4-18-1848

Representatives of William H. Freeman

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The subject matter of this claim has been twice submitted to judicial investigation, and in both cases the decision on the questions involved have been against the claim of the petitioners upon the points of law in the case. The first decision was made by the Supreme Court of the United States, as will appear by reference to the case, reported in the third volume of Howard's Reports. The petitioner, however, claimed that this decision was made upon a partial statement of the facts, and the Supreme Court ordered a new trial. A written agreement of the facts in the case was entered into between the counsel for the petitioner and for the United States, and on that agreement the case was submitted to the decision of the circuit court for the district of Massachusetts; and the decision was adverse to the petitioner.

The petitioner says: "And although your petitioner was advised that the appellate tribunal would not be governed by such a mere verbal interpretation, but by an enlarged view of the intentions of Congress, and the spirit of its enactments, nevertheless, the expense attendant on a second appeal to the Supreme Court would be exhausting the small funds left by Colonel Freeman for his family, even in the event of a judgment sanctioning the claims; and your petitioner, therefore, concluded that he should best fulfil his duty by a direct appeal to Congress for relief, as the manifest justice of the case commends it to their favorable regard."
Under these circumstances, the committee cannot recommend a favorable report. They regard, except in very rare instances, the decision of a court of the United States on the precise points of law brought directly in issue in a suit between the United States and a petitioner, as conclusive. They have held it to be so in two cases, during the present session of Congress, where the decision of the questions of law were against the United States; and it is equally proper that it should be so when the decision is against the claimant. The reason also assigned for appealing to Congress, when he had the power of appealing from the decision of the circuit court to the highest tribunal of the country, certainly furnishes no ground for entertaining the claim.

As a former committee reported favorably on this claim, the committee append the papers in the case.

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

The petition of Francis Freeman, of the city of Boston, as he is administrator of the estate of William H. Freeman, deceased,

RESPECTFULLY SHOWETH:

That said William-H. Freeman, for several years prior to his death, had been a major and brevet lieutenant colonel of marines:

That, pursuant to orders, he was detached for service with the army to the Creek nation, on or about the month of May of the year 1836:

That thereupon a draft from the quartermaster of the marine corps was sent to him, drawn upon the Commonwealth Bank in Boston, for the sum of twenty-five hundred dollars, for the transportation of marines from the posts of Portsmouth, New Hampshire, Boston, and New York, to said Creek nation:

That said draft was presented to said bank by said Freeman, and the amount thereof was placed to his credit and drawn for, as occasion required, for the objects connected with such transportation, except the sum of $222 67:

That the said bank had been before duly selected as a depository of the public funds, and was continued as such till its suspension, some time in the month of May of the year 1837:

That if said Colonel Freeman had been a regularly constituted disbursing officer, it would have been his duty to keep the public moneys in his hands in said bank, being an incorporated one, until required for expenditure, pursuant to the act of Congress of the 3d of March, 1809, chap. 95, sec. 4; and it was but a prudent step so to place them, as a temporary military agent of the government.

Your petitioner showeth that said bank failed before said Colonel Freeman returned from service in Florida, during the campaign ensuing.

Nevertheless, the accounting officers of the treasury, although Colonel Freeman gave them his check on said bank for said sum o
$222.67, refused to allow the same to his credit, but charged him therewith; and also with another sum of $73.10, which had been before properly allowed to him on the books of the quartermaster of his corps, and both sums were certified in form by a treasury transcript as due from him; and a suit was thereupon instituted for the recovery thereof by the United States in the circuit court for the Massachusetts district, and judgment was rendered against him, principally on the authority of the decision of the United States vs. Prescott, in 3 Howard's Reports, that every officer receiving public money becomes a debtor to the government, and is answerable for all losses, though involuntary, of the funds.

That during a service of upwards of thirty years, this was the only balance which could colorably be pretended to be due from Colonel Freeman, and it would not have been for his interest to have contested it, considering the general expense of litigation, had it not been that he had claims against the government of an equitable nature; but which, in his own view, were also of a legal character.

