

HATTIE A. BURNETT.

MAY 1, 1886.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PINDAR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill S. 2022.]

The Committee on Invalid Pensions, to whom was referred the bill (S. 2022) granting an increase of pension to Mrs. Hattie A. Burnett, submit the following report:

Your committee adopt the report of the Senate committee, which is annexed and is as follows:

[Senate Report No. 415, Forty-ninth Congress, first session.]

The claimant is the widow of Maj. Gen. Ward B. Burnett. The following statement of the military and civil record of this distinguished soldier has been furnished your committee:

General Ward B. Burnett died June 24, 1884, at Washington City, aged 74. This distinguished veteran of six wars was appointed by President Jackson a cadet at West Point in 1828, and he was graduated in 1832; brevetted second lieutenant Second Artillery, July 1, 1834; ordered to report to Colonel Mahan, professor of engineers (was furloughed), reported to chief engineer, Major Douglass, assistant upon the surveys and plans and estimates which resulted in the adoption of his plans for the Croton water-works, now indispensable to New York City, and a monument to his genius. When relieved from the Academy, was ordered to report for duty to Maj. Hartman Bache, United States Topographical Engineers, at Philadelphia, Pa., on harbors and light-houses; then, as principal engineer to Col. H. Long, Topographical Engineer, upon surveys conducted by himself and Major Yarl, of the Royal Engineers, to determine the routes of railways connecting the Atlantic with the Canadas. Engaged in action of Lacha-Hatcha against the Seminole Indians. He fought in the Black Hawk war in that year on the ground near where Chicago now stands, before a single house was built in that city, and as captain of cadets in the Black Hawk war, the command, in seeking the enemies of his country, met one more formidable in the Asiatic cholera, which attacked more than one-half of General Scott's army, spreading desolation and death among them. As the surgeon-general and his assistants were among the dead and dying, the officers were obliged to take care of the sick, and young Burnett, fearless of consequences, was among the most active in providing for their comfort and safety. Reported to Maj. Gen. Winfield Scott during the difficulties at Charleston, S. C., acted quartermaster for a time, was staff officer to General Clinch, staff officer to General Bankhead at the battle of the Coves of the Withlacoocha. He organized two regiments and tendered his services to the President for the Mormon war. In 1842 and 1843 he organized a brigade, and offered his services to the President when war was anticipated with England over the Oregon boundary line; he was the brigadier general, and the brigade was kept together at his own expense. He attended the artillery school, Metz, France.

After leaving the Florida and Creek wars, was engineer, with Colonel Abert, chief of Topographical Engineers, on harbors, in 1837; became resident engineer in State of Illinois and Michigan canal upon that great and important work; was made major-general of militia; founded the Light Guard of New York State; captain of Tompkins's Blues when a mere lad; was major and brigade inspector.

In 1846, two regiments of his brigade having been accepted by Governor Wright, he was ordered to report with his regiments (the first troops raised for the Mexican war) to Maj. Gen. Winfield Scott for duty in the Mexican war, where his actions were brilliant. He was engaged in that war in the siege of Vera Cruz, Molina del Rey, Buena Vista, Palo Alto, Resaca de la Palma, in the battles of Cerro Gordo, Contreras, Monterey, and Churubusco—battles unsurpassed in thrilling interest and the glory of military achievement in the annals of the world, and the bravest deeds on record. General Burnett's regimental flag was the first one planted on the elevated causeway opposite Portalis in the battle of Churubusco, and his command captured Santa Aña and planted his flag at Cerro Gordo, the headquarters of General Santa Aña; after the troops had captured the position held by the whole Mexican line, he returned the first American flag that was planted upon the castle at Chapultepec, even before the Mexican standard was hauled down from the plaza of the castle, and the brave Mexican general surrendered his troops and the key to the enemy's position to General Burnett's command, as shown of him in the great painting now hanging in the governor's room, city hall, New York, and the national flag presented to him by Maj. Gen. Winfield Scott at the national palace in the city of Mexico, and a beautiful one from the ladies of Mexico, made by their own hands, and three other ones presented by the State and city of New York for their gallant conduct through the war. General Burnett presented the flags of his country to his command at the island of Lobos, Mexico, in 1846, upon their knees repeating this oath from his lips: "No enemy shall capture these colors while our lives are spared to defend them." Welcomed home to New York by the first division of New York regiments, under Major-General Sandford, by 200,000 people. Broadway was literally packed with people, who turned out to receive the returning troops, and flowers strewn in their pathway. Public receptions tendered him by the cities of New York, Brooklyn, Troy, Albany, Philadelphia, New Orleans, and others; then in the zenith of his glory, he was met everywhere by enthusiastic crowds. The young ladies from the seminaries, the school children forming processions, throwing and strewing blossoms beneath the horse's feet in honor of the gallant rider.

