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*S*URVEYING THE FORT BROOKE  
MILITARY RESERVE

BY JOE KNETSCH, PH. D.

*T*he acquisition of Florida by the United States in 1821 presented it with a continuation of a problem: what to do with the Native American population and the escaped slaves and free blacks living in the Territory. The presence of these populations had already been a major cause of the so-called First Seminole War (1817-18), which brought the forces of General Andrew Jackson southward into Spanish Florida as far as Suwannee Old Town. This punitive action forced the Seminoles and their allies southward to other positions on the peninsula, including those in a nebulous settlement now known as Angola, alleged to be somewhere along the Manatee or another southwestern Florida river. In addition to the problematic presence of the Indians and blacks, there were also a number of Spanish fishing rancheros along the coast from Anclote to Charlotte Harbor who often traded with the local inhabitants. This trade, of course, had a military ramification in that the Seminoles were supposedly supplied with guns and ammunition via this trade route. The United States Army had no visible presence south of St. Augustine, St. Marks, and Pensacola. If any kind of control of these diverse groups was to be effected, there must be established a military outpost closer to them.

It has been speculated that Captain James Gadsden first recommended a post on Tampa Bay as early as 1818 to keep the British and Spanish from stirring up the Indians and supplying them with arms. Nothing appears to have been done with this suggestion at the time, but when he negotiated the Treaty of Moultrie Creek in September 1823, the time for definite action had come. Accordingly, on November 4, 1823, Gadsden was ordered to run the boundary of the Indian settlement area and meet with the officer to be named at Tampa Bay for the establishment of the proposed post. The officer named for the assignment was Brevet Colonel George Mercer Brooke of the Fourth Infantry. He was ordered to communicate directly with Gadsden for the selection of the most proper location for the erection of the

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fortification.<sup>1</sup> Colonel Brooke took with him four companies of the Fourth Infantry and most of the supplies needed to construct a suitable establishment and faint fears of the allegedly large numbers of blacks and Seminoles south of the bay. Because of some resistance shown by the Seminoles to Gadsden's attempt to "run" – or carry out – his survey of the territory assigned to them, the captain asked that Brooke send his men immediately and that the Navy be asked to send some vessels from the West Indian Squadron along the coast to deter any possible action or trade with the Spanish fishermen.<sup>2</sup> By December 23, Gadsden had been reassured that his requests had been granted and that Brooke and his force were on the way and the Navy was sending vessels into the waters around Florida.<sup>3</sup> Brooke's command arrived at Tampa Bay on December 20, and Brooke joined Gadsden in selecting a point of land "at the mouth of North Hillsborough river, at the head of the Bay of the same name as the site for the Military Post." Named for the commanding officer, the site was selected because of the already cleared land, the small but good body of hammock, and the high, undulating pine lands behind the post extending up the river about nine miles, which would provide most of the timber for the construction of the post. It was a judicious selection.<sup>4</sup>

Trouble appeared on the horizon even before the troops arrived in the form, not of Indians, but lumbermen. Governor William Pope Duval had written to the secretary of war asking for the post to be quickly established because the Indians had reported to him that a number of vessels had landed in the vicinity of Tampa Bay and Charlotte Harbor for the purpose of cutting wood. Duval, both Indian agent and governor, also had responsibility for the public lands prior to the establishment of the surveyor general's office later that year and had written to Brooke on January 15, 1824, asking the commanding officer to send a detachment of men along the bay and to Charlotte Harbor to arrest these men for cutting timber from the public lands without permit or grant.<sup>5</sup> Brooke was to have some trouble with these timber depredators later in 1824, when he seized a shipload of ship timbers from lumbermen illegally harvesting timber on Hillsborough Bay.<sup>6</sup> Given the urgency of establishing the post, it is little wonder that no military reservation had yet been made and no survey of one ordered.

There was one little problem with the selection of this location, or any location around Tampa Bay, the infamous land grants to the Duke of Alagon that allegedly gave this Spanish nobleman title to the land in question. The grant had been made,

<sup>1</sup> Clarence E. Carter, ed. *The Territorial Papers of the United States*, vol. 22, *The Territory of Florida, 1821-1824* (Washington: Government Printing Office, 1856), 783-85. Hereafter cited as *Territorial Papers*, followed by the volume and page numbers.

<sup>2</sup> *Ibid.*, 795-96.

<sup>3</sup> *Ibid.*, 817.

<sup>4</sup> *Ibid.*, 841-43.

<sup>5</sup> *Ibid.*, 834.

<sup>6</sup> *Territorial Papers*, 23: 37.



