

IN THE SENATE OF THE UNITED STATES.

JULY 3, 1876.—Ordered to be printed.

Mr. CAPERTON submitted the following

REPORT:

[To accompany bill S. 969.]

The Committee on Claims, to whom was referred the petition of T. T. Garrard and others, proprietors and lessees of the salt-works near Manchester, in the State of Kentucky, praying compensation for the destruction of their salt and injuries committed upon their works by troops of the United States, in the year 1862, submit the following report :

The petition in this case was presented to the Senate at the first session of last Congress and referred to this committee, who, through Mr. Pratt, on February 17, 1874, made the following report :

Near Manchester, in Clay County, in the State of Kentucky, upon Goose Creek and its tributary waters, were several salt-wells, with the necessary fixtures for pumping, conducting, and boiling the water, and storing the manufactured salt. The country round about was mountainous, and the people, with few exceptions, loyal. Because of their loyalty they had been plundered by the rebel army of their property and crops, and reduced to a destitute condition. Salt in large quantities was manufactured here, and the confederate forces in the South and Southwest supplied their wants from these works. Several thousand bushels of salt had accumulated in the fall of 1862. The confederates had carried away between 3,500 and 4,000 bushels previously, and on the 21st of October, 1862, General Buell had reason to believe that the rebel authorities purposed to capture and appropriate the large supply then on hand. On that day he issued his order, from his headquarters at Crab Orchard, to Major-General Thomas, second in command, directing that certain divisions be sent forward promptly to destroy the salt-works about Manchester. This order was carried out by Brigadier-General Craft, commanding Twenty-second Brigade, Fourth Division, who made his report on the 25th of October. From this and the reports of Colonels Enyart, Hanson, and Spencer, the following facts appear :

The works, consisting of five in number, were situate, owned, and occupied as follows :

The first was owned and occupied by Col. T. T. Garrard, and situate on the main fork of Goose Creek, two miles from Manchester. The second, third, and fourth were situate on Collins's Fork of the creek, within three miles of the above town, and were respectively owned and occupied as follows :

The second, by Mrs. J. T. Woodward and her daughter, Mrs. Mollie Shackelford, and was rented for the years 1862 and 1863 by James W. Reid, by whom they were occupied.

The third was owned by A. T. White, Michael Horton, and Daniel Gara, sr., (meaning Daniel Garrard.)

The fourth was owned by Alexander White and by Mrs. Woodward and her daughter, as above, and was occupied by Stephen Gibson and A. Chastain.

The fifth was owned and occupied by J. & D. White, and was situate on the east fork of Goose Creek, five miles from Manchester.

These works were furnished with water from bored wells, from 500 to 600 feet in depth, and were in good order, in full operation, each turning out daily from 50 to 100 bushels of salt.

Five hundred men engaged in the sad work of destroying these useful and expensive works, under the order above given, and for thirty-six consecutive hours the work of destruction went on. The wells and pumps upon which the works depended for supplies of water to manufacture the salt were rendered useless and unfit for service as far as it was possible in that space of time to do it; so, also, of the pipes conveying the water. In each case the pumps, or portions of them, where they could not be gotten out entirely, were taken out of the wells, broken to pieces, and the pieces forced back into the wells, into and upon the pipes. In one case a piece of iron grate was driven into that part of the pump which could not be got out of the well. In another case an iron bar was forced down into the well and into the well-pipe, and 300 feet of the surface-pipe were destroyed. In another case cannon-balls were forced into the wells; the scaffolding, a large part of the wood-work of the pans, and all the surface-pipe were destroyed.

Large quantities of salt were destroyed. Taking the wells in the order above named, the officers charged with the destruction estimated the quantities destroyed as follows:

At	Bushels.
Number 1.....	5,840
Number 2.....	5,000
Number 3.....	2,000
Number 4.....	8,000
Number 5.....	9,000
Total	29,840

This was the best approximate estimate they could make, having no experience in the measurement of salt, and trusting to parties interested and such others as happened to be present to aid them in coming to a conclusion.

The loyal citizens in the neighborhood were allowed to remove what was necessary to supply the country round about; the remainder was destroyed by turning the water from the cistern upon it, and by throwing the salt into the pools and streams of water convenient. No considerable amount was left to fall into the hands of the rebels.

