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Reimbursing the Western Miami Indians.

52D CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 2544.

REIMBURSING THE WESTERN MIAMI INDIANS.

FEBRUARY 21, 1893.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CLOVER, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. R. 5371.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 5371) to reimburse the Western Miami Indians, submit the following report:

A treaty was made in November, 1840, with the Miami tribe of Indians, which then resided in the State of Indiana, by which it was stipulated that they would remove west of the Mississippi River to the then Territory of Kansas, and the United States agreed to cede to them a tract of land in Kansas supposed to contain 500,000 acres in exchange for their lands in Indiana.

In June, 1854, in this city, another treaty was made with the Miami tribe of Indians, which had emigrated to Kansas Territory, under the treaty referred to, by which it was stipulated, among other things, that they would reconvey to the United States all the land ceded to them in Kansas by the treaty of 1840, except 70,000 acres, which were to be retained by them for a permanent home and for the *exclusive use and benefit* of those who resided on the lands. The United States expressly guaranteed this in the treaty. The money to be paid for the land so reconveyed to the United States was stipulated to be paid in installments to the Indians on the ceded lands in Kansas, who were known as the tribe proper. A list was carefully made of the Indians entitled to share in the lands so guaranteed to them by the treaty of 1854 for their permanent homes in Kansas, and in the money provided by said treaty.

Under the provisions of an act of Congress passed June 12, 1858, the Secretary of the Interior, in October of that year, took from the funds set apart for the Western Miamis by the treaty of 1854, and without their consent, and in violation of the terms of the treaty, the sum of $18,370.89, and paid it to 68 persons (to which number 5 persons were afterward added) who did not emigrate west with the tribe or reside there, who did not even belong to the Western Miami tribe, and who had no rights under the treaty, as decided by the Court of Claims in their findings of fact hereinafter referred to. Under said act of 1858 the Secretary also alloted to the same 68 persons (to whom 5 were afterward added) 200 acres of land each, amounting in the aggregate to 14,533.38 acres. Said selections and allotments were approved by the Secretary of the Interior in October, 1859, and the lands so alloted carried, upon the approval of the Secretary, a fee-simple title.

The Miami Indians denied the right of these persons to share in lands and funds, which they claimed belonged exclusively to the tribe under treaty stipulations, and, as soon as they could, they appealed to Congress for relief. Their claim for the money and the value of the lands so taken from them was referred to the Court of Claims, and that court after mature deliberation reported that, under the act of Congress referred to, the money of the Western Miami tribe was taken from the funds set apart for them, without their consent, and paid to persons not entitled to it, and that 14,533.38 acres of the lands of the Miamis were allotted to said persons not entitled to them, without consultation with the tribe or the consent of the chiefs; both of which acts were, of course, in violation of the treaty of 1854.

The court found as a fact that the reasonable value of the lands so taken, at the time they were taken, was $3 per acre (Mis. Doc. No. 83, second session, Fifty-first Congress). Congress concurred with the Court of Claims and by law approved March 3, 1891, directed that the sum of $18,370.89 be refunded to the Western Miami Indians, "which amount (the act says), belonging to said Indians and in possession of the United States, was taken from their tribal funds, against their protest and in violation of the treaty of 1854, and paid to other persons not entitled to it." The same act also directed that the sum of $43,600.14, the value of their tribal lands so taken from them, be paid to them. The act recites that when taken they were "occupied by said Indians and were guaranteed to them as a part of their permanent home by said treaty (of 1854), and were taken and allotted to other persons not entitled to said lands and against the protest of the said Indians." (U. S. Stat. L., Vol. 26, p. 1000.)

The Court of Claims and Congress have thus concurred that both the money and lands were taken from the Indians without their consent and in violation of treaty stipulations. Congress has repaired the wrong and made good the loss as of the date when the money and lands were so taken. But it appears clear to your committee that this does not reimburse the Indians for the losses they have sustained by the wrongful act of the Government, or give them what they are clearly entitled to under a promise and guaranty pledged by treaty. The Supreme Court has repeatedly held that treaties with Indian tribes were equally as sacred and as binding upon the Government as those with foreign nations. That court, referring to an Indian treaty (19 Howard, 366), said that the treaty after it was "executed and ratified by the proper authorities of the Government, became the supreme law of the land, and the courts can no more go behind it for the purpose of annulling its effect and operation, than they can behind an act of Congress." Other decisions are to the same effect as to the force and authority of a treaty with Indian tribes.

The United States was acting in the two-fold capacity of guardian and trustee to these Indians, and was bound by all the obligations imposed by law and morals to discharge the trust it assumed fairly and justly to them. These Indians had been on friendly terms with the United States for nearly a century, and had given no trouble to the Government. On the contrary, they had manifested a disposition at all times to yield to the wishes of the United States in the management of their tribal affairs. They gave up their lands in Indiana, dear to them as the home of their ancestors for generations, and emigrated West, because the Government desired it. By the treaty of 1854 they relinquished to the United States four-fifths of their lands, and retained

a comparatively small tract for their reservation, which by a solemn treaty was *guaranteed to them as a permanent home.* Out of this reservation was carved a large body of their best land, then worth $3 per acre, and now worth $15 to $20 per acre, without the consent of the tribe, and clearly in violation of the treaty, and given to other persons not members of the tribe; and the United States, also holding in trust their money, diverted over $18,000 without their consent, and gave it to other persons not entitled to it. Any guardian or trustee so acting would be clearly liable for both principal and lawful interest, and the United States should not seek to escape a like responsibility and liability.

