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Extra pay to General Scott. Letter from the Secretary of War, transmitting the information required by a resolution of the House of Representatives of 28th ultimo, in relation to extra compensation allowed to General Scott, in addition to his full pay, &c., as a major general of the army of the United States, &c.

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EXTRA PAY TO GENERAL SCOTT.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

The information required by a resolution of the House of Representatives of 28th ultimo, in relation to extra compensation allowed to General Scott, in addition to his full pay, &c., as a major general of the army of the United States, &c.

MARCH 4, 1842.

Referred to the Committee on Expenditures in the War Department.

DEPARTMENT OF WAR, March 2, 1842.

SIR: In compliance with a resolution of the House of Representatives of the 28th ultimo, received yesterday, I communicate herewith the report of the Second Auditor, and the papers transmitted by him, marked from No. 1 to No. 12, inclusive. I have also caused a copy of two letters of the Secretary of War, of the 25th February, 1839, and March 1st, 1839, to the chairman of the Committee of Finance, to be made, which are also sent herewith. These are all the papers in this Department relating to the subject of the resolution.

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

J. C. SPENCER.

HON. JOHN WHITE,
Speaker of the House of Representatives.

TREASURY DEPARTMENT,

Second Auditor's Office, March 1, 1842.

SIR: In reply to the resolution of the House of Representatives of the 28th of February, referred to this office for report, asking "whether General Winfield Scott has been allowed extra compensation, in addition to his full pay and emoluments of office as a major general of the army of the United States, for services rendered, in the year 1838, in the removal of the Cherokee nation of Indians; and, if extra compensation has been allowed, to report the amount thereof, and by what law or authority the same was granted;" also, "the time when said claim for extra compensation was first presented to the War Department," &c., I have the honor to state that a claim of General Scott, for \$1,952, for services as commissioner, appointed by the President, to negotiate with the Cherokees concerning their removal

in 1838, was allowed by A. M. Lea, Esq., acting Secretary of War, and passed the accounting officers in October last, in conformity with a decision of the Supreme Court of the United States, in the case of Minis, at the January term, 1841. On the settlement of this account of General Scott, and the certificate of the Second Comptroller, No. 6622, dated the 12th October, 1841, a requisition issued on the same day for the amount aforesaid, in his favor, as per his receipt endorsed on the account, and on file in this office.

Previously to this per diem allowance for his services as commissioner, General Scott was allowed, by the Commissioner of Indian Affairs, \$358 71, to cover his expenses incurred while acting as commissioner aforesaid, and which was paid him accordingly.

But, in order to put you fully in possession of the facts, I have the honor to transmit, herewith, copies of all the papers in the two cases, numbered 1 to 11, inclusive, in that of the per diem allowance; and in that for expenses marked A.

I have the honor, sir, to be, with great respect, your obedient servant,
W. B. LEWIS.

The Hon. J. C. SPENCER,
Secretary of War.

No. 1.

WASHINGTON, *April 11, 1838.*

SIR: If, on your arrival in the Cherokee nation, propositions should be made to you by the party opposed to emigration, the acceptance of which you shall have good reason to believe will prevent the shedding of blood, and secure and expedite the voluntary emigration of the whole nation, you are authorized to receive and transmit them to the Department of War, for the consideration of the President and Senate, provided the said propositions do not in any degree impugn the treaty with the execution of which you are charged, or materially change any of its provisions, and particularly that which provides for their emigration to the West, otherwise than by such an extension of the time allowed for removal by the treaty as may appear to you to be indispensably necessary; but no such extension to be agreed to unless, nor to be any longer operative than whilst the same is, accompanied by immediate, active, and continued steps, on the part of the Cherokees, in part performance of their obligation to remove; and provided, further, that no stipulation shall be entered into that shall affect injuriously, and against their will, the individual rights of any of the citizens of the States in which the Indians now reside, and which are secured to such citizens by the laws of such States, and founded upon the treaty. For these purposes, and to meet the contingency referred to, you are hereby appointed a commissioner, and authorized to conclude an arrangement, of the nature herein described, with the said Indians, subject to the approbation or rejection of the Senate. In such proceedings, the known chiefs and their adherents, of the party heretofore opposed to emigration, may, if you find it necessary, be put upon a footing of equality with the other part of the nation, taking care not to sign any stipulation which may injuriously

