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UNITED STATES COURT OF CLAIMS.

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ARGUMENT FOR PLAINTIFF,

IN CASE OF

THOMAS HICKS, EX'R. OF CAPT. ISAAC HICKS,

VERSUS

THE UNITED STATES, FOR HALF-PAY,

UNDER THE RESOLVE OF OCTOBER 21, 1780.

ALSO,

IN BEHALF OF THE HALF PAY DEBTS DUE TO THE OFFICERS
OF THE REVOLUTION GENERALLY,

EMBRACING

THE LAWS AND DECISIONS IN SUPPORT OF SAME.

ALSO,

SUGGESTIONS IN BEHALF OF ALL THE CREDITORS OF THE
UNITED STATES.

BY NATHANIEL HATCH,
No. 514, Twelfth Street, Washington, D. C.

OCTOBER, 1859.

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Treaty

IN CASE OF

THOMAS HICKS, EXR. OF CAPT. ISAAC HICKS

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THE UNITED STATES, FOR HALF PAY

UNDER THE RESOLVE OF OCTOBER 21, 1793.

ALSO,

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OF THE REVOLUTION, GENERALLY,

AND

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UNITED STATES.

BY NATHANIEL HATCH,

No. 614, Twelfth Street, Washington, D. C.

OCTOBER, 1830.

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SYNOPSIS

OF THE

LAWS AND ARGUMENT

IN BEHALF OF

THE HALF-PAY CLAIMS,

UNDER THE RESOLVE OF OCTOBER 21, 1780.

These claims consist of three several and *continuous* considerations, which were finally, by the act of October 21, 1780, blended in one entire contract:

1. Grants of land by the resolves of September 16 and 18, 1776;
2. Seven years half pay by the resolve of May 15, 1778;
3. Seven years half pay in specie or current money, October 3, 1780;
4. Extended and reaffirmed by act of December 31, 1781;
5. Extended also by act of January 17, 1781;
6. Extended also by act of March 8, 1785;

All by the Congress of the old Confederation, which, in the immortal words of Washington, constituted a legal contract for half pay for life, pledged to the officers, was a debt, a just debt, a constitutional one, with all the attributes of a common debt; and that it was more than a common debt—a debt of honor and of gratitude, the equivalents of which were the blood of the officers and the independence of the country; that it was a perpetual debt, therefore, which could never be cancelled until it was fully and fairly paid.

2. That this half pay contract was made after the Government had become utterly insolvent, and was therefore made *payable in specie or other current money*, by the acts of October 3 and October 21, 1780; and was extended by the act of November 28, 1780, to the officers of the Medical staff.

3. That the United States solicitor admits, in his printed brief in *defence*, that these claims never were paid as *half-pay*, and that the attempt to *substitute* the act of March 22, 1783, for five years' full pay did not repeal the half pay act of October 21, 1780; and that that contract still subsists, binding *only* on those who *received* the certificates under that act; that it was at their *option* to receive the certificates for five years' full pay, or a *certificate* for half pay for life, and that they were *induced* to accept those *certificates* because *great fears* were entertained that Congress had no power to make the half pay contract; that the "States, at this time, were the real sovereigns; Congress was a mere assembly of ambassadors." This is charging the old Confederation with having attempted to obtain the fortunes and services of the officers under false pretences; and still contends, the acceptance of these *certificates*, made without the authority of law, was a valid accord and satisfaction. He also alleges, that this act was passed at the request of and by the assent of the majority of the officers *individually*, and that it was optional with the officers to receive or reject these certificates.

4. The *evidence*, however, finds that it was for the payment and security of arrears of pay in *money*, and not the paper of the Government, (which they then held and was of no value,) for which they asked relief.

5. That the act of March 22 expressly declares that the officers, *individually*, shall not have the right of *option* to refuse said certificates.

6. That the paymaster general had the *exclusive* power of stating and adjusting all these accounts, and never issued to any *one* officer, even when demanded, a certificate for half pay.

7. The act of March 22 was virtually repealed by a subsequent act of July 4, 1783. The several States had omitted to furnish Congress with *substantial security*, by which all the debts against the United States were to have been funded as *promised* to the officers in the act of January 25, 1783. Therefore the paymaster was not authorized to force these unsecured, depreciated certificates upon the officers as a *compromise*, or satisfaction of a debt, actually certain and over due, and for three times the amount, payable in *specie*, but they were merely like the certificates charged toward arrears of pay, and should be considered as any others, a payment *pro tanto* toward the half pay.

8. As the act of March 22 had omitted to describe the manner in which these certificates were to be secured, the officers were not asking for paper, but *security*—and as the act of January extended to all, and declared it to be *substantial security*, by which these debts were to be funded; and the terms of half pay being payable in *specie* or *current* money, by the act of October 3, 1780. It is impossible to conceive of that paper being certain or safe when it is in market at 90 cents below par.

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9. That to allege that these creditors held two classes of claims against the same debtor, and that all of these claims were 90 per cent below par, does not prove that either is *payment* or security, or that one creditor of a half pay life estate of thirty years of age, should receive no larger an amount than one of seventy, no more than creditors holding an unsettled account against his debtor for ten thousand dollars, should be considered as having been *paid*, because the debtor had charged, in his *own book*, a note for one thousand dollars, in full for the ten; but more especially when the interest, which was payable annually, goes eight years unpaid.

10. That it is the duty of the *debtor*, and not the creditor, to pay the debt.

11. These creditors do not ask to set aside this *time-dishonored*, but sacred specie paying contract. They ask that all these acts may stand as monuments of the history and progress of our Government; and if anything has been paid and charged to these creditors, under the acts of March or July, 1783, they ask that the same may be *deducted* from the half pay.

12. That an existing law is just as *imperative* on all who come within its jurisdiction, whether passed at the request of one or one thousand. If that law contains, or does not contain, a provision of the right of option, or not, and the *officer* authorized to administer the same disregards this right of option, its effect is the same to all parties interested. And the evidence of the Secretary admits that the paymaster's acts were conclusive.

13. The inference of abandonment of claims against the United States, from the lapse of time, cannot arise, because all these parties, as well as all others against the United States, were estopped from urging the payment in any court of law, until this court was established and received *jurisdiction* over all claims, either *expressed* or *implied*.

14. That these claims, by one or more of these joint and several payees have been presented and acknowledged every session of Congress since the Government was formed; that they were fully discussed and admitted, on principles of legal right, and an act fully confirming them passed May 15, 1828, which extended, as well in point of recognition, to those of the dead as well as the survivors; that it is no fault of the creditors that these just debts have not been paid, *or* for the poverty and insolvency of the old Confederation.

15. That a promise to *one* of several promisees of a joint and several contract, is an acknowledgment, recognition, renewal and restoration of the rights of all the other payees.

16. That they were fully restored to their original rights by the decision of this court in case of Surgeon Baird. In that case, the right of option to reject the certificates was fully considered by this court and affirmed by *Congress*. That act of Congress is a law of the United States, made in pursuance of the Constitution, and is as binding on this court as if it had been described for the relief of the creditors *generally*; and this decision and this act of Congress, should *forever close the controversy* as between all these creditors and the Government. Whether viewing itself as a judicial tribunal or merely as a committee of Congress, it is bound to respect its own decisions,

whether they make in favor of a creditor (if such a result shall ever be had,) or that of the United States. But if they shall feel at liberty to disregard their own, they are bound to respect and obey the laws of Congress, and this act of Congress, in the case of Dr. Baird. So long as law and the oath of office shall be considered binding and sacred, these claims are forever established, and this court need not refer them back to the discretion of Congress. The joint action of the court and Congress, in this case, leaves nothing for the discretion of either. Nothing remains for this court, or Congress, but simply the discharge of a high and imperative duty. It only remains for Congress to vote the means of payment. It is no longer necessary for this court to add their seal of repudiation to these just debts, in opposition to the opinion of the late and much lamented Chief Justice Gilchrist.

17. That the solicitor admits the half pay contract still subsists, but that it cannot avail those who received their certificates. This objection was one on which this court was divided in their opinion. And Congress decided that the reception, even in money, of a less sum, was not an accord and satisfaction of the half pay contract, which was payable in specie.

18. These creditors do not complain that the *holders* of these certificates funded, or omitted to fund them, under the act of August 4, 1790, inasmuch as they had obtained them at a small value, and could well afford to fund them at a loss of one half. But the payees of the half pay contract do object to any attempt on the part of the United States to *resuscitate* and again connect these old repudiated certificates with the half pay contract, except so far as they may go as a payment *pro tanto*. They had long been disconnected and cannot be again connected, except in express violation of all principles of law and equity, as specially declared by the 9th section of the funding act (1). Nor is it their own sufferings and insolvency of which they complain. It is by the utter poverty and insolvency of the Government by which they have been injured and of which they now charge the Government to have so long been disregarding of its honor and those sacred obligations.

19. The acts of March 22 and July 4, 1783, were not passed for the benefit of any class of creditors; but they were the result of the great and imperative necessities and utter insolvency of the Government at that early and trying time, merely to *suspend* the day of payment.

20. That these contracts embraced the promise of land as well as money; and the contract has been renewed over seven hundred times by the issuing of land warrants and patents since 1828 to the present time. The acts of Congress sometimes, by hasty legislation, are unjust.

The evidence in this, as in all these cases, proves beyond the possibility of doubt—1. That the act of 22d March, 1783, was not in its terms, in any one important particular, such as was contemplated in the address of the officers. It is also proved, beyond the possibility of a doubt, that even that act never was adopted by a "majority of the officers of the several States." That the act itself, as passed, whether with or without the consent of the officers, expressly declares that the officers, individually, shall not have the right of option to refuse said certificates.

The delivery of such valueless certificates could not have been considered advantageous. The officers did not obtain a sum certain for a contingent right. It cannot be said they thereby received something before they were entitled to anything. Many years of half pay had become due before these certificates were issued, and the value in specie, or security, of one year's half pay would have purchased four times the amount of the full pay certificates. There is not a particle of evidence that the right of option to refuse these certificates was granted to any officer. The records of Congress, to which the attention of the court has been called, prove beyond all doubt that the officers not only "complained" of this unjust measure, but that Congress often admitted, in different forms, the justice and legality of these debts. That the full pay proposition never was fully executed by the old or new Government. It was never even attempted to be shown by the defence that either of the acts had been complied with. It is not the duty of the creditor to alledge or prove the compliance of a contract.

Every school boy understands the term *security* to mean safety, to make safe. Everybody would say that the note of an insolvent debtor, whose paper is selling in market for two and a half dollars to the hundred, is neither specie nor security, even if it should be negotiable. The proposition of Congress in answer to the address of the officers, was to pay or secure all their four classes of claims, as well as commutation by substantial securities, to be furnished by the several States. Nothing was said about an endorsement, or a mortgage, nor was any such thing inferred. Nothing was anticipated by the way of security, except that which is clearly expressed in the act of January 25, 1783. We ask simply that the court, in giving effect to these several acts of Congress, may be guided by a true and common sense construction; the acts speak for themselves, and if they decide one point, they should decide all which are urged.

The officers never proposed to give a release of their half pay, which was of three times the value of the amount of the full pay, and receive only the promise of the Government, which they already held. Is it not unreasonable to suppose that any man of common sense would willingly give up a note against the same debtor for one thousand dollars, and take in exchange one for four hundred dollars against the same insolvent debtor? It is not reasonable to presume that he would do so. Nor is it reasonable to presume one is more certain than the other. No, may it please the court, while good morals and common sense shall have any connection with justice, and regard for truth shall prevail in our national Legislature, or our courts, every act of repudiation of these just debts will meet the just animadversion of the people throughout the country. The old Confederation expired in insolvency, and the new has had to contend with embargos and wars, and worse than all, with repudiators of all claims, until the grave has closed over the original creditors, and very near those of their surviving children.

We always have had, and shall continue to have, repudiators of debts, no matter however sacred they may be. Many of them have become the just objects of execration. God grant that they may seldom be found in places of power or positions of honor. The rights of property, whether it consists in debts against the United States, or otherwise, must be respected.

The acts of March 3, 1855, and May 14, 1856, were founded entirely upon a *gratuitous consideration*, requiring only 14 days nominal service, (which was paid for in good money,) entitled for this service to 160 acres of land, while those of the Revolution served many years without pay and without any land. These acts gave it to the soldiers, widows, or minor children, and most unjustly discriminated *against* the same of the Revolution, by confining the benefit to their minor children. This was evidently by accident or omission, and I hope to see justice done in this particular. A declaration of the children furnishing proof of their descent, places of residence, from what State, and line of service, was of more value than the land, and became another record to the memory of those who did so much for the cause of freedom and humanity.

UNITED STATES COURT OF CLAIMS.

No. 1764.

THOMAS HICKS, EXR. OF THE ESTATE OF CAPT. ISAAC HICKS,

vs.

THE UNITED STATES.

1. This is an application to this court for the recovery of a balance due for *Half Pay*, with interest, promised to the said Captain Hicks for his services as captain in the third Battalion of the Georgia Continental line of the American army, during the war of the Revolution—(also for services performed as regimental Paymaster.) The *Half Pay* to commence at the date of the peace, 1783, to the time of his death June 20, 1817.

This claim is presented and payment urged on the ground of a *legal contract*, fully sustained by principles of law and equity. He does not ask or claim anything as a *gratuity*, *pension* or arrears of *pension*, but the payment of a *debt*, just and *meritorious* debt, founded on the most sacred considerations, and strict *legal right*. He does not in presenting this just claim, ask that this government, either through this court or through Congress, shall assume the payment of all the old unliquidated claims of the old confederation. They ask no deduction for *depreciation* of *government paper*. Nor does he ask to be remunerated for the fortune expended and the five years' service rendered without pay previous to the date of said contract. He asks the payment of these *just Half Pay debts*—1, *Because*, by all the principles of law and equity they are justly, equitably and *positively due*; 2, *Because* they are free from all possible influence of *conjecture*, or *uncertainty*; 3, *Because* their amount is unchangeably *fixed* by a recorded *public law* of this nation. If anything has ever been paid toward this sacred contract, that *payment* is also an unchanging record. Nothing is left to conjecture, nothing to *unwritten* or *unrecorded* evidence. All payments made are to be deducted, not at their value, but for their *full amount*. What court, or member of congress can ask for more? These *balances* of *Half Pay* due to these officers are as fully and conclusively *proved* as any event of the war or the Government, as fully and *conclusively established* and rests on as sure foundation as that of the Washington Monument, which is being reared to the memory of those creditors and their noble deeds, rebuking every act of repudiation which stains the records of those meritorious and legal debts.

