IN THE COURT OF CLAIMS.

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Trustees of the Reformed Church of Burkittsville, Maryland,	)	
vs.	)	No.13,050 Congressional.
THE UNITED STATES.	)	

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CLAIMANTS' BRIEF ON LOYALTY AND MERITS, REQUEST FOR FINDINGS OF FACTS, AND ABSTRACT OF EVIDENCE.

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Coldwell Fenning

Counsel for claimants.

CLAIMANTS' REQUEST FOR FINDINGS OF FACTS.

The claimants, considering the facts hereinafter set forth to be proven, and deeming them material to the due presentation of the case in the findings of fact, request the Court to find the same as follows:

I.

That the Reformed Church of Burkittsville, Maryland, as an organization, was loyal to the government of the United States during the Civil War.

II.

That during the late Civil War the military forces of the United States, by proper authority, took possession of the building and grounds of the Reformed Church of Burkittsville, Maryland, and occupied and used the same for military purposes. That the reasonable value of the use and occupation of said property during the period of said occupancy, was the sum of $1200, for which no payment has been made.

STATEMENT OF CASE.

This is a claim for pay for use and occupation of, and incidental injury to the building and grounds of the Reformed Church of Burkittsville, Maryland, by the military forces of the United States, during the Civil War, stated at $1200. The claim (S.Bill #7345) was referred to this Court by resolution of the United States Senate March 2, 1907, under act of Congress approved March 3, 1887, known as the Tucker Act.

ABSTRACT OF EVIDENCE.

The following evidence was taken under the rules of this Court July 31st, 1907:

Greenberry J. R. House testifies:

Age 81; retired farmer; no interest.

I lived all my life, before the War, within 4 miles of Burkittsville, Md., and lived within 2 miles during the War. I became a member of the Reformed Church of Burkittsville several years before the War; was a deacon during the Civil War, and have been a member of it ever since. (Rec.P.1.)

When the War began, this was a brick church building of one story, with gallery across one end and the full length of two sides. The church was 62 feet long by 40 feet, 8 inches, outside measurement. In addition to these dimensions, there was an extension at the rear of the church where the pulpit stood, 16 feet wide by 6 feet deep, and a one-story brick addition, at one corner of the church, about 10 feet square, used as pastor's study. I do not know exact height of ceiling of auditorium but looking at it today I think it is about 20 feet. The outside walls of the church and the interior arrangements are the same today as at the beginning of the War. The church building was constructed originally in 1829, but was generally overhauled and additions built at both ends, the height of the walls raised 2 or 3 feet, the interior frescoed, both side walls and ceiling, new pews and new pulpit put in, just before the Civil War, in 1860. The church had 8 windows in the sides, each having 6 sash, each sash having 6 panes,

These windows were arched at the top, and each window had altogether 37 panes, each pane 9 x 14 inches. They were of glass, painted white in diamond figures. There were 2 small windows beside the pulpit. The frescoing of the ceiling was in squares, and there were 3 arch figures back of the pulpit. I cannot describe the frescoing of the side walls. There were 2 large fluted columns with Corinthian caps, one on each side of the pulpit. The galleries were supported by 8 smaller fluted columns, of wood. The pews were of pine or poplar, painted, with a scroll of the same wood at the end. The church had 3 aisles and 4 rows of pews. There were 48 pews, each about 7 1/2 feet long. It was heated with stoves. The front of the galleries was finished with extension rails supported by wood brackets. (Rec.P.2.)

I know very well the church was occupied during the War and appeared to be filled with both Union and Confederate Armies immediately after the battle of South Mountain, which was fought September 14, 1862, about a mile west of Burkittsville. The wounded men were brought to this church by the Federal forces. Burkittsville was within the Federal lines at the time of the battle. The battle was fought along South Mountain, west of this village, and the Confederates were repulsed and retired toward Antietam after the battle.