*Tampa Bay History Center Collection*

Colonel George Mercer Brooke, first commanding officer of Cantonment Brooke, later renamed Fort Brooke. Brooke, along with Colonel James Gadsden, decided upon the location of the fort – the east side of the Hillsborough River where it flows into Hillsborough Bay.

according to the sources, after the date of the treaty, January 24, 1818. Indeed, the grant had been made in February of that year and one month after the deadline. This late action made the entire grant void according to the treaty. Unfortunately, one Robert Hackley purchased this grant from the duke, approximately 11 million acres worth, and began to market it to northern investors. As the grant had been ruled void, so too was the title transferred to Hackley and later his heirs. Not until 1904, in the case of *Scott v. Carew*, was the final challenge to the grant decided against the

Hackley heirs and in favor of the homesteaders in and around Tampa Bay.<sup>7</sup>

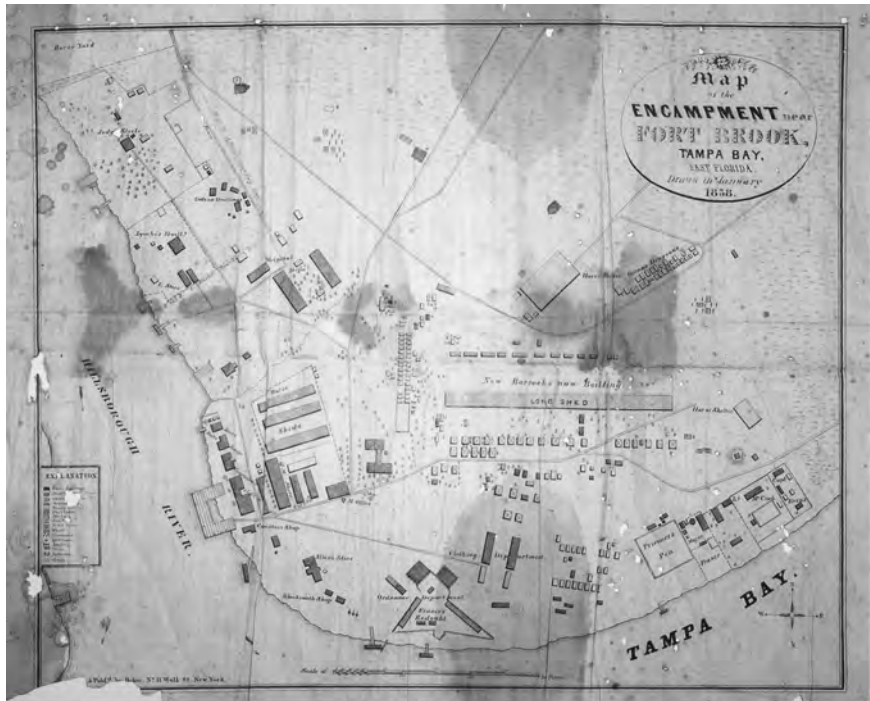
Another Spanish land grant claim for an eight-league square around Hillsborough and Tampa bays was filed by Pedro Miranda. Basically the grant was allegedly given by Governor Enrique White on November 19, 1810. The testimony offered indicated there was a question about the signature of Governor White attached to the documents filed, but not one witness could swear for or against the validity of the signature. The question lingered in the courts for many years before being decided by the Supreme Court of the United State in the case *U.S. v. Miranda* (16 Peters, 153). The decision was against the grant based upon three points, (1) there was no attempt to settle the grant; (2) no proper survey was ever made of the property; (3) the grant was indefinite and therefore invalid.<sup>8</sup> This unfavorable decision echoes that of other such claims in Florida and throughout the country where these principles apply.

Not until 1830, with the establishment of an Indian subagency near Fort Brooke did the United States get around to establishing a military reserve around the area. On December 10, 1830, the commissioner of the General Land Office, Elijah Hayward, wrote to Surveyor General Robert Butler that the president of the United States had approved the reservation of a sixteen-mile square of and for military purposes and that he was to review the plan offered. The plan, which is attached to the letter, includes much of both Hillsborough and Tampa bays, which occupy nearly a third of the drawing. The original survey was made by Lieutenant Gouverneur Morris of the Fourth Infantry and sent to the Adjutant General of the Army Roger Jones by Colonel Duncan L. Clinch, then commanding the Fourth Infantry in Florida. The Morris survey is dated by Clinch as April 21, 1829, and was obviously done in preparation for the final order but not because of it. The Morris survey was soon questioned and a better description of the land involved was sent to the secretary of war by Major General Alexander Macomb, who obviously had been informed of the deficiencies in the Morris survey as reported. The Macomb description of the reservation follows only the land and does not cross the waters of the bays as the Morris work did. He was careful to include the islands opposite the "Cantonment" in his description, which would be very important later as these islands were the haven for the friendly Indians at the beginning of the Second Seminole War (1835-42).<sup>9</sup> The reasons for the reservation at this time are readily apparent in the letter of February 7, 1830, when Clinch asked that the commanding officer at the

<sup>7</sup> Donald L. Chamberlin, "Fort Brooke, A History" (master's thesis, Florida State University, Tallahassee, 1968), 12-13, 141. This very good thesis tells the history of the fortification and is useful in understanding many of the problems associated with this grant. Chamberlin maintains that the cleared land found by Brooke and Gadsden was that cleared by Robert Hackley, Richard's son.