An Indian tribe can not be charged with laches, as it can not employ counsel or appeal to the Government for any relief, except by the consent of the Indian Office. It was therefore the duty of that Office, as their guardian, charged with the care of the Indians and their rights, to have presented the facts to Congress for relief, especially after being advised of the law by the Attorney-General in 1867, followed by the decision of the Secretary in 1873. But the Indian Office, on the contrary, as appears by the Report of the Commissioner of Indian Affairs to Congress (Ex. Doc. No. 23, Forty-ninth Congress, first session), denied the right of these Indians to recover the money which the Court of Claims and Congress have since determined they were entitled to under treaty stipulations. No principle analogous to the statute of limitations could apply to these Indians, for they were in the position of minors under the care of a guardian. Their appeal to their guardian was denied, and they were helpless until their prayer reached the court and Congress. They have manifested diligence in their demand for a redress of their wrongs, and the wrong was so flagrant, and the amount they ask is comparatively so small, that Congress should not hesitate to fully reimburse them for the losses sustained at the hands of their guardian and trustee.

The general rule that the Government, being ready at all times to pay its obligations, should not be liable for interest, is a correct one, but there are many exceptions as the history of legislation will show. This case is clearly an exception, for the Government was acting in a fiduciary capacity and violated its trust, as it has admitted, by diverting from the *cestui que trust* the property specifically named in the treaty. The liability of the Government comes clearly within the rule laid down by Parsons (Par. Contr. 2, 380), "where it is that money ought now to be paid, and ought to have been paid long since, the law, in general, implies conclusively that for the delay in the payment of the money, the debtor *promised* to pay *legal* interest." It is the universal rule between man and man, which the courts always enforce, and the Government is bound by a like liability and responsibility.

In the case of Erskine *vs.* Van Arsdale (15 Wallace, p. 75), Chief-Justice Chase said that "where an illegal tax has been collected, the citizen who has paid it, and has been obliged to bring suit against the collector is, we think, entitled to interest in the event of recovery, from the time of the illegal exaction." This was a suit against the Government. A similar case was that of Cochran *et al. vs.* Schell, collector, etc. (17 Otto, p. 625).

The cases are numerous where Congress has recognized the duty and liability of the Government to pay interest, and has made provision by law for its payment. The counsel for the United States at Geneva claimed interest upon the amounts awarded against Great Britain, and the counsel for that nation admitted that there were cases in which in-

terest should be allowed, and the following language presents the common ground of agreement between opposing counsel:

It is ordinarily to be presumed that the person who has wrongfully taken possession of the property of another has enjoyed the fruits of it; and if, instead of this, he has destroyed it or kept it unproductive, it is still just to hold him responsible for interest on its value, because his own acts, after the time when he assumed control over it, are the causes why it has remained unfruitful. In all these cases it is the actual or virtual possession of the money or property belonging to another which is the foundation of the liability of interest. The person liable is either *lucratus* by the detention of what is not his own or is justly accountable as if he were so.

The proposition embodied in this statement as to the responsibility for interest embraces completely the case of the Miami Indians.

In an appendix accompanying this report will be found a part of an elaborate report of Hon. I. C. Parker (now a Federal judge), in the first session of the Forty-third Congress (Report No. 391), in the case of the Choctaw Nation of Indians, in which the subject of interest is fully and exhaustively discussed, and numerous precedents are cited of the passage of laws by Congress for the payment of interest to its own citizens, to several States of the Union, to foreign nations, and to Indian tribes. Not one of the cases cited presented stronger or more meritorious grounds for the allowance of interest than the cla m of the Miami Indians.

Wherefore your committee report back the bill and recommend its passage in the sum of $55,918.55.

APPENDIX.

Part of Hon. I. C. Parker's report on the subject of interest.

THE OBLIGATION TO PAY INTEREST ON THE AMOUNT AWARDED THE CHOCTAW NATION.

Your committee have given this question a most careful examination, and are obliged to admit and declare that the United States can not, in equity and justice, nor without national dishonor, refuse to pay interest upon the moneys so long withheld from the Choctaw Nation. Some of the reasons which force us to this conclusion are as follows:

1. The United States acquired the lands of the Choctaw Nation on account of which the said award was made on the 27th day of September, 1830, and it has held them for the benefit of its citizens ever since.

2. The United States had in its Treasury, many years prior to the 1st day of January, 1859, the proceeds resulting from the sale of the said lands, and have enjoyed the use of such moneys from that time until now.

2. The award in favor of the Choctaw Nation was an award under a treaty, and made by a tribunal whose adjudication was final and conclusive. (Comegys *vs.* Vasse, 1 Peters, 193.)

4. The obligations of the United States under its treaties with Indian nations have been declared to be equally sacred with those made by treaties with foreign nations. (Worcester *vs.* The State of Georgia, 6 Peters, 582.) And such treaties, Mr. Justice Miller declares, are to be construed liberally. (The Kansas Indians, 5 Wall., 737–760.)

5. The engagements and obligations of a treaty are to be interpreted in accordance with the principles of the public law, and not in accordance with any municipal code or executive regulation. No statement of this proposition can equal the clearness or force with which Mr. Webster declares it in his opinion on the Florida claims, attached to the report in the case of Letitia Humphreys. (Senate Report No. 93, first session Thirty-sixth Congress, page 16.) Speaking of the obligation of a treaty, he said:

"A treaty is the supreme law of the land. It can neither be limited nor restrained, nor modified, nor altered. It stands on the ground of national contract, and is declared by the Constitution to be the supreme law of the land, and this

gives it a character higher than any act of ordinary legislation. It enjoys an immunity from the operation and effect of all such legislation.

"A second general proposition, equally certain and well established, is that the terms and the language used in a treaty are always to be interpreted according to the law of nations, and not according to any municipal code. This rule is of universal application. When two nations speak to each other they use the language of nations. Their intercourse is regulated, and their mutual agreements and obligations are to be interpreted by that code only, which we usually denominate the public law of the world. This public law is not one thing at Rome, another at London, and a third at Washington. It is the same in all civilized states; everywhere speaking with the same voice and the same authority."