I do not know the names of the surgeons in charge of the wounded in the church, but they were Federal surgeons. I couldn't tell you exactly how long the church was so occupied. They were here several months in the church, I suppose. As to ~~xxxxxxxx~~ what ~~xxxx~~ knowledge I had of the wounded soldiers being in this church,- I saw them. I was in the church a number of times while they were there. As to what I know of any injury to the church property resulting from this occupation,- Well, the pews were all taken out of the church before the soldiers were put in, I suppose. As to how many pews, if any, were in the church when I visited it,-There were none, to the best of my knowledge. There were none of the pews left in the church. As to any other injury or changes in the church from this occupation,- The carpet was a great deal injured. To my own knowledge, I cannot say about the side walls. The pulpit was not removed. At the time the occupation began the front of the church, from the front pews to the front walls, including the pulpit platform, was covered with Brussels carpet, I am very confident that it was Brussels carpet. The 3 aisles were carpeted, but I think Ingrain carpet. This carpet was all about two years old, put in when the church was built in 1860. The place in front of the pews was about 13 x 38 feet in size and the pulpit recess was 6 x 16 feet. The length of the aisles from the front pews back to the door was about 32 feet, making about 32 yards of carpet for the 3 aisles. I think such Brussels carpet was worth about $2 per yard. I can give the value of the ingrain carpet more intelligently than the Brussels, as I bought ingrain carpet about that time for myself, and my recollection is that it was worth about $1.50 per yard.

I do not know much of my own personal recollection about the injury to this carpet. My impression is that we used some of it in the church after the military occupation, but what part of it I cannot say; we used some of it, at least. My recollection is

that the pews were piled up outside of the church. Some of them at least were in front of the church building, and they remained there as long as the soldiers were in the church. After the soldiers left, the pews were pretty much all put back in the church. Could not say positively whether everyone or not, but nearly all, at least, and have been used from that time to the present. There was some damage done to the pews from moving them, some pieces knocked off, but I would not say how much.

I had done very little building before the War and could not state the value of this church, do not feel competent to state its value, or its rental value at that time. (Rec.P.4.)

Loyalty: As to whether this church, as an organization, rendered any aid or comfort to the Confederacy at any time,-Not to my knowledge.

Cross examination.

As to whether it is not true that the woodwork, finishing of the walls before frescoing, and the seats of this church, are of a plain and not very expensive character,- The walls were plain plastered, before they were painted; the seats are plain, the doors are substantial but plain. As to whether the columns, supporting the gallery, and the two large columns either side of the recess back of the pulpit, are not hollow,- Yes. As to whether the carpet had been in use for several years when this church was occupied as hospital,-Only a few years. A carpet subject to church use would not be worn much in two years.

I would not say positively that the carpet in the pulpit end of the church was Brussels, but I feel pretty sure it was. I have always heard it said it was Brussels carpet.

Some of the trustees of the church in 1862 were Ezra Williard Daniel S. Biser, Henry Biser and myself. Rev. Moser Stewart was pastor. (Rec.P.5.)

Henrietta Biser testifies:

Age 65; housekeeper; no interest.

I lived, during the Civil War, about 2 miles from Burkittsville, Md. I attended the Reformed Church from the time I was a little girl and became a member of that church 2 or 3 years before the War.

I know they had soldiers in it and used it as a hospital right after the battle of South Mountain in 1862. I was first in the church within a day or two after the soldiers were first placed in it. I saw a table standing in the Altar of the church and they were amputating a limb in the church. There were soldiers lying all around in the church. I also saw a pile of amputated limbs lying just inside of the door of the church. The blood was running down over the floor, where they were amputating, and things were torn to pieces. The seats were taken away and the soldiers were lying on the floors in rows. I think the carpet was all down and they were lying on the carpet. The church had, before this occupation, Brussels carpet on the pulpit platform, and within the Altar rail within the pulpit.There was also

carpet in front of the pews and each side of the Altar rail, but I am not certain whether it was Brussels or ingrain. (Rec.P.6.)

There was also a strip down each aisles which was ingrain. These carpets were both bought at the time we repaired the church in 1860. I do not know and cannot estimate the cost of either of those carpets.

Loyalty: Asto whether this church, as an organization, rendered any aid or comfort to the Confederacy, - Oh no, not that I know of.

CROSS EXAMINATION.

As to how much space was enclosed in the Altar rail and pulpit platform, which I say was covered by Brussels carpet,- That space would be about 18 feet square.

I am certain that the Brussels carpet within the Altar rail was down at the time I saw the blood running down from the amputation table and it was running under the carpet. I know that a portion of the carpet was never used again, was not fit to use, and whether any portion was used again, I am not certain. (Rec. P.7.)

Henry M. Wiener testifies:

Age 66; Justice of the Peace; no interest.

