

IN SENATE OF THE UNITED STATES.

JUNE 6, 1838.

Submitted, and ordered to be printed.

Mr. WILLIAMS submitted the following

REPORT :

[To accompany Senate bill No. 350.]

The Committee on Naval Affairs, of the Senate, to whom was referred the petition of James H. Clark, with the accompanying documents, report :

That the memorialist claims allowance for certain items which he insists has been illegally and unjustly denied to him, in the settlement of his accounts at the Navy Department.

Mr. Clark is one of the oldest pursers in the navy, and has been much employed in discharging the duties of his office. Very large sums of money have passed through his hands, and no difficulties have arisen in full and accurate settlements of his accounts, except upon certain allowances which he claimed, being refused, and which now constitute the subject of his petition to Congress.

The whole amount claimed in Mr. Clark's memorial, upon the several items of his exhibit, is \$3,998 44.

The items Nos. 1, 2, and 15, amounting to \$122 75, and which had been refused at the department since 1828, were allowed and credited to him, on 29th January, 1838, and are therefore now removed from our consideration.

Of the \$812 50 paid by Mr. Clark to A. D. Ostrander, for clerk hire from 1st April, 1828, to 1st October, 1829, and for one and a half month in the 1st quarter of 1830, the sum of \$588 75 has been, upon reconsideration at the department in January, 1838, allowed and passed to Mr. Clark's credit; and he now claims that the balance, \$223 75, should be allowed to him by Congress, on the ground that similar allowances of clerk hire had been made to others and to himself, and, without notice that any change had been or would be made in the rule for settling such accounts, he had paid to Mr. Ostrander the full amount as charged by him.

The committee are satisfied that the payments were so made by Mr. Clark; but after the disallowance of the whole charge by the Fourth Auditor, viz: on 16th June, 1830, Mr. Clark addressed to Mr. Branch, then Secretary of the Navy, the following note: "From the time you have disallowed the amount paid to Mr. Ostrander for clerk hire, I would respectfully ask to be allowed the pay, &c., of a steward, as now allowed

Purser Halsey, and to say, that during the time for which you have allowed Mr. Ostrander pay, there was no steward borne on the books of the navy yard at New York." And upon that letter is endorsed as follows: "June 16, 1830. Let him be allowed for a purser's steward. Jno. B." And in consequence of that certificate, he has lately obtained the credit of \$588 75, before mentioned; and inasmuch as Mr. Clark has obtained what in 1830 he asked for in consequence of the disallowance for clerk hire, the committee are not disposed to open the question again, and, therefore, have disallowed this part of the claim.

Item No. 3 is for \$14 14, paid by Mr. Clark, under a written order of 5th June, 1828, by Captain Newton, requesting Williams and Nichols to deliver to bearer certain crape and gloves, and to send their account to James H. Clark, purser of that (New York) station. The order and account for \$14 14 were paid by Mr. Clark on 11th June, 1828, and the claim was disallowed at the department, for the reason that the articles paid for were for the funeral of Lieutenant W. F. Smith, who stood charged on the books of the department with \$167 85, for loss on Treasury notes.

The committee do not think this a sufficient reason for them to reject this claim. The payment was made under an order which the purser was bound to obey; and neither Captain Newton or Mr. Clark could be presumed conscious of the fact of such indebtedness of Lieutenant Smith; and if they had been, it ought not to have changed their action on that occasion, under the regulations respecting funeral expenses. The law provides that an indebtedness arising from loss on Treasury notes shall not affect the settlement of the accounts of the officers; much less should it deprive an officer of an allowance for a payment made under the circumstances in which Mr. Clark made this payment; and the committee think this item should be allowed.

Item No. 4 is for \$10, paid under the order of Commodore Chauncey, to John Smith, for apprehending and delivering James Thompson, a deserter from the ship Natchez, and to charge the same to *his* account. The money was paid by Mr. Clark, on the day the order was given, 7th August, 1829; and the charge was disallowed in April, 1830, for the reason that there was no evidence that this sum had been checked from the pay of Thompson, the deserter; and Mr. Clark was required to furnish the certificate of the paymaster that it was charged to the deserter.

There is no question that this sum was paid by Mr. Clark, pursuant to order from competent authority; and as Mr. Clark furnished to the department evidence of the payment, with the proper vouchers to enable the Auditor to charge it to the deserter, while he remained in the service and under the control of the Government, the committee think that he did all that was incumbent upon him to do, and that it was the business of others to see that this sum was charged to the deserter; and, therefore, that Mr. Clark should now be allowed what he thus paid.