General Craft acted under the immediate command of Brig. Gen. William Lovy Smith, whose report was before the committee. From this it appears that the above officers, under whose supervision the salt-works were destroyed, were constituted a board to fix the value of the injury inflicted, and the damages, present and prospective, caused to the owners. They did not fix the money-value, and hence General Smith recommended that a competent commission be appointed to take the necessary testimony and assess the damages. General Craft uses this language:

"I recommend that a special commission or commissioner be appointed by the Government of the United States to repair to the works and take evidence as to the quantity and price of the salt destroyed, the permanent damage to the works, and the amount of any remote or consequential damage that may ensue to the owners or lessees from the stoppage of their manufactories."

These recommendations were acted upon at an early day, for we find that on the 16th day of February, 1863, the Adjutant-General, by order of the Secretary of War, made the following order:

"Ordered that William P. Thomasson, esq., of Louisville, Ky., be, and he is hereby, authorized to investigate and report to this Department the value of Goose Creek salt-works, destroyed by the order of Major-General Buell, in Kentucky; that he give notice to the proprietors or their agents of the time and place at which he will receive testimony, and that he take such further testimony on the part of the Government as may be necessary to protect the rights and interests of the Government, as well upon the point of value as of the loyalty of the proprietors to the Government of the United States."

It will be noticed in this order that Mr. Thomasson was commissioned to investigate the value of the salt-works destroyed, and the political sentiments of the proprietors.

On the 27th day of April, 1863, the commissioner proceeded to execute his trust, and on the 13th of May following he submitted his report to the Secretary of War, with the statements of the different witnesses examined. There was a sixth case considered by him, not embraced in the reports of the officers—that of James White and Dougherty White, survivors of Claiborne—James and Dougherty White *against* The United States.

The following is the schedule of the claims, as allowed by him for injuries done to the salt-works, according to the testimony taken before him. It will be noticed that he goes beyond the terms of his commission in estimating the value of the salt destroyed, as well as the loss of profits from the stoppage of the works for eight succeeding months, to the 23d day of June, 1863.

CASE NO. 1.

UNITED STATES TO T. T. GARRARD,	Dr.
For injury to well, pump, pipe, &c.....	\$500 00
For 124 salt-barrels, at 40 cents each.....	49 60
For 6,300 bushels of salt destroyed, at 50 cents per bushel.....	3,150 00
For deterioration of furnace and fixtures by non-usage.....	500 00
For 19,200 bushels salt, the anticipated yield for eight months, at 50 cents..	9,600 00

Total 13,799 60

The claimants demanded for these injuries \$22,749.60.

CASE NO. 2.

UNITED STATES TO JAMES W. REID,	Dr.
For injury to well, pump, pipe, &c.....	\$500 00
For 5,000 bushels salt destroyed, at 50 cents.....	2,500 00
For deterioration of furnace and fixtures.....	500 00
For 11,200 bushels salt, the anticipated yield for eight months, at 50 cents..	5,600 00

Total 9,100 00

The claim was for \$15,400.

CASE NO. 3.

UNITED STATES TO WHITE, HORTON & GARRARD,	Dr.
For injury to well, pump, pipe, &c.....	\$500 00
For 2,000 bushels of salt destroyed, at 50 cents.....	1,000 00
For deterioration of furnace and fixtures by non-usage.....	500 00
For 16,000 bushels salt, the anticipated yield for eight months, at 50 cents..	8,000 00

Total 10,050 00

The claim was for \$16,050.

CASE NO. 4.

UNITED STATES TO GIBSON & CHASTAIN,	Dr.
For injury to well, pump, pipe, &c.....	\$500 00
For 8,000 bushels salt destroyed, at 50 cents.....	4,000 00
For deterioration, by non-usage, of furnaces and fixtures.....	500 00
For 9,600 bushels salt, the anticipated yield for eight months, at 50 cents..	4,800 00

Total 9,800 00

The claim in this case was for \$16,900.

CASE NO. 5.

UNITED STATES TO J. & D. WHITE,	Dr.
For injury to wells, pumps, pipes, &c.....	\$1,000 00
For injury to water-pipe, furnace, &c.....	1,000 00
For 9,000 bushels salt destroyed, at 50 cents per bushel.....	4,500 00
For deterioration, by non-usage, of furnace and fixtures.....	550 09
For 20,000 bushels salt, the anticipated yield for eight months, at 50 cents..	10,000 00

Total 17,050 00

The claim made was for \$28,350.

