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Amelia Brereton. (To accompany bill H.R. no. 287).

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AMELIA BRERETON.

[To accompany bill H. R. No. 287.]

MARCH 5, 1846.

Mr. POLLOCK, from the Committee of Claims, made the following

REPORT :

The Committee of Claims, to whom was referred the petition of Amelia Brereton, widow of Dr. John A. Brereton, late assistant surgeon in the United States army, report :

That the petition and accompanying papers fully set forth the nature of the claim and the equities of the case, and, as a favorable exposition thereof, are hereto annexed. The nature of the claim, and the reasons in support of it, are more particularly detailed in the report of the Surgeon General of the United States army, which is adopted by the committee and made part of their report.

The committee, concurring in the reasoning and principles of the report of the Surgeon General, and believing that the prayer of the petitioner ought to be granted, herewith report a bill for her relief.

To the honorable the Senate and the House of Representatives, in Congress assembled :

Amelia Brereton, widow of Dr. John A. Brereton, late assistant surgeon in the army of the United States, prays, in behalf of herself and children, (five in number,) his legal representatives, to be allowed the sum of \$783 75, being the balance of an amount of a per diem compensation, claimed by her deceased husband for services in the Surgeon General's office, between the 1st July, 1821, and 31st May, 1832 ; which balance was disallowed in the adjustment of his accounts as assistant surgeon, and begs leave to refer to the annexed statement explanatory of said claim.

AMELIA BRERETON.

DORCHESTER, MASS., December, 1845.

The claim of Dr. John A. Brereton, late assistant surgeon in the United States army, presented by his widow, Mrs. Amelia Brereton.

Dr. Brereton was assigned to duty in the office of the Surgeon General on the 1st July, 1821, and so continued till transferred to Fort Washington, on the 1st June, 1832. For this period, being 3,988 days, he claims to be entitled, by virtue of the regulations of the War Department of August 10, 1818, and of 27th July, 1819, to \$1 25 per day, amounting to \$4,985 00

Less the allowances and per diems received by him as follows, to wit: An allowance, by direction of the Secretary of War of 12th July, 1821, from 1st July, 1821, to 31st December, 1824, being 3 years, 5 months, and 20 days, at \$240 per annum	-	\$840 00
A per diem, by Secretary's order of 10th January, 1825, from 1st January, 1825, to 30th November, 1825, being 334 days, at \$1 25 per diem	-	417 50
An allowance, by Secretary's order of 1st December, 1825, from 1st December, 1825, to 31st July, 1829, being 3 years and 8 months, at \$450 per annum	-	1,650 00
A per diem, by Secretary's order of 12th November, 1831, from 12th November, 1831, to 31st May, 1832; and a per diem, by order of War Department of 28th October, 1840, from 1st August, 1829 to 12th November, 1831, being in all 1,035 days, at \$1 25 per diem	-	1,293 75
		4,201 25
Leaving a balance still due for per diem	-	783 75

AMELIA BRERETON.

Orders of the War Department, &c., applicable to the claim.

August 10, 1818.—General order of War Department, giving to officers detailed to perform duties in the office of chief engineer, &c., \$1 25 per diem in addition to their usual pay and emoluments.

July 27, 1819.—Allowances under regulation of 10th August, 1818, extended to officers detailed for extra duties in the Surgeon General's office.

July 1, 1821.—Dr. John A. Brereton appointed assistant surgeon in United States army; ordered to give medical attendance on sick at arsenal, officers and enlisted men on duty at Washington, Indians at the seat of government, and also to report to the Surgeon General for duty at his office.

January 10, 1825.—Mr. Calhoun, Secretary of War, says Dr. Brereton will be allowed, from the 1st of that year, \$1 25 per diem, in lieu of compensation then received by him.

December 1, 1825.—Mr. Barbour, Secretary of War, says the order of 10th January, 1825, allowing Dr. Brereton \$1 25 per diem, is countermanded.

December 2, 1825.—Mr. McKenney, Superintendent of Indian Affairs, informs Dr. Brereton that he is appointed physician to all the Indians visit-

ing Washington, with a salary of \$450 per annum, commencing on the 1st instant, and to include cost of medicine.