<sup>8</sup> *Spanish Land Grants in Florida*, vol. 1, *Unconfirmed Claim* (Historical Records Survey, Works Progress Administration, State Library Board, Tallahassee, Fla., 1940), 230-31.

<sup>9</sup> Letters from Commissioner, 1: 540-43 (Title and Land Records Section, Division of State Lands, Florida Department of Environmental Protection, Tallahassee).



*Tampa Bay History Center Collection*

This map of Fort Brooke was drawn in 1838 at the height of the Second Seminole War. The fort was among the largest military fortifications in the United States at the time. Virtually every building on this map was damaged or destroyed during a hurricane ten years later.

fort be “impowered as early as possible to use his discretion in preventing settlers from occupying this section of public Lands, and to remove such persons already located upon it as he may deem proper.”<sup>10</sup> Obviously the commanding officer had seen the usual collection of “camp followers” gathering across the river, especially the liquor dealers and prostitutes.

The growing alarm over the reactions of the Seminoles and their allies prior to the “official outbreak” of the Second Seminole War made Tampa a veritable lone bastion in the wilderness. People from the surrounding area began crowding into the reserve area seeking protection from the ambushes, thefts, and murders attending the upheaval. Friendly Indians, too, sought shelter under the reinforced walls of the fortification. Captain Francis Smith Belton, commanding at the fort with the departure of Major Francis L. Dade’s command, had his hands filled with details and frightened inhabitants. His own force being denuded by the order from Clinch to

<sup>10</sup> *Ibid.*, 542.

send Dade northward to Fort King, Belton needed nerves of steel to withstand the pressure, especially after he learned from the two survivors what had happened on December 28, 1835. All outside buildings were leveled to clear the field of fire. Not until the arrival of the forces brought by General Edmund P. Gaines and the timely showing of the United States Marines was Tampa relatively safe from abandonment or being overrun by the enemy. It was a very harrowing time, and no one was thinking of the limits of the reservation or a proper resurvey thereof.<sup>11</sup>

The Second Seminole War opened up the area for further problems with the influx of military and civilian personnel. More of the usual camp followers, “worthless drunkards,” and other such individuals made keeping discipline at Fort Brooke very difficult. These same offending inhabitants also decided to squat on the lands of the reservation and made life difficult for the commanding officers and U.S. Marshall Joseph Sanchez. Captain Washington Seawell accused Sanchez of being lax in his duties when he did not evict a number of these people from the reservation. Sanchez replied that he needed a “just cause” order from the local judge before eviction could take place under civilian law. The conflict between civilian law and military law in the case of policing the military reservation became a bone of contention, with the end result being that some were evicted and others were allowed to stay. One can assume the choice was at the commanding officer’s discretion.<sup>12</sup>

The other upshot of the controversy over the evictions was the obvious need for a clearly marked survey of the reservation boundaries. On September 8, 1842, Colonel Josiah H. Vose wrote to the adjutant general that the survey would be one of the most logical means of making the military’s case against the liquor dealers and others and requested permission to have the survey done.<sup>13</sup> Surveying after the war was just beginning by late 1842, and some hostile parties were still suspected of being on the land. In return for military protection for the surveyors, Commissioner Thomas Blake offered to make surveys of the permanent military reserves when the adjutant general had supplied him with a list of such posts. Much of this communication must have been verbal, but the record is clear that if there were a perceived threat to the lives of the surveyors, application could be made to the local military commander for small escorts. It was a small concession, to be sure, but one that gave peace of mind to some of the surveyors about to take the field.<sup>14</sup>

Surveying became a little more complicated with the passage of the Armed Occupation Act of 1842. In this act, the grandfather of the Homestead Act of 1862-63, the settler was allowed 160 acres free if he made improvements on the land, built a habitation fit for man, settled upon the land for a period of not less than five consecutive years, and was capable of bearing arms. As a general rule in the General

<sup>11</sup> Joe Knetsch and Pamela Gibson, “being continually in apprehension of an attack from the Indians ...”: Tampa Bay in Early 1836,” *Sunland Tribune* 29 (2003) (Tampa Historical Society, Tampa, Fla.).

<sup>12</sup> Chamberlin, “Fort Brooke,” 107-8.