He therefore presented them to the Fourth Auditor of the treasury for allowance; but that officer disallowed them, and they were filed in set-off in the above mentioned suit against him. These claims were:

1st. For $354.69, for responsibility of clothing and arms of the men under his command, while a captain in the line of the marine corps, from 17th of July, 1831, to the 30th of June, 1834, under the act of Congress of the 2d of March, 1827.

2d. For double rations, amounting to $1,669, while in command of the marines on the Boston station or post, from 30th June, 1834, to the 1st of April, 1842, as a separate post.

3d. For $1,013.93 for brevet pay and emoluments as brevet lieutenant colonel of marines, from 30th of June, 1834, to the 1st of April, 1842.

That upon the trial of said suit, and in the state of facts thereupon agreed to, as appears by a copy of the record accompanying this petition, it was established, in regard to the first claim of $354.69, that the said Freeman, as captain in the marine corps, had under his command the number of privates at the end of each month exceeding the number constituting the maximum of a company of infantry in the army, except in fourteen instances, when it exceeded the minimum of such a company, according to the general regulations of the army.

In respect of the claim of $1,669 for double rations, it was proved that the marine barracks near the navy yard, Charlestown, usually called the Boston station, had at all times been considered a separate and permanent post or station, and officers commanding it had been uniformly allowed double rations till April, 1829, when they were suspended for a short time by the order of the then Fourth Auditor; but by joint resolutions of Congress of 29th of May, 1830, and the 25th of May, 1832, they were restored, with all other emoluments and allowances, as they had been previously en-
joyed notwithstanding the original order of the President, constituting this a separate and permanent post, could not be found.

That by the act of the 11th of July, 1798, the marine corps was created, and by the first section it was declared to be in "addition to the military establishment, and the corps may be formed into as many companies or detachments as the President shall direct;" and by the fourth section it was "to be governed by the same rules as are prescribed for the military establishment of the United States, and by the rules for the regulation of the navy, &c., according to the nature of the service in which they shall be employed."

That by the fifth section of the act of 16th March, 1802, it is declared "that the commanding officers of each separate post shall receive such additional number of rations as the President of the United States shall from time to time direct, having respect to the special circumstances of each post."

That the first general order for the army relative to the subject which appeared in evidence, was that of the 6th March, 1816, which provided "that all officers, while in command of permanent posts, &c., separate from the stations of commandants of departments, &c., are allowed double rations." And in regard to the claim of $1,013 93 for brevet pay and emoluments, it rested, at the trial, on the ground that said Freeman, while a captain, had a commission of brevet lieutenant colonel of the marine corps conferred upon him, to take rank from the 17th of July, 1831; and in June, 1834, he was commissioned as a major in the aforesaid corps.

That by the fourth section of the act of 6th of July, 1812, the President was authorized to confer brevet rank on officers of the army; but it was not then supposed that this act included the officers of the marine corps; and on the 16th of April, 1814, Congress passed an act expressly authorizing the President to confer brevet rank on such officers of the marine corps as should distinguish themselves, and provided that such brevet rank should not entitle the officers to additional pay or emoluments, except when commanding separate stations or detachments.

Your petitioner further showeth, that in the lifetime of Colonel Freeman a case was stated, upon a division of opinion of the judges of the circuit court, and taken to the Supreme Court, in order to determine the validity of these claims, without regard to the organization of the corps, or to the number of men under his command.

The decision on the case thus abstractedly stated is found reported in the third volume of Howard's Reports of the Supreme Court; and by reference to the opinion there given, it appears that the court held that all the acts touching the marine corps were subordinate to, or in pari materia with, and to be construed by, the acts for the government of the army, and the regulations made pursuant to them by the President.