It is time that the *assumed* facts of *pretended settlement* of these just debts through subsequent acts of the old confederation were better understood and the rights of these creditors were more justly appreciated. They are not, may it please the court, made up of mere words of *responsibility*; because the government at that time was utterly bankrupt, and had repudiated and fixed a value on its *securities* of only two and half dollars, to the hundred—but this half-pay contract was supposed to be inspired with the plighted honor of the nation which would survive the depressing influences of poverty and discouraging prospects which then prevailed—made at a time when the Government had nothing but their honor to pledge. I will with leave of the court, 1st, consider the half-pay claims generally; 2nd, endeavor to point out to the court, the distinction which prevails in the present case, as well as these officers, who were deranged by the act of December 31st, 1781. What are the acts of the old confederation on which these half-pay debts are predicated?

1st. The resolve of September 18, 1776, which promised to those who should serve to the end of the War, Bounty Land. (1)

2nd. By the resolve of 15th May, 1778, there was promised to them in addition to the land, seven years half-pay. (2)

3rd. On the 3rd October, 1780, Congress reorganized the army to take effect on the 1st of January, 1781, and promised those who were retired, seven years half-pay in specie or other current money equivalent; and also grants of land at the close of the war, agreeably to the resolution 16th September, 1776. (3)

(1.) "*Resolved*, That in addition to money bounty of twenty dollars to each non-commissioned officer and private soldier, Congress make provision for granting land, in the following proportions, to the officers and soldiers who shall engage in the service, and continue therein to the close of the war, or until discharged by Congress, and to the representatives of such officers and soldiers as shall be slain by the enemy, viz: to a colonel, 500 acres; lieutenant colonel, 450; major, 400; captain, 300; lieutenant, 200; ensign, 150; each non-commissioned officer and soldier, 150 acres."

This was extended, by resolve of September 18, 1776, "to all who are or shall be enlisted for that term." This was "extended to the general officers," in the following proportions: major general, 1,100 acres; brigadier general, 850 acres—August 12, 1780. September 22, 1780, it was extended "to the several officers of the medical department, except the clerks and stewards."

In Congress, May 15, 1778.

(2) "*Resolved, unanimously*, That all military officers commissioned by Congress, who are now or hereafter may be in the service of the United States, and shall continue therein during the war, and not hold any office of profit under the States, or any of them, shall, after the conclusion of the war be entitled to receive annually for the term of seven years, if they live so long, one half of the present pay of such officers: *Provided*, That no general officer of the cavalry, artillery, or infantry, shall be entitled to receive more than the one-half of the pay of a colonel of such corps, respectively: *And, provided*, That this resolution shall not extend to any officer in the service of the United States, unless he shall have taken an oath of obligation to, and shall actually reside within, some one of the United States.

"*Resolved, unanimously*, That every non-commissioned military officer and soldier who hath enlisted or shall enlist into the service of these States for during the war, and shall continue therein to the end thereof, shall be entitled to receive a further reward of eighty dollars at the expiration of the war."

(3) "Congress, on the 3d October, 1780, re-organized the army, to take effect on the 1st of January, 1781, the effect of which was to throw many of the officers out of service.—They therefore at the same time adopted the following resolution:

The attention of the court is invited to notice the fact that this act which passed after the government had become utterly insolvent, the seven years half-pay was made payable in "specie or other current money equivalent."

4th. 18 days after the passage of this act Congress passed that of 21st October, 1780, extending the seven years' half-pay to during life, without altering the mode of payment, which was therefore payable in specie or other current money equivalent, (4) and not in the depreciated paper, and this was by the act of August 24, 1780, extended to the widows and orphan children. (5)

Those half-pay contracts were often recognized by acts of Congress, before and subsequent to the peace. (6)

That the officers fully performed and fulfilled the contract on their part is not controverted, and these creditors claim that each officer individually acquired a vested right of property, therein of which he could not be divested without a full consideration, or due

"And whereas, by the foregoing arrangement, many deserving officers must become *supernumerary*, and it is proper that regard be had to them:

"Resolved, That from the time the reform of the army takes place, they be entitled to half pay for seven years, *in specie, or other current money equivalent*, and also grants of lands at the close of the war, agreeably to the resolution of the 16th of September, 1776."

(4) "That resolve is in the following words:

"[1780, October, 21.]—Resolved, That the Commander-in-chief, and commanding officer in the Southern department, direct the officers of each State to meet and agree upon the officers for the regiments to be raised by their respective States, from those who incline to continue in service; and where it cannot be done by agreement, to be determined by seniority, and make return to those who are to remain; which is to be transmitted to Congress, together with the names of the *officers reduced*, who are to be allowed *half pay for life*.

"That the officers who shall continue in the service to the end of the war, shall also be entitled to *half pay during life*, to commence from the time of their reduction."

(5) In Congress, August 24, 1780.

"Resolved: That the resolution of the 15th May, 1778, granting half pay for seven years to the officers of the army who should continue in service to the end of the war, be extended to the widows of those officers who have died or shall hereafter die in the service; to commence from the time of such officer's death, and continue for the term of seven years; or if there be no widow, or in case of her death or intermarriage, the said half pay be given to the orphan children of the officer dying as aforesaid, if he shall have left any."

(6) Resolution—In Congress, December 31, 1781.

"Resolved, That all officers of the line of the army, below the rank of brigadier general, who do not belong to the line of any particular State or separate corps of the army, and are entitled by acts of Congress to pay and subsistence, shall have the same, with the depreciation of their pay, made good to the first day of January, 1782.

"Resolved, That the Secretary of war be, and he is hereby directed to make returns to Congress, on or before the 20th day of January, 1782, of the names and rank of all the officers necessary to be retained in service, that are included in the preceding resolution.

"Resolved, That all officers included in the foregoing description, and whose names shall not be inserted in the returns directed to be made by the preceding resolution, shall be considered as retiring from service on the first day of January, 1782; provided always, that nothing contained in these resolutions shall be construed so as to prevent or hinder any officer that shall retire as aforesaid from enjoying all the emoluments that he may, upon retiring, be entitled to by any former acts of Congress."

Resolution—In Congress, March 8, 1785.

"Resolved, That the officers who retired under the resolve of the 31st December, 1781, are equally entitled to *half pay* or commutation, with those officers who retired under the resolves of the 3d and 21st October, 1780."

process of law, or by his own free and voluntary relinquishment, and in the language of the able Committee of the House of the 1st September of 35th Congress, (report No. 125.)

“Any act of Congress impairing or affecting this right is repugnant to the Constitution and void. Under this contract each officer became entitled from the United States to half-pay, according to the rank he held in the army from the close of the revolutionary war, or from the time of his discharge from the service until the period of his death, to be paid yearly and every year during that period, and for the performance of such contract on the part of the United States *the faith of the nation was solemnly pledged*. The committee also find that such officers were also entitled to an interest of six per cent. per annum on the yearly payments, and on the aggregate from the date of the officer's death to the time of settlement, under the resolution of Congress, passed June 3, 1784, which provides “That an interest of six per cent. shall be allowed to all the creditors of the United States for supplies furnished or *services done*, from the time that payment became due.” In alluding to this resolve, Chief Justice Gilchrist, of the Court of Claims, in a recent decision says: “No language could be more express or free from doubt than this. The resolution was passed from a feeling that it was just and right that interest should be paid from the time the half pay became due, and it was a voluntary contract on the part of the United States constituting a legal claim against them which no subsequent legislation could release without the consent of the other party.” The above contract for half pay, although made under the confederation, is equally binding upon Congress, for by the sixth article of the Constitution of the United States, section one, “all *debts* contracted or *engagements* entered into before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the confederation.”

Thus, this Government became the assignee and Trustee of the public domain and assumed the liabilities of the old confederation.

I propose to examine, first, how far this half-pay contract was effected by any thing done by the old confederation.

These creditors further say, that they have been prohibited from enforcing the payment of their claim against the United States by any court of law, that said Captain Hicks demanded his claim to half pay very often of the old confederation, without being able to obtain the same, as also of the present government of the United States.— That said half pay debts have been often *presented* to Congress and always received the most favorable consideration of the many committees to whom they have been referred, who consisted of able and profound jurists, and statesmen to whose reports I invite the attention of the Court:

The reports of Mr. Madison in 1783, Mr. Nelson in 1810, Mr. Johnson in 1818, Mr. Sergeant, December 10, 1819, Mr. Hemphill, January 3, 1826, Mr. Burgess, May 8, 1826, and February 11, 1828; the act of May 15, 1828, Senator Walker's report in 1852, Senator Evans', February 4, 1854, and Mr. Broom, April 4, 1856, show a repeated recognition of the contract on the part of Congress; *but* no general provision appears to have been made by Congress for the relief of these officers, until the act of May 15, 1828, in which the contract of 1780 is fully recognized. They are there acknowledged as *creditors* of the government, and not pensioners. The act, however, applies to the few surviving officers only, and made no provision for those who died before its passage. (1)

(1) AN ACT for the relief of certain surviving officers and soldiers of the Army of the Revolution.

SEC. 1. Be it enacted, &c, That each of the surviving officers of the army of the Revolution, in the continental line, who was entitled to half pay by the resolve of October twenty-first, seventeen hundred and eighty, be authorized to receive, out of any money in the Treasury not otherwise appropriated, the amount of his full pay in said line, according to his rank in the line, to begin on the third of March, one thousand

It may be well to remember, in connection with these claims, that long after the passage of the acts of May 15, 1828, and June 7, 1832, and after the act of July 6, 1836, in behalf of the widows, the Senate Committee on Revolutionary Claims, May 11, 1838, reported that,

"After an assiduous investigation, the committee conclude that no legislation subsequent to the 21st October, 1780, could, or that by a fair construction did, contravene or in any manner impair the claim of the officers of the army, or any such class of officers, to the half-pay promised them by the act of Oct. 21, 1780. The half-pay for life contracted by the act of October, 1780, to be paid to the officers of the army for certain services to be performed by them, *instantæ* became a *vested right*, of which subsequent legislation nor nothing whatever could divest the officer, save a failure on his part to perform the prescribed service. And it would be a libel on the good sense and justice of the distinguished statesmen and patriots of that period, to imagine, even that any legislation subsequent to the 21st of October, 1780, had for its object to impair the deliberate engagement made by that act to allow half-pay for life to the officers of the army.

It is conceded by the United States that these claims were never settled or paid as half pay. But it is attempted to be shown by the United States that they were liquidated in pursuance of a subsequent act of Congress of the 22d day of March, A. D., 1783.

As this act assumes that it was passed in answer to the memorial of the officers of the several lines. It is very important that the causes which induced that address to Congress and the object and wishes of the officers should be understood, and the action of Congress upon that address explained. (1)

eight hundred and twenty-six, and to continue during his natural life: Provided, That under this act, no officer shall be entitled to receive a larger sum than the full pay of a captain in said line.

Attorney General Butler, in a very able and elaborate opinion of February 3, 1834, shows very conclusively that the act of 1828 was to be regarded as an *acknowledgment* of a debt equitably due, than as conferring gratuitous pensions.

By this act, the claimants, or those who had survived, were acknowledged as creditors of the Government; and the second section declares, that any pension to which said officer was entitled was to cease after the passage of this act.

(1) Resolution of March 22, 1783.

On the report of a committee, consisting of Mr. Hamilton, Mr. Dyer, and Mr. Bedford, to whom was referred a motion of Mr. Dyer, together with the memorial of the army, and the report of the committee thereon, Congress came to the following resolutions:

1. Whereas the officers of the several lines under the immediate command of his Excellency General Washington, did, by their late memorial, transmitted by their committee, represent to Congress that the half pay granted by sundry resolutions was regarded in an unfavorable light by the citizens of some of these States, who would prefer a compensation for a limited term of years, or by a sum in gross, to an establishment for life; and did, on that account, solicit a compensation of their half pay for an equivalent in one of the two modes above mentioned, in order to remove all subject of dissatisfaction from the minds of their fellow citizens: And whereas Congress are desirous as well of gratifying the reasonable expectations of the officers of the army as removing all objections which may exist in any part of the United States to the principle of the half pay establishment, for which the faith of the United States hath been pledged; persuaded that those objections can only arise from the nature of the compensation, not from any indisposition to compensate those whose services, sacrifices and sufferings, have so just a title to the approbation and rewards of their country.

2. Therefore resolved, That such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the amount of five years' full pay in money or securities on interest at six per cent. per annum, as Congress shall find most convenient, instead of the half pay promised for life by the resolution of the 21st day of October, 1780; the said securities to be such as shall be given to other creditors of the United States; provided it be at the option of the lines of the respective

It will be seen that the 2d section of the act prohibits the officers individually of the several lines from dissenting from the same. It will also be seen by the act of March 22, 1783, that it assumes in fixing a value to the life estate of each officer, that they were all of equal age and health, that the life of an officer of thirty was valued no more than one of seventy; which was utterly at variance with and opposed to the rights of property which was admitted to be in each officer. It will also be seen, by referring to the same section, that no time was named in that act, in which the same was to be made payable, or in what way the amount was to be secured. But the creditors were entitled by the half-pay contract to "specie or other current money equivalent." And therefore we find the great object of complaint and distress of the officers, as set forth in their address, to have arisen from the fact that they could not command any money for government paper, and therefore they ask first, for money. (1)

States, and not of officers, individually, in those lines, to accept or refuse the same; and provided, also, that their election shall be signified to Congress, through the Commander-in-chief, from the lines under his immediate command, within two months, and though the commanding officer of the Southern army, from those under his command, within six months from the date of this resolution.

3. The same commutation shall extend to the corps not belonging to the lines of particular States, and who are entitled to half pay for life, as aforesaid; the acceptance or refusal to be determined by corps, and to be signified in the manner, and within the same time, as above mentioned.

4. That all officers belonging to the hospital department, who are entitled to half pay by the resolution of the 17th day of January, 1781, may collectively agree to accept or refuse the aforesaid commutation, signifying the same through the commander-in-chief, within six months from this time; that such officers as have retired at different periods, entitled to half pay for life, may, collectively, in each State of which they are inhabitants, accept or refuse the same; their acceptance or refusal to be signified by agents authorized for that purpose, within six months from this period; that, with respect to such retiring officers, the commutation, if accepted by them, shall be in lieu of whatever may be now due to them since the time of their retiring from service, as well as of what might hereafter become due; and that so soon as their acceptance shall be signified, the superintendent of finance be and he is hereby directed to take measures for the settlement of their accounts accordingly, and to issue to them certificates, bearing interest at six per cent.; that all officers entitled to half pay for life, not included in the preceding resolution, may also collectively agree to accept or refuse the aforesaid commutation, signifying the same within six months from this time.

