

12-9-1879

Report : Petition officers of the Fifth Calvary

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IN THE SENATE OF THE UNITED STATES.

DECEMBER 9, 1879.—Ordered to be printed.

Mr. MAXEY, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill S. 106.]

The Committee on Military Affairs, to whom was referred Executive Document No. 54, "Letter from the Secretary of War, transmitting a petition of certain officers of the Fifth Infantry U. S. A., praying to be reimbursed for losses sustained by the sinking of the government steamer Don Cameron," have had the same under consideration, and submit the following report:

The record shows that in the year 1877, the Quartermaster's Department of the United States Army constructed two steamboats at Jeffersonville, Ind., for the purpose of navigating the Upper Missouri River and its tributaries, in the transportation of public property and materials for the erection of Forts Keogh and Custer in the Territory of Montana.

In July, 1876, shortly after the Custer massacre, the Fifth Regiment United States Infantry was ordered from Fort Leavenworth, Kansas, for active field service in the campaign against the hostile Indians under "Sitting Bull" and "Crazy Horse." During that summer and autumn and the winter campaign of 1876 and 1877, the officers of this regiment were compelled to leave their private property, except such as was necessary for an active field campaign against the Indians, at Fort Leavenworth in Kansas. When this campaign had terminated in the suppression of Indian hostilities in the Northwest, the officers of the Fifth Regiment of Infantry were stationed, in the spring of 1877, at what was known as Tongue River cantonment at the mouth of Tongue River, Montana, where their services were deemed necessary by the commanding general of the Army.

The following is the law regulating the allowance of baggage to officers in changing stations:

Officers' baggage.

Paragraph 1097, Revised Army Regulations, is modified as follows:

The baggage to be transported is limited to camp and garrison equipage and officers' baggage. Officers' baggage shall not exceed (mess-chest and all personal baggage included) as follows:

	In the field.	Changing stations.
Major-general	1,000 pounds.	2,500 pounds.
Brigadier-general	700 "	2,000 "
Field-officers	500 "	1,800 "
Captains	200 "	1,500 "
Subalterns	150 "	1,000 "

2 REIMBURSEMENT OF OFFICERS OF THE FIFTH INFANTRY.

These amounts shall be reduced *pro rata* by the commanding officer when necessary, and may be increased by the Quartermaster-General on transports by water when proper, in special cases.

By order of the Secretary of War.

E. D. TOWNSEND,
Adjutant-General.

Official. _____, *Assistant Adjutant-General.*

NOTE.—Made a part of the law by act of July 28, 1866. (The United States vs. Williamson, 23d Wall., 411;) and see, specially, the 37th section of same act, vol. 14, U. S. Stat. at Large, pp. 337, 338.

From this it will be seen that the specified amount may be increased by the Quartermaster-General. On the 3d of March, 1877, the Quartermaster-General, by the following letter, increased the allowance of baggage for the Fifth Infantry, as authorized as above quoted by Army regulations:

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, March 3, 1877.

COLONEL: Referring to letter from this office to you of the 13th ultimo, in relation to the building of boats for service on the Yellowstone and Bighorn Rivers, you are respectfully informed that the Secretary of War directs that the transportation of the company baggage, laundresses, enlisted men, officers' families, and property of the Fifth Infantry, now at Fort Leavenworth, be done by the boats (now building at Jeffersonville) to go up the Missouri River.

The regimental quartermaster of the Fifth Infantry reports that transportation will be required for officers' families, some twenty persons in number, twenty soldiers, and that children of soldiers will swell the list to about two hundred persons, while the property to be shipped is estimated at one hundred and fifty tons. Please give orders to the boats accordingly.

Very respectfully, your obedient servant,

M. C. MEIGS,
Quartermaster-General.

Lieut. Col. JAMES A. EKIN,
*Deputy Quartermaster-General, U. S. A.,
Jeffersonville, Ind.*

Official.

