

JAMES ORMOND.

MAY 20, 1842.

Laid upon the table.

Mr. COWEN, from the Committee of Claims, made the following

REPORT:

*The Committee of Claims, to which was referred the petition of the heirs of James Ormond, deceased, report:*

That this is a claim arising under the 9th article of the treaty between the United States and Spain of the 22d of February, 1819. It is for compensation for five slaves—Alexander, Pompey, Nancy, Mingo, and Dido—alleged to have been lost by the operations of the American army in Florida in 1818.

The article of the treaty by which this claim must be sustained, if it be allowed, stipulates that “the United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American army in Florida.”

March 3, 1823, an act was passed to carry into effect this article of the treaty, by which “the judges of the superior courts established at St. Augustine and Pensacola, in the Territory of Florida, respectively,” were “authorized and directed to receive and adjust all claims, arising within their respective jurisdictions, of the inhabitants of said Territory, or their representatives, agreeably to the provisions of the ninth article of the treaty with Spain, by which the said Territory was ceded to the United States.”

The act further provides “that, in all cases in which said judges shall decide in favor of the claimants, the decisions, with the evidence on which they are founded, shall be, by the said judges, reported to the Secretary of the Treasury, who, on being satisfied that the same is just and equitable, within the provisions of said treaty, shall pay the amount thereof to the person or persons in whose favor the same is adjudged.” (Vol. 7 Laws U. S., 166.)

In 1827, this claim, in the name of James and Emanuel Ormond, was presented for adjustment before Joseph L. Smith, then judge of the district of East Florida. Judge Smith decided in favor of the claimants, and awarded them the sum of two thousand dollars. This decision, with the evidence on which it was founded, was duly certified by the judge, as the act giving him jurisdiction of the subject required, and transmitted to the Secretary of the Treasury, then Mr. Rush. On the 11th of June, 1828, Mr. Rush rejected the claim. It has been reviewed by some of the successors of Mr. Rush, but his decision has not been reversed.

It has been for some years depending before Congress, but the committee do not find that it has ever been definitively acted upon by either House, or any committee thereof. The testimony taken and reported by Judge Smith, a copy of which, with his decision, is before the committee, was in relation to this and seven other cases, in many respects similar to this. Judge Smith, in his decision, speaking of the eight cases, the case of the Ormonds included, says: "In each case, the testimony is conclusive as to the ownership and loss of the slaves; and the facts generally, without repeating recorded testimony, are summarily as follows: that, during the disturbed and unsettled state of the province, these slaves, previous to the year 1818, left their owners and collected themselves at the Indian town near the mouth of the Suwanee, upwards of a hundred miles west from St. Augustine; that, while at that place, early in 1818, the province was invaded, and the town attacked and destroyed, by a force under the command of General Jackson, consisting of white troops, Indians, and half-breeds; that these negroes were thereby killed, wounded, taken prisoners, and carried into the United States, or otherwise dispersed, so that they have been absolutely lost to the claimants."

Ten witnesses were examined. Few of these witnesses say any thing of the slaves of Ormond. No one saw them, or any one of them, after the battle at Suwanee town. A short time before the time of the attack by General Jackson upon that town, they were seen there. The negroes in question ran away from the ancestor of the petitioners in 1815. They had not been recovered from that time until 1818. Many of the witnesses think they would have been obtained by their owners in a short time, had they not been dispersed by the American army. This opinion is founded upon what the negroes said as to their disposition to return to their masters, and declarations of Indians of the nation where they were.

These negroes had escaped from the custody of their masters. They had been three years absent; had become identified with the Suwanee Indians, with whom the United States were at war. When General Jackson attacked the Indian town, these slaves were among the hostile Indians, in arms, forming part of their force. As persons or as property, they were the legitimate objects of destruction or imprisonment. General Jackson would have been fully justified by the laws of war in taking them prisoners. It would have been the duty of this Government, perhaps, to have surrendered them to their owners upon demand; but, having obtained possession of them lawfully, they might be permitted to go at large, without rendering the United States liable for their value.

It may be proper to inquire whether this is that kind of injury to a Spanish inhabitant provided for by the 9th article of the treaty. That article provides for satisfaction for injuries to officers and individual Spanish inhabitants by the then late operations of the American army in Florida. The committee do not consider this to provide for losses resulting from the lawful authorized acts of the army, or for the unauthorized acts of individual soldiers of the army. If the property of a Spanish inhabitant was found in the military use of the enemy, whether with or without the assent of the owner, and was injured, taken, or destroyed, while in such use, the committee do not think the United States bound to pay for it. The injury must be regarded as the consequence of the voluntary act of the slaves. They had, of their own motion, and certainly without any agency of the American army, and contrary to the interests of the army, joined the hos-

tile Indians. This free act of the slaves created a necessity for the American army to attack them, kill, disable, or disperse them, or make them prisoners. The committee do not suppose that the high contracting parties to that treaty intended, nor do they think the words import, that satisfaction would be made in such cases.

