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### California, Oregon, and Nevada War Claims

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IN THE SENATE OF THE UNITED STATES.

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APRIL 23, 1894.—Ordered to be printed.

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Mr. DOLPH presented the following

**STATEMENT OF CALIFORNIA, OREGON, AND NEVADA RELATIVE TO THEIR STATE REBELLION WAR CLAIMS AGAINST THE UNITED STATES; MADE IN SUPPORT OF SENATE BILL NO. 101, INTRODUCED BY SENATOR STEWART, OF NEVADA, ON AUGUST 8, 1893, AND OF SENATE BILL NO. 1033, INTRODUCED ON OCTOBER 2, 1893, AND SENATE BILL NO. 1062, INTRODUCED BY SENATOR DOLPH, OF OREGON, ON OCTOBER 9, 1893, AND OF SENATE BILL NO. 1295, INTRODUCED BY SENATOR WHITE, OF CALIFORNIA, ON DECEMBER 18, 1893, AND OF HOUSE BILL NO. 2615, INTRODUCED BY REPRESENTATIVE CAMINETTI, OF CALIFORNIA, ON SEPTEMBER 11, 1893, AND OF HOUSE BILL NO. 4959, INTRODUCED JANUARY 3, 1894, BY REPRESENTATIVE MAGUIRE, OF CALIFORNIA, ALL HAVING FOR THEIR OBJECT "TO REIMBURSE THE STATES OF CALIFORNIA, OREGON, AND NEVADA FOR MONEYS BY THEM EXPENDED IN THE SUPPRESSION OF THE REBELLION WHEN AIDING THE UNITED STATES TO MAINTAIN THE 'COMMON DEFENSE' ON THE PACIFIC COAST."**

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The facts out of which the aforesaid State war claims arise have been very fully stated in several reports heretofore made in the House of Representatives and to the Senate, as follows, to wit: House Report No. 254, and Senate Report No. 158, Fifty-second Congress, first session; House Report No. 2553, and Senate Report No. 644, Fifty-first Congress, first session; and House Report No. 3396 and Senate Reports No. 1286 and No. 2014, Fiftieth Congress, first session.

Bills relating to these State war claims of these three Pacific coast States, passed the Senate during the first session of the Fiftieth Congress, and were favorably reported to the Senate during the first session of the Fifty-first and Fifty-second Congress, and to the House during the Fiftieth, Fifty-first and Fifty-second Congresses, but were not reached for consideration by the House, in either thereof. Similar Senate bills, to wit: Nos. 101, 1062, 1295, were introduced during the first and second sessions, Fifty-third Congress, by Senators Stewart, Dolph, and White, of California, and all referred to the Senate Committee on Military Affairs. Similar House bills, to wit: H. R. No. 2615 were also introduced in the House on 11th day of September, 1893, by Mr. Caminetti, of California, House bill No. 4959, on January 3, 1894, by Mr. Maguire, of California, and both referred to the House Committee on War Claims.

Sums of money (recited in three reports made by the honorable Secretary of War to the Senate, on the State war claims and printed as Senate Ex. Docs. Nos. 10, 11, and 17, Fifty-first Congress, first session) proven to the full satisfaction of the War Department to have been expended by said States to aid the United States in the suppression of the war of the rebellion were included in the general deficiency appropriation bill as it passed the Senate during the second session of the fifty-first Congress, for the purpose of indemnifying and reimbursing said States on account and in partial liquidation of said claims, but the same were omitted from said deficiency bill as it became a law. Senate bill No. 52, and House bills No. 54 and No. 42, Fifty-second Congress, first session were in all respects identical; the last of which House bills, was, on February 10, 1892, favorably reported by the House War Claims Committee in House Report No. 254, Fifty-second Congress, first session and said Senate bill No. 52, was on February 4, 1892, favorably reported by the Senate Committee on Military Affairs in Senate Report No. 158, as follows, to wit:

[Senate Report No. 158, Fifty-second Congress, first session.]

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1892.—Ordered to be printed.

Mr. Davis, from the Committee on Military Affairs, submitted the following report (to accompany S. 52):

The Committee on Military Affairs, to whom was referred the bill (S. 52) to reimburse the States of California, Oregon, and Nevada for moneys by them expended in the suppression of the rebellion, have examined the same and report as follows, to wit:

This measure was considered by this Committee during the first session of the Fifty-first Congress, and was reported upon favorably (Report No. 644).

Your committee concur in the conclusions stated in that report, and recommend the passage of the bill.

At a very early period of the war of the rebellion, nearly all the troops of the regular Army of the United States, then serving in California, Oregon, and Nevada, were withdrawn from military duty in those States and transported thence by sea to New York City at an expense to the United States of about \$390,103, or at an average cost of about \$284 for each commissioned officer and of about \$133 for each enlisted man.

This withdrawal therefrom of said regular troops left these three Pacific coast States comparatively defenseless, and for the purpose of supplying their places, and to provide additional military forces, rendered necessary by public exigencies, calls for volunteers were made upon said States under proclamations of the President, or requisitions by the War Department, or by its highest military officers commanding the military departments on the Pacific. These calls for volunteers continued until the necessity therefor entirely ceased to exist, during which time these three Pacific coast States furnished, enlisted, equipped, enrolled, paid, and mustered into military service of the United States 18,715 volunteers, as shown in said reports so made to the Senate by the Secretary of War.

In consequence of this withdrawal in 1861 of said military forces from the Pacific coast, in order that they might perform military service in the East, and in view of the circumstances and exigencies existing in the Pacific coast States and Territories during the rebellion period, requisitions were duly made from time to time by the President of the United States and by the Secretary of War upon the proper State authorities of California, Oregon, and Nevada for volunteers to perform military service for the United States in said States and Territories, as are fully and in great detail set forth in Senate Ex. Docs. Nos. 10, 11, 17, Fifty-first Congress, first session. In compliance with the several calls and official requisitions so made between 1861 and 1866, inclusive.

	Volunteers.
The State of California furnished .....	15, 725
The State of Nevada furnished .....	1, 180
The State of Oregon furnished .....	1, 810
Making a total aggregate of.....	18, 715

men who were enlisted and were thereafter duly mustered into the military service of the United States as volunteers from said States. The same number of troops if organized in the East and transported from New York City to the Pacific coast States and Territories in the same manner as was done by the United States War Department from June 17, 1850, to August 3, 1861, would have cost the United States at that time the sum of about \$5,483,385, for *transportation alone*.

The indemnification for the "costs, charges, and expenses" properly incurred by said States for enrolling, subsisting, clothing, supplying, arming, equipping, paying, transporting, and furnishing said 18,715 volunteer troops employed by the United States to aid them to maintain the "common defense," was guaranteed by the United States in the act of Congress approved July 27, 1861 (12 U. S. Stats., 276), an act entitled "An act to indemnify the States for expenses incurred by them in defense of the United States."

The then Secretary of War, Hon. Redfield Proctor, now U. S. Senator from Vermont (on p. 28 of his report, Senate Ex. Doc. No. 41, Fifty-first Congress, first session), in reporting upon the military services performed by said volunteers during the rebellion, said:

They took the places of the regular troops in California, all of which, except three batteries of artillery and one regiment of infantry, were withdrawn to the east at an early period after the outbreak of the war. Without them (and the Oregon and Nevada volunteers) the overland mail and emigrant routes, extending from the Missouri River via Great Salt Lake City to California and Oregon, and passing through an uninhabited and mountainous country infested with hostile Indians and highwaymen, could not have been adequately protected; and yet it was of the first importance to have these routes kept open and safe, especially as rebel cruisers had made the sea routes both hazardous and expensive. Two expeditions composed of California volunteers, under the command of Brig. Gens. James H. Carleton and Patrick E. Connor, respectively, performed perilous and exhausting marches across a desert and over an almost impassable country and established themselves, the latter in Utah—where, besides protecting the mail routes, a watchful eye was kept on the uncertain and sometimes threatening attitude of the Mormons—and the former in Arizona and New Mexico, which Territories were thereafter effectually guarded in the interests of the United States against Indians and rebels.

On March 3, 1863 (12 U. S. Stats., 808), Congress organized the Territory of Idaho, the extensive mineral discoveries in which, attracting thousands of miners, explorers, and immigrants, naturally necessitated an additional volunteer military force to guard and protect so extended, difficult and new Indian frontier lines.

On October 14, 1861, the Secretary of State, Hon. William H. Seward, by direction of the President of the United States, issued to the governors of all the loyal States, a circular letter, wherein the attention of the proper authorities of said States was invited to the necessity of improving and perfecting the defenses of their respective States, to be done in a manner such as should thereafter be determined by the legislature of each of said States who were to rely upon Congress to sanction their action, and to reimburse all expenses by them so incurred, Mr. Secretary Seward, expressing it as his opinion, that "such proceedings by said States would require only a temporary use of their means."

Said circular letter is as follows, to wit:

DEPARTMENT OF STATE,  
Washington, October 14, 1861.

SIR: The present insurrection had not even revealed itself in arms when disloyal citizens hastened to foreign countries to invoke their intervention for the overthrow of the Government and the destruction of the Federal Union. These agents are known to have made their appeals to some of the more important States without success. It is not likely, however, that they will remain content with such refusals. Indeed, it is understood that they are industriously endeavoring to accomplish their disloyal purposes by degrees and by indirection. Taking advantage of the embar-

rassments of agriculture, manufacture, and commerce in foreign countries, resulting from the insurrection they have inaugurated at home, they seek to involve our common country in controversies with States with which every public interest and every interest of mankind require that it shall remain in relations of peace, amity, and friendship. I am able to state, for your satisfaction, that the prospect of any such disturbance is now less serious than it has been at any previous period since the course of the insurrection. It is nevertheless necessary now, as it has hitherto been, to take every precaution that is possible to avert the evils of foreign war to be superinduced upon those of civil commotion which we are endeavoring to cure. One of the most obvious of such precautions is that our ports and harbors on the seas and lakes should be put in a condition of complete defense, for any nation may be said to voluntarily incur danger in tempestuous seasons when it fails to show that it has sheltered itself on every side from which the storm might possibly come.

The measures which the Executive can adopt in this emergency are such only as Congress has sanctioned and for which it has provided. The President is putting forth the most diligent efforts to execute these measures, and we have the great satisfaction of seeing that these efforts, seconded by the favor, aid, and support of a loyal, patriotic, and self-sacrificing people, are rapidly bringing the military and naval forces of the United States into the highest state of efficiency. But Congress was chiefly absorbed during its recent extra session with those measures and did not provide as amply as could be wished for the fortification of our sea and lake coasts. In previous wars, loyal States have applied themselves by independent and separate activity to support and aid the Federal Government in its arduous responsibilities. The same disposition has been manifested in a degree eminently honorable by all the loyal States during the present insurrection. In view of this fact, and relying upon the increase and continuance of the same disposition on the part of the loyal States, the President has directed me to invite your consideration to the subject of the improvement and perfection of the defenses of the State over which you preside, and to ask you to submit the subject to the consideration of the legislature when it shall have assembled. Such proceedings by the State would require only a temporary use of means.

The expenditures ought to be made the subject of conference with the Federal authorities. Being thus made with the concurrence of the Government for general defense, there is every reason to believe that Congress would sanction what the State should do and would provide for its reimbursement. Should these suggestions be accepted the President will direct proper agents of the Federal Government to confer with you and to superintend, direct, and conduct the prosecution of the system of defense of your State.

I have the honor to be, sir, your obedient servant,

WILLIAM H. SEWARD.

His Excellency THOMAS H. HICKS,  
*Governor of the State of Maryland.*

The Attorney-General of the United States, on June 11, 1891, in rendering an opinion, at the request of the honorable Secretary of the Treasury, involving a question as to the "State war claims of the State of Vermont against the United States," declared that the defense of the State of Vermont by said State during the war of the rebellion, as recited in his said opinion, was the defense of the United States, and that all expenses so incurred by said State in repelling invasion and in preparing to resist attacks, etc., constitute valid charges against the United States to be paid out of the public Treasury.

From June 17, 1850, and continuously until August 3, 1861, the practice of the War Department under the laws of Congress was to pay each soldier, enlisted, recruited, or re-enlisted in the State of California, Oregon, and Nevada, a sum of money which, while Congress termed it a "bounty," yet it in fact and effect was, and was intended to be merely extra or additional pay in the form of a constructive mileage equivalent to the cost of transporting a soldier from New York City to the place of such enlistment or re-enlistment; said sum was to be paid to each Pacific coast soldier in installments, in the amounts, at the times, and in the manner as recited in the act of Congress therefor, approved June 17, 1850, the third section of which reads as follows:

SEC. 3. *And be it further enacted,* That whenever enlistments are made at or in the vicinity of, the said military posts, and remote and distant stations, a bounty equal

in amount to the cost of transporting and subsisting a soldier from the principal recruiting depot in the harbor of New York, to the place of such enlistment, be, and the same is hereby, allowed to each recruit so enlisted, to be paid in unequal installments at the end of each year's service, so that the several amounts shall annually increase, and the largest be paid at the expiration of each enlistment. (U. S. Stat., vol. 9, p. 439.)

Congress, during the rebellion, changed the manner of maintaining a military force in these three Pacific coast States by relying, to a very large degree, if not almost exclusively, upon volunteers to be enlisted and raised therein, and wherefore, on August 3, 1861, repealed said law. (12 U. S. Stats., sec. 9, p. 289.)

In consequence of the high cost of living in California and Oregon, Congress, on 28th September, 1850, passed an act paying to every commissioned officer serving in those States an extra \$2 per day, and to all the enlisted men serving in the U. S. Army in those States double the pay then being paid to the troops of the regular Army. This law is as follows, to wit:

For extra pay to the commissioned officers and enlisted men of the Army of the United States, serving in Oregon or California, three hundred and twenty-five thousand eight hundred and fifty-four dollars, on the following basis, to wit: That there shall be allowed to each commissioned officer as aforesaid, whilst serving as aforesaid, a per diem, in addition to their regular pay and allowances, of two dollars each, and to each enlisted man as aforesaid, whilst serving as aforesaid, a per diem, in addition to their present pay and allowances, equal to the pay proper of each as established by existing laws, said extra pay of the enlisted men to be retained until honorably discharged. This additional pay to continue until the first of March, eighteen hundred and fifty-two, or until otherwise provided. (U. S. Stat., vol. 9, p. 504.)

It will be here noticed that under these two acts of Congress, the one of the 17th of June, 1850, and the other of the 28th of September, 1850, the so-called "extra pay" and the so-called "bounty" or constructive mileage, were both paid during one and the same period of time by the United States to its own troops serving in the regular United States Army stationed in these States.

If the necessity for this character of legislation for the regular Army of the United States recited in these two acts existed in a time of profound peace—and no one doubts but that a necessity therefor did exist—then how much greater the necessity for similar legislation in a period of actual war, when the land carriage for supplies over a distance of 2,000 miles, from the Missouri River to these Pacific coast States, was simply impossible, or at least impracticable, there not being then any overland railroads, and the two sea routes via Cape Horn and the Isthmus of Panama, as recited in the said reports of the Secretary of War, being both hazardous and expensive?

The condition of public affairs existing in these Pacific coast States in the early part of 1863 is recited on pages 25 and 26 of House Report No. 254, Fifty-second Congress, first session, in words as follows, to wit:

In the early part of April, 1863, the overland mail and emigrant route was attacked by Indians and communication was closed between the Atlantic States and the Pacific coast. This route extended from the Missouri River to California via the Platte River, Salt Lake City, through Nevada to Sacramento, in California, and was the only means at that date of direct overland communication between the Missouri River and California. At this time the gold discoveries in California continued to invite a large immigration, the interest in which was more or less intensified by the continued extensive silver discoveries in Nevada Territory, and principally on the Comstock lode, in the western part of the Territory. The routes via Cape Horn, and especially that via the Isthmus of Panama, were rendered extremely doubtful, dangerous, and expensive, on account of Confederate privateer cruisers hovering around the West India Islands and along both these sea routes, and in anticipation of other Confederate cruiser infesting the waters of the Pacific (which soon thereafter

became the theater of the operations and extensive depredations of the Confederate privateer *Shenandoah*), the overland route, therefore, although in itself both dangerous and difficult, was yet considered the better and preferable route by which to reach the Pacific.

On account of a general uprising of the Indians along the entire overland route, and especially that portion between Salt Lake City, in the Territory of Utah, and the Sierra Nevada Mountains, and because of the doubts as to the loyalty of the Mormons to the Government of the United States, the maintenance and protection of the mail and emigrant route through that section of the country and along the aforesaid line was regarded by the Government as a military necessity. Apparently in anticipation of no immediate danger of attack on the Pacific coast, nearly all the troops of the regular Army at this time had been withdrawn from service throughout this entire region of country and transferred east to other fields of military operations. This left the entire country between Salt Lake City and the Sierra Nevada Mountains without adequate and efficient military protection. The Government thus having but few troops of its regular Army in that region, was therefore compelled to call upon the inhabitants of Nevada Territory to raise and organize volunteer military companies to suppress Indian disturbances which threatened the entire suspension of all mail facilities and emigration from the East, as will be hereafter shown.

At the time of the calls upon Nevada for troops the prices of labor and supplies of all descriptions in Nevada were extremely high. There were then no railroads, and the snow on the Sierra Nevada Mountains formed an almost impassable barrier against teams from about the 1st of December until about June. The average cost of freight from San Francisco, the main source of supply for western Nevada, was about \$80 a ton, and it was necessary to lay in supplies during the summer and fall for the remainder of the year. A great mining excitement prevailed at this time, occasioned by the marvelous development of the great Comstock lode, and wages were from \$4 to \$10 a day, in gold. The people who had emigrated to the new gold and silver fields went there for the purpose of mining and prospecting for mines, and were generally reluctant to enter the irregular military service of guarding the overland mail and emigrant route. Besides, on account of the extraordinary high price of supplies of every description, and also of wages and services of every kind, it was impossible for them to maintain themselves and families without involving much more expense than any compensation which could be paid them as volunteer troops under the laws of the United States, and, as will be seen by the letters of Gen. Wright, hereafter quoted, they were expected, as volunteer troops, to furnish themselves with horses and equipments, in addition to what could be furnished by the Government.

The military authorities of the United States well knew at that time the exact condition of the country and of the roads across the mountains leading thereto and of the cost of transportation and of the prices of labor and of supplies and of their own inability to furnish either horses or equipments for a military service that required mounted troops.

It was amid circumstances like these that the honorable Secretary of the Treasury, by telegraphic instructions to the assistant treasurer of the United States at San Francisco, Cal., under date of February 9, 1863 (on which date there was on deposit in the subtreasury at San Francisco, to the credit of the United States, a large amount of gold and silver coin), directed the paymasters of the Army to pay said volunteers in U. S. notes, commonly called greenbacks. An exemplification of the effect of such instructions is reported by the Secretary of War on pp. 40 and 41, Senate Ex. Doc. No. 11, Fifty-first Congress, first session, in words as follows, to wit:

EXHIBIT No. 10.

DEPUTY PAYMASTER-GENERAL'S OFFICE,  
*San Francisco, February 13, 1863.*

SIR: Yesterday payment of my checks was refused by the assistant treasurer in San Francisco. In reply to a note which I addressed him, I received the following:

"OFFICE OF THE ASSISTANT TREASURER UNITED STATES,  
*"San Francisco, February 2, 1863.*

"SIR: Your communication of this date relative to the check of \$80,000 presented but a few minutes since by Maj. Eddy and payment declined by me, etc., is just received.



"Under instructions from the honorable Secretary of the Treasury United States of February 9, 1863, I am advised that 'checks of disbursing officers must be paid in United States notes.' Not having notes on hand sufficient to meet the check presented and referred to you has compelled me to decline payment of the same for the time being.

"Respectfully, your obedient servant,

"D. W. CHEESEMAN,

"Assistant Treasurer, United States.

"GEORGE H. RINGGOLD,

"Deputy Paymaster-General U. S. Army."

The effect of these instructions is abruptly to stop payment of the troops. I had drawn out a sufficiency, principally in coin, to pay the posts in Oregon and a portion of the troops in this immediate vicinity; the delay will, I fear, cause great dissatisfaction to those remaining unpaid, as there was a confident expectation that they would now be paid off and in coin.

In connection with the above statement, I deem proper to forward herewith a copy of a letter recently received from Maj. Drew, of the Oregon cavalry, which so clearly sets forth the condition of things as regards legal tenders on this coast as to make comment on my part superfluous, except simply to add that gold is the only currency here, and that U. S. Treasury notes are worth only what they will bring on the street. They are quoted at 61 to-day.

I have the honor to remain, very respectfully, your obedient servant,

GEO. H. RINGGOLD,

Deputy Paymaster-General.

Lieut. Col. T. P. ANDREWS,

Acting Paymaster-General U. S. Army.

Respectfully referred to Treasurer of the United States with the request that the funds may be sent to assistant treasurer at San Francisco to meet the drafts in favor of paymasters, and to return these papers for such other action as may be necessary.

T. P. ANDREWS,

Paymaster-General.

PAYMASTER-GENERAL'S OFFICE, March 18, 1863.

If the Treasurer would be kind enough to furnish us with any suggestions from the Treasury that would tend to do away the causes of complaint in this, to us, difficult case, we should feel indebted.

T. P. ANDREWS,

Paymaster-General.

PAYMASTER-GENERAL'S OFFICE, March 18, 1863.

TREASURER'S OFFICE, March 19, 1863.

Respectfully referred to the Secretary of the Treasury.

F. E. SPINNER,

Treasurer United States.

Concerning the foregoing condition of financial affairs in these three States and the effect thereof upon their volunteer troops then serving in the U. S. Army in the Department of the Pacific, the honorable Secretary of War (House Report No. 254, Fifty-second Congress, first session, p. 20) reported as follows, to wit:

It appears that up to December 31, 1862, those of the U. S. troops serving in the Department of the Pacific who were paid at all—in some cases detachments had not been paid for a year or more—were generally paid in coin, but on February 9, 1863, instructions were issued from the Treasury Department to the assistant treasurer of the United States at San Francisco that "checks of disbursing officers must be paid in United States notes." (Letter of Deputy Paymaster-General George H. Ringgold, dated February 13, 1863, to Paymaster-General; copy herewith marked Exhibit No. 10.)

Before this greenbacks had become the current medium of exchange in all ordinary business transactions in the Eastern States, but in the Pacific coast States and the adjoining Territories gold continued to be the basis of circulation throughout the war. At this time the paper currency had become greatly depreciated, and on February 28, 1863, the price of gold in Treasury notes touched 170. This action of the



Government in compelling troops to accept such notes as an equivalent of gold in payment for services rendered by them in a section where coin alone was current gave rise to much dissatisfaction; for although gold could be bought in San Francisco at nearly the same price in Treasury notes as in New York, it must be remembered that the troops in the Department of the Pacific were largely stationed at remote and isolated points.

When paying in greenbacks for articles purchased by or for services rendered to them in these out-of-way places, they were obliged to submit not only to the current discount in San Francisco, but also to a further loss occasioned by the desire of the persons who sold the articles or rendered the service to protect themselves against possible further depreciation. It admits of little doubt that by reason of his inability to realize the full value of paper money, as quoted in the money centers, and of the fact that wages and the cost of living and of commodities of every kind were abnormally high (owing in great part to the development of newly-discovered mines in that region), the purchasing power of the greenback dollar in the hands of the average soldier serving in the Department of the Pacific was from the latter part of 1862 onward from 25 to 50 per cent less than that of the same dollar paid to his fellow soldier in the East.

Representations of the great hardships the Treasury Department's instructions entailed upon the troops were promptly made. On March 10, 1863, the legislature telegraphed to Washington a resolution adopted on that date instructing the State's delegation in Congress to impress upon the Executive "the necessity which exists of having officers and soldiers of the U. S. Army, officers, seamen, and marines of the U. S. Navy, and all citizen employés in the service of the Government of the United States serving west of the Rocky Mountains and on the Pacific coast paid their salaries and pay in gold and silver currency of the United States, provided the same be paid in as revenue on this coast." (P. 46, Statement for Senate Committee on Military Affairs.)

And on March 16, 1863, Brig. Gen. G. Wright, the commander of the Department of the Pacific (comprising, besides California, the State of Oregon and the Territories of Nevada, Utah, and Arizona), transmitted to the Adjutant-General of the U. S. Army a letter of Maj. C. S. Drew, First Oregon Cavalry, commandant at Camp Baker, Oreg., containing an explicit statement of the effects of and a formal protest against paying his men in greenbacks. In his letter of transmittal (p. 154, Ex. Doc. 70), Gen. Wright remarked as follows:

"The difficulties and embarrassments enumerated in the major's communication are common to all the troops in this department, and I most respectfully ask the serious consideration of the General-in-Chief and the War Department to this subject. Most of the troops would prefer waiting for their pay to receiving notes worth but little more than half their face; but even at this ruinous discount officers, unless they have private means, are compelled to receive the notes. Knowing the difficulties experienced by the Government in procuring coin to pay the Army, I feel great reluctance in submitting any grievances from this remote department, but justice to the officers and soldiers demands that a fair statement should be made to the War Department."

The letter of Maj. C. S. Drew referred to by the honorable Secretary of War in the foregoing report is printed on p. 154, Sen. Ex. Doc. No. 17, Fifty-first Congress, first session, and is as follows, to wit:

CAMP BAKER, OREG., *March 4, 1863.*

COLONEL: I inclose herewith, for the consideration of the commanding general, the resignation of Asst. Surg. D. S. Holton, First Cavalry, Oregon Volunteers. Dr. Holton is a zealous and faithful officer, and I regret that circumstances, those which he sets forth, render it necessary for him to leave the service. But knowing the facts in the premises I must nevertheless recommend, as I now do, that his resignation be accepted. While upon the subject of resignations I beg to remark that the cause assigned by Dr. Holton for his resignation is valid and sufficient, doubtless, for its acceptance. But there is another which in its practical workings is almost as potent, and which precludes the possibility for any of the officers at this post to remain much longer in the service. I allude to their nonpayment since they entered the service, as also that of the entire command. This has borne heavily upon the officers, more especially as they have been compelled to hire money, some of them for more than a year past, with which to purchase their horses and equipments and to defray personal expenses. The act of Congress of June 18, 1862, requiring "that company officers of volunteers," and unjustly applied to the field and staff of regiments also, "shall be paid on the muster and pay rolls," has worked a great injury to the officers here, as it has, no doubt, in other portions of this department, by inhibiting the use of "pay accounts," which in our case could have been used as collater-

als, at or near their face, in obtaining the money for our expenditures. But no such arrangement could be effected under the new regulations, as by its requirements the death of the officer or his removal to other and distant post would enhance the probability of a delay in payment of his indebtedness and increase the risk and expense attending its final collection. Hence the greater rate of interest charged.

But this is not all. The money borrowed has been specie, and must be paid in the same currency, while payment to the officers is liable to be made in Treasury notes, worth here not more than 50 to 55 cents per dollar, and very little sale for them even at those low figures; thus, practically, with the interest which has accrued on the amount borrowed, it will require more than \$2 of the money in which the officer is paid to repay \$1 of that which he owes. With this condition of things, too, each officer and soldier of this command is serving for less than half pay, and have done so, some of them, for more than sixteen months past. Under these circumstances it must be impossible for any of the officers here to serve much longer without becoming irretrievably bankrupt and bringing upon themselves all the contumely and reproach that such misfortune is always sure to create. But private injury is not all that this delay and final mode of payment inflicts. It is exceedingly detrimental to the public service generally, as without any stated market value to the notes, and no surety as to when payment in them, even, will be made, in every purchase or other expenditure made here, not only the current San Francisco discount on the notes is added to the specie value of the article or service, but, in addition to all this, a large percentage for the risk of a further depreciation in their value, and a vexatious delay in payment.

It is thus that capital protects itself from loss, and perhaps realizes better profits than under the old and better system of payment in coin. But the soldier has not this power, not even that to protect himself against loss, and if paid in notes must necessarily receipt in full for what is equivalent to him of half pay or less, for the service he has rendered, and must continue to fulfill his part of his contract with the Government for the same reduced rate of pay, until his period of service shall terminate. This, in its practical results, is making a distinction between capital and labor, or personal service, unfriendly and injurious to the latter, that I am sure was never contemplated or designed by the War Department, and its abolishment here at least would be of much advantage to the service, besides meting out but simple justice to long-deferred creditors, and at no greater cost to the Government. This delay and uncertainty about the payment of the troops at this post is also working a public injury by preventing enlistments in this part of Oregon, in any considerable number, for the new companies ordered to fill this regiment. Good men will not enlist for \$6 or \$7 a month while \$13 is the regular pay, and moreover, being realized by every soldier in any other department than the Pacific. Men who would enlist under these circumstances are, as a general rule, entirely worthless for soldiers or anything else, and would be an incubus upon the service if permitted to join it.

