

IN SENATE OF THE UNITED STATES.

JANUARY 15, 1841.

Submitted, and ordered to be printed.

Mr. HUBBARD made the following

REPORT:

[To accompany Senate bill No. 208.]

*The Committee of Claims, to whom was referred the petition of Daniel G. Skinner, asking compensation for supplies furnished the Alabama militia in 1836, while engaged in the service of the United States, report :*

That the petitioner has in his memorial very fully set forth the grounds of his claim, which he has verified by his oath. From the memorial of the petitioner the committee have made the subjoined extracts, as going to show the justice of his claim, viz :

“ The facts relative to this omission are, briefly : That the volunteer force under Major General Irwin had only just arrived, and were in great consternation at the reports that reached them from various quarters, of the massacres of the whites by Indians, who, as it was confidently stated, were embodied to the number of six thousand on the Cowagee, eight miles from us ; and, also, that the town of Roanoke had, on the previous night, been conflagrated, and its inhabitants murdered. These calamitous events determined the general at once to proclaim martial law, to save the place from the fate of Roanoke. He instantly mustered the male inhabitants into rank and file, threw up a strong fort, and took possession of the few provisions (for the support of the forces) that the town afforded, which had to support a command of about eight hundred men until the public supplies ordered by General Clay to that post should arrive. Amongst the first provisions that were thus taken, were those out of my store, belonging to me, by the quartermaster, as certified in his certificate. General Irwin appointed Lieutenant Walter Patterson to take an account of the provisions and the stores thus taken from me for public use, and ordered him to appraise their value, through the assistance of Lieut. John R. Salley, with the quartermaster ; which they proceeded to execute, in receiving for the public subsistence of the forces.

“ In the prosecution of their orders, they went on to take minutes of the quality and value, but deferred completing by invoicing them in due form, until, unfortunately, Lieutenant Patterson was killed by the Indians. These provisions, however, were regularly issued to the troops, and consumed by them in the public service, who were mustered and paid for the duty performed whilst they were fed upon the provisions, for the payment

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of which this memorial is respectfully submitted. The petitioner, furthermore, hereby most solemnly declares that he never received any compensation, in whole or in part, for the same. And he further declares, that the valuation, as set forth and attested in the voucher, is just and correct; though, had he been left to his own free will in their disposition according to the market price at that time, he might have been a considerable gainer on the prices herewith stated."

In corroboration of the facts set forth by the petitioner, the committee have been furnished with the certificate of E. Kirkpatrick, acting quartermaster general of the 5th division of militia of Alabama, which is in the following terms:

"I certify the above account, amounting to five thousand six hundred and eleven dollars and fifty-five cents, to be correct and just; and that the said supplies were actually taken from said Skinner, and used as above charged—for the public service; and that they were so taken and issued in consequence of there being no public supplies or funds belonging to the United States at this post, and the country being in the most imminent peril of destruction by hostile Indians: they were therefore indispensably taken, and issued to troops in the United States service."

William Irwin, represented to be the major general of said division of militia, also certifies "the above account to be correct and just; and that said goods were necessarily taken, and issued by my command, in the said public service."

Honorable C. C. Clay, then the Governor of Alabama, has given a certificate as to the genuineness of the handwriting of General Irwin, and of his being at the time in command of the Alabama militia, in the capacity of a major general.

Upon this evidence, the committee are of opinion that provision ought to be made for the satisfaction of this claim. It is true that it has not been presented to the department for allowance; for the reason, that, according to the rules there prescribed in reference to this class of claims, it would have been disallowed. The head of the office of the Commissary General of Subsistence, in his letter to the chairman of the committee, states "that the usual evidences of purchase, of payment for the purchases, and delivery to the troops, are wanting in this case, which are strenuously insisted on in cases of officers and agents of this department." The committee entirely approve of the rule referred to; but this case, from necessity, must be regarded as one to which the rule could not apply. The goods and supplies constituting the amount of the bill were, upon the plea of urgent and indispensable necessity, *impressed* for the use of the service; and thus private property was taken for public use. The only embarrassment the committee have experienced, is in fixing the value of the property thus taken; and they feel themselves warranted in the conclusion to which they have arrived, that no more than justice will be done to the claimant by allowing the bill as charged.

On referring to the report of the commissioners appointed by the President of the United States, in conformity with the provisions of the 2d section of the act of Congress of March 3, 1837, making appropriations for the Indian Department, the commissioners found that this particular claim came within the provisions of the act of April 9, 1816, and the acts amendatory thereto; and the said commissioners have fixed the value of the property at the same amount stated in the bill reported.

The commissioners, in their report, say : " As the proviso of the act expressly declares that nothing therein shall be so construed as to subject the United States to pay for depredations not provided for by the act of April 9, 1816, those coming under the provisions of the law of 1816, and constituting the first class, are herewith transmitted," &c. And, as before stated, this particular claim is set down in that class. Under every view of this case, therefore, the committee think the claim just; and they report the accompanying bill.