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Jacob Hanks.

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Recommended Citation

H.R. Rep. No. 1061, 25th Cong., 2nd Sess. (1838)

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JACOB HANKS.

[To accompany S. bill No. 202.]

JULY 7, 1838.

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

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

REPORT :

The Committee of Claims, to whom was referred a bill from the Senate (No. 202) for the relief of Jacob Hanks, report :

That the bill provides that there be allowed and paid to Jacob Hanks, of Adams county, in the State of Illinois, late a private in Captain Earl Pierce's company of Illinois mounted volunteers, out of any money in the Treasury not otherwise appropriated, the sum of sixty-five dollars, the value of a horse lost by him in the campaign against the Sac and Fox Indians on the Northwestern frontier, in the summer of the year one thousand eight hundred and thirty-two, while employed in the military service of the United States. The cause of the death of the horse is not mentioned, and, from the bill itself, the inference is, that the United States are liable for the loss of all horses while employed in the military service of the United States. The liability of the United States, on the contrary, is confined to specified losses enumerated in the act of January 18, 1837.

The cause of the death of the horse is stated in the report to have been in consequence of extreme fatigue and exhaustion, proceeding from a failure on the part of the United States to supply sufficient forage for his subsistence. "Extreme fatigue and exhaustion for the want of forage" are not causes enumerated in the law; and if what the petitioner alleges be true, he is not entitled to relief. By his contract with the United States, he took upon him the risk of his horse dying from extreme fatigue and exhaustion, and in consideration of it the United States agreed to pay him forty cents a day, which is the interest of \$2,433½ per day. This has been paid him, and, in addition thereto, an allowance of twenty-five cents a day for forage.

The claim was sent to Mr. Hagner for allowance, under the act of January 18, 1837.

His report in the case is affixed to the report of the committee in the Senate, and is referred to. The committee in the Senate say, "They have not followed the Third Auditor through his technical discussion of

numerous supposed difficulties in the way of this claim, nor have they attempted to answer his logical deductions from supposed premises, calculated to defeat the just intention of Congress in respect to this meritorious class of our citizens." These remarks are made on the following state of facts: In the roll opposite to the name of Jacob Hanks there is a note, which has been altered, in the manner here represented: "(on foot)—August 4th, 1832, (sick,) return home." The committee suppose that the words in parentheses have been inserted since the roll was first made out.

Captain Pierce made no return that the horse of Jacob Hanks was lost. The claimant made a deposition in 1833, in which he stated that his horse failed and gave out near Rushville, on or about 20th August, and died on the 22d of that month. This was six days after the discharge of the company.

August 12th, 1837, Captain Pierce gave his deposition, and stated that about the 31st day of July, in the same year, the said Jacob Hanks, while at the mouth of Bad-axe river, on the Mississippi river, unavoidably abandoned and lost his sorrel mare, appraised at \$65, as aforesaid, in consequence of extreme fatigue and exhaustion, and of the United States failing to supply sufficient forage for its subsistence. The abstracts made by Mr. Hagner from official documents are what the committee of the Senate describe as "supposed difficulties," raised by him for "technical discussion," and from which he has made "logical deductions, from supposed premises, calculated to defeat the just intention of Congress," &c. After stating what is contained in the deposition of Captain Pierce, the committee of the Senate say, "The committee are, therefore, reduced to the necessity of either allowing the claim, or deciding that Captain Pierce has committed perjury; which latter alternative they are by no means disposed to adopt."

In the opinion of this committee, neither alternative is necessary; a more charitable conclusion is, that Captain Pierce is mistaken. His deposition was given five years after the transaction, and it is not to be presumed he had his muster-rolls with him. He was officially bound to make correct return of the loss of horses. If this loss took place, as he states, in July, why did he not report it? If it took place then, why did the claimant swear that it took place on the 22d of August?

In the opinion of this committee, by the most obvious rules of evidence, greater reliance should be placed on the official acts and documents of a witness at the time, than on a statement made by the same witness many years afterwards. The following resolution is presented:

Resolved, That the bill (No. 202) for the relief of Jacob Hanks, ought not to pass.