I beg to be understood as reporting the condition of things actually existing here, and not as I would have them. Neither would I be understood as casting any censure whatever upon any officer of this department. I am aware that Col. Ringgold would have taken as favorable action in our case with regard to payment as he has at any other post, had it not have been for the unfortunate order of the Secretary of the Treasury that his drafts should be paid in notes, and at a time too when there were no notes on hand. I trust that the commanding general will give us a word of encouragement, if in his power, so that it may be imparted to the men of this command, many of whom are becoming somewhat alarmed as to their pay and as to the currency to be used in payment.

I am, colonel, very respectfully, your obedient servant,

C. S. DREW,

*Major First Cavalry, Oregon Volunteers.*

RICHARD C. DRUM,

*Assistant Adjutant-General, U. S. Army,  
Headquarters Department of the Pacific, San Francisco, Cal.*

This action was had by the authorities of the United States notwithstanding the contents of General Orders No. 16 from the Headquarters of the Army, issued on September 3, 1861, which is as follows, to wit:

[General Orders, No. 16.]

HEADQUARTERS OF THE ARMY,  
*Washington, September 3, 1861.*

The general in chief is happy to announce that the Treasury Department—to meet future payments to the troops—is about to supply, besides coin, as heretofore, Treas-

ury notes in fives, tens, and twenties, as good as gold at all banks and Government offices throughout the United States, and most convenient for transmission by mail from officers and men to their families at home. Good husbands, fathers, sons, and brothers, serving under the Stars and Stripes, will thus soon have the ready and safe means of relieving an immense amount of suffering which could not be reached with coin.

In making up such packages every officer may be relied upon, no doubt, for such assistance as may be needed by his men.

By command of Lient. Gen. Scott.

E. D. TOWNSEND,  
*Assistant Adjutant-General.*

In consequence of the foregoing, formal protests were duly forwarded to the War Department by the commanding general, Division of the Pacific, and legislative appeals by these States were made direct to Congress to come to the relief of the volunteers then serving the United States in these Pacific coast States, by increasing to living rates the pay of said troops. But all such protests, appeals, and representations in behalf of these troops proved, in the language of the Secretary of War, "perfectly futile."

The reports of the honorable Secretary of War on this subject recite as follows, to wit:

It was under circumstances and exigencies such as these that the legislatures themselves—all appeals to the General Government having proved futile—provided the necessary relief by the law of April 27, 1863. They did not even after that relax their efforts on behalf of the United States troops, other than their own volunteers, serving among them, but on April 1, 1864, adopted a resolution requesting their representatives in Congress to "use their influence in procuring the passage of a law giving to the officers and soldiers of the regular Army stationed on the Pacific coast an increase of their pay, amounting to 30 per cent on the amount now allowed by law." (Senate Ex. Doc. No. 17, Fifty-first Congress, first session, p. 14.)

It was under and amid national financial embarrassments like these that these three Pacific coast States (California taking the lead, and Oregon and Nevada following in due course, and California not moving therein until April 27, 1863) felt compelled to come to the relief of their own volunteers, then serving in the U. S. Army therein, and passed acts through their respective legislatures, under and by which each volunteer in each of said States was to be paid the sum of \$5 per month, and in order to raise the money with which to pay the same, said States, under appropriate acts of their respective legislatures hereinafter recited, issued and sold their State gold bonds, and paid said \$5 per month, in gold coin, to their said volunteers.

In 1864 the period of the three years' enlistments of the volunteers in these States who had been mustered in 1861 into the military service of the United States was approaching termination. These volunteers were in the field, scattered throughout the deserts of Arizona and New Mexico, in the South; in Washington Territory, in the North; along the Western slopes of the Rocky Mountains, in the East; and guarding the immigrant and overland mail routes and pony express lines, extending from the Missouri River to the Pacific Ocean, which duties, onerous and vexatious, were soon to be supplemented by others equally so in protecting and escorting exploring, reconnoitering, and surveying parties, about to engage in running preliminary lines of overland railroad surveys for the Central and Union Pacific railroads, rendering it necessary, not only to maintain an adequate military force, then in the field, but to provide for exigencies in the near future, which seemed to render an additional volunteer military force absolutely necessary.

The war in the East was still flagrant, and no one could then foretell the end thereof. Gen. Lee had just invaded Pennsylvania with a large

army, and though defeated at Gettysburg, yet extensive and devastating raids were made into the State of Pennsylvania by the Confederate forces as late as July, 1864, by Gens. Early, Johnson, and McCausland, the effects of which are represented to have been even more disastrous to the people of that State than those arising from the raids made therein in 1862 by Gen. Zeb. Stuart, of the Confederate cavalry. Chambersburg, Pa., was burned on July 30, 1864, the Confederates destroying extensive properties in the counties of Adams, Bedford, Cumberland, Franklin, Fulton, Perry, Somerset, and York, lying along the southern border of Pennsylvania and adjoining the northern Maryland line, the value of which property so destroyed is reported to have aggregated a very large sum.

In addition to the foregoing, attention is called to the official decisions rendered in September, 1863, by the Second Comptroller of the Treasury, Hon. John M. Brodhead, to the effect that the volunteers of these and other States then serving in the Army of the United States, who should be discharged by virtue of reenlistments as veteran volunteers, *should not receive any mileage from the places of their discharge to the places of their original enrollment.* (See Second Comptroller's Decisions, September 8 and 9, 1863, vol. 25, pp. 422 and 425, printed as section 2192, on p. 283 of Digest of Second Comptroller's Decisions, vol. 1, 1861 to 1868.)

However valid these decisions may have been as declaratory of the intentions of the law as then viewed by the Treasury Department, yet the practical effect thereof was to discourage reenlistments in the case of these volunteers from California, about to be discharged in New Mexico, where they were serving at the dates of said decisions, many hundreds of miles from the places of their original enrollment. Under these decisions the United States paid a bounty or mileage to those volunteers *who did not reenlist in the U. S. Army*, but refused to pay it to those who did so reenlist.

The serious, in fact, alarming effect of these decisions of the honorable Second Comptroller upon the military condition of affairs in Arizona and New Mexico, where several regiments of these California volunteers were then serving, is shown by the great anxiety and serious concern of Brig. Gen. James H. Carleton, of the regular Army of the United States, commanding the department of New Mexico, so much so, that he made it the subject of a special report to the adjutant-general of the Army, at Washington, D. C., recited on pp. 60 and 61 (Report of Secretary of War, Senate Ex. Doc. No. 11, Fifty-first Congress, first session, in words as follows, to wit:

EXHIBIT No. 22.

HEADQUARTERS DEPARTMENT OF NEW MEXICO,  
Santa Fé, N. Mex., November 29, 1863.

GENERAL: Until Mr. Brodhead's decision was made, that volunteers who should be discharged by enlistment in veteran volunteers should not receive their mileage from the place of said discharge to the place of original enrollment, I entertained hopes that many, if not most, of the First and Fifth Regiments of Infantry, of the First Cavalry California Volunteers, and First Cavalry New Mexican Volunteers, would reenlist in the veteran volunteers. But since that decision was made it is very doubtful if the California volunteers will reenlist. Their present term of office will expire next August and September. Before that time other troops will have to be sent here to take their places, unless these can be induced to reenlist. The troops in this department should be made an exception to the general rule. In my opinion an order should be made giving all volunteers who reenlist in this department the \$100 due on first enlistment and an increased bounty on the second over and above

the bounty paid to soldiers in the East, which would be equal to the cost of getting soldiers from the East to New Mexico. The Government in this way would lose nothing, but would rather gain, because these well-disciplined men would then remain, doubtless, and they have now become familiar with the country, and can do better service for that reason than any new comers. These men should receive their mileage on their first enlistment. In my opinion, the law clearly allows it to soldiers honorably discharged. If the Government do not deny their traveling allowances and will give the bounty named, I believe the most of these regiments can be got to remain. If the Government will not do this, I beg to give timely notice of the necessities which will exist to have troops sent to take their places in time to be in position before the term of service of these men expire.

The California troops do not wish to be sent as regiments back to California; they would rather be discharged here in case they do not reenlist. Some desire to go to the States, some to the gold fields of Arizona, some settle in New Mexico, and some go to California by whatever route they please. The true economy of the question would be promoted by making the bounties so liberal as to induce them to reenter the service for three years or during the war.

I am, general, very truly and respectfully, your obedient servant,  
 CHARLES H. CARLETON,  
*Brigadier-General, Commanding.*

Brig. Gen. LORENZO THOMAS,  
*Adjutant-General, U. S. Army, Washington, D. C.*

DEPARTMENT NEW MEXICO,  
*Santa Fé, N. Mex., July 12, 1865.*

Official:

BEN. C. CUTLER,  
*Assistant Adjutant-General.*

These three Pacific Coast States therefore and in consequence of the foregoing facts determined for the benefit of their respective volunteers who might reenlist (and thereby successfully retain veteran soldiers in the military service of the United States), or, who after April, 1864, should enlist for the first time in the U. S. Army, then serving in these States, to revive substantially the provisions of the aforesaid act of Congress of June 17, 1850, which had been in existence for the benefit of the U. S. Army serving on the Pacific coast, continuously from June 17, 1850, to August 3, 1861. Under the provisions of said act each volunteer soldier of these States, so enlisting or reenlisting in the U. S. Army after April 4, 1864 (the date of the California act for this specific purpose), was to be paid in installments, at the time and in the manner substantially as recited in said Congressional act of June 17, 1850, a sum of money assumed to be equal to the cost of transporting a soldier from New York City to the place of reenlistment or the enlistment of such volunteer soldier. In view of the scattered military stations of said Pacific coast volunteers—extending, as they did, from Arizona on the south, to Puget Sound on the north; and from San Francisco on the west to Salt Lake City on the east; this sum was fixed by all three of said States at \$160 per each volunteer soldier, which sum at that time substantially represented about the average cost which the United States would have had to pay to transport a soldier from New York City to the places of such enlistment or reenlistment of said volunteers in said three States.

These three States, in reviving said act of Congress of June 17, 1850, in the manner and for the purposes therein recited, used substantially the identical language which Congress had used in said act, by calling said sum of money a "bounty," when, as aforesaid, it was, and was only intended to be, a *constructive mileage*, and which was paid by these States out of their respective State treasuries for the use and benefit of the United States in aid of the "common defense" during the war of the rebellion, but not beginning until after April 4, 1864, and as

contemplated by said act of Congress of July 27, 1861 (12 U. S. Stats., 276), and Joint Resolution 5 of March 8, 1862 (12 U. S. Stats., 615), and of March 19, 1862 (12 U. S. Stats., 616). In reference to this matter the Secretary of War, in Senate Ex. No. 11, pp. 22 and 23, Fifty-first Congress, first session, reported to the Senate as follows, to wit:

With respect to the circumstances and exigencies under which this expenditure was incurred by the State, it appears to be plain that it was the earnest desire of the legislature that such troops as the State had been or might thereafter be called upon to furnish the General Government should be promptly supplied. The time was approaching when the terms of most of the volunteer regiments raised in California in the early part of the war would expire. These regiments were occupying important stations in the State and in Territories of Utah, Arizona, and New Mexico, and it was obvious that it would become necessary either to continue them in service by filling them up with new recruits or reenlisted veterans, or, in the event of their disbandment, to replace them by new organizations. Volunteering under the calls of the previous year had progressed tardily, while lucrative employment in the State was abundant and the material inducements for men to enter the army were small. It was probable that unless these latter were considerably increased, recruiting would come to a standstill, and a draft, as in the Eastern States, have to be resorted to. That a draft in California was considered possible, and even probable, is shown by an official letter, written January 8, 1864, to the Adjutant-General of the Army by General Wright, commanding Department of the Pacific, in which he expressed the hope "of procuring quite a number of men who would prefer volunteering to running the chance of being drafted." (P. 205, Senate Ex. Doc. 70, Fiftieth Congress, second session.) The expectation that the mere fear of a draft would sufficiently stimulate volunteering had not, some months later, been realized; and under all circumstances, and prompted by the desire above mentioned, the legislature doubtless deemed it wise to enact the bounty law of April 4, 1864.

Attention is called in "Statement for Senate Committee on Military Affairs" (p. 27) to the third section of an act of Congress (9 U. S. Stats., 439) granting to persons enlisting on the Western frontier, and at remote and distant stations, a bounty equal in amount to the cost of transporting and subsisting soldiers from the principal recruiting depot in the harbor of New York to the place of enlistment, and it is argued that if it was just, proper, and expedient to grant such a bounty to men enlisting in the regular Army in such localities in time of peace, the allowance by California of a bounty to its volunteers when they were in the actual and active service of the United States in time of war, and "while the exigencies exceeded in degree those under which the United States have heretofore paid a much larger sum to its own regular Army serving in said States (of California, Oregon, and Nevada) in a time of peace, may be deemed to have been in harmony with the policy so long and so frequently executed by the United States.

These "costs, charges and expenses" so incurred by these States were:

- (1) Military expenditures for recruiting volunteers.
- (2) Military expenditures in organizing and paying volunteers.
- (3) Military expenditures in and for Adjutant-General's Office.
- (4) Military expenditures in paying volunteer commissioned officers between date of service and date of muster-in by the proper mustering officers of the United States.
- (5) Military expenditures of a general and miscellaneous character.

All "costs, charges, and expenses" for the military services of the *militia* in all these States were *suspended* by the Secretary of War and are excluded from the present claims in accordance with recommendations heretofore made by the Committee on Military Affairs in the Senate and by the Committee on War Claims in the House.

Attention is specially called to the aforesaid two important resolutions of Congress adopted, the one on the 8th and the other on the 19th of March, 1862, the object of the first of which was to explain the aforesaid act of Congress of July 27, 1861, and the object of the second was to encourage and invite appropriations of money to be made by the several States as they might deem to be appropriate in the interests of the United States and wherein the obligation existed that the United

States should indemnify by fully reimbursing the several States out of any money in the Federal Treasury not otherwise appropriated, the sums of money which such States should appropriate and expend for the uses and purposes recited in the acts of the legislature of each State so appropriating the same. (12 U. S. Stats., 615-616.) These two resolutions are in words as follows, to wit:

A RESOLUTION declaratory of the intent and meaning of a certain act therein named.

Whereas doubts have arisen as to the true intent and meaning of act numbered eighteen, entitled "An act to indemnify the States for expenses incurred by them in "Defence of the United States," approved July twenty-seven, eighteen hundred and sixty-one (12 U. S. Stats., 276):

*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the said act shall be construed to apply to expenses incurred as well after as before the date of the approval thereof.*

Approved March 8, 1862 (12 U. S. Stats., 615.)

A RESOLUTION to authorize the Secretary of War to accept moneys appropriated by any State for the payment of its volunteers and to apply the same as directed by such State.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That if any State during the present rebellion shall make any appropriation to pay the volunteers of that State, the Secretary of War is hereby authorized to accept the same, and cause it to be applied by the paymaster-general to the payments designated by the legislative act making the appropriation, in the same manner as if appropriated by act of Congress; and also to make any regulations that may be necessary for the disbursement and proper application of such funds to the specific purpose for which they may be appropriated by the several States.*

Approved, March 19, 1862 (12 U. S. Stats., 616.)

In other words, the legislation enacted by Congress in said act and in these resolutions, taken in connection with subsequent similar legislation duly enacted by these States, constituted in effect and intentment, statutory contracts binding upon the United States. It is evident that Congress, in advance of all legislative acts, by these three States, making appropriations of money for their said volunteers, duly declared that all moneys appropriated by their respective legislatures, and paid out of their respective State treasuries, intended for the exclusive use and benefit of their said volunteers, theretofore, then, or thereafter serving in the military service of the United States, should be accepted by the United States, through the Secretary of War, and paid to the State volunteers of the States so appropriating said moneys, for the specific uses and purposes for which said States had so appropriated the same, and in the same manner, for the same purposes, and to the same extent as if said moneys had been actually paid directly out of the Federal Treasury, under acts of Congress, appropriating the same. In other words, Congress approved, ratified, and confirmed *in advance* all these appropriations of money so made by the legislatures of these three States, and in fact, intentment and effect, Congress made these State appropriation acts its own acts, the provisions of which should be duly administered by its own proper officers for the objects and purposes as recited in said State acts. These three Pacific coast States substantially conformed to this legislation of Congress, and strictly followed the same in all particulars, wherein the same was not inhibited by the State constitutions or by the State laws of said States.

A copy of this resolution of Congress, adopted March 19, 1862, was, on July 5, 1863, duly transmitted by Gen. George Wright, commanding the military department of the Pacific, to the governor of California, Hon. Leland Stanford, late Senator from California. The corre-



spendence relating thereto is reported by the Secretary of War on page 183, Senate Ex. Doc. No. 11, Fifty-first Congress, first session, and is as follows, to wit:

HEADQUARTERS DEPARTMENT OF THE PACIFIC,  
San Francisco, Cal., July 5, 1863.

His Excellency LELAND STANFORD  
Governor, State of California, Sacramento City, Cal.:

SIR: Inclosed herewith I have the honor to lay before your excellency a resolution to authorize the Secretary of War to accept moneys appropriated by any State for the payment of its volunteers, and to apply the same as directed by such State, approved March 19, 1862.

Under the provisions of this resolution Lieut. Col. George H. Ringgold, deputy paymaster-general at my headquarters, will accept any moneys which have been or which may be appropriated for the purpose set forth, and cause it to be applied to the payments designated by the legislative acts.

With great respect, I have the honor to be your excellency's obedient servant,  
G. WRIGHT,  
Brigadier-General, Commanding.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT,  
Sacramento, July 16, 1863.

Gen. GEORGE WRIGHT,  
Commanding Department of the Pacific:

SIR: Your favor of the 5th instant, with resolution relative to appropriations for the relief of volunteers in the several States, is at hand.

By reference to sections 3 and 4 of the act of the legislature approved April 27, 1863 (Statutes of 1863, folio 662), you will observe that the requirements of the law are such as to preclude our State officers from departing from its provisions, and would therefore be impossible to pay out the appropriations in the manner indicated by the resolution of Congress.

I am, general, very respectfully, your obedient servant,  
LELAND STANFORD,  
Governor of California.

The particular method, form, or manner of payment to these volunteers of the specific sums of money so appropriated by these States was not made the essence of these contracts. It is a fair and reasonable construction of said legislation of Congress to say that that which was anticipated was the *substance* rather than the form; that which was requisite being, only, that the moneys so appropriated by said States should in fact be paid to their said volunteers, all of which was done by paying said volunteers upon official muster rolls duly furnished their State adjutants-general by the colonels of these volunteer regiments, by and through which said moneys were paid directly to said volunteers for the uses and purposes recited in said State acts.

If Congress, in enacting its aforesaid legislation of July 27, 1861, March 8, 1862, and March 19, 1862, did not intend to indemnify and reimburse these States the money which they, in the exercise of the wise discretion of their own respective legislatures, should appropriate and cause to be paid to their volunteers serving in the Army of the United States during the war of the rebellion, it may then be very pertinently asked what object did Congress have in enacting such legislation?

It is submitted that these three States fully expected that these appropriations of money so made and advanced through their own legislatures to the United States, and paid to their said volunteers then serving in the Army of the United States as a part of the military establishment on the Pacific coast during the war of the rebellion, should be fully reimbursed to them. In addition to the foregoing these three States

had been urged to make these very appropriations of money by Gen. George Wright, commanding the Department of the Pacific, and by Gen. Irwin McDowell, commanding the Division or Department of California and Nevada, and by Gen. Benjamin Alvord, commanding the Department of Oregon, for the reimbursement of all of which appropriations they relied, not only upon the public exigencies which demanded such appropriations of money on their part, but wherein they rested their action upon the legal and equitable obligations of the United States in all these premises to reimburse the same.

(1) In the recitals contained in said circular letter of the Secretary of State, Hon. William H. Seward, of October 14, 1861, addressed to the governors of the loyal States, prepared, issued, and proclaimed by order of the President of the United States. This order and act of Mr. Secretary Seward were the order and act of the President of the United States, and as such were in fact and in law the order and act of Congress itself, because Congress (12 U. S. Stats., 326) had declared—

That all the acts, proclamations, and orders of the President of the United States after the 4th of March, 1861, respecting the Army and Navy of the United States, and calling out or relating to the militia or volunteers from the States, are hereby approved and in all respects legalized and made valid to the same extent and with the same effect as if they had been issued and done under the previous express authority and direction of the Congress of the United States.

(2) In the act of Congress of July 27, 1861 (12 U. S. Stats., p. 276), as legislatively construed and explained by Congress itself in its resolution adopted March 8, 1862 (12 U. S. Stats., 615).

(3) In the unrestricted resolution adopted by Congress March 19, 1862 (12 U. S. Stats., 616).

(4) In the official acts of Gen. George Wright, U. S. Army, commanding the military Division of the Pacific, and the similar acts of Gen. Irwin McDowell, U. S. Army, commanding the military Department of California and Nevada, and the similar acts of Gen. Benjamin Alvord, U. S. Army, commanding the Department of Oregon, all of whom, as the highest commanding military officers of these Pacific coast States, duly conferred with the governors thereof, and who jointly agreed upon the manner in which the defenses of said States for the "common defense" should be improved and perfected, and which system of "common defense" so agreed upon was duly adopted by the legislatures of each as contemplated in said circular letter of Mr. Secretary Seward. These commanding generals, not in their own names, but in the names of their highest military commander, to wit, the *commander in chief of the Army*, the President of the United States, all of whose official acts were approved, legalized, and made valid by Congress as if done under previous express authority and direction of Congress.

In addition to the foregoing, these States have ever relied, and do now rely, for a full indemnity and reimbursement herein upon that general comity that has ever heretofore existed between the United States and the several States in all cases wherever or whenever the latter have been made, either expressly or impliedly, the agents of the United States in aiding to maintain the "common defense" during a period of actual war.

There was no war between *these three States* and the Confederate States, but the war of the rebellion was one between the *United States* and the Confederate States.

These war "costs, charges, and expenses" of these Pacific coast States so incurred under State and Federal authority, executive and legislative, were incurred not in defense of said States, separate and apart

from the rest of the States, but were incurred in aiding *the United States to maintain the "common defense,"* and when incurred were authorized by the State legislature of each of said States, moved thereto at the urgent solicitation of the highest executive authorities of the United States, with the approval and at the direction of the President of the United States and by the sanction and indorsement of Congress, theretofore duly expressed in the aforesaid act and resolutions.

In view of these declarations, supported by the aforesaid opinion of the United States Attorney-General in the case of "*The State of Vermont v. The United States,*" it is respectfully submitted that all "costs, charges, and expenses" properly incurred by these States when acting in accordance with the acts of their respective legislatures, when aiding the United States to maintain the "common defense," became, constituted, and now are valid charges against the United States, and as such should be duly appropriated for by Congress and paid to these States out of the National Treasury.

Congress, when legislating in these premises, did not undertake to determine in advance for these three States the specific kind or amount of the "costs, charges, and 'expenses' necessary for them to incur to maintain the common defense," nor did Congress authorize the War Department to issue proposals to these States to aid in the suppression of the rebellion provided it should be done by the *lowest possible bidder*; but Congress, confidently relying upon all the loyal States to come to the aid of the United States with men and money when called, left the President, as commander in chief of the Army and Navy of the United States, to fix the number of men for which he should make a requisition to aid the United States during this period of war, and very properly left the respective States to be the judges and to determine for themselves the kind, character, and extent of the "costs, charges, and expenses" which they deemed necessary to be incurred by them when obeying the proclamations and requisitions for volunteers of the President of the United States and his proper officers in all these premises.

Specific expenses had to be and were necessarily incurred in all these premises by all these States, and as heretofore duly reported to Congress by the Secretary of War, so that it would seem to ill-become the United States at this late day to raise the question either of consideration, or of necessity, or of cost, or of equivalent value received in any of these premises, under circumstances and amid exigencies as recited in this statement.

As a matter of fact, all moneys so appropriated by the legislatures of these States out of their respective State treasuries were raised by the sale of their State bonds and advanced by these States to the United States, and expended for the uses and purposes of their said volunteers, as declared and recited in these several State acts, to aid the United States to maintain the "common defense" during a period of actual war.

It is self-evident in these cases that this legislation pertaining to the volunteers of these States came jointly from Congress and from these three States, Congress in fact taking the lead, *but the moneys paid out to their volunteers actually came from moneys hired by their own State treasuries exclusively therefor and not otherwise.* The legislatures of these States did not act at any time in any of these premises until the demands therefor and the appeals made by the United States to their respective governors became most urgent and when the public exigen-

cies which justified their action became of a character such as not to permit of any delay whatsoever on the part of the legislatures of said States.

House Report No. 254, Fifty-second Congress, first session, recites the years of diligent and persistent effort which have been made by these States to have these claims intelligently understood, recognized, and paid by Congress, which, finally recognizing their merits, passed the act of June 27, 1882, intended, as was then thought and expected by said States, to provide for the full and final adjudication of all these State war claims.

Legislation by Congress for such adjudication was initiated in the Senate by the introduction of certain Senate resolutions, one of which, Senate Resolution No. 10, was introduced December 12, 1881, by Senator Grover, of Oregon, to provide for these State rebellion war claims of the State of Oregon; and the other, Senate Resolution No. 13, was introduced December 13, 1881, by Senator Fair, of Nevada, to provide for these State rebellion war claims of the State of Nevada, and for both of which the Committee on Military Affairs in the Senate substituted a bill, S. 1673, which was amended in the Senate upon the motion of Senator Miller, of California, so as to provide for these rebellion war claims of the State of California, but when said bill finally passed Congress it included the State war claims of California, Oregon, Nevada, Colorado, Kansas, Nebraska, and Texas, and became the act of June 27, 1882 (22 U. S. Stats., 111).

Hon. Robert T. Lincoln was Secretary of War when this act of June 27, 1882, became a law, under the provisions of which his Department examined and audited the State war claims of the States of Kansas, Colorado, and Nebraska, all of which have been fully paid by the United States.

In a report made January 26, 1884, by Senator Maxey, of Texas, then a member of the Military Committee in the Senate, in reference to certain war claims referred to that committee upon the motion and request of Senator Jones, of Nevada, for the benefit of the people of that State, Mr. Secretary Lincoln, uniting therein with the honorable Third Auditor, declared his opinion to be that said act of June 27, 1882, was broad enough to embrace all proper war claims of Nevada—rebellion war claims of which, as recited in said letter, had theretofore been duly filed with said Third Auditor of the Treasury, and which were there then pending *sub judice*—the question as to the *necessity and cost incurred* by the States named therein having been left exclusively to the honorable Secretary of War to determine under said act, and as so decided by said Third Auditor.

It was in consequence of said opinion of Mr. Secretary Lincoln and of said Third Auditor that Senator Maxey, using said opinions and report as a basis for his action, being directed therein by the unanimous vote of the Senate Committee on Military Affairs, reported to the Senate that no further or additional legislation by Congress was needed in any of the war claims of the State of Nevada; and as a necessary corollary, no further or additional legislation was needed in the similar war claims of the States of California and Oregon, for if said act of June 27, 1882, was broad enough under which these State war claims of Nevada could be examined, it was equally broad to permit the examination of the similar war claims of California and Oregon. Mr. Secretary Lincoln, however, at about the same time duly submitted to Congress a report, that in view of the great labor involved in the proper examination and determination of matters arising under

said act of June 27, 1882, and devolving thereunder upon his Department, relative to the war claims of these States, and recommended that he be duly authorized to appoint a special board of three Army officers to aid him in the examination and adjudication of the State war claims of the States named in said act, he alleging that Congress had imposed upon him special and responsible duties, but had failed to give him a corresponding force to aid him in the execution thereof.

Congress, in compliance with said recommendation and request of Mr. Secretary Lincoln, passed an act on August 4, 1886 (24 U. S. Stats., 217), wherein authority was given the Secretary of War to appoint a board of three Army officers to aid him in the work of examination of the war claims of the several States named in said act of June 27, 1882, and which officers, before entering upon their duties, were required to take and subscribe an oath that they would carefully examine said claims and, to the best of their ability, make a just and impartial statement thereof.

This act of August 4, 1886, is as follows, to wit:

AN ACT for the benefit of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, and Nevada when a Territory.

\* \* \* \* \*

SEC. 2. The Secretary of War is hereby authorized to detail three Army officers to assist him in examining and reporting upon the claims of the States and Territory named in the acts of June twenty-seventh, eighteen hundred and eighty-two, chapter two hundred and forty-one of the laws of the Forty-seventh Congress, and such officers, before entering upon said duties, shall take and subscribe an oath that they will carefully examine said claims, and that they will, to the best of their ability, make a just and impartial statement thereof as required by said act.

Approved August 4, 1886. (24 U. S. Stats., 217.)