General Burnett was a warm personal friend of President Andrew Jackson, of Henry Clay, Abraham Lincoln, and Daniel Webster. In the wars he had many wounds, and the Mexican, where he was severely wounded by a shot through his body, hip, and shoulder dislocated by the fall of his horse—twice shot under him; from his wounds his jaws were closed with lock-jaw (tetanus) for forty-five days. His coffin was made, but the gallant Major Twiggs was buried in it. He was promoted general by President Polk, September, 1847, by an act of Congress; his commission signed by Governor Seymour; he commanded a brigade.

For General Burnett's heroic services to his country he was tendered a resolution of thanks by Congress, the State of New York, and other States, and honors in private life showered upon him by his countrymen.

In 1861, he organized troops for the war of the rebellion, although a great cripple, in the Assembly Rooms, Broadway, New York City, at his own expense, consolidating regiments as general United States Army, under appointment by the governor and commission from the Government by President Lincoln; headquarters were at Metropolitan Hotel. He rendered valuable services to the city during the New York riots, and by his efforts saved the United States mint when he had command of the city; was wounded again and sent to the United States Ladies' Hospital. He organized several commands in New Jersey, Delaware, Maryland, and Pennsylvania for services in the field during the war. From exposure consequent upon these labors he became a martyr to inflammatory rheumatism and neuralgia.

General Burnett rendered valuable services to his country as United States topographical engineer. In 1849 President Polk offered to make him commissioner to run the boundary line between the United States and Mexico; but being upon crutches he was made chief engineer for the construction of the navy-yard dry-dock, which he completed in 1852. Thence in 1855 he was in charge of the New York dry-dock, and the construction of the workshops in the New York navy-yard.

He made the plans of the Brooklyn water works, which were adopted and of inestimable value to the City of Churches, and a lasting honor to his name. In 1857 he was made chief engineer of Norfolk navy-yard and Portsmouth water works, which involved his survey of Lakes Drummond; in Richmond and Maryland, made plans for tunneling the Blue Ridge Mountains in Virginia.

He was made surveyor-general of Kansas and Nebraska, which included Colorado, Montana, and two other Territories, because from ill health he was unable to accept the appointment offered him by President Buchanan as minister to Turkey.

General Burnett at the time of his death was the oldest living graduate who became General United States Army in the Mexican war. Of the fruits of his valor was a territory conquered by the United States in 1848, almost one-quarter in extent of its then existing area, which is now peopled by 1,500,000 souls, and which, from its mines alone, could pay our national debt. He won by his bravery the highest honors

awarded to the immortal Jackson; in brief, the highest honors accorded to Lafayette by the empire city of the Union. Relics of great value were showered upon him, many came from foreigners. Two massive gold medals from the city and State of New York; another of great intrinsic value from the officers and soldiers of his division and command. The sword and the old hickory cane of President Jackson, newly mounted and ornamented with jewels and a massive gold eagle; another one from Mrs. Jackson heavily mounted. A beautiful gold mounted sword with diamonds was presented to him by the Light Guard of New York for the gallant acts of his youth, and saving the life of Cadet Clark from drowning, and six others, at different times. A grand reception was given to him by the mayor and common council and citizens at the Governor's room, city hall, New York, at the theaters and public places. A great dinner was given to him by the citizens of Philadelphia, and also dinners and receptions in several other cities. A grand banquet was given to him and his officers at Troy, where the ladies from the seminaries showered them with flowers.

