

1-25-1842

Report : Mr. Wright

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IN SENATE OF THE UNITED STATES.

JANUARY 25, 1842.

Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT :

The Committee of Claims, to whom have been referred the petition and papers of Joseph Paxton, praying to be remunerated for property captured and lost during the late war, report :

That the claim of the petitioner for losses and captures, is—

1. For one horse, killed by some person unknown, or in some manner unknown, though not in any way connected with the public service	\$80 00
2. For money taken from him, when taken prisoner, on the 2d or 3d May, 1813	125 00
3. For three suits of clothes captured at the same time	100 00
4. For one rifle captured at the same time	25 00
5. For one tomahawk, inlaid with silver	10 00
6. For one wampum-belt	10 00
7. For one shot-pouch	5 00
8. For one hat, oil-cloth, and silver eagle	12 25
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	367 25

And for this amount a bill was reported by the Committee of Claims of this House, at the session of 1839-40, which passed the Senate and went to the House of Representatives. The claim there underwent a new and more extended examination, and a call was made upon the proper Department of the Government for information in respect to it. The information thus derived exhibited, as the committee think, the mistaken character of the whole claim; and they therefore adopt that report as their own in the case, and, upon the strength of the facts stated in it, feel authorized to recommend to the Senate the adoption of the following resolution:

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

The Committee of Claims, to whom was referred the bill from the Senate (No. 134) entitled "An act for the relief of Joseph Paxton," report :

The bill is in the following words :

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be allowed and paid

to Joseph Paxton, of Campbell county, in the State of Kentucky, out of any money in the Treasury of the United States not otherwise appropriated, the sum of three hundred and sixty-seven dollars and twenty-five cents; eighty dollars of which being the value of a horse lost by him while acting as trumpeter to Captain Johnson's troop, in Colonel Simrall's regiment of light dragoons from Kentucky, in the campaign against the Indians at the Mississinuiway towns, on the Wabash river, in the month of December, 1812; and the residue being for money, clothing, a rifle-gun, Indian tomahawk, wampum-belt, shot-pouch, and butcher's knife; afterward taken from him by the Indians, when he belonged to Captain Comb's company of spies, and was wounded and taken prisoner near Fort Meigs, on the northwestern frontier, in the month of May, 1813; while in the military service of the United States; and is accompanied with a report from the Senate (No. 41), to which this committee refer for a detailed statement of the facts upon which the Senate was called upon to grant the relief prayed for.

The petitioner states that he was a trumpeter in a company of riflemen at the battle of Tippecanoe, in the year 1811; that he was also a trumpeter in a company of light dragoons in the battle of the Mississinuiway, under Colonel Campbell, in the year 1812; that he was on several other expeditions previous to the campaign in 1813; that while at Piqua, in the State of Ohio, in the year 1813, he was chosen and agreed to serve as a volunteer spy in Captain Leslie Combs's company of spies, and served under him in his various scouting expeditions; until the 1st May, 1813; that, on that day, Combs was ordered to take a part of his company and proceed to Fort Meigs, and, if possible, open a communication with General Harrison; that Combs communicated this order to the company, and invited volunteers; that petitioner, with three other white men and one Indian named Blackfish, in company with Captain Combs, embarked on the same day in a canoe, and proceeded down the Maumee river, through the rapids, in the night, for ten or fifteen miles; that they landed early the next morning, before reaching the fort, and prepared for action, as they expected to fight their way to Fort Meigs, in consequence of their failure to reach there during the night, as was their expectation when they set out the evening before; that, after preparing for their defence, they re-embarked in their canoe, and soon arrived in sight of the fort. They were attacked by the enemy, and one of their party, named Johnson, was wounded in the body by a ball from the enemy. Finding it impossible to advance farther in the canoe, when, by order of Captain Combs, they landed. In the act of petitioner's jumping from the canoe to the shore, "he was struck by a musket-ball near the right shoulder-blade, and not far from the back-bone, which was cut out several months afterward, in the front, near the right nipple." He then retreated with the Indian (Blackfish) in the direction of old Fort Defiance, and halted about eleven miles; and being unable to proceed farther, Blackfish, the Indian left him. In a few hours afterward, the hostile Indians came up and made him a prisoner, stripped him of his arms and clothing, money, and everything else he had about his person, except his shirt, pantaloons, and shoes, and then took him to the British camp. Soon after this, he, with the prisoners taken at Dudley's defeat, were sent across the lake, and the ball extracted from petitioner's shoulder, by Dr. Cloud, in July, 1813. During the expedition under Colonel Campbell to the Mississinuiway, in December, 1812, he lost his horse, by his body being cut open so as to let