In the meanwhile the Federal administration changed officers, Mr. Secretary Lincoln going out and Mr. Secretary Endicott coming in as Secretary of War; but nothing had been actually done by Mr. Secretary Lincoln in the way of adjudicating said war claims, outside of expressing said opinion as to said act of June 27, 1882, so that when Mr. Secretary Endicott took office he construed for himself said act of June 27, 1882 (22 U. S. Stats., 111), relative to the rebellion war claims of these three States, and he was of opinion, and on February 8, 1887, declared, that it was not broad enough to embrace these State war claims of these States. This information upon being made known to the Senate, that body unanimously adopted a resolution as follows, to wit:

*Resolved*, That the Secretary of War, through the board of war-claims examiners, appointed under section 2 of the act of Congress entitled "An act for the benefit of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, and Nevada when a Territory," approved August 4, 1886, be, and is hereby, authorized and directed to examine all accounts, papers, and evidence which heretofore have been, or which hereafter may be, submitted to him in support of the war claims of the States of California, Oregon, and Nevada, and Nevada when a Territory, growing out of the war of the rebellion, and in suppressing Indian hostilities and disturbances during the war of the rebellion, and in guarding the overland mail and emigrant routes during and subsequent to the war of the rebellion, and to ascertain and state what amount of money each of said States, and Nevada when a Territory, actually expended and what obligations they incurred for the purposes aforesaid; whether such expenditures were made or obligations incurred in actual warfare or in recruiting, enlisting, enrolling, organizing, arming, equipping, supplying, clothing, subsisting, drilling, furnishing, transporting, and paying their volunteers, militia, and home guards, and for bounty, extra pay, and relief paid to their volunteers, militia, and home guards, and in preparing their volunteers, militia, and home guards in camp and field to perform military service for the United States.

The Secretary of War is also directed to ascertain what amount of interest has been paid by each of said States, and Nevada when a Territory, on obligations incurred for the purposes above enumerated. The Secretary of War shall report to Congress the amount of money which may be thus ascertained to have been actually paid by each of said States, and Nevada when a Territory, on account of the matters above enumerated, and also the amount of interest actually paid or assumed by each of said States, and Nevada when a Territory, on moneys borrowed for the purposes above enumerated. And the Secretary of War shall also report the circumstances and exigencies under which, and the authority by which, such expenditures were made, and what payments have been made on account thereof by the United States.

In response to this resolution, the honorable Secretary of War, having fully completed, with the aid of said Army board, a thorough and exhaustive official examination of all these war claims of said three States, transmitted in December, 1889, his reports to the Senate in each of these State war claims of California, Oregon, and Nevada, as required by said resolution, and which reports are as follows, to wit, Senate Ex. Docs. Nos. 10, 11, 17, Fifty-first Congress, first session. These reports and the exhibits attached thereto, respectively, are in great detail, and contain a very full history of the important part taken by the Pacific coast States and Territories during the rebellion in defense of the Union, and are in full compliance with said Senate resolution, showing the actual amount of the "costs, charges, and expenses" actually incurred by each of said States, and of Nevada when a Territory, during the war of the rebellion in aid of the United States and the authority, State, Territorial, and national, and also the special circumstances and exigencies under which the expenditures so reported upon by said Secretary and said board therein, respectively, were made.

Under this act of Congress of June 27, 1882, Mr. Secretary Lincoln examined, allowed, and stated the State war claims of the States of Kansas and Nebraska in sums as allowed and stated by him, and which have been fully appropriated by Congress. Mr. Secretary Endicott (with the aid of said Army board, appointed under said act of August 4, 1886) duly examined, audited, allowed, and stated the State war claims of the State of Texas, and of the sums so audited by the Secretary of War Congress appropriated the sum of \$927,177.40 in the act entitled:

An Act to provide for certain of the most urgent deficiencies in the appropriations for the service of the Government for the fiscal year ending June the thirtieth, eighteen hundred and eighty-eight, and for other purposes.

Approved March 30, 1888. (25 U. S. Stats., 71.)

And further appropriated the sum of \$148,615.97 in the act entitled:

An Act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June the thirtieth, eighteen hundred and ninety, and for prior years, and for other purposes.

Approved September 30, 1890. (26 U. S. Stats., 539.)

Aggregating the sum of \$1,175,793.37.

No one doubts but that all said war claims of Texas so examined and audited by the honorable Secretary of War (aided by said Army board) were valid and proper charges, against and should have been paid by, the United States in the exact sums so audited by the Secretary of War, and which were so paid by Congress without any hostile opposition from any quarter as to the *merits* or *amounts of any thereof*.

In order to show the careful, painstaking, and exact manner in which the members of said Army board performed their duties when aiding the Secretary of War in the examination of these claims, attention is especially called to the views expressed in the House of Representatives by several members of the Texas delegation in Congress, to wit, those of Hon. S. W. T. Lanham, Hon. R. Q. Mills, and Hon. J. D. Sayers, at the

date when said Texas State war claims were under consideration in the House during the Fiftieth Congress, first session, wherein the reliability and the exactness of the statements of the board were shown to be in a manner not only perfectly satisfactory to them, but such in a statement and allowance in the said Texas war claims aggregating \$927,177.40, the difference between the sums so stated by said board and the sums subsequently appropriated by Congress with which to pay the same amounted only to the sum of \$64.90. (See p. 2233, Congressional Record, March 16, 1888.)

The first installment of \$927,177.40, so paid to the State of Texas in satisfaction of her said State war claims, passed as an item in the *urgent deficiency appropriation act*, approved March 30, 1888.

It is true this Texas war claim, besides being examined by the Secretary of War, was also reexamined in the Treasury Department, but that reexamination was for the purpose simply of verifying the computations in the audit of the Secretary of War, it being the duty of the Secretary of War, under said act of June 27, 1882, as decided by the Treasury Department, to report upon all matters which related to the *necessity for*, and *reasonableness of*, all expenses so incurred by said States, as appears from a letter from the honorable Third Auditor of January 24, 1884, to the honorable Secretary of War, reported by Mr. Secretary Lincoln to Senator Maxey, of Texas, under date of January 26, 1884, in a report as follows, to wit:

WAR DEPARTMENT,  
Washington City, January 26, 1884.

SIR: In response to so much of your communication of the 22d ultimo as requests information concerning Senate bill 657, to "authorize the Secretary of the Treasury to adjust and settle the expenses of Indian wars in Nevada," I have the honor to invite your attention to the following report of the Third Auditor of the Treasury, to whom your request was duly referred:

"The State of Nevada has filed in this office abstracts and vouchers for expenses incurred on account of raising volunteers for the United States to aid in suppressing the late rebellion, amounting to \$349,697.49, and the expenses on account of her militia in the 'White Pine Indian war' of 1875, \$17,650.98; also, expenses of her militia in the 'Elko Indian war' of 1878, amounting to \$4,654.64, presented under act of Congress approved June 27, 1882 (22 Statutes, 111, 112).

"These abstracts and vouchers will be sent to your Department for examination and report as soon as they can be stamped, as that statute requires a report from the Secretary of War as to the *necessity for*, and *reasonableness of*, the expenses incurred. This statute is deemed sufficiently broad enough to embrace all proper claims of said State and Territory of Nevada."

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,  
Secretary of War.

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

In addition to the foregoing it appears, in a report from the War Department addressed to Hon. S. B. Maxey, U. S. Senator from Texas, under date of January 27, 1886, that the Secretary of War, Hon. W. C. Endicott, held that while the title of the act of June 27, 1882, and the wording of the first section thereof would seem to convey the impression that the claims of the States named in said act were to be adjusted by the Secretary of the Treasury, with the aid and assistance of the Secretary of War, *yet, as a matter of fact, the whole duty of examining and auditing said claims was, by section 2 of said act, imposed upon the Secretary of War, leaving the Treasury Department the simple duty of verifying the computations of the audit of the Secretary of War therein, and as will officially and fully appear in Senate Mis. Doc. No. 54, Forty-ninth Congress, first session, as follows, to wit:*



[Senate Mis. Doc. No. 54, Forty-ninth Congress, first session.]

*Letter from the Secretary of War to Hon. S. B. Maxey, in relation to the claim of the State of Texas, presented under the act of June 27, 1882.*

JANUARY 29, 1886.—Referred to the Committee on Appropriations and ordered to be printed.

WAR DEPARTMENT,  
Washington City, January 27, 1886.

SIR: Referring to our recent conversation in regard to the claim of the State of Texas, presented under the act of June 27, 1882 (22 Stats., 111, 112), I have the honor to inform you that the first installment of the claim (amount \$671,400.29) came before the Department from the Third Auditor of the Treasury July 9, 1884, and the action then taken in the matter appears in the letter from this Department to Mr. Dorn, dated July 16, 1884, copy herewith. The papers herein mentioned were returned to the agent of the State July 25, 1884. November 2, 1885, the Third Auditor of the Treasury wrote to the Department, transmitting through Mr. W. H. Pope, agent of the State, the papers in the claim, which papers were received here November 17, 1885, and they are now being stamped and marked.

In regard to the subject of the State claims mentioned in said act, I beg to inform you that the great difficulty experienced in disposing of the claim of the State of Kansas, the first one presented thereunder, has caused the Department to delay taking up the other claims pending. While the title of the act and the wording of the first section thereof would seem to convey the impression that the claims were to be adjusted by the Secretary of the Treasury, "with the aid and assistance of the Secretary of War," the whole duty of examining and auditing the claims was, by section 2, imposed upon the Secretary of War, leaving the Treasury Department the simple duty of verifying the computations of the Secretary of War.

The policy thus indicated differed widely from that prescribed in section 236 of the Revised Statutes, that "all claims and demands whatever by the United States, or against them, and all accounts whatever in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Department of the Treasury," and differs also from the provisions for the adjudication of State claims under the act of July 27, 1861 (12 Stats., p. 276), which were "to be settled upon proper vouchers, to be filed, and passed upon by the proper accounting officers of the Treasury."

The claims arising under the act are said to amount to \$10,000,000 (that of Texas is now stated at \$1,842,443.78), and the vast labor of examining the papers, pointing out the evidence required to perfect the vouchers and show the necessity of calling out the militia, whose services are charged for, fixing the rate to be allowed on each voucher, and tabulating the same, many thousand in number, must be performed by the Secretary of War, and no provision has been provided by Congress for this laborious work.

Two years were consumed in disposing of the claim of the State of Kansas, and if the same course is to be pursued with the other claims arising under the act, it will be some time before the claim of Texas is reached, that of Nevada being next in order of receipt.

The subject of the claims was brought to the attention of Congress at the last session (*see* report of Secretary of War for 1884, pp. 4, 5, and estimates for 1886 on p. 206 of House Ex. Doc. No. 5, Forty-eighth Congress, second session), and it has again been presented in the Secretary's report for 1885 (pp. 35 and 36). An estimate to defray the cost of examining the claims will be found on p. 225 of House Ex. Doc. No. 5, Forty-ninth Congress, first session.

I inclose draft of a bill which, if enacted, will enable the Department to dispose of the matter.

Copies of the above mentioned reports are inclosed.

Very respectfully,

WM. C. ENDICOTT,  
*Secretary of War.*

Hon. S. B. MAXEY,  
*United States Senate.*

This reexamination by the Treasury Department, to verify the final computations in said audit of the Secretary of War of the Texas war claim, showed, as aforesaid, an error of only \$64.50 in a total allowance of \$927,177.40, which sum was appropriated by Congress and paid by the United States to the State of Texas.

It is respectfully submitted that all that Congress in any case desires to know, and very properly inquires into in cases like these, is, have the claims which it is requested to pass upon been carefully computed and set forth in an official statement of account signed by the head of a Department or Bureau, whose duty it is to wholly examine and audit the same?

The dignity heretofore given by Congress to examinations not dissimilar to these is shown in the fact that year after year, since 1859, it has included in the regular deficiency appropriation bill appropriations with which to pay the Oregon and Washington Indian war claims in sundry and divers sums of money based exclusively upon *the original authority of a House resolution only*, adopted February 8, 1858, which resolution, reported in House Ex. Doc. No. 11, Thirty-sixth Congress, first session, is as follows, to wit:

[House Ex. Doc. No. 11, Thirty-sixth Congress, first session.]

*Report of the Third Auditor of the Treasury, in pursuance of a resolution of the House of Representatives passed February 8, 1858.*

FEBRUARY 10, 1860.—Referred to the Committee on Military Affairs and ordered to be printed.

THIRTY-FIFTH CONGRESS, SECOND SESSION,  
CONGRESS OF THE UNITED STATES,  
*In the House of Representatives, February 8, 1859.*

*Resolved*, That preliminary to the final settlement and adjustment of the claims of the citizens of the Territories of Oregon and Washington for expenses incurred in the years eighteen hundred and fifty-five and eighteen hundred and fifty-six in repelling Indian hostilities, it shall be the duty of the Third Auditor of the Treasury to examine the vouchers and papers now on file in his office, and make a report to the House of Representatives by the first Monday in December next of the amount respectively due to each company and individual engaged in said service, taking the following rules as his guide in ascertaining the amount so due:

1st. He shall recognize no company or individual as entitled to pay, except such as were called into service by the Territorial authorities of Oregon and Washington, or such whose services have been recognized and accepted by said authorities.

2d. He shall allow to the volunteers engaged in said service no higher pay and allowance than were given to officers and soldiers of equal grade at that period in the Army of the United States, including the extra pay of \$2 per month given to the troops serving on the Pacific by the act of 1852.

3d. No person either in the military, or in the civil service of the United States, or of said Territories, shall be paid for his services in more than one employment or capacity for the same period of time, and all such double or triple allowances for pay as appears in said accounts shall be rejected.

4th. That in auditing the claims for supplies, transportation, and other services incurred for the maintenance of said volunteers, he is directed to have a due regard to the number of said troops, to their period of service, and to the prices current in the country at the time, and not to report said service beyond the time actually engaged therein, nor to recognize supplies beyond a reasonable approximation to the proportions and descriptions authorized by existing laws and regulations for such troops, taking into consideration the nature and peculiarities of the service.

5th. That all claims of said volunteers for horses, arms, and other property lost or destroyed in said service shall be audited according to the provisions of the act approved March 3d, eighteen hundred and fifty-nine.

Attest:

I. C. ALLEN, *Clerk*.

Attention is here specially called to the fact, disclosed by said Oregon and Washington resolution, that Congress when dealing with the volunteers of Washington and Oregon declared as late as February 8, 1858, that said volunteers should be paid an extra compensation, and in those particular cases the extra compensation was to be the same as provided for in the act of Congress approved August 31, 1852. (10 U. S. Stats., 108.)

The extra compensation of \$2 per month as recited in said Oregon and Washington resolution is error—the exact extra compensation to be paid was one-half additional to the regular pay of officers and enlisted men.

Said provision of law by which said extra compensation was to be measured is as follows, to wit:

SEC. 3. *And be it further enacted*, that so much of the act making appropriations for the support of the Army for the year ending the 30th of June, 1851, approved the 28th of September, 1850, as provides extra pay to the commissioned officers and enlisted men of the United States serving in Oregon or California, be, and the same is hereby, continued in force for one year from the first day of March, 1852, and that the provisions of the last mentioned act be, and is hereby, extended to New Mexico during the current year provided for by this section, and that \$300,000 be and is appropriated hereby for that purpose: Provided further, That said officers and men shall receive only one-half of the increased amount over the regular pay allowed by law. (10 U. S. Stats., 108.)

Attention is here called to the fact, that in the examination and audit of the said Oregon and Washington Indian War Claims of 1855 and 1856 under the aforesaid House resolution, the Third Auditor was made the sole commissioner to examine the same, and for this extra duty under section 3, act of March 2, 1861, he was paid the sum of \$1,000, and the appropriation to the said Oregon and Washington Indian War Claims, made in said act (12 U. S. Stats., 198), were based on the allowance that he, as such commissioner, made and reported to the House, February 8, 1859, under said resolution, and as printed in House Ex. Doc. No. 11, Thirty-sixth Congress, first session.

The examination of the war claims of the State of Texas were limited, as to time, to the examination of claims for the expenses incurred and arising in the said State subsequent to October 20, 1865, and were confined, as to character, exclusively to claims for expenses by her incurred for or on account of military defense against Mexican raids, against Mexican invasions, and against Indian hostilities only. Whereas, in the cases of these three States said act of June 27, 1882, was intended to include and cover, and did include and cover all military expenses of every nature, beginning April 15, 1861, incident upon calling into the field their volunteers, beginning at the date of the commencement of the rebellion (April 15, 1861), and was not confined to claims for reimbursement of expenses incurred for defense against Indian hostilities only, but covered, and was intended to cover, all expenses of the rebellion or for repelling invasions, coming from any source whence they may, but included also those of Indian hostilities.

If there were any doubts as to the purposes and intentions of Congress as to the scope of said act of June 27, 1882, or as to the character of the claims to be examined thereunder, the expenses for which Congress intended to reimburse said States, these doubts would be removed by considering:

(1) The declarations recited in the fifth section of said act of June 27, 1882, in words as follows, to wit:

SEC. 5. That any military services performed and expenditures on account thereof incurred during the Territorial organization of Nevada, and paid for or assumed by either said Territory or said State of Nevada, shall be also included, and examined and reported to Congress in the same manner as like service and expenditures shall be examined and reported for the State of Nevada.

(2) By considering the views submitted May 12, 1882, on the bill S. 1673 by the Military Committee in the Senate, in Senate Report No. 375, Forty-seventh Congress, first session, and as reappears in Senate

Report No. 644, Fifty-first Congress, first session. This Senate bill S. 1673 finally became the act of June 27, 1882, and an extract from said report made thereon is in words as follows, to wit:

The circumstances under which the expenditures provided for in this bill were made by these States being exceptional, and their reimbursement not being provided for by any existing law, general or special, prior to June 27, 1882, Senator Grover, of Oregon, on December 12, 1881, introduced Senate joint resolution No. 10, and Senator Fair, of Nevada, on December 13, 1881, introduced Senate joint resolution No. 13, providing for the equitable adjustment of these State war claims of Oregon and Nevada, which resolutions were referred to the Senate Committee on Military Affairs.

These two Senate joint resolutions, Nos. 10 and 13, Fortieth Congress, first session, are as follows, to wit:

[S. R. 10., Forty-seventh Congress, first session.]

JOINT RESOLUTION to authorize the Secretary of War to ascertain and report to Congress the amount of money expended and indebtedness assumed by the State of Oregon in repelling invasions, suppressing insurrections and Indian hostilities, enforcing the laws, and protecting the public property.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of War be, and he is hereby, authorized and directed to cause to be examined and adjusted all the accounts of the State of Oregon against the United States for money expended and indebtedness assumed in organizing, arming, equipping, supplying clothing, subsisting, transporting, and paying either the volunteer or militia forces, or both, of said State called into active service by the governor thereof after the fifteenth day of April, eighteen hundred and sixty-one, to aid in repelling invasions, suppressing insurrections and Indian hostilities, enforcing the laws, and protecting the public property in said State and upon its borders, except during the Modoc war.

SEC. 2. That the Secretary of War shall also examine and adjust the accounts of the State of Oregon for all other expenses necessarily incurred on account of said forces having been called into active service as herein mentioned, including the claims assumed or paid by said State to encourage enlistments, and for horses and any other property lost or destroyed while in the line of duty by said forces: *Provided,* That in order to enable the Secretary of War to fully comply with the provisions of this act there shall be filed in the War Department by the governor of said State, or a duly authorized agent, an abstract accompanied with proper certified copies of vouchers or such other proof as may be required by said Secretary, showing the amount of all such expenditures and indebtedness, and the purposes for which the same were made.

SEC. 3. That the Secretary of War shall report in writing to Congress, at the earliest practicable date, for final action, the results of such examination and adjustment, together with the amounts which he may find to have been properly expended for the purposes aforesaid.

[S. R. 13, Forty-seventh Congress, first session.]

JOINT RESOLUTION to authorize the Secretary of War to ascertain and report to Congress the amount of money expended and indebtedness assumed by the State of Nevada in repelling invasions, suppressing insurrection and Indian hostilities, enforcing the laws, and protecting public property.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of War be, and he is hereby, authorized and directed to cause to be examined and adjusted all the accounts of the State of Nevada against the United States for money expended and indebtedness assumed in organizing, arming, equipping, supplying clothing, subsisting, transporting, and paying either the volunteers or militia, or both, of the late Territory of Nevada and of the State of Nevada, called into active service by the governor of either thereof after the fifteenth day of April, eighteen hundred and sixty-one, to aid in repelling invasions, suppress insurrections and Indian hostilities, enforcing the laws, and protecting the public property in said Territory and said State and upon the borders of the same.

SEC. 2. That the Secretary of War shall also examine and adjust the accounts of the late Territory of Nevada and of the State of Nevada for all other expenses necessarily incurred on account of said forces having been called into active service as herein mentioned, including the claims assumed or paid by said Territory and said

State, to encourage enlistments, and for horses and other property lost or destroyed while in the line of duty of said forces: *Provided*, That in order to enable the Secretary of War to fully comply with the provisions of this act, there shall be filed in the War Department by the governor of Nevada, or a duly authorized agent, an abstract accompanied with proper certified copies of vouchers or such other proof as may be required by said Secretary, showing the amount of all such expenditures and indebtedness, and the purposes for which the same were made.

SEC. 3. That the Secretary of War shall report in writing to Congress, at the earliest practicable date, for final action, the results of such examinations and adjustment, together with the amounts which he may find to have been properly expended for the purpose aforesaid.

As recited in said Senate Report No. 644 (Fifty-first Congress, first session), that committee (to wit, Senate Committee on Military Affairs), instead of reporting back said joint resolution, reported back, May 12, 1882, in lieu thereof, a substitute in the form of a bill, to wit, Senate 1673, Forty-seventh Congress, first session, providing for the payment of certain war claims, to wit, those only of Texas, Oregon, and Nevada, and of the Territories of Idaho and Washington, and which bill, after having been amended in the Senate so as to include the State war claims of Colorado, Nebraska, and California, and amended in the House so as to include the State war claims of Kansas, finally resulted in the passage of the act approved June 27, 1882. (22 U. S. Stats., 111.)

It was then, no doubt, the intention of Congress to provide for the full indemnity and reimbursement of all moneys which California, Oregon, and Nevada, and Nevada when a Territory, had actually expended during the war of the rebellion on account of the several matters recited in Senate bill No. 1295, Fifty-third Congress, second session. Senate bill No. 1673, Forty-seventh Congress, first session, was accompanied by a report (Senate No. 575, Forty-seventh Congress, first session) made by Senator Grover, May 12, 1882, which renders said intention of Congress quite evident.

The Senate Committee on Military Affairs did not at that time make any report in relation to any of the State war claims of the State of California, but when this substitute bill (Senate 1673, Forty-seventh Congress, first session), reported from that committee, was under consideration in the Senate, Senator Miller, of California, called attention to the fact that California had similar war claims unprovided for, and on his motion this bill (Senate 1673, Forty-seventh Congress, first session) was amended in the Senate as to include the State war claims of the State of California. It is alleged by California, Oregon, and Nevada that this act of June 27, 1882, which they believed was intended by Congress to be an act for their relief and benefit and an equitable statute to be liberally construed in order to pay to these three States that indemnity "which had been so guaranteed by its aforesaid legislation, has been found to be an act 'so well and carefully and closely guarded by restrictions'" that, when construed by those who have been called upon to execute it, has proven to be completely inoperative as an equitable relief measure, so much so as to amount to a practical denial of justice so far as the present State war claims of these States now provided for in these bills were or are concerned.

Said report is as follows, to wit:

[Senate Report No. 575, Forty-seventh Congress, first session.]

MAY 12, 1882.—Ordered to be printed.

Mr. GROVER, from the Committee on Military Affairs, submitted the following report, to accompany bill S. 1673:

The Committee on Military Affairs, to whom were referred Senate bill 1144 and

Senate joint resolutions 10 and 13, "to authorize an examination and adjustment of the claims of the States of Kansas, Nevada, Oregon, and Texas, and of the Territories of Idaho and Washington, for repelling invasions and suppressing insurrection and Indian hostilities therein," submitted the following report:

*Oregon.*—It appears by the report of the Adjutant-General U. S. Army of April 3, 1882, that one regiment of cavalry, one regiment of infantry, and one independent company of cavalry were raised in the State of Oregon during the late war of the rebellion, and that the expenses incident thereto have never been reimbursed said State by the United States; and that the claims therefor have never been heretofore presented by said State for audit and payment by the United States, as per report of the Secretary of War of April 15, 1882, and of the Third Auditor of the Treasury of April 8, 1882. Under section 3489 of the Revised Statutes, the claim for expenditures so incurred by said State can not now be presented for audit and payment without legislation by Congress. In addition thereto there are some unadjusted claims of said State growing out of the Bannock and Umatilla Indian hostilities therein in 1877 and 1878, evidenced by a communication of the Secretary of War of date last aforesaid, and some unadjusted balances pertaining to the Modoc war, not presented for audit to Gen. James A. Hardie, approximating the sum of \$5,000.

*Nevada.*—It appears by the report of the Adjutant-General U. S. Army, of February 25, 1882, that one regiment of cavalry and one battalion of infantry were raised in the late Territory of Nevada during the late war of the rebellion, and that the expenses of raising, organizing, and placing in the field said forces were never paid by said Territory, but were assumed and paid by the State of Nevada, and that none of said expenses so incurred by said Territory, and assumed and paid by said State, have never been reimbursed the State of Nevada by the United States, and that no claims therefor have ever been heretofore presented by either said Territory or said State for audit and payment by the United States. Under section 3489 of the Revised Statutes, hereinbefore referred to, the payments of these claims is barred by limitation.

These forces were raised to guard the overland mail route and emigrant road to California, east of Carson City, and to do other military service in Nevada, and were called out by the governor of the late Territory of Nevada upon requisitions therefor by the commanding general of the Department of the Pacific, and under authority of the War Department, as appears by copies of official correspondence furnished to your committee by the Secretary of War and the general commanding the Division of the Pacific; and it further appears that there are some unadjusted claims of the State of Nevada for expenses growing out of the so-called White River Indian war of 1875, and aggregating \$17,650.98, and of the so-called Elko Indian war of 1878 therein, and aggregating \$4,654.64, and which sums, it appears by the official statements of the comptroller of said State of Nevada, were expended and paid out of the treasury of said State.

*Texas.*—The unadjusted claims of the State of Texas provided for by this bill are those which accrued subsequent to October 14, 1865. These have been heretofore the subject-matter of much correspondence between the State authorities of Texas and the authorities of the United States, and have several times received the partial consideration of both branches of Congress, but without reaching any finality, never having been audited or fully examined, and consequently no payment on account thereof has been made.

These claims are referred to in Senate Ex. Doc. No. 74, second session, Forty-sixth Congress, and in the executive documents therein cited.

It appears by the official correspondence exhibited in the document referred to, and copies of official correspondence from the State authorities of Texas, and submitted to your committee, that the expenses for which the State of Texas claims reimbursement were incurred by the authorities thereof under its laws, and for the proper defense of the frontiers of said State against the attacks of numerous bands of Indians and Mexican marauders. These claims approximate the sum of \$1,027,375.67, and were incurred between October 14, 1865, and August 31, 1877.

*Washington and Idaho.*—The volunteer troops in Washington and Idaho were in the field during Indian hostilities in 1877 and 1878, in said Territories, by orders of the local authorities thereof. While these volunteers were not mustered into the regular service of the U. S. Army, they were attached to the command of U. S. troops in the Department of the Columbia, and acted with said troops, rendering valuable and faithful services during said wars, under the orders and immediate command of officers of the regular Army of the United States, as appears by copies of orders in the hands of your committee.

The obligation of the General Government to defend each State is acknowledged to be included in the constitutional obligation to maintain the "common defense," by a long series of acts of Congress making appropriations to cover the expenses of States and Territories of the Union which have raised troops and have incurred liabilities in defending themselves against Indian hostilities and other disturbances.

The bill herewith reported provides for an examination of the claims and accounts of the States and Territories therein named by the Secretary of the Treasury, acting in connection with the Secretary of War, and that they report the amount of money necessarily expended and indebtedness properly assumed in organizing, supplying and sustaining volunteers and militia called into active service by each of them in repelling invasions and suppressing Indian hostilities therein, during the periods named.

This bill is carefully guarded against the assumption by the United States of unnecessary liabilities, and fixes the pay of volunteers and militia of these several States and Territories on the basis of the pay of regular troops.

Your committee therefore report the present original bill as a substitute for Senate bill 1144 and Senate joint resolutions 10 and 13, which heretofore have been under consideration by said committee, having the same objects as provided for by this bill, and recommend its passage.

The foregoing recitals clearly and fully show, so far as Oregon and Nevada were concerned, that said Report No. 575 and said Senate bill No. 1673, and said Military Committee in the first session of the Forty-seventh Congress dealt with both State rebellion war claims and State Indian war claims of the States of Oregon and Nevada and the Territory of Nevada, and when Senator Miller, of California, suggested that California had State war claims similar to those of Oregon and Nevada, said bill S. 1673 was amended upon his motion so as to also include the State rebellion war claims and the State Indian war claims of that State.

