

IN SENATE OF THE UNITED STATES.

JANUARY 6, 1845.

Submitted, and ordered to be printed.

Mr. SEVIER made the following

REPORT:

[To accompany bill S. 62.]

The Committee on Pensions, to whom was referred the memorial and papers of Asahel Brainard, praying for arrears of pension, report:

That upon a full and careful examination of this case, and the strong corroborative evidence by which it is sustained, they are of opinion that the petitioner is entitled to the arrears prayed for.

The committee adopt the report made by the Committee on Pensions on the 17th February, 1843, hereto appended, as a part of theirs, in which the highly important services rendered by the petitioner are fully narrated. Based upon that report, a bill was unanimously passed by Congress, granting him a pension of twenty dollars per month as a captain of a rifle company in the service of the United States. The object of the present application is to obtain an allowance of the arrears of the pension, at the same rate, from the 17th September, 1814, the day the petitioner was borne from the field, totally disabled by two desperate wounds received at the sortie from Fort Erie, to the 24th February, 1843, the date of the commencement of his pension as captain.

The committee, from the gallant and brave services of the petitioner, and his present helpless condition, arising from the wounds then received, do consider this as among the most meritorious claims ever presented to the consideration of Congress; and of the many cases heretofore allowed, none appeals with greater force to the justice of the Government, nor none sustained by clearer or more positive testimony, from sources of the highest respectability.

The committee therefore report a bill for his relief.

FEBRUARY 17, 1843.

Mr. PHELPS, from the Committee on Pensions, to whom was referred the memorial of Asahel Brainard, praying for an increase of pension, reported:

That the petitioner entered the service very early during the late war with Great Britain, served till near its close, and was in most of the severe and desperate battles fought on the Northern frontier.

His first service was while quite a youth, as a militiaman, at Sackett's Harbor, under General Jacob Brown. His next was as one of Forsyth's riflemen, in which capacity he was at the taking of York, Upper Canada, where he was wounded. He afterward entered the regiment of New York volunteers, commanded by Colonel Dobbin, in the brigade of General P. B. Porter, as the drum major of the regiment, and with this brigade he was engaged at Chippewa, Lundy's Lane, and at Fort Erie. This last service deserves a more particular notice.

During the desperate and bloody conflicts which occurred on the Niagara frontier, in the campaign of 1814, where so much gallantry was exhibited, and the honor of the American arms so proudly sustained, every effort was necessary to give efficiency to the army and to supply the deficiency caused by the havoc of several successive engagements of a most sanguinary character. With this view, the corps of musicians in Porter's brigade were converted into fighting men. They were armed with rifles, and the command conferred upon Brainard. It was at the head of this company of riflemen that he served at Chippewa, Lundy's Lane, and Fort Erie. He appears to have been actively engaged—to have displayed great gallantry, and to have rendered essential service. He has the highest testimonials of his activity and bravery from his associates in arms, but which the committee do not deem it necessary to repeat, as, however gratifying they may be to his patriotic feelings and his pride as a soldier, they do not constitute the substantial basis upon which the committee place their report.

At the sortie from Fort Erie, the last and not the least sanguinary of those battles, he was, while at the head of his riflemen, twice wounded, and carried from the field. This terminated his service.

The testimony of two examining surgeons rates his disability as total, and he has already been allowed by the department a pension at the rate of eight dollars per month.

The object of this application is to obtain an increase of the pension to the allowance of a captain, the station which he occupied at the time the disability was incurred. There may be most satisfactory reasons why the department could recognise only his rank as drum major. It must be governed by the fixed and permanent rules. The proper documentary evidence of higher rank might not be found there, and the authority for conferring such rank, under such circumstances, might not have that legal sanction which the mere executive officer must require. But, in the eye of legislative discretion, the subject assumes a different aspect. The committee look to the actual service, and they can see no reason nor justice in disowning the gallant soldier, after he has faithfully and gallantly served his country, and sacrificed, not indeed his life, but those physical faculties necessary for its enjoyment, simply because the service was rendered upon an emergency which did not admit of more formal arrangements. His life was as much perilled, and his service as effectual and as valuable, as if he had entered the battle with a formal commission in his pocket. Indeed, that was no time for paper arrangements, nor for devising the military emblems which should adorn the parchment. It was a time of action, prompt, rapid, desperate, and decisive. That action was had. The country was defended and its honor sustained. The arrangement was justified by the emergency, and we are bound in honor to give it our sanction.

The committee can see no danger in the precedent. This is not a case where a subordinate assumes a command as the next in rank, upon the removal of his superior. It is the case of an original command conferred under such circumstances, that whether the authority which conferred it was strictly legal at the time, it ought not now to be questioned. If the memorialist was called upon to exchange his instruments of music for the rifle, and to incur the increased danger of his new employment and *command*, the country should extend to him all the advantages of his new position.

The committee therefore report a bill for his relief.

MEMORIAL.

To the honorable the Senate and House of Representatives of the Congress of the United States.