Again, in the same opinion, Mr. Webster used the following language:

"We are construing a treaty, a solemn compact between nations. This compact between nations, this treaty, is to be construed and interpreted throughout its whole length and breadth, in its general provisions, and in all its details, in every phrase, sentence, word, and syllable in it, by the settled rules of the law of nations. No municipal code can touch it, no local municipal law affect it, no practice of an administrative department come near it. Over all its terms, over all its doubts, over all its ambiguities, if it have any, the law of nations 'sits arbitress.'"

6. By the principles of the public law, interest is always allowed as indemnity for the delay of payment of an ascertained and fixed demand. There is no conflict of authority upon this question among the writers on public law.

This rule is laid down by Rutherford in these terms:

"In estimating the damages which anyone has sustained, when such things as he has a perfect right to are unjustly taken from him, or withholden, or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of the thing is likewise the owner of the fruits or profits. So that it is properly a damage to be deprived of them as it is to be deprived of the thing itself." (Rutherford's Institutes, Book I, chap. 17, sec. 5.)

In laying down the rule for the satisfaction of injuries in the case of reprisals, in making which the strictest caution is enjoined not to transcend the clearest rules of justice, Mr. Wheaton, in his work on the law of nations, says:

"If a nation has taken possession of that which belongs to another, if it refuses to pay a debt, to repair an injury or to give adequate satisfaction for it, the latter may seize something of the former and apply it to his advantage, till it obtains payment of what is due, together with interest and damages." (Wheaton on International Law, p. 341.)

A great writer, Domat, thus states the law of reason and justice on this point:

"It is a natural consequence of the general engagement to do wrong to no one that they who cause any damages by failing in the performance of that engagement are obliged to repair the damage which they have done. Of what nature soever the damage may be, and from what cause soever it may proceed, he who is answerable for it ought to repair it by an *amende* proportionable either to his fault or to his offense or other cause on his part, and to the loss which has happened thereby." (Domat, Part I, Book III, Tit. V., 1900, 1903.)

"Interest" is, in reality, in justice, in reason, and in law, too, a part of the debt due. It includes, in Pothier's words, the loss which one has suffered, and the gain which he has failed to make. The Roman law defines it as "quantum mea interfuit; id est, quantum mihi abest, quantumque lucraci portui." The two elements of it were termed "lucrum cessans et damnum emergens." The payment of both is necessary to a complete indemnity.

Interest, Domat says, is the reparation or satisfaction which he who owes a sum of money is bound to make to his creditor for the damage which he does him by not paying him the money he owes him.

It is because of the universal recognition of the justice of paying, for the retention of moneys indisputably due and payable immediately, a rate of interest considered to be a fair equivalent for the loss of its use, that judgments for money everywhere bear interest. The creditor is deprived of his profit, and the debtor has it. What greater wrong could the law permit than that the debtor should be at liberty indefinitely to delay payment, and, during the delay, have the use of the creditor's moneys for nothing? They are none the less the creditor's moneys because the debtor wrongfully withhold's them. He holds them in reality and essentially in trust; and a trustee is always bound to pay interest upon money so held.

In closing these citations from the public law, the language of Chancellor Kent seems eminently appropriate. He says "In cases where the principal jurists agree, the presumption will be very great in favor of the solidity of their maxims, and no civilized nation that does not arrogantly set all ordinary law and justice at defiance will venture to disregard the uniform sense of established writers on international law."

7th. The practice of the United States in discharging obligations resulting from treaty stipulations has always been in accord with these well-established principles. It has exacted the payment of interest from other nations in all cases where the obligation to make payment resulted from treaty stipulations, and it has acknowledged that obligation in all cases where a liability was imposed upon it.

The most important and leading cases which have occurred are those which arose between this country and Great Britain; the first under the treaty of 1794, and the other under the first article of the treaty of Ghent. In the latter case the United States, under the first article of the treaty, claimed compensation for slaves and other property taken away from the country by the British forces at the close of the war in 1815. A difference arose between the two Governments, which was submitted to the arbitrament of the Emperor of Russia, who decided that "the United States of America are entitled to a just indemnification from Great Britain for all private property carried away by the British forces." A joint commission was appointed for the purpose of hearing the claims of individuals under this decision. At an early stage of the proceedings the question arose as to whether interest was a part of that "just indemnification" which the decision of the Emperor of Russia contemplated. The British commissioner denied the obligation to pay interest. The American commissioner, Langdon Cheves, insisted upon its allowance, and in the course of his argument upon this question said:

"Indemnification means a reimbursement of a loss sustained. If the property taken away on the 17th of February, 1815, were returned now uninjured it would not reimburse the loss sustained by the taking away and consequent detention; it would not be an indemnification. The claimant would still be unindemnified for the loss of the use of his property for ten years, which, considered as money, is nearly equivalent to the original value of the principal thing."

Again, he says:

"If interest be an incident usually attendant on the delay of payment of debts, damages are equally an incident attendant on the withholding an article of property."

In consequence of this disagreement the commission was broken up, but the claims were subsequently compromised by the payment of $1,204,960, instead of $1,250,000, as claimed by Mr. Cheves; and of the sum paid by Great Britain, $418,000 was expressly for interest.

An earlier case, in which this principle of interest was involved, arose under the treaty of 1794, between the United States and Great Britain, in which there was a stipulation on the part of the British Government in relation to certain losses and damages sustained by American merchants and other citizens, by reason of the illegal or irregular capture of their vessels, or other property, by British cruisers; and the seventh article provided in substance that "full and complete compensation for the same will be made by the British Government to the said claimants."

A joint commission was instituted under this treaty, which sat in London, and by which these claims were adjudicated. Mr. Pinckney and Mr. Gore were commissioners on the part of the United States, and Dr. Nicholl and Dr. Swabey on the part of Great Britain; and it is believed that in all instances this commission allowed interest as a part of the damage. In the case of "The Betsey," one of the cases which came before the board, Dr. Nicholl stated the rule of compensation as follows:

"To reimburse the claimants the original cost of their property, and all the expenses they have actually incurred, together with interest on the whole amount, would, I think, be a just and adequate compensation. This, I believe, is the measure of compensation usually made by all belligerent nations, and accepted by all neutral nations, for losses, costs, and damages occasioned by illegal captures." (Vide Wheaton's Life of Pinckney, page 198; also 265, note, and page 371.)