But, were a different construction adopted, the testimony does not make it very clear, in the opinion of the committee, that the opinion of the witnesses, that it was an easy matter for the petitioners to have recovered possession of the slaves, was well founded, or that they were killed, wounded, or taken prisoners. The witnesses thought the recovery an easy matter because the slaves said they were willing to return, and the Indians said they were not opposed to it. If the slaves were willing to go to their masters, and the Indians were willing to let them go, and their masters wanted them to return, why did they not do so? This concurrence of disposition, it is to be presumed, would have produced corresponding action. Is it not probable that these declarations were insincere?—that the negroes and Indians would have evaded peaceful efforts and resisted forcible attempts to reclaim the slaves?

The evidence does by no means establish the fact that these slaves were killed, wounded, or carried away, or in any way injured, by the American army. They were seen just before and at the time of the attack upon Suwanee town. They have not been seen since. If the attack occasioned their flight, or if the dispersion of the Indians compelled the slaves to seek another home, it will not be seriously contended that that would be good ground of claim against the United States under this treaty. True, the witnesses testify of what was rumored, and generally admitted, as to the fate of the slaves generally, and some slaves in particular. But even this species of evidence, as to these slaves, is not furnished. To find that the slaves of the petitioners were disposed of in any particular manner, we must take hearsay evidence as to the slaves at Suwanee town generally, and from that fact, resting upon incompetent evidence, infer another material fact to support this case. Two of the witnesses (colored men) lived at Suwanee at the time the attack was made. They had the best opportunity of seeing and hearing of the fate of the negroes and Indians. They say that the report was that the negroes fled to an island, were pursued by the Indians and half-breeds who accompanied the American army, taken from the island, and carried into the States. Taking this report as true, and if testimony of this kind be received, this is the most credible, as these witnesses were most favorably situated to obtain correct information; and the abduction of the slaves was not the act of the American army: it was the act of Indians and half-breeds, who had co-operated with the American army, and for whose acts, when under the command and acting in obedience to the orders of American officers, this Government would be liable under this treaty, but not when acting without orders from such officers.

The committee have thought proper to submit these views. The testimony is voluminous. It is, much of it, wholly irrelevant to this case, and more of it is, as the committee think, wholly incompetent, because it is not given upon the personal knowledge of the witnesses, but is upon information derived from others, and that without even giving the names of their informants. The sanction of an oath, which is uniformly required in unofficial evidence, will be of no avail, if witnesses, who know the

truth, may make these statements to others, and those receiving the information are permitted to give those statements in evidence. For these reasons it is not published, except that of the two colored witnesses. The committee herewith report and recommend the adoption of the following resolution :

*Resolved*, That the petitioners are not entitled to relief.

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*Testimony of John Prince, a colored man.*

TERRITORY OF FLORIDA, *St. Augustine, ss :*

Personally appeared John Prince, a free colored man, who, being duly sworn and carefully examined, testified as follows, *to wit*: That, at the time General Jackson came into the country with the American soldiers and troops, he was at Suwanee town, on the Suwanee river, not many miles from its mouth ; this place was his home ; he lived there ; states that he knows at the time of the attack, and of the destruction of this town ; James and Emanuel Ormond had several negroes there, that had left Tomoka ; says he is unable to mention their names or precise number. Being inquired of by the judge as to the means of his knowlege, by which he is enabled to say that they belonged to Messrs. Ormonds, says he knew them at Tomoka, and says, including some little ones, that their number exceeded *five* ; makes the same statement as to the negroes belonging to the estate of John Addison ; knew them at their plantation in Tomoka, before they came to the Suwanee ; says he also knew those belonging to Joseph S. Sanchez, those belonging to Francis Pellicer, and the woman and child belonging to Pedro Benet ; knew them all well before they went into the country. Witness says that Mr. Perpall also had some negroes there ; that Mrs. Berta had a negro there, by the name of Joe—knew him well ; that he was at the town when the attack was made ; that he remained with the Indians and negroes, and fought as long as he dared ; but they came too hot upon them, and they all ran to save their lives, and that all their houses were burnt before their eyes ; that some Indians and some negroes were killed ; that the attack was made by white soldiers, by half-breeds, and by full-blooded Indians from the United States. There were a great many of them, and so strong that we stood no chance. The negroes, many of them, as witness understood, took shelter upon an island, so he has always heard, and that the half-breeds pursued them in boats, got the other side of them, and took them all prisoners, and carried them off to the United States. Witness says that these Indians knew the value of slaves ; that he has since heard of their (these slaves) being among the Indians within the United States, in Georgia, among the Creeks ; that some of them have been got back again since this country has been transferred to the United States.