CASE NO. 6.

UNITED STATES TO J. & D. WHITE, SURVIVORS,	Dr.
For injury to well, pump, and pipe.....	\$500 00

The claim as made was \$650.

The committee have examined the testimony taken by the commissioner, and certainly his conclusions as to values and damages seem fully justified by the evidence. The mode by which the anticipated profits were estimated by the witnesses was to calculate the capacity of the wells for production by the week or month, and deduct the cost of operating the works.

Thus, in case No. 5, Mr. Raines says that, judging from the quality of the water, the situation of the furnace, the convenience of fuel, and the quantity of salt sold at the

works and shipped, he supposes they would produce 2,500 bushels per month, worth \$1 per bushel, while the works could be run at a monthly cost of \$400. Generally the estimates of the witnesses proved the cost of the production to bear the relation to the product of from one-fourth to one-third.

During the preceding five years the price of salt at the works had varied from 35 cents to \$1 per bushel. A combination among the manufacturers had existed for some years, which prevented competition and established a uniform price for all the salt produced at the different wells.

The estimates of profits are, of course, based upon the assumption that the proprietors or lessees could and would have manufactured the quantities stated; that no interruption of the peaceable pursuit of their business would have occurred; that there would have been a demand for all their salt and the old prices maintained. No allowance is made for contingencies, not even those of war, although their works were situated in a region of country traversed by both armies; although the signs were recent of the disastrous retreat from Cumberland Gap of the army commanded by General Morgan, the earth being covered by the wrecks of abandoned property; although these very works had been visited by the enemy, and several thousand bushels of salt captured; although the loyal inhabitants of that region had been plundered of every description of property which the rebels could make available; although it would seem next to impossible to collect in that disturbed region a sufficient body of men to operate the works.

Even as to the salt on hand, and which was destroyed by the troops, the claimants assume that this species of property would have been exempted from the common fate of all other in the neighborhood, while the very motive which prompted its destruction was the imminent danger that unless destroyed it would fall into the hands of the rebels and thus enable them to prolong the rebellion.

It becomes, therefore, an exceedingly complicated question to determine what should be the measure of re-imbursement to the claimants. If it be assumed that their property would have escaped appropriation or destruction by the rebels, that result could only have occurred by reason of the respect shown them by the confederates as friends of their cause. In this view of the question, they would be entitled to no compensation at all. If, on the other hand, it be assumed that their salt would have been appropriated by the enemy without compensation, then to that extent they have suffered no loss for which the Government should compensate them. We know that in point of fact the rebels had drawn their supplies of salt from these works, and were likely to continue to do so.

And then, again, we are not to lose sight of the main fact that all this destruction was committed not wantonly or unadvisedly, but as a means to an end, which end was the suppression of the rebellion, the restoration of peace, and the mild sway of law. The Government was spending two millions of money per day at that very time to bring around these desirable results for these claimants and all other citizens of the republic. Looking to these objects and to the end attained, may not the Government fairly interpose a claim of set-off to some extent, at least, for real benefits conferred? It is true these benefits may be said to be shared equally by others who were not losers; and therefore, in this view, those who were exempt from similar losses could well afford to pay those who were so unfortunate as to have their property and business upon the theater of strife. And this seems to the committee the more reasonable view of the question. While, therefore, they reject all allowances as made by the commissioner for prospective profits, they are of opinion petitioners should be paid for the injuries done the salt-works, and for the salt actually destroyed. They accordingly allow—

In case No. 1, to T. T. Garrard.....	\$4, 199 60
To James W. Reid, in case No. 2.....	3, 500 00
To White, Horton & Garrard, in case No. 3.....	2, 050 00
To Gibson & Chastain, in case No. 4.....	5, 000 00
To J. & D. White, in case No. 5.....	7, 050 00
To the same, survivors, as above, case No. 6.....	500 00
	<hr/>
	22, 299 60

These are the allowances made to the claimants in his report, and embrace all the items save that for the prospective yield and profits of the works.

The committee file herewith, for the information of the House of Representatives, Ex. Doc. No. 29, 38th Congress, 1st session, which embraces all the papers to which the committee have had access in the examination of these claims, and which seems to be a correct copy of the papers on file in the War Department.