affect the true interests or just pride of the latter. To the ends contemplated by these instructions, any reasonable sum of money, not exceeding \$300,000, to be paid by the United States, after the execution of the stipulation or stipulations by the said Indians, may be agreed upon; but the discretionary authority hereby conferred upon you is made subject to the following absolute restrictions, viz: that no proposals are to be received from the Indians until the great body of the chiefs, headmen, and people of the remaining Cherokees, have been distinctly informed that the said proposals are based upon their certain and speedy removal to their new homes; that the only object in view is to make the removal more satisfactory to them, and that no delay in the execution of the treaty, not really indispensable, is to be occasioned by any of the proceedings authorized by these instructions.

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

M. VAN BUREN.

Maj. Gen. SCOTT, *U. S. Army.*

No. 2.

The UNITED STATES to Major General SCOTT, *Commissioner, &c., Dr.*
To his *per diem* as commissioner to treat and to make arrangements with the Cherokee Indians, 244 days, including the 11th of April, 1838, (the date of his appointment,) and the 10th of December, 1838, at \$8 a day - - - - - \$1,952

OCTOBER 8, 1841.

The objections raised by the Commissioner of Indian Affairs against this account having been overruled, 1st, by the decision of the Supreme Court in the case of Minis, and, 2d, by the production of the original *commission* from the President, it is believed to be equitably and legally due, and will therefore be paid out of the appropriation for the removal and subsistence of Indians.

ALBERT M. LEA,
Acting Secretary of War.

Received, October 12, 1841, from the office of the Second Auditor a requisition on the Treasury (No. 4801) for \$1,952, in payment of the within account.

WINFIELD SCOTT.

Extract of an opinion of the Supreme Court of the United States, delivered by Justice Story, in the case of Philip Minis vs. the United States. (Peters's Reports, vol. 15, p. 444, referred to in the endorsement of Mr. Lea.)

“The first instruction asked embraces the question, What is the true construction of the first section of the act of the 3d of March, 1835, chap.

303, entitled 'An act making certain additional appropriations for the Delaware breakwater, and for certain harbors, and removing obstructions in and at the mouths of certain rivers, for the year 1835?' That act, after making the specific appropriations, contains the following proviso: 'Provided, That no officers of the army shall receive any per cent. or additional pay, extra allowance, or compensation, in any form whatsoever, on account of the disbursing any public money appropriated by law during the present session for fortifications, execution of surveys, works of internal improvement, building of arsenals, purchase of public supplies of any description, or for any other service or duty whatsoever, unless authorized by law.' The argument on behalf of the United States is, that this proviso, although found in a mere appropriation law of a limited nature, is to be construed; by reason of the words 'or for any other service or duty whatsoever, unless authorized by law,' to be permanent in its operation, and applicable to all future appropriations, where officers of the army are employed in such service or duty; and that it appears from the record that this was the very ground on which the Treasury Department rejected the claim of Doctor Minis for commissions: The same question has been made and fully argued in the case of Gratiot vs. the United States, at the present term, and we have given it our deliberate consideration. We are of opinion that such is not the true interpretation of the terms of the proviso, and that it is limited exclusively to appropriations made at the session of 1835."

No. 3.

HEADQUARTERS, EASTERN DIVISION,

Columbus, Ohio, December 3, 1838.

SIR: As I may not be in Washington in several months, and as I am much in want of the money, I beg leave to trouble you with the enclosed account for \$1,952, and to beg that you will have the goodness to order a draft for the amount, payable to my order, to be remitted to me at Buffalo, New York.

I expended a small sum, less than \$400, in entertaining the Cherokees, as commissioner. The vouchers for such expenditures are not at hand, but will be submitted as soon as an aid-de-camp, not at the moment with me, shall rejoin.