Witness states that, from his knowledge of the situation of the country and of these negroes, he is sure, if the country had not been attacked and overrun as it was, that the people (planters mentioned by him in his testimony as having negroes at the Suwanee) could have got their negroes at any time. They had a short time before learnt that these negroes were at the Suwanee, and they had only to come for them.

In answer to an inquiry from the judge, witness says the Indians would not have prevented their owners from taking them. The Indians have always said that they should not have been attacked at the Suwanee, if they had not had these negroes among them; that the hope of getting possession of them (the negroes) invited the attack and proved the destruction of the town. Witness says that he understands and speaks the Indian language, and that what he states he has heard the Indians say with his own ears. Witness repeats that there was nothing to prevent the planters from taking these negroes, but the attack as above, and that they were entirely safe to the planters, except the trouble of going or sending for them. He says the Indians would have taken the owners to their negroes, and found them out for their owners; that the negroes would have made no resistance; that, just before the attack, a number of them were sent for, and did go back; that they were of as much value at the Suwanee, except the trouble of sending for them, as at their plantations. Witness is sure that these planters lost their negroes by reason of General Jackson's invasion of the province, and the attack upon and destruction of Suwanee town, as stated by him; and further saith not.

Sworn before me at St. Augustine, East Florida, this 10th day of January, A. D. 1828.

JOSEPH L. SMITH, *Judge.*

*Testimony of Nero Bowlegs, a colored man.*

*Nero Bowlegs*, a free colored man, also at the Suwanee at the time of the attack on the town, personally appeared before me, and, upon careful examination, made solemn oath that he personally knew the negroes claimed by Messrs. Ormonds, by Mr. Addison, by Mr. Pellicer, by Mr. Sanchez, by Mrs. Berta, by Mr. Perpall, and by Mr. Benet, before they left their owners' plantations and went to the Suwanee; that he saw and knew them at the Suwanee; that, so far as he is able to recollect, there were five belonging to the Ormonds; four or five to Sanchez; four to Pellicer, and one woman and a child to Mr. Benet; to Mr. Perpall not less than eight or ten, and to Mrs. Berta one, named José. Witness says he is unable to remember their names; can mention some of them, and supposes he knew them all at the time; states that, at the attack upon the town, these negroes were all there; that he, witness, did not engage in the fight, being occupied in swimming horses across the river to this side; that a good many Indians and negroes were killed by the assailants, who were American soldiers, half-breeds, and Indians—the Indians and half-breeds he supposes, came from Georgia; states that the negroes, as he understood, (for he has heard so both from the Indians and negroes,) fled and took shelter in an island; that the half-breeds and Indians pursued them to the island and took them prisoners, and carried them to the nation—he believes the Creeks in Georgia; that some of the negroes that were at the Suwanee have been heard of since in the United States, and some have been got back again, but not those, so far as he understands, which have been named to him before this court. Witness says he has no doubt, but for this attack, that these negroes were all safe to their owners; there was nothing to prevent it—they had only to send for them; that by this attack they were killed or taken prisoners, and ran out of the country, and lost to their owners; he is certain that this was the only cause of their loss.

The testimony of *John Prince*, more in detail than his own, being read to him, he, witness, says he is acquainted with all the facts stated therein, and wishes them to be considered as testified to by him, and that, as to the opinions therein stated, he also accords with that deponent; and further saith not.

Sworn before me, at St. Augustine, East Florida, and by me set down in writing this 11th day of January, A. D. 1828.

JOSEPH L. SMITH, *Judge.*

*Additional testimony of John Prince and Nero Bowlegs.*

*John Prince* and *Nero Bowlegs*, being again called and further inquired of in behalf of the claimant, *Thomas Addison*, both state that they personally knew *Harry*, one of the negroes owned by Mr. *John Addison*, and included in the claim presented by *Thomas Addison*; that he was, as they have already stated, at *Suwanee* town when the attack was made; that *Harry* was among the number of wounded, being shot through the arm, and was carried off a prisoner; that they have always heard that, when on their way to the Americans, *Harry* attempted to escape, was pursued by the Indians, and killed. *Nero* and *John* say that they have since been among the *Caweta* Indians, who took him prisoner, and they told him that *Harry* attempted to run away from them, and they pursued, and shot and killed him. Both witnesses say that they know that the *Caweta* Indians accompanied *General Jackson* when he came into the country, and joined in the attack upon *Suwanee*. *Nero* says particularly that he knows them well, and has been among them at their towns since the invasion, and both witnesses have heard them talk about it, and have talked with them about it. *Nero* says that, when at their town, he saw a number of the negroes that they had taken from the *Suwanee*; that they worked the negroes, who made their corn, and they held them as their property, having taken them in war; and further they say not.

Sworn before me the 12th day of January, 1828.

JOSEPH L. SMITH, *Judge.*