The 12th item is for \$2,200, for three years and eight months' compensation as paymaster to mechanics and laborers, from 1st May, 1825, to 31st December, 1828, at \$600 per year, and is claimed upon the principle that similar allowances had been made by the department to pursers at that, as well as at other stations; and that in cases of pursers who were delinquent, and sued, similar claims were allowed to them by juries. Mr. Clark was not delinquent, and hence could not have the benefit of submitting this claim to a jury, and the department has not admitted it. In addition to the

ground that this claim is warranted by precedent, Mr. Clark produces the letter of T. Watkins, then Fourth Auditor, to him, dated Feb. 16, 1829, saying: "I have received your letter of the 11th instant. The charge of \$2,200, made in your last account, will be allowed;" and a letter from the Hon. Samuel L. Southard to him, dated May 20, 1830, from which the following is an extract: "I have received your letter respecting an allowance which you claim for your services in the payment of mechanics and laborers, &c., and which was passed by the Auditor in February, 1829. You desire to know whether the claim before mentioned was approved and authorized by me as Secretary of the Navy? I have to answer, that I do not clearly remember all the circumstances connected with the case. A part of them I do remember. I was very ill during the winter of 1828-29, and often and long confined to my bed. Sometimes unable to write, and using an amanuensis, to whom I dictated; but I performed every duty which I was aware it was necessary for me to perform. The allowance of this item of your account was of this description. It was my province to decide upon it. My predecessor and myself had established a general rule against such allowances, and by it the Auditor was governed in ordinary cases. But we had both authorized variations from this rule, where the extra and severe duty imposed on the officer, his heavy responsibilities, the losses and expenses to which the orders of the department necessarily subjected him, and other exigencies of the case, justified our doing it. Our reasons had been repeatedly stated to, and were known by, Congress, and were not disapproved. I did not doubt my right to make such allowances, under the laws and regulations by which the department was governed. You will find some cases at the office similar to your own, which have my approval. This approval, when in my power, was usually endorsed on the papers, and it was never given without full examination of the facts. Your case had come under my consideration, and was fully examined by me, before I was taken sick, my attention having been led to it by other cases, and I believe by some communication from yourself, or others, respecting it. My opinion was formed, and I was satisfied that it fell entirely within the rules and principles by which I had been governed in my decisions, and could not properly be refused, while those rules and principles were in operation. I recollect very well that the Auditor called several times in my bed room to obtain my decision on claims of the same general character as yours, but varying in the facts and circumstances by which they were supported. Some of them were allowed, and some were rejected. Sometimes I was able to give him a written authority. At other times I gave him verbal directions. According to my recollection, strengthened by papers now in my possession, he came to me somewhere about the middle of February, while I was confined to my room, with several accounts, and among which was yours, and it was allowed by me; and I believe, therefore, that he settled it under my express authority. Whether that authority was verbal or in writing, I am not able to recollect. In the situation in which I then was, its not being in writing would not make me doubt that it was given."

This evidence, together with the allowance of other similar claims to others under like circumstances, has been repeatedly presented to the department, but Mr. Clark's claim has not yet been admitted or allowed, and the committee think that provision should be made by Congress for the payment of it.

Item No. 13 is amount paid for paper used in the public service, \$2 25. As this claim was disallowed by the department in 1830, and there being no other evidence in the case, the committee do not think proper to allow it.

Items 14 and 16 are for travelling expenses under orders from the department, and, in the opinion of the committee, should be allowed. The orders of the department were complied with as far as they could be, without disobeying subsequent and different orders, and there seems to the committee no good reason why Mr. Clark should not be paid for what he did in obedience to the order first given to him.

The last two charges of Mr. Clark are for services in paying mechanics and laborers from the 1st of January, 1829, to the 28th of February, 1830, and rest upon the principle that previous charges of the same nature had been sanctioned by the department, and no notice was given that a different rule would be applied; and it does not appear that objections were made to such charges until after these charges had accrued. How far these proceedings should be regarded as sanctioning such charges is for Congress to determine, but the committee think the precedents established by the department in reference to other similar claims, and the fact that an allowance of a similar charge was made by the jury in the case of Mr. Fitzgerald, well justified Mr. Clark to expect the allowance of his charges, and that provision should be made for the payment of them. The claims in Mr. Clark's schedule which the committee recommend the allowance of, are the following, viz :

Item No. 3	- - - - -	\$14 14
Item No. 4	- - - - -	10 00
Item No. 12	- - - - -	2,200 00
Items Nos. 14 and 16	- - - - -	136 80
Last two charges	- - - - -	700 00
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		\$3,060 94

And they report the accompanying bill for his relief.