General Burnett never was in a battle that was lost, or skirmish; he had great perseverance and fortitude, and many are the incidents of his generous nature which can be related. He drew around him a multitude of friends. In the parlor he was as gentle as a lady. He was calm, cool, and brave in the field. It was often said of him, he never knew what fear was, ever manly and hopeful through the many afflictions and hardships he was called to endure. His civil and military career placed him as one of the most distinguished men in American history, and was a most accomplished gentleman, possessed of more than ordinary intelligence of mind and of refined and artistic tastes. His mind had been cultivated by reading, studying, and reflection, and his memory was wonderful even up to the hour of his death, and the extent and accuracy of his information was remarkable. He was sociable, refined, and generous to a fault. He revered and loved his Redeemer, and was confirmed early in life in the Episcopal Church. A hero, a gentleman, a kind father, a devoted husband; for many years an invalid, but cheered by a faithful, brave-hearted wife, which was the one bright spot in the closing years of a once brilliant career.

General Burnett was honored as the bravest officer in the United States, and by his countrymen he was awarded the "President Jackson gold box" (and bequeathed to his widow), which bears the following inscription:

(Front side.)

February 23, 1819.

Presented by the mayor, aldermen, and commonalty of the city of New York to Major-General Andrew Jackson, with the freedom of the city, as a testimonial of respect for his high military service.

(Reverse side.)

THE HERMITAGE, TENNESSEE, August 17, 1859.

Bequeathed

by Major-General Andrew Jackson "to that patriot, of New York City, who (should our happy country not be blessed with peace) should be adjudged by his countrymen to have been the most distinguished in defense of his country and our country's rights."

Awarded

under that bequest, by the general voice of his countrymen, to Brigadier-General Ward B. Burnett, commanding the New York troops in the late war with Mexico.

Major-General Burnett's achievements have made every American citizen his debtor. He declined the democratic nomination for governor of New York—was provisional governor of New Mexico.

There should be no scant gratitude to the widow of "the bravest of the brave." His death was a source of national grief; his body lay in state in the Governor's room, city hall, New York; the flags all placed at half mast; thousands of citizens viewed the remains and followed him to his grave. Letters of condolence from the President, Congressmen, governors, military, and Navy, were sent to his afflicted widow and family.

General Burnett was placed on the pension-roll by the Department at \$30 per month, which amount was increased at different times to \$72. Upon his death, in 1878, his widow made application to be allowed that amount, but was only given \$30. The matter was taken to the Court of Claims, which sustained the decision of the Depart-

ment, and upon appeal to the Supreme Court of the United States the decision of the lower court was affirmed.

Your committee call attention to the language of Mr. Justice Harlan, who delivered the opinion of the court, which is as follows:

By an act of Congress of March 3, 1879, the Secretary of the Interior was directed to place on the pension-roll the name of Ward B. Burnett, and pay him a pension of \$50 per month in lieu of the pension then received by him (20 Stat., 665, ch. 290). The subsequent act of June 16, 1880, provides that all soldiers then receiving a pension of \$50 per month, under the provisions of the act of June 18, 1874, entitled "An act to increase the pension of soldiers and sailors who have been totally disabled" (18 Stat., 78, ch. 298), shall receive, in lieu of all pensions then paid to them by the United States, the sum of \$72 per month; those whose pensions were thus increased from \$50 to \$72 per month, to receive the difference between those sums monthly, from June 17, 1878, to the date when that act took effect. (21 Stat., 281, ch. 236.)

On the 17th of July, 1882, General Burnett received from the Department of the Interior a certificate showing that he was entitled to a pension "for gunshot wounds through left leg and rheumatism," at the rate of \$30 per month, to commence on the 1st of August, 1848, and \$31.25 per month from June 4, 1872, and \$50 per month from June 4, 1874, and \$72 per month from June 17, 1878.

By an act approved July 25, 1882, it is provided that no person then receiving, or who should thereafter receive, a pension under a special act, shall receive, in addition thereto, a pension under the general law, unless the special act expressly states that the pension granted thereby is in addition to the pension which such person is entitled to receive under the general law. (22 Stat., 176, ch. 349.)

