

IN THE SENATE OF THE UNITED STATES.

APRIL 14, 1886.—Ordered to be printed.

Mr. JONES, of Arkansas, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 502.]

The Committee on Claims, to whom was referred the bill (S. 502) for the relief of J. M. English—printed T. M. English—have had the same under consideration, and report as follows:

Richard Fitzpatrick was a citizen of Florida at the breaking out of the Seminole war, and owned a plantation at the mouth of the Miami River, in that State. The Indians destroyed his houses, crops, &c.. The military and naval forces soon thereafter took possession and established two military posts on the land owned by Fitzpatrick, viz, Fort Dallas and Fort Lauderdale; the former was military headquarters. These posts were occupied by the military and wood was cut from the lands of Fitzpatrick and used by the army.

Fitzpatrick first presented his claim to Congress by bill in the Senate during the first session of the Thirty-second Congress, and claimed \$60,320, made up of the following items:

One hundred acres of sugar-cane, worth \$100 per acre.....	\$10,000
Thirty acres of corn and pumpkins, worth	1,200
Five acres of sweet potatoes, worth	500
Four thousand plantain and banana trees.....	4,000
Twelve acres of Bermuda arrow-root.....	500
Lime grove destroyed	2,000
One hundred cocoa-nut trees destroyed.....	500
Nursery of tropical fruit trees destroyed.....	2,500
Six hundred bushels of flint corn	1,500
One hundred head of hogs.....	1,000
Poultry, viz, ducks, fowls, turkeys, and guinea fowls.....	200
One large flat boat, 60 feet long (cost)	1,300
One clinker-built boat.....	120
One cedar boat.....	60
One schooner	1,500
One framed house.....	2,300
Two corn cribs.....	200
One kitchen.....	50
One poultry house	50
One hewed-log house.....	100
Twelve negro houses.....	1,600
One framed house, south side of Miami River.....	300
One framed house, smaller.....	100
Two framed houses and out-buildings, purchased from Lewis	2,500
Plantation tools, blacksmiths' tools, carts, plows, axes, hoes, grubbing-hoes, cooking utensils, &c.....	500
Furniture, bed clothes, books, &c.....	2,000

Three years' occupation of my plantation by the United States troops at Fort Dallas, Miami River.....	18,000
Forty thousand shingles.....	240
Three hundred cords of wood cut from my land, to the 1st of April, 1840, for the use of the United States steamers employed on the coast of Florida, at \$6 per cord.....	1,800
Two hundred cords of wood cut from my land, at New River, for the United States steamboats, at \$6 per cord.....	1,200
House and improvements, including fruit trees, wharf, &c., purchased of William Cooley, on Little River.....	2,500
	<hr/> 60,320

The Committee on Claims reported a bill for his relief (S. 431, Report No. 234, that session), which passed the Senate, but was not acted on by the House.

A bill for his relief was again introduced in the Senate, and again reported back favorably by the Senate Committee on Claims during the Thirty-third Congress (S. 141, Report 49), and again passed the Senate.

This Senate bill, together with all the papers in the case, was referred by resolution of the House of Representatives to the Court of Claims.

The Court of Claims reported their findings of fact to the Thirty-fifth Congress, first session, and recommended the payment of \$12,000 as compensation for rent of plantation and for wood used for fuel for troops and steamboats in the Government service.

Fitzpatrick was forced by the Indians to abandon his plantation; subsequently the Government built block houses, &c., upon the property, and the troops used about 100 acres of the abandoned lands for pasture. This was the extent of the Government occupation. Some timber was cut by the troops and used for fuel. The quantity and value of this is not proven clearly.

Five hundred cords is charged in the account at \$6 per cord. One witness (English) estimates the quantity at 2,000 to 3,000 cords; another (Cussans) places it at 1,200 cords; others estimate it at 50 cords per month, but all disclaim any accurate knowledge.

Ex-United States Senator Mallory, in a letter to the chairman of the Committee on Military Affairs dated January 14, 1855, commenting upon a letter of Colonel Churchill's and speaking of the timber, says:

It is a superior article for steamboats, and by what process he determines its value to be 50 cents a cord I am at a loss to imagine. Key West is the market and has always been the market for everything produced at the Miami or on the Keys, and wood has not varied in price there in fifteen years from \$5 per cord.

In a statement by the same gentleman, dated February 12, 1858, which was read as evidence in the Court of Claims by agreement, the following language occurs:

I should think that, taking into consideration the facilities afforded at Fitzpatrick's place for supplying boats, the wood on the land growing ought to be worth at least \$1 per cord, cut when this wood was cut.

John Costen swears that "said wood is worth in his district at least \$6 per cord."

General Jesup, Quartermaster-General, says:

As he could make no use of the land himself, and as the fuel was cut and hauled by the troops, from \$2,000 to \$3,000 a year would, I should think, be ample compensation for both.

The Court of Claims, after setting out the evidence before it, sums up its findings as follows:

Our opinion is, that the petitioner's claim is well founded. This private property was taken for public use, and he is entitled to a just compensation therefor.

As to the amount of compensation, a general estimate made by a witness, who knows the premises well, and frequently visited them whilst in the occupancy of the United States, is all that can justly be required of the petitioner. Such a witness is Senator Mallory. We adopt his estimate.

We shall, therefore, report to Congress a bill in favor of the petitioner for the sum of \$12,000, as compensation for the wood and the rent.

We cannot "adopt this estimate." Grazing the animals belonging to a command which had in the nature of things to depend upon natural pasturage for forage was not such occupation of the abandoned lands of Fitzpatrick as entitled him to compensation by the Government, and the item of wood taken is not so definite in quantity or value as to enable this committee to name any sum which should in fairness be paid by the Government to the legal representatives of Fitzpatrick.

On the other hand the evidence satisfies your committee that the quantity of wood cut was really not more than a few hundred cords, and that, standing in the forests of that remote region, it had little or no value.

Hence your committee report the bill back and recommend that it be indefinitely postponed.

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