

JOHN ROBB.

[To accompany Bill H. R. C. C. No. 5.]

MAY 14, 1858.

Mr. S. S. MARSHALL, from the Committee of Claims, submitted the following

REPORT.

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of John Robb, together with the bill accompanying it, have had the same under consideration, and now beg leave to report :

That this case involves the same question with that of Asbury Dickins, just reported on, and your committee, therefore, on the same grounds, now report the accompanying bill, as a substitute for the bill from the Court of Claims, and recommend its passage.

34TH CONGRESS, 1ST SESSION.—HOUSE OF REPRESENTATIVES.—REPORT
C. C. No. 14.

JOHN ROBB.

[To accompany Bill H. R. C. C. No. 5.]

MAY 16, 1856.—Referred to the Committee of Claims.

MAY 23, 1856.—Ordered to be printed.

The COURT OF CLAIMS made the following

REPORT.

JOHN ROBB vs. THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The Court of Claims respectfully presents the following documents as the report of the case of John Robb vs. The United States :

1. The petition of the claimant.
2. Certificate of the Secretary of State, showing the dates of the appointments of the claimant as Acting Secretary of War.

3. Certificate of the Secretary of the Treasury, showing how long the claimant so acted.

These two certificates are transmitted to the Senate.

4. Opinion of the court, with the opinion of the court in Asbury Dickins' case annexed ; with a bill for the claimant's relief.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this 7th day of May, A. D. 1856.

[L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Judges of the Court of Claims :

The petition of John Robb respectfully showeth : That your petitioner, at the time hereafter mentioned, being chief clerk of the War Department, was appointed and duly commissioned to act as Secretary of War, at the following dates, to wit : June 8, 1832, July 16, 1832, November 12, 1832, May 6, 1833, June 6, 1833, and September 26, 1833, and served, as well as he recollects, altogether about nine months, under the appointments at the different periods above stated.

Your petitioner further states, that he presented his claim for payment at the Treasury Department, for the services rendered as aforesaid, and that the First Auditor reported on the 10th August, 1849, the sum of two thousand seven hundred and eighty-one dollars and ninety-four cents, due from the United States to your petitioner for his salary as Acting Secretary of War, for various periods, during the years 1832 and 1833, but there was no further action upon the case by the Treasury Department. The exact period of time which your petitioner served as aforesaid appeared from an official statement from the War Department, which, with other papers that accompanied the First Auditor's report, were lost or mislaid, and your petitioner asks that on order of court be made, to obtain from the War Department an official statement of the length of time he was Acting Secretary of War.

Your petitioner, having performed the duties of Secretary of War, believes that he is justly entitled to the salary for the time he acted as such, upon principles of equity and precedents of the Treasury Department in similar cases ; and that he is the sole owner of the claim, and prays that a bill be reported to Congress for his relief.

JOHN ROBB.

J. S. EDWARD, }
A. H. LAWRENCE, } *For petitioner.*

DISTRICT OF COLUMBIA, }
 Washington County, } ss.

Personally appeared before me, a justice of the peace in and for said county, John Robb, who made oath that the foregoing petition contains the facts, according to his knowledge and belief.

Given under my hand, this 16th of July, 1855.

L. F. WHITNEY, JR.

JOHN ROBB vs. THE UNITED STATES.

Opinion of the court, delivered by BLACKFORD, J.:

This is a claim upon the United States for compensation for the services of the claimant as Acting Secretary of War, at different times, between the 8th of June, 1832, and the 9th of October, 1833—both days inclusive.

It appears by the evidence that the claimant was regularly appointed Acting Secretary of War, at various times in said years, as stated in his petition; and that he served in that office, in those years, for one hundred and seventy-five days. The petition states, that during the time those duties were performed the claimant was chief clerk in the War Department.

This case is the same in principle with that of Dickins vs. The United States, recently decided by this court. The decision in that case, relative to the validity of the petition, is hereto attached. It shows the reasons of our decision in the present case.

We consider the claimant entitled for his services, as Acting Secretary of War, to the same compensation that was, at the times of his service, allowed by law to the Secretary of War—that is, at the rate of six thousand dollars a year. Such allowance is in accordance with the decision of the circuit court of the United States in the case of the United States vs. White and others, cited in our opinion in the case of Dickins vs. The United States.

The account rendered by the claimant is as follows:

“The United States to John Robb, Dr., for services as Acting Secretary of War.

From 8th June, 1832, to 15th June, 1832, inclusive,	7 days.
16th July, 1832, to 6th Oct., 1832,	“ 82 “
12th Nov., 1832, to 17th Nov., 1832,	“ 5 “
6th May, 1833, to 8th May, 1833,	“ 3 “
6th June, 1833, to 8th Aug., 1833,	“ 64 “
26th Sept., 1833, to 9th Oct., 1833,	“ 14 “

175 days.

At the rate of \$6,000 per annum, making \$2,876 73.”

We consider that account to be proved by the evidence; and we therefore render judgment in favor of the claimant for the said sum of

two thousand eight hundred and seventy-six dollars and seventy-three cents. A bill for that sum is accordingly reported.

A BILL for the relief of John Robb.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury pay to John Robb the sum of two thousand eight hundred and seventy-six dollars and seventy-three cents, out of any money in the treasury not otherwise appropriated, as a compensation in full for his services as Acting Secretary of War, in the years eighteen hundred and thirty-two and eighteen hundred and thirty-three.

ASBURY DICKINS *vs.* THE UNITED STATES.