(3) By considering the views expressed by Hon. R. Q. Mills, now the junior Senator from Texas, of the purposes and intentions of said act of Congress of June 27, 1882, which were duly emphasized by his remarks thereon in the House on the date when said Texas war claim was then and there pending *sub judice* (which remarks with those submitted at the same time by Mr. Lanham and by Mr. Sayers of Texas on this same bill are printed on pp. 2126 to 2265, Congressional Record, Fiftieth Congress, first session). On that occasion Hon. R. Q. Mills declared as follows, to wit:

Mr. MILLS. Mr. Chairman, it might have been better if this claim had been held back and placed upon the regular deficiency bill. Perhaps there would have been no objection raised on either side of the House if that course had been adopted with reference to it. But the claim is now before the House, on a favorable report from the Committee on Appropriations, and it is here for action. Being before us, I do not want to see a vote against it to-day because of the fact that it has not been held back to give a red-tape examination to it.

This is an old, familiar friend of mine. I am thoroughly acquainted with it in all of its details. I introduced bills, as did my colleagues upon this floor, years ago to pay the State of Texas the money which had been expended by that State in doing that which the Government of the United States ought to have done for her. I remember the time when the Representatives from Kansas, Nevada, and Nebraska and ourselves often met together for conference and with a view to helping each other to get the Congress of the United States to do justice to our people in recognizing these claims which had been standing so long.

We united our efforts and aided in the passage of the law of 1882. That law was passed for the purpose of providing a settlement for these claims, and under it all of the claims of this class were submitted, with the evidence to substantiate them, to a board of Army officers. They have been thoroughly, patiently, exhaustively examined through a careful process of inspection covering a long period of time, and have all been reported to Congress.

There is no objection made to the payment of any of this class of claims upon the judgment of this board of officers, indorsed as it has been by the Treasury Department, except with regard to the claim of Texas; and the opposition, Mr. Chairman, is as unjust to the State of Texas as it would have been to the other States.

There is no gentleman who has challenged or will challenge the statement that not a single item has been questioned or can be pointed out in which a wrong judgment has been made by this board of officers.

But, sir, this appeal that is made here is all for delay. They say the case ought to have waited longer—as if it had not waited long enough already—and that it should have gone through some further and more patient examination; but they have not



been able to point to a single item of all the items making up this sum of \$927,000 which is not justly due to my State—not one of them.

Our claim is a little larger than the claim of the State of Kansas, because Kansas had a much smaller frontier, and had to guard only against the Indians, whereas we had both the Indians and the Mexicans. We had a border as long on the northern frontier of the State as the whole frontier line of the State of Kansas, and in addition to that we had all of that vast line from the thirty-second parallel of north latitude down to the Gulf of Mexico, making more than a thousand miles in addition. That is the reason why the claim of the State of Texas is larger. (Congressional Record, March 17, 1888, p. 2265.)

There is a consensus of opinion of the Treasury and War Departments as to the duties which were to be performed under said act of Congress of June 27, 1882, by the Secretary of War and by the Secretary of the Treasury, respectively, in the adjudication of the claims of the States named in said act, which were substantially to this effect, to wit: That the Secretary of War was to pass upon and decide as to the *necessity* for any expenses of any kind, and as to the *reasonableness* of all expenses so incurred by said States, for the "common defense;" and in addition thereto was to wholly examine all the claims of said States for all reimbursements provided to be paid in said act, and to wholly audit all the claims for any reimbursement to be made to any of said States under said act, and that the only duty of the honorable Secretary of the Treasury under said act was to verify the computations so made by the Secretary of War.

In the cases of the rebellion war claims of California, Oregon, and Nevada, it now fully appears that the honorable Secretary of War has thoroughly, patiently, carefully, and exhaustively examined all said rebellion war claims, rejecting any that appeared doubtful, and in so doing threw out or suspended in the case of California alone claims that aggregated \$468,976.54, which had been paid by that State, and in the case of Oregon threw out or suspended claims which aggregated the sum of \$21,118.73.

The Secretary of War has certified in an official itemized statement of account as the result of an exact computation, the true amount that should be paid by the United States, to each of these States, on account of the moneys by them respectively expended as "costs, charges, and expenses" to aid the United States to maintain the "common defense" on the Pacific coast during the war of the rebellion.

If therefore Congress will accord to the computations of the Secretary of War, Hon. Redfield Proctor, in these cases the same degree of confidence which it accorded to similar computations of the Secretary of War, Hon. W. C. Endicott, in the case of the State war claims of the State of Texas, then at this time it will make provision to pay the rebellion war claims of these three States in the sums as computed by the Secretary of War, Hon. Redfield Proctor, and by him so heretofore duly reported to the Senate.

The reliance that should be placed on this examination and audit by the Secretary of War of these claims of these three States may be correctly ascertained as aforesaid from the remarks in the House in support of said Texas war claims made by the distinguished Representative from Texas, now the chairman of the House Committee on Appropriations, Hon. J. D. Sayers, substantially to the effect that said computations in the Texas war claims were almost absolutely perfect (an error of only \$64.50 occurring in an allowance of \$927,177.40), *de minimis lex non curat*.

These claims were provided for in the same act which provided for said Texas war claims, and have had substantially a similar degree of

examination by the Secretary of War, and are entitled to a similar degree of consideration by Congress.

In the deficiency appropriation bill which passed the Senate March 3, 1891, provision to pay some of these State war claims of these three States was included by the Senate without a single dissenting vote, after an explanation in support thereof had been made to the Senate in words as follows, to wit:

Mr. STEWART. I offer the amendment which I send to the desk.

The VICE-PRESIDENT. The amendment will be stated.

The CHIEF CLERK. On page 38, line 5, after the word "dollars," it is proposed to insert:

To reimburse the States of California, Oregon, and Nevada for moneys by them expended in the suppression of the rebellion, under the act of Congress approved July 27, 1861, and acts amendatory thereof and supplementary thereto, being sums of money shown by the reports of the Secretary of War to have been paid by said States in the suppression of the rebellion:

To the State of California the sum of \$2,451,369.56.

To the State of Oregon the sum of \$224,526.53.

To the State of Nevada the sum of \$404,040.70.

Mr. STEWART. Mr. President, there is no time to enter at length into an explanation of this claim. I would state, however, that during the war the States named in this amendment furnished 18,715 troops, who were enlisted in the U. S. Army and served on the Pacific coast. At the time the war broke out the soldiers who were stationed there were called home, and it became necessary to raise troops in those States. The Secretary of War, the President, and other officials urged these States to raise the troops, as they could not be sent from the East. These States, immediately after the rebellion closed, attempted to obtain compensation. It was a long time before they could get the accounts examined.

Finally, it was developed that these States had made an additional allowance beyond what was made in the Atlantic States. By two acts passed in 1850 a different allowance was made for troops serving on the Pacific coast. Those who were enlisted there were paid at a different rate. These acts were repealed in 1861. When it was attempted to raise troops on the Pacific coast it was found necessary to continue the old compensation on account of the very high price of living. Soldiers who had families or other obligations could not possibly serve at the reduced rates.

These States made an allowance, not up to what the Government had been in the habit of allowing, but considerably less, not more than one-fourth probably of the Government allowance. The transportation alone of the troops, without the subsistence that would have been allowed if they had been taken from New York under the regulations which had prevailed since 1850, would have amounted to \$5,483,385. If the extra pay had been counted in it would have ranged something over \$10,000,000, perhaps \$15,000,000. If the regular United States pay which had been allowed from 1850 up to 1861, when the war broke out, had been paid these men, it would have amounted—I have not figured it out exactly—to some \$10,000,000 or \$15,000,000. The transportation alone would have been nearly \$5,500,000.

In order that this question might be examined, several acts of Congress were passed, and a board of war claims commissioners was organized to investigate such claims. Under that war claims commission several States that came in on account of Indian depredations—Kansas, Nebraska, Nevada, California, and Texas—were paid in the aggregate \$1,297,850. Texas received of that sum \$927,177.40, and since that it has received an additional sum of \$148,615.97.

The question of the allowance of additional pay, which has been so long urged, still remains. The Senate, after investigating it, passed a resolution to have the claims examined, so as to ascertain the exact amount that was paid. Under that resolution the war claims examiners reduced the amount stated. With great labor they went through all the papers and examined all the vouchers. The result is the amendment which I offer. There is no doubt about the equity of the case.

THE VICE-PRESIDENT. The question is on the amendment of the Senator from Nevada.

The amendment was agreed to.

(See p. 4116, Congressional Record, March 5, 1891.)

But this amendment was not retained in said bill by the conferees for reasons recited in the debate which took place thereon in the Senate, as follows, to wit:

Mr. STEWART. Mr. President, if I understand the amendments that have been agreed to and rejected, the amendment of the Senate putting in the French spolia-

tion claims has been agreed to, and these State claims and the payment to the railroads for carrying the mails have been rejected.

Now, the position of the bill seems to be that the State claims of California, Oregon, and Nevada for money expended in the suppression of the rebellion, after all the other States have been paid, are rejected; that the judgments of the Supreme Court on the claims for the carrying of the mails, the judgment already declared that the United States is liable and owes the money and should pay it, have been rejected.

The French spoliation claims, in which there is no judgment, which is simply a finding under a law that declares that such findings shall not in any way commit the United States to the payment of the claims, and the finding of the court under such a law which has not been examined by the Committee on Claims, as the chairman stated that it had not been fully examined, but they had gone far enough to ascertain that a portion of them was unsatisfactory, and claims one hundred years old standing in that way, to a very large amount, are put into the bill.

Now, the system which produces such legislation certainly must be very defective. These appropriation bills come in and the main part of the legislation of Congress is forced into two or three days and nights, and investigation and deliberation under the pressure are denied, because we are threatened with an extra session of Congress, and we must take what the House says we shall take or we must take the consequences of an extra session. That alternative is constantly presented, and while judgments of courts binding upon the Government are ignored, while State claims cannot get consideration and are to be abandoned after consideration, claims that do not have a standing by reason of a judgment of a court or the investigation of a committee are allowed to pass.

I refer to the validity of these particular claims. I am aware that committees have held from time to time that there were equities in these French spoliation claims, but before they are paid it should be ascertained by some committee that each item that is appropriated goes to a legitimate claimant, so that when it has been neglected one hundred years we may investigate it and ascertain that the money goes to the parties entitled to it. This has not been done. I would not object to the payment of any of these claims if it were found that there was money due to a particular individual, but it comes in without that investigation, and it is to be passed in the last hours of the session, while the judgments of courts and claims of States are unceremoniously ignored. Now it goes back to the committee for further reference.

It is a serious responsibility upon a Senator who feels that he must do his duty here as to what he ought to do under such circumstances, whether he must continue from year to year to pass bills under the threat of an extra session, to which we can not give our assent conscientiously, and must stay here year after year and see legitimate claims ignored. The question is whether it is our duty to submit to it. It is a matter of grave consideration. I will not now determine what I shall do, but it seems to me if legislation can not be carried on more orderly than this it is the duty of the Senate to defeat the important bills and call a halt and rearrange the mode of doing business.

I think the Senate is, in a great measure, to blame in this matter. The Senate has the same power to originate appropriation bills that the House has. The House has got in the habit, and it goes on every season, and it always will, to send these bills here at the last moment so that they can not be considered by the Senate. I think the Senate is derelict in its duty if it does not commence early in the session to inaugurate bills and give time for consideration, that we may have our legislation in order, so that at the end of the session every Senator will not leave the Senate Chamber conscious that he has been a party to a very great wrong which the Congress of the United States allows because he did not have time to correct it.

The whole legislation of Congress has to be done in two or three nights, when it must be done hurriedly—done when jobs of all kinds can go through. Each Senator has to go home and explain it, and has to submit to it, that he can not reach it; that he could not discuss it because he was threatened with an extra session or the failure of the passage of the necessary bills to carry on the Government. It is a matter of grave consideration whether it is not my duty here to do all in my power to defeat this bill. Mr. President, I have said all I desire at this time. I have made these remarks, and I may make more before the bill becomes a law, but that is all I shall say at this time.

Mr. HALE. Mr. President, I desire to say only a word in reply to the Senator from Nevada. The instructions given to the committee on the part of the House do not apply to the State claims, but only to the railroad claims, so that in the conference which will immediately ensue the Senate conferees will not find the conference embarrassed by any action of the House aside from those claims. The committee of conference will be in session immediately, and I only repeat what I have said before, that it will endeavor to secure as much as possible of the action of the Senate upon this bill.

*I want to say to the Senator from Nevada—I know that he is a reasonable man upon all these subjects—that the Senate is committed to these State claims by vote, by sentiment, and it is only a question of time when they will pass.*

The present bill, aside from the matters which have been discussed, contains upon it an appropriation for pensions for soldiers amounting to \$28,000,000. I do not suppose there is a Senator here who, whatever may be his feeling about other matters in the bill, would desire to wreck the bill and thereby leave the soldiers without money for the payment of their pensions during the remainder of the year. Calling the attention of the Senator to this, I leave the subject now, and hope to be able to report from the conference committee in a very short time.

Mr. CHANDLER. I ask the Senator how much is appropriated in the bill for pensions.

Mr. HALE. The appropriations for pensions are found upon page 5—

Mr. EDMUNDS. What is the total amount?

Mr. HALE. Amounting to \$28,678,332.89. This money is needed at once. Without it the payments between now and June 30, of course, will cease.

#### DEFICIENCY APPROPRIATION BILL.

Mr. HALE submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on certain amendments of the Senate to the bill (H. R. 13658) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1891, and for prior years, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 22, 30, 59, 60, 84, 96, 98, 101, 103, and 104.

That the House recede from its disagreement to the amendment of the Senate, numbered 85, with an amendment as follows: In lieu of the matter proposed to be inserted by said amendment insert:

“For clerks to Committees on Patents, Coast Defenses, and Engrossed Bills, from March 4 to July 1, 1891, at the rate of \$2,200 per annum each.”

EUGENE HALE,  
W. B. ALLISON,  
F. M. COCKRELL,

*Managers on the part of the Senate.*

J. G. CANNON,  
S. R. PETERS,

W. C. P. BRECKINRIDGE,  
*Managers on the part of the House.*

Mr. STEWART. I should like to ask what disposition has been made of the amendments that were disagreed to.

Mr. HALE. The Senate conferees found the conferees on the part of the House entirely firm in their resistance, and declined to yield; so that it became a question of giving up the Senate amendments or giving up the bill, and mainly in consideration of the large appropriation in the bill for the pensioners, amounting to \$28,000,000, the conferees on the part of the Senate receded from the amendments and they are out of the bill.

Mr. STEWART. Mr. President, this illustrates in a very glaring form the mode of doing business between the two Houses. Appropriation bills involving more money than were ever appropriated in any one session, in time of peace at least, can not be said to have been considered by the Senate. They nearly all came here in a bunch in the last two or three days and the Senate has been compelled to work night and day. Many Senators were unable to stay here on account of their health. Old men feeble men, and men in ill health were unable to stay here and criticise these bills. They have been in the hands of a very few men who were overworked and could not give to them the attention they required.

They are not bills passed by the deliberation of this body, and it will be a marvel if there are not many things in these bills that Senators will regret and will be called upon to explain, and they will be compelled to make the explanation that there was no opportunity for any investigation of the great bulk of these bills, that it would have involved an extra session of Congress, which is regarded by the country as a calamity. We have been passing these bills under the shade of that calamity and under that threat, sitting here night and day. A large portion of the time, there could not be a quorum. Those who were engaged on conference were necessarily in their committee rooms, and what has been done is unknown to the majority of the Senate.

In this bill judgments of courts, of the Supreme Court, binding legal obligations of the Government, have been rejected. Claims of States of undoubted validity that have been long delayed have been rejected, and claims—

Mr. MORGAN. Will the Senator from Nevada allow me to ask him a question? Does the Senator desire to defeat the bill?

Mr. STEWART. I am not going to defeat the bill. I shall only occupy a few moments more, but I want to call attention to the situation. I am going to sit down in a moment. I say claims that have not the investigation or indorsement of the committee, involving millions, are in this bill. I do not complain of the conferees of the House; I do not complain of the conferees on the part of the Senate. They have labored night and day. It is a marvel to me that they have been able to perform the labor they have. They have done the best they could, and the result is that we have made these enormous appropriations of which the Senate, although responsible legally, can not be held responsible individually or morally.

I call attention to this matter now for the purpose of suggesting the necessity of earlier action on the appropriation bills and the further necessity of the Senate inaugurating appropriation bills, so that they can have them in time, that they can consider them properly, and that we can have legislation that we will understand, and that the country will understand, and not a great mass of material, involving millions and hundreds of millions that we know nothing of, forced through at the end of a session with the old excuse that we could not reach it because we had to submit and pass the bills to avoid an extra session. The Government must be carried on, I recognize that; and I do not propose to block the wheels of Government, but I appeal to Senators that in the future this work on appropriation bills shall be begun in time, and that they may be properly considered.

The PRESIDENT *pro tempore*. The question is on concurring in the conference report.

The report was concurred in.

(See p. 4223, Congressional Record, March 6, 1891.)

No valid reason is known to exist why Congress should not at this time authorize the payment of these State war claims of these three Pacific Coast States, and not compel them to keep knocking at its doors as petitioners, session after session, demanding payment of the same.

The volunteers of these States at the date when they were called, promptly responded to all requisitions made by the proper United States authorities upon their respective States, none waiting to be drafted or otherwise pressed into the military service of the United States, but all coming with alacrity when called.

The thorough, patient, careful, and exhaustive reports submitted to the Senate by the Secretary of War, Hon. Redfield Proctor, upon the work of the examination of the State war claims of these three States show some of the difficulties met and overcome by them when aiding the United States in these premises, and which, recited in the language of said Secretary in Senate Ex. Docs. Nos. 10, 11, and 17, Fifty-first Congress, first session, are as follows, to wit:

NEVADA.—EXTRA MONTHLY PAY TO HER STATE VOLUNTEERS—LIABILITIES ASSUMED.

[Senate Ex. Doc. No. 10, Fifty-first Congress, first session, p. 7.]

It appears from the affidavit of the State controller (herewith, marked Exhibit No. 2) that liabilities to the amount of \$1,153.75 were assumed by the State of Nevada as successor to the Territory of Nevada on account of "costs, charges, and expenses for monthly pay to volunteers and military forces in the Territory and State of Nevada in the service of the United States," and that State warrants fully covering such liabilities were duly issued. It is also shown in the affidavit that of said warrants two for the sums of \$11.33 and \$8.50, respectively, have been paid, such payment reducing said liabilities to \$1,133.92.

The circumstances and exigencies under which the Nevada legislature allowed this extra compensation to its citizens serving as volunteers in the U. S. Army are believed to have been substantially the same as those that impelled the legislatures of California and Oregon to a similar course of action for the relief of the contingent of troops raised in each of these States. Prices of commodities of every kind were extravagantly high during the war period in Nevada, which depended for the transportation of its supplies upon wagon roads across mountain ranges that were impassable for six months of every year; and at certain times, at least during the same period the rich yield of newly-opened mines produced an extraordinary demand for

labor, largely increasing wages and salaries. These high prices of commodities and services were coexistent with, though in their causes independent of the depreciation of the Treasury notes, which did not pass current in that section of the country, though accepted through necessity by the troops serving there; and it is safe to say that in Nevada, as in California and Oregon, the soldier could buy no more with a gold dollar than could the soldier serving in the Eastern States with the green-back or paper dollar.

On the whole, therefore, we are decided in the conviction that in granting them this extra compensation the legislature was mainly instigated by a desire to do a plain act of justice to the U. S. volunteers raised in the State and performing an arduous frontier service, by placing them on the same footing as regards compensation, with the great mass of the officers and soldiers of the U. S. Army, serving east of the Rocky Mountains. It is true that the seven companies of infantry that were called for on October 19, 1864, had not been organized; and that on March 8, 1865, three days before the approval of the State law above noticed, the commanding general Department of the Pacific wrote as follows from his headquarters at San Francisco to the governor of Nevada (*see* p. 287, Senate Ex. Doc. '10, Fiftieth Congress, second session):

"What progress is making in recruiting the Nevada volunteers? I will need them for the protection of the State, and trust that you may meet with success in your efforts to raise them. I hope the legislature may assist you by some such means as have been adopted by California and Oregon."

But the fact remains that the declared purpose of the monthly allowance was to give a compensation to the Nevada Volunteers (*see* section 1 of the act last referred to), and that when measured by the current prices of the country in which they were serving, their compensation from all sources did not exceed, if indeed it was equal to, the value of the money received as pay by the troops stationed elsewhere, i. e., outside of the Department of the Pacific.

#### CALIFORNIA.—EXTRA PAY TO ENLISTED MEN AS HER STATE VOLUNTEERS.

[Senate Ex. Doc. No. 11, Fifty-first Congress, first session, p. 23.]

By an act approved April 27, 1863, the legislature appropriated and set apart "as a soldiers' relief fund" the sum of \$600,000, from which every enlisted soldier of the companies of California volunteers raised or thereafter to be raised for the service of the United States was to be paid, in addition to the pay and allowances granted him by the United States, a "compensation" of \$5 per month from the time of his enlistment to the time of his discharge. Drafted men, substitutes for drafted men, soldiers dishonorably discharged or discharged for disability existing at time of enlistment, were not to share in the benefits of the act, and except in cases of married men having families dependent upon them for support, payment was not to be made until after discharge. Seven per cent interest-bearing bonds to the amount of \$600,000, in sums of \$500, with coupons for interest attached to each bond, were authorized to be issued on July 1, 1863. (Pp. 349-351, Statement for Senate Military Committee.)

A few unimportant changes respecting the mode of payment in certain cases were made by act of March 15, 1864, and on March 31, 1866, the additional sum of \$550,000 was appropriated for the payment of claims arising under its provisions, such sum to be transferred from the general fund of the State to the "soldiers' relief fund."

Fearing that the total amount of \$1,150,000 specifically appropriated might still prove insufficient to pay all the claims accruing under the act of April 27, 1863, above mentioned, the legislature directed, by an act which also took effect March 31, 1866 (p. 604, Stats. of California, 1865-'66), that the remainder of such claims should be audited and allowed out of the appropriation and fund made and created by the act granting bounties to the volunteers of California, approved April 4, 1864, and more fully referred to on page 19 of this report,

Upon the certificate of the adjutant-general of the State that the amounts were due under the provisions of the act and of the Board of State Examiners, warrants amounting to \$1,459,270.21 were paid by the State treasurer, as shown by the receipts of the payees indorsed on said warrants.

It is worthy of note here that on July 16, 1863, the governor of California, replying to a communication from the headquarters Department of the Pacific, dated July 5, 1863, advising him that under a resolution of Congress adopted March 9, 1862, the payments provided for by the State law of April 27, 1863, might be made through the officers of the pay department of the U. S. Army, stated that the provisions of said law were such as to preclude him from availing himself of the offer.

Some information as to the circumstances and exigencies under which this money was expended may be derived from the following extract from the annual report of the adjutant-general of the State for the year 1862, dated December 15, 1862:

"The rank and file of the California contingent is made up of material of which any State might be proud, and the sacrifices they have made should be duly appreciated and their services rewarded by the State. I do most earnestly recommend therefore that the precedent established by many of the Atlantic coast States of paying their troops in the service of the United States an additional amount monthly should be adopted by California, and that a bill appropriating, say, \$10 per month to each enlisted man of the troops raised or to be raised in this State be passed. \*

\* \* This would be a most tangible method of recognizing the patriotic efforts of our soldiers, relieve many of their families from actual destitution and want, and hold out a fitting encouragement for honorable service." (P. 58, Statement for Senate Committee on Military Affairs.)

Your examiners are of the opinion that the favorable action which was taken on the above recommendation of the adjutant-general can not be justly ascribed to any desire on the part of the legislature to avoid resort to a conscription, although the exclusion of drafted men from the benefits of the act indicates that they realized and deemed it proper to call attention to the possibility of a draft. Unlike the law of April 4, 1864, the benefits of which were confined to men who should enlist after the date of its passage and be credited to the quota of the State, the provisions of the act now under consideration extended alike to the volunteers who had already entered or had actually completed their enlistment contract and to those who were to enlist in the future. There is every reason for the belief that the predominating if not the only reason of the State authorities in enacting this measure was to allow their volunteers in the United States service such a stipend as would, together with the pay received by them from the General Government, amount to a fair and just compensation. In fact, as has already been stated, this was expressly declared to be the purpose of the act.

It appears that up to December 31, 1862, those of the U. S. troops serving in the Department of the Pacific who were paid at all—in some cases detachments had not been paid for a year or more—were generally paid in coin, but on February 9, 1863, instructions were issued from the Treasury Department to the assistant treasurer of the United States at San Francisco that "checks of disbursing officers must be paid in United States notes." (Letter of Deputy Paymaster-General George H. Ringgold, dated February 13, 1863, to Paymaster-General; copy herewith marked Exhibit No. 10.)

Before this, greenbacks had become the current medium of exchange in all ordinary business transactions in the Eastern States, but in the Pacific coast States and the adjoining territories, gold continued to be the basis of circulation throughout the war. At this time the paper currency had become greatly depreciated, and on February 28, 1863, the price of gold in Treasury notes touched 170. This action of the Government in compelling troops to accept such notes as an equivalent of gold in payment for services rendered by them in a section where coin alone was current, gave rise to much dissatisfaction. For although gold could be bought in San Francisco at nearly the same price in Treasury notes as in New York, it must be remembered that the troops in the Department of the Pacific were largely stationed at remote and isolated points.

When paying in greenbacks for articles purchased by or for services rendered by them in these out-of-the-way places, they were obliged to submit not only to the current discount in San Francisco, but also to a further loss occasioned by the desire of the persons who sold the articles or rendered the service, to protect themselves against possible further depreciation. It admits of little doubt that by reason of his inability to realize the full value of paper money, as quoted in the money centers, and of the fact that wages and the cost of living and of commodities of every kind were abnormally high (owing in great part to the development of newly-discovered mines in that region), the purchasing power of the greenback dollar in the hands of the average soldier serving in the Department of the Pacific was from the latter part of 1862 onward from 25 to 50 per cent less than that of the same dollar paid to his fellow soldier in the East.

Representation of great hardship which the Treasury Department's instructions entailed upon the troops were promptly made. On March 10, 1863, the legislature telegraphed to Washington a resolution adopted on that date instructing the State's delegation in Congress to impress upon the Executive "the necessity which exists of having officers and soldiers of the U. S. Army, officers, seamen, and marines of the U. S. Navy, and all citizen employes in the service of the Government of the United States serving west of the Rocky Mountains and on the Pacific coast paid their salaries and pay in gold and silver currency of the United States, provided the same be paid in as revenue on this coast." (P. 46, Statement for Senate Committee on Military Affairs.)

And on March 16, 1863, Brig. Gen. G. Wright, the commander of the Department of the Pacific (comprising, besides California, the State of Oregon and the Territories of Nevada, Utah, and Arizona) transmitted to the adjutant-general of the U. S. Army a letter of Maj. C. S. Drew, First Oregon Cavalry, commandant at Camp



Baker, Oregon, containing an explicit statement of the effects of and a formal protest against paying his men in greenbacks. In his letter of transmittal (p. 154, Senate Ex. Doc. 70, Fiftieth Congress, second session), General Wright remarked as follows:

"The difficulties and embarrassments enumerated in the major's communication are common to all the troops in this department, and I most respectfully ask the serious consideration of the General in Chief and the War Department to this subject. Most of the troops would prefer waiting for their pay to receiving notes worth but little more than half their face; but, even at this ruinous discount, officers, unless they have private means, are compelled to receive the notes. Knowing the difficulties experienced by the Government in procuring coin to pay the Army, I feel great reluctance in submitting any grievances from this remote department, but justice to the officers and soldiers demands that a fair statement should be made to the War Department."

It was under circumstances and exigencies such as these that the legislature themselves—all appeals to the General Government having proved futile—provided the necessary relief by the law of April 27, 1863. They did not even after that relax their efforts on behalf of U. S. troops, other than their own volunteers, serving among them, but on April 1, 1864, adopted a resolution requesting their Representatives in Congress to "use their influence in procuring the passage of a law giving to the officers and soldiers of the regular Army stationed on the Pacific coast an increase of their pay amounting to 30 per cent on the amount now allowed by law."

OREGON.—EXTRA MONTHLY COMPENSATION TO OFFICERS AND ENLISTED MEN OF  
HER STATE VOLUNTEERS.

[Senate Ex. Doc. No. 17, Fifty-first Congress, first session, p. 14.]