G. W. BAIRD,
First Lieutenant and Adjutant, Fifth Infantry.

This letter shows that the Secretary of War, through the Quartermaster-General, had directed the transportation of the companies' baggage, laundresses, enlisted men, and officers' families and property of the Fifth Infantry then at Fort Leavenworth, to be performed by the boats then building at Jeffersonville, Ind. It further appears, both from the official reports and the affidavits of Lieut. F. H. Hathaway, Jno. A. Ross, quartermaster-sergeant, Fifth Infantry, and Private Leonard B. Whitbeck, Company K, Fifth Infantry, hereinafter quoted, and the affidavit of G. W. Baird, first lieutenant and adjutant Fifth United States Infantry, also exhibited, that Hathaway was the regimental quartermaster of the Fifth Infantry; that on the 10th of May, 1877, he embarked at Fort Leavenworth on the United States steamer J. Donald Cameron, bound for the military post at Tongue River, Montana, where his regiment was stationed, said post being reached by steaming up the Missouri River, thence up the Yellowstone to the mouth of Tongue River; that said boat was laden with some public property, and the private effects, household goods, and baggage of a number of the officers of the Fifth Infantry, who, as will be seen by the letter of General Miles, were going to a remote section, where supplies, necessities, and comforts for their families and themselves could not be obtained, and hence they were compelled to lay in more than the usual

quantity transported by officers on change of ordinary station; that on the 18th of May, 1877, about noon, while the said steamer was running at the usual rate of speed up stream, she struck a snag, about two feet in diameter, with such force as to puncture the boat and break off the snag, some twenty or more feet long, at the bottom of the river; that the water poured through the hole made by the snag in such quantities as to sink the steamer in eighteen feet water, and in about twenty minutes after striking the snag, and that all the property of the officers of this regiment then on the boat was submerged and lost. General Terry, commanding the Department of Dakota, under date of May 24, 1877, ordered a board of officers to be convened, consisting of Maj. George W. Candee, Pay Department; Maj. William B. Hughes, Quartermaster-General's Department; and Capt. William A. Elderkin, Subsistence Department, to assemble at Sioux City, Iowa, on the 26th day of May, and to proceed thence to the wreck of the steamer J. Donald Cameron to examine into the circumstances of the sinking of that vessel, to ascertain and report the extent of the damage, and determine whether any person or persons were responsible for such damages. This board, after examining into all of these matters and taking a large amount of testimony, and making a full and complete investigation, submitted and reported that the following points were fully established by the evidence, namely:

1st. That the steamer J. Donald Cameron was not properly constructed for the safe navigation of the Upper Missouri River, in that she was not provided with proper bulkheads or water-tight compartments, and that the sinking of said steamer at the time and under the circumstances would not have occurred but for these defects in her construction.

2d. That John S. Ritchie, employed by Lieut. Col. J. A. Ekin, deputy quartermaster-general, U. S. A., as master and pilot of said steamer J. Donald Cameron, was not a regularly licensed pilot upon the Missouri River, and had never been up said river above Omaha, Nebr.; that J. C. Woodruff, employed by Lieut. Col. J. A. Ekin, deputy quartermaster-general, U. S. A., as pilot of said United States steamer J. Donald Cameron, was not a regularly licensed pilot upon the Missouri River, and had never been upon said river. The committee refer to the report of said board on file in the papers of this case.

Your committee here quote sections 4438, 4442, 4446, and 4463 of the Revised Statutes of the United States relating to navigation:

SEC. 4438. The board of local inspectors shall license and classify the masters, chief mates, engineers, and pilots of all steam-vessels. It shall be unlawful to employ any person, or for any person to serve as a master, chief mate, engineer, or pilot on any steamer who is not licensed by the inspectors; and any one violating this section shall be liable to a penalty of \$100 for each offense.

SEC. 4442. Whenever any person claiming to be a skillful pilot of steam-vessels offers himself for a license, the inspectors shall make diligent inquiry as to his character and merits, and if satisfied from personal examination of the applicant, with the proof that he offers, that he possesses the requisite knowledge and skill, and is trustworthy and faithful, they shall grant him a license, for the term of one year, to pilot any such vessel within the limits prescribed in the license; but such license shall be suspended or revoked upon satisfactory evidence of negligence, unskillfulness, inattention to the duties of his station, or intemperance, or the willful violation of any provision of this title.

SEC. 4446. Every master, mate, engineer, and pilot who shall receive a license shall, when employed upon any vessel, place his certificate of license, which shall be framed under glass, in some conspicuous place in such vessel, where it can be seen by passengers and others at all times; and for every neglect to comply with this provision by any such master, mate, engineer, or pilot, he shall be subject to a fine of \$100, or to the revocation of his license.

SEC. 4463. No steamer carrying passengers shall depart from any port unless she

shall have in her service a full complement of licensed officers and full crew, sufficient at all times to manage the vessel, including the proper number of watchmen. But if any vessel, on her voyage, is deprived of the services of any licensed officer without the consent, fault, or collusion of the master, owner, or any person interested in the vessel, the deficiency may be temporarily supplied until others licensed can be obtained.