August 6, 1829.—Mr. Eaton, Secretary of War, appoints Dr. Thomas C. Scott physician to Indians visiting Washington, with salary of \$400 per annum, commencing on the 1st instant, "to which time Dr. Brereton is to be paid."

August 8, 1829.—Dr. Brereton asks of the Secretary of War that he may be allowed the per diem compensation as received by other officers on duty at War Department.

May 8, 1830.—Mr. Eaton, Secretary, decides against the allowance.

November 12, 1831.—Mr. Cass, Secretary of War, allows Dr. Brereton \$1 25 per diem, from that date, for performance of duties in Surgeon General's office, agreeably to standing regulations of 10th August, 1818, and 27th July, 1819.

April 25, 1832.—Dr. Brereton was ordered to Fort Washington to report for duty, June 1, 1832.

October 28, 1840.—Order of the War Department allowing Dr. Brereton \$1 25 per diem from August 1, 1829, to November 12, 1831, the time from which he received it under the decision of General Cass.

The above is a brief statement, in the order of their dates, of the orders applicable to the claim of Dr. Brereton, as made by his widow. They will be found stated more at length and in full in the accompanying copies, and all but the last in the report of the Surgeon General, (Lawson) dated 26th December, 1839, the last one having been made since that date.

It will be seen, by reference to them and the claim as stated, that previous to the allowance under said last order of 28th October, 1840, Dr. Brereton had received a per diem for all of the time covered by the claim, except the periods during which he received a stated allowance or salary, and the period from 1st August, 1829, to 12th November, 1831, during which period he received neither a salary nor a per diem.

By the said last order, the per diem was allowed to him for the last mentioned period; so that the balance now claimed by him, viz: \$783 75, is the difference between the amount of a *per diem* for the periods when he received a stated allowance or salary, and the amount of such allowance or salary, viz: from 1st July, 1821, to 31st December, 1824, and from 1st December, 1825, to 31st July, 1829.

By the act of Congress of 3d March, 1845, section 4, page 67, pamphlet laws, it is provided, "that from and after the passage of this act, no accounts which have been adjusted by the accounting officers of the treasury shall be reopened without authority of law." Application is therefore made for relief by act of Congress.

The simple question is, whether the stated salary or allowance should be considered as *in full* of the extra duty at the office of the Surgeon General during the time for which he received it.

That he performed such extra service may be assumed from the direct statement to that effect of the Surgeon General, in his report of 26th December, 1839.

It is respectfully submitted that the character of the general order granting the per diem, and the peculiar circumstances under which, in the case of Dr. Brereton, the extra service was performed, go to support this claim.

1st. That order gave to every officer detailed for extra service an extra

compensation of \$1 25 per diem, neither more nor less. Every officer who performed such duty was entitled to this per diem as much as he was to his regular pay and emoluments. All other officers performing such services did receive it in full.

"A special order against the claim of one individual out of many, all similarly situated and equally competent to receive extra pay, to be justified, must rest upon other grounds than the expediency of the measure, or the mere fancy of the disposer of the public benefits." This language of the Surgeon General, it is respectfully submitted, is entitled to consideration. It is difficult to find any change in the circumstances of Dr. Brereton, or in the character of his services, regular or extra, during the period in question, that would justify a change in his compensation, the general order remaining in force as to all other officers.

2d. As to the peculiar circumstances. In the case of most of the other officers detailed, the duty performed by them was in no other sense "extra" than that it was something *besides* their regular duty. For the time being, their regular duties were suspended, and this extra duty was the *only* duty performed by them. They were taken, for the most part, from their posts at a distance and transferred to Washington, and could not, in fact, perform their regular duty.—(See the report of the Surgeon General.)

Dr. Brereton's regular duty for the time covered by his claim lay altogether in Washington and the immediate vicinity, and was all performed, as well as the extra duty.

As to the inference from his own letter to Mr. Eaton, asking for the per diem again after his salary had been stopped—that *he understood* one was to be received in place of the other—if it was a right under the general order, his own mistake ought not to conclude him. Besides, it is believed there were reasons influencing him to receive the salary *or* per diem, according to the view of the Secretary of War then in office, without any intention on his part of admitting that he was not always entitled to the per diem. The changes were made so clearly without reason, as he understood the matter, that he thought it best to submit without disputing them.

