46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 872.

STEPHEN P. YEOMANS AND ANDREW LEECH.

APRIL 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5680.]

The Committee on Claims, having had under consideration the bill (H. R. 1110) for the relief of Stephen P. Yeomans and Andrew Leech, beg leave to submit the following report:

The claimants in this case seek indemnity for clerk hire and office rent expended by them respectively as register and receiver of the Sioux City land office, Iowa.

Stephen P. Yeomans was appointed register March 7, 1855, and remained in said office until May, 1861, something over six years. He asks compensation upon the following basis:

Office rent, at $600 per annum	$3,600
One clerk six years, at $1,000 per annum	6,000
Additional clerk hire	2,000
Total office rent and clerk hire	11,600

He also prays compensation for services in investigating, by order of the Secretary of the Interior, charges against a receiver at Omaha, Nebr., and the surveyor-general's office in Kansas, of $500. Also for services in depositing money at Dubuque, received from the receiver at Sioux City, in the sum of $300, making a total of $12,400.

Andrew Leech was appointed October 8, 1855, and continued in such office till March 31, A. D. 1860, a period of nearly four years and one-half. He prays compensation upon the following basis:

Clerk hire	$4,000
Office rent and incidental expenses	1,500
Total	5,500

In response to an inquiry addressed to the honorable Secretary of the Interior, by your committee, the acting Commissioner of the General Land Office, in a letter under date of February 10, 1880 (herewith submitted), says:

It appears from the records of this office that Andrew Leech was receiver of public moneys at the land office at Sioux City, Iowa, from the 29th November, 1855, to the 31st March, 1860, and that Stephen P. Yeoman's was register at the same place during all of said period. The register and receiver during the whole of the time were paid their salaries, and were each allowed the fees and commissions authorized by law on the business of said office, even to maximum compensation.

1. No allowances were made for "clerk-hire or office-rent" during their terms of

office, for the reason that such allowances were not made twenty or twenty-five years ago, the time of their incumbency.

2. Mr. Yeomans, as register, has not been allowed anything "for depositing at Dubuque," for the reason that he was not required nor authorized by law to make deposits.

3. No credit has been given the disbursing agent for the register's claim for services in investigating charges against the surveyor-general's office in Kansas.

It appears abundantly, from the evidence submitted to your committee, that both Yeomans and Leech supposed themselves to be entitled, as a part of the emoluments of their office, to certain warrant charges exacted of parties entering government land agreeably to the various acts of Congress on that subject, and more particularly the sixth section of the act of March 3, 1855, which provides—

That registers and receivers of the several land offices shall be severally authorized to charge and receive for their services in locating all warrants under the provisions of this act the same compensation or percentage to which they are entitled by law for sales of the public lands for cash at the rate of $1 per acre, the said compensation to be paid by the assignees or holders of said warrants.

These warrant charges were, in the aggregate, very considerable, and, had they belonged to these officers, would have rendered the emoluments of these positions sufficient to cover all necessary expenses and afford, at the same time, ample salary for the incumbents thereof.

The claim to these charges, as a part of the emoluments of these offices, seems to have been universal among registers and receivers. It was based upon the construction given to the said tenth section of the act of March 3, 1855, and the various other acts of Congress relating to the sale of public lands, by several eminent lawyers, and notably among others the late Reverdy Johnson, of Baltimore.

It seems, however, that the Secretary of the Treasury did not acquiesce in this claim upon the part of registers and receivers, but, on the contrary, insisted that the salary and perquisites of these officers were limited by the act of Congress of April 20, 1818 (3 Stat., 466), to the sum of $3,000 per annum as the maximum amount. Suits were instituted by the government to settle the construction of the various acts of Congress bearing on the question in controversy.

Two cases were commenced in 1858 in the United States district court for the district of Iowa, one against Lysander W. Babbitt, as register of the land office at Kanesville, Iowa, and one against Robert Coles, register at Chariton, Iowa. These suits were decided by the district court of Iowa against the government, Judge Love affirming the right of the defendants to retain the charges as a part of the emoluments of their respective offices. The cases were subsequently taken by writ of error to the Supreme Court of the United States, where the decision of the district court was reversed, the court holding that the maximum amount of the emoluments of these offices was fixed by the act of 1818 at the sum of $3,000. The opinion of the Supreme Court is reported in 1st Black, page 55.

Under this decision of the Supreme Court the claimants were compelled to account to the government for all receipts of their offices in excess of the sum of $3,000 per annum.

It appears from a letter from the acting Commissioner of the General Land Office, under date of February 19, 1880 (herewith submitted), that the claimant Leech, as the receiver of public moneys at the land office at Sioux City, Iowa, "collected and paid over as fees on military bounty-land warrants the sum of $21,602.11 between the 3d day of December, 1855, and the 31st day of March, A. D. 1860.

