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PAY FOR HORSES LOST IN THE MILITARY SERVICE OF
THE UNITED STATES.

[To accompany bill S. No. 82.]

JULY 6, 1838.

Read, and, with the bill, committed to a Committee of the Whole House to-morrow.

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

REPORT:

The Committee of Claims, to whom was referred the bill (No. 82) from the Senate entitled "An act to provide for the uniform payment of horses lost in the military service of the United States," report:

That the bill provides "that all laws now in force for making payment for horses lost by militia and volunteers in the military service of the United States shall be, and the same hereby are, extended to the officers of the army of the United States, and shall be construed to include the horses lost by them, under like circumstances, as fully as if said officers had been named in said act."

The same subject, with others, was referred to this committee by this House on the 29th day of December last, by a resolution introduced by the honorable William Graham. The committee reported on the 23d of May; so much of said report as relates to the subject of this bill is as follows:

"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 petition of Lieutenant Colonel Kearney and the petition of Captain Trenor, accompany the bill; and the existence of the bill is probably owing to the loss which these officers sustained. It appears from the petitions of these officers, that they were encamped west of the Washita river, on the Southwestern frontier, in July, 1834, and had, in the encampment under the command of Lieutenant Colonel Kearney, from 250 to 300 horses and mules, and 60 or 70 beeves, which they turned out in the morning to graze; that, on the 28th of July, three horses, the property of Lieutenant Colonel Kearney, strayed away; that one of them was reclaimed; and that, after all attempts to reclaim the other two, they have not been retaken.

To show what has been the decision in relation to losses that officers of the regular army have sustained by the death of their horses, when not killed in battle, or when they have not died of wounds received in battle, the committee refer to the following extract of a letter from Mr. Hagner to Mr. Poinsett, on the 15th of June, 1837, on an application made by Colonel Todd.

"I have the honor to return the letter of Colonel C. S. Todd, referred to me by you for a report. It relates to the loss of three horses by him while an officer of the regular army of the United States during the late war with Great Britain; and in it he has referred to the law of the 18th of January last, and expressed that the terms of the first section thereof appear to him to be comprehensive and conclusive, on the point of its making provision for the cases in which an officer of the regular army, during the war of 1812, lost horses or other property under the circumstances contemplated by that law; those terms authorizing compensation for horses lost, under certain circumstances, by 'any field, staff, or other officer, mounted militiaman, ranger, or cavalry, engaged in the military service of the United States since the 18th of June, 1832;' and that he cannot see how regular officers can be excluded from the provision.

"As signified in the letter, the law is not considered by me to provide for any losses sustained by officers of the regular army. For their benefit, an act, unlimited in its duration, was passed on the 12th of May, 1796; and has ever since remained unrepealed; and it is the only one under

which officers of the regular army have, to my knowledge, ever been compensated for the loss of horses. On the 9th of April, 1816, a law (to continue in force two years) was enacted, containing provisions nearly similar to those in the act of January last, and which had to be administered by a commissioner, who, in the discharge of his duties, was to be subject to such rules and regulations as the President of the United States should prescribe.

“The commissioner concluded that the words “any person;” in one of these provisions, were intended to include the officers of the regular army, as well as those of militia and volunteers. His views on this subject appear, by the correspondence records of his office, to have been presented in a letter to the Secretary of War, dated the 16th of October, 1816, and which is presumed to be on the files of your Department; and the reply, communicating the decision of the President in relation thereto, is dated on the 21st of that month. Thereafter, no claims for the loss of horses by officers of the regular army were deemed to be admissible under that law. Another act was passed on the 4th of May, 1822, for the relief of the officers, &c., engaged in the campaign of 1818 against the Seminole Indians, and in which campaign there were numerous officers of the regular army on duty. This, in terms, made provision for ‘any officer, volunteer, ranger, cavalry, or other persons engaged in the campaign;’ but it was never considered by me to apply to an officer of the regular army, nor did any ever receive remuneration under it.”

By the 14th section of an act passed on the 30th of May, 1796, volume 2, page 558, entitled “An act to ascertain and fix the military establishment of the United States,” certain rates of allowance, in money, were prescribed to certain descriptions of officers, whenever forage should not be furnished by the public.

By the regulations for the army, paragraph 1044, “officers are allowed to draw forage in kind, when in actual service in the field,” &c. It seems to be at the option of the officer whether he draw forage in kind, or whether he receive commutation. If he prefers to draw in kind, it is reasonable that he should notify the proper officers of such intention. Before Congress legislates on this subject, a very extensive examination should be had of the facts, that a knowledge may be obtained of the number of cases that a general law will probably present for allowance, and of the circumstances attending the losses. If the officers in the regular army have considered themselves aggrieved because they have not been put on a footing of equality with the volunteers and militia, it is singular they have not asked some general relief.

It is believed that allowing an officer to commute his forage for money has been a perquisite of some magnitude. The officers enumerated in the 14th section mentioned, are allowed a certain rate per month for forage, when it is not furnished by the public. It is at his option whether he takes forage or money. If he is at a post where he does not need his complement of horses, he can commute his forage for all the horses to which he is entitled: this is advantageous to him. So far as such allowances have been made, the committee do not complain; but it would be manifestly unjust to obtain this commutation when he keeps no horse, or not his complement of horses, and then continue to draw his commutation until a casualty happens, and then claim that the casualty has happened from the act of the Government.

The committee are opposed to the bill, also, because it is retrospective. If it is proper that payment should be made in future for such losses, the laws should be revised with reference to this new and increased liability.

The committee, at present, entertain the opinion that the bill mentioned should not become a law; and they submit the following resolution:

Resolved, That Senate bill (No. 82) entitled "An act to provide for the uniform payment of horses lost in the military service of the United States," ought not to pass.