I have the honor to be, sir, with great respect, your most obedient servant,

WINFIELD SCOTT.

Hon. J. R. POINSETT, *Secretary of War.*

No. 4.

WAR DEPARTMENT,

Office Indian Affairs, December 12, 1838.

SIR: I have the honor to report on the account and accompanying letter of General W. Scott, referred to this office.

The claim set forth in the account is for per diem, at \$8, "as a commissioner to treat and make arrangements with the Cherokee Indians, 244

days, including the 11th of April, 1838, (the date of his appointment,) and the 10th of December, 1838;" its amount is \$1,952. I have looked for an appointment of General Scott as a commissioner, but can find none. The original order to him, authorizing the superintendence and direction of Cherokee removal is strictly military, made by the Commanding General, and dated 6th April. The subsequent communication of 23d May, by the Secretary of War, gives authority to make an arrangement with John Ross and others, but in all other respects enforces the observance of the course previously adopted by the general for emigrating purposes. I do not perceive, then, that the allowance can be made to General Scott as a commissioner, nor is there any fund applicable to the demand, that I am aware of.

The law of 3d March, 1835, forbids the allowance of per centage, "additional pay, extra allowance, or compensation in any form whatever, to officers of the army, on disbursements, or for any other service or duty whatsoever, unless authorized by law." This law bears strongly on the claim, and was the basis of a general order (No. 14) issued on 13th March, 1835, by Governor Cass, as Secretary of War, in which is the following: "Compensation to officers on duty connected with the removal of the Indians, except their actual travelling expenses, which are allowed by the act of June 30, 1834, entitled 'An act to provide for the organization of the department of Indian Affairs,' is within the prohibition of the act of 3d March, 1835."

I do not think, therefore, that the account of General Scott, as presented, can be allowed. But his actual travelling expenses, under the 10th section of the law of 1834, and the foregoing order, would be payable to him. The Secretary of War, under his discretionary power as such, could also, I presume, allow the sum expended by General Scott in entertaining the Cherokees.

I have the honor to be, very respectfully, your most obedient servant,
T. HARTLEY CRAWFORD.

Hon. J. R. POINSETT, *Secretary of War.*

No. 5.

WAR DEPARTMENT, *December 26, 1838.*

SIR: I have the honor to acknowledge the receipt of your letter of the 3d instant, enclosing your account for a *per diem* as commissioner for the emigration of the Cherokee Indians; and, in reply, I enclose herewith the report of the Commissioner of Indian Affairs of the 12th instant, and an opinion of the Attorney General, dated the 22d instant.

Your letter of the 16th instant, on the subject of affairs generally on the frontier, has also come to hand.

I enclose, herewith, duplicate of my letter of the 17th December, in relation to the leave of absence for General Eustis.

Very respectfully, your most obedient servant,

J. R. POINSETT.

Maj. Gen. WINFIELD SCOTT,
Utica, New York.

No. 4.

[Copy of a copy.]

HEADQUARTERS, EASTERN DIVISION,

Utica, January 29, 1839.

SIR: I have had the honor to receive your letter of the 26th ultimo, covering the separate opinions of the Attorney General and the Commissioner of Indian Affairs, against my claim to the *per diem* of commissioner, &c.

I exceedingly regret that I could not have been advised in time that it was deemed necessary to refer that claim to the legal consideration of those functionaries. At a great distance from Washington, and passing rapidly from one high duty to another, the account was drawn up and transmitted by me in the most naked form, and without the least suspicion that its payment could, in any quarter, be made a matter of doubt or hesitancy. I have now to combat a formal decision, rendered against me without a previous hearing, and without, as it would seem, a knowledge on the part of my judges of the most material fact in the case.* My position has thus become (no matter how great the candor and intelligence addressed) one of serious disadvantage.

On the face of the account I designated myself *commissioner appointed to treat and make arrangements with the Cherokee Indians*. Both the Attorney General and the Commissioner of Indian Affairs say that no evidence of such appointment could be found, and consider the absence of such evidence as conclusive against the claim.