By a reference to the American State Papers, Foreign Relations, Vol. 2, pages 119, 120, it will be seen by a report of the Secretary of State of the 16th February, 1798, laid before the House of Representatives, that interest was awarded and paid on such of these claims as had been submitted to the award of Sir William Scott and Sir John Nicholl, as it was in all cases by the Board of Commissioners. In consequence of some difference of opinion between the members of this Commission, their proceedings were suspended until 1802, when a convention was concluded between the two Governments, and the Commission reassembled, and then a question arose as to the allowance of interest on the claims during the suspension. This the American Commissioners claimed, and though it was at first resisted by the British Commissioners, yet it was finally yielded, and interest was allowed and paid. (See Mr. King's three letters to the Secretary of State, of 25th March, 1803, 23d April, 1803, and 30th April, 1803, American State Papers, Foreign Relations, Vol. 2, pages 387 and 388.)

Another case in which this principle was involved arose under the treaty of the 27th October, 1795, with Spain; by the twenty-first article of which, "in order to terminate all differences on account of the losses sustained by citizens of the United States in consequence of their vessels and cargoes having been taken by the subjects

of his Catholic Majesty during the late war between Spain and France, it is agreed that all such cases shall be referred to the final decision of commissioners, to be appointed in the following manner," etc. The commissioners were to be chosen, one by the United States, one by Spain, and the two were to choose a third, and the award of the commissioners, or any two of them, was to be final, and the Spanish Government to pay the amount in specie.

This Commission awarded interest as part of the damages. (See American State Papers, Vol. 2, Foreign Relations, page 283.) So in the case of claims of American citizens against Brazil, settled by Mr. Tudor, United States minister, interest was claimed and allowed. (See Ex. Doc., first session Twenty-fifth Congress, House Reps., Doc. 32, page 249.)

Again, in the convention with Mexico of the 11th April, 1839, by which provision was made by Mexico for the payment of claims of American citizens for injuries to persons and property by the Mexican authorities, a mixed commission was provided for, and this commission allowed interest in all cases. (House Ex. Doc. 291, Twenty-seventh Congress, second session.)

So also under the treaty with Mexico of February 2, 1848, the Board of Commissioners for the adjustment of claims under that treaty allowed interest in all cases from the origin of the claim until the day when the Commission expired.

So also under the convention with Colombia, concluded February 10, 1864, the Commission for the adjudication of claims under that treaty allowed interest in all cases as a part of the indemnity.

So under the recent convention with Venezuela, the United States exacted interest upon the awards of the Commission from the date of the adjournment of the Commission until the payment of the awards.

The Mixed American and Mexican Commission now in session here allows interest in all cases from the origin of the claim and the awards are payable with interest.

Other cases might be shown in which the United States or their authorized diplomatic agents have claimed interest in such cases, or where it has been paid in whole or in part. (See Mr. Russell's letter to the Count de Engstein of October 5, 1818, American State Papers, Vol. 4, p. 639, and proceedings under the convention with the Two Sicilies of October, 1832, Elliot's Dip. Code, p. 625.)

It can hardly be necessary to pursue these precedents further. They sufficiently and clearly show the practice of this Government with foreign nations, or with claimant under treaties.

8th. The practice of the United States in its dealings with the various Indian tribes or nations has been in harmony with these principles.

In all cases where money belonging to Indian nations has been retained by the United States, it has been so invested as to produce interest for the benefit of the nation to which it belongs; and such interest is annually paid to the nation who may be entitled to receive it.

9th. The United States, in adjusting the claim of the Cherokee Nation for a balance due as purchase money upon lands ceded by the nation to the United States in 1835, allowed interest upon the balance due them, being $189,422.76, until the same was paid.

The question was submitted to the Senate of the United States, as to whether interest should be allowed them. The Senate Committee on Indian Affairs, in their report upon this subject, used the following language:

"By the treaty of August, 1846, it was referred to the Senate to decide, and that decision to be final, whether the Cherokees shall receive interest on the sums found due them from a misapplication of their funds to purposes with which they were not chargeable, and on account of which improper charges the money has been withheld from them. It has been the uniform practice of this Government to pay and demand interest in all transactions with foreign governments, which the Indian tribes have always been said to be, both by the Supreme Court and all other branches of our Government, in all matters of treaty or contract. The Indians, relying upon the prompt payment of their dues, have, in many cases, contracted debts upon the faith of it, upon which they have paid, or are liable to pay, interest. If, therefore, they do not now receive interest on their money so long withheld from them, they will in effect have received nothing." (Senate Report No. 176, first session Thirty-first Congress, p. 78.)

10th. That upon an examination of the precedents where Congress has passed acts for the relief of private citizens, it will be found that, in almost every case, Congress has directed the payment of interest, where the United States had withheld a sum of money which had been decided by competent authority to be due, or where the amount due was ascertained, fixed, and certain.

The following precedents illustrate and enforce the correctness of this assertion, and sustain this proposition:

1. An act approved January 14, 1793, provided that lawful interest from the 16th of May, 1776, shall be allowed on the sum of $200 ordered to be paid to Return J.

Meigs, and the legal representatives of Christopher Greene, deceased, by a resolve of the United States, in Congress assembled, on the 28th of September, 1785. (6 Stats. at Large, p. 11.)

2. An act approved May 31, 1794, providing for a settlement with Arthur St. Clair, for expenses while going from New York to Fort Pitt and till his return, and for services in the business of Indian treaties, and "allowed interest on the balance found to be due him." (6 Stats. at Large, p. 16.)

