

2-12-1884

## To Indemnify California

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1884.—Ordered to be printed.

Mr. MAXEY, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill S. 809.]

*The Committee on Military Affairs, to which was referred bill S. 809, respectfully submits the following report:*

On December 22, 1883, the committee addressed a communication to the Secretary of War requesting to be furnished with such information in respect to the matters set forth in this bill as might be had in the War Department. On the 24th January, 1884, the Secretary replied as follows:

WAR DEPARTMENT,  
Washington City, January 24, 1884.

SIR: Referring to so much of your communication of December 22, 1883, as requests information upon the subject of Senate bill No. 809, "to indemnify the State of California for balances paid and remaining due on account of indebtedness incurred in the Indian wars," &c., I have the honor, in reply, to forward copy of the report of the Third Auditor of the Treasury, dated the 22d instant, upon the bill, which it is hoped will afford the information desired.

A similar bill having been introduced in the House of Representatives, and the subject being one of considerable importance, I beg to request that the letter of the Auditor may be printed.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,  
Secretary of War.

Hon. S. B. MAXEY,  
Of Committee on Military Affairs, United States Senate.

The communication of the Third Auditor therein called for is as follows:

TREASURY DEPARTMENT,  
THIRD AUDITOR'S OFFICE,  
Washington, D. C., January 22, 1884.

SIR: I have the honor to return \* \* \* "A bill to indemnify the State of California \* \* \*," and the other papers referred to me by your direction.

Notwithstanding the recitals in the bill, I am unable to perceive that any part of the appropriation was due to the State, or that the non-payment of the small balance of the appropriation was caused by "delays occasioned by War Department rulings." On the contrary, the facts would seem to be that the small unpaid balance belonged exclusively to the holders of the yet outstanding California bonds, and that the sole reason for the non-payment was the failure by a few of such holders to come forward and present their bonds for payment.

A brief history of the legislation by Congress is as follows:

The original act, August 5, 1854 (10 Stat., 582, 583), directed the Secretary of War to examine and ascertain the "amount of expense incurred and now actually paid" by the State in the suppression of Indian hostilities within the State prior to January 1, 1854, and to pay the amount so ascertained into the *State treasury*, but not to exceed \$924,259.65.

But, as shown by correspondence, the State officials determined not to present its claim as the law stood; and by act of August 18, 1856, Sec. 8 (11 Stat., 91), the law was changed to provide that the appropriation should be used to pay the holders of the war bonds which the State had issued on account of such expenses.

An amendment was made by act of June 23, 1860 (12 Stat., 104), but it was of minor importance, and need not be now set out.

The holders of the great bulk of the bonds presented them within a short time, and received payment.

A period of more than three years then elapsing without further calls, the appropriation became by law "lapsed," and the unexpended balance, \$10,188.65, was therefore carried into the surplus fund.

Subsequently a few bonds, aggregating not over \$2,500, were presented to this office, but were returned, there being no fund for payment; and on March 22, 1866, the Third Auditor recommended to the Secretary of War to ask Congress to reappropriate said balance of \$10,188.65.

By act of July 25, 1868 (15 Stat., 175), a balance of \$10,183.65 (\$5 short) was reappropriated. Only one person, James Steele, presented any bond, and he was paid \$538.11. Again the appropriation "lapsed" by want of calls upon it for a period of three years; and on July 1, 1874, the balance, \$9,645.52, was carried into the surplus fund.

By act of March 3, 1881 (21 Stat., pages 510, 511), a sufficient amount of the unexpended balance was reappropriated to pay the principal, with interest to July 1, 1860, of four bonds described by denomination and serial numbers; and payment was accordingly made to the owner, Frances D. Bingham, in the sum of \$1,288.36, leaving the balance now in the surplus fund, \$8,357.16.

I do not know why Congress allowed interest to July 1, 1860, on Mrs. Bingham's bonds. On the others interest was allowed to January 1, 1854, as the appropriation, so I understand, would suffice for no more, having been based upon the showing made by the State of the expense incurred by it up to *that date*.

I fail to perceive that the *State* had any right in the unexpended balance.

Very respectfully,

A. M. GANGEWER,  
*Acting Auditor.*

Hon. ROBERT T. LINCOLN,  
*Secretary of War.*

The committee is of the opinion that the report of the Third Auditor is conclusive as against the bill. The argument of counsel for California does not overturn, in the opinion of the committee, the case upon the facts as made out by the Third Auditor. It is insisted that—

The report of the Third Auditor misapprehends the intention and scope of said bill and fails to include and give (to the committee) the full information and facts and history of said matter, due evidently from the fact that the same are not matters of record in the Third Auditor's office.

This argument, it is submitted, would address itself rather to the War Department or to that branch of it where "the matters of record" not in the Third Auditor's office may be found, or to that office, wherever

it be, which contains this testimony. The committee called upon the Secretary of War (this being a war claim) and was furnished with the report of the Third Auditor, with the remark, "Which it is hoped will afford the information desired." The importance of this report, in the estimation of the Secretary, is shown by his request to have it printed, which the committee requested to be done, and the report was printed, and has evidently been examined by counsel for the State. If there is anything else in the case the committee has not been furnished with it, the committee assuming that all was furnished which in the judgment of the Secretary of War was pertinent.

The committee takes the bill and evidence furnished, and upon it reports the same and recommends that bill S. 809 do not pass.

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