(1)

[PAPER NO. VII.]

To the United States in Congress assembled:

The address and petition of the officers of the army of the United States humbly sheweth, That we the officers of the army of the U. States, in behalf of ourselves and our brethren, the soldiers, beg leave, with all proper deference and respect, freely to state to Congress, the supreme power of the United States, the great distress under which we labor.

At this period of the war, it is with peculiar pain we find ourselves constrained to address your august body, on matters of a pecuniary nature. We have struggled with our difficulties year after year, under the hopes that each would be the last; but we have been sadly disappointed. We find our embarrassments thicken so fast, and have become so complex, that many of us are unable to go further. In this exigence we apply to Congress for relief, as our head and sovereign.

To prove that our hardships are exceedingly disproportionate to those of any other citizens of America, let a recurrence be had to the paymaster's accounts, for four years past. If to this it should be objected, that the respective States have made settlements and given security for the pay due, for part of that time, let the present value of those nominal obligations be ascertained by the monied men, and they will

What did the committee of Congress propose in answer to this memorial of the 14 officers? (for it will be seen that the names of 14 officers only are attached to the memorial.) To this act of the committee of Congress I wish to call the particular attention of the Court.

be found to be worth little indeed; and yet, trifling as they are, many have been under the sad necessity of parting with them, to prevent their families from actually starving.

We complain that shadows have been offered to us, while the substance has been gleaned by others.

Our situation compels us to search for the cause of our extreme poverty. The citizens murmur at the greatness of their taxes, and are astonished that no part reaches the army. The numerous demands, which are between the first collectors and the soldiers, swallow up the whole.

Our distresses are now brought to a point. We have borne all that men can bear—our property is expended—our private resources are at an end—and our friends are wearied out and disgusted with our incessant applications. We therefore most seriously and earnestly beg, that a supply of money be forwarded to the army as soon as possible. The uneasiness of the soldiers, for want of pay, is great and dangerous; any further experiments on their patience, may have fatal effects.

The promised subsistence or ration of provisions, consisted of certain articles specified in kind and quantity. This ration, without regard, that we can conceive, to the health of the troops, has been frequently altered, as necessity or conveniency suggested, generally losing by the change some part of its substance. On an average, not more than seven or eight tenths have been issued; the retained parts were, for a short time paid for; but the business became troublesome to those who were to execute it. For this, or some other reasons, all regard to the dues, as they respected the soldiers, has been discontinued (now and then a trifling gratuity excepted). As these dues respected the officers, they were compensated during one year and part of another, by an extra ration; as to the retained rations, the account for several years remains unsettled; there is a large balance due upon it, and a considerable sum for that of forage.

The clothing was another part of the soldier's hire. The arrearages on that score, for the year 1777, were paid off in continental money, when the dollar was worth about four pence; the arrearages for the following years, are unliquidated, and we apprehend scarcely thought of, but by the army. Whenever there has been a real want of means, any defect in system, or neglect in execution, in the departments of the army, we have invariably been the sufferers, by hunger and nakedness, and by languishing in an hospital.

We beg leave to urge an immediate adjustment of all dues; that, as great a part as possible be paid, and the remainder be put on such a footing as will restore cheerfulness to the army, revive confidence in the justice and generosity of its constituents, and contribute to the very desirable effect of re-establishing public credit.

We are grieved to find, that our brethren, who retired from service on half pay, under the resolution of Congress in 1780, are not only destitute of any effectual provision, but are become the objects of obloquy. Their condition has a very discouraging aspect on us, who must sooner or later retire, and from every consideration of justice, gratitude and policy, demands attention and redress.

We regard the act of Congress respecting half-pay, as an honorable and just recompense for several years' hard service, in which the health and fortunes of the officers have been worn down and exhausted. We see with chagrin the odious point of view, in which too many of the citizens of the States endeavor to place the men entitled to it. We hope, for the honor of human nature, that there are none so hardened in the sin of ingratitude, as to deny the justice of the reward. We have reason to believe, that the objection generally is against the mode only. To prevent, therefore, any altercations and distinctions, which may tend to injure that harmony which we ardently desire may reign, throughout the community, we are willing to commute the half pay pledged, for full pay, for a certain number of years, or for a sum in gross,

Also to the language of the memorial, in which, with other things, they say, "We are grieved to find that our brethren who retired from service on half pay under the resolution of Congress in 1780, are not only destitute of any effectual provision, but are become the objects of obloquy.

"We regard the act of Congress respecting half pay, as an honorable and just recompense for several years hard service, in which the health and fortunes of the officers have been worn down and exhausted. We see with chagrin the odious point of view in which the citizens of too many of the States endeavor to place the men entitled to it."

"We hope, for the honor of human nature, that there are none so hardened in the sin of ingratitude, as to deny the justice of the reward."

This address was dated in December 1782, (vol. 4 Jour. of Con., p. 107, 208.)

REPORT OF GRAND COMMITTEE.

In Congress, Saturday Feb. 25, 1783, Vol. 4, p. 152-3.

The Grand Committee consisting of a member from each State.

REPORT.--That they have considered the contents of a memorial presented by the army, and find that they comprehend five different articles:

1st. Present pay. 2nd. Settlement of accounts for arrears of pay and security for what is due.

as shall be agreed to by the committee sent with this address. And in this we pray, that the disabled officers and soldiers, with the widows and orphans of those who have expended, or may expend their lives in the service of their country, may be fully comprehended. We also beg, that some mode may be pointed out for the eventual payment of those soldiers, who are the subjects of the resolution of Congress, of the 15th May, 1778.

To the representation now made, the army have not a doubt that Congress will pay all that attention which the serious nature of it requires. It would be criminal in the officers to conceal the general dissatisfaction which prevails, and is gaining ground in the army, from the pressure of evils and injuries, which, in the course of seven long years, have made their condition, in many instances, wretched. They therefore entreat, that Congress, to convince the army and the world, that the independence of America shall not be placed on the ruin of any particular class of her citizens, will point out a mode for immediate redress.

H. KNOX, M. General,	}	On the part of the Massachusetts line.
JOHN PATTERSON, B. General,		
J. CREATON, Colonel,		
JOHN CRANE, Colonel,		
H. MAXWELL, Lieut. Colonel,	}	On the part of the Connecticut line.
J. HUNTINGTON, B. General,		
H. SWIFT, Colonel,		
SAMUEL B. WEBB, Colonel,		
E. HUNTINGTON, Lt. Colonel,		
P. CORTLANDT, Colonel,		On the part of the New York line.
JOHN N. CUMMINGS, Lt. Col.,		On the part of the New Jersey line.
WILLIAM SCOTT, Major,		On the part of the New Hampshire line.
W. EUSTIS, Hospital Surgeon,		On the part of the general hospital.
MOSES HAZEN, Brigadier General.		

CANTONMENTS, HUDSON'S RIVER, December, 1782.

3d. A commutation of the half pay allowed by the different resolutions of Congress for an equivalent in gross.

4th. A settlement of the accounts of the deficiencies of rations and compensation.

5th. A settlement of the accounts of deficiencies of clothing and compensation, Whereupon,

Resolved, As to the first, that the superintendent of finance be directed, conformable to the measures already taken for that purpose, as soon as the state of the public finances will permit, to make such payment and in such manner as he shall think proper until the further order of Congress

Resolved, With respect to the 2d article, so far as relates to the settlement of accounts, that the several States be called upon to complete, without delay, the settlement with their respective lines of the army, up to the first day in August 1780, and that the superintendent of finance be directed to take such measures as shall appear to him most proper for effecting the settlement from that period." The 1st day of August was changed to 31st of December. Passed.

As to what relates to the providing security for what shall be due on settlement: *Resolved*, That the troops of the United States in common with all the creditors of the same, have an undoubted right to expect, and that Congress will make every effort in their power to obtain from the respective States substantial funds, adequate to the object of funding the whole debt of the United States, and will enter upon an immediate and full consideration of the nature of such funds, and the most likely mode of obtaining them.

"Ordered, That the remainder of the report be referred to a committee of five. Ordered, that it be an order of the day for Monday next, to take into consideration the means of obtaining from the several States substantial funds, for funding the whole debt of the United States." On Monday, January 27, Congress proceeded on the order of the day, but came to no resolution thereon.

It will be seen here is pointed out the anticipated manner and way in which these debts were to be paid or secured.

What was the answer of these officers to this action of Congress?

On the 15th of March, 1783, seven days only previous to the passage of this act, after hearing a most patriotic and thrilling address of Gen. Washington—he having retired these officers: *Resolved*, That the unanimous thanks of the officers of the army be presented to his excellency, the Commander-in-chief, for his excellent address, and the communication he has been pleased to make them, and that he be assured that the officers reciprocate his affectionate expressions with the greatest sincerity of which the human mind can be capable."

The address from the army to Congress—the report of the committee from the army, and the resolutions of Congress of the 25th of January, 1783, being read—

Resolved unanimously, "That the army continue to have an unshaken confidence in the justice of Congress and their country, and

are fully convinced that the representatives of America will not disband or disperse the army until their accounts are liquidated, the balance accurately ascertained, and adequate funds established for payment, and in this arrangement the officers expect that the half-pay or commutation of it, should be efficaciously comprehended.

Resolved unanimously, "That, &c., &c., that the proceedings of this day be transmitted by the President to Maj. McDougal, and that he be requested to continue his solicitations at Congress until the object of his mission had been accomplished. HORATIO GATES,
President."

Thus we find the proposition of Congress submitted to these officers, in which they are given to understand in the most positive terms, that the securities are to consist of substantial funds of the several States, by which all the debts of the creditors of the United States were to be settled, and there cannot be a doubt that the assent of any, or a majority of the lines of the army if ever they gave their assent to this five years' full pay proposition, it must have been with reference to the fulfilment of the terms of security promised in this act of Jan. 25, 1783, which utterly and entirely failed, and proves most conclusively that none of the officers could by any possibility of construction have understood the words "money or securities on interest at six per cent. per annum," to have referred simply to the renewed acknowledgement of the half pay debt, by giving and charging the officer with a certificate of the government to that effect, without expressing any time in which the same should be payable, or how the same was to be secured, and expressly at the same time, prohibiting the officers, individually, the right of option to receive their certificate of service and their right to half pay for life.

The additional words, "said securities" to be such as shall be given to other creditors of the United States, does not in the least diminish the force of the promise of money or securities. The half pay contract being payable in specie or other current money equivalent, when made by the government, admits that its own paper is not specie or security, more especially while the acts of Congress sealing and fixing a value on its own securities or certificates of two and a half dollars to the hundred, are in full force. (1) But this act of January 25th expressly declares that all other creditors are to be se-

(1.) It will be remembered that this contract was made after the Government had become utterly insolvent, and had on the 18th of April, 1780, passed a resolution "that the principal of all certificates taken out since the 18th of March, 1780, should be discharged at the rate of one Spanish milled dollar, or the current exchange thereof in other money at the time of payment, for forty dollars of the said bills of credit secured on loan; and that the principle of all certificates that should thereafter be taken out, until the further order of Congress, be discharged at the same rate and in the same manner as those that had been taken out since the 18th of March, 1780."

Here, then, was the public declaration of the utter insolvency of the Government, as early as the 18th of March, 1780.

By this act two several and distinct classes of currency were created and continued during all the period of the old confederation. Contracts were payable in specie.— Keeping in view this fact, it will clearly be seen that all Government certificates had long previous to 1783 ceased to be security.

cured by substantial funds of the States. But it will be seen that Congress did not wait the time given for the acceptance or rejection of the five years' full pay act, but on the 4th day of July, 1783, passed a resolve by which it will be seen that all the rights of the officers were committed for settlement to the entire control and decision of the Paymaster-General.

These half-pay debts were not attempted to be settled in pursuance of the act of March 22, but of July 4, 1783, which, by legal construction, took away the effect of March 22. (1)

This law made no reference to the five years' full pay, or that it should be payable in "specie or securities;" or if in securities when payable, made no reservation of the right of option to the officer to accept or refuse the five years' full pay. The Paymaster-General could by this law only give certificates of the sums which should appear due on such settlements. The Paymaster-General by this act had full power to settle all accounts and demands any of the claimants had against the U. States, and he chose to credit the officers with five years' full pay, together with the balance which was due for arrears of pay—and these certificates issued, and all that was done was so done by his positive command and of this law, and as will be seen by the letter of the Secretary of Finance in his reply touching one of these half-pay cases. (2)

The act of July 4, 1783, (Journal, 4 vol., 237,) is full and explicit (3)

(1) "It is our duty," says Chief Justice Parsons, "to consider other statutes made *in pari materia*, whether repealed or unrepealed."—(Church vs. Crocker, 3 Massachusetts Reports, 17-21.) "For statutes," says Chief Justice Parker, "are not to be taken according to their very words, but the provisions may be extended beyond, or restrained within the words, according to the sense and meaning of the legislature apparent from the whole of the statute, or from other statutes enacted before and after the one in question. The general system of legislation may be taken into view to aid the construction of any one statute relating to the same subject."—(Holbrook vs. Holbrook, 1 Pick. 248, 284.) For it is to be assumed that a series of statutes relating to one subject was intended to be consistent and harmonious in its several parts and provisions.—(Dwarris on Statutes, p. 869.)

(2) OFFICE OF FINANCE, 17 FEBRUARY, 1784.

"SIR: I am to acknowledge the receipt of your favor of the first instant. I should be very glad to give such opinion on the subject as might be agreeable to your wishes, but I am not authorized to give my opinion at all on the subject, because the adjustment of these accounts rest with the Paymaster alone, by the special act of Congress. If I were to express a private opinion, it would not have (or at least it ought not to have) any influence. If the Paymaster reject any claim made on him, the claimant can only have redress by application to Congress. But I should suppose that if it should be a doubtful case he will report it as such for their opinion. If on the contrary his opinion be decidedly against you, *I doubt much the success of an application to them.* However you will on this occasion judge for yourself, and any service which I may consistently render you may confidently rely on.

I am, with esteem and respect, sir,

Your most obedient servant.