That the act of the 16th of April, 1818, chap. 117, having directed that officers of the army having brevet commissions should receive pay and emoluments of their brevet rank, when on duty and having a command according to their brevet rank, and at no other
time, it consequently followed, upon the case as stated, that Colonel Freeman had not commanded the number of companies or battalions prescribed by the regulations of the army, and, therefore, was not entitled to the two last set-offs, although the inclination of the opinion of the court appeared to be in favor of his right to the first named set-off.

That the cause was remanded, and the former state of facts discharged, and a new trial ordered, when, Colonel Freeman having by an accident lost his life, your petitioner, as administrator, assumed the control of the defence; and on rehearing the facts were re-stated as they in truth existed. That it then appeared that although the President was authorized by the act of Congress of the 11th of July, 1798, to direct the corps to be formed into as many companies or detachments as he should think proper, yet in fact the corps was never distributed into companies, except temporarily when serving with the army in the Creek nation, and in Florida.

That no act of Congress had expressly authorized the President to organize said corps into battalions or regiments, nor did it have that organization, except temporarily, as before mentioned; but it appeared, from the facts stated in the accompanying record of the final decision, that during the whole time, for which additional rations and brevet pay and allowances were claimed, Colonel Freeman did have under his command, at each monthly return of his separate post or station, a number of privates exceeding the number constituting a company of infantry, and ranging, from time to time, as high as 163 privates, exclusive of officers and music.

And your petitioner entertained a confident belief, that notwithstanding the opinion given by the Supreme Court, on a partial view of the facts, that as it was subsequently proved that the number of privates equal to, or which might have constituted the number of companies, according to the general regulations of the army of the years 1825 and of 1835, and of a battalion according to those of 1841, to entitle Colonel Freeman to the claims made in set off, had been during the whole period under his command; and as the usage of the corps had been, down to the year 1834, to recognize these claims, and especially as officers in the army, though not commanding a larger number of privates, had uniformly received such allowances; and inasmuch as by the act of Congress of 1816, chap. 69, sec. 9, it was directed "that the regulations in force before the reduction of the army be recognized as far as the same shall be found applicable to the service," and as the act of Congress of 1814 evidently manifested the legislative opinion that the command of a station or detachment in the marine corps was a sufficient ground or title to additional rations, without regard to the army organization, which had never been by law directed—he did well hope that the spirit of this legislation, and not the letter, would have prevailed. But, to the great disappointment of the wife and children of Colonel Freeman, as well as your petitioner; the circuit court came to a different conclusion; determining that as to the first claim of Colonel Freeman, inasmuch as he did not command an organized company, nor during the time embraced in
the other claims actually command an organized battalion, these set-offs could not be allowed, except so far as he served as lieutenant colonel of a regiment in the Florida campaign.

And although your petitioner was advised that the appellate tribunal would not be governed by such a mere verbal interpretation, but by an enlarged view of the intentions of Congress, and the spirit of its enactments, nevertheless the expense attendant on a second appeal to the Supreme Court would be exhausting the small funds left by Colonel Freeman for his family, even in the event of a judgment sanctioning the claims; and your petitioner, therefore, concluded that he should best fulfill his duty by a direct appeal to Congress for relief, as the manifest justice of the case commends it to their favorable regard. Wherefore, he prays the interposition of Congress, and such enactments as may prevent any loss to the estate he represents; and such as may secure to it its equitable and just rights.

FRANCIS FREEMAN, Administrator.

BOSTON, February, 1846.

TREASURY DEPARTMENT,

July 24, 1846.

SIR: In reply to your note of the 20th instant, in behalf of the Committee of Claims, enclosing the petition and papers of W. H. Freeman, and desiring “to know whether the amount of the judgment rendered in his favor has been paid by the department,” I have the honor to transmit copies of reports from the Fourth Auditor and the Solicitor of the treasury, by which the committee will perceive that the claim in question has not been paid.

Very respectfully, your obedient servant,

R. J. WALKER,
Secretary of the Treasury.

Hon. S. GORDON,
Of Committee of Claims, House of Reps.