From the facts ascertained and reported by the board of survey, sustained by the affidavits of Lieutenant Hathaway and others, hereto appended, and the letter of General Miles, also exhibited, your committee are of opinion—

1st. That the order increasing the amount of baggage to officers was, in this change of stations, properly issued.

2d. That no other transportation than by the steamer designated for the baggage was furnished by the government.

3d. That the pilot in charge of the *Don. Cameron* was not a *licensed pilot* for navigating the Missouri River; that the captain of the boat, the chief mate, and the other officers were wholly unacquainted with said part of said river.

4th. That the boat was unseaworthy.

5th. That the navigation of the Missouri River between Omaha, Nebr., and Sioux City, Iowa, is dangerous, so much so that it has been styled "the graveyard of steamboats."

6th. That some of the officers whose property was lost had insured the same, but payment of these policies has been successfully resisted on the ground, as the committee is advised, of *gross neglect* on the part of the government officials in officering the boat with men wholly ignorant of those waters and not licensed to navigate the same, and on the further ground that the boat was *unseaworthy*.

Your committee therefore conclude that the government was guilty of gross neglect in the construction of this boat for the navigation of the Missouri and Yellowstone Rivers, known to be dangerous waters, without the construction of water-tight bulkheads or compartments in the hold, or steam capstans about the deck, both of which are regarded as necessary and usual in the construction of steamboats for the navigation of those waters.

The government was further guilty of gross neglect in sending this boat up the Missouri River officered and manned by men unacquainted with those waters and in charge of a pilot who was not regularly licensed for the navigation of that river.

The navigation laws of the United States are enacted with a view to protect life and property on the high seas and on our navigable waters, and to establish such rules and regulations as have been demonstrated by experience to be conducive to the public good. The government is as much bound by these laws as the citizen, and may not avoid them without incurring responsibility. In this case it appears, to the satisfaction of your committee, that the officers representing the government, and having this transportation in charge, not only disregarded the navigation laws, but neglected the usual and necessary prudence in the construction of the boat, which the most ordinary observation would have shown was utterly unfit and unworthy the dangerous service of navigating the Upper Missouri River. The officers and men of the Fifth Infantry and their families had no option but to embark upon this boat at the imminent risk of life and property, and, therefore, in no way contributed to the carelessness and gross negligence through which their property was lost. While it is true the government cannot, in law, be held to be an insurer, yet the government cannot, more than the citizen, escape or avoid the penalties and liabilities which the law imposes upon

gross negligence; and it is submitted that the law of insurance has nothing to do with the case.

There are several precedents established by Congress where compensation has been made for losses incurred under somewhat like circumstances. Your committee deem it proper to cite the following acts bearing upon the case herein considered:

AN ACT for the relief of the United States troops who were sufferers by the recent disaster to the steamship San Francisco.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That there shall be paid, under the direction of the President, to each of the officers, non-commissioned officers, musicians, and privates, who, on the twenty-first day of December, eighteen hundred and fifty-three, embarked at New York, under orders for California, on the steamship San Francisco, and who was on board that vessel on the occasion of her recent disaster at sea, and to Lieutenant Francis Key Murray, and other officer or seaman of the United States Navy who was on board the said steamship, under orders, a sum equal in amount to his pay and allowances for eight months.

SEC. 2. *And be it further enacted,* That if any such officer, non-commissioned officer, musician, or private, shall have died before receiving such payment from any cause consequent upon said disaster, his widow, if one survive him, and if not, then his minor children, if any there be, shall be paid a sum equal in amount to six months' pay and allowances of the deceased. And that the widows and minor children of those officers, non-commissioned officers, and privates who perished by this disaster, or who died from disease in consequence thereof, shall be allowed pensions in the same manner in all respects as if the said officers, non-commissioned officers, and privates had been killed in battle (10 Stat., 269).

Approved March 27, 1854.

AN ACT for the relief of certain officers of the Third United States Artillery, who suffered by fire at Fort Hamilton, New York Harbor, on the third of March, eighteen hundred and seventy-five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of Treasury of the United States be, and are hereby, authorized to settle with the first lieutenants of the Third United States Artillery who lost their personal effects by fire at Fort Hamilton, New York Harbor, on the third of March, eighteen hundred and seventy-five, at a sum not to exceed six hundred dollars each, and a sufficient sum is hereby appropriated out of any money in the Treasury not otherwise appropriated.

Approved, January 30, 1877.