I have lived in Burkittsville, Md.,ever since 1846. I attended the Reformed Church occasionally before the War,and lived within 300 or 400 yards of it. I attended this church when it was the old Union Church years before the War. Two congregations worshipped in it at that time, the Reformed Congregation, and the Lutheran Congregation. The Lutheran congregation began to build a new church not over 80 yards from this church building, and they completed the Lutheran church in 1860, and have worshipped in it ever since. In 1860, also, the Reformed congregation rebuilt or remodeled the old church building, and the two congregations have worshipped separately ever since. I do not know what settlement was made as to property between the two churches.

As to my opportunities of knowing cost of constructing buildings before or during the War,- My father constructed both business houses and dwellings of brick about 1858, and I was then about 20 or 21 years old. I was also in partnership with my father in building operations after the War. (Rec.P.8.)

As to my estimate of the value of the Reformed Church of Burkittsville in the year, 1862,- I would suppose the building, at the time, would have cost in the neighborhood of $20,000, if not more. As to my opportunities for knowing the rental values of property in Burkittsville during the Civil War,- I only knew from general information what residence property rented for at that time; there was no demand for the rental of such buildings as this church or anything but residence property. As to my estimate of the rental value of this church in 1862, for use as a military hospital, not including any damages to the property ,(objected to by counsel for defendants on ground witness has not shown observation or experience at that time to enable him to

correctly estimate rental of this building),- Well, the owner should have at least 10% or 15% of the value of the property, as a yearly rental. I don't think that 20% would be too much. But I do not mean that is to cover any damages.

As to knowledge of any occupation of this church for military purposes,- I know there were wounded soldiers of both Armies brought in here in the Federal ambulances and placed in that church within a few hours after the battle of South Mountain or Crampton's Gap which occurred September 14, 1862. I assisted in taking out some of the pews myself when the soldiers were placed in it, and was in the church several times afterward, many times while they were there. The soldiers were removed from Burkittsville, gradually, as they improved or recovered. The last of them, according to my recollection, were taken away between the holidays. I know some of them were still there in the church in December. As it was getting colder they could not keep up the heat in the church and they were taken away. (Rec.P.9.)

I know the seats were taken out of the church in a hurry by a half dozen men and I know some of them were broken or split, to some extent, I could not state definitely to what extent. I distinctly remember there was a carpet on the center aisle of the church, the aisle I entered the church, while the soldiers were here. I cannot remember whether there was carpet on the other portions of the church or not; there was no carpet inside of the pews then. I do not think they could have time to remove any carpet, they were brought in in such a hurry. I know 30 or 40 soldiers were brought in at once. At first they lay on the floor with nothing but blankets, some with not even blankets, but very soon, the next day I think, they brought in straw for them to lie on. I remember of seeing blood on some of the walls of the church. I saw blood on the west wall between 2 windows as high as the bottom of the windows or a little higher. I also saw blood on the south wall at the left of the entrance by the side of the amputation table. The amputation table was located in that corner of the church the first day or two, and after that they removed it to the front part of the church somewhere. After a few days the straw on the floor got wet and became offensive and they then put men to work and made cots and covered the whole floor of the church with cots, made of lumber, and put straw into ticks for beds. There were also soldiers in the ~~xxx~~-gallery during this occupation, I was ~~xxx~~ up in the gallery once or twice while they were there.

CROSS EXAMINATION.

As to how I arrive at the estimate of $20,000 as the value of this church in 1862,- According to the value of materials at that time. (Rec.P.10.)

Brick, at that time, was worth $6 or $8 per thousand. The facilities for getting lumber were not as good as now and were somewhat higher than brick in proportion, we hauled from Frederick or Hagerstown then. Framing lumber was worth about $15 per thousand, flooring about $20 per thousand. I don't remember what the cost of labor was at that time. As to whether, in estimating $20,000 as the value of this building, I did not estimate the

quantity of the different materials required and the cost of labor necessary and sum them up,- No, nor did I intend to do it. I approximate it. As to whether I have any idea how much brick it takes to construct this building,- No, I have never measured it. As to whether my estimate is more of a guess than an estimate,- Yes. As to how I arrive at my estimate of 10% to 20% of the value of the building as a proper rental value,-A rented dwelling house is always considered not less than 10%. Churches and halls always bring more, but I don't know why. As to whether there was no demand, commercially, for renting buildings of the size of this church in this community,-No sir. As to whether, then, commercially speaking, it would be impossible to fix the rental value of a building of its size and character at Burkittsville,- Yes, we have no criterion to go by. (Rec.P.11.)

Peter M. Horine testifies:

Age 65; retired farmer and mechanic; no interest.