P. S.—The papers of Mr. Freeman are herewith returned.

CIRCUIT COURT, MASSACHUSETTS DISTRICT—MAY TERM, 1845.

UNITED STATES vs. WILLIAM H. FREEMAN.

It is agreed that E. J. Weed was quartermaster of the marine corps, and as such, and pursuant to orders from the proper department, under acts of Congress making appropriations for the suppression of hostilities with the Creek Indians, did, on the 23d of May, 1836, advance $2,500 to said Freeman for public expenditure in his office of brevet lieutenant colonel of marines, detached in said month of May for service with the army, and a part of the
marine corps in said Creek nation. This advance was made by a treasury draft on the Commonwealth Bank, in the city of Boston, and the amount thereof was entered on the books of said bank to the personal credit of said Freeman, when presented by him. Said bank had been before selected as a depository of the public money, and continued such till May, 1837, when it suspended specie payment, and thereby ceased to be a depository bank; but the funds of the government had not been withdrawn therefrom at the time of its failure in January, 1838, because it had refused to pay the specie. The sum of $222 67 is the undrawn balance of said $2,500 deposited in said bank as aforesaid, and there remaining at its failure, to the credit of said Freeman, on the books thereof.

And said Freeman being called on for settlement of his account, sent in payment, and on account of the balance of said sum of $2,500, to the Third Auditor of the treasury, his check on said bank for said balance of $222 67 there remaining, which was refused to be received at the treasury as a discharge for that amount and to be applied to his credit, on the ground that the bank was not then—to wit, in 1839—a public depository bank.

The account of Colonel Freeman with said Weed, as quartermaster, ended with a balance of $2,426 90 against said Freeman, which was transferred to the War Department. But upon the application of the administrator of said Weed's estate, the Second Comptroller directed that estate to be credited with the full sum of $2,500 aforesaid, as received through the War Department, and the same to be charged to Colonel Freeman; making a difference of $73 10 charged against him by order of said Second Comptroller. These two items of $73 10 and $222 67, amounting to the sum of $295 77, are duly certified in form by a treasury transcript in the case, as due from Colonel Freeman, on the books of the treasury, and is the amount claimed by the government in this suit, according to said treasury transcript.

The letter of said Weed upon which the duplicate receipt of said Freeman was asked for said $2,500, is as follows:

"HEADQUARTERS MARINE CORPS, Quartermaster's Office, March 25, 1837.

Sir: I have this day received a letter from the acting quartermaster general, informing me that the Auditor required your receipt for the amount advanced to you. The sum I transferred against you was $2,426 90, the balance of the $2,500 having been credited to you at this office. Please forward me the required receipt.

"Very respectfully, your obedient servant,

"E. J. WEED, Quartermaster.

"To Lt. Col. W. H. FREEMAN,
""U. S. Marine Corps, Boston, Mass."

It is further agreed that said Freeman was duly appointed and commissioned to be a captain in the marine corps on the 17th of July, 1821; and upon that lineal rank a commission was duly con-
ferred on him as brevet lieutenant colonel of marines on the 30th of February, 1832, to take rank from the 17th of July, 1831; and that on the 30th of June, 1834, he was appointed a major in the line of the marine corps.

Said Freeman filed an account in set-off against the United States for compensation for responsibility of clothing and arms, while a captain in the line of the marine corps, from the 17th of July, 1831, to the 30th of June, 1834, amounting to $354 69, under the act of Congress of the year 1827, chap. 199, which account had been presented to and disallowed by the Fourth Auditor of the treasury, on the ground that said Freeman received pay at the same time for a grade higher than that of captain. By the annexed certificate (C) it appears that he was charged with, and accounted for, the clothing, arms, &c.

He also filed an account in set-off, amounting to $1,069, for double rations, while in command of the marines on the Boston station or navy yard, between the 30th of June, 1834, and the 1st of April, 1842, as a separate post.

