

STEPHEN PLEASANTON.

APRIL 5, 1836.

Read, and laid upon the table.

Mr. TOUCEY, from the Committee on the Judiciary, made the following

REPORT:

The Committee on the Judiciary, to which was referred the petition of Stephen Pleasanton, respectfully report:

That the memorialist, being Fifth Auditor of the Treasury, with a salary of three thousand dollars per annum, claims an additional compensation of one thousand dollars per annum, for executing the duties of agent of the Treasury from July 1st, 1821, to May 29th, 1830, on the ground that they were extraordinary duties, not belonging properly to his office; these duties were performed at the same time and in connection with what he deems the peculiar duties of his office, and for which he has received the salary fixed by law. If they were in fact a part of his official duties, for which the salary was paid and received, and there was no law, nor contract, nor authorized allowance within the discretionary powers of the Executive Department to sustain his claim, it is obvious that it cannot be recognised.

By the act of Congress of March 3, 1817, four auditors and one comptroller were added to the Treasury Department, each with a salary of three thousand dollars per annum, and it was made "the duty of the Fifth Auditor to receive all accounts accruing in or relative to the Department of State, the General Post Office, and those arising out of Indian affairs, and examine the same, and thereafter certify the balance, and transmit the accounts, with the vouchers and certificates, to the First Comptroller, for his decision thereon." On the 30th of December, 1819, the Secretary of the Treasury, under the act of December 23, 1817, to abolish the internal duties, assigned to the Fifth Auditor the duties of Commissioner of the Revenue, including those usually performed by that officer in relation to light-houses, beacons, and buoys, and at the same time, three additional clerks were assigned to him. By the act of February 24th, 1819, all unsettled accounts arising out of Indian affairs, with the exception of those appertaining to Indian trade, were, from and after the 3d of March following, transferred from the Fifth Auditor to the Second Auditor of the Treasury. By the act of 15th May, 1820, it was made "the duty of such officer of the Treasury Department as the President of the United States shall from time to time designate for that purpose, as the agent of the Treasury, to direct and superintend all orders, suits, and proceedings in law or equity for the recovery of money, chattels, lands, tenements, or hereditaments, in the name and for the use of the United States." On the

22d of July, 1820, the First Comptroller of the Treasury was designated by the President as the agent of the Treasury, and he performed the duties without additional compensation until the 23d of May, 1821, when they were assigned by the President to the memorialist, then and now the Fifth Auditor, and they continued to be attached to that office, and performed by him, until the 29th of May, 1830; at that time the office of Solicitor of the Treasury was created, and two of the clerks were transferred to it from the office of the Fifth Auditor.

It thus appears that after the creation of the office of Fifth Auditor, and before the 29th of May, 1830, three changes occurred: First, in February, 1819, one class of duties relating to Indian affairs was transferred from this office to another; in December, 1819, a new class of duties, before that time performed by the Commissioner of the Revenue, was added to it; and a third class, relating to suits in law and equity, was annexed in May, 1821. All these duties belonged properly to the Treasury Department, and in neither instance, when the burthen was transferred from one to another, was there any corresponding change of salary.

It is very clear, that the act of May 15, 1820, made it the official duty of the Fifth Auditor of the Treasury Department to act as agent of the Treasury after he had been designated for that purpose by the President in conformity with that act. He had no option to decline those duties but with his office. The new class of duties became as appropriately his official duties as any other. The salary was received for the performance of all the duties attached to the office. There is no distinction between one official duty and another made such by law.

Nor was there any contract made with the memorialist, by virtue of which he has any claim to any additional compensation. No officer of the Government had power to contract for the performance of these duties which the law imposed. None attempted to exercise such power, or to give assurances of further compensation. The letter of President Monroe shows no such thing.

Nor has there been any practice, allowance or decision in the Executive Department within its legitimate powers, nor indeed any whatever, which would authorize the claim of the memorialist. And where these are wanting, and there is no contract, it is believed that the Supreme Court has, neither in the cases alluded to by the memorialist, nor in any other, adopted any principle of which he can avail himself in the present instance.

The act of 1820, making it the duty of the designated officer of the Treasury Department to act as agent of the Treasury, without providing any additional compensation, is an implicit denial of any such compensation. There does not seem to have been any oversight. The creation of a distinct office had been recommended to Congress. A bill had been accordingly reported, creating the office and annexing a salary; and it was that bill which by amendment became the present law.

