

12-29-1837

## Horses and other property lost in the military service.

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HORSES AND OTHER PROPERTY LOST IN THE MILITARY SERVICE.

[To accompany bill H. R. No. 803.]

CONGRESS OF THE UNITED STATES.

IN THE HOUSE OF REPRESENTATIVES, December 29, 1837.

On motion of Mr. GRAHAM, of Indiana,

Resolved, That the Committee of Claims be instructed to inquire into the expediency and propriety of amending the act entitled "An act to provide for the payment of horses and other property lost or destroyed in the military service of the United States," approved January 18, 1837, so as to extend the benefits of said act to all cases of horses or other property of officers, as well as other soldiers, and to mounted rangers in the military service of the United States, lost or destroyed in such service since the 18th of June, 1812; and that the committee also inquire into the expediency of providing for the loss of horses and other property pressed into the service in the late war of 1832.

Attest:

W. S. FRANKLIN, Clerk.

MAY 23, 1838.

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

REPORT:

*The Committee of Claims, instructed by a resolution passed by the House of Representatives on the 29th of December, 1837, to inquire into the expediency and propriety of amending the act entitled "An act to provide for the payment of horses and other property lost or destroyed in the military service of the United States," approved January 18, 1837, so as to extend the benefits of said act to all cases of horses or other property of officers, as well as other soldiers, and to mounted rangers in the military service of the United States, lost or destroyed in such service since the 18th of June, 1812; and also instructed by the same resolution to inquire into the expediency of providing for the loss of horses and other property, pressed into the service in the late war of 1832, report:*

The first branch of the first part of the resolution directs the committee to inquire into the expediency of extending the act of the 18th of January, 1837, to the regular officers of the army, in all cases of lost horses or other property.

Officers of the regular army, from the origin of the Government to the present time, have only been paid for their horses when they have been

killed in battle. The first section of the act of May 12, 1796, is as follows: "That every officer in the army of the United States, whose duty requires him to be on horseback in time of action, and whose horse shall be killed in battle, be allowed a sum not exceeding two hundred dollars, as a compensation for each horse so killed."

By the second section, the act has a retrospective operation to the 4th of March, 1789. Under the provisions of this act, the losses that occurred during the severe and desolating campaigns against the Indians on the Western frontier, from the organization of the Government to Wayne's treaty at Greenville, on the 3d of August, 1795, and from that time, during the period when our military posts were in remote positions in the Indian country, of difficult access, and attended with great danger to horses in traversing woods and swamps, and during the hardships and privations of the last war with Great Britain, have been settled.

An officer, when he enters the service, estimates the risks to which his property is exposed, and they are fair subjects of contract. The Government gave a greater compensation than it would give if the officers did not run the risk of their horses, except when killed in battle. There may be individual cases of great hardship, and so there are in all classes of contracts; but they should not change either general or special legislation.

The act of April 9, 1816, did not extend to officers of the regular army; and where that act provided for the payment of accoutrements, equipage, and other property lost in the military service of the United States without any fault of the owner, Mr. Madison decided that it did not extend to those articles which, by military usage, the individual found himself.

The clothing of a draughted militiaman, and the arms of an officer, are mentioned by way of illustration. Uniformity and stability should be observed in legislation, and, so far as they are consistent with justice, they should be adhered to.

The committee do not think it is expedient to extend the act of January 18, 1837, to officers in the regular army, so as to make payment to them for horses or other property they may have lost in the military service.

The second branch of the first part of the resolution directs the committee to inquire into the expediency of extending the provisions of the act aforesaid to mounted rangers in the military service of the United States since the 18th of June, 1812, who have lost their horses or other property in said service.

That part of the act of January 16, 1837, which has a bearing on the present investigation, is contained in the first section, and is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any field or staff, or other officer, mounted militiaman, volunteer, ranger, or cavalry, engaged in the military service of the United States since the 18th of June, 1812, or who shall hereafter be in said service, and has sustained or shall sustain damage, without any fault or negligence on his part, while in said service, by the loss of a horse in battle, or by the loss of a horse wounded in battle, and which has died or shall die of said wound, or being so wounded shall be abandoned by order of his officer, and lost, or shall sustain damage by the loss of any horse by death or abandonment, in consequence of the United States failing to supply sufficient forage, or because the rider was dismounted and separated from his horse, and ordered to do duty on foot at a station detached from his horse; or when the officer in

the immediate command ordered or shall order the horse turned out to graze in the woods, prairies, or commons, because the United States failed or shall fail to supply sufficient forage, and the loss was or shall be consequent thereof, or for the loss of necessary equipage, in consequence of the loss of his horse as aforesaid; shall be allowed and paid the value thereof."

Rangers are included in this section, as well as mounted militiamen or cavalry, unless they entered the service under express agreement that they would incur the risk of their horses and other property themselves; and if they did make such contracts, and received increased compensation in consequence thereof, the committee do not perceive why they should not abide by their contracts.