The order appointing the commissioner authorized him to investigate and report to the War Department "the value of the Goose Creek salt-works, destroyed by order of Major-General Buell, Kentucky."

The report goes beyond the letter of the authority, unless the accumulated salt be

regarded as part of the works. If that item be left out, the amount of damages found to have been done to the owners by strict construction of the order is as follows:

Case No. 1.....	\$1,049 60
Case No. 2.....	1,000 00
Case No. 3.....	1,050 00
Case No. 4.....	1,000 00
Case No. 5.....	2,550 00
Case No. 6.....	500 00
Total.....	7,149 60

Value of the salt destroyed, \$15,150.

But the committee are of opinion that the same principle governs the destruction of the salt on hand which governs the injuries done to the salt-works. If the petitioners are entitled to relief in the one case they are in the other. They should be paid the whole or nothing.

In relation to the question of the loyalty of the claimants, the commissioner found they were all believed to be loyal, except Col. Daniel Garrard, (of the claimants White, Horton & Garrard.) He was 83 years of age and took no pains to conceal his southern proclivities. But as he was the father of Brig. Gen. T. T. Garrard, of the Federal Army, and of Col. James H. Garrard, treasurer of the State of Kentucky, both true and loyal men, the commissioner was of opinion that the virtues of the sons should overshadow the follies of the father.

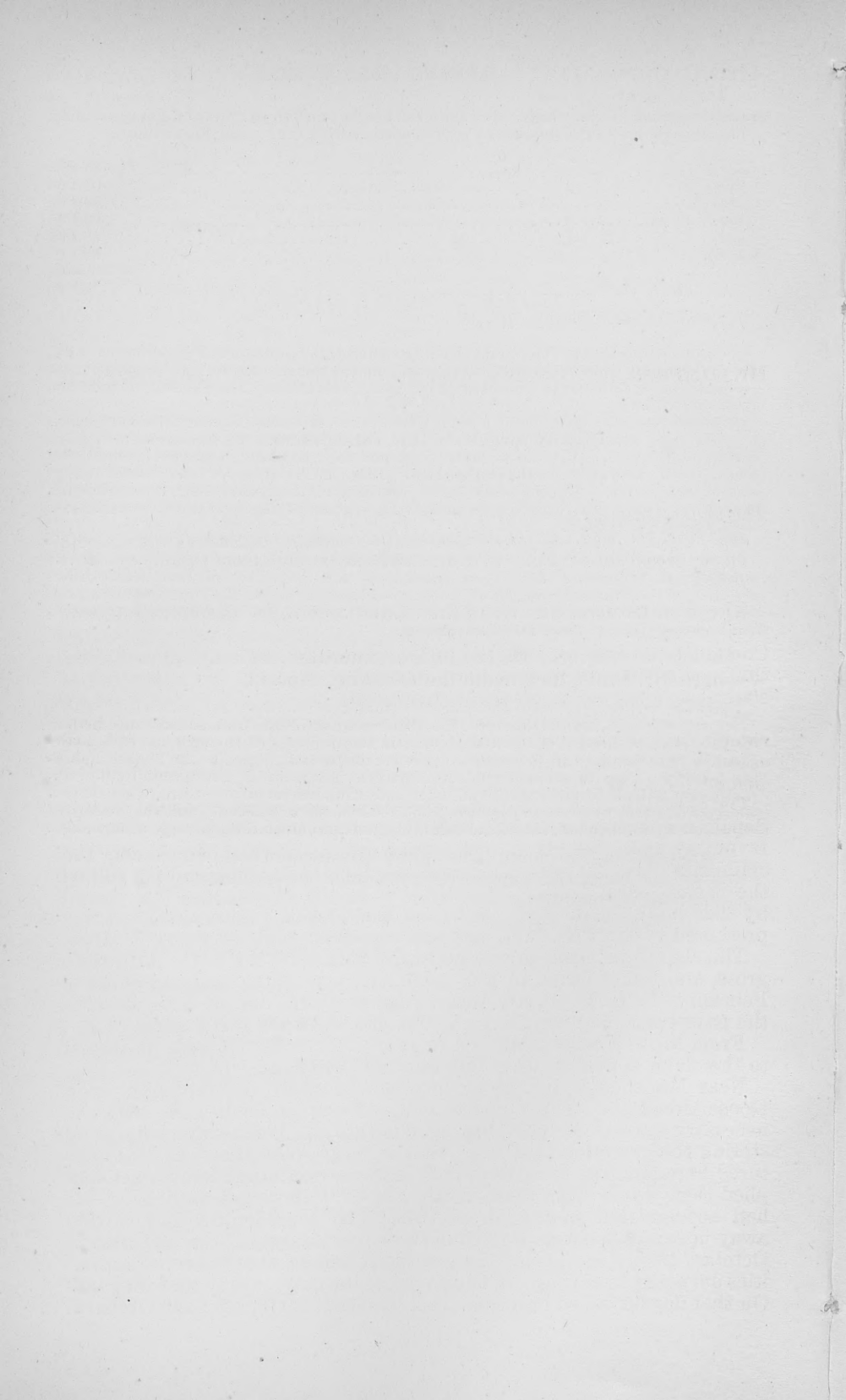
The majority of the committee, however, are of opinion, that from the foregoing allowance in case No. 3 of \$2,050 to White, Horton & Garrard, there should be deducted one-third, or the sum of \$683.33, on account of the disloyalty of Daniel Garrard, a member of the firm, reducing the allowance in that case to \$1,366.67 and reducing the sum total of the allowances from \$22,299.60 to \$21,616.27, and they herewith report a bill accordingly, and recommend its passage.