The certificate of the State treasurer, duly authenticated by the secretary of state under the seal of the State, sets forth that the amounts severally paid out for the redemption of relief bonds, as shown by the books of the treasurer's office, as reported by the treasurer to the several legislative assemblies, and as verified by the several joint committees (investigating commissions) of said assembly under the provisions of a joint resolution thereof, aggregate \$90,476.32. The following books, papers, etc., are also submitted in evidence of payment:

- (1) The canceled bonds.
- (2) A copy of the relief bond register, the correctness of which is certified by the secretary of state and state treasurer, showing number of bond, to whom issued, date of issue, and amount of bond; also showing the date and rate of redemption. The reports of the joint committees of the legislature above mentioned, to the effect that they compared the record kept by the State treasurer with the bonds redeemed and found the amounts correct and agreeing with the amounts reported by the State treasurer to the legislative assembly, are entered in said bond register.
- (3) Certificates of service given to the several Oregon volunteers upon which warrants were given entitling the holders to bonds. These certificates cover service for which the sum of \$86,639.85 was due. The remainder of the certificates, the State authorities report, were not found and are probably lost or destroyed.
- (4) Copies of the muster rolls of the Oregon volunteers, certified to by the secretary of state, setting forth the entire service of each officer and enlisted man.

In all, bonds amounting to 93,637 were issued. As has been stated, but \$90,476.32 is found to have been expended in the redemption of these bonds, some of which were redeemed at less than their face value. Five bonds, valued at \$731, have not been redeemed.

The authority by which these bonds were issued is contained in an act of the legislature, which was approved on October 24, 1864 (copy herewith), appropriating a sum not exceeding \$100,000 to constitute and be known as the "commissioned officers and soldiers' relief fund," out of which was to be paid to each commissioned officer and enlisted soldier of the companies of Oregon volunteers raised in the State for the service of the United States to aid in repelling invasion, etc., from the time of their enlistment to the time of their discharge, \$5 per month in addition to the pay allowed them by the United States. Enlisted men not receiving an honorable discharge from the service, or volunteers discharged for disability existing at the time of enlistment, were not to be entitled to the benefits of the act, nor was payment under the provisions thereof to be made to an enlisted soldier until he should be honorably discharged the service; but enlisted married men having families dependent upon them were authorized to allot the whole or any portion of the monthly pay accruing to them for the support of such dependents. A bond bearing interest, payable semiannually, at 7 per cent per annum, redeemable July 1, 1875, with coupons for the interest attached, was to be issued by the secretary of state for

such amount as the adjutant-general should certify to be due under the provisions of the act to each man, whose receipt for the amount so paid to him was to be taken by the secretary of state. Said bonds were to be paid to the recipient or order.

The circumstances and exigencies that led to the enactment of the above-cited law, and to the expenditures incurred under its provisions, were substantially the same as those which brought about the adoption of similar measures of relief in California and Nevada. It must have been patent to every one fully acquainted with the circumstances of the case that the volunteers that had been raised in Oregon at this time (October 24, 1864), consisting only of the 7 companies of the First Oregon Cavalry and the independent detachment of four months' men, a majority of whom had then nearly completed their terms, had been greatly underpaid, considering the nature of the service performed by them and the current rate of salaries and wages realized in other pursuits of life. At the time of the enrollment and muster-in of the First Oregon Cavalry and up to the latter part of 1862 the Government paid those of its troops in the Department of the Pacific that were paid at all in specie; but, as often happened during the war, a number of the companies of the regiment named, occupying remote stations, remained unpaid for a long time, and were finally paid in Treasury notes, some of the members having more than a year's pay due them.

During the remainder of the war the Government paid its troops in the Department of the Pacific, as elsewhere, in greenbacks. Referring to this condition of things and to the fact that coin continued to be the ordinary medium of exchange in Oregon in private business transactions, Maj. C. S. Drew, First Oregon Cavalry, in a letter to his department commander, dated March 4, 1863 (p. 154, Senate Ex. Doc. 70, Fiftieth Congress, second session), called attention to the fact that at his station (Camp Baker) Treasury notes were "worth not more than 50 or 55 cents per dollar;" that each officer and soldier of his command was serving for less than half pay, and had done so, some of them, for sixteen months past; that while capital protected itself from loss and perhaps realized better profits than under the old and better system of payment in coin, "the soldier did not have that power, and if paid in notes must necessarily receipt in full for what is equivalent to him of half pay or less for the service he has rendered, and must continue to fulfill his part of his contract with the Government for the same reduced rate of pay until his period of service shall have terminated; and that "good men will not enlist for \$6 or \$7 a month while \$13 is the regular pay, and, moreover, is being realized by every soldier in every other department than the Pacific." In forwarding this letter to the Adjutant-General, U. S. Army, the department commander remarked that the embarrassments enumerated in the major's communication were common to all the troops in the department, and he therefore asked "the serious consideration of the general in chief and the War Department to this subject." Some months later (August 18, 1863) Gen. Alvord, while reporting to the department commander the location of a new military post at Fort Boise, referred to the difficulties encountered by the garrison charged with the duty of establishing it as follows:

"Some difficulty is experienced in building the post in consequence of the low rates of legal-tender notes. In that country they bear merely nominal value. The depreciation of the Government currency not only embarrasses the Quartermaster's Department, but also tends greatly to disaffect the men. The differences between their pay and the promises held out by the richest mines, perhaps, on the coast, the proximity of which makes them all the more tempting, is so great that many desertions occur." (Senate Ex. Doc. 70, Fiftieth Congress, second session, p. 188.)

About the same time (September 1, 1863) the adjutant-general of the State complained of the inadequacy of the soldiers' pay, resulting from the depreciation of the paper currency with which they were paid. Referring to the fact that after the expiration of eight months from the date of the requisition of the United States military authorities for 6 additional companies for the First Oregon Cavalry but 1 had been raised, he said:

"And yet we are not prepared to say that it is for the want of patriotism on the part of the people of Oregon, but from other causes, partly from the deficiency in the pay of the volunteer in comparison with the wages given in the civil pursuits of life, as well as with the nature of the currency with which they are paid, the depreciation of which renders it hardly possible for the soldier to enlist from any other motive save pure patriotism. And I would here suggest that the attention of our legislature be called to this defect, and that additional pay, either in land, money, or something else, be allowed to those who have volunteered. Justice demands that this should be done."

In enacting the relief law of October 24, 1864, it is fair to presume that the legislature was largely influenced by the following statements and recommendations of the governor, contained in his annual message, dated September 15, 1864:

"The Snake and other tribes of Indians in eastern Oregon have been hostile and constantly committing depredations. The regiment has spent two summers on the

plains, furnishing protection to the immigration and to the trade and travel in that region of the country. During the past summer the regiment has traveled over 1,200 miles, and the officers and men are still out on duty. The officers and most, if not all, the men joined the regiment through patriotic motives, and, while some of the time they have been traveling over rich gold fields, where laborers' wages are from \$3 to \$5 per day, there have been very few desertions, and that, too, while they were being paid in depreciated currency, making their wages only about \$5 per month. A great many of these men have no pecuniary interest in keeping open the lines of travel, protecting mining districts and merchants and traders. The benefit of their service thus inures to the benefit of others, who should help these faithful soldiers in bearing these burdens. Oregon, in proportion to her population and wealth, has paid far less than other States for military purposes. California pays her volunteers \$5 per month extra in coin. It would be but an act of simple justice for this State to make good to the members of this regiment their losses by depreciated currency." (P. 87, Statement for Senate Military Committee.)

It is to be noted here that while the officers and men who became the beneficiaries of this law had been paid in a depreciated currency, which in Oregon does not appear to have had more than two-thirds of the purchasing power it had in the East, the Government provided them with clothing, subsistence, shelter, and all their absolutely necessary wants. On the other hand, it is to be borne in mind that the legislature must have been aware of the fact noted, and that it granted the extra compensation from a sense of justice and without any purpose calculated to benefit the State at large, such as might be reasonably inferred from the granting of bounties to men "who should hereafter enlist." As has been already mentioned, the terms of the Oregon volunteers were drawing to a close and the benefits of the law were restricted to the volunteers "raised," and did not therefore include those "to be raised."

It is very material to here call attention to certain important facts, to wit, that subsequent to the dates when these three States, through appropriate legislation enacted therefor by their respective legislatures, provided for the aforesaid extra pay to their own volunteers, Congress on June 20, 1864, increased by one-third the pay of the soldiers of the regular Army of the United States, to begin on May 1, 1864, and to continue during the rebellion (the close of which, as proclaimed by the President of the United States, was August 20, 1866 (13 U. S. Stats., 144, 145).

Nay, more, Congress on March 2, 1867, as to the soldiers, extended said act for three years from August 20, 1866, and at the same time, as to the officers of the regular Army of the United States, increased their pay by one-third for two years from July 1, 1866. (14 U. S. Stats., 422, 423.)

Nay, still more, in this act of June 20, 1864, Congress provided for the payment of bounties (or constructive mileage) to such soldiers as should reenlist, as therein recited, and which bounties had theretofore been denied payment by Second Comptroller Brodhead under his aforesaid decisions of the Treasury Department.

Nay, even still more, on March 2, 1867 (14 U. S. Stats., 487), Congress provided for the payment of mileage to the California and Nevada volunteers from the places of their discharge in New Mexico, Arizona, Utah, etc., to the places of their enlistment, etc.

So therefore it fully appears that Congress finally, though tardily, enacted for the regular Army of the United States the identical provisions which these three States prior thereto felt called upon to enact for their own volunteers, the propriety of which legislation by said States has never been questioned, and the timeliness of which served only to measure the patriotism which inspired such legislation in aid of the "common defense."

But in the meanwhile the aforesaid legislation of these three States had been duly set in motion and was actively running in full force and effect at the dates of the aforesaid legislation of Congress, and the statutory obligations of said States to their own volunteers in good faith

had to be fully met according to the letter and spirit of the intention of their enactment.

These war claims of these three States are not therefore to be weighed in scales of refined technicality.

These State war claims are not private claims, but are public claims presented to Congress by three States of the Union in their corporate and political capacities, and are entitled to its highest possible consideration, because of the fact they are State claims for the reimbursement of cash *actually paid by these three States, as the "costs, charges, and expenses" in aiding the United States, at their own solicitation, to maintain the "common defense" on the Pacific coast during a period of active war.*

Not only this, but said cash so by them expended *had to be and was hired by these three States by the sale of their State interest-bearing bonds, supported only by their own State credit.*

In order to resort to measures so extraordinary, the legislatures of these three States were compelled to avail themselves of those provisions of their State constitutions that contemplated extraordinary emergencies in public affairs, and which demanded extraordinary expenditures of money, in excess of the maximum limit provided for a condition of peace and tranquillity, and which extraordinary expenditures these three States felt justified in making in view of a state of actual war against the Union and of the obligation of the United States to indemnify and reimburse them for such expenditures as had been so guaranteed by Congress in its aforesaid legislation.

It is respectfully submitted that the aforesaid legislation of Congress and proceedings had by the Executive Departments of the United States in connection therewith, so fully executed in good faith by these three Pacific coast States, constituted and are statutory contracts which contemplate an obligation on the part of the United States to wholly indemnify these three States by fully reimbursing them the money they so advanced and expended in good faith to aid the United States to maintain the "common defense," and so hired by said States by the sale of their State interest-bearing bonds.

At the dates when the United States made the aforesaid calls or requisitions for these 18,715 volunteer troops there was no money in State treasuries of these three States which was not specifically appropriated to meet their fixed and necessary current expenses, and hence, not having any money with which to defray the "costs, charges, and expenses" of furnishing said volunteer troops for the military service of the United States, they *were compelled to raise money by hiring the same, and to do this they were compelled to sell at not less than par their State interest-bearing war bonds, principal and interest of which were paid in gold coin from money raised by taxation most extraordinary, levied upon the inhabitants of these three States.*

These statutory enactments of Congress, supplemented by these statutory enactments of the legislatures of these three States, constitute and are the highest and most solemn form of governmental contracts, and are to be construed in all cases, not as mere legislative enactments, *but as contracts* binding upon all parties thereto—in this case the United States and the States of California, Oregon, and Nevada.

Huidecooper's Lessee v. Douglas, 3 Cranch R., 1;  
1 Peters' Condensed Rep., 446;  
State Bank v. Knoop, 16 How., 369;  
Corbin v. Board of County Comrs., 1 McCrary, 521;

Sinking Fund Cases, 99 U. S. R., 700;  
 Fletcher v. Peck, 6 Cranch, 87;  
 New Jersey v. Wilson, 7 Cranch, 166;  
 Dartmouth College Case, 4 Wheaton, 518;  
 Keith v. Clark, 97 U. S. R., 454.

It was impossible for these States to raise, enlist, organize, equip, and muster volunteer troops into the military service of the United States *without the immediate expenditure of cash*, and they could not expend cash which they did not have, and hence they were forced to *hire cash* in the same manner as they hired anything else, to wit, by paying for the use of such hire, to wit, interest on the principal so by them hired.

In construing the aforesaid legislation the circumstances under which the same was enacted are to be and must be taken into consideration.

In this case the emergencies were not only great, but extraordinary and imminent, not admitting in the least of any delay. The life of the nation was in peril; volunteer troops were imperatively demanded; official requisitions therefor had to be promptly obeyed; the Federal treasury was wholly empty; the State treasuries of these three States were equally empty, whatever money being on deposit therein having been appropriated and set apart for specific purposes, so that no part thereof could be constitutionally used for any other object whatsoever.

It was under circumstances like these that the Federal Government besought these three States to send them 18,715 volunteer troops, and in substance promised: "We will wholly indemnify and fully reimburse you for all proper costs, charges, and expenses incurred in our behalf therein," etc.

All these things were matters of public contemporaneous history, and were contained in the constitutions and State statutes of these three States, and presumably were well known to Congress at the dates when it enacted the aforesaid acts and adopted the aforesaid resolutions, and Congress must necessarily have contemplated that these three States, if they had not the cash, would necessarily make use of their credits, respectively, for the purpose of hiring the cash with which to immediately provide for raising said volunteer troops for the "common defense," and that whatever sums of money might be paid out by these States (both principal and interest paid for the use of said principal) would be necessarily reimbursed them by the United States.

The mere *title* of the aforesaid act of Congress of July 27, 1861, is of itself sufficient to declare the intent of Congress in these premises, to wit: "An act to indemnify the States (in this case of California, Oregon, and Nevada) for expenses incurred by them in defense of the United States," both before and after July 27, 1861.

To indemnify these States was and is "to save them harmless, to secure them against any future loss or damage, to fully make up to them for all that is past, to make good all expenditures, to fully reimburse them for all proper 'costs, charges, and expenses' incurred by them in furnishing said 18,715 volunteer troops." (Webster *et als.*)

The objects of this legislation by Congress will therefore not be wholly satisfied by a partial reimbursement to these States of these expenses so by them incurred, but the intention of Congress will be properly and wholly satisfied only by the full reimbursement to these States of the total principal of the cash by them hired, and the interest paid by them for the hire of the cash (principal) expended by them, at the request of the General Government, to aid the United States to maintain the "common defense" on the Pacific coast during the rebellion.

“The costs, charges, and expenses” contemplated by the aforesaid act of July 27, 1861, was the money which theretofore had been, or which thereafter might be “duly expended, actually laid out, in fact consumed by using, or the disbursements made, outlays paid, and charges met, as the proper expenses of war” by said three States. (Webster *et als.*)

Sullivan *v.* Triumph Mining Company, 39 Cal., 450;  
 Foster *v.* Goddard, 1 Cliff., 158;  
 1 Black, 506;  
 Dashiel *v.* Mayor, etc., of Baltimore, 46 Md., 615;  
 Dunwoodie *v.* The United States, 22 C. of Cls. R., 269.

There is another familiar rule of statutory construction which should be observed in the application of this act of July 27, 1861, and it is, that “what is implied in a statute is as much a part of it as what is expressed.” (United States *v.* Babbitt, 1 Black, 55, 61.)

And the opinion of the court in that respect has been quoted with great emphasis in many subsequent decisions of the Supreme Court of the United States.

Gelpcke *v.* City of Dubuque, 1 Wall., 221;  
 Croxall *v.* Sherrard, 5 *id.*, 228;  
 Telegraph Company *v.* Eiser, 19 *id.*, 427;  
 United States *v.* Hodson, 10 *id.*, 406;  
 Buckley *v.* United States, 19 *id.*, 40.

The United States have universally reimbursed all sums of money actually expended and used for the benefit of the Federal Government, not only principal, but also interest paid for the hire of any principal used for such purposes.

In this case reimbursement is asked for interest, not upon any claim which these three States have against the United States, but as a part of the “costs, charges, and expenses” incurred and actually paid out, for which, it is respectfully submitted, full reimbursement should be made by the United States to these three States.

6 U. S. Stats., 139, April 18, 1814;  
 3 U. S. Stats., 422, April 9, 1819;  
 3 U. S. Stats., 560, April 11, 1820;  
 5 U. S. Stats., 522, August 23, 1842;  
 5 U. S. Stats., 578, August 31, 1842;  
 5 U. S. Stats., 628, March 3, 1843;  
 5 U. S. Stats., 716, April 30, 1834;  
 5 U. S. Stats., 797, March 1, 1845;  
 9 U. S. Stats., 571, February 27, 1851;  
 2 Comptroller’s decision, vol. 15, p. 137, office records, holding to the effect that interest, when paid by a State for the use and benefit of the United States, becomes a part of the principal debt of the United States due to such State and constitutes a just and legal claim of such State against the Federal Government, as much so as the principal itself;  
 1 Opinion of the U. S. Attorney-General, 542, 566;  
 2 Opinion of the U. S. Attorney-General, 841;  
 5 Opinion of the U. S. Attorney-General, 71, 108, 463.

Congress is presumed to have enacted the aforesaid legislation with a full knowledge not only of its own aforesaid acts but also of the aforesaid decisions of the Executive Department of the United States in reference to the construction and application of similar legislation theretofore duly enacted by Congress; and if there existed any ambiguity

or doubt (which is denied in the premises) with reference to the true construction of such legislation by Congress, then such prior decisions and opinions of the proper Executive Departments of the United States upon such similar statutes should have a controlling weight, and said laws should be construed in harmony with such decisions and opinions.

U. S. *v.* Moore, 95 U. S. R., 760-63;  
 U. S. *v.* Pugh, 99 U. S., 265-269;  
 Hahn *v.* U. S., 107 U. S. R., 402-406;  
 Brown *v.* U. S., 113 U. S. R., 568;  
 U. S. *v.* Philbrick, 120 U. S. R., 52;  
 U. S. *v.* Hill, 120 U. S. R., 169.

The departmental construction and opinions of similar laws of Congress become part of these laws, as much so as if they had been expressly incorporated therein, and should be duly respected and adopted by Congress as is invariably done by the courts of the country.

The United States are liable for the reimbursement for the "costs, charges, and expenses" upon which these claims of these three States are founded, because the same were duly made and incurred at the request and solicitation of the United States to maintain the "common defense" on the Pacific coast while the United States were engaged in actual war, and hence these States in so making said expenditures were acting in fact as the fiscal agents of the Federal Government.

In view of the emergencies amid which, from 1861 to 1866, the Federal Government was placed, and the circumstances in which these States found themselves, it must be admitted that "the costs, charges, and expenses" for which reimbursement is now claimed were not only necessary, but it has never been at any time, by any person, or at any place, suggested that these three States could in any other manner have responded to the frequent calls and urgent demands of the United States, except by doing that which in good faith they promptly did, to wit, hire money and pay interest for such hire, implicitly relying upon the good faith, equity, and the public conscience of the United States and upon the highest order of obligation imposed upon and now resting upon the United States to wholly indemnify and fully reimburse the same.

These three States have not heretofore asked and do not now seek to recover any principal or any interest which they did not actually pay out of moneys by them hired, with which to meet "the costs, charges, and expenses" of raising, organizing, equipping, and furnishing, etc., 18,715 volunteer troops, for the military service of the Federal Government on the Pacific coast, and all of which troops were continuously engaged and employed in the field, from 1861 to 1866, inclusive, serving as far south as Arizona and as far north as the Territory of Washington, and as far east as the Territory of Utah.

The State interest-bearing war bonds of these three States were not authorized to be issued or sold and were not issued and sold, nor the cash represented thereby was not hired, and the interest paid for such hire was not paid to relieve their own people, but all of the same were done by these States to enable the Federal Government to do through their credit that which the United States did not do, and seemingly could not then otherwise do, to wit: to immediately put in the field 18,715 volunteer troops, fully equipped and prepared for military service and who, in the opinion of the United States, were immediately needed to maintain the "common defense" on the Pacific coast, and to serve as aforesaid during the period of the rebellion.

The principle contended for in these cases does not go even as far as Congress itself has heretofore gone in sundry cases, at sundry times, beginning at a very early period in the history of the Federal Government because these claims are for the reimbursement only of such cash as these three States actually hired and expended for the use and benefit of the Federal Government, during a period of active war, and at the solicitation of the United States, while Congress has at times not only authorized the reimbursement of the principal, but has also authorized the payment of interest, for the use by the Federal Government, of money, up to the dates when same was actually repaid by the United States.

As late as March 7, 1892, the War Claims Committee, in the House of Representatives, having this subject-matter under examination, made a unanimous report to the House, to wit: House Report No. 555, Fifty-second Congress, first session, to accompany H. R. 4566, which report is as follows, to wit:

[House Report, No. 555; Fifty-Second Congress, first session.]

MARCH 7, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following report (to accompany H. R. 4566):

The Committee on War Claims, to whom was referred the bill (H. R. 4566) to reimburse the several States for interest on moneys expended by them on account of raising troops, etc., submit the following report:

The facts out of which this bill for relief arises will be found stated in a report made by this committee to the House in the Fiftieth Congress, which is appended as a part of this report.

Your committee concur in the conclusions stated in that report and recommend the passage of the bill.

[House Report No. 309, Fiftieth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 1474) to reimburse the several States for interest on moneys expended by them on account of raising troops employed in aiding the United States in suppressing the late insurrection against the United States, beg leave to report the same back to the House with the recommendation that it do pass.

This recommendation is founded upon the precedents which Congress has heretofore established of paying interest on moneys advanced by States on account of the war of 1812; also, Indian wars of 1835, 1836, 1837, and 1838, and the northeast frontier of the State of Maine, as evidenced by the following acts of Congress:

- To reimburse Virginia, act of March 3, 1825, Stat. at Large, vol. 4, 132.
- To reimburse Maryland, act of May 13, 1826, Stat. at Large, vol. 4, p. 161.
- To reimburse city of Baltimore, act of May 20, 1826, Stat. at Large, vol. 4, p. 177.
- To reimburse Delaware, act of May 20, 1826, Stat. at Large, vol. 4, p. 175.
- To reimburse New York, act of May 22, 1826, Stat. at Large, vol. 4, pp. 192, 193.
- To reimburse Pennsylvania, act of March 3, 1827, Stat. at Large, vol. 4, pp. 240, 241.
- To reimburse South Carolina, act of March 22, 1832, Stat. at Large, vol. 4, p. 499.
- To reimburse Alabama, act of January 26, 1849, Stat. at Large, vol. 6, p. 344.
- To reimburse Georgia, act of March 3, 1851, Stat. at Large, vol. 6, p. 646.
- To reimburse Maine, act of March 3, 1851, Stat. at Large, vol. 6, p. 626.
- To reimburse New Hampshire, act of January 27, 1852, Stat. at Large, vol. 10, pp. 1, 2.
- To reimburse Massachusetts, act of July 8, 1870, Stat. at Large, vol. 16, pp. 197, 198.

The President, by authority of Congress, called upon the governors of the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Kentucky, Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Kansas, Nebraska, Nevada, Oregon, and California to furnish volunteers and militia



troops to aid the United States in suppressing the late insurrection against it, and these States expended various sums of money, which were advanced to the Government, in enrolling, equipping, subsisting, clothing, supplying, arming, paying, and transporting regiments and companies employed by the Government in suppressing the late insurrection, and it matters not to the Government from what sources these States obtained the moneys advanced by them for the benefit of the Government, they are equally and justly entitled to be paid interest on such advances from the time they presented their claims to the Government for payment to the time when the same were refunded by the Secretary of the Treasury.

These States incurred heavy obligations of indebtedness on account of raising these troops, on which they paid interest, and many of them are still paying interest on their bonded indebtedness.

As the Government had the use and benefit of these advances made by these States, above mentioned, and that, too, at a time when greatly needed, and added largely to the maintaining of the credit of the Government, it is deemed by your committee but equitable and just that interest should be allowed equally to all the States on moneys advanced by them to aid the Government in furnishing troops.

The same rule has been observed in the cases of several States which advanced money for the "common defense," in suppressing Indian and other wars, as follows, to wit:

Georgia, act March 3, 1879 (20 Stat. at L., p. 385); Washington Territory, act March 3, 1859 (11 Stat. at L., p. 429); New Hampshire, act January 27, 1852 (10 Stat. at L., p. 1); California, act of August 5, 1854 (10 Stat. at L., p. 582); California, act August 18, 1856 (11 Stat. at L., p. 91); California, act June 23, 1860 (12 Stat. at L., p. 104); California, act July 25, 1868 (15 Stat. at L., p. 175); California, act March 3, 1881 (21 Stat. at L., p. 510); and in aid of the Mexican war (see statute of June 2, 1848).

Attorney-General Wirt, in his opinion on an analogous case, says:

"The expenditure thus incurred forms a debt against the United States which they are bound to reimburse. If the expenditures made for such purpose are supplied from the treasury of the State, the United States reimburse the principal without interest; but if, being unable itself, from the condition of its own finances, to meet the emergency, such State has been obliged to borrow money for the purpose, and thus to incur a debt on which she herself has had to pay interest, such debt is essentially a debt due by the United States, and both the principal and interest are to be paid by the United States. (See Opinions of Attorneys-General, vol. 1, p. 174.)"

Thus it will be seen that the precedent for the payment of interest, under the rule adopted for the settlement of claims of war of 1812-15 and Indian wars above cited, is well established.

These State war claims of these three States rest, therefore, upon a basis well founded, and, by virtue of the political relations existing between these States and the United States under the circumstances herein recited, entitle their petition to Congress for payment to prompt and just consideration.

These States have not been importunate in repeating their demands, but at all times have had a due regard for the fiscal condition of the Federal Treasury. They have been prompt, active, vigilant, and earnest in the due presentation of these State war claims against the United States, understating, if anything, rather than overstating, the exact amount thereof and asking at all times that they be reimbursed only whatever amount they actually paid to aid the United States in maintaining the "common defense," now computed and reported by the head of the War Department, under which all these military services have been performed.

The States of California, Oregon, and Nevada have not been guilty of any laches or delays tending to prejudice their said claims.

Under proper legislation of Congress, and under an appropriate resolution of the Senate, proceedings to carefully investigate these claims have been had, the amount of each and every necessary "cost charge and expense" in the case of each of these States has been heretofore

fully inquired into, exactly ascertained, specifically stated, and carefully computed by the honorable Secretary of War.

This branch of the history of these State war claims is, therefore, not embarrassed by any controversy as to the facts, leaving only to be determined by Congress the just measure of the obligations resting upon the General Government resulting from these facts, fully shown in this statement and recited in said reports officially made to the Senate by the Secretary of War and repeated in the several reports made to the House and Senate by the appropriate committees of each.

The question, therefore, that naturally arises is, "What is the duty of Congress under circumstances like these in a case like this?" These claimants are not private parties, but are States of the Union, *entitled to indemnities from the Federal Government*, who have heretofore relied and do now rely for reimbursement upon the aforesaid legislation of Congress and acts of its highest officers, wherein the amount by them expended for the "common defense" has been exactly ascertained by the Secretary of War and duly reported to the Senate. These States do not ask for reimbursement of any money which they did not pay or fully expend; but they do ask that Congress, without further delay, objection, or evasion, may now fully reimburse them the moneys heretofore by them fully paid in gold coin and appropriated and expended in good faith in aiding the United States, at their own solicitation, to maintain the "common defense," and expended too, by these States when the United States seemingly were unable to pay the same.

Other States of the Union have been reimbursed sums of money which they in good faith expended during the rebellion in aid of the "common defense," and in amounts aggregating (up to March 5, 1892) the sum of \$44,725,072.38, as shown by the subjoined correspondence and table, prepared in the Treasury Department, on account of expenses incurred by the States therein named during the war of the rebellion.

This table contains the names of every State loyal during the rebellion *except the States of California, Oregon, and Nevada*. This correspondence and table are as follows, to wit:

TREASURY DEPARTMENT, *March 21, 1892.*

Hon. WILLIAM M. STEWART, *U. S. Senate:*

SIR: In reply to your communication of the 9th instant, I have the honor to transmit herewith a statement of the amounts reimbursed the several States for expenses incurred by them in behalf of the United States during the war of the rebellion, as prepared in the offices of the Second and Third Auditors of the Treasury, together with accompanying reports of said officers.

