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Report : Petition of W. Spencer

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1886.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 611.]

The Committee on Military Affairs, to which was referred the bill (S. 611) for the relief of William C. Spencer, have duly considered the same, and submit the following report:

In the Forty-fourth Congress, Captain Spencer presented his petition to the House of Representatives, and on February 11, 1876, the Committee on Military Affairs made the following report:

The Committee on Military Affairs, to whom was referred the petition of Capt. William C. Spencer, have had the same under consideration, and beg leave to report:

That it appears that Captain Spencer entered the military service of the United States in 1855, as second lieutenant in the Second Infantry; that he served with marked gallantry during the Sioux troubles in Minnesota in 1857, and continued in the Army on the northwestern frontier until the spring of 1861. In August, 1861, he was promoted to a captaincy in the Seventeenth Infantry. In the spring of 1862 he was on duty with the army under General McClellan in the Peninsula in Virginia, and while in the advance on Richmond he heard of the arrest of his uncle, Judge Richard B. Carmichael, of Maryland, under circumstances of cruelty and outrage which greatly incensed Captain Spencer. He sought redress through the commanding general, which was denied; he then tendered his sword to his commanding officer, and was placed in arrest; and being still under arrest, at the second Bull Run, in August, 1862, he performed gallant and highly meritorious service in the field. His health becoming impaired, a sick-leave was granted him, and he remained absent till the 1st of December following, when he was ordered to report for trial, but owing to the absence of one of the witnesses the trial was postponed. Captain Spencer then proceeded to Washington City, and tendered his resignation, which was accepted December 12, 1862.

An imputation of disloyalty seems to have been cast on Captain Spencer, growing out of the indignation he expressed and resentment he showed for the cruel and unwarranted treatment his uncle had received. But this is clearly disproven by the evidence on file with the petition. The question presented in the case is this: Should Captain Spencer, even taking into consideration his meritorious conduct as an officer in the service of his country, be restored to his rank in the Army? In the first place, the justice and propriety of his restoration to the Army is not for the legislative, but peculiarly for the executive department of the Government to determine. The legislative department of the Government should invade the province of the executive department in the matter of restoration or appointment only in extreme cases, which the facts here do not seem to constitute. In the second place, while the circumstances attending the arrest of Judge Carmichael were well calculated to excite in the breast of his nephew a feeling of indignation, yet they did not warrant either the tender of his sword to his superior, or his subsequent resignation. The fact, therefore, that Captain Spencer voluntarily surrendered his commission, when it appears, from his own showing it was entirely in his power to have maintained his rank in the Army and fully vindicate his honor, does not warrant the exercise of legislative interposition in his behalf.

The committee, therefore, report adversely to the prayer of the petition.

All of which is respectfully submitted.

In the same Congress S. 838, for the relief of Captain Spencer, was presented in Senate, and on February 13, 1877, reported adversely by the Committee on Military Affairs and indefinitely postponed.

Said report is as follows:

The Committee on Military Affairs, to whom was referred the bill (S. 838) for the relief of William C. Spencer, have considered the same, and submit the following report:

This bill authorizes the President to appoint William C. Spencer, late a captain in the Seventeenth United States Infantry, to fill the first vacancy occurring in the list of captains of infantry, with the same date of rank held by him July 1, 1862, provided that instead of such reappointment the President is authorized to appoint him to such rank on the retired-list of the Army as he would have attained had he remained in the service continuously. No evidence accompanied the bill.

Your committee referred the bill to the Secretary of War, and received through him from the Adjutant-General of the Army the following report and exhibits, to wit:

ADJUTANT-GENERAL'S OFFICE,
Washington, February 8, 1877.

THE HON. SECRETARY OF WAR:

SIR: I have the honor to return herewith the letter from Hon. F. M. Cockrell, dated the 1st instant, on behalf of the Senate Committee on Military Affairs, inclosing a bill (S. 838) providing for the reinstatement of William C. Spencer as captain in the Army, "with the same date of rank held by him July 1, 1862," and requesting a full history of Captain Spencer's record and all facts connected with his case.

The following documents are annexed thereto:

Captain Spencer's military history, as shown by the records of his regiment—A.

Copy of Spencer's report, dated Frederick, Md., September 17, 1862—B.

Copy of report of General Sykes, dated September 26, 1862, and of inclosures, and indorsements thereon, relative to Captain Spencer's unauthorized absence—C.

Copies of regulations in force at that time governing the subject of absence from duty of officers on account of sickness—D.

Copy of Spencer's letter of resignation and indorsements thereon—E.