The claim was recommitted to the committee, and on March 30, 1874, through Mr. Pratt, they made the following report:

Upon the reconsideration of this case, the committee find that, in case No. 3, of White, Horton & Garrard, Daniel Garrard, the third member of the firm, is dead, and had, in his life-time, an interest of one-fourth only in the property of the firm, instead of one-third, as was assumed in the report of the committee submitted to the Senate, February 17, 1874. They therefore amend that report in its concluding paragraph by the subtraction of \$512.50 from the \$2,050 allowed said firm, instead of one-third, which leaves the sum due the survivors of the firm \$1,537.50, instead of \$1,366.67, and they herewith report an amendment of the bill accordingly, and recommend its passage as amended.

A majority of the committee adopt these reports as expressing their views of the case, and therefore report back the accompanying bill and recommend its passage.

S. Rep. 444—2



IN THE SENATE OF THE UNITED STATES.

JULY 8, 1876.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, submitted the following as the

VIEWS OF THE MINORITY :

[To accompany bill S. 969.]

The undersigned, a minority of the Committee on Claims, respectfully dissent from the report of the said committee made to the Senate July 3, 1876, on the memorial of T. T. Garrard and others, and submit their views, as follows :

The congressional history of this claim is, in brief, as follows: It was first presented in the Senate February 28, 1870, and referred to the Committee on Claims. On the 16th of February, 1871, Mr. Pratt, from that committee, reported a joint resolution, No. 321, for the relief of claimants, upon which no action was taken.

At the second session of the Forty-first Congress, the House of Representatives passed a bill, No. 1059, for the relief of claimants; this bill came to the Senate, and on January 31, 1870, was there referred to the Committee on Claims, but no action was had upon it.

On the 15th of March, 1871, the claim was again referred to the Senate Committee on Claims. Mr. Pratt, from that committee, reported favorably upon the claim, and introduced a bill (No. 161) for relief of claimants; the bill was afterward amended, and, as amended, passed the Senate April 8, 1872; the bill went to the House, and was passed by that body January 20, 1873. On the 21st of January, 1873, it was presented to the President, and was vetoed by him February 12, 1873.

The claim was again presented to the Senate in the Forty-third Congress, and was referred to the Committee on Claims. On the 17th of February, 1874, Mr. Pratt, from that committee, reported in favor of the payment of \$21,616.27; no action was had upon this report.