Respectfully yours,

L. CROUNSE,  
*Assistant Secretary.*

TREASURY DEPARTMENT,  
*Second Auditor's Office, March 21, 1892.*

Respectfully returned to the honorable Secretary of the Treasury, with the report that the amounts allowed through this office, as reimbursement to States for expenses in behalf of the United States during the war of the rebellion, are set forth in Senate Ex. Doc. No. 11, Fifty-first Congress, first session.

No additional allowances have been made.

J. H. FRANKLIN,  
*Acting Auditor.*

TREASURY DEPARTMENT, OFFICE OF THE THIRD AUDITOR,  
Washington, D. C., March 15, 1892.

Hon. CHARLES FOSTER, *Secretary of the Treasury*:

SIR: I have the honor to return the communication addressed to you by Hon. William M. Stewart, U. S. Senate, on the 9th instant, respecting allowances to the several States for reimbursements of the expenses of raising troops for the United States during the war of the rebellion.

The tabular statement inclosed by him (aggregating \$44,137,590.34) is taken from a "Recapitulation," on page 63 of Senate Ex. Doc. No. 11, Fifty-first Congress, first session. It included jointly allowances as shown by the records of this office and as reported by the Second Auditor from his records.

So far as the data came from this office, it is correct; but some further allowances have since been made through this office, as shown by the tabular statement herewith. But I perceive that by oversight a sum of \$485 paid to Nebraska was included therein, which sum was not for raising troops for the United States, but was expenses in suppressing Indian hostilities. I now drop out that item.

So far as the data came from the records of the Second Auditor I presume it to be correct, but can not so certify; nor can I state officially whether any further allowances have since been made through his office.

Respectfully yours,

A. W. SHAW,  
*Acting Auditor.*

*Statement accompanying Third Auditor's letter to the Secretary of the Treasury, dated  
March 15, 1892.*

Allowances by Third Auditor.					
State.	As reported in Senate Ex. Doc. No. 1438, Fortieth Congress, second session, p. 57.	Allowances made since said list.	Total allowances by Third Auditor.	Allowances by Second Auditor as reported in Senate Ex. Doc. No. 11, Fifty-first Congress, first session, p. 63.	Total allowances up to Mar. 15, 1892.
Connecticut.....	\$2,096,950.46	\$6,014.83	\$2,102,965.29	.....	\$2,102,965.29
Massachusetts.....	3,660,483.07	301,133.28	3,961,616.35	\$7,608.88	3,969,225.23
Rhode Island.....	723,530.15	.....	723,530.15	.....	723,530.15
Maine.....	1,027,185.00	448.99	1,027,633.99	.....	1,027,633.99
New Hampshire.....	976,081.92	476.56	976,558.48	450.00	977,008.48
Vermont.....	832,557.40	.....	832,557.40	.....	832,557.40
New York.....	3,957,996.98	*102,737.32	4,060,734.30	198,938.52	4,259,672.82
New Jersey.....	1,420,167.35	6,548.45	1,426,715.80	96,859.44	1,523,575.24
Pennsylvania.....	3,204,636.24	14,390.04	3,219,026.28	667,074.35	3,886,100.63
Ohio.....	3,245,319.58	71,348.20	3,316,667.78	.....	3,316,667.78
Wisconsin.....	1,035,059.17	24,102.86	1,059,162.03	.....	1,059,162.03
Iowa.....	1,039,759.45	3,705.35	1,043,464.80	.....	1,043,464.80
Illinois.....	3,080,442.51	1,532.92	3,081,975.43	.....	3,081,975.43
Indiana.....	2,668,529.78	.....	2,668,529.78	1,073,208.51	3,741,738.29
Minnesota.....	70,798.45	462.45	71,260.90	276.75	71,537.65
Kansas.....	384,138.15	2,298.21	386,436.36	.....	386,436.36
Colorado.....	55,238.84	.....	55,238.84	.....	55,238.84
Missouri.....	7,580,421.43	996.37	7,581,417.80	.....	7,581,417.80
Michigan.....	844,262.53	1,493.16	845,755.69	.....	845,755.69
Delaware.....	31,988.96	.....	31,988.96	.....	31,988.96
Maryland.....	133,140.99	3,140.65	136,281.64	.....	136,281.64
Virginia.....	48,469.97	.....	48,469.97	.....	48,469.97
West Virginia.....	471,063.94	.....	471,063.94	.....	471,063.94
Kentucky.....	3,504,466.57	47,137.40	3,551,603.97	.....	3,551,603.97
Total.....	42,092,668.89	587,967.04	42,680,635.93	2,044,416.45	44,725,052.38

\* Included in this sum is an allowance of \$16,197.42 to New York not yet actually paid, but upon the list to be reported to Congress at its present session, for a deficiency appropriation.

L. W. F.

SECOND AUDITOR'S OFFICE, March 19, 1892 (Mail Room).  
THIRD AUDITOR'S OFFICE, March 15, 1892.

Many of the important facts reported to the Senate by its Committee on Military Affairs, in a statement in support and explanation of Senate bill No. 3420, Fiftieth Congress, first session, which though when

reported was intended to apply only to the rebellion war claims of the Territory and State of Nevada, yet the same apply with equal force and correctness to these similar rebellion war claims of the States of California and Oregon, some of which, recited in said statement, are as follows, to wit:

#### RESULTS OF THE FOREGOING LEGISLATION BY NEVADA.

By these legislative enactments of Nevada substantial and effectual aid was given and guaranteed by Nevada, both as a Territory and State, to the Government of the United States in guarding its overland mail and emigrant route and the line of the proposed transcontinental railroad, in furnishing troops during the war of the rebellion, and for suppressing Indian hostilities and maintaining peace in the country inhabited by the Mormons, and for the common defense, as contemplated in said circular letter of Secretary Seward, along an exposed, difficult, and hostile Indian frontier, and then but sparsely populated. These enactments were fully known to the authorities of the United States and to Congress; they have ever been acquiesced in and met with the sanction and practical indorsement of the United States, in whose interest and for whose benefit they were made. As a partial compensation to these volunteers for this irregular, hazardous, and exposed service in the mountains and on the desert plains, and to aid them to a small extent to maintain families dependent upon them for support, first the Territory and afterwards the State of Nevada offered and paid this small stipend, never suspecting that the United States would not promptly and willingly respond when asked to reimburse the same. These citizens of Nevada who volunteered, enlisted, and did military service for the United States were compelled in many cases to abandon their employment, in which their wages were always lucrative and service continuous, so that nothing less than the individual patriotism of these volunteers enabled the Territory and State of Nevada to cheerfully and promptly respond to every call and requisition made upon them for troops by the United States.

#### NEVADA'S DILIGENCE IN THESE PREMISES.

The State of Nevada has not slept upon her rights in any of these premises nor been guilty of any *laches*; on the contrary, at all proper times she has respectfully brought the same to the attention of Congress by memorials of her legislature and of her State authorities, and through her representatives in Congress. On March 29, 1867, her legislature first asked for the payment of the claims of the State by a joint resolution, which is printed in the appendix, marked Exhibit No. 8, p. 64. And again, on February 1, 1869, the legislature of Nevada passed a memorial and joint resolution renewing her prayer in these premises, which is also so printed in the appendix, marked Exhibit No. 9, p. 65.

The Journals of the U. S. Senate show that on March 10, 1868, the writer of this report presented the first-mentioned memorial and resolution to the Senate, accompanied with an official statement of the amount of the claims of the State referred to therein. These papers were referred to the Committee on Claims, but the records fail to show that any action was ever taken upon them. On May 29 of the same year the writer of this report introduced a joint resolution (S. 138) providing for the appointment of a board of examiners to examine the claims of the State of Nevada against the United States, and on June 18 of the same year the Committee on Claims, to whom this joint resolution was referred, was discharged from its further consideration. The official statement of the moneys expended by the State of Nevada on account of the United States, and presented to the Senate on March 10, 1868, can not now be found on the files of the Senate.

On February 11, 1885, and January 26, 1887, the legislature of Nevada, renewing its prayer for a reimbursement of the money by her expended for the use and benefit of the United States, further memorialized Congress, asking for the settlement of her claims, which are printed in the appendix and marked Exhibits Nos. 10 and 11, pp. 65 and 66.

#### CONCLUSIONS AND RECOMMENDATIONS.

Nevada has not demanded a bounty nor presented a claim against the United States for reimbursement of any expenditure she did not in good faith actually make for the use and benefit of the United States, and made, too, only subsequent to the date of the aforesaid appeal of Secretary Seward to the nation, and made, too, in consequence of said appeal and of the subsequent calls and requisitions made upon her then scanty resources and sparse population, and wherein the good faith of the

United States was to be relied upon to make to her ungrudgingly a just reimbursement whenever the United States found itself in a condition to redeem all its obligations.

Nevada has been diligent in making her claim known to Congress, but she has not with an indecorous speed demanded her pound of flesh, but has waited long and patiently, believing upon the principle that the higher obligations between States, like those among men, are not always "set down in writing, signed and sealed in the form of a bond, but reside rather in honor," and that the obligation of the United States due her in this case was as sacred as if it had originally been in the form of a 4-per cent U. S. bond, now being redeemed by the United States at \$1.27 upon each \$1 of this particular form of its unpaid obligations.

Nevada has not solicited any charity in this case, but, on the contrary, by numerous petitions and memorials has respectfully represented to Congress why the taxes heretofore levied upon her people and paid out of her own treasury to her volunteer troops in gold and silver coin to aid the United States at its own solicitation to protect itself and maintain the general welfare should be now returned to her by the General Government.

Congress should not forget that during the long period of the nation's peril the citizens of Nevada, like those of California (when not engaged in the military or naval service of the United States) not only guarded the principal gold and silver mines of the country then discovered, and prevented them from falling into the hands of the public enemy, but also worked them so profitably for the general welfare as to enable the United States to make it possible to resume specie payment and to redeem its bonds at 27 per cent above par, and to repay all its money-lenders at a high rate of interest, and that, too, not in the depreciated currency with which it paid Nevada's volunteer troops, but in gold coin of standard value.

As these expenditures were honestly made by the Territory and State of Nevada, your committee do not think that, under all the peculiar and exceptional circumstances of this case, the action of the Territory and State of Nevada should be hewn too nicely or too hypercritically by the United States at this late date. These expenditures were all made in perfect good faith and for patriotic purposes, and secured effectual aid to the United States which otherwise could not have been obtained without a much larger expenditure. The State of Nevada in good faith assumed and paid all the obligations of the Territory of Nevada to aid the United States, and issued and sold its own bonds for their payment, upon which bonds it has paid interest until the present time. The only question now for consideration is, shall the United States in equal good faith and under all the circumstances herein recited relieve the State of Nevada from this obligation, or shall the United States insist and require it to be paid by the people of that State alone?

In support of that portion of these State war claims, which relates to the indemnity and reimbursement of the cash paid by these three States as *interest* for the hire and use of the principal by them borrowed, with which to defray the "costs, charges, and expenses" of furnishing said 18,715 volunteer troops there is submitted herewith and printed in the appendix as Exhibit No. 1 a copy of the decision of the U. S. Court of Claims, rendered June 8, 1891, on the petition of the State of New York in the cause in that court entitled "The State of New York v. The United States" (26 U. S. Court Claims Reports, 467-509).

That court in adjudicating the claim so presented to it in said petition of that State for *interest* actually paid out for the hire and use of money by it borrowed and expended to aid the United States to maintain the "common defense," rested its opinion and entered its decree and judgment upon principles identical in all respects with those contended for herein, and that decision being the latest judicial declaration and announcement of the obligation of the United States incurred under circumstances similar to those herein recited, is entitled to the careful and respectful consideration of Congress in these premises.

Respectfully,

JOHN MULLAN,  
Of Counsel for California, and  
Attorney for Oregon and Nevada, Claimant States.

No. 1310 CONNECTICUT AVENUE,  
Washington, D. C., January 4, 1894.

CITY OF WASHINGTON,  
*District of Columbia, ss :*

John Mullan, on first being duly sworn, says that he is now, and for many years last past has been, of counsel for the State of California and attorney for the States of Oregon and Nevada in all matters recited and referred to in the foregoing statement, all of which he has carefully read and knows fully the contents of all thereof; that all the matters therein recited are true of his own personal knowledge, except those matters therein recited upon information and belief, and as to those matters he believes the same to be true; that the United States are now justly indebted to the State of California in the sum of \$3,951,915.42, and to the State of Oregon in the sum of \$335,152.88, and to the State of Nevada in the sum of \$404,040.70, said sums being the identical amounts as reported to the Senate by the honorable Secretary of War, and as recited in Senate Ex. Docs. Nos. 10, 11, 17, Fifty-first Congress, first session, and in Senate bill No. 1295, and in House bill No. 4959, Fifty-third Congress, second session, which two bills are printed in the appendix herewith and marked Exhibits Nos. 2 and 3, and that no portion of any thereof has ever heretofore been paid by the United States to said States, or to either of them. That the foregoing statement\* embodies substantially the same facts (errors of omission and commission excepted) as were submitted in a letter signed by all the Senators and Representatives in Congress from California, Oregon, and Nevada on March 16, 1892, addressed to the House Committee on Appropriations, in support of the joint request of said delegations to said committee to include these State war claims in the deficiency appropriation bill during the Fifty-second Congress, but which request was refused only because said claims were not recognized by the subcommittee on deficiencies of said committee as being in the nature of deficiencies, but that said State claims in the opinion of said subcommittee should otherwise be provided for.

JOHN MULLAN.

Subscribed and sworn to before me this 4th day of January, 1894.

GEO. E. TERRY,  
*Notary Public.*

[NOTARIAL SEAL.]

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APPENDIX.

EXHIBIT No. 1.

[Court of Claims, No. 16430. *The State of New York v. The United States.* Decided June 8, 1891.]

FINDINGS OF FACT.

This case having been heard by the Court of Claims, the court, upon the evidence, finds the facts as follows:

I.

Between the 22d day of April, 1861, and the 4th day of July, 1861, the State of New York, by its governor, Hon. Edwin D. Morgan, who was the commander in chief of its military forces, and by its other duly authorized officers and agents, enlisted, enrolled, armed, equipped, and caused to be mustered into the military service of the United States, to aid in the suppression of the war of the rebellion, 38 regiments of troops for the period of two years, or during the war, and numbering in all 30,000 men.

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\* Exhibits Nos. 4, 5, 6, and 7 are also made parts of this statement, April 14, 1894.

## II.

Such troops were so enlisted, armed, equipped, and mustered into the service of the United States, under and pursuant to the provisions of chapter 277 of the laws of the State of New York, passed April 15, 1861, and which act provided that all expenditures for arms, supplies, or equipments necessary for such forces should be made under the direction of the governor, lieutenant-governor, secretary of State, comptroller, State engineer and surveyor, and State treasurer, or a majority of them, and that the moneys therefor should, on the certificate of the governor, be drawn from the treasury, on the warrant of the comptroller, in favor of such person or persons as shall, from time to time, be designated by the governor, and the sum of \$3,000,000, or so much thereof as might be necessary, was appropriated by the act, out of any moneys in the treasury not otherwise appropriated, to defray the expenses authorized by the act, or any other expenses of mustering the militia of the State, or any part thereof, into the service of the United States.

The act also imposes, for the fiscal year commencing on the 1st day of October, 1861, a State tax for such sum as the comptroller should deem necessary to meet the expenses thereby authorized, not to exceed two mills on each dollar of the valuation of real and personal property in the State, to be assessed, raised, levied, collected, and paid in the same manner as the other State taxes are levied, assessed, collected, and paid into the treasury. (2 Laws of New York, session of 1861, p. 631, 636.)

## III.

There was no money in the treasury of the State in 1861 which was not specifically appropriated for the expenses of the State government, and no money which could be used to defray the expenses of enlisting, enrolling, arming, equipping, and mustering such troops into the service of the United States.

## IV.

The fiscal year began on the first day of October and ended on the 30th day of September, and the tax rate necessary to raise the tax required for the purpose of raising the moneys necessary to defray the expenses of the State government and other expenses authorized by law, in any fiscal year, is fixed by the legislature, which convenes on the first Tuesday in January preceding the commencement of the fiscal year for which the taxes are required; that is to say: For the fiscal year beginning on the 1st day of October, 1860, and ending on the 30th day of September, 1861, the tax rate was fixed by the legislature which began its session on the first Tuesday in January, 1860, and the tax rate necessary to defray the expenditures for the fiscal year beginning October 1, 1861, and ending September 30, 1862, was fixed by the legislature which began its session on the first Tuesday of January, 1861.

## V.

Under the laws of the State of New York then existing, the moneys to be collected for the State taxes could not reach the State treasury and be made applicable for use in defraying its expenditures until the months of April and May of the fiscal year for which they were levied, and in some instances not until a later date, and the moneys authorized to be raised by the act of 1861, to defray the expenses of enrolling, enlisting, arming, equipping, and mustering in such troops, did not reach the State treasury, and were not available for use by the State officers in defraying such expenses until the months of April and May, 1862.

The State comptroller, in 1861, made an apportionment of the State taxes among the several counties, and issued to the board of supervisors of each county a requisition requiring such board to cause to be levied and collected and paid into the State treasury the county's quota of such tax.

The board of supervisors were required by law to meet in the month of November for the purpose, among other things, of levying such tax and apportioning it among the several towns of the county and making out a tax roll and warrant to the collector of taxes in each town, for the levy and collection of the town's quota of the tax into the county treasury, and each town had until the 1st day of February in which to pay its quota of said tax into the county treasury, and the county treasurer had until the 1st day of May in which to pay the quota of the county into the State treasury, and if he failed to pay in the amount by that time the comptroller might report the matter to the attorney-general, who must wait thirty days, or until the first day of June, before proceedings could be taken to compel payment.



## VI.

The total tax rate of the State, fixed at the session of the legislature beginning on the first Tuesday, 1861, was  $3\frac{1}{2}$  mills, of which  $1\frac{1}{2}$  mills was the amount of the tax authorized by chapter 277, and the moneys realized from this tax were paid into the State treasury as follows:

In January, 1862.....	\$190,403.72
In February, 1862.....	153,792.32
In March, 1862.....	696,696.00
In April, 1862.....	170,909.34
In May, 1862.....	614,307.09
In June, 1862.....	1,345,671.61
In July, 1862.....	68,365.27
In August, 1862.....	180,023.03
In September, 1862.....	800,246.93
And the sum of, subsequent to October.....	274,590.64

## VII.

The State of New York had no other means of raising the money required for the purpose of immediately defraying the expenses of enlisting, enrolling, arming, equipping, and mustering in such troops, except by borrowing money in anticipation of the collection of its State tax, and between June 3, 1861, and July 2, 1861, it issued for that purpose bonds in anticipation of such State tax, to provide for the public defense, to the amount of \$1,250,000, payable on July 1, 1862, except that \$100,000 was payable June 1, 1862, at the rate of 7 per cent per annum, payable quarterly, which at that time was the legal rate of interest under the laws of the State of New York.

The issue of all these bonds was necessary for the purpose of providing the money required, and the full amount of the face value of such bonds was received by the State, upon the sale thereof, and was used and applied by it, together with other moneys, in raising troops, and the entire sum expended by the State for such purpose, between the 23d day of April, 1861, and the 1st day of January, 1862, was \$2,873,501.19, exclusive of any interest upon the bonds or loans made by the State for that purpose.

## VIII.

In addition to the sums aforesaid, the State of New York paid, on account of interest which from time to time accrued on said bonds issued in anticipation of the tax for the public defense, the sum of \$91,320.84, as follows:

1861:	
October 1.....	\$1,750.00
Same date.....	2,197.20
December 27.....	22,331.97
1862:	
January 2.....	1,750.00
Same date.....	1,750.00
March 26.....	18,375.00
April 1.....	1,750.00
Same date.....	1,750.00
June 3.....	1,166.67
June 26.....	18,375.00
July 1.....	1,750.00
Same date.....	1,750.00
September 26.....	16,625.00
Total.....	91,320.84

And by chapter 192 of the laws of the State of New York of the session of 1862, passed April 12, the legislature specifically appropriated the sum of \$1,250,000 "for the redemption of comptroller's bonds issued for loans to the treasury in anticipation of the State tax to provide for the public defense, imposed by chapter 277 of the laws of 1861, reimbursable, viz, \$100,000 on the 1st day of June and \$1,150,000 on the 1st day of July, 1862, and the further sum of \$91,320.84 for the payment of the accruing interest on said bonds."

## IX.

Of the remainder of the above sum of \$2,873,501.19 necessarily expended by the State of New York, for the purpose aforesaid, between April, 1861, and January, 1862, after deducting the amount of \$1,250,000, raised by issue of bonds, the sum of \$1,623,501.19 was taken from the canal fund, so called, of the State, which fund, under the constitution of the State, is a sinking fund for the ultimate payment of what is known as the canal debt of the State.

Under the tax rate of 1860 there had been levied and collected and paid into the treasury of the State the sum of \$2,039,663.06 for the benefit of and to the credit of the canal fund, which moneys reached the treasury of the State in April and May, 1861, and were then in the treasury to be invested by the State officers, pursuant to the requirements of law and the constitution of the State, in securities for the benefit of the canal fund, and the interest accruing on which must be paid into that fund, and on May 21, 1861, the lieutenant-governor, comptroller, treasurer, and the attorney-general, who constituted the commissioners of the canal fund, authorized the comptroller to use \$2,000,000 of the canal-fund moneys for military purposes until the 1st day of October next, and \$1,000,000 until the 1st day of January, 1862, at 5 per cent, and of this amount the sum of \$1,623,501.19 was used by the comptroller for the purpose of defraying the expenses of raising and equipping such troops. The following is the order:

STATE OF NEW YORK, CANAL DEPARTMENT,  
*Albany, May 21, 1861.*

The comptroller is to be permitted to use \$2,000,000 of the canal-fund moneys for military purposes until the 1st day of October next, when the commissioners of the canal fund will invest \$1,000,000 of the canal sinking fund under section 1, article 7, in the tax levied for military purposes until July 1, 1862, at 5 per cent, and the comptroller may use \$1,000,000 of the tax levied to pay interest on the \$12,000,000 debt until January 1, 1862, when the commissioners will, if they have the means, replace that or as large an amount as they may have the means to do it with from the toll of the next fiscal year, so as that the whole advance from the canal fund on account of the tax be \$2,000,000. It is understood the comptroller will retain the taxes now in the process of collection for canal purpose until the above investments are made, paying the funds 5 per cent interest therefor.

Indorsed: We assent to the within-named arrangement. Albany, May 22, 1861.

R. CAMPBELL,  
*Lieutenant-Governor.*  
ROBERT DENNISTON,  
P. DORSHEIMER,  
CHS. G. MYERS,  
*Commissioners of the Canal Fund.*

On December 28, 29, and 31, 1861, the United States repaid to the State, on account of moneys so expended, the sum of \$1,113,000, leaving the sum of \$510,501.19 unpaid of the moneys which had been used from the canal fund, and which sum was placed to the canal fund, with interest, on April 4, 1862.

The amount of interest at 5 per cent per annum on the moneys so used of the canal fund during the time it was used by the State for the public defense, in raising troops, was \$48,187.13. But during the same time the State had received interest on portions of the money while it was lying in bank unused to the amount of \$8,319.95, and the net deficiency of the State on account of interest on such moneys during the period which they were so used was \$39,867.18, which sum was paid into the canal fund from the State treasury, April 4, 1861.

## X.

The total amount of the sums so paid by the State of New York, for interest upon its bonds issued in anticipation of the tax for the public defense, and of the amount placed by it in the canal fund for moneys used of that fund, as aforesaid, for the purpose of defraying the expenses of raising and equipping such troops, is \$131,188.02, and no part of the same has been paid to the State of New York by the United States, nor has the State been reimbursed therefor, or for any part thereof, by the United States.

## XI.

On September 5, 1861, the Federal War Department, by a general order, directed all persons having authority to raise volunteer regiments, batteries, or companies

in the State of New York to report to Hon. Edwin D. Morgan, governor of the State, at Albany, and they and their commands were placed under the command of Governor Morgan, who was given authority to reorganize them and prepare them for the service in such manner as he might deem most advantageous for the interests of the General Government.

The order also provided that all commissioned officers of such regiments, batteries, or companies now in service raised in the State of New York independent of the State authorities, might receive commissions from the governor of the State by reporting to the adjutant-general of the State and filing in his office a duplicate of the muster rolls of their respective organizations.

#### XII.

On September 28, 1861, Governor Morgan was commissioned a major-general in the military service of the United States, and on October 26, 1861, a new military department was created, to be called the Department of the State of New York, and placed under command of Governor Morgan, as major-general of volunteers in the service of the United States, with headquarters at Albany.

#### XIII.

On June 27, 1861, Hon. William H. Seward, Secretary of State of the United States, telegraphed to Governor Morgan acknowledging that New York had furnished 50,000 troops for service in the war of the rebellion, and thanking the governor for his efforts in that direction, and on July 25, 1861, Secretary Seward telegraphed Governor Morgan: "Buy arms and equipments as fast as you can. We pay all." And on July 27, 1861, that "Treasury notes for part advances will be furnished on your call for them." And on August 16, 1861, Hon. Simon Cameron, then Secretary of War of the United States, telegraphed to Governor Morgan: "Adopt such measures as may be necessary to fill up your regiments as rapidly as possible. We need the men. Let me know the best the Empire State can do to aid the country in the present emergency." On February 11, 1862, Hon. Edwin M. Stanton, Secretary of War, telegraphed Governor Morgan: "The Government will refund the State for the advances for troops as speedily as the Treasurer can obtain funds for that purpose."

Governor Morgan continued to be major-general of volunteers in the Federal military service until about the expiration of his term of office as governor on the first day of January, 1863, when he tendered his resignation, which was subsequently accepted.

#### XIV.

The moneys above specified, which were actually expended by the State of New York, were necessarily paid out and expended for the purpose of enlisting, enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting such troops, and causing them to be mustered into the military service of the United States, where they were employed in aiding to suppress the insurrection which then existed against the Government of the United States, known as the war of the rebellion, and were so paid and expended at the request of the civil and military authorities of the United States.

#### XV.

A large portion of such expenditures were made and incurred by the Hon. Edwin D. Morgan, governor of the State, while acting in that capacity, and pursuant to his authority as such major-general.

#### XVI.

Prior to January 3, 1889, the State of New York had presented, from time to time, various claims and accounts to the Treasury Department of the United States for settlement and allowance, for the charges and expenses incurred by it in enlisting, enrolling, arming, equipping, and mustering into the military service of the United States such troops, which claims amounted in aggregate to \$2,950,479.46, and included charges for all the moneys paid and placed as hereinbefore specified.

That such Department has allowed thereon, from time to time, various sums, amounting in the aggregate to \$2,775,915.24, leaving a balance of \$174,564.22, not

allowed, and the claims and accounts for which were pending in said Department unadjusted on said 3d day of January, 1889.

That of said sum of \$174,564.22 not allowed by the Treasury Department, the sums hereinbefore specified, amounting to \$131,188.02, constituted a part, and on said 3d day of January, 1889, the Hon. Charles S. Fairchild, then Secretary of the Treasury of the United States, transmitted to this court, under section 1063 of the Revised Statutes of the United States, the said claim of the State of New York, so pending in said Department, for said sum of \$131,188.02, together with the vouchers, proofs, and documents relating thereto on file in said Department, to be proceeded with in this court according to law.

The claim of the State of New York for expenditures and expenses in furnishing troops with clothing and munitions of war, as set forth in the foregoing findings, was filed in the Treasury Department in May, 1862, which claim included said items for interest, and said claim for interest has from said time been suspended in said Department, and was so suspended at the time the matter was transmitted to this court.

#### CONCLUSION OF LAW.

Upon the foregoing findings the court determines as a conclusion of law that the claimant is entitled to recover the sum of \$91,320.84.

#### OPINION.

WELDON, *J.*, delivered the opinion of the court.

The petition alleges that the defendants became indebted to the claimant on the 1st day of July, 1862, for money laid out and expended to and for the use of defendants, at their request, in the sum of \$3,131,188.02, and of this there has been paid the sum of \$3,000,000, leaving a balance due the petitioner of \$131,188.02.