<sup>13</sup> *Territorial Papers*, 26: 535.

<sup>14</sup> *Ibid.*, 539-40.



Land Office (GLO) for many decades preceding this act, 160 acres was equated with a quarter section of land and not some random 160-acre parcel with natural boundaries. Added to the already existing “pre-emption” lands in the area, this could spell trouble for any deputy surveyor. The act also specified that no settlement under the act could be on lands within a two-mile radius of a permanent post like Fort Brooke.<sup>15</sup> The two-mile limit was an aid to the control of intruders on the military reserves in Florida but made the identifying of the boundaries a higher priority.

In 1843, Arthur M. Randolph received the contract to survey the lands around the Tampa Bay area; included in this contract was the special order to run (set) the boundary of the Fort Brooke Military Reserve. This was the first thing that this very capable man did when he arrived in the vicinity, and by May 8, Randolph reported the boundary run. This was not the main focus of his contract, which called for sectioning a large number of townships mostly east of Tampa near the headwaters of the Hillsborough and Alafia rivers. During this survey, he suffered an attack of chills and fever that incapacitated him for nearly a week, something seldom mentioned in Randolph’s numerous letters. He did find that he had two more ranges added to his contract because of the meridians then being run by Henry Washington, and this disheartened him considerably. Because of the added work, the sickness, and the flooding of many of the rivers and streams in his district, he had to ask for an extension of time to finish the contract.<sup>16</sup> The rainy and sickly season had arrived early that year.

Soon after the Randolph survey was accepted and recorded, there appears to have been agitation to have the reservation reduced and the land turned over to the General Land Office for public sale or public use. In a letter of May 21, 1844, Adjutant General Jones wrote to General William Jenkins Worth, now commanding in Florida, to ask if it were desirable to reduce the military reserve at Tampa. In this brief letter, Jones noted the efforts being made in Congress concerning the reserve and its possible relinquishment.<sup>17</sup> One of those who raised the question about the reserve was John Parsons, the receiver of public moneys at Newnansville, who was soon to have major holdings in the area. Parsons appears to have written to Commissioner Blake about the reserve and the undo exercise of military authority, which probably goes back to the eviction of some of his friends from Tampa.<sup>18</sup> Parsons was also aligned with Territorial Delegate David Levy (soon to add “Yulee” to his name), who was an outspoken critic of the military and much hated by Worth and his colleagues. A letter of November 4, 1844, shows that Levy was involved with the attempts to

<sup>15</sup> Ibid., 658.

<sup>16</sup> Letters and Reports to Surveyor General, vol. 1, 1825-1847, 319-35 (Title and Land Records Section, Division of State Lands, Florida Department of Environmental Protection, Tallahassee). Hereafter cited as “Letters and Reports,” followed by the volume number and the page number or date of letter (some page numbers are illegible in this series).

<sup>17</sup> *Territorial Papers*, 25: 905.

<sup>18</sup> Ibid., 934.





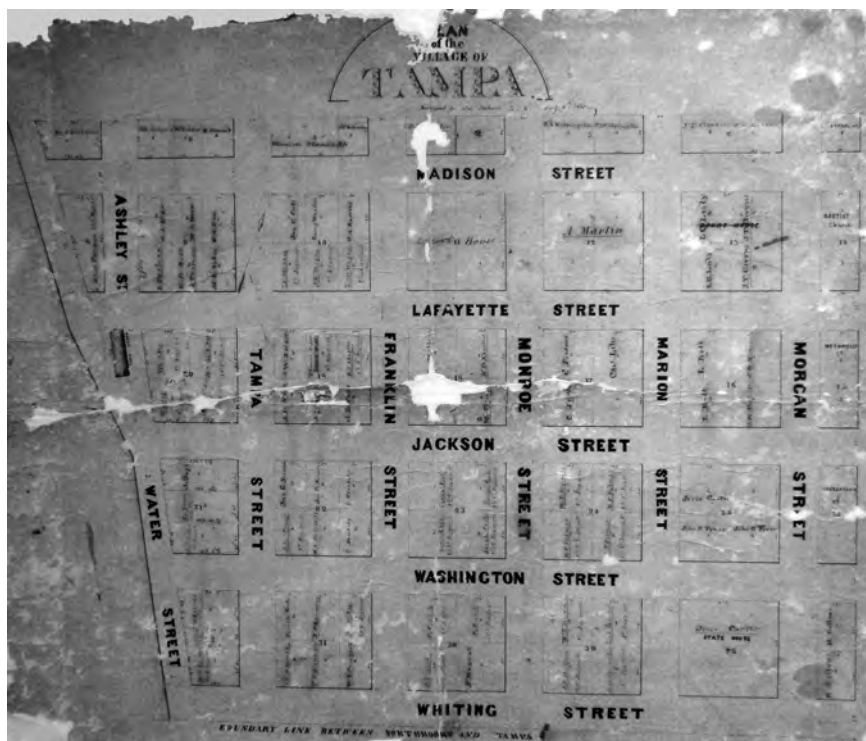
*Tampa Bay History Center Collection*

The central Florida section of an 1846 map of Florida. When this map was drawn, the state of Florida was a year old and the Second Seminole War was four years in the past. Central Florida at this time was sparsely populated and still skittish about the Seminoles who remained in the state.