3. An act approved February 27, 1795, authorized the officers of the Treasury to issue and deliver to Angus McLean, or his duly authorized attorney, certificates for the amount of $254.43, bearing interest at 6 per cent from the 1st of July, 1783, being for his services in the Corps of Sappers and Miners during the late war. (6 Stats. at Large, p. 20.)

4. An act approved January 23, 1798, directing the Secretary of the Treasury to pay General Kosciusko an interest at the rate of 6 per cent per annum on the sum of $12,280.54, the amount of a certificate due to him from the United States from the 1st of January, 1793, to the 31st of December, 1797. (6 Stats. at Large, p. 32.)

5. An act approved May 3, 1802, provided that there be paid Fulwar Skipwith the sum of $4,550, advanced by him for the use of the United States, with interest at the rate of 6 per cent per annum from the 1st of November, 1795, at which time the advance was made. (6 Stats. at Large, p. 48.)

6. An act for the relief of John Coles, approved January 14, 1804, authorized the proper accounting officers of the Treasury to liquidate the claim of John Coles, owner of the ship *Grand Turk*, heretofore employed in the service of the United States, for the detention of said ship at Gibraltar from the 10th of May to the 4th of July, 1801, inclusive, and that he be allowed demurrage at the rate stipulated in the charter-party, together with the interest thereon. (6 Stat. at L., p. 50.)

7. An act approved March 3, 1807, provided for a settlement of the account of Oliver Pollock, formerly commercial agent for the United States at New Orleans, allowing him certain sums and commissions, with interest until paid. (6 Stat. at L., p. 65.)

8. An act for the relief of Stephen Sayre, approved March 3, 1807, provided that the accounting officers of the Treasury be authorized to settle the accounts of Stephen Sayre, as secretary of legation at the court of Berlin in the year 1777, with interest on the whole sum until paid. (6 Stat. at L., p. 65.)

9. An act approved April 25, 1810, directed the accounting officers of the Treasury to settle the account of Moses Young, as secretary of legation to Holland in 1780, and providing that after the deduction of certain moneys paid him, the balance, with interest thereon, should be paid. (6 Stat. at L., p. 89.)

10. An act approved May 1, 1810, for the relief of P. C. L'Enfant, directed the Secretary of the Treasury to pay him the sum of $666, with legal interest thereon from March 1, 1792, as a compensation for his services in laying out the plan of the city of Washington. (6 Stat. at L., p. 92.)

11. An act approved January 10, 1812, provided that there be paid to John Burnham the sum of $126.72, and the interest on the same since the 30th of May, 1796, which, in addition to the sum allowed him by the act of that date, is to be considered a reimbursement of the money advanced by him for his ransom from captivity in Algiers. (6 Stat. at L., p. 101.)

12. An act approved July 1, 1812, for the relief of Anna Young, required the War Department to settle the account of Col. John Durkee, deceased, and to allow said Anna Young, his sole heiress and representative, said seven years' half pay, and interest thereon. (6 Stat. at L., p. 110.)

13. An act approved February 25, 1813, provided that there be paid to John Dixon the sum of $329.84, with 6 per cent per annum interest thereon from the 1st of January, 1785, "being the amount of final-settlement certificate No. 596, issued by Andrew Dunscomb, late commissioner of accounts for the State of Virginia, on the 23d of December, 1786, to Lucy Dixon, who transferred the same to John Dixon. (6 Stat. at L., p. 117.)

14. An act approved February 25, 1813, required the accounting officers of the Treasury to settle the account of John Murray, representative of Dr. Henry Murray, and that he be allowed the amount of three loan certificates for $1,000, with interest from the 29th of March, 1782, issued in the name of said Murray, signed Francis Hopkinson, treasurer of loans. (6 Stat. at L., p. 117.)

15. An act approved March 3, 1813, directed the accounting officers of the Treasury to settle the accounts of Samuel Lapsley, deceased, and that they be allowed the amount of two final-settlement certificates, No. 78446, for one thousand dollars, and No. 78447, for one thousand three hundred dollars, and interest from the 22d day of March, 1783, issued in the name of Samuel Lapsley, by the commissioner of Army accounts for the United States on the 1st day of July, 1784. (6 Stat. at L., p. 119.)

16. An act approved April 13, 1814, directed the officers of the Treasury to settle the account of Joseph Brevard, and that he be allowed the amount of a final-settle-

ment certificate for $183.23 dated February 1, 1785, and bearing interest from the 1st of January, 1783, issued to said Brevard by John Pierce, commissioner for settling Army accounts. (6 Stat. at L., p. 134.)

17. An act approved April 18, 1814, directed the receiver of public moneys at Cincinnati to pay the full amount of moneys, with interest, paid by Dennis Clark, in discharge of the purchase money for a certain fractional section of land purchased by said Clark. (6 Stat. at L., 141.)

18. An act for the relief of William Arnold, approved February 2, 1815, allowed interest on the sum of $600 due him from January 1, 1873. (6 Stat. at L., 146.)

19. An act approved April 26, 1816, directed the accounting officers of the Treasury to pay to Joseph Wheaton the sum of eight hundred and thirty-six dollars and forty-two cents, on account of interest due him from the United States upon sixteen hundred dollars and eighty-four cents, from April 1, 1807, to December 21, 1815, pursuant to the award of George Youngs and Elias B. Caldwell, in a controversy between the United States and the said Joseph Wheaton. (6 Stat. at L., 166.)

20. An act approved April 26, 1816, authorized the liquidation and settlement of the claim of the heirs of Alexander Roxburgh, arising on a final-settlement certificate issued on the 18th of August, 1784, for $480.87, by John Pierce, commissioner for settling army accounts, bearing interest from the 1st of January, 1782. (6 Stat. at L., 167.)