COL. HENRY B. LIVINGSTON.

Signed, ROBERT MORRIS."

(3) Resolved, "That the Paymaster-General, and he is hereby fully authorized and empowered to settle and finally adjust all accounts whatsoever between the U. States and the officers and soldiers of the American army, so as to include all and every demand which they or either of them may have by virtue of the several resolutions and acts of Congress relating thereto, and that the said Paymaster do give certificates (not money or securities) of the sums which may appear due on settlements in the form and

when once charged and sent to the officer, these certificates could not be returned. (1)

The Secretary of Finance not only says that the settlement of all these claims is exclusively under the control of the Paymaster-General, but he also expresses the opinion that Congress would not interpose any action in behalf of a creditor where the Paymaster-General had decided against him.

It was in pursuance of this law, and the imperative rules of the Paymaster-General, that these and all other accounts and claims were attempted to be finally adjusted. The officers were never consulted in stating the account between them and the U. States. Neither the law nor the rules of the Paymaster-General left any opportunity to approve or disapprove of anything which he saw fit to do. There was due to the officers generally a large amount for arrears of pay which was a sum fixed by law, and then long over due. But the Paymaster refused to state, and never did state, the account of one of the officers without first crediting him with five years' full pay and charging him with the certificates to balance the account, and he chose to make all these certificates payable in ten years, he had the same authority to have made them payable in fifty years. While this act made no provision for the return of any of these certificates he continued to issue them long after the States had neglected to contribute the "substantial funds," promised under the act of January 25, 1783, and while they were worth in market less than $\frac{1}{8}$ th of their nominal amount. This he continued to do long after the invalid officers had petitioned Congress for leave to return their full pay certificates, and Congress, by the act of Sept. 14, 1788, had resolved, "That the invalid officers be permitted to return the amount of their commutation in other securities of the U. States, where they have parted with their own, provided the same shall be of the same amount and bearing the same interest." He credited to the officer of the same grade, no more to the young than to the old, no more to the officer of thirty than to one of seventy years of age; no more to the young officer whose life estate was of the legal value of twenty years, than one of five years' full pay. After the interest which amounted to more than five hundred dollars then overdue, he issued certificates and charged

manner which the Superintendent of the Finance of the U. States may direct" (Not described to be such as "should be given to other creditors.) Provided always that the certificates to the officers shall be delayed for a reasonable time to obtain returns of payment or advances to them by the States or public departments where in, the opinion of the Paymaster General, such delay shall be necessary."

(1.) None but invalid officers permitted to return their commutation certificates.—By act of Congress, Sept. 14, 1788, *Resolved*, "That invalid officers be permitted to return the amount of commutation in other securities of the U. S. where they have parted with their own, provided the same shall be of equal amount and bearing the same interest. But this resolve was not extended to the other officers, notwithstanding the government had failed to have them secured as was promised by act of January 25 1783. And therefore as the Secretary declares, and as all history of all subsequent action of these creditors, as well as Congress proves, that it was of no use for them to ask Congress to interpose their action for relief against the opinion of the Paymaster-General."

them at their full amount for \$2,400, when, at that very time, the government could have purchased the same amount for \$300. As there were over twenty officers who were young or middle aged, to one of old, there must have been over twenty-five to one, whose interest it must have been opposed to such an arrangement. And inasmuch as the Paymaster never allowed a certificate of half pay to be issued to even one officer, it rebuts all possibility of the assent or agreement of the officers to receive these certificates as a compromise in final settlement of the Half Pay Contract. The only question which could possibly arise, would be what amount ought the officer be charged for these depreciated certificates which they could not return, as did the invaled officers, having disposed of them for their market value, say from eight to ten dollars for the hundred, after having waited in vain for many years to have them secured by "substantial stocks," as promised in the act of January 25, 1783, which was as much a part of the act of March 22 and July 4th, 1783, as if they had all been embraced in one act. Whose fault was it that this security was not furnished? Whose fault was it that Congress made no appropriation for the payment of the interest which became due annually, whereby all confidence in these public securities (as they are misnamed) was lost? Why was it that the credit of the old confederation became so bad and all of its paper so worthless? Whose fault was this? Who promised to pay the half-pay debt in specie or current money equivalent? Who promised to pay these certificates, the officers or the government? Is it the law of this Court or of Congress that the creditor and not the debtor is to pay the debt? Were these certificates anything more than the evidence of indebtedness until there was an appropriation made by Congress for security or payment? The facts find that the old confederation expired without having paid one cent of interest or principal of these certificates, and that only about two-thirds of the amount of principal and interest was ever paid to any person by the present U States. Therefore, while no court or jury can by any principles of law or equity convert the charge and delivery of these certificates into even a payment *pro tanto* in discharge of this specie-paying contract, how can any court, any lawyer, the Congress of any civilized nation, by any possible error of construction, convert such a disconnected faithless transaction into a final settlement or compromise of a solemn contract for more than double the amount in value? Did the American people gain their liberties and establish this republic at the sacrifice of their honor, the entire disregard to justice, and the abrogation of their private rights? When the old confederation neglected to consider them as connected with the contract by attempting to substitute these certificates in place of that obligation, and preserve their credit by the payment of the interest annually, they ceased to represent or have any connection with the half-pay contract, they were charged on the books of the government to the officer in stating the account in the same manner as those given for arrears of pay. And this was the relation of the

parties, the statement of the accounts of the old confederation with the officers when the Union of these U. States was formed and this government became the assignee of the public domain, and by the 6th article of the constitution assumed the payment of all the debts and engagements of the old confederation. Now of what did these debts and engagements consist? There were the certificates of the government given for arrears of pay, and those given toward the half-pay contract, all or nearly all had changed hands; few if any were in the hands of the original payees; they had parted with them for a small sum, because the old confederation had failed to fulfil the promise of funded security, by the act of Jan. 25, 1783.

Have these United States any right to select some of these worthless certificates which, because the Paymaster-General assumed the authority to charge some of them to the officers as full pay, and by the way of contradistinction in stating the account from those given for arrears of pay then due. After having assumed the payment of all debts and engagements, omitted to make any appropriation for their payment or security for 2 years, and thereby lessening public confidence on the value of those certificates, and even then, at that late day refusing to attempt to carry out that full pay proposition of the old confederation by paying promptly even to strangers who held them, the full amount of those certificates with annual interest. Instead of that, utterly repudiated any such arrangement, refusing by all their acts to recognise any connection of these certificates with this contract. And yet, now come into their own court after having been credited with the full amount instead of their value, and ask that these particular certificates may extend to the half pay contract, and that this court may so construe the attempt to secure the promise to pay, as a full performance of all the promises expressed as well as clearly implied by the old confederacy, and that these certificates given for arrears of pay were rightfully sacrificed to the officers, and that those charged as intended to apply to full pay, should be considered as a compromise and full discharge of all sums which accrued after deducting the ten years half-pay. This is done after the government admits that the act of March 22d, 1783, was not intended to repeal, and did not repeal the act of Oct. 21, 1780. Now take this admission and then read the special provision of the 9th section of the funding act of August 4, 1790, as follows: "That nothing in this act contained shall be construed in anywise to alter, abridge, or impair the rights of those creditors of the United States who shall not subscribe to the said loan, or the contracts upon which their respective claims are founded, but the contracts and rights shall remain in full force and virtue." There can be nothing left in defence. The officers did not fund these securities, and strangers holding this evidence of indebtedness, could not have acquired thereby any interest on any other claims of the payees, against the old confederation or the new. The holders of these certificates could not make the officers subscribers to the funding loan,

and they never did subscribe, and if they had, it would not have affected their legal rights under the contract. Because, as I have before stated, all these certificates were charged and delivered to the officers in pursuance of a positive law of Congress.

We have seen that the officers had no option to refuse the certificates or to surrender them to the Government.

The act of 1783 contained no provision for their return. They were sent to the officers by order of law, and they were neither specie or securities; and as late as September 14, 1788, the last year of the old Confederation, a special act was passed authorizing the invalid corps "to return the amount of their commutation in other securities of the United States, where they have parted with their own, provided the same shall be of the same amount.

This is placed beyond a possibility of doubt 1st. Because no one officer was permitted, or ever did receive his certificate for half-pay, nor was the same ever paid to any officer until this court decided and Congress affirmed it in the case of Dr. Baird. It was specially demanded and refused in the case of Col. McLane. State papers, vol. 1, page 456. That the officers never gave their individual assent to the passage of the law appears from the debates in Congress, (1) and the opinion of those who voted for the law (2) after the law had passed Congress, whether with or without their consent, it was imperative on all.

I need not detain the court to prove that the decision of this court in the case of Dr. Baird confirmed and removed these half pay debts beyond all controversy. 1st.

(1.) Mr. Smith, of Maryland, contended that none of the Maryland line ever expressed their consent to the act of 1785. "They, therefore, could never in fact, have come under the provisions of the commutation law. It was true, that when they came home from service they found that the law had passed and that they must take the commutation or nothing. The alternative was to take it or starve, and it was not unnatural to suppose that they chose the former. This was the case with the whole Maryland line.—(Debates in Congress, 1827–28, vol. 4, part 1.)

(2.) "Mr. Madison who was in Congress in 1783, and voted "aye" on the passage of the commutation Resolution, says in the course of the debate referred to in 1790, was this depreciated paper (commutation certificates) freely accepted? No. The Government offered that or nothing. The relation of the individual to the Government and the circumstances of the offer, rendered the acceptance, a forced one, not a free one. The same degree of constraint would vitiate a transaction between man and man before any court of equity on the face of the earth." * * * * * Here, then, is a debt acknowledged to have been due, and which was never discharged; because the payment was forced and defective." See Annals of Congress, vol. 1, pp. 1236, 1308.

"Col. Hartley who was an officer in the late army, says also, that these certificates were not accepted by the soldiers willingly as an equivalent for their services, but Congress forced them to except of them as the only alternative." Ib. p. 1209.

Mr. Tucker says—from our inability to pay, we were obliged to force on them certificates with a promise to pay them an annual interest thereon, &c. * * * Ib. p. 1222.

"Mr. Scott. If these paper certificates are evidences of anything, it is of a pre-existing contract broken. * * * * *

And since it was not in the power of interested individuals to compel Congress to compliance, that the contract was completely annihilated, and Congress was reduced to the necessity of offering some consideration in lieu thereof. What did they offer? Paper of the nominal value of twenty shillings, but of no more real value than two shillings and sixpence." * * * * * Ib. p. 1317.

"Mr. Seney's views." * * * * * Ib. vol. ii., p. 1324, 531.

Because the Constitution of the United States was ordained to establish justice. 2d. Article I provides that "all legislative power shall be vested in Congress of the United States, who shall have power to lay, levy and collect taxes, &c. to pay the debts, to borrow money on the credit of the United States, to constitute tribunals inferior to the Supreme Court." The second section of the 4d article provides "that the judicial power of the United States shall be vested on one Supreme Court, and such inferior courts as Congress may from time to time ordain and establish, that the judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States and treaties or which shall be made under their authority, to controversies to which the United States shall be a party."

The Court of claims is invested by the terms of the act, with a more enlarged jurisdiction than any other courts of the United States. They are "to hear and determine all claims founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States, which may be suggested to it by a petition filed therein, and also all claims which may be referred to said Court by either House of Congress."

It is a judicial court with all the requisitions and elements of such a court. Their power to determine is co-extensive with the power which conferred it. Congress may refuse to make an appropriation to meet the award, it will be none the less the judgment and exclusively a judicial act. Congress cannot assign as a reason the want of jurisdiction in the adjudication and determination of claims against the United States by a court of their own creation—by the authority of the constitution, which was ordained to establish justice, which is defined to be "the virtue by which we give to any man what is his due," whether it be by contract, express or implied, "right," the assertion of right; one deputed by the King to do right by the way of judgment. This exposition is fully sustained by the Supreme Court of the United States in *Martin heir at law of Fairfax vs. Hunters, Lessee—Wheaton*, 304; 4 do., 310; 9 do., 1: 11 *Peters*, 257; 7 do., 243; 3 *Cond., Rep.*, 575; 5 *Wheaton*, 153; do., 344.

There is no rule of law more clearly settled or sustained by higher authorities than that.

An allowance of a portion of a debt as the balance due, and the reception by the creditor, is no bar or compromise of the claim.

The principle of compromise, by the payment of a less sum, always presumes—

1. That it is made free from compulsion.
2. That there has been no concealment or misrepresentation by the debtor of his pecuniary condition.
3. That at the time of the receipt of a less sum as a compromise, it must also be presumed that the creditor has the opportunity of enforcing his claim by a court of law.
4. The creditors of the government are never consulted in the allowance made, nor is the reception by the creditor of the amount allowed by the officer of the government, to imply his consent to its correctness, or any admission that he intends thereby to release the balance of the claim. (1.) This the claimants consider an important point, and demands the special consideration and decision of this court.

(1.) In the case of the *U. States vs. Dickson*, 15 *Peters*, page 162, "the Supreme Court of the U. S. say that the construction given to the laws by any department of the executive government, is necessary *exparte*, without the benefit of an opposing argument in a suit where the very matter is in controversy, and when the construction is once given, there is no opportunity to question or revise it by those who are most interested in it as officers, desiring their salary and emoluments therefrom, for they cannot bring the test by a judicial decision." It is only when they are sued by the government for some supposed balance that they can assert their rights.

As Attorney-General Cushing says in the case of *Bowman*:

"When an act of Congress commands a head-of department to do a particular thing,

The act of July 4, 1783, and that of March 22, 1783, were not passed at the request of the officers, nor of the creditors generally of the United States, but were the results of the utter insolvency and imperative necessities of the old confederation, which left no other course than to pass a general law instructing the Paymaster-General to state and adjust all accounts and demands against the government, without particularly referring to half-pay or arrears pay of the officers. He was to adjust all by issuing certificates— the act not specifying any time in which they were to be made payable. He took it

and the thing to be done is ministerial in its nature, as, to pay so much money to A. B., then the head of the department is bound in law to do the thing, and may be compelled by mandamus of the Circuit Court.— (*Kendall vs. United States*, 12 *Peters*, 610.)

The same doctrine applies to a joint resolution, properly enacted, which differs from an act of Congress only in form.

But, if the tenor of the law be not mandatory of a mere ministerial act to be done, then the head of department acts according to his discretion, in subordination always to his constitutional and legal relation to the President of the United States.— (*Decatur vs. Paulding*, 14 *Peters*, 497.)