From the evidence submitted to your committee, the facts in regard to the claim appear to be as follows, that is to say :

Near Manchester, in Clay County, in the State of Kentucky, upon Goose Creek and its tributary waters, were several salt-wells, with the necessary fixtures for pumping, conducting, and boiling the water, and storing the manufactured salt. Salt in large quantities was manufactured here, and the confederate forces in the South and Southwest supplied their wants from these works. Several thousand bushels of salt had accumulated in the fall of 1862. The confederates had carried away between 3,500 and 4,000 bushels previously, and on the 21st of October, 1862, General Buell had reason to believe that the rebel authorities purposed to capture and appropriate the large supply then on hand. On that day he issued his order, from his headquarters at Crab Orchard,

to Major-General Thomas, second in command, directing that certain divisions be sent forward promptly to destroy the salt-works about Manchester. This order was carried out by Brigadier-General Craft, commanding Twenty-second Brigade, Fourth Division, who made his report on the 25th of October. From this and the reports of Colonels Enyart, Hanson, and Spencer the following facts appear:

The works, consisting of five in number, were situate, owned, and occupied as follows:

The first was owned and occupied by Col. T. T. Garrard, and situate on the main fork of Goose Creek, two miles from Manchester. The second, third, and fourth were situate on Collins's Fork of the creek, within three miles of the above town, and were respectively owned and occupied as follows:

The second, by Mrs. J. T. Woodward and her daughter, Mrs. Mollie Shackelford, and was rented for the years 1862 and 1863 by James W. Reid, by whom they were occupied.

The third was owned by A. T. White, Michael Horton, and Daniel Gara, sr., (meaning Daniel Garrard.)

The fourth was owned by Alexander White and by Mrs. Woodward and her daughter, as above, and was occupied by Stephen Gibson and A. Chastain.

The fifth was owned and occupied by J. & D. White, and was situate on the east fork of Goose Creek, five miles from Manchester.

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Five hundred men engaged in the work of destroying these useful and expensive works, under the order above given, and for thirty-six consecutive hours the work of destruction went on. The wells and pumps upon which the works depended for supplies of water to manufacture the salt were rendered useless and unfit for service as far as it was possible in that space of time to do it; so, also, of the pipes conveying the water. In each case the pumps, or portions of them where they could not be gotten out entirely, were taken out of the wells, broken to pieces, and the pieces forced back into the wells, into and upon the pipes. In one case a piece of iron grate was driven into that part of the pump which could not be got out of the well. In another case an iron bar was forced down into the well and into the well-pipe, and 300 feet of the surface-pipe were destroyed. In another case cannon-balls were forced into the wells; the scaffolding, a large part of the wood-work of the pans, and all the surface-pipe were destroyed.

Large quantities of salt were destroyed. Taking the wells in the order above named, the officers charged with the destruction estimated the quantities destroyed as follows:

At	Bushels.
Number 1.....	5, 840
Number 2.....	5, 000
Number 3.....	2, 000
Number 4.....	8, 000
Number 5.....	9, 000
Total.....	29, 840

This was the best approximate estimate they could make, having no experience in the measurement of salt, and trusting to parties interested and such others as happened to be present to aid them in coming to a conclusion.

The loyal citizens in the neighborhood were allowed to remove what was necessary to supply the country round about; the remainder was destroyed by turning the water from the cistern upon it, and by throwing the salt into the pools and streams of water convenient. No considerable amount was left to fall into the hands of the rebels.

General Craft acted under the immediate command of Brig. Gen. William Lovy Smith, whose report was before the committee. From this it appears that the above officers, under whose supervision the salt-works were destroyed, were constituted a board to fix the value of the injury inflicted, and the damages, present and prospective, caused to the owners. They did not fix the money-value, and hence General Smith recommended that a competent commission be appointed to take the necessary testimony and assess the damages. General Craft uses this language:

I recommend that a special commission or commissioner be appointed by the Government of the United States to repair to the works and take evidence as to the quantity and price of the salt destroyed, the permanent damage to the works, and the amount of any remote or consequential damage that may ensue to the owners or lessees from the stoppage of their manufactories.

These recommendations were acted upon at an early day, for we find that on the 16th day of February, 1863, the Adjutant-General, by order of the Secretary of War, made the following order:

Ordered that William P. Thomasson, esq., of Louisville, Ky., be, and he is hereby, authorized to investigate and report to this Department the value of Goose Creek salt-works destroyed by the order of Major-General Buell, in Kentucky; that he give notice to the proprietors or their agents of the time and place at which he will receive testimony, and that he take such further testimony on the part of the Government as may be necessary to protect the rights and interests of the Government, as well upon the point of value as of the loyalty of the proprietors to the Government of the United States.