The memorial of the undersigned, Asahel Brainard, of Willoughby, Lake county, in the State of Ohio, late a captain of a volunteer rifle company in the service of the United States,

RESPECTFULLY REPRESENTS :

That your memorialist, prompted by the desire to serve his country in her hour of need, entered the service as drum major in the spring of 1812, at Sackett's Harbor, in Colonel Bellinger's regiment ; that he joined Major Forsyth's rifle corps about the 1st April, 1813, at that place, and was with him in the actions of Little York, on the 27th April, 1813, and Fort George, in the month of May following, Major General Dearborn commanding. In the former engagement your memorialist was wounded in the right thigh, which did not, however, incapacitate him from duty ; that about the 2d October, 1813, he was engaged on picket guard with Lieutenant Roane, at Fort George, and remained with the army until it moved down the river St. Lawrence to join General Wade Hampton, when he was discharged at Grenadier's island ; that, although discharged, he continued to serve his country during the winter at Ithaca, on recruiting service with Lieutenant Richard Goodhill, Colonel Mulany, and Majors McFarland and Brooks's regiments, and continued in that service till the 1st May, 1814, when he volunteered at Canandaigua, in Colonel Dobbyn's regiment of New York volunteers, under General Peter B. Porter, and was placed in the staff of the brigade ; that your memorialist was in the attack and capture of Fort Erie on the 3d July, 1814, and on the morning of the 4th (a day so memorable in our country's history) had conferred on him by General Porter, in the presence of General Ripley, Colonel Wood, and other officers, the rank of captain of a rifle company, consisting of one hundred men, which rank, he was proud to believe, was conferred on him in approbation of his services on that occasion ; that your memorialist participated in all the active operations of the army under General Brown, and in the continued skirmishing with the enemy, following the capture of Fort Erie ; was in the battle of Chippewa, on the 5th July, 1814, and of Niagara, (or Lundy's Lane,) on the 25th July, 1814, which covered the American arms with so much glory ; that the morning after the latter engagement, the army, under General Ripley, (on whom the command was consigned by General Brown, who, with General Scott, was wounded,) moved to Fort Erie, and fortified ; that on the 15th August following, we were attacked by the enemy under Lieutenant General Drummond, on which occasion the British forces were most signally repulsed.

That, on the 17th September, 1814, General Brown directed a sortie from Fort Erie, which resulted in the entire destruction of General Drummond's works, and the killing and capturing of one-third of his whole force ;

that, during this sanguinary conflict, and whilst your memorialist, at the head of his brave company, was storming the upper battery and block house, he received *two wounds*, one on the hip and the other in the arm, and was borne from the field or ravine, by Dr. Cyrenus Chapin, to Buffalo, where he remained until his father and grandfather conveyed him home to Whitesborough, Oneida county, New York, where he laid all the winter under medical treatment.

That the *wounds* your memorialist received in the several desperate and bloody actions with the enemies of his country, and whilst endeavoring, with all his energy, to *sustain her honor*, *shattered* his body to pieces, and nearly deprived him of life; that the *total disability* occasioned by those wounds has, ever since they were received, and still continues to afflict him, to such a degree, indeed, that he has abandoned all hope of a restoration to health and strength; all of which facts, *he trusts*, will be conclusively and abundantly proven by the many documents on file in the office of the Commissioner of Pensions, and to which your honorable bodies are particularly referred. In addition to which testimony, your memorialist begs leave to refer your honorable bodies to all the old officers of the army now on duty at the seat of the General Government, whose illustrious services have added such *brilliant honors* on their country and themselves, and with whom your memorialist had the honor and the pride to serve, viz: Generals Scott, Jesup, Jones, and Towson, &c.

Your memorialist hopes and trusts that your honorable bodies will pardon this lengthy recital of the services and sufferings of an old *war-shattered* soldier, deemed by him necessary to elucidate and sustain the claim he now has the honor to submit to the justice and the liberality of his country.

That your memorialist, when in better circumstances, refrained from asking a pension, but, becoming unfortunate, did apply, and on the 12th December, 1842, was placed on the pension list at eight dollars per month.

That, by the report of the honorable Mr. Phelps, from the Committee on Pensions of the Senate, dated the 17th of February, 1843, (which report is particularly referred to,) the nature and extent of the services rendered by your memorialist were so clearly, correctly, and feelingly stated, that Congress, on the 24th of that month, not only recognised and established his rank of *captain*, but increased his pension to twenty dollars per month.

Your memorialist, at this time, in his advanced age, and in his adversity, begs leave to submit a claim for arrears of invalid pension, at the rate of his present pension, from the 17th September, 1814, the day on which he was borne from the field *totally disabled*, to the date of the commencement of his pension as captain—the 24th February, 1843.

Your honorable bodies are aware of the many instances of the allowance of similar claims; and your memorialist hopes and trusts that *his services* will not be viewed as less meritorious, or less deserving of recompense.

And your memorialist will, as in gratitude and duty bound, ever pray.