General Burnett died on June 24, 1884, from the effect of wounds received in the war with Mexico. The appellant, his widow, claims the same pension—\$72 per month, that her husband was receiving at his death. The Interior Department granted her a certificate for a pension at the rate of only \$30 per month, to continue from June 24, 1884, during her widowhood. Her claim for a larger pension having been denied, the matter was referred by the Department to the Court of Claims. The claimant, in her petition in that court, asked for judgment against the United States for \$210, that being the difference between \$30 per month and \$72 per month from the date of her husband's death to the commencement of this action. A demurrer by the Government to the petition having been sustained, the case has been brought to this court.

The only question presented by the parties for our consideration is whether, under existing statutes, the widow of General Burnett is entitled to the same pension that he was receiving at his death.

Section 4692 of the Revised Statutes provides that "every person specified in the several classes enumerated in section 4693, who has been, since the 4th day of March, 1861, or who is hereafter disabled under the conditions therein stated, shall * * * be placed on the list of invalid pensioners of the United States, and be entitled to receive for a total disability, or a permanent specific disability, such pension as is hereafter provided in such cases, and for an inferior disability, except in cases of permanent specific disability, for which the rate of pension is expressly provided, an amount proportionate to that provided for total disability, and such pension shall commence as hereinafter provided and continue during the existence of the disability." (17 Stat., 566; 18 Id., 61; 19 Id., 403.)

Section 4693 specifies who shall be beneficiaries under the preceding section, among whom is "any officer of the Army, including regulars, volunteers, or militia, * * * disabled by reason of any wound or injury received, or disease contracted, while in the service of the United States and in the line of duty." (17 Stat., 566, 567; 19 Id., 403.)

Section 4695 provides that "the pension for total disability shall be * * * for lieutenant-colonels and officers of higher rank in the military service * * * \$30 per month." (17 Stat., 567; 19 Id., 264.) Other sections fix the amount of pensions in cases of disabilities known as permanent specific disability and inferior disability.

It is then provided, by section 4702, that "if any person embraced within the provisions of sections 4692 and 4693 has died since the 4th day of March, 1861, or hereafter dies by reason of any wound, injury, or disease, which, under the conditions and limitations of such sections, would have entitled him to an invalid pension had he been disabled, his widow * * * shall be entitled to receive the same pension as the husband or father would have been entitled to had he been totally disabled, to commence from the death of the husband or father, to continue to the widow during her widowhood," &c. (Act of March 3, 1873, 17 Stat., p. 569, ch. 234, § 8.)

It would seem to be too clear for discussion that the construction which the court placed upon these statutory provisions is correct. It is not to be doubted that the words "total disability" in the pension laws has a technical signification which cannot be disregarded. And when the statute fixes \$30 per month as the pension, in case of total disability, of an officer of the rank of General Burnett, and declares that his

widow shall receive the same pension as her husband would have received had he been "totally disabled," there is no room left for a construction that would give her a pension in excess of that amount. If it is supposed that the law operates unjustly against the officers and soldiers who became "totally disabled" in the service, or that an unreasonable distinction is made between different kinds of disability, the remedy is with another department of the Government. The courts must give effect to the intention of Congress as manifested by the statute. They cannot make, but can only declare the law.

The judgment is affirmed.

Mrs. Burnett is therefore now in receipt of only \$30 per month. Her husband died in consequence of his services, having been for a considerable time in a condition of entire helplessness, and her health was seriously impaired by the constant care necessary for his comfort. She is now dependent upon her pension.

The bill as introduced provides for a pension at the rate of \$100 per month, but your committee do not feel warranted in establishing such a precedent at this time, or in making this case an exception to the cases of widows of many other distinguished officers of the Army and Navy who have been allowed \$50 per month. We therefore report back the bill, and recommend its passage, with the following amendments:

In the title strike out the words "General Ward B." and insert "Hattie A."

In the fourth line strike out the letter "H." and insert "Hattie."

In the sixth line strike out the words "her late husband's invalid pension of one hundred" and insert "a pension at the rate of fifty."

Strike out in the seventh, eighth, and ninth lines all after the word "receiving" in the seventh line.

Your committee recommend the passage of the bill.

H. Rep. 2151—2

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