reduce the reservation and had on two different occasions requested information regarding the reduction from the adjutant general. The response to these letters indicates that there were no plans at that stage to reduce the reserve.<sup>19</sup>

By January 21, 1845, the situation had changed, and General Worth was more than accommodating to the proposition of reduction. Part of his reasoning centered on the relative sterility of the soil in much of the reservation and the unlikelihood of its immediate settlement. He also noted that “Commissioners duly appointed” had recently visited the area and selected, obviously with his knowledge and approval, a quarter section of land for Hillsborough County’s new courthouse, and that this group would soon be petitioning Congress for a grant of land upon which to build the new county facility. General Worth also noted that a number of settlers under the Armed Occupation Act, in total ignorance of the two-mile limit and the boundaries of the reservation, had begun to inhabit and improve lands in the immediate vicinity. The usually volatile general then asked that they be allowed to remain and have their titles perfected. The only inconvenience he noted was the shortage of wood for fuel and building, which he considered almost a trivial concern at that point. Worth concluded by stating: “It is unlikely that any but a very

<sup>19</sup> *Ibid.*, 972.



*Tampa Bay History Center Collection*

John Jackson's 1847 "Plan of the Village of Tampa" is the oldest known map of Tampa. The map, now in the collection of the Tampa Bay History Center, was found in a home in Ozona, Florida in the 1980s and was gifted to the History Center in 2007.

trifling garrison will be retained here after a few years. . . . Should the government assent to this proposition the convenience of the community will be promoted by an early decision."<sup>20</sup> For whatever reasons, Worth seemed to actually be encouraging the reduction of the reserve in deference to the people of the Village of Tampa and Hillsborough County.

Part of the military's reasoning may have been the stirrings in Texas and Mexico, which were soon to erupt into the Mexican-American War. The U.S. Army was not very large, hardly numbering ten thousand fit men at the beginning of this conflict. Many of these troops were stationed along the western frontier and in coastal defenses around the country. With very few Seminole and Miccosukees left in Florida, and they acting very peaceably, there were few reasons to maintain a large force in the new state. The Fort Brooke military reservation was reduced to a four-

<sup>20</sup> *Ibid.*, 997-98.

mile square in February 1847 and further reduced by President James K. Polk in 1848. The limits proposed by Polk's executive order were the limits of the "present military quarters." Polk was responding to a resolution passed by the Legislature of the State of Florida in January of 1848 requesting 160 acres of land for Hillsborough County. The language of this resolution stated that they wanted this land, adjoining to and north of Fort Brooke, on the east side of the Hillsborough river, so as to include the present town of Tampa, it being the permanent seat of justice for said county, being on unsurveyed lands reserved by the government for military purposes, but relinquished by order of the Secretary of War, and reducing the military reserve of Fort Brooke to the ground enclosed by the picket fence.<sup>21</sup>

Congress solidified the reduction by passing an act in July 1848 giving Hillsborough County its 160-acre tract.<sup>22</sup>

To survey out this new land, Surveyor General Robert Butler appointed Tampa resident John Jackson to do the work. Jackson was a native of Ireland, born at Ballybag, County Monaghan, in 1812. His early life is relatively unknown, but he did receive some education in the local schools and became the apprentice of a local engineer. In 1841, with Ireland suffering from the beginnings of the infamous Potato Famine, Jackson left his native land for the United States. He soon found work as the assistant city engineer in New Orleans, where he and his brother Thomas resided for more than a year. At that time, Jackson met Simon Turman and was persuaded to come to the new town of Tampa and apply for 160 acres of land under the Armed Occupation Act. His land was located near the Turman property along the Manatee River, where he met his future employer and friend, Sam Reid, a United States deputy surveyor and trusted founder of the Manatee Colony. By 1845, Jackson was beginning his life in Tampa and assisting Reid on his surveys for the government. When Reid realized that Jackson was not in the best of health, he recommended to Surveyor General Butler that he hire Jackson as a U.S. deputy surveyor. Butler, an old friend and political ally of Reid's from the latter's Tallahassee days, did not hesitate to comply with his friend's wish. Jackson signed his first contract later that same year, 1847, and began a long and distinguished career as one of Florida's most accurate surveyors.<sup>23</sup>

Jackson finished the work of surveying the 160-acre parcel for Hillsborough County in October of 1848 and returned his work to Butler later that year.<sup>24</sup> Jackson's survey was soon questioned by the new surveyor general, Benjamin Putnam, one of the leaders of Florida's Whig Party and former Speaker of the House. Apparently Putnam was not satisfied that Jackson had followed the letter of the General Land Office, which instructed him to work with the sketch provided. Jackson answered

<sup>21</sup> United States Senate Miscellaneous Document No. 68, Thirtieth Congress, 1st sess.