It may happen that a claim shall arise, which, according to the plain terms of the law, is not within its provisions, or which is not proved by the evidence which the law prescribes, and so is rejected by the Secretary. In such a case the claimant may apply to Congress, and that body may pass a private law for the relief of the party, dispensing with its own conditions of applicability, or its prescribed rules of evidence. But no such dispensing power resides in the Secretary.

Or the Secretary, in the exercise of lawful discretion in construing such a general act of Congress, may adopt a construction of it which is deemed erroneous by the two Houses of Congress. In that case, they will pass a declaratory act, which, being approved by the President, or repassed after his refusal to approve it, constitutes a new law for the government of the Secretary."

Subjoined is the decision of the Attorney-General in the case of H. L. Gallaher, who had a contract with the United States for doing certain work on the Washington aqueduct :

ATTORNEY GENERAL'S OFFICE, SEPT. 5, 1857.

SIR: H. L. Gallaher had a contract with the United States for doing certain work on the Washington aqueduct. He was to be paid by the cubic yard, and the government reserved the right of suspending the work under the contract at any time. The engineer in charge gave him notice to suspend in July, 1856, the appropriation being exhausted, and the contractor was paid for what had been done up to that time. In March, 1858, he was notified to resume his work, and did so. He now says he is doing the work at a loss, and asks you, in a memorial, either to give him a larger compensation than he bargained for, or else to release him from the contract.

You have no authority to do either of these things. You cannot absolve him from his obligation to do the work, and if he does it you cannot authorize him to be paid for it at a higher price than the contract stipulates for. This is true, whether he was bound in law to resume after the suspension or not. If he was so bound, it is your duty not to release him; and if he is already released by the suspension, he does not need your interference. *Qua cunque via data*, the result is the same; he is asking for that which cannot be given. In short, you have no power to relieve him from the hardship he complains of, either by giving him damages, by releasing him from his present contract, or by making a new one.

This is a practical answer to the whole case. What the effect of the suspension may be upon the rights of the contractor and his sureties is not a question for you, and consequently not for me, to decide at present. The courts will settle it in due time, if it becomes necessary to raise it. In the meanwhile, if the contractor quits his work or otherwise violates the covenant he has made with the Government, he must do so at his own peril and that of his sureties.

I am, with great respect, yours, &c.,

Hon. J. B. FLOYD, Secretary of War.

J. S. BLACK.

It was settled to be no bar even where Congress, in the act allowing it, declared it to be for the half-pay for life— Case of Thos. H. Baird.

upon himself to make them payable in ten years with interest annually. History finds that it was utterly impossible for the government to have paid the debts which were then due, or even the interest. Not only so, but another important fact that Congress on the 25th of July, 1783 passed a vote refusing to allow the several States each to assume the payment and security of the commutation of their several lines, and deduct the amount from their quotas of tax, &c.—The great exigency of the government required that the debts should be postponed, and no one seems to have seen more clearly, and appreciated that necessity more than paymaster Pierce, who never allowed the account of one of these creditors to be stated without charging enough of these certificates to balance it, and we shall all, while we must ever regret the injury to the creditors of the government, who suffered by its insolvency, yet we shall ever rejoice that it was to this poverty which caused the change of securities until they reached the hands of those who could see clearly that the redemption of these certificates could only be hoped for in no other way than through a union of these United States.

Having shown that these certificates were issued in pursuance of the imperative law of July 4, 1783, and not of March 22, 1783, for the benefit of the government and not to benefit the officers.

2d. That the Paymaster-General assumed the right by virtue of this law, to state the account of all the creditors as he thought proper, that he could not and did not state account of any officer without crediting him with five years full pay, and charging him with these depreciated certificates, and did not give any officer the right of option to accept or refuse them.

3d. That the old confederation expired without having paid one cent of principal or interest, although the interest was due at the end of each year on the amount due on the certificates given for arrears of pay as well as all other certificates.

I now propose to show in what way these as well as all the other certificates were finally disposed of—the loss which the holders of these certificates sustained.

One of the great purposes for which our Constitution was ordained is declared to be, to establish justice, &c., and for that purpose established three great departments of government—the legislative, the executive and the judicial. The first to pass laws, the second to approve and execute, the third to expound and enforce them.—Martin heir at law of Fairfax, Hunter's Lessee, 1 Wheaton, 153.

One of the first great principal measures of this government was that of the funding law by which all the paper of the government was funded, and the certificates which were issued to the officers of the army, and the loss on them under the act of August 4, 1790, may be seen from the Register Certificate and the speech of Mr. Tucker.

LOSS ON THE CERTIFICATES.

“The records in the Register's office will show that Mr. Tucker is right in his figures, and as the principal of settling or redeeming these certificate under the funding act:

“Mr. Tucker, of N. J. It is ascertained, Mr. Chairman, that each captain, for his five years full pay, received a certificate for \$2,400, bearing interest at six per cent. payable annually, and such a certificate Captain Deerhart received in lieu of his half-pay for life, which ran eight years without payment of interest, as before stated, viz: from the 1st of January, 1783, to the 1st of January, 1791, the interest amounting on the latter day to \$1,152; making in the aggregate \$3,552. It well be recollected that in March, 1788 the present government went into operation, and in the year 1790 made provision for and funded the public debt.

“Well, sir, how did they provide for the payment of Captain Deerhart’s \$2,400 principal, and \$1,152 interest, due on the 1st of January 1791?—Why, sir, they gave him three certificates. One for \$1,600, being two-thirds his principal, with interest at six per cent., and one for \$800, the other third of his debt, but deferred ten years without interest, and, instead of paying his \$1,152 down, or giving him paper at six per cent., they gave him a certificate for his \$1,152 interest, and redeemable at the pleasure of the United States, at three per cent. Let us now examine how this funding system operated.

“1. Loss of interest on \$800, deferred from the 1st of January, 1791 to 1st January, 1801, (ten years) at six per cent.	\$480.00
2. Interest on the above sum from the 1st January, 1801, to the 1st January, 1828, (twenty-seven years,) at six per cent.	777.60
“3. Loss on interest on the \$1,152 of the three per cent., from 1st January, 1791, to 1st January, 1828, (thirty-seven years,) at three per cent.	1,278.72

“Total loss on Captain Dehart’s, down to this. \$2,536.32

“And, in the same proportion, every officer’s pay or commutation according to his rank.”—Ib., p. 1,599.

So much, and only so much, was ever paid to the bearer of these certificates, or counterfeits of the same, for one was quite as numerous as the other, (the government having neglected to guard against it, by issuing them on paper in which the style of execution and design was hardly equal to a school child’s reward of merit,) and this sum was only payable in instalments, requiring some thirty years longer to extinguish; but if it was paid to a person who purchased them for seven cents on the dollar, or was found in the street, it may have been considered as liberal between the bearer (and not the payee of the certificates) and the U. S. But the language of the act is that the officer shall be entitled to receive the amount. How to receive? By whom paid and when paid? It is a well settled law that where no time is specified in which the sum is to be paid, it is payable immediately, or within a reasonable time. Here we have the law of the United States [not the statement or deductions of Counsel] by which certain certificates which were charged on account stated between the old Confederation and the officers, who were entitled by contract to half pay for life, were finally disposed of by those who held them, eight years after they were issued, and charged to the officers. These facts are not controverted. It will be seen, therefore, that these certificates were never paid to any person, but were funded un-

der the Act of August 4, 1790, and even then, only about two-thirds of the amount was ever paid, and the act declares that so much can be done only by voluntary loan on their part." The Government actually borrowed these certificates on which to make a loan, to set up in business, and these constituted the only real capital it possessed. The debtor actually borrowed the money from his creditor to pay this much of the debt, and was the cause of our great commercial advancement.

But as there appears to be some diversity of opinion in the construction of this law (—) I have annexed a copy, (1) by which it will be seen that it only embraced certificates (2) and bills of credit.

(1)

Funding Act of August 4, 1790.

The first section of the act reserves out of the proceeds of the revenue from customs, &c., \$600,000 a year for the support of Government, and appropriates the residue for the payment of interest on debts and loans. The act then proceeds thus:

"And as new loans are and will be necessary for the payment of the aforesaid arrears of interest and the instalments of the principal of said foreign debt, due and growing due, and may also be found expedient in effecting an entire alteration in the state of the same.

Wherefore the second section authorizes the President to cause \$12,000,000 to be borrowed, part to pay arrears and instalments of the foreign debt, and to make other contracts relating to the foreign debt. The act then proceeds in relation to the domestic debt thus:

"And whereas it is desirable to adapt the nature of the provision to be made for the domestic debt to the present circumstances of the United States, as far as it shall be found practicable, consistent with good faith and the rights of the creditors, which can only be done by a voluntary loan on their part.

The third section then authorizes a loan to be proposed to the full amount of the "domestic debt," by opening books for receiving subscriptions, by a commissioner of loans, to be appointed in each of the States; and that the sums which shall be subscribed thereto be payable in "certificates," issued for the said debt according to their specie value; which said certificates are designated and described as follows:

The fourth section designates and describes the three new certificates which the subscribers to the said loans shall be entitled to receive—upon all certificates bearing interest the same as to be received up to the last day of December, 1790.

That for the whole or any part of any sum subscribed to the said loan, by any person or persons, or body politic, which shall be paid in the principal of the said domestic debt, the subscriber or subscribers shall be entitled to a certificate, purporting that the United States owe to the holder or holders thereof, his, her or their assigns, a sum to be expressed therein, equal to two-thirds of the sum so paid, bearing an interest of six per centum per annum, payable quarter yearly, and subject to redemption by payments not exceeding in one year in amount of principal and interest the proportion of eight dollars of a hundred of the sum mentioned in said certificate. A second certificate for one-third, payable as aforesaid, bearing interest after 1800. A third certificate for the amount of the interest, bearing an interest at three per centum per annum, payable quarter yearly; provided it shall not be understood that the United States shall be bound or obliged to redeem in the proportion aforesaid; but it shall be understood only that they have a right to do so.

(2)

Description of certificates receivable for sums subscribed.

- "1. The 'certificates' issued by the Register of the Treasury.
- "2. Those issued by the Commissioners of Loans in the several States, including 'certificates' given pursuant to the act of Congress of the 2d January, 1779, for bills of credit of the several emissions of the 20th May, 1777, and of the 11th April, 1778.
- "3. Those issued by the Commissioners for the adjustment of the accounts of the quartermaster, commissary, hospital, clothing, and marine departments.
- "4. Those issued by the Commissioners for the adjustment of accounts in the respective States.

It did not embrace anything but negotiable paper of the old Confederation. It did not include the Half-pay contract. The present government was therefore interested in having the use of these certificates, and they performed a great work of recuperation, of Public credit.

Thus, after this second proposition made to the officers had remained entirely unprovided for during eight years, and no portion of the principal or interest, which was payable annually, had been paid, certificates were finally sealed again, and given up, by a subscription to a loan for the funding of the domestic debt, and a new proposition was made for the issuing of new certificates to the holders, (none of them being in the hands of the officers at that time,) payable by annual instalments of eight dollars to the hundred, making a deduction of interest nearly equal to the principal. In this last proposition, Congress was more cautious, and reserved the right of paying this proportion of the debt or not. There was no *positive assumption* by the present government. The holders were still left in *uncertainty* as to *the amount* they were to receive, even under the second proposition. But as I before stated that it was specially *guaranteed* by *this* government, by the ninth section of this funding act, that nothing in this act contained shall be construed in any wise to *alter, abridge or impair the rights of those creditors of the United States, who shall not subscribe to the said loan or the contracts upon which their respective claims are founded, but the contracts and rights shall remain in full force and virtue.* This government designedly made the broad and just distinction between these floating and depreciated certificates, and those which were in any way founded on *special contracts*, and for that reason disconnected them from those contracts, and left them as they had been *stated* in the books, a charge, and simply as a *payment protanto*.

The act of Congress of March 22, 1783, *admits* the claim of the officers which accrued under the resolve of October 21, 1780, for half pay, to have been such a *debt and engagement* as is contemplated by the Constitution; "for which (says the resolve) *the faith of the United States hath been pledged;*" "whose services and sufferings have so just a *title* to the approbation and rewards of their country."

The solicitor even admits that the act of Oct. 21, 1780, was not repealed by the act of March 22, 1783, and says it was so decided in the case of Dr. Baird. He says that the act for half-pay is a valid subsisting contract, and cites resolutions of Congress of January 20 and February 11, 1784, and March 8, 1785, [4 Journals 331 and 337.] He says "the resolution of 1783 simply provided one mode of discharging the promise of 1780. It could only be effected by the act of the party in accepting the terms offered by it. I have already shown that all these claims of the officers are attempted to be adjusted not by the act of March 22, but by the act of July 1783, in antici-

"5. Those issued by the late and present Paymaster General, or Commissioner of army accounts.

"6. Those issued for the payment of interest, commonly called indents of interest.

"And the 'bills of credit' issued by the authority of the United States in Congress assembled, at the rate of one hundred dollars in the said bills for one dollar in specie.

pation that the security by "substantial funds" would have been furnished, that not having been done, any inference of compromise or the substitution of the act of March, 1783, for that of 1780 ceased to exist by operation of law, and the act giving the right to invalid officers the opportunity to return the amount of their certificates, and others having the same interest, as late as 1788 establishes the great fact that the government merely viewed them as a payment *protanto*, not as a compromise of the half-pay contract, and Congress in language too comprehensive, too explicit and extensive to be misunderstood, secured them by this ninth section of the funding law—the 6th article of the Constitution of the United States provides as follows:

1st. All debts contracted, and engagements entered into before the adoption of this Constitution, as under the Confederation.

"That all debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States, under this Constitution, as under the Confederation."

2d. "The Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3d. "The Senators and Representatives before mentioned, and the members of the several Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution."

The act of July 4, 1783, by which all claims against government were settled was founded not in justice, not in right, but was one which originated in the great national imperative necessity which could not have been avoided without great risk of the loss of this republican government which had cost so much blood and treasure to acquire, which was always dear to those who made such sacrifices to obtain. The court are aware that it was well understood by Washington, that the peace between England and France, which was also to terminate the war with America, had been agreed upon as early as August 1782. How was the government to meet its pressing and overwhelming obligations, and particularly to the army, soon to be disbanded under the most pressing circumstances of destitution, and all the skill and influence of Washington and the patriots of that day was necessary to save the republic. They could only hope to do so by the promise of security and the postponement of the day of payment of all of the obligations. Hence, we find that Congress treated all rumors of peace in a doubtful manner, and the appearance of war kept up, and for that reason we find as early as August, 12, 1782, recorded on the 60th page, 4 journal of Congress, the following: "Whereas from the publications, the people throughout the United States may be induced to believe that Congress have received authentic communications upon the subject of approaching peace—

"Resolved, That it be and is hereby recommended to the several States in the Union, not to remit their exertions for carrying on the war with vigor, as the only effectual means of securing the settlement of a safe and honorable peace."

