

IN SENATE OF THE UNITED STATES.

JANUARY 9, 1843.

Submitted, and ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

The Committee of Claims, to whom were referred the petition and papers of Samuel Grice, praying to be compensated for certain live oak timber, respectfully submit the following report :

The claim of the petitioner is for the following property, at the following prices, viz :

39 pieces live oak timber, averaging 23 feet each, 897 feet, at \$1 20 per foot	\$1,076 40
24 pieces live oak timber, averaging 26 feet each, 624 feet, at \$1 25 per foot	780 00
Property taken and destroyed by the hostile Indians, viz :	
7 yoke of oxen, at \$70 each	\$490 00
1 house and lumber	85 00
1 wagon and harness	75 00
	650 00
	<u>2,506 40</u>

The facts stated in the petition are, that the petitioner was engaged in December, 1835, with a large number of hands, in cutting live oak timber, under a contract with the Board of Navy Commissioners, in Musquito county, East Florida; that, in consequence of the near approach of the hostile Indians, he was obliged to abandon the place, and move off with his workmen; that subsequently, in March, 1836, he succeeded, after much difficulty, in chartering the schooner Bushrod, of New York, to go after the timber he had lying on the landings on Halifax river in said county of Musquito; that, on her arrival there, they were unable to take on board said timber, in consequence of Major Kirby's having taken his lighter for the use of the army, and refusing to give her up, as will appear by the testimony, &c.

The petition mentions the expense incurred in the effort to get the timber, and "the loss of his oxen, timber-wheels," &c., but contains no further material allegation.

The testimony in the case is the deposition of James K. Anderson, annexed and marked A, and the letter of Major Kirby, of the United States army, marked B, also annexed. Mr. Anderson testifies that he chartered the schooner, at St. Augustine, in March, 1836, as the agent of the petitioner; went with the vessel to Musquito; then proceeded up the river Hali-

fax, with the mate and a part of the crew of the vessel, in search of the petitioner's flat-boat, which was left at Williams's plantation on that river; that they found the boat in the possession of Major Kirby, then commanding a detachment of the army at Musquito, and the boat actually loaded with provisions for the troops; that he applied to Major Kirby for the boat, who said its use was then indispensable, and he could not surrender it; that they could not obtain any other boat, and could not get the timber to the schooner without a lighter; and, therefore, returned to St. Augustine with the schooner. This is the substance of Mr. Anderson's deposition.

The letter of Major Kirby is to Mr. Anderson, the deponent, and says: he occupied a post, in March, 1836, at Williams's plantation, on the Halifax river, with two companies of United States artillery under his command; that it was his duty to forward, by water, provisions and supplies to the camp of Colonel Brisbane, twenty miles above; that, for that purpose, he was directed to take possession of all the boats on the river; that he took a large flat from near Dunlawton, and was told that it belonged to *Anderson's* family; that, about the 10th of March, Anderson came to his post and demanded *his* flat for the purpose, as he said, of loading a schooner with live oak; *that the flat was then in the act of shoving off with a load for the post above*; and that he refused to allow it to be taken, because the public service imperiously required its use.

This is the whole case as it is presented to the committee, and they state it thus fully, and annex the whole testimony, that the present rule of the Senate may be observed with a full understanding of the facts.

It will be remarked that no claim is made by Grice for the flat, or for its use, while the testimony leaves it doubtful whether the property of the boat was in him or in Anderson's family.

As the committee can not suppose that the Government will ever consent to make itself responsible for such consequential damages as are here claimed, under such a state of facts, they do not propose to remark upon the entire insufficiency of the testimony, in their judgment, to support the claim here made *for the timber*, even if a consequential liability on the part of the Government were acknowledged. It has been the invariable practice of the Government, under the necessities growing out of a state of war, to authorize its officers to impress and take into the military service, both without the consent and against the consent of the owner, boats, vessels, teams, and the like, and a just compensation for the use of the property, or for its value, if destroyed or consumed, has always been provided for; but the committee are not aware that compensation has been made for consequential damages under any circumstances. A farmer may sustain the injury or loss of his crop by having his teams impressed, or he, may in the same way, be disabled to put into the earth his seeds in their seasons, and is the Government, in either case, to attempt to estimate and compensate such losses? The committee suppose not, because, if that principle be adopted, there would be no misfortune to the citizen, growing out of a state of war, which might not be charged upon the public.

In this case it does not appear that the timber was *lost* or injured. It was merely not taken away at that time, but was *left*. For aught that appears, it might have been taken at any other time, and might have been obtained then simply by waiting until the flat had made its trip of twenty miles and back.

Yet, however, this may be, the principle, in the judgment of the commit-

tee, would not be altered. In taking the flat into the public service, without the consent of the owner, the United States became liable to the owner, whoever he might be, for its use and its safe return, or for compensation for any injury it might sustain while in the service of the United States, if damaged, and for its value if not returned, while no other liability could, or can, grow out of that act. Hence any further testimony as to consequential damages of any character would not change the case, in their view of it.

As the petitioner offers no testimony to sustain his claim for the property said to have been taken and destroyed by the hostile Indians, it is probable he has informed himself that such destruction of his property devolves, of itself, no responsibility upon the Government.

The committee respectfully present for the action of the Senate the following resolution:

Resolved, That the prayer of the petition ought not to be granted.

A.

CITY OF ST. AUGUSTINE,
County of St. John's, Territory of Florida. } ss:

Personally appeared before me, George L. Phillips, a justice of the peace in and for said county, James K. Anderson, who, being sworn, says: That he was agent for Mr. Samuel Grice; that, in March last, he chartered the schooner Bushrod, Captain Houston, of the port of New York, to carry a load of live oak from New Smyrna to New York; that the said vessel sailed from this port for Smyrna, deponent being on board; that when the vessel arrived at Musquito, he proceeded up the river Halifax, with the mate of the said schooner and some of the crew, for the purpose of bringing Mr. Grice's flat, which was at Samuel H. Williams's plantation, on the Halifax river; that when deponent arrived there, he found that the said flat had been taken possession of by Major Kirby, of the United States service, then commanding a detachment at Musquito, and the flat was loaded with provisions for the troops; that he made application to Major Kirby for the flat, for the purpose of carrying the live oak from the shore to the schooner, then at anchor in the river, but Major Kirby said the service required the use of the flat, and that he could not give it up to deponent; that, in consequence of not being able to get the flat, or any other in the river, the said schooner was compelled to return to St. Augustine without her cargo, as there was not any means by which the live oak could be got on board of her, excepting by the flat as aforesaid.

JAMES K. ANDERSON.

Subscribed and sworn to before me, this 28th day of November, A. D. 1836.

GEORGE L. PHILLIPS,
Justice of the Peace.

B.

ST. AUGUSTINE, November 25, 1836.

SIR: In reply to your note I have to state, that in the month of March last, I occupied a post at Williams's plantation on the Halifax river, with

two companies of United States artillery under my command. It was my duty to forward by water provisions and supplies to the camp of Colonel Brisbane, twenty miles above. For this purpose, I was directed to take possession of all the boats in the river. I took a large flat from near Dunbarton, and was told that it belonged to your family. About the 10th of March, you came to my post and demanded your flat, for the purpose, as you told me, of loading a schooner with live oak. The flat was then in the act of shoving off with a load for the post above, and I refused to allow you to take it, as the public service imperiously required its use. I believe that your vessel immediately left the river without a load.

I am, sir, very respectfully, your most obedient servant,

R. M. KIRBY,
Major U. S. Army.

J. K. ANDERSON, Esq.