There is one fact which appears from these papers, having some bearing on the question. When Dr. Scott, the successor of Dr. Brereton as physician to the Indians visiting Washington, was appointed, *his* salary for that service *alone* (for he seems to have been in no other way in the employment of government) was \$400 per annum, only \$50 less than that given Dr. Brereton; which difference may well be explained by the fact that, in Dr. Brereton's case, \$450 included the cost of medicine, whilst in that of Dr. Scott \$400 did not. So that it would seem that, under a general, unqualified order for the per diem, within which Dr. Brereton was clearly included, if this claim is not allowed him, he must receive for part of the time in question for *both* his extra service and attendance upon the Indians—only about the amount which Dr. Scott received for the first service alone, and for the remainder of the time an amount much less, viz: \$240.

In this connexion, it may well be argued that the attendance upon the Indians was the service *principally* in view in fixing the salary or stated allowance; for although, in the order of 12th July, 1821, the Secretary speaks of duty "performed in this office," as well as attendance on the Indians, yet, in the order communicated by the Superintendent of Indian Affairs, under date of 2d December, 1825, no mention is made of the "extra

duty" at the Surgeon General's office, even when, by that order, the salary was increased.

The careful attention of the committee to which this claim may be referred is respectfully asked to the report of the Surgeon General hereinbefore alluded to.

AMELIA BRERETON.

SURGEON GENERAL'S OFFICE,
December 26, 1839.

SIR: From the papers relating to the claim of the late assistant surgeon Brereton to a per diem allowance of \$1 25 throughout the period of his service in the Surgeon General's office, referred by you to this office, the following facts are developed:

On the 10th of August, 1818, an order was issued by the War Department, giving to the "officers detailed to perform duties in the offices of the Chief Engineer, Quartermaster General, Adjutant General, Inspector General, and the Chief of the Ordnance Department, \$1 25 per diem, in addition to their usual pay and emoluments." On the 27th of July, 1819, the allowances under the regulation of the 10th of August, 1818, to officers detailed for extra duty in the Quartermaster's, Engineer, and Commissary General's departments at this place, are extended to officers detailed for similar duties in the Surgeon General's office.

On the 1st of July, 1821, Dr. John A. Brereton was appointed an assistant surgeon in the United States army, and ordered to "give the necessary medical attendance upon the sick at the arsenal at Greenleaf's point, upon the officers and enlisted men on duty at Washington, upon the Indians who may from time to time visit the seat of government, and also to report to the Surgeon General for duty in his office."

On the 12th of July, 1821, the Surgeon General says, in a letter to the Second Auditor: "The Secretary of War directs that Dr. John A. Brereton be paid at the rate of \$240 per annum, for attendance on the Indians who may be at the seat of government, and for duty performed in this office, \$100 of which is to be charged to the Indian fund, and the balance to the medical fund."

On the 10th of January, 1825, Mr. Calhoun, Secretary of War, in an order, says: "In lieu of the extra compensation at present received by assistant surgeon Brereton, for attendance on the Indians at the seat of government, and the extra duties performed in the Surgeon General's office, he will be allowed, from the first of the present year, \$1 25 per day, being the same as received by other officers on duty in the War Department."

On the 1st of December, 1825, Mr. Barbour, Secretary of War, in an order to the Quartermaster General, says: "The order of the 10th of January, 1825, allowing assistant surgeon Brereton, stationed at this place, \$1 25 per day for attendance on such Indians as may visit the seat of government, and for duty in the Surgeon General's office, is hereby countermanded."

On the 2d of December, 1825, Mr. McKenney, Superintendent of Indian Affairs, in a letter to Dr. Brereton, says: "I have the honor of conveying to you, by direction of the Secretary of War, the information that he has appointed you physician to all the Indians who may visit Washington, and

who may need, during their stay here, medical assistance. Your salary will be at the rate of four hundred and fifty dollars per annum, to commence on the 1st instant, to include the cost of medicine. You will consider the Indians now here, and all others who may hereafter visit this city, as in your charge, as physician, and give the necessary attendance."