21. An act approved April 14, 1818, authorized the accounting officers of the Treasury Department "to review the settlement of the account of John Thompson," made under the authority of an act approved the 11th of May, 1812, and "to allow the said John Thompson interest at six per cent per annum from the 4th of March, 1787, to the 20th of May, 1812, on the sum which was found due to him, and paid under the act aforesaid." (6 Stat. at L., 208.)

22. An act approved May 11, 1820, directed the proper officers of the Treasury to pay to Samuel B. Beall the amount of two final-settlement certificates issued to him on the 1st of February, 1785, for his services as a lieutenant in the Army of the United States during the Revolutionary war, together with interest on the said certificates, at the rate of six per cent per annum, from the time they bore interest, respectively, which said certificates were lost by the said Beall, and remain yet outstanding and unpaid. (6 Laws of U. S., 510; 6 Stat. at L., 249.)

23. An act approved May 15, 1820, required that there be paid to Thomas Leiper the specie value of four loan-office certificates, issued to him by the commissioner of loans for the State of Pennsylvania, on the 27th of February, 1779, for $1,000 each; and also the specie value of two loan certificates issued to him by the said commissioner on the 2d day of March, 1779, for $1,000 each, with interest at 6 per cent annually. (6 Stat. at L., 252.)

24. An act approved May 7, 1822, provided that there be paid to the legal representatives of John Guthry, deceased, the sum of $123.30, being the amount of a final-settlement certificate, with interest at the rate of 6 per cent per annum, from the 1st day of January, 1788. (6 Stat. at L., 269.)

25. An act for the relief of the legal representatives of James McClung, approved March 3, 1823, allowed interest on the amount due at the rate of 6 per cent per annum from January 1, 1788. (6 Stat. at L., 284.)

26. An act approved March 3, 1823, for the relief of Daniel Seward, allowed interest to him for money paid to the United States for land to which the title failed, at the rate of six per cent per annum from January 29, 1814. (6 Stat. at L., 286.)

27. An act approved May 5, 1824, directed the Secretary of the Treasury to pay to Amasa Stetson the sum of $6,215, "being for interest on moneys advanced by him for the use of the United States, and on warrants issued in his favor, in the years 1814 and 1815, for his services in the Ordnance and Quartermaster's Department, for superintending the making of army clothing and for issuing the public supplies." (6 Stat. at L., 298.)

28. An act approved March 3, 1824, directed the proper accounting officers of the Treasury to settle and adjust the claim of Stephen Arnold, David and George Jenks, for the manufacture of three thousand nine hundred and twenty-five muskets, with interest thereon from the 26th day of October, 1813. (6 Stat. at L., 331.)

29. An act approved May 20, 1826, directed the proper accounting officers of the Treasury to settle and adjust the claim of John Stemman and others for the manufacture of four thousand one hundred stand of arms, and to allow interest on the amount due from October 26, 1813. (6 Stat. at L., 345.)

30. An act approved May 20, 1826, for the relief of Ann D. Taylor, directed the payment to her of the sum of three hundred and fifty-four dollars and fifteen cents, with interest thereon at the rate of six per cent per annum from December 30, 1786, until paid. (6 Stat. at L., 351.)

31. An act approved March 3, 1827, provided that the proper accounting officers of the Treasury were authorized to pay to B. J. V. Valkenburg the sum of $597.24, "being

the amount of fourteen indents of interest, with interest thereon from the 1st of January, 1791, to the 31st of December, 1826." (6 Stat. at L., 365.)

In this case the United States paid interest on interest.

32. An act approved May 19, 1828, provided that there be paid to the legal representatives of Patience Gordon the specie value of a certificate issued in the name of Patience Gordon by the commissioner of loans for the State of Pennsylvania, on the 7th of April, 1778, with interest at the rate of 6 per cent per annum from the 1st day of January, 1788. (7 Stat. at L., p. 378.)

33. An act approved May 29, 1830, required the Treasury Department "to settle the accounts of Benjamin Wells as deputy commissary of issues at the magazine at Monster Mills, in Pennsylvania, under John Irvin, deputy commissary-general of the Army of the United States, in said State, in the Revolutionary war;" and that "they credit him with the sum of $574.04, as payable February 9, 1779, and $326.67, payable July 20, 1780, in the same manner, and with such interest, as if these sums, with their interest from the times respectively as aforesaid, had been subscribed to the loan of the United States." (6 Stats. at Large, 447.)

34. An act approved May 19, 1832, for the relief of Richard G. Morris, provided for the payment to him of two certificates issued to him by Timothy Pickering, quartermaster-general, with interest thereon from the 1st of September, 1781. (6 Stats. at Large, 486.)

35. An act approved July 4, 1832, for the relief of Aaron Snow, a Revolutionary soldier, provided for the payment to him of two certificates issued by John Pierce, late commissioner of army accounts, and dated in 1784, with interest thereon. (6 Stats. at Large, 503.)

36. An act approved July 4, 1832, provided for the payment to W. P. Gibbs of a final-settlement certificate dated January 30, 1784, with interest at six per cent from the 1st of January, 1783, up to the passage of the act. This act went behind the final certificate and provided for the payment of interest anterior to its date. (6 Stats. at Large, 504.)

37. An act approved July 14, 1832, directed the payment to the heirs of Ebenezer L. Warren of certain sums of money illegally demanded and received from the United States from the said Warren as one of the sureties of Daniel Evans, formerly collector of direct taxes, with interest thereon at the rate of six per cent per annum from September 9, 1820. (6 Stats. at Large, 373.)

38. An act for the relief of Hartwell Vick, approved July 14, 1832, directed the accounting officer of the Treasury to refund to the said Vick the money paid by him to the United States for a certain tract of land which was found not to be property of the United States, with interest thereon at the rate of six per centum per annum, from the 23d day of May, 1818. (6 Stats. at Large, 523.)