AN ACT relative to the burial of the officers and others of the United States Navy who perished by the wreck of the United States steamer Huron, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Navy be, and he is hereby, authorized, at such time as in his discretion may be proper, to have removed to the Naval Cemetery at Annapolis, Maryland, and have buried there, the remains of the officers and others who perished by the wreck of the United States steamer Huron on the twenty-third of November, eighteen hundred and seventy-seven, and which have been, or may hereafter be, buried on the coast of North Carolina: *Provided,* That the relatives of any such deceased officers and others who prefer that the remains of such be taken to their homes within the United States, shall have such privilege extended to them and the expenses thereof shall be borne by the United States: *And provided further,* That the expense of removal, incurred by the relatives of those whose bodies have already been removed, shall be reimbursed to them, and the sum of six thousand dollars, or so much thereof as may be found necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated, to carry out the provisions of this act. And the benefit of the provisions of this act as far as applicable is hereby extended to those of the wrecking steamer B. and J. Baker who were lost in the attempt to rescue the crew of the steamer Huron.

Approved, December 15, 1877.

It is submitted that if these salutary acts for the benefit of persons who had suffered by disaster, and the heirs, &c., of such, were well

grounded, surely those who suffered by such gross negligence as existed in this case have a valid claim to relief.

TERRITORY OF MONTANA,
Custer County, ss :

Personally appeared before me, G. M. Miles, U. S. commissioner for the district of Montana, Lieutenant F. H. Hathaway, Fifth U. S. Infantry, who, being sworn according to law, deposes and says that, on the 10th day of May, 1877, he embarked at Fort Leavenworth, Kansas, on the U. S. steamer J. Donald Cameron, a government river transport, with a detachment of soldiers belonging to the Fifth Infantry, together with the families of some of the officers of the said regiment, and servants and other persons, bound for the military post at Tongue River, M. T., to be reached by steaming up the Missouri and Yellowstone Rivers. The said boat was laden additionally with some public property, and the private effects, household goods, and baggage of a majority of the officers of the said regiment.

That upon examining the said vessel deponent discovered that there was no water-tight bulkheads or compartments in the hold or steam capstans about the deck, both of which essential features deponent believes are necessary and usual in steamboats navigating the rivers mentioned; that the said steamer J. Donald Cameron was built, owned, and run by the government, and that no officer on the said steamer had ever navigated the Missouri River north of Omaha, Nebraska, to his knowledge and belief; that on the 18th day of May, 1877, about noon, while the said steamer was running at usual rate of speed upstream, she struck a snag, about two feet in diameter, with such force as to penetrate the bow and to raise deck over the fore-castle, and to break off the snag, some twenty-five or thirty feet long, at the bed of the river; that the water poured through the hole made by the snag with such force as to sink the said steamer in ten and eighteen feet of water in about twenty minutes' time; that with the snag stuck fast in the bow it was impossible to head in to the shore, and it became necessary to back in as close as possible; that the boat did not reach a point nearer than thirty or forty feet from the shore, and there sunk in deep water, with all the property of the following-named officers on board, viz: Col. N. A. Miles; Major Geo. Gibson; Capts. D. H. Brotherton, Simon Snyder, Jas. S. Casey, Samuel Ovenshine, E. P. Ewers, and Andrew S. Bennett; Lieutenants Mason Carber, Frank D. Baldwin, E. L. Randall, Henry Romeyn, Geo. W. Baird, T. F. Forbes, F. H. Hathaway, D. Q. Rousseau, H. K. Bailey, W. H. C. Bowen, O. F. Long, and C. P. Thompson, all of the Fifth U. S. Infantry; that all the property of the said officers, excepting a few personal effects in trunks and packages on the cabin deck, were submerged and lost or damaged by the said wreck. Deponent further states that in his opinion, if the said steamboat had been fixed with water-tight compartments, the boat and property lost and damaged might have been saved; and that the place of said wreck was on the west bank of Missouri River, at the Winnebago Indian Reservation, Neb., about forty miles below Sioux City, Iowa.

F. H. HATHAWAY,
1st Lt. 5th U. S. Inf'y.

Sworn to and subscribed before me this 14th day of December, 1878.

G. M. MILES,
U. S. Court Commissioner.

Personally appeared before me John A. Ross, quartermaster sergeant Fifth Infantry, and Private Leonard B. Whitbeck, Co. K, Fifth Infantry, who, having heard the foregoing affidavit read, depose that they were on the said steamboat Cameron at the time of her wreck, and that the statements and facts as set forth are true, to the best of their knowledge and belief.

JOHN A. ROSS.
LEONARD WHITBECK.

