

IN THE COURT OF CLAIMS .

Trustees of the Reformed Church  
of Burkittsville, Maryland,

vs.

THE UNITED STATES.

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) No.13050 Congressional.  
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CLAIMANTS' REPLY BRIEF.

We submit that the payment of three hundred and fifty-one dollars and fifty cents (\$351.50) made in 1863 was purely "for damages sustained", and by no possible construction of the language, can be claimed to cover rent or use and occupation of the property. In numberless cases during and shortly after the Civil War, it was held that the Quartermaster's Department had no legal authority to pay rent for use of this class of buildings.

The reference to a voucher in the case of the Presbyterian Church of Hancock, Maryland, has no possible bearing on this case. The language used in that voucher is entirely different from the language in the case before us, and even in the case of the Presbyterian Church of Hancock, we claimed the amount paid, two hundred and ninety-four dollars and thirty-seven cents (\$294.37) was really to cover only actual expenditure for

repairs, and that the voucher in that case should not have been prepared in such way as to cover the use of the church at all.

There is not the slightest evidence that any payment has been made in this case for rent.

The suggestion in defendants' brief that it is improbable that a town of the size of Burkittsville would have a church building worth twenty thousand dollars (\$20,000), is mere speculation in the face of the evidence in the case. It is indeed not common to find a church building of such value in a town of that size, but a little investigation explains the situation. Burkittsville is situated in Frederick County, Maryland, one of the half dozen wealthiest agricultural counties in the United States, and instead of being a mountain town, as indicated in defendants' brief, it is located in one of the most, if not the most, fertile valley in Frederick County. The land surrounding it is of remarkable richness, and the country was evidently very highly developed and most prosperous before the Civil War. The fact is, as shown in great particularity by the evidence, that this splendid church building was actually located and in existence in that town at that time, a very large brick building, sixty-two (62) feet by forty feet, eight inches wide, ceiling about twenty (20) feet high, an extension to the building behind the pulpit sixteen (16) feet wide and six (6) feet deep, and a one story brick addition at the corner used as Pastor's study.

It was generally overhauled and put in first class condition in 1860, the interior walls frescoed, both side walls and ceiling, new pews and new pulpit furnished; it had galleries the full length of both sides of the Auditorium and across one end, said galleries being supported by eight fluted columns, and there were two large fluted columns with Corinthian capitals beside the pulpit; eight very large windows, arched at the top, each having thirty-seven panes of diamond shape; the church was excellently carpeted, the pews had scrolls at the end, and the estimate of witness Weiner of the value of twenty thousand dollars (\$20,000) we submit was a moderate estimate for the actual value of this building at the time stated.

We also submit that his evidence as to ten per cent. or fifteen per cent. on the actual value of a building being the ordinary yearly rental return for business buildings is correct; that much higher rental should be allowed for such a use of such a building as this than for ordinary business buildings for the reasons set forth at the close of our former brief; that the estimate of witness Weiner that twenty per cent. on the value of this building would not be too much rent is perfectly reasonable.

At twenty per cent. the annual rental of this building would be four thousand dollars (\$4,000), or three hundred and thirty-three dollars (\$333) per month. At this rate for the period of actual occupation, four months and seventeen days,

the amount allowed for rent alone would exceed the full amount of the claim in this case, twelve hundred dollars (\$1200). But we submit that the claimant should be allowed rent just as clearly for an additional period of at least two months to allow time for the necessary repairs, as during the period of actual occupancy, the church being deprived of the use of its building during the repair period just as effectively as during the period of occupation.

The question of value of this church if rented for a store has nothing in the world to do with this case. The church was not built for a store, was of incomparably better and costlier construction as to interior finish, height of ceiling, etc., etc., than any ordinary store building, even if there were one of equal floor space, and the real measure of value is its value to the Government at this time when there was absolute necessity for such a large well lighted and ventilated building for hospital purposes, and when the demand for such buildings was far greater than the supply.

We submit that the full amount claimed should certainly be allowed in this case, twelve hundred dollars (\$1200).

Respectfully submitted

*Colburn Tunney*  
Counsel for claimant.