I know that the Reformed Church of Burkittsville was occupied by the U.S.soldiers as a hospital from the 15th day of Sept. 1862. I could not say positively how long the occupation continued but I think until sometime in January following, probably the latter part of January. I have nothing definite to fix the time. It is my impression, from what I recollect, that they were here until at least the middle of January, and left about that time. I then lived 2 miles in the country. The battle was fought on Sunday and I came in town the next morning, intending to visit the battlefield, but found all full of wounded, and I was at this church on frequent occasions during the time the wounded soldiers were there.

I am a member of the Evangelical Lutheran Church of Burkittsville. According to my information, the church property, known as the Reformed Church of Burkittsville, was owned, prior to 1859, jointly by the Lutheran and Reformed congregations of this place. About that time, however, the Reformed Church bought out the interest of the Lutheran congregation in the building and have owned it since that time. I do not know what they paid, or what the terms of sale were. (Rec.P.12.)

Report of Quartermaster General, War Department, of June 21, 1907:

"The records do not show the receipt in this office of a claim in favor of the Reformed Church, Burkittsville, Md., nor afford any information bearing on the same."

Report of Secretary of the Treasury, dated October 28,1907:

"The accounts of Capt. John McHarg, A.Q.M.,show payment was made to the abovenamed church, as follows:

"For damages sustained by the Evangelical Reformed Church at Burkittsville,Md.," and in the Qr.Mrs.Dept.at Frederick, Md.,used as hospital for sick and wounded soldiers from Sept.14,1862,to January 31,1863,four months and 17 days" $351.50, as per voucher 155,Abst.B, for August,1863.

The records of this office furnish no further information in this case.

Respectfully,
B. F. Harper, Auditor."

S U M M A R Y.

Loyalty.

It is shown by the testimony of G. J. R. House (Abst.P.4) and Henrietta Biser (Abst.P.5) that this church, as an organization, did not render any aid or comfort to the Confederacy during the Civil War.

M E R I T S.

It appears from the evidence that the military forces of the United States occupied the church building of the claimant during the period from September 14, 1862, to the late of January, 1863, as a military hospital, and during said occupancy badly damaged the same; that this church, at the time, was a brick building 62 feet long by 40 feet, 8inches wide, ceiling about 20 feet high, and with an extension to the building behind the pulpit 16 feet wide and 6 feet deep, and a one-story brick addition at one corner, used as pastor's study; that while the building was constructed in 1829, it was generally overhauled and put in firstclass condition just before the War, in 1860, the interior walls frescoed, both side walls and ceiling, new pews and new pulpit furnished; that it had galleries the full length of both sides of the auditorium and across one end; that the galleries were supported by eight fluted columns, and there were two

large fluted columns with Corinthian capitals, one each side of the pulpit; that there were eight windows, each window having six sashes, the windows being arched at the top and each having 37 panes of glass, the glass being in diamond-shaped figures; that the recess in rear of pulpit and the pulpit platform and the space between pulpit and front pews, and the aisles of the church were carpeted, part of the carpet being Brussels, worth about $2 per yard, the balance ingrain, worth about $1.50 per yard; that this carpet was only two years old when the military occupation occurred, and had been little worn; that wounded soldiers were brought into the church directly after the battle of South Mountain, that amputations of limbs were performed in the church, at first in one corner, afterward in the Altar space, that piles of amputated limbs were thrown on the floor, and blood flowed over the carpet and floor; that the church pews, which were well constructed, having scrolls at the ends, were all taken out when the wounded were brought in, and were piled up outside the church, some being broken and split in the removal, and straw was brought in for the wounded to lie upon, and later the whole floor was covered by cots constructed of lumber; that the walls of the church, in different places, were spattered with blood, and that soldiers occupied the gallery as well as the main floor.

Henry M. Wiener (Abst.P.5) fixes the value of the property, at the time of this occupation, at $20,000 or more, and its rental value from 10% to 20% of its value.

We submit that rent should be allowed not only for the period of actual occupation, but for two or three months additional

to allow reasonable time for making repairs; also much higher rate of rental than otherwise should be allowed because this building was taken furnished, and not unfurnished, it was taken without consent of the owners, instead of being a voluntary contract, the rental should be very much higher for a short period than for a long term, and should be much higher because the term was indefinite than if taken for a definite period. We submit that the sum of $200 per month should be allowed for a period of six months, and that the full amount claimed in this case, $1200, should be granted, independent of the claim for injury to the property.

Respectfully submitted,

Coldren & Fenning

Counsel for claimants.