Yet the alarm of creditors increased throughout the country, but more especially those of the army, whose destitute condition had become distressing in a painful degree.

Hence the memorial of the 14 officers, and the resolve of Congress of July,

25, 1783 in answer to that of March 22, and July 4, 1783—all the results of this great national exigency, and could not possibly have been avoided; whatever injury and injustice was thereby committed against meritorious creditors were the results of pressing necessities of the government. The Paymaster General, could not have done otherwise, and for the honor of humanity, of justice, and the memory of that patriotic Congress, the memory of Washington, why not leave these transactions to rest on these foundations? why is it necessary to attempt to place the defence on the ground of a special favor made at the request of the officers, to a measure which embraced terms so unequal and so unjust, and after having made promise after promise only to be broken and public faith violated? why follow these claims into the administration of a new government, and attempt to show that all these unconstitutional, unjust acts of the old confederation were all passed for the benefit of the creditors—why not admit the poverty and great and trying exigencies of the old confederation to cover over her pages blotted with repudiation.

I have, may it please the court, thus far presented this case, as if these claims were still open to a defence and the subject of controversy. I wish now to call the attention of the court to the action of Congress as well as this court, by which it will be seen that—

THESE CLAIMS ARE NO LONGER OPEN TO DEFENCE.

What have been some of the Actions of Congress?

Those who were members of the old and new governments have said, in the said ninth section, that these contracts and rights *shall* not be *impaired* by the issuing of these certificates; “but that the contracts and rights shall remain in full force and virtue.” This act is imperative in its language, and binding on this court as well as that of Congress. But this is not the only act by which Congress has admitted the continuation and existence of the half pay contract.

The committee of the Senate, who reported the bill providing for the surviving officers and soldiers of the army, which passed 15th May, 1828, composed of such able and profound lawyers as Woodbury, Webster, Berrian, Van Buren, Hayne and Harrison, advocated on strict common law principles.

Mr. Woodbury, Chairman of that committee, expressed his opinion in the strongest language, in support of these claims. (1) Also, a

(1) “But they have averred, and it is again repeated, that these officers are seeking a right, and that is a right both on common-law and on chancery principles. But if on only one, whether it be a right on strict common-law principles, or on chancery principles, it is equally a right, and the claim is equally a legal claim. The forum in which it becomes a right does not alter its legality. Hence, if every gentleman would agree with him from Virginia, (Mr. Tyler,) that the statute of limitation should be scorned, and that the pretended payments made to these officers was ‘mere wind, mere trash,’ I aver that, in any forum, before any court or jury in Christendom, this right, as between individuals, could now be unanswerably established. Let the issue be formed,

report of the House of January 3, 1826. (2) Also, that of the Senate of 1838. (3) It will be seen that the act of 1828 recognized all their legal rights.

and the cause tried to-morrow, and no three or five judges, no twelve 'good men and true,' as jurors, could say that the wages of toil and blood, the solemn promises for sacrifices and sufferings, to secure the liberties of American, had ever been discharged by only 'wind and trash.' * * * * *

"Without dwelling a moment on considerations before urged in the argument, in favor of the legality of this claim, let me ask, what has been the reply to the position of the committee, that, on strict legal principles, the promise of half pay for life, has ever been fulfilled? Has any one shown that the half pay, in the form of half pay, has ever been paid? No pretence for it. Has any one shown that the half pay has ever been technically released? No pretence for it. * * * * *

"How, then, has the promise of October, 1780, been fulfilled? In no way, except by the act of commutation. But it could not be fulfilled by that act, unless all things were transacted in conformity to the provisions of that act." * * * * *

"Everybody feels and knows likewise, that the payment, to be in conformity to the act, was to have been money, or at least securities equivalent to money, when, in truth, it was neither; and even under the most favorable view, if the certificates were kept till the funding, fell short of what was due, from one fourth to one-third. So the certificates, or the payment, should have been made in September, 1783, but were not, in fact, made until some time in 1784-85, when worth much less. But, break through the forms of measures, and every lawyer, every constitutional statesman must admit that on strict legal principles, there should not only have been a conformity to the commutation act, but in the act itself, to make it binding, there should have been a regard to private vested rights."

(2) This claim for half pay was again admitted in the report of Mr. Hemphill, of the committee of the House, of January 3, 1826, in which he says "that, by virtue of these resolves, a solemn contract between the Government and the officers was made, that ought to be observed on the part of the Government with the most profound sanctity. That when the power of rescision resides exclusively in the bosom of one of the parties, it should be exceedingly cautious that justice should be done to the other; that claims are founded on a contract which has not been fairly rescinded, and if it has, there cannot possibly be a doubt that the commutation contract has not been fulfilled;" and recommended allowing the officers their half pay, deducting their commutation certificates, without any reference to what may have been recovered under the pauper acts of 1818 and 1823.

Mr. Burges made a very able report to the House, February 11, 1828, in which the committee say "that, in their opinion, the delivery of those certificates, as well on general principles as on those which govern courts of law or equity, did not annul the right of half pay or exonerate the Government from the obligations of the original contract. Such of those officers as had survived the war, and continued in the service until the peace, became severally and individually vested with a complete right to the reward of half pay for the residue of their lives.

"The reward was gallantly won at the point of the sword; it was the price of our independence, purchased with blood and sanctioned by *public faith*."

(3) So the committee of the Senate, in 1838, reported:

"After an assiduous investigation, the committee conclude that no legislation subsequent to the 21st of October, 1780, could or by a fair construction did, contravene, or in any manner impair the claims of the officers of the army, or any class of such officers, to the half pay promised them by the act of October 21, 1780. The half pay for life contracted by the act of October, 1780, to be paid to the officers of the army for certain services to be performed by them, instantly became a vested right, of which subsequent legislation nor nothing whatever could divest the officers, save a failure on his part to perform the prescribed service. And it would be a libel on the good sense and justice of the distinguished statesmen and patriots of that period, to imagine even that any legislation subsequent to the 21st of October, 1780, had for its object to impair the deliberate engagement made by that act to allow half pay for life to the officers of the army."

At the 33d Congress, the much lamented Senator Evans, of South Carolina, chairman of committee of Revolutionary claims, reported a bill for the final settlement of all these claims, which passed the Senate on the 22d of February, 1855, by a vote of 26 to 15, which was not reached in the House. At the 1st session of the next (34th) Congress, a bill was reported by Hon. Jacob Brown, of the House, on the 30th July, 1856, and ably sustained in his report on legal as well as equitable grounds, and passed the House by a vote of 106 to 60; which was reported in the Senate without amendment. It was, however, in the accidental absence of some of its friends, postponed, by a vote of 24 to 23; and was, therefore, deferred to the 35th Congress.

The strongest objection urged in the Senate by the opponents of that bill, was, that it was partial, and provided for the settlement of only a portion of the claims, in exclusion of others just as meritorious. At the last (35th) Congress, early in the first session, a bill was offered by R. E. Fenton, of New York, which reported back to the House, by Hon. Mr. Cragin, of the committee on Revolutionary claims, without amendment, in which these claims are placed, and ably supported on legal principles; and I would invite the attention of the court to the able, legal and concise speech of Mr. Fenton, in support of these claims. The court may not be aware that, by the rules of the House, if a bill, when reached on the calendar, shall be objected to by one member only, it requires a two-third vote to suspend the rules, in order to have it considered. This bill having been thus objected to, the motion of Mr. Fenton to suspend the rules, in the anxiety of adjournment, did not prevail; and thus this bill remains, with the unfinished business of Congress. And so long as a rule, so much at variance with the principles of our government shall continue, fifty years will be as one month in regard to private rights.

But I wish now to invite the particular attention of the Court to the action of Congress, and especially where the act was in confirmation of the opinion of the Court which act of Congress embraced all the considerations of the case at bar, and all of these half pay time honored contracts, and have fully and conclusively established the rights of all those claims which are embraced in the contract of Oct. 21, 1780, and removed them forever from all controversy. What were the points settled appear—in

STATEMENT OF THE CASE OF THOMAS H. BAIRD. EX'R OF DR. ABSALOM BAIRD, FOR HALF PAY.

Payment of full pay in specie no discharge of half pay contract.

In this he petitioned Congress (*not for half pay*) for *commutation of pay*, which was postponed for many years, and an act was finally passed of June 3, 1836, by which the proper accounting officers of the treasury are requested to *settle the accounts* of Dr. Absalom Baird, and to allow him, or

&c., compensation equal to five years full pay, without interest, which five years' full pay is the commutation for his half pay for life"—(6 Stat. L., 641.) This sum was duly paid at the treasury. Afterward, on the 27th of December, 1837, he again presented his petition for the balance of the claim, and in 1855, the claim for the interest was referred, by Congress, to this court. It was contended by the solicitor for the United States—

1. That Dr. Baird did not come *within* the provisions of the acts promising half pay for life, because he did not come within that class of officers.

2. Because the act of 1836, allowing him half pay, *without interest*, was not in itself evidence that he was embraced in the half pay acts—and

3. That the act of Congress of 1836, which authorized the officers of the treasury to settle the account of Dr. Baird, and to allow his representatives compensation, without interest, which Congress, in said act, *declared to be the commutation for his half pay for life*, he having received the amount, without objection, it was a compromise and a final settlement of his half pay; that he knew very well what he was about when he received it, without objection.

Chief Justice Gilchrist delivered the opinion of the court, (1). One other of the court delivered a *dissenting* opinion.

(1) Says Chief Justice Gilchrist:—"The proceedings in relation to the claim for commutation do not appear to be very material in relation to the case in the present position. On the 23d March, 1783, a resolution was passed, providing that the officers and others entitled to half pay for life 'shall be entitled to receive, at the end of the war, their five years' full pay, in lieu of half pay for life, in money—that is, *specie*—or in securities on interest, as Congress shall find most convenient.' On the 23th of January, 1794, Dr. Baird applied for the benefit of this provision, but died in the year 1806—having, as is said in the report of the Committee of Claims of the 5th February, 1855, 'become wearied and disheartened with delay.' In the year 1818, his son, Thomas H. Baird, having become of age, petitioned Congress for relief; and on the 3d of March, 1855, the committee reported that 'Dr. Absalom Baird was entitled to the benefit of the act of the 17th of January, 1781, extending the grant of half pay for life to the officers of the hospital department and medical staff.' No action was had upon the resolution until the 22d of June, 1836, when an act was passed granting five years' full pay as commutation, under the resolution of 1783, but *without interest*.

"Now, this claim does not depend for its validity upon any admission contained in the act of 1836. But the Congress which passed that act must have considered that Dr. Baird had a legal claim of some kind; otherwise their conduct, in granting him five years' full pay, was wholly indefensible. It is, however, relied upon as a final settlement of the claim. Upon any principle known to the law, this position is wholly untenable. It is easy enough to declare, *ex cathedra*, that it was a final settlement. But it is extremely difficult to imagine, in the absence of all evidence, what reasons can be urged for holding that the payment of a sum of money is of itself a discharge of a debt for a larger amount. A plea of payment of a small sum in satisfaction of a larger is bad, even after verdict. (2 Parsons on Contracts, 130, and notes.) This principle is familiar to every lawyer. A debt may be paid by a fair and well understood compromise, carried faithfully into effect. *But here* there was no compromise.—If it were a case between individuals, no one would dream of applying such a term to it. The United States are either bound by principles of law applicable to them, or they are not so bound. If they are not bound, there is an end of the discussion—for then all reasoning is fruitless. If they are bound by the principles of law, it is impossible to regard the payment of five years' full pay, without interest, as a satisfaction of this claim. There is no evidence that either party so re-

The minority and majority reports of this court were both submitted to Congress. The dissenting opinion alleges that "the word *compensation*, which the act uses, is a very common one—it means *recompense, satisfaction, amends*. So that the five years' full pay, without interest, was paid and received as a recompense for, or in satisfaction of the services in question." Again—"That act of 1836, after allowing said compensation of five years full pay, says, which five years' full pay is the *commutation for his half pay for life*," &c. "Therefore, Congress, by the act of 1836, paid the claimant five years' full pay, without interest, in exchange for the half pay for life, or, in other words, Congress satisfied the claim of half pay for life by the payment of five years' full pay, without interest, which five years' full pay, says the law, is the commutation of the half pay for life. The same claimant afterwards received at the treasury, under the law and without objection, the said five years' full pay. The same claimant now demands of the Government the same half pay, with interest, before demanded, deducting the said sum of twenty-four hundred dollars. My opinion is, that the payment and receipt of said sum of money, allowed the claimant by the act of 1836, is a bar to the present demand, were it otherwise tenable. That the allowance of five years' full pay, without interest, was in exchange for and in satisfaction of the whole demand."

Here, then, is presented the claim of *one these joint and several payees of the same contract*. Where the effect of the payment of the five years' full pay was expressly and distinctly presented to Congress, accompanied by the reasons on both sides, by the able judges and attorneys for the Government, to influence Congress in their decision. Congress, in 1836, had confined the claim for half pay to the *five years' full pay*, without interest; they are called upon again to review their decision of 1836, and with the opinions of the court before them, they reverse their decision, and here, in this claim presented by *one of the joint and several payees of the same half pay contract*, where the question of the effect of the payment, even in specie, of the five years' full pay, was expressly and distinctly presented to Congress. What, may

garded it; and, unless we set at defiance every principle of law, we cannot hold that one party to a contract, without the consent of the other, can discharge his debt by the payment of a smaller sum than the amount due." * * * "The amount of Dr. Baird's half pay was \$240 per annum, payable at the end of every year. He was entitled to this sum up to the 27th day of October, 1805, the day of his death, and interest on the payments as they became due, according to the express provisions of the resolutions of June 3, 1784."

