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William Purcell.

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H.R. Rep. No. 268, 24th Cong., 2nd Sess. (1837)

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WILLIAM PURCELL.

FEBRUARY 22, 1837.

Read, and laid upon the table.

Mr. RUSSELL, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to which was referred the petition of William Purcell, praying compensation for two horses lost by him when in the service of the United States, in the year 1811, report:

That the claim now submitted was before the Senate of the United States at the 1st session of the 23d Congress; and a bill was then introduced there for the relief of the petitioner, which passed that body, and was sent to the House of Representatives for their concurrence, and there referred to the Committee of Claims: that committee, on the 27th June, 1834, made a report, which concluded with a resolution that the bill from the Senate, for the relief of William Purcell, ought not to pass; and no further action was had thereon at that session in the House of Representatives. No report was transmitted from the Senate with the bill to the House of Representatives; nor does it appear, from any report made to the Senate, upon what principle it was sustained there. There is now no additional evidence submitted with the petition, nor is there any error pointed out by the petitioner heretofore made by this committee; and, on a careful review thereof, the committee have now come to the same conclusion which was arrived at then. While the committee concede the propriety of correcting errors into which they previously may have fallen, they apprehend that, before they should be called upon to overturn a decision, or depart from a principle previously laid down in a report, strong reasons should be given for such a departure. If this committee, or any other, at each successive session of Congress, were to disregard the principle which produced the action of their predecessors, it will readily be perceived that little regard would be paid to the action of either. Stability, uniformity, and decision, should characterize legislative action, as well as judicial proceedings; and it is believed that an essential departure from this rule would soon impair the public confidence in either. Entertaining these views, the committee have adopted the report heretofore made, and herewith submit it as a part of this report; and offer, for the consideration of the House, the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

JUNE 27, 1834.

The Committee of Claims, to which was referred a bill from the Senate for the relief of William Purcell, report:

The bill directs "the Secretary of the Treasury to pay to William Purcell one hundred and sixty dollars, being the value of two horses lost by him in the service of the United States, in the year one thousand eight hundred and eleven."

The petitioner states he was employed in the wagon train in the campaign on the Wabash, in 1811, with a wagon and four horses; that while being detained at the building of Fort Harrison, an attack was made in the night on the party by the Indians, on the 10th of October, 1811, when two of his horses were stolen by the Indians and taken away, and wholly lost to him. He estimates their value at \$200.

Samuel Ennison testifies to the loss of two of Purcell's horses by being stolen by the Indians, as was supposed; on the same night there was an alarm, and a sentinel was shot on his post. The witness says he and Purcell were employed in the wagon department, under the direction of Col. Piatt. He thinks the horses were worth from \$160 to \$200. William Purcell testifies he was with the train; and, while at Fort Harrison, the petitioner lost two of his horses, and, as was believed, they were stolen by the Indians. He thinks the horses were worth \$200, and he says they have not been heard of since.

The bill is not accompanied by any report of a committee in the Senate.

The committee sent the petition and papers to the Third Auditor for information, and, in particular, to ascertain if the petitioner was in the service; and, if so, whether he received pay for the hire of four horses during all the time he was thus employed. In investigating this class of cases, it has been found not to be uncommon that the owner of a team in the public employ drew his pay for the entire period he was in the service, and for his whole team as first entered; when, on examination, it has been found that his team, in whole or in part, was lost long before the expiration of the service. The per diem compensation then given, and an allowance of pay for forage, which applicants have received thus improperly, frequently goes far to remunerate the losses complained of. Mr. Haguer, in his answer, says that the accounts in this case were lost by the late destruction of the Treasury office; and he cannot, therefore, answer this part of the inquiry. He has sent to the committee, however, an original paper containing a return of the wagon-horses killed, wounded, and taken at the battle of Tippecanoe, on the morning of the 7th November, 1811.

The horses of the petitioner are said to have been taken at the place where they were building Fort Harrison, and not at Tippecanoe, and on the 10th of October, 1811, near a month before the horses were killed, wounded, or taken, according to the paper mentioned; yet, on this paper are entries of two horses, in the name of Martin Rose, that were said to have been stolen at Fort Harrison. Why all the horses lost at Fort Harrison were not returned on the same paper, does not appear, if more were lost than are mentioned; and the presumption is, connected with the interval of nearly twenty-two years, without making an application for payment, that there must be some mistake about this loss now complained of. Samuel Emmerson, (supposed to be the witness mentioned above,) had a horse

wounded at the battle of Tippecanoe, as appears from the paper to which reference has been made. On the same paper is another return of "a list of wagon-horses killed and wounded at the battle of Tippecanoe, and on the march to said battle ground." This list is only mentioned to show the care taken by the officers on that expedition to report the losses that occurred. The loss of the petitioner is not mentioned.

The committee are not prepared to recommend the passage of the bill without further proof. The petitioner should show why he has suffered his claim to lie dormant for so many years. He should, in some way, show that he did not receive pay for the use of these horses, nor pay for their forage, after the time he alleges they were stolen; or, if he did, then for what period. If he cannot do this in any other way than by his own oath, he should make that. These directions are given under the supposition that the United States are liable for the loss complained of. The committee will therefore remark, there were two modes of taking property into the public service: one was by contract, the other by impressment. If property was taken into the service by contract, the testimony of the officer who made the contract should be obtained, proving the terms of the contract; or if the property was impressed, the testimony of the officer who impressed it should be taken, proving the circumstances. If the owner was with the property impressed, how came he to be with it? was he required to go? All the circumstances attending the loss of the property, whether taken into the service by contract or impressment, should be proven.

With these remarks, the committee submit the following resolution:

Resolved, That the bill from the Senate, for the relief of William Purcell, ought not to pass.