December 13, 1865, the President directed Captain Spencer's appointment as second lieutenant, but the examining board in New York, before which he appeared, found him disqualified on account of physical disability, "the loss of sight and disorganization of right eye, result of injury received before entry into service."

July 2, 1868, the President directed that Spencer be allowed a re-examination. He appeared before an examining board (not the same board which had previously examined him), December 16, 1868, and was again reported disqualified by reason of loss of right eye.

The bill under consideration contemplates the restoration of Captain Spencer, with his original date of rank (which would entitle him, immediately on his appointment, to promotion over the heads of all the captains of infantry who have rendered continuous service since his resignation), or his retirement with the rank "he would have attained had he remained in service continuously," viz, that of major.

The retired-list is limited by law to three hundred, and there are now many officers on the active-list rendered totally unfit for duty, by reason of hard service and wounds received in battle, who cannot be retired because there are no vacancies for them on the list. During several years past the President has declined favorable action on Captain Spencer's appeals for restoration.

The copies of records annexed show that Captain Spencer's total service was but little over seven years; that while under charges he absented himself from his command in a manner not warranted by the regulations, which prescribed the means of obtaining such relief from duty as might have been necessary; that he voluntarily resigned from the Army, and thus avoided the opportunity to disprove the charges before a court-martial; and that the disability on which his claim for retirement is based was not incurred in the line of duty or in consequence of service, but existed before he originally entered the Army.

Even had he resigned with a clear record, it is not conceived how he could have any claim whatever for restoration to the rank of captain. His restoration, with the rank fixed by the bill now proposed, would be a great injustice to the Army and mischievous in its effects.

Very respectfully, your obedient servant,

E. D. TOWNSEND,
Adjutant-General.

A.

ADJUTANT-GENERAL'S OFFICE,
Washington, February 7, 1877.

Military history of W. C. Spencer, of the United States Army, as shown by the files of this office.

Appointed second lieutenant Second Infantry, June 18, 1855; first lieutenant Second Infantry, April 30, 1861; captain Seventeenth Infantry, May 14, 1861.

Service.—Joined regiment August 8, 1855, and served with it in Minnesota and Nebraska to June 7, 1858; on leave of absence to April 2, 1859; with regiment in Minnesota and *en route* to Virginia to June 24, 1861; on regimental recruiting service to March 11, 1862; with company in Virginia to June 25, 1862, when placed in arrest for disloyalty and confined at Fort Monroe, Va., to August 19, 1862; served with the Fourteenth Infantry to September 14, 1862, and was reported absent without authority from September 19, 1862.

Resigned, under charges, December 11, 1862.

THOMAS M. VINCENT,
Adjutant-General.

B.

FREDERICK, MD., *September 17, 1862.*

GENERAL I have the honor to inclose a certificate of ill health given me by Dr. Baer, M. D., of this city, in the absence of an Army surgeon.

My address will be "Centreville, Queen Anne County, Maryland."

I am, general, very respectfully, your obedient servant,

W. C. SPENCER,
Captain Seventeenth Infantry.

General L. THOMAS,
Adjutant-General, United States Army, Washington, D. C.

[Inclosure to above.]

FREDERICK CITY, MD., *September 17, 1862.*

William C. Spencer, a captain in Seventeenth Infantry, applied to me to give him case a careful examination, which I have done. He is now and has been for some time laboring under chronic diarrhea and general debility, which disqualifies him from military duty.

I further certify that, from the train of symptoms, it will require a respite and medical attention for at least thirty days.

JACOB BAER, M. D.

Sworn and subscribed to before me on the day and date above written.

THOS. M. HOLBUMER,
Justice of the Peace.

C.

HEADQUARTERS SYKES'S DIVISION,
CAMP NEAR SHARPSBURG, MD.,
September 26, 1862.

GENERAL: Capt. W. C. Spencer, Seventeenth United States Infantry, has left this command without any authority whatever, and by his letter, herewith inclosed, has proceeded to his home in Maryland.

For a long time (since 26th June, 1862), Captain Spencer has been under charges for disloyalty to the Government of the United States. For that cause he was sent in arrest to Fortress Monroe, just previous to the battles in the vicinity of Richmond. I permitted him to join the division as it passed Old Point, *en route* to Aquia Creek, and also permitted him to do duty with the Fourteenth Infantry at the battle of Manassas, August 30, 1862.