On the 6th of August, 1829, Mr. Eaton, Secretary of War, in an order to the Second Auditor, says: "I have appointed Doctor T. C. Scott to superintend, and administer medical aid to such Indians as may from time to time visit the seat of government, which he consents to do. His compensation will be four hundred dollars, to be paid quarterly, commencing from the first day of this month, to which time Dr. Brereton will be paid, and cease to discharge this duty in future. You are desired to give information of this to Dr. Brereton."

On the 8th of August, 1829, Doctor Brereton, in a letter to the Secretary of War, says: "I received yesterday, through the Second Auditor, Major Lewis, a notification that my extra compensation for attendance on the Indians who might visit the seat of government was discontinued after the 1st of July, and by order of the honorable Secretary; I have, therefore, respectfully to ask that I may be allowed the per diem compensation, the same as received by other officers of the army on duty in the War Department, and was formerly received by me."

On the 8th of May, 1830, the Secretary of War, Mr. Eaton, in answer to Dr. Brereton's application for extra compensation, says: "In the application made by Doctor Brereton for extra per diem allowance, I have not been able to find where it ever has been extended to him. The regulations of Mr. Calhoun is dated in 1819, still *non constat* that the allowance was ever made to the Doctor for services rendered in the Surgeon General's office. Besides this, the Surgeon General, in a recent report made at the call of Congress, has stated that there are no persons in his office in the performance of extra duty. The claim, therefore, cannot be admitted."

On the 12th of November, 1831, Mr. Cass, Secretary of War, in an order, says: "Doctor Brereton will be hereafter allowed the sum of one dollar and twenty-five cents a day for the performance of duties in the Surgeon General's office, agreeably to the standing regulation of the department of August 10, 1818, and July 27, 1819."

On the 25th April, 1832, the following order was issued from the Adjutant General's office:

"Assistant surgeon Brereton is assigned to duty at Fort Washington, to which post he will repair and report for duty to the commanding officer, on the 1st of June, and there relieve assistant surgeon King."

From the foregoing evidence, it appears that assistant surgeon Brereton was, on the 1st of July, 1821, ordered, in addition to his other duties, to serve in the Surgeon General's office, and that he continued uninterruptedly on duty in the office until the 1st of June, 1832, when he was removed to Fort Washington.

Under the orders of the 10th of August, 1818, and 27th July, 1819, Doctor Brereton was entitled to \$1 25 per diem extra pay from the 1st of July, 1821, to the 1st of June, 1832, and would have received that amount of compensation but for the intermediate orders.

Why a distinction was made between Doctor Brereton and the other officers of the army stationed at Washington, I cannot conceive; it could not have been that he had nothing to do, for more duty was assigned to

him than he or any body else could possibly well perform. The other officers simply exchanged duties; they were translated from service with their companies and corps in the field, on fortifications, and in arsenals, to clerkships, &c., in Washington, while Doctor Brereton, in addition to his appropriate duties as surgeon of the arsenal at Greenleaf's point, and medical attendant upon all the officers and enlisted men permanently or temporarily located in the District, from Georgetown to the navy yard, acted as clerk in the Surgeon General's office; and, withal, gave his attention to the Indians that were in those days continually flocking to the seat of government. The object of the Surgeon General's letter of the 12th of July, 1821, then, must have been to devise other than the usual way and means to pay the doctor for his extra duties; but in doing this they forgot the extent of the services imposed upon him, and lost sight of the fact that he possessed equal rights with the other officers at Washington, and should have been compensated from the same fund or appropriation. Mr. Calhoun, Secretary of War, it seems, eventually took a more favorable view of Doctor Brereton's position, as he, on the 10th of January, 1825, issued an order that Doctor Brereton should be paid for his extra services in the same manner, and at the same rate of compensation, with the other officers on duty in the War Department.

Mr. Barbour, his successor in office, however, on the 1st of December of the same year, countermanded this order; and why, we do not know, unless it was to change the mode of compensation, for, on the same day, he appointed Doctor Brereton special physician to all the Indians who might visit Washington, and with a salary of four hundred and fifty dollars per annum, from the appropriation for the Indian service. Matters continued thus until the 6th of August, 1829, when Doctor Brereton was informed by Mr. Eaton, then Secretary of War, that Doctor Thomas C. Scott, having been appointed surgeon to the Indians visiting the seat of government, on the first of the month he would be paid up, and his duties cease with the Indians on that day. This order was evidently given to benefit another person; and it relieved Brereton of the Indian duty, without taking him from the Surgeon General's office, and his other duties in the District of Columbia, he having still as much to do as any one man could well perform.