The opinion of the court, delivered by Judge BLACKFORD :

This is a claim for compensation for services performed by the claimant as Acting Secretary of the Treasury, at different periods, between the 24th of April, 1829, and the 31st of May, 1833—both days inclusive. It is also a claim for compensation for services performed as Acting Secretary of State at different periods, between the 10th of August, 1833, and the 9th of November, 1836—both days inclusive.

The petition, which is hereto attached, states that the claimant was appointed to said offices by the President of the United States, and rendered the services accordingly. It states, further, that during the times the claimant was acting as Secretary of the Treasury, he was also chief clerk in the Treasury Department; and, during the times he was acting as Secretary of State, he was chief clerk in the State Department.

The petition also states that the claimant's appointments of Acting Secretary of the Treasury were made on account of the absence from the seat of government, or sickness, of the Secretary of the Treasury; and that his appointments of Acting Secretary of State were on account of the absence or sickness of the Secretary of State.

The objection to the claim, relied on in this case, is founded on the 9th section of the act of Congress of 1818, entitled "An act to regulate and fix the compensation of the clerks in the different offices." That section is as follows :

"SEC. 9. *And be it further enacted,* That the compensation allowed by this act to clerks shall commence from and after the 31st day of March last. And it shall be the duty of the Secretaries for the Departments of State, Treasury, War and Navy, of the Commissioners of the Navy, and the Postmaster General, to report to Congress, at the beginning of each year, the names of the clerks they have employed, respectively, in the preceding year, together with the time each clerk was actually employed during the year, and the sums paid to each; and no higher or other allowance shall be made to any clerk in the said departments and offices than is authorized by this act.

And all acts, and parts of acts, inconsistent with the provisions of this act, are hereby repealed."—(3 Stat. at Large, 447.)

The meaning of that part of the above section relied on by the Solicitor is only this: That no such clerk, as there referred to, shall receive any other compensation, as clerk, than what the act allows. It does not affect the question, whether the claimant is not entitled, besides his salary as clerk, to a compensation, and if any, to what amount, for his discharge of the duties of the other offices conferred on him.

The 8th section of the act of Congress referred to by the claimant, is as follows:

"SEC. 8. *And be it further enacted*, That in case of the death, absence from the seat of government, or sickness, of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments, whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices, until a successor be appointed, or until such absence, or inability by sickness, shall cease."—(1 Stat. at Large, 281.)

It was under that law that the claimant received from the President the appointments, authorizing him to perform the duties, respectively, of Secretary of the Treasury and of Secretary of State.

It appears to us that the petition shows that the claimant, at the times he performed the duties of Secretary of the Treasury, held an office separate from his office of chief clerk; and that he also held an office separate from that of chief clerk at the times he performed the duties of Secretary of State. He held two offices at those times; and there was no law to prohibit him from doing so. He discharged the duties of both offices, and must be entitled to compensation accordingly. He does not claim any pay beyond his salary as chief clerk, for extra services. His claim for compensation, beyond his salary as chief clerk, is on account of his holding other offices at different times whilst he was chief clerk, and of his discharging the duties of such other offices.

The claim, we think, is well founded. There is the following decision on the subject, by the circuit court of the United States for the Maryland district. It was the case of a navy agent who had been appointed acting purser. Chief Justice Taney, in delivering the opinion of the court, uses the following language:

"But he is entitled to set off the sum of \$5,328 08, for his salary as acting purser to the naval establishment at Annapolis. The Secretary of the Navy had a right to appoint a purser *ad interim*, usually called acting purser, to discharge the duties of purser at this establishment, if the demands of the public service elsewhere, or any other sufficient cause, put it out of his power to employ a purser regularly appointed. The court is bound to presume that the power, in this instance, was exercised under circumstances that justified the appointment of the defendant as acting purser. He performed all the duties of purser at

the naval establishment, settled his accounts with the proper officer at Washington as such, and not as navy agent; and was recognized as acting purser in the reports to Congress concerning certain expenditures chargeable to that branch of the service. The act of Congress fixes the salary of purser, when not otherwise provided for, at \$1,500 a year. As the defendant performed all the duties of the office, and performed them in the name and in the character of purser, he is entitled to the compensation which the law has provided for such services. The circumstance that he held the office of navy agent at the same time can make no difference. There is no law which prohibits a person from holding two offices at the same time. As a matter of policy it would certainly be highly objectionable in most cases as a permanent arrangement; but in the absence of any legal provision to the contrary, this appointment was valid. Indeed, it often happens that in unexpected contingencies, and for temporary purposes, the appointment of a person already in office to execute the duties of another office, is more convenient and useful to the public than to bring in a new officer to execute the duty. And if the duties of the second office are performed, and the law has fixed the compensation which it deems just for such services, it cannot be material whether they are rendered by one holding another office or not, provided they are faithfully discharged."—(The United States vs. White and others, April term, 1851.)

That case is very similar to the one before us, and is, no doubt, correctly decided. It shows that the present claimant is entitled to receive for his services, as Acting Secretary of the Treasury and as Acting Secretary of State, the same compensation, for the time he acted, which the law then allowed to the Secretaries of the Treasury and of State, respectively.

The petition further states, that, from the 21st of June to the 7th of August, 1831, the claimant received a compensation as Secretary of the Treasury, but that during that time he did not receive his salary as chief clerk. The circumstance here stated will be taken into consideration, when an account shall be taken from the evidence of the amount to which the claimant is entitled.

The Solicitor refers us to certain acts of Congress of 1839 and 1842, (5 Stat. at Large, 349, 510, 525.) It is only necessary to observe, with respect to these acts, that they were not in force when the services now sued for were rendered.

Testimony is ordered to be taken in this case.

