

SAMUEL FERGUSON.

[To accompany Senate bill No. 40.]

APRIL 17, 1838.

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

REPORT:

*The Committee of Claims, to which was referred the bill from the Senate for the relief of Samuel Ferguson, report:*

That said bill is as follows: "That there be allowed and paid to Samuel Ferguson, of Adams county, in the State of Illinois, late a private in Capt. Earl Pierce's company of Illinois mounted volunteers, out of any money in the Treasury of the United States not otherwise appropriated, the sum of seventy dollars, the value of a horse which died, 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, whilst employed in the military service of the United States."

To remunerate those who lost horses in said expedition, Congress passed an act on the 19th of February, 1833, the first section of which is as follows: "That any mounted militiaman or volunteer, whilst in the service of the United States in the late expedition against the Indians on the frontiers of Illinois and the Territory of Michigan, who sustained damage by the loss of any horse which was killed in battle, or died in consequence of a wound received therein, or in consequence of a failure on the part of the United States to furnish such horse with sufficient forage whilst in the service, or in consequence of the owner being dismounted, or separated and detached from the same, by order of the commanding officer, or in consequence of the rider being killed or wounded in battle, shall be allowed and paid the value of such horse at the time of going into service: *Provided*, Such loss was not the result of negligence on the part of the owner. The time employed in going to the place of rendezvous, and returning home after being discharged, to be taken and considered as actual service."

The Legislature of Indiana, by a resolution passed for that purpose on the 30th of January, 1834, instructed the Senators and requested the Representatives from that State "to use their exertions and influence to procure the enactment of a law which will authorize speedy payment to be made by the United States for all horses lost or disabled to their owners in public service, or in consequence thereof, on the presentation of the proper proofs and vouchers of such loss."

Colonel A. W. Russell commanded volunteer rangers during the Indian war of 1832; and, on the 30th of January, 1834, the said Legislature, by

another resolution, instructed the Senators and requested the Representatives from that State "to use their best exertions to procure an amendment of the law now in force authorizing the payment for horses, so as to embrace the case of the horses lost under the command of A. W. Russell, upon the proper proof and vouchers presented to the Department."

These resolutions were presented to the House of Representatives and referred to the Committee of Claims. On the 3d of April, 1834, the committee made a report, which is printed in the Reports of Committees of the 1st session 22d Congress, volume 3, report No. 383; to which this committee refer. The history of the entire legislation of Congress on the loss of property during war is set forth in that report, and reviewed.

The committee reported a bill extending the relief to any officer, field or staff, volunteer, ranger, cavalry, or other person, engaged in the service of the United States in said war, who had lost his horse in the manner and from the causes designated in the act of the 19th of February, 1833. The bill became a law on the 30th of June, 1834.

It has been the object of Congress to remunerate for such losses of horses as could be traced to the omission or inability of the United States to perform their agreement with those who entered the service and did not take all risks on themselves. The laws that had been passed before the 18th of January, 1837, provided for paying for horses lost in consequence of a failure to furnish forage, or in consequence of the owner being dismounted, or separated and detached from his horse by order of the commanding officer, or in consequence of the rider being killed or wounded in battle, and where the horse was killed in battle, or died of wounds received therein. There was another class of cases which seemed to come within the spirit of the rule established by Congress, and the act of 18th January, 1837, embraced it. The class referred to was this: where any mounted militiaman, volunteer, ranger, or cavalry, was sent on to the frontiers, and, no forage being furnished, he was obliged to turn his horse out to graze, and it was lost in consequence thereof, without the fault of the owner. It appeared to the committee, and it was so considered by Congress, that the act of January 18, 1837, embraced all cases where it was judicious or proper to make the United States liable for any loss of a horse in their military service.

If the case mentioned in the bill is to be provided for, the principle must be established that the United States take all risks upon themselves, unless fault or negligence shall be traced to the owner of the horse. If this risk is to be run by the United States, the compensation of forty cents a day is exorbitantly high. The committee are not inclined to enlarge the liability of the United States, and recommend the adoption of the following resolution:

*Resolved*, That the bill from the Senate for the relief of Samuel Ferguson ought not to pass.