out his bowels; but how or by whom was never known; that he was worth \$80; that he soon purchased another horse, and continued to perform duty as before; that at the time he became a member of Captain Combs's company of spies, and at the time he was taken prisoner by the Indians, he had with him three suits of clothing, worth \$100; a rifle, worth \$25; a tomahawk, worth \$10; a belt, worth \$10; and various other articles which he enumerates; and which, with \$125 in silver, amount to \$287 25; all of which was lost when taken by the Indians, except his shirt, pantaloons, and shoes.

There is an affidavit of the petitioner accompanying the petition, made on the 19th October, 1837, in which he states that the allegations in the petition are true. Captain Combs's affidavit, and that of James McDowell, are also submitted, bearing the same date, to which the committee refer.

Upon the reference of the bill to this committee, a call was made upon the Department of War for information relating to its merits; in answer to which, the annexed letter from the Third Auditor was received. The claim is alleged to have arisen a quarter of a century ago, and why it has not been before presented has not been shown; but, disregarding that circumstance, the claim for the horse does not appear to have arisen from any of the casualties against which the United States have guaranteed. The horse was not killed in battle, nor did it die of wounds received in battle, nor for the want of forage which the Government was bound to supply. The horse, too, was in the service at the risk of the owner. By the 2d section of the act of 2d January, 1795, which regulates the compensation the petitioner received for the use of his horse, it is stated that, "in addition to the monthly pay, there shall be allowed to each officer, non-commissioned officer, musician, and private of the cavalry, for the use of his horse, arms, and accoutrements, and for the *risk thereof*, except for horses killed in battle, forty cents per day." This compensation the petitioner has received. It was, at the time he entered the service, deemed, both by Government and the petitioner, commensurate with the risk, and both are bound by it.

The claim for the money alleged to be lost is not sustained by the testimony. No witness speaks of the loss of the money as a fact within his own knowledge; but Captain L. Combs "has entire confidence in the strict truth of Paxton's statement," and from that he concludes that the loss was sustained, as stated by him. The committee, however, cannot take the petitioner's statement as evidence upon which to found a report. He is the party interested, and his testimony inadmissible to sustain the merits of the claim. Besides, these affidavits were taken a quarter of a century after the occurrence to which they refer took place, and on that account are to be examined with scrutiny. But if the evidence established the loss, it is not one for which the Government would remunerate the petitioner; nor is there any principle, hitherto established by legislation of Congress, known to the committee, which would authorize the payment of the claim. For the residue of the property mentioned in the petition, the annexed communication from the Third Auditor shows the claim to be without merit; and the committee, therefore, recommend the rejection of the bill.

TREASURY DEPARTMENT,
Third Auditor's Office, April 25, 1840.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant, enclosing the testimony in the case of Joseph Paxton, a printed copy of a bill passed by the Senate for his relief, and a printed copy of a report of the Committee of Claims of the Senate in relation thereto. In your letter you have signified that the Committee of Claims of the House of Representatives desire such information touching the merits of the claim as it may be in my power to furnish, and especially to know whether Joseph Paxton was in the service at the time spoken of; if so, in what capacity; at what compensation; whether mounted, or on foot; if mounted, whether any, and what compensation was paid for the use of his horse; and whether his horse was killed in the service; at whose risk it was in the service; that of the owner, or that of the Government; and under what law Paxton was called into service.

The claim appears to be for a horse described in a deposition of James McDowell, major of Colonel James Simrall's regiment of cavalry, as having been worth \$80, and as having been lost by Paxton, a trumpeter to Captain Johnson's company in said regiment, by having its body cut open and bowels let out, some time in December, 1812, but how, or by whom, was never made known to the deponent; and also for other property, set down in a deposition of the claimant, as having been lost by him while serving as a spy in the company of Captain Leslie Combs, in May, 1813.