And he also filed in set-off another account for brevet pay and emoluments while in command of said Boston station as brevet lieutenant colonel of said marine corps, from the 30th of June, 1834, to the 1st of April, 1842, amounting to $1,013 93. Both of these accounts had been presented to and were disallowed by the Fourth Auditor.

It is also agreed that the post called the barracks at the navy yard in Massachusetts was formerly a part of the town of Charlestown, and is included in the Boston station; that it was duly constituted, and has been at all times considered a separate post or station; and that said Freeman, during the periods stated in his accounts, was in command thereof; and that double rations and other emoluments and allowances have been heretofore paid to officers of the marine corps commanding separate posts and stations, up to the 30th of June, 1834, in the manner stated by Mr. Dayton, the Fourth Auditor, in his letter of the 27th of April, 1842, (marked B,) in the case.

That the marine corps, after it was created, was never divided into regiments, battalions, or companies, excepting only such portions thereof as served with the army in the Creek nation, and in Alabama, and in Florida, in the years 1836 and 1837, and then only in the months subsequent to May, 1836, and as appears by the certificate of the adjutant and inspector of the corps in the case, (marked A.)

It is further agreed that during the period stated in the first of said accounts filed in set-off, there was under the command of said Freeman, at the end of every month, except in seventeen instances, a number of privates exceeding the maximum number of a company in the infantry of the army; and in those instances the number exceeded the minimum of a company of infantry, according to the army regulations.

That during the periods stated in the second and third accounts filed in set-off, the number of privates under the command of said
Freeman, at said station or post, exceeded the number constituting a company of infantry, fluctuating from month to month as they arrived and were detached, and ranging as high as 163 privates in a month, without including non-commissioned officers and music; and in two months only the number fell short of the maximum, but exceeded the minimum number of a company of infantry.

The regiments of the army are not, by any act of Congress, divided into battalions, but by the usage of the service they are so divided; and one of them is commanded by the major, and the other by the lieutenant colonel of said regiment. No fixed number of companies before the year 1841 constituted a battalion, but it must have consisted of more than one company.

That during the years 1836 and 1837, said Freeman was on duty as lieutenant colonel with that portion of the marine corps detached to serve with the army, as before mentioned.

By the general regulations of the army, established in the year 1825, it is declared, under article 71, No. 1124, as follows: "Brevet officers shall receive the pay and emoluments of their brevet services when they exercise command equal to their brevet rank: for example, a brevet captain must command a company; a brevet major and a brevet lieutenant colonel a battalion."

"No. 1125. Double rations will be allowed to the commandants of departments, and of such posts and arsenals as the War Department shall authorize."

And by the general regulations established in 1841, it is declared in "No. 1255. Officers who have brevet commissions shall be entitled to receive their brevet pay and emoluments when on duty, and having a command according to their rank, as follows:

"A brevet lieutenant colonel when commanding at least four companies, or when on duty as lieutenant colonel of the regiment."

The general regulations of the army in 1825 and in 1841 are in the case.

The parties submit to the decision of the court, upon these facts:

1. Whether the defendant is chargeable with the loss of said sum of $222 67, deposited, as aforesaid, to his personal credit in the said bank.

2. Whether the defendant is chargeable with the said sum of $73 10, directed by the Second Comptroller to be placed to his debit.

3. Whether the said Freeman is entitled to the set-offs claimed by his first, second, and third accounts filed, or either of them, or any part of the same.

And it is agreed that such judgment shall be entered, with interest, on any sums awarded, as the court shall direct.

WILLIAM C. AYLWIN,  
For Defendant.

R. RANTOUL, JR.,  
Attorney for U. S.

It is further agreed that the annexed order was issued by the

Navy Department on the 30th July, 1841, and makes a part of the case.

R. RANTOUL, JR.,
Attorney for U. S.

WILLIAM C. AYLWIN,
Attorney for Defendant.

A.

HEADQUARTERS OF THE MARINE CORPS,
Adjutant and Inspector's Office, Washington, June 20, 1845.