Officers say he acquitted himself creditably in that battle. Since then he has been on the sick-report, although able to march and ride on horseback whenever he saw fit. About the 4th September, 1862, a court-martial was ordered for his trial on the original charges for disloyalty, and nothing but the campaign of General McClellan in Maryland prevented its meeting. Captain Spencer was perfectly aware of this, and perfectly aware that he had no authority or sanction to leave the command. He took upon himself to procure a medical certificate from irresponsible sources, which, if necessary, the medical officer of the division would have given, and upon it takes

himself off out of reach of military jurisdiction and away from the action of the court-martial ordered in his case. I have directed that he should be reported as a deserter, and, taking all things into consideration, I respectfully recommend that the President of the United States drop him from the rolls of the Army.

I am, sir, respectfully, your obedient servant,

GEORGE SYKES,
Brigadier-General Commanding Division.

General S. WILLIAMS,
Assistant Adjutant-General Army of the Potomac.

[Indorsements on the foregoing.]

HEADQUARTERS FIFTH ARMY CORPS,
September 26, 1862.

Respectfully forwarded to headquarters Army of the Potomac, concurring in the recommendation of Brigadier-General Sykes.

F. J. PORTER,
Major-General Commanding.

HEADQUARTERS ARMY OF THE POTOMAC,
September 27, 1862.

Respectfully forwarded to the Adjutant-General, concurring in the recommendation of General Sykes.

GEORGE B. McCLELLAN,
Major-General Commanding.
By S. WILLIAMS,
Assistant Adjutant-General.

[Inclosure to General Sykes's letter of September 26, 1862.]

FREDERICK, MD., *September 17, 1862.*

LIEUTENANT: I have the honor to state that I am at this point sick, and having procured the certificate of Dr. Bear, of this city, duly testified to, by a magistrate, of the state of my health, I am going to Centreville, Queen Anne County, eastern shore of Maryland.

The certificate of ill-health has been inclosed by me to the Adjutant-General of the Army.

I am, sir, very respectfully, your obedient servant,

W. C. SPENCER,
Captain Seventeenth Infantry.

Lieut. J. A. SNYDER,
Aid-de-Camp General Sykes's Division Regulars.

D.

[General Orders No. 61.]

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, June 7, 1862.

The great number of officers absent from their regiments without sufficient cause is a serious evil, which calls for immediate correction. By paragraph 177, General Regulations, the power of commanding officers to grant leaves of absence is limited to a "time of peace." In time of war leaves of absence will only be granted by the Secretary of War, except when the certificate of a medical officer shall show, beyond doubt, that a change of location "is necessary to save life, or prevent permanent disability." (Paragraph 186, General Regulations.) In such case the commander of an army, a department, or district, may grant not exceeding twenty days. At the expiration of that time, *if the officer be not able to travel*, he must make application to the Adjutant-General of the Army for an extension, accompanied by the certificate of a medical officer of the Army, in the usual form, and that he is not able to travel. If it be not practicable to procure such a certificate, in consequence of there being no Army physician in the place where the officer resides, the certificate of a citizen physician, *attested by a civil magistrate*, may be substituted.

VI. Where troops are serving in an army corps, or an army, no leave of absence will be granted on the certificate of a regimental or brigade surgeon till the same has been approved by the medical director of such army corps or army; and no medical

director will indorse any certificate until he has made a personal examination of the applicant, or received a favorable report from a medical officer appointed by him to make such personal examination. And if upon such personal examination it be found that the certificate of disability was given without proper cause, the name of the medical officer giving it will be reported to the Adjutant-General of the Army, in order that he may be dismissed from the service.

VII. Where officers are not serving in a division, army corps, or separate army, applications for leaves may be made to the Adjutant-General of the Army; but, except in very extraordinary cases, no leave of absence will be granted unless the application be accompanied by a certificate of the same character as that prescribed in General Orders No. 61.

E.

WASHINGTON, D. C., December 3, 1862.

GENERAL: I have the honor to tender my resignation as an officer of the Army of the United States. I do at the same time promise never to bear arms or engage in war against said Government.

My health, which has been much impaired since the summer campaign before Richmond, causes me to take this step, as you will see from the inclosed surgeon's certificate, that my general condition of health is anything but good, and having lost the sight of an eye, have by the constant and severe use of the other injured it to such an extent as to cause almost entire blindness after dark.

Last summer I was arrested for disloyalty on account of language used in connection with the arrest of a relative, the arrest taking place on the 24th of June. On the 30th of August following, I commanded a company of the Fourteenth Infantry, and was engaged with the enemy (as the regimental return will show) during the day.

Several days ago I received an order while at home sick to repair to the Army headquarters for trial on the aforesaid charge; on reporting, it was found that one of the principal witnesses in the case being absent, it could not be tried until his return, and I was permitted by the commanding general of the division to come to this point and await another summons. I would also state that the exposure to the hardships of camp life which I experienced in going to the Army have made me very much worse, and for fear of having a severe attack of illness, I am compelled to go to my father's house in Maryland, near the town of Centreville.

