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Report No. 406.

[To accompany bill H. R. No. 356.]

HOUSE OF REPRESENTATIVES.

LAWRENCE DAILY.

MARCH 28, 1848.

Mr. JOHN A. ROCKWELL, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to whom was referred the petition of Lawrence Daily, report:

That the petitioner lost his horse on the 29th of December, 1846, at the city of Monterey, in Mexico, as he alleges; that the horse was stolen whilst he was standing guard, and that he has never recovered said horse.

A case of this kind was considered at the 2d session of the 28th Congress, in the case of Samuel D. Enocks. The report of this committee thereon is annexed hereto as illustrative of this claim.

It is clear that the soldier could not abandon his post to save his property, and the committee therefore think he should be indemnified for his loss, and report a bill in accordance with that opinion, and recommend its passage.

To the honorable the Senate and House of Representatives in Congress assembled:

Your petitioner respectfully states, that in June, 1846, he enlisted as a private in Captain O. P. Beard's company of Kentucky mounted volunteers, in Colonel H. Marshall's regiment; that his horse was appraised by the inspecting officer, who mustered the troops into service at Louisville, to the value of seventy-five dollars; that on or about the 25th day of December, 1846, his horse was stolen from him whilst he was standing guard at the city of Monterey, Mexico; that he was placed on duty at a place different

from where his horse was left, and, therefore, he was unable to protect or secure his horse from thieves. He never afterwards heard from his said horse. He learns, from other applications made to the War Department for remuneration for horses lost in the service, that there is no existing law authorizing such remuneration. He regularly served out his term of service, and received an honorable discharge at New Orleans, which is now on file in the War Department. He is now without recourse, save by application to your honorable body for relief. He deems it only necessary to present a simple statement of the facts to insure the action of your honorable body for relief in his behalf. He, therefore, respectfully solicits that a bill may be passed for his benefit, making an appropriation of seventy-five dollars to remunerate him for the loss of his horse, and he will ever pray, &c., &c.

LAWRENCE DAILY.

Sworn to and subscribed, this 4th day of September, 1847.

B. F. GRAVES, J. P.

HOUSE OF REPRESENTATIVES.—February 15, 1845.

The Committee of Claims, to whom was referred the petition of Samuel D. Enochs, report:

This claim was presented to Congress, and in the House of Representatives referred to the Committee of Claims, at the first session of the 26th Congress; and an unfavorable report was made thereon, (see Rep. No. 697,) which is here referred to, and made a part of this report. The Committee of Claims, after again examining the case at the 3d session of the 27th Congress, adopted the report above referred to, and made an adverse report thereon. (See Rep. No. 118.)

The committee have again examined the case, and find no new evidence to induce them to come to a different conclusion from that adopted in the reports referred to; but from the same evidence deduce a different conclusion, as being, in their opinion, more consonant with sound principles of equity and justice. The act of the 18th of January, 1837, entitled "An act to provide for the payment of horses and other property destroyed in the military service of the United States," makes the following provision, to the peculiar and definite terms of which the attention of the House is invited, as affording the grounds upon which the committee places its reversal (with great diffidence made) of the former decisions of the committee upon this case. The passage reads thus:

"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: Provided," &c. (See Laws U. S., vol. 9, page 585.)

From the testimony submitted, it is proved that he was separated from his horse by order of his superior officer. Indeed, the committee that reported against the claim remark that "it appears, from the evidence submitted, that the claimant was a private in Captain Gideon Simpson's company, under the command of Colonel John Thomas, in the war with the Sac and Fox Indians, in the year 1832; that on the night of the 24th of May, 1832, he was separated from his horse, by being put on guard duty on foot; that while on guard, the horses generally became frightened, and his mare, valued at \$80, ran off, and has never since been heard of—is supposed to have been taken by the Indians."

The petitioner was, for all practical purposes, "separated from his horse"—"detached from his horse"—as much so as if he had been removed one thousand miles from his horse; for whatever the danger to his horse, or however easily averted, he was not at liberty to leave his position to go to the rescue. The desertion of his post, even for five minutes, to save his property, would have rendered him liable to the punishment of death. Under such circumstances, the committee are of opinion that the petitioner ought to be paid for his horse; and report a bill for his relief, and recommend the passage thereof.

JANUARY 28, 1843.

The Committee of Claims, to whom was referred the petition of Samuel D. Enochs, report:

This claim was examined by the Committee of Claims of the House of Representatives at the 1st session of the 26th Congress, and an unfavorable report made thereon, (see Rep. No. 697,) which is hereunto annexed, and made part of this report.