The committee also think the objection entitled to great weight, that the cotemporary Congress, by the omission of the memorialist to present his claim for increased compensation on account of increased duties, was deprived of the power of equalizing the duties of the various officers of this Department, if any undue inequality had been introduced, and of diminishing the compensation where the duties had been diminished for any cause. The subject should have then been presented, the attendant circumstances would have then been open to inquiry and easy of investiga-

tion, and if the transferred duties had arisen from any cause requiring legislative action, the remedy might have been applied in any direction which the public service required. The practice of allowing extra pay to an officer for the performance of his duty on the ground of inequality, where he had acquiesced in silence, and permitted the subject to sleep for so many years, and where the Government might perhaps have found others equally competent and willing to perform the duty at the legal compensation; would be inconvenient and liable to abuse.

This claim has been before the House and reported against at two previous sessions. The committee now come to the same conclusion, and ask to be discharged from the further consideration of it, and that the petitioner have leave to withdraw his petition.

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To the honorable the Judiciary Committee of the House of Representatives, United States.

I am requested by Mr. S. Pleasanton, to place before you two additional papers in relation to his claim for compensation for his services as agent of the Treasury.

The first is a certificate of Mr. Harper as to the nature and magnitude of the services performed by Mr. Pleasanton, and of his being necessarily occupied at hours in which the officers of Government, in the discharge of regular official duties, are not required to labor.

The second is a copy of a letter (the original will be laid before the committee) from the late President, James Monroe, in 1831, under whose direction and authority Mr. Pleasanton assumed the duties of the agency.

This letter recognises the duties thus devolved on Mr. Pleasanton as extra duties, and although, from the length of time that had elapsed, Mr. Monroe states, that he has "no very distinct recollection of what passed," yet admits that "he has no doubt that he expressed the sentiment, that some additional compensation would be proper."

This letter I conceive ought to remove any doubt as to the propriety of compensating Mr. Pleasanton for these services.

It shows that they were not required of him as the regular official duties of the office he held, but as extra duties, and that he assumed them with an expectation of compensation, and on intimation from the first officer of the Government, that such "compensation would be proper."

How he fulfilled these duties, and the immense amount saved to the Government by his diligence in a most arduous and unpleasant service, sufficiently appears.

I am aware that objections naturally, and justly apply, to claims for extra compensation, for extra official duties. Yet it must be admitted that there may be cases where the exigencies of the Government may require the discharge of such duties from an officer, and it is justice not to allow them to go unrequited.

If the duties are of the same nature with the regular duties of such an officer, or if they involve no new responsibilities, nor require a large amount of labor beyond the ordinary office hours, or are assumed without any expectation or understanding at the time of being compensated, such objections should prevail. But where all these circumstances are different, where the responsibility and the labor are greatly beyond the ordinary

official duties, and the service different from the ordinary employment of the officer, and requiring his attention after regular office hours, and above all, where, when undertaken, the expectation of compensation is stated to the chief officer of the Government, and admitted to be proper, it would not seem reasonable that the Government, after receiving very considerable advantages from the services, should disappoint such expectations.

There can be no doubt, from the circumstances in this case, that if Mr. Pleasonton had objected to the President or the Secretary of the Treasury, that he was already as much occupied, and indeed more, with his proper duties, than the other auditors, or than several of them, and that to exact this duty from him, would be imposing on him an unjust and unequal portion of labor, obliging him even to devote the allowed hours of relaxation to the performance of them, he would not have been compelled to undertake such an agency.

As he consented to undertake it, as extra labor, as an addition to the fair proportion of the public labor already designated to his office, with a declared expectation of compensation, and such an acknowledgment of the propriety of such compensation as he received, and has discharged its duties laboriously, faithfully, and most advantageously to the public, it seems to me that there can be no danger that the allowance of such a claim would give any encouragement to claims for extra compensation under ordinary circumstances.

Very respectfully,
F. S. KEY.

Washington, March 3, 1836.

NEW YORK, January 13, 1831.

DEAR SIR: I have engaged in some very interesting duties, which have borne heavily on me, in my present weak state of health, since the receipt of your letter of the 7th, or I should have answered it before.

Having approved your conduct while you acted under me, in the Department of State, and in the office to which I was afterwards elected, I have always expressed that sentiment with pleasure. The communication to which you refer in your letter, occurred at a period too distant for me to have any very distinct recollection of what passed between us, but I have no doubt that I expressed the sentiment which you suggest, when I committed to you the extra duty, created by the law, that some additional compensation would be proper.