I beg leave to refer to the accompanying paper, a copy of the President's instructions to me, dated April 11, 1838, under his sign manual. It will be seen that I was therein duly "appointed a commissioner, and authorized to conclude an arrangement," &c. As those instructions are marked "confidential" on the envelope, and were written during your illness, it is probable that no copy of them was placed on the records of the War Department.

But it is argued, by the functionaries mentioned, that, being an *officer of the army*, my demand is barred by the *proviso* appended to the act (chap. 26) of March 3d, 1835.

It is true that the *proviso* declares "That no officer of the army shall receive any per cent. or additional pay, extra allowance, or compensation, in any form whatever," but continues, "on account of the disbursing any public money appropriated by law *during the present session*, for fortifications, execution of surveys, works of internal improvements, building of arsenals, purchase of public supplies of any description, or for any other service or duty whatsoever, unless authorized by law."

Now, my claim is not on account of the *disbursement of public money*, in any manner whatever, appropriated at *that* (or any other) *session of Congress*. It is entirely distinct from that kind of "service or duty;" and the *proviso* relates wholly to the disbursement of public money appropriated at *that* particular session.

This the Attorney General would have conceded, if the *proviso* "had stopped" at the word "description." But (he says) the following gen-

* Viz: Mr. Van Buren's letter appointing me a commissioner to treat, &c., with the Cherokees. This note was added by General Scott, October 6, 1841.]

eral and comprehensive expression is added, "or for any *other* service or duty whatsoever, unless authorized by law."

If it be asked, what objects of disbursements, under the appropriations of that session, were left *unenumerated*, and which, out of abundant caution, were intended to be embraced in the "general and comprehensive expression," I answer, many. Disbursing "public money," by officers of the army, for the payment of Indian annuities, (notwithstanding the many superintendents, agents, and sub-agents, of the Indian department,) for building and repairing barracks, which are certainly not "arsenals," or "works of internal improvements," for the payment of militia,* although the militia are provided, by act of Congress, with paymasters of their own—all of which extra or additional employments have, as occasions required, been thrown upon some "officer of the army," and made a part of his "service or duty." I might even add the disbursements made for the Delaware breakwater itself, also under the charge of army officers—the *only* object mentioned in the title of the act of March 3, 1835, and which, if the enumeration in the proviso were strictly construed, could hardly be called one of the "works of *internal* improvement."

I have thus shown many objects (and the number might easily be extended) of disbursements, to which the "general and comprehensive expression" of the proviso was intended to be applied, and by which I conclusively establish that the proviso to the act of March 3, 1835, relates exclusively to *disbursements of public money* appropriated at *that* session of Congress, and I make no claim to any part of *those* appropriations, which have long since been expended or lapsed.

But even admitting that I am wrong in the foregoing views of the proviso, (and I am sure that the Attorney General will find no error,) I beg it may be observed that, as an "officer of the army," I make no claim to "extra pay" or "additional allowance." The *per diem* is, as *commissioner*, a distinct and independent appointment; and which demand would be paid, as a matter of course, to any other citizen duly clothed with such appointment, and employed in such service.

That service was in no degree a *military* duty. It did not even incidentally appertain to my functions as the commander of the troops employed in the forcible collection and emigration of the Cherokees under their stipulations in a previous treaty. Those functions derived no necessary aid, nor suffered any injury (notwithstanding the great additional labor imposed) from the independent appointment of commissioner, which authorized me, under certain restrictions, to negotiate a modification of the old treaty, or to make a new arrangement for the emigration. As commander, I received one set of instructions from Major General Macomb, the general-in-chief of the army; as commissioner, another set from the President, not as the commander-in-chief, but as the Chief Magistrate of the United States. And the civil appointment might very well in this, as in most similar cases, have been conferred upon any citizen other than the commander of the forces at hand.

Will it be said that the two appointments, civil and military, (commissioner and major general,) could not be held by the same individual? There is nothing in the Constitution or laws which prohibits the union.