39. An act approved June 18, 1834, for the relief of Martha Bailey and others, directed the Secretary of the Treasury to pay to the parties therein named the sum of four thousand eight hundred and thirty-seven dollars and sixty-one cents, being the amount of interest upon the sum of two hundred thousand dollars, part of a balance due from the United States to Elbert Anderson on the 26th day of October, 1814; also the further sum of nine thousand five hundred and ninety-five dollars and thirty-six cents, being the amount of interest accruing from the deferred payment of warrants issued for balances due from the United States to said Anderson from the date of such warrants until the payment thereof; also the further sum of two thousand and eighteen dollars and fifty cents admitted to be due from the United States to the said Anderson by a decision of the Second Comptroller, with interest on the sum last mentioned from the period of such decision until paid. (6 Stats. at Large, 562.)

40. An act approved June 10, 1834, directed the Secretary of the Treasury to pay balance of damages recovered against William C. H. Waddell, United States marshal for the southern district of New York, for the illegal seizure of a certain importation of brandy, on behalf of the United States, with legal interest on the amount of said judgment from the time the same was paid by said Waddell. (6 Stats. at Large, 594.)

41. An act approved February 17, 1836, directed the payment of the sum therein named to Marinus W. Gilbert, being the interest on money advanced by him to pay off troops in the service of the United States, and not repaid when demanded. (6 Stats. at Large, 622.)

42. An act approved February 17, 1836, for the relief of the executor of Charles Wilkins, directed the Secretary of the Treasury to settle the claim of the said executor, for interest on a liquidated demand in favor of Jonathan Taylor, James Morrison, and Charles Wilkins, who were lessees of the United States, of the salt works in the State of Illinois. (6 Stats. at Large, 626.)

43. An act approved July 2, 1836, for the relief of the legal representatives of David Caldwell, directed the proper accounting officers of the Treasury to settle the claim of the said David Caldwell for fees and allowances, certified by the circuit court of the United States for the eastern district of Pennsylvania, for official services to the

United States, and to pay on that account the sum of four hundred and ninety-six dollars and thirty-eight cents, with interest thereon at the rate of six per centum from the 25th day of November, 1830, till paid. (6 Stats. at Large, 664.)

44. An act approved July 2, 1836, provided that there be paid Don Carlos Delossus interest at the rate of six per centum per annum on three hundred and thirty-three dollars, being the amount allowed him under the act of July 14, 1832, for his relief, on account of moneys taken from him at the capture of Baton Rouge, La., on the 23d day of September, 1810, being the interest to be allowed from the said 23d day of September, 1810, to the 14th day of July, 1832. (6 Stats. at Large, 672.)

In this case the interest was directed to be paid four years after the principal had been satisfied and discharged.

45. An act approved July 7, 1838, provided that the proper officers of the Treasury be directed to settle the accounts of Richard Harrison, formerly consular agent of the United States at Cadiz, in Spain, and to allow him, among other items, the interest on the money advanced, under agreement with the minister of the United States in Spain, for the relief of destitute and distressed seamen, and for their passages to the United States from the time the advances, respectively, were made to the time at which the said advances were reimbursed. (6 Stats. at Large, 734.)

46. An act approved August 11, 1842, directed the Secretary of the Treasury to pay to John Johnson the sum of seven hundred and fifty-six dollars and eighty-two cents, being the amount received from the said Johnson upon a judgment against him in favor of the United States, together with the interest thereon from the time of such payment. (6 Stats. at Large, 856.)

47. An act approved August 3, 1846, authorized the Secretary of the Treasury to pay to Abraham Horbach the sum of five thousand dollars, with lawful interest from the 1st of January, 1836, being the amount of a draft drawn by James Reeside on the Post-Office Department, dated April 18, 1835, payable on the 1st of January, 1836, and accepted by the treasurer of the Post-Office Department, which said draft was indorsed by said Abraham Horbach at the instance of the said Reeside, and the amount drawn from the Bank of Philadelphia, and at maturity, said draft was protested for nonpayment, and said Horbach became liable to pay, and in consequence of his indorsement, did pay the full amount of said draft. (9 Stats. at Large, 677.)

48. An act approved February 5, 1859, authorized the Secretary of War to pay to Thomas Laurent, as surviving partner, the sum of $15,000 with interest at the rate of 6 per cent yearly, from the 11th of November, 1847, it being the amount paid by the firm on that day to Major-General Winfield Scott, in the city of Mexico, for the purchase of a house in said city, out of the possession of which they were since ousted by the Mexican authorities. (11 Stats. at Large, 558.)

49. An act approved March 2, 1847, directed the Secretary of the Treasury to pay the balance due to the Bank of Metropolis for moneys due upon the settlement of the account of the bank with the United States, with interest thereon from the 6th day of March, 1838. (9 Stats. at Large, 689.)

50. An act approved July 20, 1852, directed the payment to the legal representatives of James C. Watson, late of the State of Georgia, the sum of fourteen thousand six hundred dollars, with interest at the rate of six per cent per annum from the 8th day of May, 1838, till paid, being the amount paid by him, under the sanction of the Indian agent, to certain Creek warriors for slaves captured by said warriors while they were in the service of the United States against the Seminole Indians in Florida. (10 Stat. at Large, 734.)

51. An act approved July 29, 1854, directed the Secretary of the Treasury to pay to John C. Fremont one hundred and eighty-three thousand eight hundred and twenty-five dollars, with interest thereon from the 1st day of June, 1851, at the rate of ten per cent per annum, in full for his account for beef delivered to Commissioner Barbour for the use of the Indians in California in 1851 and 1852. (10 Stat. at Large, 804.)

52. An act approved July 8, 1870, directed the Secretary of the Treasury to make proper payment to carry into effect the decree of the district court of the United States for the district of Louisiana, bearing date the 4th of June, 1867, in the case of the British brig *Volant*, and her cargo; and also another decree of the same court, bearing date the 11th of June, in the same year, in the case of the British bark *Science*, and cargo, vessels illegally seized by a cruiser of the United States; such payments to be made as follows, viz: To the several persons named in such decrees, or their legal representatives, the several sums awarded to them, respectively, with interest to each person from the date of the decree under which he receives payment. (16 Stat. at Large, 650.)