Sworn to and subscribed before me this 14th day of December, 1878.

[SEAL.]

G. M. MILES,
U. S. Court Commissioner.

DISTRICT OF COLUMBIA,
Washington City, County of Washington, ss :

George W. Baird, first lieutenant and adjutant Fifth Infantry, having been duly sworn, on his said oath deposes and says: In the summer of 1876 the Fifth Regiment United States Infantry, stationed at Fort Leavenworth, Kans., was ordered on a campaign against the hostile Sioux Indians in the Territory of Montana; that the families of the officers, together with all their household furniture and all of their personal effects not necessary for a campaign in the field, was left; that the property, consisting of personal baggage, household furniture, &c., belonging to the officers of the regi-

ment, remained at Fort Leavenworth until on or about the 11th day of May, A. D. 1877, when the same was shipped on board of the United States steamer J. Don. Cameron, for the station of the regiment at the mouth of Tongue River, on the Yellowstone, Territory of Montana; that prior to said shipment deponent obtained insurance on a portion of his property so shipped to the amount of five hundred (\$500) dollars, and that portion so insured, together with nearly all of the remainder of his property so shipped, was lost by the sinking of said boat on or about the 18th day of May, A. D. 1877; that upon application to the insurance company for payment of the policy the same was rejected, on the ground that the steamer was not properly officered, in that the pilot in charge of the same was not skillful or acquainted with those waters.

Deponent further says it was currently reported at the time, and generally believed by the officers of the regiment, that the pilot in charge of said boat was not skillful or acquainted with the navigation of the Missouri River between Omaha, Nebraska, and Sioux City, Iowa.

Deponent further says that, from general répute, the navigation of the Missouri River between Omaha, Nebraska, and Sioux City, Iowa, is the most difficult and dangerous of any portion of that river; that the point in that river above referred to is generally termed by persons acquainted with the navigation of the river "the grave-yard of steamboats."

Deponent further says that, from personal knowledge, he knows that it is the custom of persons navigating those waters to employ two pilots on each steamer, one of whom at least has had long experience in navigating that river.

G. W. BAIRD,
1st Lieut. & Adj't 5th U. S. Inf'g.

Sworn and subscribed before me this 15th day of January, A. D. 1879.

[SEAL.]

RUTLEDGE WILLSON,
Notary Public, D. C.

WASHINGTON, D. C., January 23, 1879.

SIR: I have the honor to state, regarding the loss of property belonging to the officers of my regiment, that in July, 1876, immediately after the Custer massacre, my regiment was suddenly ordered from Leavenworth, Kans., to Montana; the officers could only take what was required for hard field-service; they were engaged in the campaign against Sitting Bull and Crazy Horse during that summer and autumn, and the severe campaign of the winter of 1876 and 1877. On the opening of spring their property was put upon the government steamer Don. Cameron, a steamboat in many respects utterly unsuited for service upon the most dangerous river in the United States. It was built without bulkheads; its officers were either incompetent or unacquainted with the river, which, at least, is considered unsafe, and that portion of the Missouri River below Sioux City has undoubtedly wrecked more steamboats than any body of water in the country.

The loss of property was particularly hard upon the officers and their families, as many of them lost everything they had in the world except the clothes they were wearing. The valuable service they were rendering at the time to the government was not only most severe and dangerous but very expensive, and as they had no alternative but to submit their property to the safety of a government boat, it would seem but just and right that the government should sustain the loss that they can ill afford to bear, as the loss was occasioned through no fault of theirs.

Some of the officers had insured their property, but, on the grounds of gross neglect on the part of the government officials in putting this boat upon the Missouri River, the insurance company refuses to pay any part of the insurance thereupon; they are obliged to look to the government for assistance. To show what other losses the officers have sustained and the kind of service they are engaged in, I would add that during the past two years that the regiment has been on the Yellowstone it has lost one officer killed, one officer died from exposure, two disabled by wounds received in battle, and three have, by disease contracted in the line of duty, been obliged to leave their commands and are now under medical treatment.

I have the honor to be, very respectfully, your obedient servant,

NELSON A. MILES,
Col. and Bvt. Major-Gen., U. S. Army.

Hon. S. B. MAXEY,
United States Senator.

The premises considered, your committee are clear that the petitioners are entitled to relief; and therefore report the accompanying bill, authorizing and directing the Secretary of War to examine into and ascertain the losses herein occurring, and making an appropriation of the amount reported necessary to enable him to pay the adjusted claims therefor, and recommend passage of the same.