* For this service or duty additional and temporary paymasters are provided by the act of July 5, 1838, sec. 25. The old or permanent paymasters of the army have long been contending for a per centage on their payments of the militia.

And premising that both offices were fully executed on the occasion, I further answer the question by referring to the volume of Indian treaties, many of which were negotiated and concluded, on the part of the United States, by *army officers*, who were duly appointed commissioners, and *paid* as such, myself (Indian Treaties, pages 503, 508) among the number.

There is nothing in the general order issued by Mr. Secretary Cass, March 13, 1835, and cited by the Commissioner of Indian Affairs, (in the opinion before me,) which affects the question I am discussing. This order, issued immediately after the passage of the *proviso*, says that "compensation to officers on duty connected with the removal of the Indians" is within the prohibition of the proviso; meaning, no doubt, the words "or for any other service or duty whatsoever"—the "general and comprehensive expression," without which those officers, or that kind of "service or duty," not having been enumerated, would not have been affected, as I have explained above. But, 1st. The order very properly protected the appropriations that had just been made. 2d. The "officers on duty connected with the removal of the Indians" held no *separate civil appointment* or *commissions*.*

The Commissioner of Indian Affairs says there is no "fund applicable to the demand" that I have made. I trust that a "fund" may be found or called for. And allow me to point attention to the act (chapter 97) of June 12, 1838, "making appropriations for *preventing* and suppressing Indian hostilities for the year 1838." The first section contains this item: "For miscellaneous and contingent charges of *all kinds*, not embraced under the foregoing heads, \$750,000."

I had supposed, from the first, that the *per diem* of the commissioner had been intentionally included in that sum. And, when it is recollected that my labors, both as commissioner and commander, were successfully employed in *preventing hostilities*; that, by early collecting and conciliating the Cherokees, I was enabled, at the end of thirty-odd days, instead of ninety, to discharge nearly 4,000 militia, (I had no regulars at the beginning,) thereby saving many hundred thousand dollars—I might, perhaps, say, many millions—it is hoped that the *per diem* account of \$1,952 will not be thought unreasonable, either by the Executive or legislative departments of the Government.

Asking that the claim may be reconsidered, I have the honor to remain, sir, with high respect, your most obedient servant,

WINFIELD SCOTT.

Hon. J. R. POINSETT, *Secretary of War*.

General Scott's endorsement on the above, October, 1841.

Concerning a *per diem* claim as commissioner to treat with the Cherokee Indians, accompanied by—

1. Secretary of War to General Scott, December 26, 1838. Original.
2. Commissioner of Indian Affairs to the Secretary of War, December 12, 1838. Original.

* In the removal of the Cherokees there were many officers of the army connected, &c., who held no such separate commissions.—Note added October 6, 1841. W. S.

3. Attorney General to the Secretary of War, December 23, 1838. Original.
4. President Van Buren to General Scott, April 11, 1838. Original.
5. Mr. Secretary Cass's order, March 14, 1835.

Conceiving that great injustice has been done me in this case, I had intended to submit it to Mr. Bell and Mr. Crittenden for revision, and spoke to the latter on the subject, but have only, in the last ten days, recovered, among my old papers, Mr. President Van Buren's original instructions appointing me a commissioner to treat with the Cherokee Indians.

The want of this original document (not recorded, it seems, in any of the public offices) contributed mainly, in the first instance, to the rejection of the claim; and afterwards, when a copy was sent with this letter, the *pride of consistency* prevented the retraction of gross error.

The other ground of rejection refers to the *proviso* found in the act of March 3, 1835, discussed within. That this *proviso* is confined solely to the appropriations of that session of Congress may be further seen by the note thereto annexed in Cross's Military Laws, (2d edition,) page 251, which edition was prepared under the sanction of Mr. Secretary Poinsett himself, although not published, I think, until some time later.