I certify that there is no record or evidence to be found in this office that the marine corps was ever organized or divided into battalions or companies, other than is stated in my certificate of the 9th instant, as follows, viz:

"I certify that it appears from the records of this office that that portion of the marine corps on duty with the army in Alabama and Florida during the years 1836 and 1837 was organized into companies. The detachments from headquarters, Philadelphia and Norfolk, constituted five companies. The detachments from Charlestown, Massachusetts, Portsmouth, New Hampshire, and New York, constituted three companies. Owing to sickness, expirations of service, and other causes; the number of companies was, in October, 1836, reduced to six; in December, 1836, the number was reduced to five; and in September, 1837, the number was reduced to two."

I further certify that the following marine stations, to wit: the barracks at Portsmouth, New Hampshire; Charlestown, Massachusetts; Brooklyn, New York; Philadelphia, Pennsylvania; Gosport, Virginia; and Pensacola, Florida, are, and have at all times been, considered as separate posts. The headquarters of the corps and the navy yard at Washington city, D. C., while under the command of Brevet Lieutenant Colonel William H. Freeman—that is, from the 8th September, 1827, to 30th June, 1830—were not two separate posts; the two were considered as one.

P. G. HOWLE,
Adjutant and Inspector.

B.

TREASURY DEPARTMENT,
Fourth Auditor's Office, April 27, 1842.

Sir: In answer to the inquiries contained in your letter of the 25th inst., I have to state that, for many years previous to 1829, marine officers commanding separate posts in the United States, and the senior marine officers in squadrons, were allowed double rations.
How or when this practice commenced, the records remaining in this office do not enable me positively to state; but as no authority for it is found in any act of Congress passed with express reference to the marine corps, it is presumed that it must have arisen from a supposed applicability to that corps, in this respect, of laws and regulations enacted for the government of the army. In April, 1829, Mr. Kendall, then Fourth Auditor, being of opinion that the allowance was illegal, withheld it; but, by a joint resolution of Congress passed on the 29th of May, 1830, it was restored from the time at which it had been stopped, and, together with all other emoluments and allowances which the officers of the corps had received previously to the 1st April, 1829, was directed to be continued to them until the 28th of February, 1831. On the 25th of May, 1832, it was directed by another joint resolution of Congress, (the former one having expired,) that the pay, subsistence, emoluments, and allowances of the said officers should be the same as they were previously to the 1st of April, 1829, and should so continue until they should be altered by law. Under this resolution the officers commanding marines at separate stations on shore, and the senior officers in squadrons, received double rations until the passage of the act of 30th June, 1834, “for the better organization of the United States marine corps;” since which time they have not been allowed, though they have been included in the estimates and appropriations for each year.

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

A. O. DAYTON.

To Lt. Col. WM. H. FREEMAN,
U. S. Marine Corps.

GENERAL ORDER.

NAVY DEPARTMENT, July 30, 1841.

The colonel commandant, or commanding officer of the marine corps, and the heads of the staff departments, shall at all times be entitled to double rations, and double rations shall be allowed to the commanding marine officer at the navy yards, or upon the marine stations, at Portsmouth, New Hampshire, Boston, New York, Philadelphia, Washington, Norfolk, and Pensacola, and to the commanding or senior marine officer in a squadron, of which the naval commander receives pay as a commander-in-chief of a squadron.

Marine officers entitled to double rations will not forfeit such allowance by reason of absence on duty for any period less than thirty days.

By order of the President:

GEO. E. BADGER.
WAR DEPARTMENT, March 6, 1816.

Generals commanding division, officers commanding military departments, and all officers while in command of permanent posts and garrisons, separate from the stations of commandants of departments, which subject them to the additional expense of independent command, are allowed double rations. No more than one officer can be entitled to double rations at the same station.

C.