53. An act approved July 8, 1870, directed the Secretary to make the proper payments to carry into effect the decree of the district court of the United States for the district of Louisiana, bearing date July 13, 1867, in the case of the British brig *Dashing Wave*, and her cargo, illegally seized by a cruiser of the United States, which

decree was made in pursuance of the decision of the Supreme Court, such payments to be made with interest from the date of the decree. (16 Stat. at Large, 651.)

An examination of these cases will show that, subsequent to the seizure of these several vessels, they were each sold by the United States marshal for the district of Louisiana as prize, and the proceeds of such sales deposited by him in the First National Bank of New Orleans. The bank, while the proceeds of these sales were on deposit there, became insolvent. The seizures were held illegal, and the vessels not subject to capture as prize. But the proceeds of the sales of these vessels and their cargoes could not be restored to the owners in accordance of the decrees of the district court, because the funds had been lost by the insolvency of the bank. In these cases, therefore, Congress provided indemnity for losses resulting from the acts of its agents, and made the indemnity complete by providing for the payment of interest.

Your committee have directed attention to these numerous precedents for the purpose of exposing the utter want of foundation of the often repeated assumption that "the Government never pays interest." It will readily be admitted that there is no statute law to sustain this position. The idea has grown up from the custom and usage of the accounting officers and Departments refusing to allow interest generally in their accounts with disbursing officers and in the settlement of unliquidated domestic claims arising out of dealings with the Government. It will hardly be pretended, however, that this custom of usage is so "reasonable," well known, and "certain" as to give it the force and effect of law, and to override and trample under foot the law of nations and also the well-settled practice of the Government itself in its intercourse with other nations.

11th. Interest was allowed and paid to the State of Massachusetts because the United States delayed the payment of the principal for twenty-two years after the amount due had been ascertained and determined. The amount appropriated to pay this interest was $678,362.41, more than the original principal. (16 Stat. at Large, 198.)

Mr. Sumner, in his report upon the memorial introduced for that purpose, discussing this question of interest, said:

"It is urged that the payment of this interest would establish a bad precedent. If the claim is just, the precedent of paying it is one of which our Government should wish to establish. Honesty and justice are not precedents of which either Government or individual should be afraid." (Senate Report 4, 41st Cong., 1st sess., p. 10.]

12th. Interest has always been allowed to the several States for advances made to the United States for military purposes.

The claims of the several States for advances during the Revolutionary war were adjusted and settled under the provision of the acts of Congress of August 5, 1790, and of May 31, 1794. By these acts interest was allowed to the States, whether they had advanced money on hand in their treasuries or obtained by loans.

In respect to the advances of States during the war of 1812–'15, a more restricted rule was adopted, viz: That States should be allowed interest only so far as they had themselves paid it by borrowing, or had lost it by the sale of interest-bearing funds.

Interest, according to this rule, has been paid to all the States which made advances during the war of 1812–'15, with the exception of Massachusetts. Here are the cases:

Virginia, U. S. Stats. at Large, Vol. 4, p. 161.
Delaware, U. S. Stats. at Large, Vol. 4, p. 175.
New York, U. S. Stats. at Large, Vol. 4, p. 192.
Pennsylvania, U. S. Stats. at Large, Vol. 4, p. 241.
South Carolina, U. S. Stats. at Large, Vol. 4, p. 499.

In Indian and other wars the same rule has been observed, as in the following cases:

Alabama, U. S. Stats. at Large, Vol. 9, p. 344.
Georgia, U. S. Stats. at Large, Vol. 9, p. 626.
Washington Territory, U. S. Stats. at Large, Vol. 11, p. 429.
New Hampshire, U. S. Stats. at Large, Vol. 10, p. 1.

13th. The Senate Committee on Indian Affairs, in the report to which reference has heretofore been made, speaking of this award and of the obligation of the United States to pay interest upon the balance remaining due and unpaid thereon, used the following language:

"Your committee are of opinion that this sum should be paid them with accrued interest from the date of said award, deducting therefrom $250,000, paid to them in money, as directed by the act of March 2, 1861; and, therefore, find no sufficient reason for further delay in carrying into effect that provision of the afore-named act, and the act of March 3, 1871, by the delivery of the bonds therein described, with accrued interest from the date of the act of March 8, 1861."

Your committee have discussed this question with an anxious desire to come to such a conclusion in regard to it as would do no injustice to that Indian nation whose rights are involved here, nor establish such a precedent as would be inconsistent with

the practice or duty of the United States in such cases. Therefore, your committee have considered it, not only by the light of those principles of the public law—always in harmony with the highest demands of the most perfect justice—but also in the light of those numerous precedents which this Government in its action in like cases has furnished for our guidance. Your committee can not believe that the payment of interest on the moneys awarded by the Senate to the Choctaw Nation would either violate any principle of law or establish any precedent which the United States would not wish to follow in any similar case, and your committee can not believe that the United States are prepared to repudiate these principles or to admit that because their obligation is held by a weak and powerless Indian nation it is any the less sacred or binding than if held by a nation able to enforce its payment and secure complete indemnity under it. Could the United State escape the payment of *interest* to Great Britain, if it should refuse or neglect, after the same became due, to pay the amount awarded in favor of British subjects by the recent joint commission which sat here? Could we delay payment of the amount awarded by that commission for fifteen years, and then escape by merely paying the principal? The Choctaw Nation asks the same measure of justice which we *must* accord to Great Britain; and your committee can not deny that demand unless they shall ignore and set aside those principles of the public law which it is of the utmost importance to the United States to always maintain inviolate.

Your committee are not unmindful that the amount due the Choctaw Nation under the award of the Senate is large. They are not unmindful, either, that the discredit of refusing payment is increased in proportion to the amount withheld and the time during which such refusal has been continued.

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