In conclusion, I would state that, having served the country for nearly eight years as an officer, I deeply regret that the state of my health compels me to resign my commission at the present time.

I am, general, very respectfully, your obedient servant,

W. C. SPENCER,
Captain Seventeenth Infantry.

General LORENZO THOMAS,
Adjutant-General United States Army, Washington, D. C.

[Inclosure to foregoing.]

Captain William C. Spencer has been for some weeks under my care on account of disorder of his digestive organs, unfitting him for military duty. He is still not recovered from this malady.

Captain Spencer also lost one eye many years ago. The other eye is now becoming imperfect, and it will require great care to preserve it

I have advised Mr. Spencer on these accounts to resign his commission in the Army.
N. R. SMITH, M. D.

BALTIMORE, November 29, 1862.

Indorsements on Captain Spencer's letter of December 3, 1862, resignation.

[First indorsement.]

HEADQUARTERS SECOND BRIGADE, SECOND DIVISION,
Fifth Army Corps, December 6, 1862.

Approved and respectfully forwarded, as the officer is of no value to the service, and all attempts to bring him to trial have thus far failed from force of circumstances.

GEO. L. ANDREWS,
Major Seventeenth Infantry, Commanding Battalion of Second Brigade.

[Second indorsement.]

HEADQUARTERS, SYKES'S DIVISION,
December 7, 1862.

Respectfully forwarded, although this officer is now under charges.

GEO. SYKES,
Brigadier-General Commanding Division.

[Third indorsement.]

Respectfully submitted to the General-in-Chief for his information and remarks before being laid before the Secretary of War.

He has just been ordered to the headquarters Army Potomac for trial.

E. D. TOWNSEND,
Assistant Adjutant-General.

A. G. O., DEC. 10.

[Fourth indorsement.]

I approve of accepting his resignation as the shortest way of getting rid of him.

H. W. HALLECK,
General-in-Chief.

DECEMBER 11TH.

In view of the facts set forth in the foregoing report and exhibits, which stand uncontradicted, your committee recommend that the bill be indefinitely postponed, and this report adopted.

In the Forty-sixth Congress, S. 662, for the relief of Captain Spencer, was presented and referred to the Committee on Military Affairs, and reported favorably on May 21, 1880.

The following extract is taken from said report, and contains Captain Spencer's vindication of himself and his reasons for resignation :

It would thus appear that the charge of disloyalty to his Government was not well founded. It is not at all likely that he would have risked his life in battle—doing his very utmost to sustain the integrity and the supremacy of the Federal Union, and to preserve the honor of the nation—had he cherished any sentiments of disloyalty in his bosom. On the contrary, it would be supposed that he would have joined the rebel army and risked his life in its behalf, had his inclination run in the direction of treason. It may be well at this point to quote Captain Spencer's explanation of the foundation of this charge. It is as follows:

"After serving during the advance on Richmond on picket in the trenches at the siege of Yorktown, and on the march up the Peninsula, and on the Chickahominy River (being continually exposed to the fire of the enemy), I heard of the arrest of my uncle, Judge Richard B. Carnichael, of the State of Maryland, who had procured for me my original lieutenantancy in the Army. The manner in which this arrest was conducted brought forth from all parties an expression of disgust and condemnation, for while that elderly judge was presiding over his court, he was dragged off the bench and beaten over the head to a state of insensibility with pistols in the hands of a gang of volunteer soldiers and roughs from Baltimore city. This outraged me beyond measure, and I asked the intercession of General George B. McClellan, and requested him to communicate with the President. He informed me through his chief of staff, General Marcy, that although he sympathized with me (not approving of the manner in which the arrest was made), he could effect nothing at Washington. I therefore tendered my sword to my commanding officer, and was placed under arrest. While en route to Fortress Monroe, a prisoner, and under charge of General Rufus Ingalls (Jackson's advance being reported near), I applied to the general for a command, and was informed if an engagement took place I should have one. After remaining several weeks at Fortress Monroe, and finding I could do nothing for my uncle, I joined my division for trial, and was the guest of Col. David McKibbin, Fourteenth Infantry. While under the charge of disloyalty I marched with the battalion into position on the field of the second Bull Run, and was requested by the colonel to take command of his right company. I did this with the sanction of the division commander, and after the engagement (the loss being 3 officers and 45 men out of 250 men carried into the action), I was reported by the colonel for gallantry on the field.