It is thus seen that had the claimants been correct in their interpreta-

tion of the law, the annual incomes of their respective offices would have been very considerably greater than the sum of $3,000. Having been disappointed in what they insist were their just expectations in regard to the emoluments of their offices, they now ask to be reimbursed for what they allege were really extraordinary expenses growing out of the exigences of the public service and necessarily incurred by them in the proper management of their offices, to wit, clerk hire and office rent, and for which, as they assert, no provision or allowance has ever been made them.

It is obvious that these claimants might have realized from their respective offices the full amount of salaries at the rate of $3,000 per annum, upon a much smaller volume of business than appears to have been in fact transacted by them. From the evidence submitted to your committee, it is clear that the claimants chose rather to afford the public every reasonable facility for the transaction of business. The rush westward for lands in those days was very great. The exigences of the public service and the burdens imposed upon registers and receivers are well described by Judge Love, of the United States district court of Iowa, in his opinion in the Babbitt case already referred to. He says:

> The history of the land sales of 1855 will place the object of Congress in passing the sixth section (act of 1855) in a clear and definite light. The rage of speculation had, during that year nearly reached its height; multitudes of people besieged the land offices, clamorously demanding the location of their warrants. Many millions of acres of land were disposed of in Iowa in an incredibly short space of time. Under these circumstances it was manifest that no ordinary force of clerks and no ordinary means and appliances were sufficient to meet the exigencies of the service. The salaries of the officers were wholly inadequate to meet these expenses. Hence, Congress had either to provide the means of paying such expenditures out of the public Treasury, or of enabling the land officers to do it by authorizing them to receive fees adequate to that purpose from those for whose benefit the services were performed and the expenses incurred. Congress chose the alternative least burdensome to the public Treasury.
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> In cash sales the officer had but to count the gold and issue the certificate. In cash sales, one written application and one certificate were sufficient for a whole section. How different is it under the land warrant-system. In the location of warrants, the officers have to examine the assignments, oftentimes numerous and sometimes by guardians, &c., and pass upon their validity. This is often a delicate and responsible duty. A separate application and separate certificate have to be written for every warrant. With 160-acre warrants, four applications and four certificates were required for a section of land, and with 40-acre warrants sixteen applications and sixteen certificates were required for the same quantity of land. (Senate Report No. 176, second session, Forty-fifth Congress, case of T. A. Walker.)

There seems to be hardly any question about the propriety of reasonable allowances for the extraordinary expenses of these officers. The Commissioner of the General Land Office, in a letter to the Secretary of the Interior, under date of February 14, 1877, which is set forth in the Senate report above cited, says:

> The following United States land offices were allowed for payment to clerks, rendered necessary in consequence of the magnitude of the sales of Osage and other Indian lands, the sums paid to them having been charged against the proceeds as expenses:
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> | David B. Emmert, receiver at Humboldt, Kans | $3,145 |
> | William Q. Jenkins, register at Wichita, Kans | 3,207 |
> | M. W. Reynolds, receiver at Independence, Kans | 2,041 |
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> The act of Congress of 7th July, 1876, allowed Ariel K. Eaton, late receiver, and James D. Jenkins, former register, at Decorah and Osage, Iowa, $3,600 each on account of payments for the services of clerks, upon the ground that such employment was necessary, owing to the large number of entries of land at that office.
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> By act of 18th February, 1861, section 2255 (Revised Statutes of the United States), the Secretary of the Interior is authorized to approve the employment for a limited period, and at a reasonable per diem compensation, of one or more clerks in the office

of a register of a consolidated land office, &c.; but, with this exception, there is no direct authority of law for the employment of clerks at the expense of the United States in the offices of the registers and receivers of the United States district land offices.

In fact, the propriety of these allowances was recognized and authorized by Congress as early as the year A. D. 1856. By section 7 of the general appropriation act of that year, it was provided—

That in the settlement of accounts of registers and receivers of the public land offices the Secretary of the Interior be authorized to allow, subject to the approval of Congress, such reasonable compensation for additional clerical services and extraordinary expenses incident to said offices, as he shall think just and proper, and report to Congress all such cases of allowance at each succeeding session, with estimates of the sum or sums required to pay the same.

This rider seems to have been overlooked by the claimants, doubtless from the fact that they were relying upon their supposed right to retain the warrant charges. That question, decided favorably on the first instance, as we have seen, was not settled adversely by the Supreme Court until the year A. D. 1862, when the opinion in the Babbitt case was rendered. In the mean time, the act of February 18, 1861 (sec. 2255 Revised Statutes), had been adopted. This act applies in terms only to consolidated land offices, and appears to have been regarded as a repeal by implication of section 7 of the general appropriation act of 1856; at all events, that section seems to have been thenceforth ignored.

