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Henry Northup.

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HENRY NORTHUP.

DECEMBER 30, 1833.

Read, and laid upon the table.

Mr. E. WHITTLESBY, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to which was referred the petition of Henry Northup, report:

That the committee, from a desire to preserve uniformity of decisions between the Treasury Department, and Congress, in cases heretofore decided by the accounting officers under laws that are now obsolete, sent the papers in this case to the Third Auditor, with a request that he communicate information on several points designated. His answer is received under date of December 23, 1833, and the committee, fully concurring with the said Third Auditor in the construction he puts on the acts referred to in his letter, adopt said letter as a part of this report, and submit the following resolution:

Resolved, That the petitioner is not entitled to relief.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled:

Your petitioner respectfully represents to your honorable body, that in the late war he was adjutant of the third regiment of Ohio volunteers raised under the act of Congress of the 6th of February, 1812; the provisions of which act he heroby refers to. That the said third volunteer regiment was under the immediate command of Colonel Lewis Cass, the present Secretary of War, of which he, your petitioner, was the adjutant. That, at the surrender of Detroit, under the command of Brigadier General William Hull, on the 16th of August, 1812, your petitioner lost his horse, saddle, and bridle, together with all the officers of the army, being taken by the Indians. His, your petitioner's, was taken out of the stable publicly by the Indians, when your petitioner remonstrated, (in presence of General Brock and his aids, Gligg, and McDonald, Attorney General of Lower Canada,) remarking that he thought, by the articles of the capitulation, private property was to be respected. To which Attorney General McDonald very pleasantly replied, "Sir, by the act of Congress of 6th February, 1812, it is provided that if any officer lose \$6, he shall be paid its appraised value; hence your horse is public property." Your petitioner would remark that his horse was not appraised, neither does he know that the horse of any officer was. That subsequent to the late war a commis-

sioner was appointed to pass on these claims; that your petitioner failed to present his claim until the time for passing on such by said commissioner had expired, since when your petitioner has never made application for pay for his said horse. Therefore, your petitioner prays your honorable body to take his case into your consideration, and to grant him the value of his horse thus lost; and your petitioner, as in duty bound, will ever pray.

HENRY NORTHUP.

TREASURY DEPARTMENT,
Third Auditor's Office, Dec. 23, 1833.

SIR: I have the honor to acknowledge the receipt of your letter of the 19th inst., transmitting, by direction of the Committee of Claims, the petition of Henry Northup, and asking whether any allowances have been made to those who volunteered under the act of 6th February, 1812, and who lost horses at Detroit by the capture of the army and the surrender of the Michigan Territory. Your letter also, after mentioning that this is, so far as the committee recollect, the first case that has been presented under the provisions of the act referred to, expresses it to be the wish of the committee to know if similar cases have been presented and rejected at the department; what construction has been put upon the 4th section of said act, and by whom; and whether many similar claims have been presented.

In reply, I have to state that I am not aware of any allowance having ever been made under the law referred to in a case like this, or that a like claim has under that law ever been presented. The petitioner appears to have been a staff officer of Col. Cass's regiment of Ohio volunteers, and which consisted of infantry. On looking over the provisions of the law, I find that by the first section the President of the United States is authorized to accept of any company or companies of volunteers, either of artillery, cavalry, or infantry, who might associate and offer themselves for the service, who should be clothed, and, in case of cavalry, furnished with horses at their own expense, and whose commissioned officers should be appointed in the manner therein pointed out. The 2d section enacts that any company, battalion, regiment, brigade, or division, thus offering itself, should whilst in service be under the same rules and regulations, and be entitled to the same pay, rations, forage, and emoluments of every kind, bounty and clothing excepted, with the regular troops of the United States. The 4th section prescribes that in case any volunteer above mentioned, while in actual service, shall sustain any damage, by injury done to his horse, or such other equipment as shall have been furnished at his own expense, or by loss of the same, without any fault or negligence on his part, a reasonable sum; to be ascertained in such manner as the President of the United States may direct, shall be allowed and paid to such volunteer for each and every such loss and damage. The 1st section of the supplementary law of the 6th July, 1812, directs that in all cases where volunteers had offered, or thereafter should offer, their services to the United States, under the first mentioned act, it should be lawful for the President of the United States to appoint and commission officers thereto, by and with the

advice and consent of the Senate, any thing in that act to the contrary notwithstanding; and the 2d section of the law of the 6th July, 1812, authorizes the President to form the corps of volunteers into battalions, squadrons, regiments, brigades, and divisions, and to appoint thereto, by and with the advice and consent of the Senate, general, field, and staff officers, conformably with the military establishment of the United States, and directs that they shall be entitled to the pay and emoluments of officers of a similar grade and corps in the army of the United States. In none of these provisions can I see the slightest manifestation of a design to confer on the commissioned officers who might be appointed any benefits beyond those to which like officers in the regular army of the United States were entitled, all of whom, authorized by law to keep horses in service, had to furnish them at their own expense, and could derive no remuneration for the loss of any, except they were killed in battle.

The non-commissioned officers and privates of cavalry in the regular army had, of course, to be furnished with horses at the expense of the Government, whereas the non-commissioned officers and privates of the cavalry volunteers authorized to be taken into service by the act of the 6th February, 1812, were to furnish their horses at their own expense; and it is, therefore, them, and to them only, that the fourth section of that act is considered by me to apply. It does not, you will perceive, in terms, extend to *officers*, although the next following section does, wherein pensions are authorized to be allowed for disabilities by wounds or otherwise.

The petition and Governor Cass's certificate are returned.

With great respect,

Your most obedient servant,

PETER HAGNER, *Auditor.*

The Hon. E. WHITTLESEY,

Chairman of the Committee of Claims, House of Reps.

DETROIT, October 24, 1829.

I certify that Henry Northup was the adjutant of the third regiment of Ohio volunteers in the service of the United States, under my command, in the year 1812. That he had a valuable horse, worth, probably, upwards of one hundred dollars, which I have always understood and believe fell into the hands of the British or Indians, at the surrender of Detroit, and was lost to Adjutant Northup.

LEW. CASS.