"Shortly afterwards, General George D. Ruggles, of General McClellan's staff, informed me I would be shortly released from arrest, which was never done.

"My health being impaired by the campaign of the previous spring and summer, I was given a certificate of ill health, and remained absent from the Army until the

1st of December, when I received orders to report for trial. On doing so, one of the witnesses for the prosecution being absent, it was found inexpedient to try me. I then proceeded to Washington and resigned my commission."

This resignation was accepted on the 11th December, 1862.

Captain Spencer further states that his resignation was in no proper sense a voluntary one, but was caused by the fact that for upwards of five months he had been deprived of his command, and kept under charges which prevented him from being afforded an opportunity, which otherwise his commission would have secured him, of rendering valuable services as an officer of the Army to his country, and by the fact that after that time the trial of the charges was further postponed by the prosecution, and that he abandoned the hope of securing a speedy trial and consequent vindication. He further states that at the time of tendering his resignation his health was much impaired by the campaign of the previous spring and summer.

Your committee have again fully investigated this case, and do not find among the papers the statement of Captain Spencer, copied in the foregoing extract from said report, but do not doubt its correctness. They find nothing to justify the statement by Captain Spencer that his resignation was not voluntary. He does not so state, either in his resignation, which is a lengthy statement, or in the statement and explanation copied in said report. In his resignation he gives his reasons in full for his resignation—"ill health"—and regrets "that the state of his health compels him to resign his commission."

His resignation could not have been a forced one. There had been no unnecessary delay in the trial of the charges. They were grave charges. He should have been anxious to have met and refuted them before a court-martial of his brother officers. He could then have met his accusers and the witnesses face to face, and had a full record made for his vindication.

The question of loyalty or disloyalty seems to have been considered the only material point in the favorable report quoted from. Captain Spencer's explanation of the charge and arrest is material. In referring to the brutal arrest of his uncle, he says:

This outraged me beyond measure, and I asked the intercession of General George B. McClellan, and requested him to communicate with the President. He informed me through his chief of staff, General Marcy, that although he sympathized with me (not approving of the manner in which the arrest was made) he could affect nothing at Washington. *I therefore tendered my sword to my commanding officer, and was placed under arrest.*

He had been an officer in the Army for some seven years. He certainly knew his duties as a subordinate. Why, for what purpose, for what object, did he tender his sword to his commanding officer? He fails to give any explanation or reason for this unsoldierly, unofficer-like, and highly insubordinate and inexcusable conduct. He makes no effort to explain or mitigate it, save his feelings of outrage in consequence of the arrest of his uncle, who, he says, "was dragged off the bench, and beaten over the head to a state of insensibility with pistols in the hands of a gang of volunteer soldiers and roughs from Baltimore City."

Upon what ground could he hold the Government of the United States and his superior officers responsible for the unauthorized or, at least, brutal conduct of volunteer soldiers and Baltimore roughs? What remedy would he secure by tendering his sword to his commanding officer?

As to what occurred and all the attending circumstances, when he tendered his sword to his commanding officer, we have been deprived of knowing by reason of his resignation under charges for this conduct and these actions. Nor are even any *ex-parte* affidavits offered us explaining this. He knew what occurred; he knew the trial of the

charges must necessarily develop all the facts and circumstances. So knowing he tendered his resignation, giving ill health as the cause. This ill health was not an incident of the service, is not shown to be so by any evidence; but, on the contrary, was reported by an examining board in New York in 1865 to have been the "result of injury received *before entry into service.*" So far as the record shows, after his resignation, December 3, 1862, accepted December 11, 1862, he was content with his position until December, 1865, when the President directed his appointment as second lieutenant, and on his physical examination before two different boards he was found unfit for military service. He remains content until the Forty-fourth Congress, when he appeals to Congress for appointment to his original rank and grade. He now asks for an appointment to a captaincy with the privilege of being placed upon the retired list.

The whole object seems to be to get on the retired list and receive the 75 per cent. of the pay of a captain, and not to render any service in the Army or to his country. There is no pretense that he is now fit for military duty. If placed upon the retired list—now full to overflowing—it would be simply pensioning him with an allowance far more than officers of the volunteer forces in the late war, disabled by wounds or disease received or contracted in the service, get, while his disabilities are not results of service.

Your committee do not impugn the loyalty of Captain Spencer; do not consider it even a material question. If his loyalty were as abundantly established as that of President Lincoln, General Grant, General Sheridan, or any other, this fact would not entitle him to the relief sought.

After a full reconsideration of this whole case, your committee feel constrained to report back the bill to the Senate with the recommendation that it do not pass, that it be indefinitely postponed, and this report be approved.

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