On search, Joseph Paxton is found to have been in service as a trumpeter of Captain Thomas Johnston's company of the 1st regiment of Kentucky volunteer light dragoons, commanded by Colonel James Simrall (and of which James McDowell is shown to have been first major), from the 27th of August to the 31st of October, 1812, and to have received for pay and use of a horse during that period the sum of \$42 28; the allowance at 40 cents per day, as to the latter, amounting to \$26 40.

The rolls do not indicate under what law the regiment was called into service; but, in a receipt at the foot of an estimate for funds for the pay thereof, on file with the paymaster's accounts, the regiment is expressed to have been "raised under an act of the 10th of April, 1812," and when an act of Congress "to authorize a detachment from the militia of the United States" appears to have been passed (see chapter 378). For pay, &c., of the regiment subsequent to the 31st of October, 1812, funds appear to have been advanced to another paymaster; but, he having failed to render any accounts or rolls in relation thereto, I am unable to furnish information as to any later services of Paxton in the regiment, or to any compensation received by him in respect thereof.

On the 2d of January, 1795, an act of Congress was passed to regulate the pay of the non-commissioned officers, musicians, and privates, of the militia of the United States when called into actual service. The second section of this act authorizes an allowance to each officer, non-commissioned officer, musician, and private of the cavalry, for the use of his horse, arms, and accoutrements, and for *the risk thereof*, except of horses killed in action, of 40 cents per day. This provision is the only one that I am aware of existing during the late war with Great Britain, evincing at whose risk the horses of mounted militia were taken into service. Thereby the United States were considered to incur the risk as to horses killed in action; and under it numerous payments for horses so killed were made by disbursing

officers in the Quartermaster's Department. All other risks are considered to have been run by the owners of the horses; and I know of no general or special law since enacted making provision for the payment for lost horses, under which remuneration in a case like the present could have been allowed. For the principles which have governed in legislating as to claims for the loss of horses, by mounted militia or volunteers, I respectfully refer to the report of the committee as to the case of William H. Spillers, made at the 1st session of the 24th Congress, and numbered 544.

As regards the other portion of the claim, the claimant, in his deposition, has declared that, at Piqua, in April, 1813, he was chosen and agreed to serve as a spy in the company of Captain Leslie Combs; and that at the time he joined it, he had with him about \$125 in silver, at the least estimate; a shot-pouch, which cost him \$5; an Indian tomahawk, inlaid with silver, which cost him \$10; wampum belt, \$10; a butcher's knife, the price of which he does not recollect; three suits of clothing, which he had provided with the determination to remain in the army as long as there was any fighting to do, and worth, he thinks, at least \$100; hat, oilcloth, and silver eagle, cost him \$12 25, and rifle worth \$25: total, \$287 25. And his deposition contains a long narrative as to his services with Captain Combs, in which he represents that, on the 1st of May, 1813, the captain was despatched from old Fort Defiance to Fort Meigs, to open a communication with General Harrison; that he (the claimant), three other members of the company, and an Indian named Blackfish, started with the captain just before sundown on that day in a canoe, and proceeded to within sight of Fort Meigs, and where they were fired on by the Indians; that a ball struck him near the right shoulder-blade, and next the back bone, but did not pass entirely through; that thus wounded, he retreated in the direction of old Fort Defiance, and, aided by Blackfish, got about eleven miles, as well as he could guess, and could proceed no farther; that the Indian then left him; that some hours after, the hostile Indians discovered and took possession of him; that he lost his arms, clothing, money, and everything but his shirt, shoes, and pantaloons; that he was taken to the British camp and examined by General Proctor; and that he was afterward sent across the lake with the prisoners taken at Dudley's defeat, and had the ball taken out in July, 1813, by Dr. Cloud, except a part of it, which he threw out about six years afterward when coughing violently.

In an affidavit of Captain Combs, appended to that of the claimant, he has testified that he wrote the letter from the dictation of Paxton; that so far as relates to his services in the captain's company, in the campaign of 1813, his recollection corresponds entirely with the claimant's statement of facts; that he does not know the value of the claimant's clothing, nor the amount of money he lost, but has entire confidence in the strict truth of his statements; that he was as fearless a man and as good a soldier as the captain ever saw; and is still unable to do much labor, from his severe wound. That his equipage, gun, and accoutrements, were all lost, and certainly, as the facts show, without his fault or neglect; and that, if any one is to blame, it is the captain, for conducting his men into such an ugly place.