<sup>22</sup> Chamberlin, "Fort Brooke," 112.

<sup>23</sup> Joe Knetsch, *Faces on the Frontier: Florida Surveyors and Developers in the 19th Century* (Cocoa: Florida Historical Society Press, 2006), 77-91. The chapter cited here covers Jackson's life.

<sup>24</sup> Letters and Reports, 2: 115.

with the assurance that he was not to be governed by the sketch but to use the letter of Major L. Whiting, then commanding at the post, as his guide. In part, the letter stated: "From the point where the pales on the North side of the enclosed ground strike the East bank of the Hillsborough River running in a line with said pales to or mar[?] the first angle, thence in a more northerly direction say 1700 yards more or less to embrace the spring from which the whole Garrison is supplied with water." If Jackson had followed what Putnam assumed were the markings, there would be a very sharp angle in the survey and further errors in the work.<sup>25</sup> Putnam, who was acting on advice from the General Land Office in criticizing the work, patiently worked with his deputy and asked advice from others who knew the area, especially Arthur Randolph. The question hinged upon the meander corner set by Jackson along the bank of the Hillsborough River, which appeared to the GLO to be too far inland from the water line. Upon advice from Randolph and Henry Wells, another well-known deputy then acting as the selection agents under the Swamp and Overflowed Lands Act of 1850, there was noted a mud flat that ran between the bank and the waterline of the river. The bank was a clear mark, which may or may not have been the ordinary high-water mark (in today's nomenclature) but was a clearly defined landmark used by Jackson. With this information, Putnam justified the work of his deputy.<sup>26</sup>

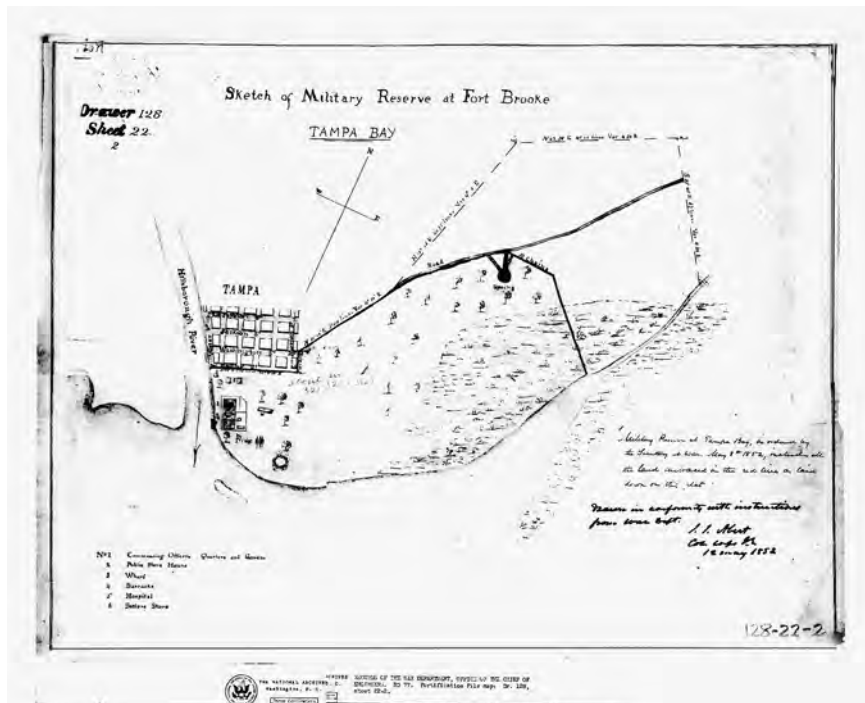
The survey took place during the Indian Scare of 1849-50 and the end of the buildup for the Mexican War. The War Department had little use for the fort and was almost ready to abandon it when the Third Seminole War (1855-58) erupted. This unfortunate war lasted three years and took an unusual amount of effort to secure the migration of a very few Seminoles from the state. With the end of this war, the usefulness of Fort Brooke was coming to an end. By 1860, the secretary of war had released the reservation to the Department of Interior. With the Civil War about to begin, there was a reluctance to turn over to anyone local a prime piece of military property and the fort was therefore leased to James McKay, a well-known local cattleman and shipper who would soon be captured twice running the Union blockade.<sup>27</sup>

After the war, the fort was briefly reoccupied by troops until about 1869, when it was released back to the Department of the Interior. The collector of customs occupied the five surviving buildings, which were used for his work, with him becoming the de facto caretaker of the property. In about 1875, there was a move by the Florida legislature to request the use of the reserve lands for an agricultural college, but this movement did not produce any direct results. The main direction for the reserve was to have its lines reestablished by a deputy and the meanders of the river run up to the "extreme point" of the bayou to the corner of the reservation.

