundred and fifty dollars, according to the specification in the account on record, to the petitioner, to Nehemiah Garrison, and that he legally assigned his claim to the petitioner, who is, according to his prayer, entitled to relief therefor.

A bill will be reported to Congress for the relief of Nehemiah Garrison in the sum of seven hundred and fifty dollars.