But, in fact, the *proviso*, even if it were a general and permanent enactment, did not, and could not, apply to my claim; because the services charged for (rendered under the gravest and most critical circumstances) were performed not under my *military*, but under a separate *civil* commission, conferred under more formal circumstances (the sign manual of the President) than any other commission ever given to treat with Indians; and I had myself, before, been a commissioner to treat with several tribes of Indians, (in 1832,) and *separately* paid as such.

It seems to me, then, perfectly evident, that, if the separate civil commission had been before Mr. Poinsett, Mr. Grundy, and Mr. Commissioner Crawford, in the first instance, my claim would have been the nallowed.— [See decision of Supreme Court, Minis's case.]

All which is respectfully submitted.

WINFIELD SCOTT.

Additional note on the within letter.

OCTOBER 6, 1841.

No. 5. I add Mr. Secretary Cass's order, founded on the *proviso* of the act of March 3, 1835; on which order I have written two remarks.

WINFIELD SCOTT.

No. 7.

No. 6622.

APPROPRIATION.

Removal and subsistence of Indians	-	-	-	-	\$1,952
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TREASURY DEPARTMENT,

Second Auditor's Office, October 10, 1841.

I certify that there is due from the United States to Major General Winfield Scott the sum of one thousand nine hundred and fifty-two dollars, being the amount of his account, as commissioner to treat and to make

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arrangements with the Cherokee Indians, from 11th April to 10th December, 1838, both days inclusive, being 244 days, at eight dollars per day, allowed by acting Secretary of War; to be paid to General Scott, present, as appears from the statement, and vouchers herewith transmitted, for the decision of the Second Comptroller of the Treasury thereon.

W. B. LEWIS, *Second Auditor.*

To the SECOND COMPTROLLER OF THE TREASURY.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above, this 12th day of October, 1841.

ALBION K. PARRIS, *Second Comptroller.*

No. 8.

ORDER No. 14.

HEADQUARTERS OF THE ARMY,

Adjutant General's Office, Washington, March 14, 1835.

The following communication has been received from the War Department, and is published for the information of all concerned:

“DEPARTMENT OF WAR, *March 13, 1835.*”

The proviso in the act of Congress, passed March 3, 1835, entitled ‘An act making additional appropriations for the Delaware breakwater, and for certain harbors, and removing obstructions in and at the mouths of certain rivers, for the year one thousand eight hundred and thirty-five,’ and which prohibits the allowance of extra compensation to officers of the army, has been submitted to the Attorney General for his opinion; and that officer has decided that it extends to, and prohibits the allowance of, all extra compensation, of every kind whatsoever, for which provision is not made by law. *Hereafter, therefore, no such extra compensation will be allowed.**

This prohibition took effect from the date of the passage of the law, and extends to the following cases:

- Per diem to officers on bureau duty;
- Per diem to officers in charge of working parties;
- Per diem to the secretary of the military board;
- Per diem to engineer officers, for disbursing public money;
- Per diem to the assistant engineer at the Delaware breakwater;
- Per diem to the members of the medical board;
- Per centage to topographical officers disbursing in the field;
- Monthly allowance, or per centage, to officers of the line temporarily performing staff duties;
- Per centage to officers for disbursing funds not properly appertaining to their department;
- Allowance to the medical officer purchasing supplies for the medical service;
- Per centage to military storekeepers for disbursements;
- Compensation to officers on duty connected with the removal of the In-

* That is to say, out of the appropriations of that year. See the end of this order.—October 6, 1841.—W. S.

dians, except their actual travelling expenses, which are allowed by the act of June 30, 1834, entitled 'An act to provide for the organization of the department of Indian Affairs;'

Allowance to the officer disbursing money at the seat of Government, under the regulation of the War Department of May 31, 1833;

Extra compensation to the assistant surgeon, for attending laborers on the works at Hampton Roads;

Allowance to the officer acting as adjutant at the Military Academy;

Allowance to the officer acting as professor of chemistry at the Military Academy.

These cases are enumerated for the information of the army, and embrace all the extra allowances which have been reported to this Department, in answer to the inquiries which have been made. It is possible, however, that some may have been omitted; and the enumeration will not, therefore, be considered as sanctioning the allowance of any claim because it is not herein expressly provided for; but the construction of the act will apply so as to prevent the granting of any extra compensation, of any nature whatever, unless expressly authorized by law.