<sup>25</sup> Ibid., 127-29.

<sup>26</sup> Letters of Surveyor General, 8: 58, 592 (Title and Land Records Section, Division of State Lands, Florida Department of Environmental Protection, Tallahassee).

<sup>27</sup> Chamberlin, *Fort Brooke*, 130.



National Archives

This survey of Fort Brooke, drawn in 1852, shows the reconfigured layout of the military base that occurred following the fort's reduction in size in 1847 and the hurricane of 1848. The southern half of the Village of Tampa is also depicted on this survey.

The purpose of this was to get the land ready for homesteaders under the Homestead Acts; it was not meant to be a private survey on behalf of William W. Wall, who had requested same.<sup>28</sup> Upon the heels of this request was the order to William Brown to reestablish the corners and the hiring of John T. Lesley to appraise the remaining property for eventual sale. Lesley completed his work on June 30, 1875, and gave an approximate value of \$1,750 to the buildings.<sup>29</sup> Surveyor General LeRoy Ball informed the GLO that, as soon as the meanders had been approved and the evaluation paid for, he would lot out the remainder of the reservation and prepare it for sale.<sup>30</sup>

<sup>28</sup> Miscellaneous Letters from Surveyor General, vol. 2, 1869-1878, LeRoy Ball to William C. Brown, July 10, 1875.

<sup>29</sup> Drawer: "U. S. Deputy Surveyors H-N," file: U. S. Deputy Surveyors J. T. Lesley [usually spelled "Lesley"] (Title and Land Records Section, Division of State Lands, Florida Department of Environmental Protection, Tallahassee). Evaluation report dated June 30, 1875 (3 handwritten pages).

<sup>30</sup> Letters of Surveyor General, 10: 461, Ball to S. S. Burdett, dated July 3, 1875.

The commissioner of the GLO, S. S. Burnett, wanted Brown to have the premises “subdivided into legal subdivisions” and run a new meander line along the east boundary of the property. The commissioner had particularly instructed Surveyor General Ball to hire a local deputy to cut down on “the undue costs of the service which would otherwise be incurred.” Burnett also insisted upon a complete description of all improvements, buildings, or any other materials thereon, which would have to be paid for by the parties acquiring the property. The instructions to Ball appear to require that the surveyor do the appraisal of the property as part of his duties, but obviously Ball chose a more practical course of action by hiring Lesley. The tone of the commissioner’s letter is interesting in that it is almost scornful of the duty required to have this post surveyed and sold.<sup>31</sup>

Ball had difficulties finding the original field notes for the earlier surveys in his office and wrote to the commissioner for copies. Ball was obviously not aware that the original surveys of the property did not contemplate subdividing the land and therefore were only of the exterior lines of the land, not any subdivisions within it.<sup>32</sup> A diagram of the reserve and whatever notes the department had were forwarded to Ball on July 12, 1875, along with permission for him to pay Brown a per diem of five dollars plus expenses. Brown’s plats and notes were sent to the department on the October 28 and were returned, unapproved, one month later. The reason they were returned unapproved was that Brown had not correctly run the meander line to encompass the entire reserve. However, instead of requiring Brown to redo the work, the GLO did it for him by protracting the lines desired to give the proper acreage to the reserve. It also saved time and money “without the necessitating an additional Survey in the field.”<sup>33</sup>

The War Department was not through with the reservation, and a modified map was filed in 1877, giving the acreage of the reserve as 150 acres. President Rutherford B. Hayes signed an order on May 29, 1878, approving a new reservation of 155 acres at the Fort Brooke site. By May 1880, two companies of the Fifth Artillery, commanded by Captain Jacob Rawles, occupied the old buildings. When the fort was visited by the Axtell family in February 1881, the Confederate earthworks were still visible, the soldiers were living in tents, and the old buildings that remained were in disrepair. The fort was obviously to be occupied only as a temporary measure. By January 1883, the last of the soldiers left old Fort Brooke. Homesteaders quickly took up the abandoned lands of the reservation and brought on a new problem that ended in the *Scott v. Carew* case decided in 1904.<sup>34</sup> The origins of the case go back to the so-called “Hackley Grant” and the deal struck between Richard S. Hackley, a former

<sup>31</sup> Letters from Commissioner, vol. 10, 1873-76, Burnett to Ball, June 9, 1875, 160-62 (Title and Land Records Section, Division of State Lands, Florida Department of Environmental Protection, Tallahassee).