In the course of the searches in relation to this portion of the claim, it has been found that, on a roll of Captain Thomas Lewis's company, of Colonel William Dudley's regiment of Kentucky militia, Joseph Paxton is mustered as a private from the 29th of March, 1813, and is noted as having "joined Captain Combs's company at Piqua;" and by a receipt-roll, filed

with the accounts of Paymaster C. Carr, he is shown to have been, March 6, 1813, paid \$10 in advance on account of his pay. From the 17th of April to the 1st of June, 1813, inclusive, Joseph Paxton is found to have been mustered as private of a company of spies under Captain Combs. According to the rolls, this company consisted of the captain and twelve privates; and, by an agreement with General Green Clay, was to receive extra pay. For the payment thereof, an advance was made to Captain Combs, under a special decision of the Secretary of War; and, by the receipt-roll, subsequently transmitted by him, he appears to have paid to Paxton \$46, being at the rate of \$1 per day for the period, from the 17th of April to the 1st of June, 1813, inclusive. On the muster-roll for that period, Captain Combs has certified that "the times of service and remarks are correct, as specified on its face." Opposite the names of six of the twelve privates, there are remarks, expressing two of them to have been killed on the 2d and 5th of May, 1813; two others of them to have been "missing, May 5, 1813, in Dudley's defeat;" one to have been "dismissed, April 29, 1813;" and the other to have "returned to the regular line, May 14, 1813." The other six, and of whom Paxton is one, are all mustered as present, and without any remark against their names.

For the period from the 2d of June to the 28th of September, 1813, Captain Combs, Joseph Paxton, and four other privates, are shown to have received their pay (that of the privates being computed at the rate of \$8 per month, and amounting to \$30 90 each) from Paymaster C. Carr; and in the muster-roll applicable to this period, and which is signed by Captain Combs, they are all entered as "present." None of the rolls, therefore, afford any evidence corroborative of the allegations in the claimant's deposition as to his having been wounded, captured by the Indians, taken to the British camp, and afterward sent across the lake with the prisoners taken at Dudley's defeat; but, on resort to the pension accounts, Joseph Paxton is found to have been in the receipt of a pension of \$4 per month, from the 28th of September, 1813, on testimony of his having been wounded on the 2d of May, 1813, near Fort Meigs. Part of the testimony is contained in a deposition of William R. Letcher, surgeon's mate of Colonel Dudley's regiment, in which he has declared that he extracted the ball in May, 1813. As to its having been taken out by Doctor Cloud in July, 1813, the claimant would seem to be in error.

Captain Combs's affidavit does not, it is perceived, in the most material respects, profess to depend on any personal knowledge he had of the facts, but on his confidence in the truth of the claimant's statements. In noticing the loss of the equipage, gun, and accoutrements, he is observed to use the words "as the facts show;" and these seem obviously to have reference to the claimant's "statement of facts," previously cited by him. And as to the very important fact of the capture of the claimant by the Indians (from which, if established, the capture of the rifle, &c., might be inferred), not a word appears in the captain's testimony; and on this head, as already indicated, the rolls appear to be in conflict with the testimony of the claimant. On satisfactory proof of the capture of the rifle, shot-pouch, and tomahawk, without any fault or negligence of the claimant, and of the value thereof, payment for the same could have been awarded without any further legislation; but under the circumstances of this case, the testimony adduced is not viewed as sufficient to justify any allowance by me. To that extent payment, too, could have been awarded by the Commissioner of Claims,

under the law of the 9th of April, 1816, on adequate evidence; and why, if the claim be correct, such evidence was not then procured and payment sought, instead of suffering the claim to remain dormant more than twenty years, the claimant has left wholly unexplained. The rules prescribed by the President, in pursuance of the law last mentioned, contained, with respect to the provision therein for the payment for arms and accoutrements, as follows: "This provision does not include the clothing of soldiers, or the clothing and arms of officers, who, in all services, furnish at their own risk their own." And I know of no other law, general or special, in which provision has ever been made for remunerating soldiers for the loss of clothing or money, by capture or otherwise, while in service.

As desired in your letter, the papers in the case are all herewith returned.

With great respect, your most obedient servant,

PETER HAGNER, *Auditor.*

HON. D. RUSSELL,

Chairman of Committee of Claims, House of Reps.