With great respect and esteem,

I am yours,

JAMES MONROE.

To STEPHEN PLEASONTON, Esq.

The above is a true copy of the original letter now in my possession.

S. PLEASONTON.

January 14, 1836.

To the honorable the Senate and House of Representatives of the United States :

The undersigned memorialist respectfully represents, that in addition to the duties of Fifth Auditor of the Treasury, for executing which he was allowed by law a salary of three thousand dollars, and the unfinished duties of Commissioner of the Revenue, which he assumed to discharge, gratis, there was assigned to him by the President, from and after the 1st of July, 1821, the important and responsible duties of Agent of the Treasury, an office created by an act of the 15th May, 1820,* and involving the prosecution of all the suits, or other proceedings, in law or equity, of the United States; that he undertook and continued to execute these duties until the 29th May, 1830, when the office of Solicitor of the Treasury was created, in pursuance of the recommendation of the President, for the purpose of relieving the memorialist from them, which, with the increase of his original and appropriate duties, had become too burthensome for a single officer; and that, for the execution of these duties, he claims the moderate compensation of one thousand dollars a year.

Your memorialist, further respectfully represents, that during the time he was charged with this office, there was in suit the sum of thirteen millions four hundred and ninety thousand two hundred and ten dollars and eighty-three cents; of which he caused to be collected and liquidated by settlements, the sum of six millions one hundred and twenty-seven thousand seven hundred and four dollars, besides a large amount collected on custom-house bonds and paid to the respective collectors. That these duties were burthensome and incessant, may be known from the facts that, during the period before mentioned, he had to institute and prosecute about three thousand six hundred suits, involving a daily and voluminous correspondence with the attorneys, marshals, clerks of courts, and defendants; besides the delicate and anxious task of saving the debts of the Government, and at the same time individual debtors from ruin, by a proper and discreet indulgence, on the personal application of the parties interested.

Your memorialist would further respectfully represent, that the salary allowed him by law was for duties prior and altogether distinct from those here stated; and that it has been no less the practice of Congress, than agreeable to obvious justice, to compensate extra duties when extra duties have been performed, as will be seen by a list of acts hereto annexed, and to which your memorialist respectfully refers:

Your memorialist would further respectfully represent, that on a reference of his claim, by the Judiciary Committee of the Senate, to Mr. Ingham, Secretary of the Treasury, in the year 1831; and afterwards to Mr. McLane, his successor, in 1832, those officers considered the duties performed by your memorialist as extra duties, and entitling him to compensation, as will be seen by their letters, bearing date, respectively, 21st March, 1831, and January 9, 1832, of which copies are hereto annexed.

Your memorialist, however, would respectfully, but more particularly, refer your honorable bodies to two decisions of the Supreme Court of the United States, rendered at its last term, and to be found in Peters's Reports, vol. 7, pages 1 and 28, as settling the law upon the subject of extra compensation. These are the cases of the United States vs. George McDaniel, and United States vs. Fillebrown. These decisions, it will be seen, fully sanc-

* Vol. 6, page 520.

tion the principle upon which the claim of your memorialist rests, and it cannot be doubted that your honorable bodies will extend to him the advantage of that principle, and not, by withholding it, place him in a worse condition than debtors and defaulters to the Government, who would have it in their power to plead and obtain the admission of a similar claim, as an offset, in any of the courts of the United States, whilst your memorialist is debarred the right of suing the Government and bringing his case before the courts.

And your memorialist, as in duty bound, will ever pray, &c.

S. PLEASONTON.

Washington city, December 7, 1833.

TREASURY DEPARTMENT, *March 21, 1831.*

SIR: In compliance with a request of the Committee of the Senate, to whom the petition of Mr. Pleasonton, for compensation for the services rendered by him as agent of the Treasury, was referred, I have the honor to state, that the duties performed by him, are so fully detailed in the accompanying paper, that it will be unnecessary for me to add any thing on those points; that the labor was great and arduous, and the responsibility highly important, is fully evinced by the anxiety frequently expressed by the former Secretary of the Treasury to have a distinct office created for that service, and, more especially, by the determination of Congress of 1829 and 1830, to establish the office of solicitor. The Fifth Auditor had been charged by the act of 1817, with the settlement of the diplomatic and post office accounts, and with the management of the appropriations for building, and repairing, and supporting light-houses, which comprehended a service more diversified, and not less laborious, than that performed by either of the other Auditors; yet such was the urgency of the public service, that the President authorized the Fifth Auditor (in virtue of a power vested in him by law, to designate some officer in the Treasury Department for that business) to superintend the collection of debts due to the Government. The service has, so far as my observation extends, been conducted with ability and remarkable success, as will appear from the amounts sued for and recovered.