<sup>32</sup> Ibid., Burnett to Ball, July 2, 1875, 174-75.

<sup>33</sup> Ibid., Burnett to Ball, November 27, 1875, 216-218.

<sup>34</sup> Chamberlin, “Fort Brooke,” 140-41.



consul to the Court of Madrid, and the Duke of Alagon. The alleged deal was signed on May 22, 1818, which made it too late to be recognized under the conditions of the Treaty of Cession. According to James Covington's research, Hackley sent his son Robert to establish a plantation on the property at the mouth of the Hillsborough River. This is the land Brooke seized for the site of the cantonment.<sup>35</sup> The seizure of the land is the origin of the lawsuit, but it was not based upon the bogus Alagon Grant or any transfer via that instrument. When the suit was filed, this ground was covered; however, the main argument for the Hackley heir was that it was a preemption, i.e., Robert had established a residence on the land prior to the military seizure and was there in accordance with the provisions of the Act of April 22, 1826, under which he filed his initial claim.<sup>36</sup> The heirs believed that they had been deprived of proper title to the land by the allegedly illegal seizure of the property by the military and that the occupation of the reserve only delayed their rights and did not nullify them.

Hackley's attorneys were smart enough to realize that the old Alagon Grant business was not going to work and the preemption claim might give them the title. The inhabitants of the property at the time, Edmund Carew and others, were very concerned about the decision, and many were worried that the claim was nothing more than an attempt by the railroads to take the property from legitimate settlers.<sup>37</sup> Horatio Bisbee, William Wade Hampton, and Edward Gunby argued for Carew and the other settlers. This talented and experienced team of lawyers argued that the government had directed Brooke to establish the post at Tampa in response to a national security need and that this action was done through the proper authority of the president of the United States acting as the supreme commander of the armed forces. Further, they noted that Hackley was on the property illegally and that his dispossession was by the authority of law. The post and reservation had been made with a specific and notorious public purpose in accordance with the law. The General Land Office and the secretary of war had all made note on maps issued and plats authorized that this land was exempt from public sale at the time. The team then closed with:

But we go further, and say, that whensoever a tract of land shall have been once legally appropriated to any purpose, from that moment, the land thus appropriated becomes severed from the mass of public lands; and that no subsequent law, or proclamation, or sale, would be construed to embrace it, or to operate upon it; although no reservation were made of it.<sup>38</sup>

The court agreed with this logic and noted that, while so appropriated they are exempted from the operation of the public land laws, and no right of an

<sup>35</sup> James W. Covington. "The Hackley Grant, the Fort Brooke Military Reservation and Tampa," *Sunland Tribune* 6, no. 1 (November 1980): 4-9 (Tampa Historical Society, Tampa, Fla.).

<sup>36</sup> The Supreme Court of the United States, *United States Reports*, vol. 196, *Cases Adjudged at the October Term 1904* (New York: Banks Law, 1905), 100-108.

<sup>37</sup> Martín M. LaGonda, "Some Petitions Relating to Tampa Families and the Disposal of Fort Brooke Lands, 1882-1883," *Sunland Tribune* 2, no. 1 (1975): 20-23 (Tampa Historical Society, Tampa, Fla.).

<sup>38</sup> *Ibid.*, 110.





*Tampa Bay History Center Collection*

This is one of the first photographs taken at Fort Brooke, showing soldiers at attention on the parade grounds. The photograph was likely taken in 1882, one year before the fort was decommissioned by the federal government.

individual settler attaches or hangs over the land to interfere with such action as the Government may thereafter see fit to take in respect to it. No cloud can be cast upon the title of the Government--nothing done by an individual to embarrass it in the future disposition of the land.<sup>39</sup>

The settlers were free to file only upon the abandonment of the reservation, and no prior claims by private individuals could cloud their title obtained from the government. The struggle for the title to land in the reserve was now over.

Until the recent findings of the graves of some of the soldiers and others on the property, the fort and its reservation had almost totally faded from the collective memory of most citizens of Tampa. The story related above should help us to see that the struggles of the frontier were not only against a hostile enemy, but also against others who would claim the land in ways not foreseen by most. The long, hard attempt to open the reserve to the public and allow the town of Tampa to grow is a fascinating tale of perseverance. And it all began with the establishment of a military post in the wilderness. Let us hope we remember this isolated but important outpost and its reservation a little longer than did our predecessors.

<sup>39</sup> *Ibid.*, 114.