The Court of Claims, therefore, reported a bill for the relief of Thomas H. Baird:

"Be it enacted, &c., That the Secretary of the Treasury be, and hereby is, directed, out of any money in the Treasury not otherwise appropriated, to pay to Thomas H. Baird, administrator of the estate of Absalom Baird, a commissioned surgeon in the army of the Revolution, the sum of \$10,074 84, with interest thereon from the 27th day of October, 1805, to the 1st day of June, 1856, deducting therefrom the sum of \$2,400, paid under the act of June 23, 1836."

please the court, was the decision on *review*, even in this case, where the *party himself received the amount without objection*? Congress affirmed the opinion of the Chief Justice, and decided thereby that the reception of the full pay, without objection, and even where the act by which the same was paid, *declared it to be the commutation for the half pay for life*; or, in other words, “*in exchange*” for the half pay, *was no bar, no compromise.*” Here, may please the court, is the *positive law* of Congress, which is the legislative *construction and declaration* made in behalf of one, and *if to one*, to all who are *embraced* in the same contract, and *virtually declaring that these just debts are no longer suspended by reason of the effect of the acts of July 4, or of March 22, 1783, and that the act of October 21, 1780, and the 9th section of the funding act of August 4, 1790, are in full force and virtue.* The creditors, therefore, have no occasion for a *new act of Congress* to expound or *enforce their rights.* They have no occasion for Congress to grant to this court more enlarged powers of *jurisdiction*, to enable them to determine and commend these claims for payment. Congress having referred this contract to this court, there clearly implied, if not conferred all the power of expressing an opinion which they have, and that opinion having been acted upon, and settled by Congress, the question of *construction* is no longer open for consideration.

It seems unnecessary to extend this part of the argument, inasmuch as the defence admits that the old Confederation was insolvent, and that they had no authority to pledge the credit of the several States, or that of the Confederation, and virtually convicts that government, and the Congress, of the crime of having obtained the fortunes and services of the officers under false pretences—(Defence by the U. S.) viz: “that, at the time Congress continued to pass these acts for half pay, that they had no authority and no power to enforce contracts—that

“The States, at this time, were the real sovereigns; Congress was a mere assembly of ambassadors. The army was in the pay of the States; the officers were appointed by them, though commissioned by Congress. Whatever Congress might resolve was of no effect, unless concurred in by the States; and the officers of those States in which the half pay system was regarded with aversion must have felt that it would be dangerous to brave

“public sentiment at home, relying upon no other support than that of Congress. The States might, as Massachusetts afterward did, on this account, withhold their quotas from the common treasury, and in this way, at least, might render the resolution a dead letter.”

And that this induced the officers to request a commutation. But he also says—

“That the offer of commutation made in the resolution of March 22, 1783, did not, and was not intended to deprive the officers of the benefits of the resolution of 1780, but was made in order to enable the officers to relieve themselves from the odium which was raised against them in some of the States, as the recipients of pensions from the Federal Government, and as being thus distinguished from the mass of their fellow citizens.”

And still further—that, notwithstanding the credit of the Government was then bad, “that the certificates given them are worth as much in market as the half pay would have been.” In relation to the first objection, the answer is found in a just maxim of law, that no man or government shall be permitted to take any advantage of their own wrong. As to the second, the solicitor must have assumed the conclusion that the certificate for five years’ full pay, due to an old man, was worth as much as a certificate for twenty years, due to a young officer—each of the same grade—or that either would be worth as much as a certificate for their half pay for life, of the same age and grade of office, because there never was issued a certificate to any officer (to which they were each entitled, but refused to all the officers,) for his half pay for life. But if the very old officer lost less, the younger officer must have lost more; and, as I have before stated, as there were twenty-five young officers to one old one, there must have been twenty-five lost where one gained by this course.

And still he adds further—

“That the acceptance by any officer of the commutation offered by Congress in the resolution of March 22, 1783, was an accord and satisfaction, and, in law, was a full discharge of the promise contained in the resolution of October, 1780; and, though not necessary as a legal defence.”

And says—

“An accord is defined by Story (Contracts, §982) to be an agreement between two parties to substitute some equivalent in satisfaction of a claim due from one to the other. Such an agreement must be advantageous, in full satisfaction, certain, and perfectly executed.”

The evidence finds that these certificates were not delivered by any “agreement” of the parties, but were charged to, sent, or delivered to these creditors, in pursuance of the law of July 4, 1783, and by the imperative rule of

the paymaster general; and the evidence finds, beyond all doubt, that it was greatly disadvantageous, that it was entirely uncertain, depending upon the same Confederation as the contract for half pay, and as the facts before related prove, never was perfectly "executed;" and the evidence finds, that it was not one-third in amount of the value of the half pay due to all the younger officers; and the amount of said certificates, if they had even been payable in specie, was not an equivalent in satisfaction of his half pay debt, which had then, by the peace, become "certain," to which all these creditors had acquired a vested right, secured to them by a positive law of Congress, payable in specie or other current money, equivalent," by the acts of October 3 and 21, 1780. If the solicitor had read a little further of the same section, (982d,) he would have found that authority was opposed to the defence—viz: "If the accord be to pay money in satisfaction, it will not operate as a defence until payment is actually made; and proof of readiness to pay, or even of a tender and refusal, is not sufficient, for a mere agreement to do a future act is only an accord without satisfaction, which is no defence." "An agreement by creditors to accept five shillings and sixpence in the pound, in full satisfaction of their claim, was held to create no bar to an action for the full debt, there being no consideration to support the agreement."—(Story 982, section 6.)

But the solicitor further admits, "that the resolution of October 21, 1780, was not repealed, in legal effect, has been decided in Baird's case, in which half pay for life was recovered under that resolution. That there is no expression in the resolution of 1783 indicating an intention to cut off the half pay of any officer, save those who should accept the full pay," And he adds, that the expression is, that the officers "shall be entitled to receive commutation—not that they shall receive it."

These are the same words which are used in acts of May 15, 1778, and October 3, 1780; if when used in the act of 1783, they were considered to be more imperative on the part of the Government, and to leave any right of option to the officer, then the paymaster transcended his duty in construing these words to mean, that all the officers should receive these certificates for full pay. The facts find, as I have before stated, that he refused even to settle or state an account, without first crediting the officer with this full pay and charging them with these certificates; and what aggravates the defence still more is the fact, that, after having charged and delivered the officers many thousand dollars on these certificates for arrears of pay, which they were unable to obtain more than ten cents on the dollar for, the paymaster continued to issue and charge more of these certificates; and, while there was no hope or chance of payment, continued to insert in them commutation for half pay for life. The act of July 4, 1783, by which all demands against the Government were settled, left to the paymaster but one way and one only, and he adhered to that without a single exception. Neither the justice of these meritorious debts, nor the pressing wants of the officers, could save them from the imperative rules of the paymaster general. And yet the solicitor endeavors to distort this known deliberate wrong, this great exigency of the Government, into an agreement of the creditor.

What would be said of a banking house who should continue to issue bills of credit under the pretence that they would soon be redeemed, and still keep on, year after year, making no provision for their redemption, but continue to issue their bills as a substitute or exchange for an obligation for

twice the amount—and the bank, in the mean time, assigns all their effects, without having paid one cent of principal or interest? What would be said of a lawyer who should come into court in defence of a suit brought on the original contract, on which is credited these worthless bills at their face—and while he admitted the bills to have been worth only 12 cents on the dollar, contend that they were worth as much as the obligation for twice the amount, because they were negotiable, and ask the court to discharge the whole debt, on the ground that if one was bad so was the other—that a faithless broken promise for one-half the amount, which had never been paid, was worth as much as the whole, and, without citing an authority, ask this court to decree the original contract discharged—notwithstanding the act of Congress had specially declared that the original contract shall not be impaired by reason of these bills of credit. And the defence to go still further and contend, that the corporation was not legally authorized to make the contract, and if not that, it was doubtful whether they would ever comply with its terms, was one of the causes which induced the creditors to accept of these bills of credit for half the amount, and but not a twenty-fourth part of the value of the contract. Another reason alleged was, that as the creditor had already lost many thousand dollars by these same debtors, and they had been thus reduced to such a state of pecuniary want, that the twelve per cent. went to his immediate relief, and was worth more than two hundred per cent. in the future.

If an individual should be knocked down in the night time and robbed of all the money he had in the world, with the uncertainty which must attend its recovery, and he could receive one-twelfth, it may be true that one-twelfth actually paid over, would be worth as much as the whole in the pocket of the robber; but such a transaction would hardly be viewed, in a court of law, as an “accord” and “satisfaction” of the claim. Such is the moral and legal deduction to be made from the defence to these claims. How could it be otherwise? A few patriotic men of the provinces and States undertake to declare themselves independent, and set up for themselves, and contend with the most powerful government on earth, surrounded with tories and enemies at home, and to carry on a war of eight years duration almost entirely on credit, and finally, after peace is declared, having no means to pay even the interest on their indebtedness, upon the same principle of right, or rather the suspension of right, from imperative necessity, which induced them to distrain cows and oxen of the citizens to feed the army, Congress passed a law ordering the paymaster general to settle all the demands existing against the Government? In what way? By paying them in specie? O, no! Of course not, for they had none. How then? Why they authorize him to issue certificates payable to the creditor or bearer, for the sum or sums which should be found due, payable in ten years, with interest annually. Now this was certainly a very easy way to pay off a hundred millions of dollars. As I examined the acts of Congress in relation to these debts, I was struck with the resemblance to that of a case of an old acquaintance of early life. He was fond of display and disposed to buy and borrow extensively, and had the reputation of being a man of property; but, to the great surprise of his neighbors, he put a notice on his door stating that he had stopped payment for twelve months, and that no demands against him would be settled before that time, unless his creditors should take their pay in such paper as he held, or twelve cents on the dollar

cash. The notice, of course, was without any date, and when he was sued by one of his creditors, to whom he had paid twelve per cent. in money, and charged the same as being full, he came into court and pleaded this notice in defence of the claim, and the defence only failed because the court decided it required two to make a bargain, and although the creditor saw him make the charge on his books, in full. But if he had only had the power which Congress had, and exercised that power as Congress did, by excluding all the creditors of the United States from the jurisdiction of her courts as plaintiffs, he would have been perfectly safe, and could have done as the United States does now, after having closed the doors of her courts against her creditors for sixty years, seek to avoid the payment of these just debts, and attempt to raise the presumption of payment from lapse of time, or that the creditors agreed to accept, and did accept, certificates for a certain amount, which was not one-half the value, which they never paid, and which they admit are not worth much, because they say, at that time the creditor of the United States was bad. It would afford the creditor of an insolvent debtor no particular satisfaction to be told that the reason why his notes were of so little value was because he was poor, which had been the cause of a loss of many thousands to him on other paper against the same debtor, and that which he then held was worth just as much as that on which he had lost his all before. But that is not all; among the certificates charged to the same officer for a number of thousands of dollars, at the same time the United States finds some of the certificates which are payable to the officer or bearer, which read for a certain sum, in which, for his own accommodation, the paymaster to keep the books straight, had inserted that the same was the commutation for half pay, and the solicitor asks the court not only to allow them to stand as they now do, as a payment *pro tanto*, but in violation of all principles of right; that they must not only lose what they have on all the other certificates, as well as these, but that he would have the court go still further, and ask that the charge and delivery of these certificates should now be resuscitated and be considered as a final settlement of the half pay contract, although held and funded by strangers. That a broken, faithless promise to pay, on the part of the Government, was equal to actual payment by one individual to another; that, as corporations had no souls, it was unnecessary for them to have any honor.

But there is another aspect of the case, which, to my mind, renders the defence still more objectionable and dishonorable—viz: the present United States are merely the assignees and trustees of the effects and public domain of the old Confederation, and in this double capacity are to answer to the creditors of the United States. In order to encourage the army, some of the States, as early as 1781, Virginia particularly, and New York, ceded all their public lands to the old Confederation, and it was at the earnest request of General Washington, and well understood that they were to constitute a fund for paying the debts, and specially those of the army. And the United States, by the 6th article of the Constitution, assumed the payment of those debts, although certain claims of the Virginia line were named, yet the supreme court of the United States decided they were to apply to all the lines of the army, and hence we find that the—

Public Lands of the United States were pledged for the payment of these debts.

The twenty-second section of the funding act of August 4, 1790, provides "that the proceeds of the sales which shall be made of lands in the western territory now belonging or that may hereafter belong to the United States, shall be and are hereby appropriated towards sinking or discharging the debts for the payment whereof the United States now are, or by virtue of this act, may be holden, and shall be applied solely to that use, until the said debts shall be fully satisfied."

The creditors are seeking the payment of these just debts through their own funds, placed in the hands of the United States as a sacred trust. The army conquered these lands for the States, and the States ceded them to the United States, to be "applied solely to that use until the said debts shall be fully satisfied." These half pay debts were excluded from the jurisdiction of settlement by the several States—nor did they come within the ordinances for settling the accounts and demands of individuals with the States—nor do they embrace any portion of \$114,409,303 10—sums allowed to the credit of the several States by the United States. While Congress is so liberal with appropriations for the reward of even the show of military service, is it not a declaration to this court, as the judiciary branch of Congress, to be governed by the most liberal rules of construction? Will this court not say that these creditors should have a small portion of their own funds, while over 139,000,000 acres, up to June, 1857, had been sold for cash, over 60,000,000 for military bounty land warrants, 67,000,000 for schools, and over 10,000,000 for internal improvements? Over 50,000,000 acres have been granted by Congress for a nominal service of three months and fourteen days, of the value of more than \$60,000,000.

The children of those who acquired these lands by many years service, were all excluded because they were not minors, were over 21 years old. There are still left of this trust fund, undisposed of, over one thousand millions of acres of land.

