

NEHEMIAH GARRISON, ASSIGNEE OF MOSES PERKINS.

APRIL 24, 1878.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. REILLY, from the Committee of Claims, submitted the following

REPORT:

[To accompany bill H. R. 966.]

The Committee of Claims, to whom was referred the bill H. R. 966, have had the same under consideration, and present the following report thereon:

The facts upon which this claim are based were investigated and determined by the Court of Claims, which rendered judgment against the United States on the 23d day of March, A. D. 1860, as fully appears by a report of the proceedings had in said court made to the first session of the Thirty-sixth Congress (Report Court of Claims No. 252). A copy of the opinion of said court in the case is hereto attached and made part of this report.

Your committee report back said bill, with an amendment, as follows, viz: In line 7, strike out the words "with interest;" and, thus amended, recommend its passage.

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 by 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 (\$750) 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 \$750, 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 \$750.