As Doctor Brereton was not relieved from his extra duties in the Surgeon General's office, he was, under the standing rule of the Department of War of the 10th of August, 1818, and 27th of July, 1819, entitled to the extra allowance of \$1 25 per diem. We cannot, then, account for the Doctor's letter of the 8th of August, 1829, otherwise than by supposing that he wished to make security doubly sure. But in this aim he unfortunately failed, for the Secretary of War did not respond to his special application for extra pay, until the 8th of May, 1830, and then in the negative. Upon what grounds, however, the Secretary of War could refuse to accord to Doctor Brereton the extra pay, and how he came to say that he had not been able to find where it ever had been allowed to him, when the order of the 10th of January, 1825, was on file or on record in the War Office, is not easily to be conceived; nor is the decision in the matter to be reconciled with the facts and the justice of the case. Mr. Cass, on his accession to the office of Secretary of War, restored Doctor Brereton to all the rights and privileges of which he had been, by some fatality or other, deprived, accorded to him the regular extra compensation, and paid him to the time of his departure for Fort Washington, out of the same fund (the contingent fund of

the army) with which the other officers employed in the military bureaus at Washington were paid.

Upon a review of the whole ground, it clearly appears that Doctor Brereton was entitled to extra allowance of \$1 25 per diem from the 1st of July, 1821, when he was first assigned to duty in the Surgeon General's office, to the 1st of June, 1832, the time that he was relieved from duty at the city of Washington.

The standing orders of the Department of War of the 10th of August, 1818, and 27th July, 1819, and which were never repealed within the period specified, gave the allowance to him in common with all other officers employed on extra duty at Washington, and there is no evidence that he ever, by any act of his own, forfeited his claim to honorable consideration or to this extra compensation. An order to the contrary may prevent an officer receiving extra pay; it does not necessarily, however, deprive him of his abstract right to compensation guaranteed to him by the fixed rule of the service.

A special order against the claim to compensation of one individual out of many, all similarly circumstanced and equally competent to receive extra pay, to be justified, must rest upon other grounds than the expediency of the measure, or the mere fancy of the dispenser of the public benefits.

But I am not so satisfied that the Surgeon General's letter of the 12th of July, 1821, or the orders of Mr. Barbour of the 1st and 2d of December, 1825, or that of Mr. Eaton on the 6th of August, 1829, or any instrument of writing other than Mr. Eaton's decision of the 8th of May, 1830, absolutely conflicted with the standing regulation of the 27th of July, 1819, all of the intermediate orders being modifications only of the regulation, and evidently intended to eke out Doctor Brereton's compensation from other funds than the appropriation for the contingent expenses of the army, as much of this last fund as possible being required for other purposes. And as this decision of Mr. Eaton's was manifestly based upon erroneous information, and a consequent misconception of Doctor Brereton's position and claims, it cannot be considered as a repeal of the regulation of the 27th July, 1819: more especially as Mr. Cass, on coming into office, reversed that decree, and, by a special order of the 10th of November, 1831, relieved the Doctor from the disabilities it imposed upon him.

I am not an advocate for giving extra compensation for extra duties, without extra labor or responsibility; but as it was the fixed rule and a settled principle with the Department of War to allow extra pay to officers employed at the seat of government, with the view to meet their extraordinary expenses, and as Doctor Brereton was not only on extra duty, but actually performed extra service or additional duty, I cannot bring myself to believe otherwise than that he was entitled to all the benefits of the contingent allowance.

In conclusion, I have to say that, inasmuch as Doctor Brereton did not, while alive, receive his full measure of compensation, it becomes us to secure what seems still to be due to those he has left behind him; and I do therefore recommend that an account be made out for \$1 25 per diem allowance, from the 1st of July, 1821, the day he entered on duty in the Surgeon General's office, to the 1st of June, 1832, the day of his removal from the office, and that the amount, less the sum already received, be paid over to his heirs-at-law.

All of which is respectfully submitted.

TH. LAWSON, *Surgeon General.*