It is further alleged that the necessity of said expenditure grew out of the wants of the Government in the early part of the civil war, and that for the purpose of maintaining national authority, through their proper officers, said defendants requested the State of New York, in common with other States, to provide means and munitions of war for the use of the Government; that in pursuance of such request the claimant did provide and render to the United States a large number of troops, and did equip the same with arms, clothing, and munitions of war, and did also render to the Government arms and munitions in addition to such as were required for the use of troops enrolled in the State of New York; that in equipping said troops and in furnishing said material for other troops the said State expended the sum of \$3,000,000; that in complying with said request so made by the defendants, in furnishing equipments for troops, the claimant was compelled to borrow a large part of said sum, there not being in the treasury of said State funds sufficient to meet said expenditure; that bonds of said State were issued upon which claimant was compelled and did pay a large amount of interest, to wit, the sum of \$131,188.02; that under the act of Congress of July 27, 1861, a portion of the expenditure of said claimant has been paid by defendants, but there still remains unpaid a portion of the costs, charges, and expenses properly incurred by said State in enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting said troops as aforesaid, to wit, the amount paid by the State of New York for interest, the said sum of \$131,188.02; that after the payment of said sum, and within six years from such payment, a claim for said amount was presented to the Secretary of the Treasury and such proceedings were thereon had in the Treasury Department, and before the proper officer thereof, to wit, the Second Comptroller; that on or about the 23d day of December, 1869, the question of said claim for interest so paid by the State of New York as aforesaid against the United States was suspended, subject to future decision, and thereafter on or about the 7th day of June, 1882, the said claim and the question of the validity thereof was presented to the Attorney-General of the United States for his opinion, and said Attorney-General thereafter, and on or about the 23d day of July, 1883, rendered his opinion thereon, and the same was filed in the Treasury Department of the United States, which opinion is to the effect that said claim of the State of New York does not come within the provisions of the act of July 27, 1861. Thereafter such proceedings were had in the Treasury Department in the matter of said claim; that at the request of said claimant, by its attorney in fact, on or about the 3d day of January, 1889, the Secretary of the Treasury did, under the provisions of section 1063 of the Revised Statutes of the United States, transmit the said claim, with all the vouchers, papers, proofs, and documents pertaining thereto, to the Court of Claims, there to be proceeded in accordance with law.

The findings in substance tend to maintain the allegations of the petitions except in the amount actually paid by claimant as interest on the funds used in the purchase of material and the payment of expenses incident to the equipment of troops. Of said \$131,188.02 the sum of \$39,867.18 is based upon the following state of facts:

Under the tax rate of 1860 of said State there had been levied, collected, and paid into the treasury of said State the sum of \$2,039,663.06 for the benefit of the canal fund, which money reached the treasury in April and May, 1861, and was then in the treasury, to be invested by certain State officers, pursuant to the law and requirements of the constitution of the State, in securities for the benefit of the canal fund.

On the 21st day of May, 1861, the lieutenant-governor, comptroller, treasurer, and attorney-general, who constituted the commissioners of the canal fund, authorized the comptroller to use \$2,000,000 of the canal fund money for military purposes until the 1st day of October following, and \$1,000,000 until the 1st day of January, 1862, at 5 per cent, and of this amount the sum of \$1,623,501.19 was used by the comptroller for the purpose of defraying the expense in raising and equipping troops as aforesaid.

On December 28, 29, and 31, 1861, the United States repaid to the State, on account of moneys so expended, the sum of \$1,113,000, leaving the sum of \$510,501.19 unpaid of the moneys which had been used from the canal fund, and which sum was placed to the canal fund, with interest, on April 4, 1862.

The total amount of interest on the moneys so used from the canal fund, during the time that it was used by the State for the public defense in raising troops, was \$48,187.13. But during the same time the State received interest on some portions of the money while it was lying in bank to the amount of \$8,319.95, and the net deficiency of the State, on account of interest on such moneys during the period which they were used is \$39,867.18, which sum was paid into the canal fund from the State treasury April 4, 1862.

The order made by said State officers under and by virtue of which the money of the canal fund was appropriated is as follows:

STATE OF NEW YORK, CANAL DEPARTMENT,  
*Albany, May 21, 1861.*

The comptroller is to be permitted to use \$2,000,000 of the canal fund moneys for military purposes until the 1st day of October next, when the commissioners of the canal fund will invest \$1,000,000 of the canal sinking fund under section 1, article 7, in the tax levied for military purposes until the 1st of July, 1862, at 5 per cent, and the comptroller may use \$1,000,000 of the tax levied to pay interest on the \$12,000,000 debt until the 1st of January, 1862, when the commissioners will, if they have the means, replace that or as large an amount as they may have the means to do it with from the toll of the next fiscal year, so as that the whole advance from the canal fund on account of the tax be \$2,000,000. It is understood the comptroller will retain the taxes now in the process of collection for canal purposes until the above investments are made, paying the funds 5 per cent interest therefor.

Indorsed: We assent to the within-named arrangement. Albany, May 22, 1861.

R. CAMPBELL,  
*Lieutenant-Governor.*

ROBERT DENNISON,  
P. DORSHEIMER,  
CHS. G. MYERS,

*Commissioners of the Canal Fund.*

The amount of money actually paid as interest on the bonds issued is \$91,320.84, and the amount of interest credited to and paid into the canal fund for the money used of said canal fund is \$39,867.18; those two sums make in the aggregate the sum of \$131,188.02, and for that amount this proceeding was commenced and is prosecuted.

Incident to the commencement of the civil war, which was inaugurated in its hostilities by the bombardment of Fort Sumter by the Confederate forces, there arose an emergency and crisis in the history and condition of the United States which called for the most effective and vigorous measures of military preparation on the part of the Federal power to maintain its authority and to preserve from dismemberment the Union of the States. And although the requisition of the 75,000 troops provided for in the first proclamation of the President was thought to be adequate, the subsequent development and magnitude of the insurrection demonstrated the inability of that force to accomplish the purpose of reestablishing the national supremacy in the States assuming to exercise the right of secession and the maintenance of that right by military force.

At the time of the commencement of the war Congress was not in session, and the Executive Department was compelled to avail itself of all the constitutional means

within its power to deal with an existing state of hostility, and for that purpose, on the 15th of April, 1861, the President issued a proclamation calling for the militia of the several States "in order to suppress combinations and cause the laws to be duly executed."

Upon the same day the legislature of New York passed an act making an appropriation of \$3,000,000 to be applied in the expenditure for arms, supplies, and equipments for the soldiers mustered into the service of the United States in the suppression of the rebellion; and every assurance was given by the executive branch of the Government that the State would be reimbursed in its expenditures in complying with the requirements of the President.

The same proclamation which called for 75,000 men called an extra session of Congress for the 4th day of July following; and in pursuance of that proclamation the first session of the Thirty-seventh Congress was held.

On the 27th day of July, 1861, Congress passed an act entitled "An act to indemnify the States for expenses incurred by them in defense of the United States," as follows:

"That the Secretary of the Treasury be, and is hereby, directed, out of any moneys in the Treasury not otherwise appropriated, to pay to the governor of any State, or its duly authorized agents, the costs, charges, and expenses properly incurred by said State for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding in suppressing the present insurrection against the United States, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury." (12 St. L., p. 276.)

On the 8th of March, 1862, Congress passed a joint resolution as follows:

"Whereas doubts have arisen as to the true intent and meaning of an act entitled 'An act to indemnify the States for expenses incurred by them in defense of the United States,' approved July 27, 1861:

"Be it resolved by the Senate and House of Representatives in Congress assembled, That the said act shall be construed to apply to expenses incurred as well after as before the date of the approval thereof."

Some question was made in the brief and oral argument of the counsel for the defendants as to proper pendency in this court of these proceedings because of the statute of limitations.

In the case of *Finn v. The United States*, 123 U. S. R., 227, it is decided:

"It is a condition or qualification of the right to a judgment against the United States in the Court of Claims that the claimant, when not laboring under any one of the disabilities named in the statute, voluntarily put his claim in suit or present it to the proper Department for settlement within six years after suit could be commenced thereon against the United States."

The findings in the present case show that in 1862, in less than one year after the origin of the claim, the claimant presented it to the proper Department for adjudication and payment, and that from that time until the commencement of this case it was pending in the Department as an unadjusted claim. The State never abandoned it, and the United States, through its proper officers, never formally rejected it. It was pending in the Treasury Department, within the meaning of the decisions of the Supreme Court and this court, at the time it was transmitted under the order of the Secretary of the Treasury, as shown in the record.

It was not *res judicata*, and does not come within the law laid down in the case of *Jackson v. The United States* (19 Ct. Cls., 504), and *State of Illinois v. The United States* (20 Ct. Cls., 342).

The court having jurisdiction of the claim, it must be disposed of on its merits.

It is manifest, from the legislation, that Congress intended to approve the action of the Executive Department, in the assurance, that the States would be reimbursed in their expenditures incident to the enrollment of the militia in defense of the national authority.

It is not necessary to examine and discuss the obligations of the States, in such an unprecedented condition of the Federal Government. It is sufficient to assume that the liability of the defendants in this case depends upon the construction of the act of 1861 and the joint resolution of 1862.

If the claim comes within the scope and terms of the act of 1862 the plaintiff has the right to recover; if it does not, there is no liability.

The aggregate of the demand is \$131,188.02, and is composed of two items originating in different forms.

Ninety-one thousand three hundred and twenty dollars and eighty-four cents compose a claim for interest paid by the State, on bonds issued by it for the purpose of raising money to defray the expense incident to the enrollment of the soldiers for the national service.

The findings show that the Treasury of the State of New York, at the time the call was made, was deficient in the funds requisite to meet the expense, and that it was necessary to negotiate bonds at 7 per cent interest, to supply that deficiency. The said sum of \$91,320 is the amount of interest paid on those bonds.

The other item, \$39,867.18, of the claim is for an alleged expense growing out of the use of certain funds coming into the treasury of the State prior to October 1, 1861, and which were to be invested by the State officers pursuant to the requirements of law and the constitution of the State in securities for the benefit of the canal fund.

In connection with this item of claim it may be said that no interest was paid by the State of New York; it simply failed to realize for the benefit of the canal fund certain interest which, by the investment of the money appropriated for the use of the defendants, it might otherwise have saved to that fund.

We will consider the rights of the claimant as to each demand separately. It is contended on the part of the claimant that both items come legitimately within "costs, charges, and expenses," as provided by the act of July, 1861, while the defendants insist, that as to both items of claim, it is an attempt to compel the United States to pay interest on an alleged obligation, where they have not expressly agreed to do so.

Section 1091, R. S., provides:

"No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest."

In the case of *Tillson v. United States* (100 U. S. R., 43), it was in substance decided:

"Where the claim of a party for loss and damage growing out of the alleged failure of the United States to perform its contracts with him, as to time and manner of payment is, by special act of Congress, referred to the Court of Claims 'to investigate the same, and to ascertain, determine, and adjudge the amount equitably due, if any, for such loss and damage,'—*Held*, that the rules of law applicable to the adjudication of claims by that court in the exercise of its general jurisdiction must govern, and that interest, not having been stipulated for in the contracts, can not be allowed thereon."

It is not necessary to speculate upon the question of the liability of the Government, for the payment of interest as such. The statute and decisions are plain and uniform on that subject, and unless there is an express contract to that effect no interest can be recovered. If this demand is in law a claim for interest, in the common and judicial sense of that term, there being no express undertaking to pay interest, in and by the words of the statute, on which the suit is based, and from which the obligation is deduced, no liability exists. It is contended by the claimant's counsel that this is not a proceeding to recover interest as such, but that the demand comes within that clause of the statute providing indemnification to the State for "costs, charges, and expenses" incurred by it in furnishing troops under the call of the President.

A liability upon the part of the Government to pay interest can not arise from implication, for the reason the statute defining the jurisdiction of the court, expressly declares, that no interest shall be allowed on any claim up to the rendition of the judgment thereon, in the Court of Claims, unless upon a contract expressly stipulating for interest.

Regarding the statute, as having the force of a contract, it has no provision from which by construction, it can be inferred, that the defendants assumed to pay the claimant any interest as such, upon any advances made by it, in defraying the expenses of the troops furnished the United States in pursuance to the proclamation of the President.

The law being that the Government does not pay interest except where the contract or statute expressly provides for the payment of interest, it is unnecessary to examine the many cases referred to by the very able argument of the counsel for the Government. If this is a proceeding to enforce the payment of interest, then the authorities relied on by the defendants are conclusively decisive of this case, and the judgment must be for the defendants.

It was not the duty of the State of New York, as one of the States of the Federal Union, acting independently to suppress the insurrection of 1861; but it was its duty to comply with all constitutional requisitions of the central government, in its efforts to maintain the authority of the United States, and to enforce the law of federal jurisdiction.

The findings show, that in responding to the call of the President for men and means, the authorities of the State did everything in their power to comply with the Federal requisition, and in so doing not only availed themselves of the taxing power of the State, but the public credit of the State government sought the money market to replenish the treasury of the State in defraying the expenses incident to the call of the President.

In appreciation of the alacrity with which the authorities acted, Congress on the 27th of July, 1861, twenty-three days after the convention of the Houses, passed the act upon which the claimant now seeks satisfaction and compensation.



It is alleged on the part of the claimant that—

"The act of July 27, 1861, constitutes a statutory contract of indemnity on the part of the United States with the several States furnishing troops as therein specified, and the payments made by the State of New York, for which this claim is filed, having been actually and necessarily made for the purpose contemplated by that act, they became part of the expenditures made by the State which the Federal Government has obligated itself to reimburse." (*Huidekoper's Lessee v. Douglas*, 3 Cranch, R. 1-70.)

The demand of the claimant does not necessarily require that it should maintain the full legal import of this proposition, as the statute of our jurisdiction provides that this court shall have jurisdiction of "all claims founded upon the Constitution of the United States or on any law of Congress." (24 Stat. L., 505.)

If by the terms of the act of July, 1861, Congress assumed to pay the claimant the kind and character of charges represented by the interest paid by the State, and have not done so, the right of the State to recover is clear and unquestionable; and the only question for us to decide in this connection is, whether the payment of interest on bonds issued by the claimant comes within the terms "costs, charges, and expenses properly incurred by said State."

In determining that question, we must not lose sight of the fundamental proposition of law, that the Government is not liable for interest, unless it has expressly obligated itself to pay interest, and it is not pretended that it has done so in this matter. Whatever may be said in the construction of this statute, the fact remains, that the claimant in the payment of interest to its bondholders disbursed and expended its money, as effectually, as though it had paid money directly from the treasury, to some person from whom it had purchased clothing and munitions of war.

If the State of New York had limited its effort in complying with the request of the General Government, to its actual resources of money in the Treasury, it might have been the performance of its duty literally; but if the resources of its credit were opened to it, and it did not avail itself of that resource, the spirit of its obligation would have been violated to the detriment of the public service, and perhaps to the prejudice of the final success of the Federal power. The statute, it will be observed, is broad and liberal in the use of terms defining the obligation of the United States, "costs, charges and expenses."

In the construction of a law somewhat similar to the act of July, 1861, Mr. Wirt, Attorney-General of the United States, gave an opinion stating:

"In construing this law, it is proper to advert to the principle on which it was founded, and to the object which it proposes to effect. The principle is this: The United States are bound by the relation which subsists between the General and State governments to provide the means of carrying on war, and, as a part of the business of war, to provide for the defense of the several States. When the United States fails to make such provision, and the States have to defend themselves by means of their own resources, the expenditure thus incurred forms a debt against the United States which they are bound to reimburse. If the expenditures made for such purpose are supplied from the treasury of the States, the United States reimburse the principal without interest; but if, being itself unable, from the condition of its own finances to meet the emergency, such State has been obliged to borrow money for the purpose, and thus to incur a debt on which she herself has had to pay interest, such debt is essentially a debt due by the United States, and both the principal and interest are to be paid by the United States. So that whenever a State has had to pay interest by reason of her taking the place of the United States in time of war, such interest forms a just charge against the United States. If a State borrows the money at once, on the first occurrence of the emergency, and expends the specific money so borrowed, both the borrowing and the expenditure being *flagrante bello*, there seems to be no doubt that the claim, both for the principal and the interest, which she would have paid upon such loan, would be a fair charge against the United States on the principle of this law." (1 Op. Att'y Gen., 723.)

Although this opinion was given before the statute forbidding the payment of interest was passed (March 3, 1863, Revised Statutes, 1091), it is important to be considered in making a legal distinction between interest actually paid and interest on funds in the Treasury at the time the requisition was made.

"It has been the general rule of the officers of the Government in adjusting and allowing unliquidated and disputed claims against the United States to refuse to give interest. That this rule is sometimes at variance with that which governs the acts of private citizens in a court of justice would not authorize us to depart from it in this case. The rule, however, is not mere form, and especially is it not so in regard to claims allowed by special acts of Congress, or referred by such acts to some Department or officer for settlement." (*McKee's Case*, 91 U. S. R., 442, and 11 C. Cls. R., 72.)

In the performance of the duty under the call, the officers of the State purchased the required munitions of war so long as they had funds; and when they had no money, the Government still needing the supply, they paid out money for the use of

money, in order that the State might fully discharge every possible duty in the restoration of Federal authority. The payment of interest was a cost properly incurred by the claimants under the requisition of the President, and comes within the letter of the act of July, 1861, and for that item the claimants have a right to recover.

The second item of claim for \$39,867.18 originates in a different form. There was no absolute payment of interest. Under the State policy of New York a portion of the tax is devoted to what is called the canal fund, and upon this fund the State is in the habit of receiving interest, the same being loaned for the benefit of that fund.

The appropriation of the canal fund for the purpose of defraying the expense of equipping the troops of the United States was in the pursuance of the following order:

STATE OF NEW YORK, CANAL DEPARTMENT,  
*Albany, May 21, 1861.*

The comptroller is to be permitted to use \$2,000,000 of the canal-fund moneys for military purposes until the 1st day of October next, when the commissioners of the canal fund will invest \$1,000,000 of the canal sinking fund, under section 1, article 7, in the tax levied for military purposes until the 1st of July, 1862, at 5 per cent, and the comptroller may use \$1,000,000 of the tax levied to pay interest on the \$12,000,000 debt until the 1st of January, 1862, when the commissioners will, if they have the means, replace that or as large an amount as they may have the means to do it with from the toll of the next fiscal year, so as that the whole advance from the canal fund on account of the tax be \$2,000,000. It is understood the comptroller will retain the taxes now in the process of collection for canal purposes until the above investments are made, paying the funds 5 per cent interest therefor.

Indorsed: We assent to the within-named arrangement. Albany, May 22, 1861.

R. CAMPBELL,  
*Lieutenant Governor.*

ROBERT DENNISTON,  
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CHAS. G. MYERS,

*Commissioners of the Canal Fund.*

The amount of interest on the money so used of the canal fund during the time it was used by the State for the public defense in raising troops was \$48,187.13. But during the same time the State had received interest on a portion of the funds while it was lying in a bank unused to the amount of \$8,319.95, and the net deficiency to the State on account of the interest on such money is \$39,867.18.

Upon the payment of the money into the treasury, from which this interest would have accumulated, it became the money of the State, and would have so remained after it became a part of the canal fund. While different departments are provided in the State, as well as the National Government, they constitute a part of an indivisible unity, and transactions between the different departments are the official act of the same political power.

The money is transferred from one department to another or from one fund to another, but it can not be said that by the transfer there is a lending of money upon which, by any fiction of law-interest can be calculated. By the use of the canal fund for the purpose of defraying the expense of raising troops the State simply appropriated from a particular fund, which, if permitted to become a part of that fund, might have been loaned on interest. It can not be said that the United States borrowed the money, at the agreed rate of interest, which other customers would have paid the State, as there is no express or implied obligation to that effect. The State paid no money directly for the use of the money belonging to the canal fund. There may have been an accounting to that fund from some other financial resource of the State, but that transaction was entirely between the different departments of the government which constitute the political organization of the State of New York.

If an allowance is made for the loss on that fund, it is in effect an allowance of interest against the United States on an obligation, in and by which they have not expressly agreed to pay interest. During the time the money was diverted from the canal fund to the purposes of the United States the State simply lost the use of that amount. The interest charged on the trust fund can not be said to be an "expense incurred" within the meaning of the law of 1861, as the State did not assume any liability, nor pay any money beyond the actual funds appropriated and paid in the purchase of materials, and the payment of the expenses of the transportation of troops. In the claim for \$91,320.84 a different element exists. The claimant actually paid that amount of money to creditors who had advanced money on the bonds of the State, which had been issued to defray the costs, charges, and expenses properly incurred "by the State in enrolling, subsisting, clothing, supplying, paying, and transporting" troops employed by the defendants in suppressing the insurrection against the authorities of the United States.

In the discussion and determination of the question of the liability of the United States to remunerate the claimant, we must not lose sight of what is so fundamental,

not only in the laws of the United States and decisions of the Supreme Court, but in the jurisdiction of this court—that the defendants are not liable for interest as such, unless they have expressly agreed to pay interest. In subordination to that well-established principle of the law, the purpose and construction of the act of 1861 must be ascertained and determined. Whatever may be said of the liability of the defendants, in the absence of said statute, on the first item of claim, it is clear that for the second they would not be liable, because it is for interest upon an obligation in which they have not expressly agreed to pay interest.

In the legal statement of a cause of action, founded upon the transaction of 1861, between the plaintiff and defendants, the pleading must necessarily allege that the \$39,867.13 was interest upon certain advances made by the State, which interest was lost by the claimant, because the money was not invested in interest-bearing obligations due the State. The marked difference between the two items of claim is, that in one there was an actual payment of money by the State, in complying with the requisition of the General Government, while in the other there was no payment but a failure to receive interest, because of a diversion of the fund as herein indicated.

It does not affirmatively appear that the fund upon which the claim of \$39,867.18 is based could, for the period of time it was used by the State for the benefit of the defendants, have been loaned; and if during that period other money of that fund was unemployed, the said fund would have been a surplus in the treasury of the State, and no interest was lost to the claimant.

It has been the rule of the Department and the policy of the Government not to pay interest upon claims against the United States, founded on the reason that the Government is always ready to pay all just claims, and if such claims are not paid, it is the fault of the claimant in not presenting his claim in apt time or in not presenting in such a way as to convince the officers of the Government of its lawfulness and justice.

It will be observed that Mr. Attorney-General Wirt makes the distinction between the payment of interest upon money borrowed to enable the State to discharge its duty and fulfil its obligation and interest upon funds in the treasury of the State appropriated for the use and benefit of the United States. The allowance of interest "as expenses, charges, and costs," in the construction of the act, is in derogation of the general policy of the Government in not paying interest, and should not be extended beyond the logical limits of the act of 1861.

The Chief Justice is of opinion that—

"The claimant is seeking indirectly to recover interest contrary to Revised Statutes, section 1091, which prohibits its allowance 'unless upon a contract expressly stipulating for payment of interest.'

"The case was transmitted to this court by the Secretary of the Treasury as a claim for interest alone.

"Interest on temporary loans made to obtain money for equipping, etc., troops for the United States is no more a charge against the Government, under the act of 1861 (12 Stat. L., 276), than is interest on long-time bonds issued by many States for the same purpose, computed to time of payment by the Government, for which it is conceded the United States are not liable.

"In either case interest paid constitutes no part of the 'costs, charges, and expenses properly incurred by said State for enrolling, subsisting, clothing, supplying, arming, equipping, and transporting its troops' within the meaning of the act. It is paid for another purpose, to wit, for the use of money raised to supply an empty treasury; and indirect expenditure, dependent upon collateral contingencies, upon the different conditions of the treasuries, and the different and uncertain legislation of the several States; for raising money by taxation, obviously not within the contemplation of Congress, and never allowed by the Treasury Department to any State under this act.

"An unequal application of the statute in the different States could not have been intended by Congress.

"If the claim be not for interest, within the intent and meaning of Revised Statutes, section 1091, then, as a one for the cost of supplying money to the State treasury, it is not unlike a claim for the cost of assessing and collecting taxes for the same object, which, it is apprehended, nobody would contend could be maintained under the act of 1861.

"Decisions of the courts and opinions of the attorneys-general before the enactment of the prohibition against allowing interest, and before the passage of the act upon which this suit is founded, or independently of them, can have no bearing on this case, which must be governed by the existing statutes and the intention of Congress."

It is the judgment of the court that the claimant recover the sum of \$91,320.84, and that the \$39,867.13 be disallowed.

NOTT, J., concurring:

The term interest covers two distinct things: compensation for the use of money by express agreement, damages allowed by law for the nonpayment of a debt after it has become due. It is the latter which is prohibited in this court, in suits against the Government, by the Revised Statutes, section 1091.

As to the first item of money expended in the payment of interest upon the bonds of the State which were sold to raise money for the General Government I concur in the opinion of my brother Weldon. As to the second item of money expended in the payment of interest upon a loan obtained from the canal commissioners for the use of the Government I dissent.

The grounds upon which I dissent are: (1) That in order to shield the defendants from making good this loss it is necessary to hold that a State government can do an unconstitutional act, or, to express it differently, that the unconstitutional act of State authorities must be deemed the act of the State itself; (2) that a substantial loss has been incurred here by the claimant, which the defendants are in honor and good conscience bound to make good, and the intent of the act of indemnity is that the loyal States which acted on behalf of the General Government during the civil war shall be reimbursed and made whole; (3) that the restriction of the Revised Statutes (section 1091) prohibiting the recovery of interest as damages in suits against the Government is not applicable to this case inasmuch as the contract loaning the money expressly provides for the payment of interest and was ratified by the acceptance of the money and the payment of the principal.

In the application of the act of indemnity to the case the initial fact of the transaction must be borne in mind. The State of New York was not a corporation whose business was to raise and equip troops for any government that chanced to be engaged in a civil war, but, on the contrary, the President of the United States, in the awful crises of the hour, went to the State officers and asked that the resources of the State be given in aid of the General Government. The legislature was not then in session, and the State officers had no authority, constitutional or legal, to pledge the credit of the State or involve it in financial liability. From motives of the highest patriotism they assumed an enormous responsibility and proceeded to act on behalf of the General Government. But in their action they were not the agents of the State, nor acting on its behalf, nor assuming to promote its interest. If they were anybody's agents, they were the agents of the General Government, and for their unauthorized acts the General Government is in law and morals and under the terms of this act of indemnity bound to make good the losses which the unauthorized acts of these officers caused the State.

This, then, being the status of the parties, the governor and comptroller proceeded to borrow money, not for the use and benefit of the State, nor by its authority, nor at its request, but for the use and benefit and at the request of the General Government. They borrowed from two sources, from ordinary lenders who had money to invest, by selling them the interest-bearing bonds of the State, and from a board of trustees known as the commissioners of the canal fund, who had moneys in their hands to loan on interest-bearing securities and only on interest-bearing securities. In course of time these loans matured, and the State assumed and paid them, principal and interest. The General Government under the act of indemnity has paid the principal which the State expended for its use, but has refused to pay the interest.

When the General Government requested the State officers to act in its behalf they might have proceeded in one of three different ways. They might have bought the military supplies on an indefinite credit and allowed the vendor to add the unknown and undetermined interest to the price; they might have purchased by contracts bearing interest which would run until the price should be paid by the General Government; they might have borrowed money on interest and bought the goods at the lowest price for cash. As to the first method, there can be no question that if it had been pursued the Government would have been liable for the price paid. As to the second method, there can hardly be a question as to the Government's liability for both principal and interest. As to the third method, it is the one which has occasioned the controversy of the present suit. Yet from a business point of view the first method was the worst, and the third, as every man of business knows, was the best. The eminent merchant who was then the governor of the State proceeded as he would have proceeded for a brother merchant. He raised the money, and went into the market and purchased at the lowest cash price.

The money which the State of New York, through its officers, thus expended at the request and for the use of the United States was not in its treasury, but was procured from two sources:

First, the State issued and sold its own bonds, bearing 7 per cent interest. The General Government lost nothing by that. The credit of the State was better than the credit of the General Government, and a saving was effected by the State loaning its own credit for the procurement of the necessary funds. It was able at that time both to buy and to borrow on better terms than the principal for whom it was acting. It has charged nothing for the use of its credit thus loaned, and is merely seeking to be repaid the money which it expended.

The second source from which money was procured for the use of the United States was the canal fund of the State of New York. This fund was, so far as the State was concerned, a sinking fund for the reduction of a public debt; but it was also an interest-bearing trust fund pledged to a designated class of creditors. I emphasize the statement that it was an interest-bearing fund; for it was in no sense an accumulation of idle money in one of the coffers of the State, but was in fact and in contemplation of law a mass of interest-bearing securities held and accumulated for the future liquidation of a specific debt, and was at the same time pledged to the holders of the debt. The commissioners of the fund had no right to hoard the money which came to their hands, and had no right to loan it without interest. The scope of their duties was to invest, and to invest at interest, and the purpose of the fund, the chief, if not the sole purpose, was that money from time to time accumulated for the extinction of the canal debt should not lie idle in the treasury of the State, but should be invested in securities which would yield, until the debt matured, that profit which we call interest.

If the State had issued more bonds than it did for money wherewith to serve the General Government, and the canal commissioners had gone into the market and bought these bonds, the circumlocution would doubtless have saved the State from the delay and vexation which beset this branch of the case, and would have made plain to all minds that the State had incurred obligations and loaned its credit and paid interest, not for its own use or benefit, but for the use and benefit of the General Government. Yet this circuitry of procedure would not have made the State any better off or the General Government any worse. The principle which would have governed and the result which would have been reached would have been the same.