Under these circumstances, I cannot but consider this case as peculiar, and wholly unlike those in which some ordinary and unimportant duties are assigned to an office, in addition to those originally belonging to it, and that an additional compensation would be no more than justice. What that ought to be, may not be proper for me to say. The extent of the service is fully before the Senate in the documents, which will enable them to judge of its importance and responsibility to the Government.

I have the honor to be,

Very respectfully,

Your obedient servant,

S. D. INGHAM,

Secretary of the Treasury.

To the Ch'n of the Judiciary Com. of the Senate, U. S.

TREASURY DEPARTMENT, *January 9, 1832.*

SIR: In reply to your letter accompanying the memorial and papers of Stephen Pleasonton, Esq. and requesting to be furnished with the views of the Department on the subject, I have the honor herewith to transmit a letter prepared by my immediate predecessor, in answer to a communication formerly made from the Judiciary Committee. To the views contained in that letter, I beg to add, in compliance with your request, my concurrence generally in the reasonableness of some allowance to Mr. Pleasonton, for the extra duties performed by him.

I have the honor to be,

Very respectfully,

Your obedient servant,

LEWIS McLANE,

Secretary of the Treasury.

HON. WILLIAM M. MARCY,

Ch'n Com. on Judiciary of the Senate.

Cases in which compensation has been made by law for extra services rendered by officers of the Government, at various periods.

Peter Hagner, for extra services as an additional accountant of the War Department, five hundred dollars. See Laws of the United States, vol. 6, page 224.

Peter Hagner, for extra services as Third Auditor of the Treasury, one thousand dollars. Vol. 7, page 607.

Thomas H. Gillis, chief clerk in the Fourth Auditor's office, for performing the duties of Fourth Auditor in the case of a vacancy, nine hundred and fifty dollars. Vol. 7, page 447. In this case there was not an actual vacancy; for William Lee, Second Auditor, had been appointed to do the duty of Fourth Auditor also.

The chief clerk in the Treasury Department, for performing the duties of secretary of the commissioners of sinking fund, two hundred and fifty dollars annually, in addition to his salary. This allowance has been continued for many years, and is still continued.

Daniel D. Tompkins was allowed \$35,190 by one act, and \$60,239 24 by another, making altogether, \$95,429 24, besides the pay of major general, which had been previously allowed him. Vol. 7, page 207 and 330.

Robert Robinson was allowed five hundred dollars in full compensation for extra services as clerk to the board of commissioners at Kaskaskias. Vol. 4, page 307.

William Rector was allowed, in addition to his salary, for examining and recording surveys of his deputies, at the rate of twenty-five cents for every mile of the boundary line of the surveys under his direction, in the offices aforesaid. Vol. 6, page 267.

William Gerrard was allowed an additional sum of fifteen hundred dollars as land commissioner. Vol. 4, page 443.

Michael Jones was allowed pay for extra services as register and commissioner of land claims, the sum of fifteen hundred dollars. Vol. 6, page 290.

Major Thomas Lewis was allowed eleven hundred and fifty-seven dollars

for extra services as additional aid-de-camp to General Hayne. Vol. 3, page 122.

Charles Hyde allowed the pay of judge advocate, from the 2d December, 1792, to the 15th July, 1794, in addition to his pay in the line. Vol. 3, page 521.

Board of commissioners, appointed under the act providing for the indemnification of certain claimants of the public lands in the Mississippi Territory, allowed, with the secretary, an additional compensation of four thousand dollars. See Laws United States, vol. 6, page 161.

Robert Atwater allowed five hundred dollars for extra services as secretary of Michigan and commissioner of land claims. Vol. 5, page 500.

The clerks of the several Departments of State, of the Treasury, War and Navy, and of the General Post Office, allowed 15 per cent. in addition to their salaries as fixed by law. Vol. 4, page 104.

Henry M. Breckenridge allowed a claim as keeper of the public archives in Florida, (he being a Judge of the United States at the same time, and receiving a salary therefor.) Vol. 7, page 599.

The secretary of the Territory of Michigan allowed five hundred dollars for his services as a land commissioner in said Territory. Vol. 4, page 111.

