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Avery D. Babcock and wife.

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Recommended Citation

S. Rep. No. 150, 55th Cong., 1st Sess. (1897)

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AVERY D. BABCOCK AND WIFE.

JUNE 11, 1897.—Ordered to be printed.

Mr. STEWART, from the Committee on Claims, submitted the following

REPORT.

[To accompany S. 1149.]

The Committee on Claims, to whom was referred Senate bill 1149, have considered the same, and beg leave to report favorably.

A bill similar to that herein named during the several fiscal years last past has several times passed the Senate, and though favorably reported by the Committee on Claims in the House, has never as yet been acted on by that body. A similar bill, to wit, S. 525, last passed the Senate on June 9, 1896. The history of said claim is fully recited in Senate reports made to accompany said bills, and are appended hereto and made parts hereof.

Your committee therefore recommend the passage of said bill.

[Senate Report No. 748, Fifty-fourth Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 524) for the relief of Avery D. Babcock and wife, of Oregon, having duly considered the same, report thereon as follows:

A bill similar in its provisions was recommended by the War Department and passed the Fifty-first, Fifty-second, and Fifty-third Congresses, but was not acted upon in the House of Representatives. The last report made from this committee is submitted herewith and made a part hereof, in which is fully and clearly recited all the facts in detail relating to the history of this claim.

Your committee concur in the reasons given in said report, and report back the bill with the recommendation that it do pass.

The report made by the Senate Committee on Claims in the Fifty-third Congress is as follows:

[Senate Report No. 280, Fifty-third Congress, second session.]

The Committee on Claims, to whom was referred the bill (S. 744) for the relief of Avery D. Babcock and wife, of Oregon, having duly considered the same, respectfully report as follows:

A bill similar in its provisions, to wit, S. 1982, was favorably reported to the Senate from the Senate Committee on Claims on February 10, 1892, in Senate Report No. 199,

Fifty-second Congress, first session, and passed the Senate April 12, 1892. It was referred to the House Committee on Claims, but no action thereon was taken.

All the facts out of which this claim arises are fully recited in said Senate Report No. 199, Fifty-second Congress, first session, which report your committee now adopt and submit herewith, and recommend that this bill do pass.

[Senate Report No. 199, Fifty-second Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 1982) for the relief of A. D. Babcock and wife, of Oregon, having duly considered the same, respectfully report:

A bill similar in its provisions was favorably reported to the Senate from the Senate Committee on Military Affairs on February 11, 1890, in Senate Report No. 236, Fifty-first Congress, first session, and passed the Senate on March 2, 1890. No action seems to have been had on said bill in the House.

Claimants, believing that the honorable Secretary of War, under section 9 of the act of February 14, 1853 (10 Stat. L., p. 160), had jurisdiction over the subject-matter of this bill, were, on December 10, 1891 (Fifty-second Congress, first session), granted leave to withdraw from the files of the Senate all the papers relating to said claim, for the purpose of submitting the same to the honorable Secretary of War for his consideration, examination, and adjudication. But the honorable Secretary of War, on January 27, 1892, after a careful examination into the matter, declared that his Department had no authority under the provisions of said act to consider the same, the conclusion of that Department being that further legislation by Congress was necessary in order to obtain the relief sought for.

The papers in the case are voluminous, among which is a report from the War Department reciting that the amount provided for in this bill, to wit, \$2,000, is, in its opinion, the sum equitably due these claimants.

All the facts in this case are fully set forth in said Senate Report No. 236, Fifty-first Congress, first session, which your committee now adopt and recommend that this bill do pass.

[Senate Report No. 236, Fifty-first Congress, first session.]

The Committee on Military Affairs, to whom was referred the bill (S. 73) for the relief of A. D. Babcock and wife, of Oregon, having duly considered the same, respectfully report:

A bill similar in its provisions was introduced in the Forty-eighth, Forty-ninth, and Fiftieth Congresses, and referred to the honorable Secretary of War for report. A report was duly made by Mr. Secretary Endicott, but no report was made by the committee.

The object of this bill is to pay A. D. Babcock and wife for the use and occupation by the United States of certain lands situated in the State of Oregon, and described in said bill. From said report of the Secretary of War and from evidence submitted it appears that the lands in question were settled, improved, and occupied as early as April 1, 1854, by A. D. Babcock and his wife, under the Oregon donation laws, and that a patent to said donees was duly issued by the United States March 2, 1883, therefor, to wit: Oregon donation claim No. 58, notification No. 8033, donation certificate No. 4000, being part of sec. 8, T. 6 S., R. 27 W., Willamette base and meridian, containing 159.35 acres.

That said lands were selected as a military post by the late Maj. Gen. William B. Hazen, chief signal officer, United States Army, in 1856, as certified to by him on February 16, 1885, he having selected these lands whereupon to establish and erect Fort Yamhill for the use of the Army serving in Oregon. Its occupation and use is duly certified to by Gen. William B. Hazen, United States Army; by the late General Sheridan, United States Army; by Gen. A. J. Smith, United States Army (retired); by Dr. Gleason, late assistant surgeon, United States Army; by Col. C. A. Reynolds, deputy quartermaster-general, United States Army; by Captain Lafollett, First Oregon (United States) Volunteers; by J. H. Batchelder, quartermaster-general, United States Army; and also sworn to by Gen. Benjamin Simpson, late United States surveyor-general for the State of Oregon; by Nathan Hussey, George Thorpe, Lewis Booley, and William Savage, reputable citizens of Oregon, all cognizant of the facts.

The reports from United States Surveyor-General Tolman and S. T. Barin, register United States land office, Oregon City, Oreg., show that said lands were also inside of the Grande Ronde Indian Reservation, established June 30, 1857 (Senate Ex. Doc. 26, Thirty-fourth Congress, first session), as well as a part of the military post of Fort Yamhill, established by General Hazen in 1856 and garrisoned by General Sheridan under Special Orders 38, Headquarters Department of the Pacific, of April 20.

1856; both of these dates, however, were subsequent to the date of the location upon these lands by said donation claimants, A. D. Babcock and wife. Under the Oregon donation act of Congress the donees were entitled to the land for which a patent was subsequently issued, as before stated. From the evidence it sufficiently appears that these lands were taken possession of by the United States in 1856 and 1857, and were continuously used and occupied by the United States for over ten years, some portions thereof for Indians and other portions thereof for military purposes.

The value of the use and occupation of these lands is variously estimated from \$2,000 to \$3,000. The estimate of the Secretary of War is \$2,000, which is the lowest estimate of all. General Hazen puts it at \$3,000.

The committee have taken the lowest sum, and recommend that the bill be amended by striking out the words "three thousand" and inserting "two thousand," and recommend the passage of the bill as amended.

[S. 1149, Fifty-fifth Congress, first session.]

A BILL For the relief of Avery D. Babcock and wife, of Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, authorized and directed to pay to Avery D. Babcock, of Polk County, Oregon, and to Margaret L. Babcock, his wife, out of any money in the Treasury not otherwise appropriated, the sum of two thousand dollars, to be equally divided between them, in full payment of their claim against the Government of the United States for the use and occupation by the United States of their donation claim numbered fifty-eight, in section eight, in township six south, range seven west, of the Willamette meridian, in the State of Oregon.

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