

ALLEN R. MOORE.

[To accompany bill H. R. No. 38]

DECEMBER 14, 1837.—Reprinted.

APRIL 5, 1836.

Mr. P. C. FULLER, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to which was referred the petition of Allen R. Moore, report :

The petitioner charges the United States with damages done in March, 1814, to his store, in Champlain, in the State of New York, by the troops under the command of General Wilkinson, who occupied said store for barracks, and for sundry small articles destroyed by the troops at that time, the sum of \$166 70. Of this sum, \$28 is charged for damages done to the building, and the balance is made up by charges for casks, flaxseed, boxes, potash, vinegar, &c.; which articles, the petitioner states, were left in the store previous to its being taken possession of by the troops, and were by them wasted and destroyed. N. Moore, the then acting assistant deputy quartermaster general, makes two affidavits. In the first, dated in November, 1815, he states that the troops took possession of the petitioner's store while much of his property remained in it, and that the property was mostly destroyed while in their possession. In his subsequent affidavit, dated the 16th of June, 1817, he says he (the deponent) was ordered, verbally, to provide quarters for the troops, and, in compliance with that order, he cleared the store of the petitioner, and gave them possession of it, and they damaged it in the manner certified by him heretofore.

There appear to be discrepancies in these affidavits ; but the fact of occupancy seems, by these and other affidavits, to be sufficiently established. Several witnesses testify to the fact that the troops occupied the store of the petitioner for barracks. Joseph Pratt swears that after the troops had left the village of Champlain, at the time alluded to, he and Captain Lanes were called on to appraise the damage done to the store of the petitioner, in consequence of its occupancy by said troops ; which they did, under oath, at a sum over \$24—he thinks \$28.

The remaining articles embraced in the petitioner's account are not of a character to be useful or necessary for the comfort or subsistence of the troops, and do not appear to have been appropriated, by the order of any officer, to their use. If destroyed, it must have been such a wanton

destruction as would implicate the soldiers or officers themselves, and not the Government. There is, moreover, a vagueness and want of precision in the testimony touching these articles, which, if they were otherwise chargeable to the Government, would render payment impossible, without further specifications as to quantity and value.

The petitioner has a further claim for a cast-iron stove, and a quantity of pipe connected therewith, and also some tobacco, which he alleges were in a building in Plattsburg, occupied by him as a store, and which store, with the stove and tobacco, was burnt in September, 1814, by order of General Macomb. Payment has been made for the building, which belonged to the Messrs. Waits; but the petitioner says he has never been paid for the stove or the tobacco.

The only testimony, aside from that of the petitioner, in relation to these articles, is that of William B. Underhill, then a clerk of the petitioner, who swears, in December, 1817, that, during the defence of Plattsburg, in 1814, the store in question was consumed by fire, and that in said store were a cast-iron stove and pipe, worth \$40, or more, a small quantity of plug tobacco, and some other articles, the property of the petitioner, which were consumed with the building.

The testimony, as to the quantity and value of the tobacco and other articles is too indefinite to require further notice.

It may be well questioned whether a stove, attached by a pipe to a building containing it, is not such a fixture, and so far forth a part and parcel of the building, as to be justly estimated with it. In this case, the store has been paid for under the act of March 3, 1815, as appears by a communication from the Third Auditor to Mr. Rich, a former member of Congress, dated in December, 1821, which is among the papers submitted to the committee, and which they beg leave to make a part of this report. The petitioner states he has not been paid for the stove; but no reason is assigned why it was left in the store, nor is it alleged that it might not have been removed.

If a stove thus circumstanced is not to be considered as a part of the building, it must come under the decisions often made by Congress, refusing to pay for personal property contained in buildings destroyed by the enemy, in consequence of military occupancy, or by order of our own officers. In either case, the committee are compelled to reject the claim, as well upon general principles, as upon the principles adopted at the Department, under the act of the 3d of March, 1815, aforesaid, as stated in the communication of the Third Auditor, above referred to.

This claim was submitted, in 1816, to the Commissioner of Claims, Mr. Lee, who declined paying the charge for damages done to the Champlain store, because the Secretary of War had decided that damage done to real property was not cognizable in that office. He declined paying for the *personal* property in that store, because damage proceeding from plunder and wanton destruction of soldiers was not provided for by the act of the 9th of April, 1816. It has since been submitted several times to different Committees of Claims. It was reported against, and the report committed to a Committee of the Whole House, in 1822.

Upon a careful review, however, of all the facts and proceedings in the case, the committee are of opinion that the petitioner should be paid for the use and damage of his store in Champlain, while occupied as barracks; and they accordingly introduce a bill.