It will be noticed in this order that Mr. Thomasson was commissioned to investigate the value of the salt-works destroyed, and the political sentiments of the proprietors.

On the 27th day of April, 1863, the commissioner proceeded to execute his trust, and on the 13th of May following he submitted his report to the Secretary of War with the statements of the different witnesses examined. There was a sixth case considered by him, not embraced in the reports of the officers—that of James White and Dougherty White, survivors of Claiborne—James and Dougherty White *against* The United States.

The following is the schedule of the claims, as allowed by him for injuries done to the salt-works, according to the testimony taken before him. It will be noticed that he goes beyond the terms of his commission in estimating the value of the salt destroyed, as well as the loss of profits from the stoppage of the works for eight succeeding months, to the 23d day of June, 1863.

CASE NO. 1.

UNITED STATES TO T. T. GARRARD,	Dr.
For injury to well, pump, pipe, &c.	\$500 00
For 124 salt-barrels, at 40 cents each	49 60
For 6,300 bushels of salt destroyed, at 50 cents per bushel.....	3,150 00
For deterioration of furnace and fixtures by non-usage.....	500 00
For 19,200 bushels salt, the anticipated yield for eight months, at 50 cents..	9,600 00
Total	13,799 60
The claimants demanded for these injuries \$22,749.60.	

CASE No. 2.

UNITED STATES TO JAMES W. REID,		Dr.
For injury to well, pump, pipe, &c		\$500 00
For 500 bushels salt destroyed, at 50 cents		2,500 00
For deterioration of furnace and fixtures		500 00
For 11,200 bushels salt, the anticipated yield for eight months, at 50 cents ..		5,600 00
Total		9,100 00
The claim was for \$15,400.		

CASE No. 3.

UNITED STATES TO WHITE, HORTON & GARRARD,		Dr.
For injury to well, pump, pipe, &c		\$500 00
For 2,000 bushels of salt destroyed, at 50 cents		1,000 00
For deterioration of furnace and fixtures by non-usage		550 00
For 16,000 bushels salt, the anticipated yield for eight months, at 50 cents ..		8,000 00
Total		10,050 00
The claim was for \$16,050.		

CASE No. 4.

UNITED STATES TO GIBSON & CHASTAIN,		Dr.
For injury to well, pump, pipe, &c		\$500 00
For 8,000 bushels salt destroyed, at 50 cents		4,000 00
For deterioration, by non-usage, of furnace and fixtures		500 00
For 9,600 bushels salt, the anticipated yield for eight months, at 50 cents ..		4,800 00
Total		9,800 00
The claim in this case was for \$16,900.		

CASE No. 5.

UNITED STATES TO J. & D. WHITE,		Dr.
For injury to wells, pumps, pipes, &c		\$1,000 00
For injury to water-pipe, furnace, &c		1,000 00
For 9,000 bushels salt destroyed, at 50 cents per bushel		4,500 00
For deterioration, by non-usage, of furnace and fixtures		550 00
For 20,000 bushels salt, the anticipated yield for eight months, at 50 cents ..		10,000 00
Total		17,050 00
The claim made was for \$23,350.		

CASE No. 6.

UNITED STATES TO J. & D. WHITE, SURVIVORS,		Dr.
For injury to well, pump, and pipe		\$500 00
The claim as made was \$650.		

Each of the reports made upon the claim, in the Senate and House, has recommended the payment of same amount.

The Senate Committee on Claims, in the reports made February 23, 1872, and February 17, 1874, recommended the payment of the several items of damage as found by Mr. Thomasson, the special commissioner, except the items for "prospective profits" from the "anticipated yield of the wells."

The Committee on Claims, in its said reports of February 23, 1872, and February 17, 1874, having found as facts—

1st. That the damage and injury to the property of the claimants for which they pray compensation was not done wantonly or accidentally, but designedly and pursuant to the order of General Buell; and,

2d. That the claimants, with a single exception, were loyal to the United States, they held that, therefore, the claimants were entitled to

recover the amount of damages they actually sustained by reason of such injury to and destruction of their property. Let us examine and see whether this conclusion is correct or not.

The real question to be considered is, "whether the Government is liable to make compensation for the property of a citizen in an adhering State seized and destroyed or damaged by competent military authority, *flagrante bello*, to prevent it from falling into the hands of the enemy, as an element of strength where warlike operations are in progress, or where the approach of the enemy is prospectively imminent."