The Attorney General has decided that the general clause in the above proviso will render illegal the allowance of any per centage or compensation for disbursing appropriations made *previous to, as well as during, the last session of Congress.**

LEWIS CASS."

By order of Alexander Macomb, Major General, commanding in chief:
R. JONES, *Adjutant General.*

[Referred to in connexion with General Scott's per diem claim, as commissioner to treat with the Cherokee Indians in 1838.]

No. 9.

ATTORNEY GENERAL'S OFFICE,

December 22, 1838.

SIR: I have examined the claim of General W. Scott, accompanying yours of this day, and have the honor to express the following opinion thereon.

General Scott is a military officer, in the regular service and pay of the United States; and on the 6th of April, 1838, General Macomb, his superior officer, by his order, (which was strictly military, for no other could be issued by General Macomb,) directed him to repair to the Cherokee country, and there to discharge those duties which properly appertain to him as an officer of the army of the United States. On the 23d of May, 1838, the Secretary of War authorized General Scott to enter into arrangements with the agent of the Indians for their removal. On the 25th of June, 1838, he was directed, by the Secretary of War, to superintend the removal of the Indians. It is understood that General Scott faithfully discharged all the duties enjoined on him. He now charges eight dollars per day for the services rendered under these orders, in addition to his pay and emoluments as major general in the army of the United States; and the question you ask me to decide is, whether he is lawfully entitled to the claim thus preferred by him.

* This is evidently retrospective.—October 6, 1841.—W. S.

Whatever difficulty formerly existed relative to extra allowances, or compensation to officers of the army seems to me to be obviated by the proviso to the act of the 3d of March, 1835, which, upon a proper construction, in my opinion forbids the allowance of the claim now in consideration. That proviso declares, "that no officer of the army shall receive any per cent., or additional pay, extra allowance, or compensation, in any form whatever, on account of the disbursing any public money appropriated by law, during the present session, for fortifications, execution of surveys, works of internal improvement, building of arsenals, purchase of public supplies of any description."

Had the proviso stopped here, it might have been insisted that its whole operation was confined to appropriations made at the then session of Congress. But the following general and comprehensive expression is added: "or for any *other* service or duty whatsoever, unless authorized by law."

It appears to me that Congress intended, by this expression, to confine military officers to their regular pay and emoluments, and not permit them to receive extra allowances or compensation for services which might not be considered by them in the strict line of their military duties.

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

FELIX GRUNDY,

The Hon. SECRETARY OF WAR.

The papers are herewith returned.

No. 10.

ATTORNEY GENERAL' OFFICE,

February 15, 1839.

SIR: I have the honor to acknowledge the receipt of yours of the 7th instant, enclosing General Scott's letter. All the views and arguments presented by him were considered before my opinion of the 22d of December, 1838, was given, except that the fact of his appointment by the President, as commissioner to make arrangements with the Cherokees for their removal, was not known at this office. That fact produces no change in my opinion. The proviso to the act of the 3d March, 1835, operates upon the claim set up by General Scott, acting under such an appointment, as fully as if he had acted without it. Such, I am of opinion, is the fair construction of the act of Congress; nor do I see any reason, in the nature of this claim, why it should be exempt from the full operation of the proviso of said act.

In this case, a major general of the army of the United States, in the receipt of his full pay and emoluments of office, has been directed to proceed to the Cherokee country, and by force, if necessary, to cause a removal of the Indians agreeably to treaty stipulations; but the President, desirous to prevent violence and bloodshed, gave to General Scott authority to make arrangements or contracts for the removal of the Indians, if thereby the objects of the treaty could be accomplished on reasonable terms, and without a resort to force. Under this authority General Scott acted, and acted faithfully and successfully. But has he even an equitable claim for the eight dollars per diem claimed by him while engaged in this service? I think

not. When performing this service, he was receiving his pay and emoluments as major general; and, by virtue of the authority conferred upon him as commissioner, he was enabled to change his character from that of a destroying warrior to that of a kind pacificator. The duty was easier, and of a more agreeable character. Upon the whole case, I am of opinion that General Scott has no right to the money claimed by him, either in law or equity.