If this charge of interest had been a mere act of the State officers, whereby the State made interest which otherwise it would not have made, the charge would be in the nature of a profit and beyond the scope of an indemnity. But in the actual case before the court, the canal fund existed long before the General Government came to the State as a borrower. It had been created and was regulated by the constitution of the State. Whoever got money from the canal fund must take it on the terms prescribed by the constitution. Neither the State officers nor the State legislature nor the General Government nor any power known to our constitutional system could take it upon any other terms or authorize it to be taken. Neither could it be applied to any purpose or business of the State; and whatever might be received from a loan in the way of interest did not go into the treasury of the State, but returned to the fund. The State itself had no power over the canal fund. Undoubtedly the State was directly interested in the fund as a public debtor, and undoubtedly the legal title to the fund was vested in the State; but beside the State was another party equally interested in the fund, the public creditors, who had loaned money upon the faith of it and who were in law *a cestui que trust* and in equity the owners of the fund.

Accordingly when the governor and comptroller of the State, who were practically acting as agents of the United States, sought a loan from the canal fund to be expended for the uses and purposes of the General Government, they proposed and agreed to the constitutional condition of interest, and expressly agreed that the loan should bear interest at the rate of 5 per cent. The canal commissioners had no authority to make the loan without interest, and they did not assume to do so; and the State subsequently recognized the obligation which it owed to its creditors and paid the interest on this specific loan out of money raised by taxation; that is to say, the taxpayers of New York made good to the canal fund the interest which would otherwise have been realized from ordinary securities, but the United States have not yet reimbursed them for the taxes that both in form and in fact were devoted to that purpose. These are in brief the ultimate facts of the transaction; the question of law involved is whether the act of indemnity extends to them.

The act of indemnity is not a statute to regulate the purchase of supplies or to restrict the compensation of purchasing agents. If the State of New York had been a merchant selling goods for the sake of profit, or a commission merchant rendering service in consideration of a percentage, it would have to take the profits or losses which legally resulted. But the State rendered its service gratuitously; it had nothing to make and, as the result proves, a risk to bear, and it acted at the request of the Government. The obligation which would rest upon an individual in such a case would be to make the other party whole, and it would be an obligation of the strongest character, legally, equitably, morally. The General Government has recognized this obligation and has passed this act of indemnity. The purpose of an act as of an instrument of indemnity is to make the injured party whole. It is not a grant; it is not one of those statutes in which doubtful words or phrases are to be strictly construed; an interpretation which leaves the injured party without the indemnity which he ought to have is as an interpretation which fails to carry into effect the confessed purpose of the statute. If an individual or a body corporate had accepted

the fruits of the loan and recognized the transaction by paying the principal, his acts would constitute a binding ratification. The act of indemnity must surely be as broad as the legal obligations of the United States.

As has been said, the State was called upon to act for the General Government and acted by borrowing money to raise and equip troops. All of this money was expended in the business and on behalf of the United States. Some of it was borrowed from ordinary lenders by the State selling its own bonds; some of it was borrowed from a trust fund of which the State was the trustee. When the interest on the bonds became due the State took the money of its taxpayers and paid it. When the interest on the other loan became due the State likewise took the money of its taxpayers and paid it also. To that extent the taxpayers of the State are just so much the worse off than they would be if the State officers had never touched the trust fund and borrowed from it for the use of the General Government. Both in form and in substance this interest was money paid. In form the transaction complies with the terms of the act of indemnity; in substance the distinction between interest lost and interest paid is too refined to be applied against the purpose of the statute.

And this distinction necessarily rests on the, constructively, illegal action of the State officers; that is to say, if the custodians of the fund acted in a constitutional and legal manner by loaning the trust moneys in their charge to the United States, through the intermediation of the governor and comptroller of the State, at an agreed rate of interest, the refunding of the interest was an expenditure for the use of the Government; but if they acted in an unconstitutional and illegal manner by diverting, misappropriating, or misapplying the trust fund to State purposes, then the State can not make money out of the transaction, and the General Government is not liable.

SCHOFIELD, J., was absent when this case was argued, and took no part in the decision.

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#### EXHIBIT No. 2.

[S. 1295, Fifty-third Congress, second session.]

Mr. WHITE, of California, introduced the following bill; which was read twice and referred to the Committee on Military Affairs:

A BILL to reimburse the States of California, Oregon, and Nevada for moneys by them expended in the suppression of the rebellion.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sums hereinafter mentioned, to reimburse and to be paid to the States of California, Oregon, and Nevada for moneys by them expended in aid of the United States in the war of the rebellion, to wit:

To the State of California, the sum of three million nine hundred and fifty-one thousand nine hundred and fifteen dollars and forty-two cents.

To the State of Oregon, the sum of three hundred and thirty-five thousand one hundred and fifty-two dollars and eighty-eight cents.

To the State of Nevada, the sum of four hundred and four thousand and forty dollars and seventy cents, being the sums of money, principal and interest, paid by said States in the suppression of the rebellion as shown by the reports of the Secretary of War in Senate Executive Documents Numbered ten, eleven, and seventeen, Fifty-first Congress, first session.

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#### EXHIBIT No. 3.

[H. R. 4959, Fifty-third Congress, second session.]

JANUARY 3, 1894.—Referred to the Committee on War Claims and ordered to be printed.

Mr. MAGUIRE introduced the following bill:

A BILL to reimburse the States of California, Oregon, and Nevada for moneys by them expended in the suppression of the rebellion.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there is hereby appropriated, out of any money in the

Treasury not otherwise appropriated, the sums hereinafter mentioned, to reimburse and to be paid to the States of California, Oregon, and Nevada for moneys by them expended in aid of the United States in the war of the rebellion, to wit:

To the State of California, the sum of three million nine hundred and fifty-one thousand nine hundred and fifteen dollars and forty-two cents.

To the State of Oregon, the sum of three hundred and thirty-five thousand one hundred and fifty-two dollars and eighty-eight cents.

To the State of Nevada, the sum of four hundred and four thousand and forty dollars and seventy cents, being the sums of money, principal and interest, paid by said States in the suppression of the rebellion as shown by the reports of the Secretary of War in Senate Executive Documents Numbered ten, eleven, and seventeen, Fifty-first Congress, first session.

#### EXHIBIT No. 4.

[House Report No. 558, Fifty-third Congress, second session.]

MARCH 8, 1894.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HERMANN, from the Committee on War Claims, submitted the following report, to accompany H. R. 4959:

The Committee on War Claims, to whom was referred the bills (H. R. 2615 and H. R. 4959) to reimburse the States of California, Oregon, and Nevada for moneys by them expended in the suppression of the rebellion when aiding the United States to maintain the "common defense" on the Pacific coast, have examined the same and report as follows:

The facts out of which the aforesaid State war claims arise have been very fully stated in several reports heretofore made to the House of Representatives and to the Senate, as follows, to wit, House Report No. 254 and Senate Report No. 158, Fifty-second Congress, first session; House Report No. 2553 and Senate Report No. 644, Fifty-first Congress, first session; and House Report No. 3396 and Senate Reports No. 1286 and No. 2014, Fiftieth Congress, first session.

Bills relating to these State war claims of these three Pacific coast States passed the Senate during the first session of the Fiftieth Congress, and were favorably reported to the Senate during the first session of the Fifty-first and Fifty-second Congresses and to the House during the Fiftieth, Fifty-first, and Fifty-second Congresses, but were not reached for consideration by the House in either thereof. These bills were introduced in the House, to wit, H. R. No. 2615, on 11th day of September, 1893, by Mr. Caminetti, of California, and H. R. No. 4959, on January 3, 1894, by Mr. Maguire, of California, and both referred to the House Committee on War Claims.

Sums of money (recited in three reports made by the honorable Secretary of War to the Senate on these State war claims and printed as Senate Ex. Docs. Nos. 10, 11, and 17, Fifty-first Congress, first session) proven to the full satisfaction of the War Department to have been expended by said States to aid the United States in the suppression of the war of the rebellion were included in the general deficiency appropriation bill as it passed the Senate during the second session of the Fifty-first Congress for the purpose of indemnifying and reimbursing said States on account and in partial liquidation of said claims, but the same were omitted from said deficiency bill as it became a law. Senate bill No. 52 and House bills No. 54 and No. 42, Fifty-second Congress, first session, were in all respects identical, the last of which House bills was, on February 10, 1892, favorably reported by the House War Claims Committee in House Report No. 254, Fifty-second Congress, first session, and said Senate bill No. 52 was, on February 4, 1892, favorably reported by the Senate Committee on Military Affairs in Senate Report No. 158, as follows, to wit:

[Senate Report No. 158, Fifty-second Congress, first session.]

"The Committee on Military Affairs, to whom was referred the bill (S. 52) to reimburse the States of California, Oregon, and Nevada for moneys by them expended in the suppression of the rebellion, have examined the same and report as follows, to wit:

"This measure was considered by this committee during the first session of the Fifty-first Congress, and was reported upon favorably (Report No. 644).

"Your committee concur in the conclusions stated in that report and recommend the passage of the bill."

At a very early period of the war of the rebellion nearly all the troops of the regular Army of the United States then serving in California, Oregon, and Nevada were



withdrawn from military duty in those States and transported thence by sea to New York City, at an expense to the United States of about \$390,103, or an average cost of about \$284 for each commissioned officer and of about \$133 for each enlisted man.

This withdrawal therefrom of said regular troops left these three Pacific coast States comparatively defenseless, and for the purpose of supplying their places, and to provide additional military forces, rendered necessary by public exigencies, calls for volunteers were made upon said States under proclamations of the President, or requisitions by the War Department, or by its highest military officers commanding the military departments on the Pacific. These calls for volunteers continued until the necessity therefor entirely ceased to exist, during which time these three Pacific coast States furnished, enlisted, equipped, paid, and mustered into the military service of the United States 18,715 volunteers, as shown in said reports so made to the Senate by the Secretary of War.

In consequence of this withdrawal in 1861 of said military forces from the Pacific coast, in order that they might perform military service in the East, and in view of the circumstances and exigencies existing in the Pacific coast States and Territories during the rebellion period, requisitions were duly made from time to time by the President of the United States and by the Secretary of War upon the proper State authorities of California, Oregon, and Nevada for volunteers to perform military service for the United States in said States and Territories, as are fully and in great detail set forth in Senate Ex. Docs. Nos. 10, 11, and 17, Fifty-first Congress, first session. In compliance with the several calls and official requisitions so made between 1861 and 1866, inclusive—

	Volunteers.
The State of California furnished .....	15,725
The State of Nevada furnished .....	1,180
The State of Oregon furnished .....	1,810
Making a total aggregate of .....	18,715

who were enlisted and were thereafter duly mustered into the military service of the United States as volunteers from said States. The same number of troops if organized in the East and transported from New York City to the Pacific coast States and Territories in the same manner as was done by the U. S. War Department from June 17, 1850, to August 3, 1861, would have cost the United States at that time the sum of about \$5,483,385 for transportation alone.

The indemnification for the "costs, charges, and expenses" properly incurred by said States for enrolling, subsisting, clothing, supplying, arming, equipping, paying, transporting, and furnishing said 18,715 volunteer troops employed by the United States to aid them to maintain the "common defense," was guaranteed by the United States in the act of Congress approved July 27, 1861 (12 U. S. Stats., 276), an act entitled "An act to indemnify the States for expenses incurred by them in defense of the United States."

The then Secretary of War, Hon. Redfield Proctor, now U. S. Senator from Vermont (on page 28 of his report, Senate Ex. Doc. No. 11, Fifty-first Congress, first session), in reporting upon the military services performed by said volunteers during the rebellion, said:

"They took the places of the regular troops in California, all of which, except 3 batteries of artillery and 1 regiment of infantry, were withdrawn to the East at an early period after the outbreak of the war. Without them (and the Oregon and Nevada volunteers) the overland mail and emigrant routes, extending from the Missouri River via Great Salt Lake City to California and Oregon, and passing through an uninhabited and mountainous country, infested with hostile Indians and highwaymen, could not have been adequately protected; and yet it was of the first importance to have these routes kept open and safe, especially as rebel cruisers had made the sea routes both hazardous and expensive. Two expeditions composed of California volunteers, under the command of Brig. Gens. James H. Carleton and Patrick E. Connor, respectively, performed perilous and exhausting marches across a desert and over an almost impassable country and established themselves, the latter in Utah—where, besides protecting the mail routes, a watchful eye was kept on the uncertain and sometimes threatening attitude of the Mormons—and the former in Arizona and New Mexico, which Territories were thereafter effectually guarded in the interests of the United States against Indians and rebels."

The Secretary of War, with the assistance of the board of Army officers, created under the authority of the act of Congress approved August 4, 1886 (24 U. S. Stat., p. 217), and which officers were duly selected and appointed on said board by Mr. Secretary of War, Hon. W. C. Endicott, has heretofore found as facts, and has so officially reported to the Senate (as printed in Senate Ex. Docs. Nos. 10, 11, 17, Fifty-first Congress, first session), that the States of California, Oregon, and Nevada, under appropriate laws of the legislatures thereof, respectively, have actually paid in gold coin out of their State treasuries, on account of the "costs, charges, and expenses"

properly incurred by said three States for enrolling, subsisting, clothing, supplying, arming, equipping, paying, transporting, and furnishing said 18,715 volunteer troops of said three States, which were employed by the United States to aid them to maintain the "common defense" on the Pacific coast during the war of the rebellion, the exact sums of money as recited in said bill (H. R. 4959), the reimbursement of which was so guaranteed to be paid to said States as an indemnity under the aforesaid act of July 27, 1861 (12 U. S. Stat., 276), "An act to indemnify the States for expenses incurred by them in defense of the United States," and under the resolution of Congress of March 8, 1862 (12 U. S. Stat., 615), "declaratory of the intent and meaning of said act, and the resolution of March 19, 1862 (12 U. S. Stat., 616), to authorize the Secretary of War to accept moneys appropriated by any State for the payment of its volunteers, and to apply the same as directed by such State," copies of which act and resolution are as follows:

On the 27th day of July, 1861, Congress passed an act entitled "An act to indemnify the States for expenses incurred by them in defense of the United States," as follows:

"That the Secretary of the Treasury be, and is hereby, directed, out of any moneys in the Treasury not otherwise appropriated, to pay to the governor of any State, or its duly authorized agents, the costs, charges, and expenses properly incurred by said State for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding in suppressing the present insurrection against the United States, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury." (12 Stat. L., p. 276.)

A RESOLUTION declaratory of the intent and meaning of a certain act therein named.

Whereas doubts have arisen as to the true intent and meaning of act numbered eighteen, entitled "An act to indemnify the States, for expenses incurred by them in 'defense of the United States,' approved July twenty-seventh, eighteen hundred and sixty-one" (12 U. S. Stats., 276):

*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the said act shall be construed to apply to expenses incurred as well after as before the date of the approval thereof.

Approved March 8, 1862 (12 U. S. Stats., 615).

A RESOLUTION to authorize the Secretary of War to accept moneys appropriated by any State for the payment of its volunteers and to apply the same as directed by such State.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any State during the present rebellion shall make any appropriation to pay the volunteers of that State, the Secretary of War is hereby authorized to accept the same, and cause it to be applied by the Paymaster-General to the payments designated by the legislative act making the appropriation, in the same manner as if appropriated by act of Congress; and also to make any regulations that may be necessary for the disbursement and proper application of such funds to the specific purpose for which they may be appropriated by the several States.

Approved March 19, 1862 (12 U. S. Stats., 616).

AN ACT for the benefit of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, and Nevada when a Territory.

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SEC. 2. The Secretary of War is hereby authorized to detail three Army officers to assist him in examining and reporting upon the claims of the States and Territories named in the act of June twenty-seventh, eighteen hundred and eighty-two, chapter two hundred and forty-one of the laws of the Forty-seventh Congress, and such officers, before entering upon said duties shall take and subscribe an oath that they will carefully examine said claims, and that they will, to the best of their ability, make a just and impartial statement thereof, as required by said act.

Approved August 4, 1886. (24 U. S. Stat., 217.)

From the facts and laws hereinbefore recited, your committee concur in the conclusions reached and recommendations made in the several House and Senate reports

which heretofore accompanied similar bills, and now reaffirm the same, and report back said bill (H. R. 4959) with a recommendation that it do pass with an amendment added thereto as follows, to wit:

"That payment of said sums of money shall be made to each of said States in four equal installments, the first of which shall be paid to them respectively upon the passage of this act, the second of which shall be paid to them respectively on July 1, 1895, the third of which shall be paid to them respectively on July 1, 1896, the fourth of which shall be paid to them respectively on July 1, 1897."

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EXHIBIT No. 5.

CHAPTER XXXII.—SENATE JOINT RESOLUTION No. 5, relative to indebtedness of the United States Government to the State of California (adopted March 13, 1893).

*Resolved by the Senate, the Assembly concurring,* That the State of California urges upon its Senators and Representatives in Congress to use their best efforts in procuring the passage of the act now pending in both houses of Congress, to reimburse California for the money raised and disbursed for arming and equipping troops brought into service by requisition of the United States during the rebellion. These claims have all been passed upon and approved by the War Department, and by the committee in each house to whom they were referred, and are on their respective calendars for passage, but may fail this Congress, as in the last, for want of earnest and active presentation. For war claims, see House Report three thousand three hundred and ninety-six, and Senate Reports one thousand two hundred and eighty-six and two thousand and fourteen, first session, Fiftieth Congress; also, House Report two thousand five hundred and fifty-three, and Senate Report six hundred and forty-four, first session Fifty-first Congress; and House Report two hundred and fifty-four, and Senate Report one hundred and fifty-eight, first session Fifty-second Congress.

*Resolved,* That whatever money shall be received by the State from these claims, or from the claim of the State to five per cent of the cash sales of public land sold in this State by the United States, the same shall be turned into the State treasury, and credited to the school fund.

*Resolved,* That his excellency the governor be requested to forward a copy of these resolutions to each of the Senators and Representatives in Congress.

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EXHIBIT No. 6.

[Senate Mis. Doc. No. 51, Fifty-second Congress, second session.]

FEBRUARY 13, 1893.—Referred to the Committee on Appropriations and ordered to be printed.

Mr. DOLPH presented the following memorial of the legislature of the State of Oregon praying the payment of moneys expended in maintaining the common defense and to aid in the suppression of the rebellion:

*To the Congress of the United States:*

Whereas the State of Oregon has heretofore paid a large sum of money to aid the United States in maintaining the common defense in the suppression of the war of the rebellion, the amount of which has been shown by the reports of the honorable Secretary of War made to Congress; and

Whereas said debt has not yet been paid but is long since due; and

Whereas Hon. J. N. Dolph has introduced in the Senate of the United States an amendment to be proposed to the sundry civil appropriation bill, making an appropriation to pay said claim, together with similar claims of the States of California and Nevada; and

Whereas the United States has reimbursed other States of the Union for sums of money expended on account of the war of the rebellion, such payments aggregating up to March 15, 1892, the sum of \$44,725,072.38, but has not paid any sum whatever on said accounts to the said States of California, Oregon, and Nevada: Therefore, be it

*Resolved by the legislative assembly of the State of Oregon,* That justice and equity demand that the payment of said claims should be no longer delayed by the United

States, and that an appropriation of money therefor should be made by Congress at this time; and be it further

*Resolved*, That this memorial be telegraphed by the secretary of state to our Senators and our Representatives in Congress, and that a written copy thereof, duly certified, shall be forwarded to the presiding officers of the Senate and House of Representatives of the United States.

Adopted by the senate February 8, 1893.

C. W. FULTON,  
*President of the Senate.*

Concurred in by the house February 8, 1893.

W. P. KEADY,  
*Speaker of the House.*

GEORGE W. MCBRIDE,  
*Secretary of State.*

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EXHIBIT No. 7.

MEMORIAL TO CONGRESS.

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

Your memorialists, now the State executive officers of the State of Nevada (the legislature of Nevada not being now in session), most respectfully represent to your honorable bodies that the State of Nevada has heretofore presented a claim to the United States for expenses by her incurred and by her paid as "costs, charges, and expenses properly incurred for enrolling" her military forces during the war of the rebellion, in response to and under requisitions made by the officer commanding the Military Department of the Pacific, and which "costs, charges, and expenses" so incurred and paid by Nevada aggregate the sum of \$11,840 for enrolling 1,184 men preliminary to their being mustered into the military service of the United States.

A claim for reimbursement by the United States for the aforesaid expenditure has been presented by the State of Nevada to the United States, and payment thereof has been refused, and because its examining and accounting and auditing officers seem to have regarded this expenditure simply as a bounty or gratuity paid by Nevada to the officers of her military forces who enrolled said 1,184 men.

Nevada selected as her enrolling agents those officers of her military forces who were to be the commanding officers of the men who might be thereafter enrolled; and there can not be any valid question as to the wisdom or economy of such a course as adopted and uniformly pursued by Nevada, and especially when we consider the importance of each commanding officer being perfectly familiar with the qualifications of those he was to command in the field, both as to their mental and physical fitness.

This method of enrollment as adopted by Nevada, and seeming no doubt to her, at the time, as the most ready and economical one for putting her troops in the field for the United States military service, in obedience to requisitions made upon her, was the one followed in all cases; and this claim for reimbursement by the United States for the "costs, charges, and expenses" so incurred was in lieu of all other "costs, charges, and expenses" that would have to be incurred and as incident to said enrollment—such, for instance, as rent, fuel, furniture, salaries of enrolling officers, subsistence, and all the other detailed and expensive paraphernalia which pertain to the regular military recruiting or enrolling office of a State or of the United States, and such as the United States would herself have been compelled to incur if she had invoked or exercised her own Federal military machinery for the same purpose in the State of Nevada.

No express method of enrolling having been designated to Nevada by the United States she was left to adopt that method of organizing, collecting, and enrolling her military forces to meet the requisitions so made upon her at the time, and such as appeared to her to be the wisest and the most practicable.

To provide for and to pay the "costs, charges, and expenses" so incurred and to be incurred by Nevada on account of said enrollment the legislature of Nevada passed a law on March 11, 1865, which provided substantially that each enrolling or recruiting agent of her army intended by her for the military service of the United States should be allowed for all expenses of said enrollment \$10 per capita. The law is as follows, to wit:

*The people of the State of Nevada, represented in senate and assembly, do enact as follows:*

"SECTION 1. A sum not exceeding one hundred thousand dollars is hereby appropriated and set aside, to constitute a separate fund to be known as the "soldiers' fund," for the purpose of paying a compensation to the soldiers of the companies of Nevada volunteers already raised in the Territory and in the State of Nevada, and to be raised in this State, for the service of the United States, to aid in repelling invasion, suppressing insurrections, enforcing the laws, and protecting the public property, in addition to the pay allowed them by the United States.

"SEC. 2. There shall be paid out of the fund created and set apart by the first section of this act \* \* \* a bounty of ten dollars, to be paid to the captain or commanding officer of any company, for every recruit by him enlisted and subsequently mustered into the service of the United States: *Provided*, That the provisions of this section shall not be deemed applicable to any soldier who may be drafted, or enlisted as a substitute, or any person drafted into the Army of the United States. \* \* \*

"SEC. 3. The captains or commanding officers of companies of Nevada volunteers raised, or to be raised, for service in the Army of the United States, shall, before such officers, as recruiting agents of the Army, can be entitled to secure the benefits of this act, file in the office of the adjutant-general their affidavit, setting forth the number and names of recruits enlisted by them, and accepted by the proper medical examiners (who shall in each case be named) and sworn into the service; and further setting forth that no affidavit of the same character, for the same enlisted men, has heretofore been made or filed. The adjutant-general of the State is hereby authorized and directed to certify to the controller of state the number of men enlisted by each captain or commanding officer of a company, whenever the affidavit herein required is filed in his office, endorsed by the provost marshal of this State, or the commanding officer of the post where the enlisted men referred to and enumerated in the affidavit may have been rendezvoused on enlistment. Upon the filing of the adjutant-general's certificate, above required, in the office of the controller of State, the controller shall make out a copy of said certificate, and forward the same to the State board of examiners, and if the State board of examiners shall endorse the certificate as "Approved," then the controller shall draw his warrant upon the fund herein constituted for the sum set forth in the certificate of the adjutant-general in favor of the officers, or their legal assignees, named in the certificate, for the sums respectively set forth to be due them.

"SEC. 6. For the purpose of carrying into effect the provisions of this act, and providing for the fund created by section one of this act, the treasurer of the State of Nevada shall cause to be prepared bonds of the State to the amount of one hundred thousand dollars, in sums of five hundred dollars each, redeemable at the office of the treasurer of the State on the first day of July, one thousand eight hundred and seventy. The said bonds shall bear interest, payable semiannually, at the rate of ten per cent per annum, from the date of their issuance, which interest shall be due and payable at the office of the treasurer of this State on the first day of January and July of each year: *Providing*, That the first payment of interest shall not be made sooner than the first day of January, in the year of our Lord one thousand eight hundred and sixty-six. These said bonds shall be signed by the governor, and countersigned by the controller, and endorsed by the treasurer of the State, and shall have the seal of the State affixed thereto. Such bonds shall be issued from time to time as they may be required for use. The expense of preparing such bonds and disposing of the same shall be audited as a claim against the soldiers' fund created by this act.

"SEC. 10. For the payment of the principal and interest of the bonds issued under this act there shall be levied and collected, annually, until the final payment and redemption of the same, and in the same manner as other State revenue is or may be directed by law to be levied and collected annually, a tax of twenty-five cents, in gold and silver coin of the United States, on each one hundred dollars of taxable property in the State, in addition to the other taxes for State purposes, and the fund derived from this tax shall be set apart and applied to the payment of interest accruing on the bonds herein provided for and the final redemption of the principal of said bonds; and the public faith of the State of Nevada is hereby pledged for the payment of the bonds issued by virtue of this act, and the interest thereon and, if necessary, to provide other and ample means for the payment thereof." (Statutes of Nevada, March 11, 1865, pp. 389-393.)

This small sum of \$10 per capita when the peculiar condition of Nevada at that time is considered, in connection with her then limited and expensive means of travel which was then exclusively by wagon or horseback, and before any railroads were built in this State, will be considered to be not exorbitant, but, as your memorialists now submit, the same was and is very reasonable.

True, the act of the legislature termed this \$10 per capita for enrollment a "bounty" to the captains or commanding officers who might organize a company to

be thereafter mustered into the service of the United States, yet, as a matter of fact, it was not a bounty in the sense of a gratuity, and as is frequently used by the United States as meaning money in addition to the pay and allowances as set forth in the agreement with her commanding officers and enlisted men about to enter her military service; on the contrary, it was a lump compensation paid or to be paid by the State to her recruiting or enrolling officers in lieu of all other expenses or compensation for organizing its military forces and such as have been hereinbefore recited and covered, and was intended to cover all expense of travel, subsistence, lodging, and other incidental expenses, and such as U. S. recruiting and enrolling officers might properly incur in getting together and preparing men for the military service of the State and of the United States.

Your memorialists call attention to the fact that on March 11, 1865, Nevada did not even have in her treasury the money with which to pay this disbursement, but in section 6 of said act she was compelled to issue and to sell her own State bonds with which to raise money to pay this and other expenses of a military character in order to aid in defraying the State expenses in a time of war.

Not only this, but in section 10 of said act Nevada levied a tax in gold or silver coin of the United States upon every \$100 taxable property in the State of Nevada, in addition to other taxes for State purposes, to create a fund with which to pay said expenses, and which tax was to continue until all of said bonds were wholly paid and fully redeemed; and in addition thereto the public faith of Nevada was pledged to pay said bonds and interest thereon, and, if necessary, to provide other and ample means for the payment thereof.

The public faith of Nevada was therefore pledged for the benefit of the United States, and at a time when the public credit of the United States was itself put to the test and its paper largely depreciated in parts of the country outside the limits of Nevada.

Wherefore, your memorialists (the legislature not now being in session), believing that if the attention of Congress were respectfully and properly invited to this matter, it would not permit this expenditure to be repudiated by being disallowed or payment refused, now, therefore, petition your honorable bodies to reimburse Nevada in the sum of \$11,840 so by her expended and paid as "costs, charges, and expenses," and by her incurred for enrolling 1,184 men for the military service of the United States, and who did perform active United States military service during the war of the rebellion wherever their military services were needed.

Respectfully,

C. C. STEVENSON,  
*Governor.*

H. C. DAVIS,  
*Lieutenant-Governor and Adjutant-General.*

JOHN M. DORMER,  
*Secretary of State.*

J. F. HALLOCK,  
*State Controller.*

GEORGE TUFLY,  
*State Treasurer.*

JOHN F. ALEXANDER,  
*Attorney-General.*

JOHN E. JONES,  
*Surveyor-General.*

W. C. DOVEY,  
*Superintendent Public Instruction.*

J. C. HARLOW,  
*Superintendent State Printing.*