We are of the opinion that the same law prevails when our territory is invaded by a foreign enemy or a loyal State by a rebel invading force.

We submit that the Government has a clear right to take or use private property under its war-power on the theater of military operations, *flagrante bello*, for military purposes.

It has never been claimed that the Government is bound to pay for property taken or destroyed by the enemy in time of war, nor by its own military forces in actual battle.

The property for which these claimants ask compensation was destroyed to prevent it from falling into the hands of the enemy; it was situate in a territory where *actual* war prevailed; it was the owners' misfortune and not the fault of the Government that it was so situate. *The Government ought not to be held liable to make compensation except where it is in the wrong.*

Everybody agrees that the Government is not liable for property destroyed in battle, or in an attempt to recapture it from the enemy.

It can make no difference to the owner whether his property is destroyed immediately before a battle or during the actual conflict.

The Government ought not to be held liable to make compensation for property destroyed by it to keep it from falling into the hands of an enemy, because it is not possible to say what is the measure of damages. Can any person tell what property is worth which is liable the next day or the next hour to be taken or destroyed by the enemy?

It has been said that compensation ought to be made because the property was "taken for the public use." The property was not taken at all; it was destroyed, and it was taken under those powers which every nation possesses, whether it has a written constitution or not—*its war-powers*.

The practice and usage of Government during and since the late civil war is a denial of liability for this class of claims.

Congress has, by general law, provided for the payment of quartermaster's and commissary supplies, but has prohibited the Court of Claims from taking jurisdiction of any case against the Government growing out of the destruction of or damage to property by the Army or Navy engaged in the suppression of the rebellion.

This rule of law was recognized by the President in this very case. In his message vetoing the bill for the relief of these claimants he uses the following language, to wit:

All the objections made by me to the bill for the relief of J. Milton Best, and also of the East Tennessee University, apply with equal force to this bill.

According to the official report of Brigadier-General Craft, by whose immediate command the property in question was destroyed, there was a large rebel force in the neighborhood who were using the salt-works, and had carried away a considerable quantity of salt, and were preparing to take more, as soon as the necessary transportation could be procured; and he further states "that the leaders of the rebellion calculated upon their supply of salt to come from these works," and that, in his opinion, their destruction was a military necessity. I understand him to say, in effect, that the

salt-works were captured from the rebels, that it was impracticable to hold them, and that they were demolished so as to be of no further use to the enemy.

I cannot agree that the owners of property destroyed under such circumstances are entitled to compensation therefor from the United States. Whatever other view may be taken of the subject, it is incontrovertible that these salt-works were destroyed by the Union Army while engaged in regular military operations, and that the sole object of their destruction was to weaken, cripple, or defeat the armies of the so-called southern confederacy.

I am greatly apprehensive that the allowance of this claim could and would be construed into the recognition of a principle binding the United States to pay for all property which their military forces destroyed in the late war for the Union. No liability by the Government to pay for property destroyed by the Union forces in conducting a battle or siege has yet been claimed; but the precedent proposed by this bill leads directly and strongly in that direction; for it is difficult upon any ground of reason or justice to distinguish between a case of that kind and the one under consideration. Had General Craft and his command destroyed the salt-works by shelling out the enemy found in their actual occupancy, the case would not have been different in principle from the one presented in this bill. What possible difference can it make in the rights of owners or the obligations of the Government, whether the destruction was in driving the enemy out, or in keeping them out, of the possession of the salt-works?

This bill does not present a case where private property is taken for public use, in any sense of the Constitution. It was not taken from the owners but from the enemy; and it was not then used by the Government, but destroyed. Its destruction was one of the casualties of war; and though not happening in actual conflict, was perhaps as disastrous to the rebels as would have been a victory in battle.

Owners of property destroyed to prevent the spread of a conflagration, as a general rule, are not entitled to compensation therefor; and for reasons equally strong, the necessary destruction of property found in the hands of the public enemy, and constituting a part of their military supplies, does not entitle the owner to indemnity from the Government for damages to him in that way.

We have thus briefly stated the reasons why the claim of the memorialists ought not to be allowed.

We, therefore, recommend that the claim be disallowed.

ANGUS CAMERON.
B. WADLEIGH.
S. J. R. McMILLAN.