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Report : Petition of R. Montgomery

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IN THE SENATE OF THE UNITED STATES.

APRIL 20, 1886.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 1717.]

The Committee on Military Affairs, to whom was referred the bill (S. 1717) for the relief of Robert H. Montgomery, a captain in the Fifth Cavalry, United States Army, have had the same under consideration and submit the following observations thereon, with a conclusion favorable to the passage of the bill:

The bill (S. 1717) contains two relief propositions:

The applicant asks, first, to be relieved from any obligation to pay a judgment rendered against him by the Court of Claims for \$1,651.37 under circumstances which will be stated. He also asks that the Secretary of War be directed to so correct his military record as to show that he has served in the Regular Army continuously from August 6, 1860, to the present time, and for longevity pay and other allowances upon such proposed corrected record.

Concisely stated the facts presented to your committee are as follows:

Capt. Robert H. Montgomery entered the mounted military service of the United States in August, 1860, and joined the Fifth Cavalry in Texas, remaining there until the State fell into the hands of the Confederates, serving as a non commissioned officer. He took part in various battles and severe skirmishes in Virginia during the late war, being on the Peninsula and in the Virginia and Maryland campaigns, including the battles of Hanover Court House, South Mountain, Antietam, Gettysburg, Fredericksburg, Brandy Station, and an active participant in at least a dozen other conflicts in Virginia. He was discharged from enlistment December 17, 1862, and appointed a second lieutenant, in command of a company, from December, 1862, to October, 1863. For gallant and meritorious service at Beverly Ford he was brevetted a first lieutenant from June 9, 1863, and for like services at Brandy Station he was made brevet captain, to date from August 1, 1863, and for gallant and meritorious services at Gettysburg he was recommended for brevet major in 1868.

Since the late war he has been active in Indian hostilities. He has been twice nominated to the Senate to be brevet major for gallant conduct in the West, and for a brevet lieutenant-colonel for distinguished conduct in 1874.

The military service of the applicant for relief embraces a period of a quarter of a century, and during the whole of that time, save when he was a prisoner of war, have been marked by conspicuous gallantry in the field and entitle his prayer to the liberal disposition of the Sen-

ate. His record is defective at the War Department through no fault of his own. While acting under orders and returning from a reconnaissance to ascertain the fate of a patrol that had been sent out supposed to have been fired upon, Captain Montgomery was ambushed and captured at Elk Run, Va., October 29, 1863, and was held by the enemy a prisoner of war until his exchange, March 1, 1865. He rejoined the Fifth Cavalry April 29, 1865, having been promoted to a first lieutenant April 25, 1865, and to a captaincy to date from January 3, 1865. At the time of his capture he was beyond the videttes. It was hastily concluded that he was acting in disobedience of army orders, and his name was dropped from the rolls and dismissal from the service followed November 20, 1863.

It is now conceded that at the time of his capture he was obeying the order of his superior, First Lieutenant Jones, who had directed him to proceed far enough to ascertain the fate of the patrol sent out a short time before.

The dismissal of Captain Montgomery was based upon a mere conjectural statement of Adjutant Hastings to Captain Leib. The latter officer discovered the error, and requested of the War Department a revocation of the order of dismissal. The erroneous conclusion reached was corrected by a military board, and on the 16th of February, 1865, the President revoked the order of dismissal and reinstated Montgomery.

On the 18th of August, 1865, the War Department decided that Montgomery was entitled to pay during the time he was a prisoner of war, *i. e.*, from October 29, 1863, to March 1, 1865, and he drew pay (\$1,651.37) for that time.

In 1882 Captain Montgomery presented his claim for longevity pay, basing his claim on the decision made by the United States in *United States v. Tyler* (105 U. S. Rep., 244), but the accounting officers refused payment, claiming that Captain Montgomery was not an officer of the Army, and that the President's order of February 16, 1865, revoking his order of dismissal and reinstating him, was illegal and void.

The matter was taken to the Court of Claims, which sustained the accounting officers, upon the theory that the President exceeded his power.

When so brave and gallant an officer asks for simple justice against a conceded wrong your committee will not stop to admit nor to controvert the legal position assumed by the Court of Claims. It is enough, in the judgment of your committee, to know that power exists in Congress to right a wrong in favor of an officer who has rendered long, faithful, and meritorious service, who was erroneously dismissed, and who has too long been denied what has been accorded to others no more worthy.

Your committee do not consider it necessary to attack the soundness of the legal theory asserted by the Court of Claims. A judicial tribunal has simply denied that the Executive had the power to revoke and reinstate; but there is not a whisper against the merit nor justice of this bill, and in favor of an officer with the record of Captain Montgomery your committee do not hesitate to recommend the interposition of the power of the legislative branch in his favor. The legal theory of the Court of Claims was that Captain Montgomery was *not in service* nor an officer of the Army, either *de jure* or *de facto*, during the period of his captivity, and it rendered judgment against him for \$1,651.37, being for the amount paid him during the time he was a prisoner of war, and the court for like reason denied him longevity pay for that time. Captain Montgomery was captured as an officer while in line of duty, was

held a prisoner of war as an officer, and was exchanged as such. He was dismissed without knowledge and without a hearing. He re-entered the military service as such officer on being exchanged, and has served as such for twenty years. To deny the prayer of the bill would be to inflict injustice. Ample reparation cannot be too quickly granted to a soldier who, while suffering the hardships and privations of a captive in a Southern military prison during the late war, is dismissed without knowledge or cause, and for that reason has been denied his rights.

Your committee are constrained to recommend the passage of the bill.



REPORT