The committee have again examined the case, and find no new evidence, or any reason to dissent from the views presented in the report referred to; and therefore recommend to the House, for adoption, the following resolution:

Resolved, That the petitioner is not entitled to relief.

JULY 10, 1840.

The Committee of Claims, to whom was referred the papers in support of the claim of Samuel D. Enochs, for compensation for a horse lost in the Black Hawk war, report:

It appears, from the evidence submitted, that the claimant was a private in Captain Gideon Simpson's company, under the command of Colonel John Thomas, in the war with the Sac and Fox Indians, in the year 1832; that on the night of the 24th of May, 1832, he was separated from his horse, by being put on guard duty on foot; that while on guard, the horses generally became frightened, and his mare, valued at \$80 ran off, and has never since been heard of—is supposed to have been taken by the Indians.

It appears, from the testimony, that the petitioner was on guard at the same station where his horse was. The case does not, therefore, come within the provisions of the present laws of Congress. The horse was lost in consequence of being frightened in the night, or was perhaps stolen by the enemy; in either case, the loss must rest upon the owner. By the terms of his enlistment, he agreed to furnish his horse. This, of course, was at his risk, and not at the risk of the government. This case is not such a one as has been heretofore allowed, (see Rep. No. 921, 2d session, 25th Congress.) The committee therefore recommend to the House, for adoption, the following resolution:

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

IOWA TERRITORY, *Des Moines county, ss.*

Before the undersigned, a notary public in and for the county aforesaid, this 7th day of September, 1839, personally came Samuel D. Enochs, and made oath that he never received from any officer or agent of the United States another horse in lieu of the one lost by him in the service of the United States, alluded to in the testimony of Captain Simpson, and that he has never received any compensation for the said horse.

SAMUEL D. ENOCHS.

Sworn to, and subscribed before me, this 7th day of September, above written.

JOHN R. WOODS,
Notary Public.

STATE OF ILLINOIS, *St. Clair county, ss.*

Personally appeared before me, at my office, John Thomas, jr., and, after being duly sworn by me, deposeth and saith: That some time in the spring of the year 1832, under a proclamation of the governor of Illinois, he raised a volunteer company of mounted militia to march against a band of Sac Indians, who had invaded the State of Illinois under "Black Hawk," and that when said

company met others of a similar description at the place of rendezvous, the said troops were organized into a brigade, under the command of General Samuel Whiteside; and at the said organization, this deponent was elected to the command of the second regiment of said brigade, and one Gideon Simpson was elected to the command of said company, which was attached to, and formed a part of, the said second regiment; and that Samuel D. Enochs was a member of, and belonged to, the said company; and that during the campaign, the said Samuel D. Enochs lost his horse, which had been regularly appraised when mustered into service, to the sum of eighty-five or eighty-seven and a half dollars, to the best of his knowledge and recollection.

JOHN THOMAS, JR.

Subscribed and sworn to before William C. Kinney, clerk of the circuit court within and for the County of St. Clair, and State of Illinois.

Witness my name, and the seal of said court hereto
[L. s.] affixed, this 6th day of May, A. D., 1844.

WM. C. KINNEY..

IOWA TERRITORY, *Des Moines county, ss.*

Be it remembered, that on this 7th day of September, 1839, personally came Joseph Casterline before me, the undersigned, notary public in and for said county, who, being duly sworn on his oath, says he was in the service of the United States, under the command of Colonel John Thomas, in the war with the Sac and Fox Indians, in 1832; that Samuel D. Enochs belonged to the same company with affiant—to wit, *that of Captain Gideon Simpson*; that on the night of the 24th May, 1832, to the best of affiant's recollection, said Enochs lost his horse, "*because the said Enochs (the rider) was dismounted (being on guard) and separated from his horse, and ordered to do duty on foot, (to wit, on guard,) at a station detached from his horse.*"

JOSEPH CASTERLINE.

Sworn to, and subscribed before me, this the day above written.

JOHN R. WOODS,

Notary Public.

TERRITORY OF IOWA, }
Executive office. }

I, Robert Lucas, governor of said Territory, hereby certify that John R. Woods, whose name appears signed to the within certificate as notary, is a notary public, duly appointed for the county of Des Moines in said Territory, and that such signature is genuine.

Witness my hand, and the great seal of the Territory,
[L. s.] which I have hereunto affixed. Done at Burlington, the
7th day of September, A. D., 1839.

ROBERT LUCAS.