The committee are informed that the rangers who entered the service of the United States by virtue of the act of June 15, 1832, agreed they would furnish their own forage; and therefore, when the loss of a horse was directly or indirectly owing to the want of forage, they have not been remunerated for such loss.

The third section of that act provided that the rangers should arm and equip themselves, unless otherwise ordered by the President, and provide their own horses, and should be allowed each one dollar per day, as a full compensation for their services and the use of their arms and horses.

By the first section they were to be armed and equipped, mounted and organized, in such manner, and to be under such regulations and restrictions, as the nature of the service might, in the opinion of the President, make necessary.

The corps was to be raised for the defence of the frontiers, where it was known the United States could not furnish forage. One entire sum was to be given for the service of man and horse, and is almost fourfold the amount paid to a man who did duty on foot.

In order that there should not be any misunderstanding on this subject, or any ground for cavilling, the Secretary of War, under the President of the United States, in issuing orders for raising the rangers, expressly stated: "Rations will be furnished to the men at the expense of the United States; but forage will be found by themselves, or, if provided by the United States, will be charged to the men."

The honorable W. Graham, in a communication to the chairman of the committee, says: "At the time Captain Ford's company (of rangers) entered the service, they were directed by the commanding officer to have their horses and equipments appraised; and they were assured, at the same time, that if any part of this property was lost or destroyed while in such service, provided such loss or destruction was not occasioned by any fault or neglect on their part, they would receive compensation from the Government." The law of the United States, and the regulations issued by the Secretary of War, as mentioned above, must be supposed to have controlled the enlistment, rather than any assurance from the commanding officer of the company.

Where rangers have lost their horses, either directly or indirectly, from the want of forage, and applications have been made to the Third Auditor for payment, under the act of January 18, 1837, he has decided that where the United States were under no liability to supply forage, there could be no failure on their part in not supplying it, and consequently no loss could be attributed to the breach of a contract on their part. The committee concur in the correctness of this decision. Other rangers than those who

were organized under the act of June 15, 1832, may have lost their horses; but if there are such, and they have not taken the risk on themselves, they are entitled to a remuneration for their losses, if they fall within the purview of the act of January 18, 1837; but if they have received a consideration for the risk, or have made any agreement in relation thereto, the committee think they should abide by their contract; and they do not deem it to be expedient to enlarge the provisions of the act referred to.

By the last clause of the resolution, the committee are directed to inquire into the expediency of providing for the loss of horses and other property pressed into the service in the late war of 1832.

The committee entertain the opinion, that if a board of commissioners shall not be established, nor the powers of the accounting officers enlarged so as to embrace the cases of impressment, provision should be made by law for settling such claims, under suitable and proper restrictions. They will not act definitively on this branch of the resolution at this time, unless otherwise directed by the House, but wait the future action of the House on the bill to establish a board of commissioners for the settlement of claims.

The act of January 18, 1837, was to expire, by its own limitation, at the end of the session of Congress next after its passage; but an act passed at the first session of the 25th Congress, which will not expire until the close of the present session.

There are many claims within the purview of that act that remain undecided, and more will necessarily arise during the military operations in Florida, and in other quarters, which require, in the opinion of the committee, an extension of the act to the end of the next Congress, at least; and they see no strong objection against its being made perpetual.

When the bill first passed the House, it was without limitation; and it was with reluctance the committee assented to the amendment in this particular that was made by the Senate. A bill for continuing the act in force is herewith presented.

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HOUSE OF REPRESENTATIVES, *December 30, 1837.*

SIR: I have the honor to enclose the report of the Third Auditor, in relation to certain claims for horses lost by mounted rangers in the service of the United States. There can be no reasonable doubt but the act of January 18, 1837, was intended to provide for the cases excluded by the Auditor's report. No troops in the service of the country suffered more privations and hardships, or rendered more effectual service to our extended frontier. They were usually put on the severest duty: reconnoitring and forced marches, in situations where forage could not be procured, broke down their horses. After the close of the Black Hawk war, the mounted rangers were ordered to explore the great Western region lying between our settlements, the confines of Texas, and the Western Indians. On this tour the duties were very severe. Forage could not be procured. They had no other resource of subsisting their horses but by turning them out to graze. This was done by the order of Colonel Many, who commanded the expedition.

At the time Captain Ford's company entered the service, they were directed by the commanding officer to have their horses and equipments

appraised; and they were assured, at the same time, that if any part of this property was lost or destroyed while in such service, *provided* such loss or destruction was not occasioned by any fault or neglect on their part, they would receive compensation from the Government. The horses and equipments were accordingly valued, by three respectable freeholders, who, *after having been duly sworn*, certified the appraised value of all the horses and equipments of the company of mounted rangers under Captain Ford, as mustered into the service of the United States.