The register and receiver of the land office, for the western land district in Florida, authorized to adjudicate certain claims to land in that district, and were allowed each one thousand dollars therefor, in addition to their salaries and fees as register and receiver. Vol. 7, page 410. Sec. 6, 7, 8.

The Secretary of the Senate and Clerk of the House of Representatives, with their clerks, allowed certain sums specified in the act, for the years 1796 and 1797, in addition to the sums allowed them by law. Vol. 2, page 597.

To the same, extra allowances made. Vol. 3, page 49, 264.

The Attorney General allowed six hundred dollars per annum, for extra services in relation to the British treaty. Vol. 3, page 5. Sec. 3.

Chief clerks in the Executive Departments allowed two hundred dollars each, for the year 1794, in addition to their ordinary salaries. Vol. 2, page 437.

Chief clerk Navy Department allowed three hundred dollars additional, for 1801. Vol. 3, page 435.

Postmaster at Washington city allowed one thousand dollars a year extra. Vol. 3, page 517.

Postmasters at New Orleans, Warrenton, North Carolina, Wheeling, Virginia, and Washington city, allowed extra compensation. Vol. 6, page 34. Vol. 7, page 382.

Land commissioner at Kaskaskias allowed five hundred dollars extra for taking testimony. Vol. 4, page 541.

The commissioners of the navy pension fund, to appoint a secretary with a salary of two hundred and fifty dollars per annum. The person appointed was chief clerk of the Navy Department, and he of course received this sum in addition to his salary. Vol. 3, page 615.

Amount of suits pending on the 15th of October, 1829.

District.	Amount for which suit was brought.	Reduced.	Due.
Maine - - - -	\$170,093 06	\$83,718 54	\$86,374 52
New Hampshire - - - -	77,138 30	23,354 54	53,813 76
Massachusetts - - - -	128,078 08	16,677 39	111,400 69
Vermont - - - -	231,996 59	162,514 76	69,481 83
Rhode Island - - - -	35,065 71	6,511 62	28,554 09
Connecticut - - - -	22,930 13	2,260 17	20,569 96
Southern district New York - - - -	629,256 94	111,943 35	517,313 59
Northern district New York - - - -	384,472 26	73,880 57	310,591 69
New Jersey - - - -	24,276 17	1,050 00	23,226 17
Eastern district Pennsylvania - - - -	391,755 38	110,979 17	280,776 21
Western district Pennsylvania - - - -	147,712 65	13,133 65	134,579 60
Delaware - - - -	54,322 82	-	54,322 82
Maryland - - - -	564,858 03	160,862 28	403,995 75
Eastern district Virginia - - - -	1,141,636 91	258,762 90	882,874 01
Western district Virginia - - - -	50,460 20	29,926 44	21,233 76
North Carolina - - - -	303,092 54	57,263 62	245,828 92
Ohio - - - -	397,793 53	123,577 08	274,216 45
Kentucky - - - -	795,429 85	325,003 07	470,426 78
South Carolina - - - -	289,187 28	87,724 65	201,462 63
Eastern district Tennessee - - - -	85,653 83	20,122 22	65,531 61
Western district Tennessee - - - -	339,416 84	37,929 43	301,487 41
Georgia - - - -	371,935 15	92,479 08	379,476 07
Eastern district Louisiana - - - -	592,527 78	219,870 91	372,656 41
Western district Louisiana - - - -	42,421 07	6,000 00	36,421 07
Indiana - - - -	35,926 53	4,136 76	31,789 77
Illinois - - - -	425,764 41	247,566 39	178,198 02
Mississippi - - - -	312,428 03	162,202 65	150,225 38
Southern district Alabama - - - -	611,194 83	180,177 31	431,017 52
Northern district Alabama - - - -	45,637 11	26,980 49	18,656 62
Missouri - - - -	300,666 28	49,704 81	250,961 47
District of Columbia - - - -	1,443,014 69	527,851 96	915,162 73
Michigan - - - -	61,770 20	8,978 37	52,791 83
Arkansas - - - -	137,081 59	-	137,081 59
Eastern district Florida - - - -	3,796 26	1,309 23	2,487 03
Western district Florida - - - -	8,123 01	584 33	7,538 68
	\$10,656,913 94	\$3,234,407 14	\$7,422,506 80

The foregoing is a statement of suits still pending, on or about the 15th of October, 1829.

Independently of the above, the sum of \$2,893,296 89 has been collected by the late agent of the Treasury, on suits altogether terminated and closed, making, in all, the sum of \$6,127,704, and in suit, altogether, the sum of \$13,490,210 83.