HEADQUARTERS MARINE CORPS,

This is to certify, that from the books in this office it appears Captain W. H. Freeman (late Lieutenant Colonel Freeman) was charged with the clothing, arms, and accoutrements of the guard of marines stationed at Charlestown, Massachusetts, from the 17th July, 1831, to the 30th June, 1834, and that he accounted for the same.

AUG. A. NICHOLSON,
Quartermaster, M. C.

CIRCUIT COURT, MASSACHUSETTS DISTRICT—OCTOBER TERM, 1845.

UNITED STATES vs. WILLIAM H. FREEMAN.

And now the parties appear; and this cause having been argued by counsel on either side, upon the state of facts agreed by the parties, and after mature deliberation thereon, the court is of opinion, in regard to the first point stated, that the said Freeman is chargeable with the loss of said sum of two hundred and twenty-two dollars and sixty-seven cents.

That as to the second point submitted, he is not chargeable with said sum of seventy-three dollars and ten cents, directed by the Second Comptroller of the Treasury to be placed to his debit.

And as to the first account filed and claimed in set-off by said Freeman, as stated in the third point submitted, that inasmuch as said Freeman did not, within the period therein mentioned, command an organized company, he is not entitled to the amount thereby claimed; and in regard to the second of said accounts filed in set-off, as it does not appear that he was in command, at a separate post, of an organized battalion, or four companies at least, he is not entitled to double rations, except from the date of the general order of the Navy Department of the 30th of July, 1841, granting such allowance, irrespective of the number of companies at a

separate post; and from that time till the first day of April of the year 1842, the last day mentioned in said account, said Freeman is entitled, as commander of a separate post, to double rations, amounting to the sum of one hundred and ninety-four dollars and forty-four cents.

And as to the third account filed in set-off by said Freeman, the court is of opinion that, as he did not command an organized battalion, or four companies at least, he is not entitled to the difference of pay and rations between those of a major and a lieutenant colonel of infantry, during the time mentioned in said account, except during the Creek campaign, when he acted as lieutenant colonel, to wit: from the twenty-fifth day of May, of the year 1836, to the eighth day of February, of the year 1837; and that the difference of pay and rations during this time, amounting to the sum of one hundred and thirty-six dollars and eighty cents, he, the said Freeman, is legally entitled to.

And it further appearing to the court that the said two last sums, amounting to the sum of three hundred and thirty-one dollars and twenty cents, exceed the sum due from said Freeman to the United States by the sum of one hundred and eight dollars and fifty-three cents, it is therefore considered by the court here that the United States do take nothing by their writ and declaration, but that said Freeman and his representatives go thereof without day.

I hereby certify that the foregoing is a true copy of record.

In witness whereof, I have hereto subscribed my name and affixed the seal of the said court, this twenty-seventh day of January, A. D. 1846.

JAMES B. ROBB,
Clerk of the Court.

FOURTH AUDITOR'S OFFICE, July 23, 1846.

The Secretary of the Treasury is respectfully informed that the sum in question, which the court appears to have been of opinion was due from the United States to Colonel Freeman, has not been paid.

A. O. DAYTON.


SIR: I have received your letter of this date, referring to this office a communication from the Committee of Claims enclosing the petition of the representative of the late Colonel W. H. Freeman, of the marine corps.

In reply to the inquiry of the committee, I have the honor to state that it appears, from the files of this office, that suit was
ordered against Colonel W. H. Freeman, on the 27th April, 1842, for the recovery of the sum of $295 77; and that said suit was tried at October term, 1845, of the circuit court for the district of Massachusetts, when the court decided that the sum of $108 53 was due from the United States to Colonel Freeman; and they therefore ordered that "the United States do take nothing by their writ and declaration, but that said Freeman and his representatives go thereof without day."

If the above sum of $108 53, considered by the court to be due Colonel Freeman, or any part of it, has been paid by the department, this office has no information of it.

I return the papers herewith, and have the honor to be, very respectfully, your obedient servant,

S. BARTON,
Solicitor of the Treasury.

To Hon. R. J. Walker,
Secretary of the Treasury.