It may be proper to remark in this connection that the claimant Yeomans was absent from home for nearly four years, during the late war, as assistant surgeon of the Seventh Iowa Regiment; that during his absence his residence was destroyed by fire, and, as he alleges, all his private papers were consumed, thus preventing him from confirming by original documents and writings much that is alleged in regard to the merits and history of these claims.

In the opinion of your committee, however, it would be, under these circumstances, obviously unjust to allow any suggestion of delay on the part of the claimants to prejudice their application for relief even at this day.

The claimant, Yoemans, has furnished to your committee numerous affidavits, letters, and statements by prominent business men and citizens of Iowa and other parts of the West, who were familiar with the condition of affairs at Sioux City during his term of office as register, all of which are herewith submitted. Among others, statements by the following well-known gentlemen: Hon. A. C. Dodge, James Harlan, George W. Jones, James H. Rothrock, W. A. Burleigh, George Wright, Charles Mason. From these statements and affidavits it fully appears that in 1856 the Sioux City land district was a vast region of uninhabited territory, embracing nearly one-fourth of the State of Iowa; that the town itself was then a mere collection of log cabins out upon the verge of civilization; that rents and all the necessaries of life were extravagantly high; that Yeomans was under the necessity of erecting a building at his own expense in order to secure proper office accommodations; that he was compelled to bring the materials therefor and his mechanics to construct the same from Saint Louis, a distance of nearly one thousand miles. It further appears from the evidence submitted that the claimant Yeomans gave his personal attention strictly to the duties of his office; that he kept continuously one competent clerk and additional clerks according to the exigencies of business, the number at times running as high as four.

The claimant, Leech, has also furnished numerous affidavits and statements, which are herewith submitted. From these proofs it appears that Leech gave his personal attention strictly to the duties of his office;

that he kept continuously one competent clerk; that at times the volume of business was such as to require the services of as many as four clerks. In short, it is the concurrent testimony of numerous gentlemen of all parties, and of the highest standing, that both these claimants ran their respective offices in the most thorough and business-like manner, and gave the highest degree of satisfaction to the public and the government.

There is no doubt, in the opinion of your committee, that both claimants, during their term of office, supposed themselves to be entitled under the law to the warrant charges; they most undoubtedly believed that such charges were intended to enable them to cover the extraordinary expenses of their offices, and it seems to be the unanimous opinion of the distinguished gentlemen making statements in favor of the claimants that, having been deprived of the warrant charges, they have never received adequate compensation for their many years of faithful service. In accordance with the decision of the Supreme Court, they were compelled to account for and pay these charges over to the Treasury.

Under the circumstances of the case, therefore, your committee is of the opinion that the claimants are entitled to be indemnified for the extraordinary expenses of their respective offices.

Your committee is of the opinion, from the evidence submitted, that the office expenses of said claimant, Yeomans, including rent and clerk hire, were somewhere from $1,500 to $2,000 per annum, and that a just indemnity to him for extraordinary expenses would be the sum of $1,250 per annum, and in compensation for these disbursements your committee recommend that said claimant be allowed for the entire period of six years the sum of $7,500.

Your committee is further of the opinion that the sum of $900 per annum is a fair rate of compensation for the claimant Leech, as indemnity for the extraordinary expenses of his office, and your committee recommend that he be allowed the sum of $4,050 on that account.

It further appears from the evidence submitted, that the claimant, Yeomans, in the winter of 1855–'56, was detailed by the Secretary of the Interior to examine charges against a receiver at Omaha, and the surveyor-general's office in Kansas, which service required a journey of some seven hundred miles in mid-winter in rude conveyances, and also the taking of many depositions. The details of these services are fully set forth in the affidavit of H. C. Bacon, herewith submitted. (See also the statement of the Hon. George W. Jones.)

The claimant, Yeomans, also alleges that soon after his appointment as register, the then receiver at Sioux City, a Mr. Bryant, was removed. That Bryant, upon his removal, and before the vacancy was filled, turned over the gold coin on hand to the claimant, Yeomans, who thereupon proceeded to Dubuque, a distance of three hundred and sixty miles across the State, and made deposit of the same.

The evidence shows that the actual expenses of the claimant while in Kansas upon the discharge of the duty thus assigned him were adjusted and paid; no allowances for services, however, were made in either instance, there being no law to meet such case. While these services on the part of the claimant, Yeomans, were undoubtedly meritorious, still your committee, in consideration of the fact that he was a government officer, in receipt of compensation, do not feel inclined to make any allowances therefor.

Your committee therefore report back the accompanying substitute for House bill 1110, and recommend its passage.