I am, sir, &c.

FELIX GRUNDY.

To the SECRETARY OF WAR.

No. 11.

WAR DEPARTMENT, *February 25, 1839.*

SIR: There is no fund in this Department for compensating the commissioner (Gen. Scott) appointed in April last to treat and make arrangements with the Eastern Cherokees. His *per diem* for that service, according to the account before me, amounts to \$1,952. Gen. Scott is richly entitled to this compensation, for his valuable and important services, and I beg leave earnestly to request that you will use your endeavors to have inserted in the proper appropriation bill an item to the following effect:

“For compensating the commissioner appointed in April last to make certain arrangements with the Cherokee Indians east of the Mississippi river, one thousand nine hundred and fifty-two dollars.”

Very respectfully, your obedient servant,

J. R. POINSETT.

HON. SILAS WRIGHT, JR.,
Chairman Com. on Finance, Senate.

WAR DEPARTMENT, *March 1, 1839.*

SIR: I have had the honor to receive your letter of yesterday, inquiring whether, when Major General Scott was ordered to the Cherokee country, in 1838, there was any contract with him, that, in addition to his pay and emoluments as an officer of the army, he should receive a *per diem* allowance as a commissioner to treat with the Indians.

There was no such contract; but the President gave Gen. Scott, during my illness and consequent absence from the office, a confidential commission to negotiate with the Cherokees, and thus constituted him a commissioner. As such, he would have been entitled, by the usage of this office prior to the law of 1835, to a *per diem* allowance in addition to his pay. This law, absolutely interdicting all such allowances, compels the Department to lay General Scott's claim before Congress. He is entitled to his expenses, and they will be paid by the Department under the law of June, 1834. But this allowance being very limited, not exceeding \$350, is not equivalent to the expenses incurred and services rendered by General Scott as commissioner.

Very respectfully, your obedient servant,

J. R. POINSETT.

HON. SILAS WRIGHT, JR.,
Chairman Com. on Finance, Senate.

No. 12.—A,

No. 3461.

APPROPRIATION.

Contingencies Indian Department - - - - \$358 71.

TREASURY DEPARTMENT,

Second Auditor's Office, March 22, 1839.

I certify that there is due from the United States to Gen. Winfield Scott the sum of three hundred and fifty-eight dollars and seventy-one cents, being the amount of his account for 244 days' expenses incurred while acting as commissioner under Cherokee treaty, April to November, 1838, both inclusive; to be transmitted to Gen. Winfield Scott, Augusta, Maine, by draft on New York, as appears from the statement and vouchers herewith transmitted, for the decision of the Second Comptroller of the Treasury thereon.

W. B. LEWIS, *Second Auditor.*

To the SECOND COMPTROLLER OF THE TREASURY.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above, this twenty-fifth day of March, eighteen hundred and thirty-nine.

ALBION K. PARRIS,
*Second Comptroller.*The UNITED STATES, to Maj. Gen. W. SCOTT, *Commissioner, &c., Dr.*

For extra expenses incurred while acting as commissioner under the Cherokee treaty, &c., from April to November, 1838, 244 days, inclusive, for which no vouchers have been produced to file with the account and memorandum of daily expenses, but the whole expenses ascertained to be \$358 71.

WASHINGTON, *February 27, 1839.*

I certify that the above account is just, and that the sum of \$358 71 is due to me for extra expenses, as charged.

WINFIELD SCOTT.

The above account allowed under the 10th and 13th sections of the law of 30th June, 1834; for although the account is general, yet as the traveling expenses of Gen. Scott between April and November, and going from Washington to the Cherokee country, must be very moderately computed, not to exceed [the] above sum, I think it [ought] to be paid. Charge contingencies.

T. HARTLEY CRAWFORD.