This bill of appraisement is now in my possession. Those rangers who lost their horses were compelled to remount themselves immediately, or as soon as horses could be purchased, generally at a very high price—always at their individual expense.

Under all the circumstances of the case, it appears to me that the rangers have as strong claims on the justice and liberality of their Government as any troops employed in the service of the United States since June, 1812.

You will pardon the freedom I have used in recommending the claims of those men. I was present when they were called into the service, heard the assurance given them that lost property would be paid for, and have some general knowledge of the services they performed.

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

W. GRAHAM.

HON. E. WHITTLESEY,

*Chairman of the Committee of Claims.*

WAR DEPARTMENT, *December 14, 1837.*

SIR: I have the honor to transmit you a report of the Third Auditor, in answer to your two letters of the 8th instant, on the subject of the loss of horses in the service of the United States by Meedy W. Shields and William Thomas.

Very respectfully, your most obedient servant,

J. R. POINSETT.

HON. W. GRAHAM,

*House of Representatives.*

TREASURY DEPARTMENT,

*Third Auditor's Office, December 12, 1837.*

SIR: I have the honor to acknowledge the receipt of a letter of the honorable W. Graham, and other papers referred by you to me, for a report. The papers relate to two claims for the loss of horses: one by Meedy W. Shields, lieutenant of Captain Lemuel Ford's company of United States rangers, and the other by William Thomas, a private of the same company.

In the case of William Thomas, Captain Ford certifies that a gray mare, of the value of \$50, the property of said Thomas, a private of his company of United States rangers, was lost on the 15th of August, 1832, on a forced march; that said horse was turned out to graze, it being the only means of subsisting the horses; that whilst so turned out it became snagg'd, and so disabled that it was ordered to be abandoned by the com-

manding officer; and that he is well satisfied that the loss of said horse cannot be charged to the negligence or inattention of said Thomas. There is also a deposition of the claimant, declaring that he has never received remuneration for said horse.

According to the testimony, the loss appears to have resulted from a want of forage. The law of the 15th of June, 1832, under which the rangers were called into service, authorized the President of the United States to raise, either by acceptance of volunteers or enlistment for one year, unless sooner discharged, 600 mounted rangers, to be armed, equipped, mounted, and organized, in such manner, and to be under such regulations and restrictions, as the nature of the service might; in his opinion, make necessary. And the law provided that the non-commissioned officers and privates should arm and equip themselves, unless otherwise ordered by the President, and provide their own horses; and should be allowed each \$1 per day as a full compensation for their services and the use of their arms and horses.

On the day next after the passage of the law, an authority for raising rangers appears to have been given, through the War Department, to Captain Ford and to other officers, in which regulations as to the organizing, arming, equipping, and providing them, are laid down. One of them is in the following words: "Rations will be furnished to the men at the expense of the United States; but forage will be found by themselves; or, if provided by the United States; will be charged to the men." The rangers are shown by the rolls to have received compensation at \$1 per day, as allowed by the law; and they had, as already indicated, to find their forage themselves.

Although in the law I have to administer there is a provision authorizing payment for horses lost in consequence of their having been turned out to graze, it is limited to cases in which they had been so turned out "because the United States failed to supply sufficient forage." In cases where they were under no liability to supply forage, there could be no failure on their part in not supplying it; and on this ground the claims of rangers for losses attributable to the non-supply of forage are not allowed by me.

In the case of Lieutenant Shields, Captain Ford has certified that on the 29th of May, 1833, the horses of his company, among which was Lieutenant Shields's, were turned out to graze by the order of Colonel Many, there being no forage; and that very soon after a large herd of buffaloes rushing amongst the horses, they became so frightened that the horse aforesaid, with many others, ran off, and, though diligent pursuit and search were made, he could not be found; that he is very certain that every precaution was taken to secure said horse, and that he was not lost on account of any negligence or inattention on the part of said Shields.

By the third section of the before-referred-to act of the 15th of June, 1832, authorizing the President to raise mounted volunteers, the commissioned officers were placed in the same situation as regards pay and emoluments as officers of the same grade in the regular army.

The law of the 18th of January, 1837, under which I am now acting, being inapplicable to officers of the regular army, no remuneration for Lieutenant Shields's loss can be made under it. The only law appearing to have been ever enacted authorizing payment for the loss of horses by

officers of the regular army, was passed on the 12th of May, 1796, and that provides only for horses killed in battle. The papers in both cases are herewith returned.

With great respect, your most obedient servant,  
**PETER HAGNER, Auditor.**

Hon. J. R. POINSETT,  
*Secretary of War.*

Mr. E. S. ...

REPORT

The Committee of the House of Representatives on the subject of the ...

That the Committee of Claims, on the 10th of ...  
in the petition, which concluded, with a prayer for the ...  
claims mentioned in the petition to the Secretary of War ...  
of any ...  
performed and ...  
Frisch ...  
Jones, ...  
in ...  
under a ...  
whether ...  
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