From whatever point the defence set up in the present case may be viewed, to my mind it has neither reason, law, equity, or justice, to sustain it. If such a defence could be entertained by this court, or the Congress of the United States, I should be induced to the conclusion, that America had too many monuments dedicated to liberty and too few to justice—and I hope soon to see towering to the skies, one at the entrance of every city and the corner of every street, to inspire, if possible, a love of justice and the respect for private rights, which should become a sentiment and fixed principle, to influence the heart and enoble the character of every citizen of this great and glorious Republic, until public and private duty should become, in their influence, coextensive with the purity and power of the ballot box, felt and respected in every department, of the administration of public as well as private affairs; until justice, good faith, honor, gratitude, and all the other qualities of the heart which enoble the character, honor the nation and fulfill the great and glorious objects of our republican form of Government, give a dignity and value to liberty which has never been enjoyed. What is the value of liberty while its pretended followers overlook and override all respect for private rights, and security to the character and property of the citizen? The honor of a State cannot and ought not long survive the indifference, neglect, and dis-

regard of the rights of her citizens. Public and private virtue cannot long exist separated from each other. That which is a duty as a citizen, is equally a duty on the part of a member of Congress, a judge of a court, and the officers of all the departments of the government. This great fact must be felt in every precinct of the United States, until every citizen may be able to say that he is protected by the laws, in all his private as well as public rights; that justice is administered to him freely, without sale, completely and without denial, promptly and without delay. We would go to war with every foreign nation to redress one half the wrong committed by them against the American people, which this Government itself commits against its own citizens every week. It is only a few months since we sent a large fleet to Paragua, at the expense of many millions, to coerce the payment of ten thousand dollars due from an uncivilized nation, while debts justly due her own citizens, known positively to be due, and have been more than a half century, since we are able to pay, and for which the United States hold in trust over one thousand millions of acres of land for the payment of these just debts due to the great benefactors of our race to whom we are indebted for the existence of this glorious republic, without exciting any particular interest, not enough to be generally examined, or redress granted.

May we not hope that the recent law, doubling the pay of the members of Congress, may enable them to devote more of their time to the Administration of public affairs—that this nation may be not only great in all their Governmental and political relations, but prove to the world that where the heart enjoys the largest liberty of conscience, it has the highest appreciation of right, that public and private virtue are unitedly resting upon the eternal principles of justice.

Having thus shown that the Act of Congress in behalf of the claim of Doctor Baird, placed these half pay claims beyond all controversy, and that this court, in the present case will consider that decision binding; not because it was in confirmation of a rule of this court, but because the constitution requires that all laws of Congress shall be supreme. What is the jurisdiction and object of the Court of Claims? Suppose this court should think proper to overrule that decision, and decide against all the points settled in that case; and decide that in all cases, where these certificates were charged to the officers, that it was at their option to accept or refuse them, instead of a certificate for half pay for life. This would not abrogate or change the express and clear reading of the act itself, which declares that the officers shall not have the right to reject these certificates for full pay. This would not destroy the record evidence. The books of the Government, which show that, in no case, did the paymaster general ever charge or deliver a certificate for half pay to any officer, though requested. Suppose they decided that these worthless certificates for full pay, charged to the officers, were specie or security, to be a compliance with the terms of even the act of March 22nd. Such a decision cannot change the public record of the utter insolvency of the old confederation. It would not wipe out the law by which all the certificates were then scaled at two and a half dollars to the hundred.—Suppose this court should also decide that these officers had never afterwards expressed any dissatisfaction at these continued broken promises, would that erase the repeated applications recorded, of the complaints to Congress of this great injustice, and the many hundred acts in which Congress has at-

tempted remuneration in different forms, ever since the foundation of the Government?

But, having been so unjustly forced upon the officers, and although the interest on these certificates was payable annually, not one cent was ever paid to the original payees or the holders, during the existence of the old confederation. And only about 63 cents on the dollar was ever paid over to the holders, and that on a long term of time of some thirty years. And, notwithstanding, if this court should decide that these worthless certificates, entirely disconnected from the contract and in the hands of strangers, passing from hand to hand, for ten cents on the dollar, should be considered as still connected with the original contract, such a decision could not erase the 9th section of the law of Congress of August 4, 1790, which expressly declares:

“That nothing in this act contained shall be construed in any wise to alter, abridge, or impair the rights of those creditors of the United States who shall not subscribe to the said loan, or the contracts upon which their respective claims are founded; but the contracts and rights shall remain in full force and virtue.”

And if this court should decide that the present Government is not liable for the debts of the old confederation, it could not thereby erase the sixth article of the constitution which provides—

“That all debts contracted and engagements entered into before the adoption of this constitution shall be as valid against the United States, under this constitution, as under the confederation.”

The much abused act of March 22, 1783, declares—

“That the faith of the United States hath been pledged to those officers whose services and sufferings have so just a title to the appropriation and rewards of their country.”

Independent of any suggestions or opinion of this court, the third section of the constitution provides—that

“The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all Executive and Judicial officers, both of the United States and of the several States, shall be bound by an oath or affirmation to support this constitution.”

Suppose this court shall fail to see that the terms specie or security, expressly provided in the half pay, as well as the full pay, acts made by a Government which had scaled its own paper, and would not receive certificates for over two and a half dollars to the hundred, that they did not require to be based on any special fund. This would not erase the act of January 25, 1783, which specially provides, that they are to be based on substantial securities to be furnished by the several States. Congress would still be bound by these laws, whether the court considered them binding or not.

If this court shall decide that, as the certificates were payable to bearer, it was optional with the holders to fund them or not, it would not, in any way, operate against the original payees in their claim for the balance of the half pay as they are charged by the Government for the full amount.

I, however, concur in the opinion often expressed by this court, that this is no place for this class of claims which are conclusively settled by the laws of the Congress of the old and present Government, and the 6th article of the constitution. They do not call for the taking or consideration of any testimony of witnesses, as they rest on the positive laws of Congress. The

amount is fixed, and if any thing has been paid, it is also fixed by a law of Congress. If Congress wish for expounders of their own laws, the creditors should have the right to have that of a court of the highest jurisdiction. I cannot conceive a claim in which the unsettled, limited, jurisdiction of this court can afford any relief to the creditors of this Government—possessed of no power to enforce the payment of a judgment, and still left to the discretion and repudiation of Congress. It seems to be regarded merely as a bridge over which repudiators of just debts can pass, and avoid their obligation to the laws of Congress, the constitution, and the oath of office, and used for the continued suspension of just debts. It is hard, indeed, for the creditors of the United States to be at the expense of urging their claims before a court which has only the power of sending their claim back to the discretion of Congress. This appears to be a heavy tax to creditors, as well as a large expense to the Government, without any benefit. Congress and the court appear to be great competitors in all the sources of delay, as if there was more honor and usefulness in suspension and repudiation than in payment of just debts long due from the United States.

In what does the Discretionary Power, as Referred to by the Court of Claims, consist?

Does this power extend to all the other branches of the Government?—to the accounting officers. Would Congress be satisfied with the decision of these officers, who should adopt and credit their pay by the old act of six dollars per diem and milage, and balance the account by charging twenty-four hundred dollars, instead of some ten thousand, to some of the members for the pay and milage of a Congress, for some nine months services? Would this court be satisfied with the discretion which should credit on the books of Government, the sum of \$1200, instead of the present salary of \$4000, to each, per annum, and charge this \$1200 in full, for that salary, leaving the books squared, and when you asked for the balance, would you be satisfied with the usual answer?—"That, on examination of the account, there does not appear to be any thing further due you!" Suppose you attempt, then, to get the balance by a supplementary Act of Congress, and that should pass, would the discretionary power in the President authorise him to veto the bill? If the constitution and laws are to be respected, if, as the constitution declares, the laws of Congress "shall be supreme," how can Congress, or any of the officers of the Government, yield this imperative command and oath of office, to the unlimited, unrestrained discretion? If they can be violated where the officers are not the creditors, they may, with equal justice, be applied to them. The violation of these sacred obligations and oath of office, would be the same in either case.

These obligations cannot be avoided by the omission to examine claims which are admitted to be founded on the laws of Congress, and guaranteed by the constitution. The discretion of Congress and of this court, can only be exercised in conformity to law, and sustaining these just debts, or the resignation of the officers which now imposes an imperative duty to act. There are no discretionary power or rules of law which can enable Congress to pass a law trebling their own salary, and authorise them to withhold an appropriation for the payment of these small debts so long due to these creditors, who are really the granters and mortgages of our public domain, to whom they

are indebted, not only for the Government, but they, as well as this court, for the places they now hold.

Constituents and creditors of this business people, are demanding more respect for the rights of property, not only as States, but as individual creditors. They are asking that the efforts of their representatives may be more devoted to the calls of business of justice and peace, less, much less, to exciting influences of politics.

Having considered the liability of the United States under the half pay contracts, in their general aspect, I beg leave now to call the attention of the court to the evidence and the law as applicable to the case at bar for the services of

CAPTAIN ISAAC HICKS.

The Government of the United States having established this Court "to hear and determine all claims founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States, which may be suggested to it by a petition filed therein, and also all claims which may be referred to said Court by either House of Congress."

As the solicitor admits in his defence, that this court decided in the case of Dr. Baird, that the act of 1783 did not repeal that of 1780, but that it was a solid subsisting contract, and binding on the United States, in all cases where the party did not receive his commutation. And the court and Congress having had the question presented in that case of the effect of reception of the full amount of the commutation without interest, where too the same was paid and received by the party himself without objection, and still farther, where, as in that case, Congress declared "that amount to be the commutation for his half pay for life." As I before stated, as this particular portion of the defence was expressly and most distinctly presented to Congress by the decision and argument in that case, it is a legislative construction and imperative law in the case at bar. (1) The plaintiff therefore, in the present case, asks for no additional Act of Congress. No new rules of construction of this court. The present case is free from all the objections which are made in that case. The courts and Congress having established the question of legal right, the only questions which seem to remain for the consideration of the court, are :

1. Does the claim at bar come within the several Acts of Congress which promise half pay for life?
2. To what amount was Captain Hicks entitled for his services as Captain and regimental paymaster?
3. How much was paid, when paid, and by whom paid?
4. What balance is now due the plaintiff for these services?

(1) *Special act to one is a declaration of the rights of all of the same class of creditors.*

"An invalid pensioner was dropped from the pension roll, but restored by a special act of Congress; this act simply amounted to a legislative declaration that he was entitled; and whenever any subsequent general law increases the pension to which persons of his rank were entitled, is thereby increased." (Secretary of War—case of Peter W. Short.)

EVIDENCE.

1. The first position is fully established by the evidence, and, I believe, is not controverted. The contract embraced the promise of 300 acres of land as well as half pay, and for which a land warrant, issued as appears by certificate of pensions, not until March 12, 1794, No. 1113. See page 8.

Also, the issuing certificates; also, the proclamation of Congress. (1)

The acts of limitation cannot be urged in defence of the case at bar, inasmuch as the records of the Government show that it was presented at the close of the war, and neither the half pay, nor full pay as paymaster of the

(1) On the 18th October, 1783, (4 vol. Journals by Way & Gideon, p. 299,) Congress adopted a proclamation announcing the peace, and that, in the progress of an arduous and difficult war, the armies of the United States of America have eminently displayed every military and patriotic virtue, and are not less to be applauded for their fortitude and magnanimity in the most trying scenes of distress, than for a series of heroic and illustrious achievements which exalt them to a high rank among the most zealous and successful defenders of the rights and liberties of mankind. * * * * "We, therefore, the United States, in Congress assembled, thus impressed with a lively sense of the distinguished merit and good conduct of the said armies, do give them the thanks of the country, for their long, eminent and faithful services; and it is our will and pleasure that such of the federal armies as stand engaged to serve during the war, and as, by our acts of 26th May, the 11th day of June, the 9th day of August, and the 26th day of September last, were furloughed, shall, from and after the 3d day of November next, be absolutely discharged, by virtue of this our proclamation, from the said service; and we do also declare that the further services in the field of the officers who are deranged and on furlough, in consequence of our aforesaid acts, can now be dispensed with, and they have our full permission to retire from service without being longer liable from their present engagements to be called into command."

Pay by the several acts of Congress, and the question as to the supernumerary, or constructive service, as it is called, whether relating to half pay or to bounty land, stand upon the same conditions as prescribed by the same words, "service to the end of the war." So decided by Attorney General Cushing, June 7, 1854. Also, in the case of the State of Virginia vs. Lilly, administrator 1 Leigh, 526—but is fully settled by the proclamation of Congress, (4 vol. of Journals by Way & Gideon, 299,) in which Attorney General Cushing, in considering Virginia bounty land claims, says:

"Here we have the high authority of the Congress of the United States of America in explanation that officers deranged or supernumerary, not in command, not in actual service in the field, and on furlough, were yet liable to be called into command, and not out of the service, until discharged, from and after the 3d of November, 1783, by the proclamation above cited. It is believed that the constituted authorities of the United States never refused to issue a certificate of five years' full pay in commutation of half pay for life to any one of the numerous officers of the continental army who were thrown out of active service as deranged or supernumerary, having no command by reason of reduction of the regiments and corps of the several States, which happened between the resolutions of Congress of 21st October, 1780, and 22d March, 1783, upon pretence that such deranged, or supernumerary, or furloughed officers were out of service, and did not serve to the end of the war. All such as applied (it is believed) were acknowledged to be entitled, and received their certificates. Certain it is, that such a refusal would have been unwarranted, and in violation of the public faith and of the general principles applicable to contracts, as before explained."

regiment, were ever paid or settled, in any way, during all the period of the old Confederation. Paymaster Pierce reported all additional pay for staff service with that of rank, and therefore did not credit anything for his services as paymaster. Whereas it is well settled—

That the Line and Staff Officers could be United.

The Secretary of the Interior decided, in May 14, 1850, "That one who was both ensign and paymaster, and became supernumerary as paymaster, and continued to serve as ensign to the end of the war, was entitled to half pay for life in both grades." He also, on the 27th of January, 1852, said, "That an officer is entitled to half pay, not only for his rank in the line, but in the staff also." It is not pretended, as appears in No. 6, page 10, that he was ever credited or ever received over \$4,081 for all of his services, and was not allowed for services only up to January 1, 1783, whereas the proclamation fixes the time of service to the 3d of November, 1783. The last act fixes the pay of regimental paymasters, (of January 12, 1781;) and declares their pay to be additional to that of rank.

The Government having become satisfied that Capt. Hicks had disbursed all the money which went into his hands as paymaster. Let us see how his account stood with the Government at the end of the war, 1783—

There was due him as <i>Captain</i> for services from Sept. 4, 1776, the date of his Commission to Nov. 3, 1783, at \$40 per month, being 17 years, 2 months,	3,440 00
Also, for paymaster at \$30 per month, from August 4, 1778, to Nov. 4, 1783, 3 years and 4 months,	1,920 00
	<hr/> 5,360 00
Deduct paid up to November 3, 1783, \$3,610 53	3,610 53
	<hr/> 1,750 47
Interest on this balance to March 9, 1785, 1 year and 4 mo's,	140 02
	<hr/> 1,810 49
Deduct certificate No. 82876, dated March 17, 1785,	400 00
	<hr/> 1,410 49
Interest on this balance to March 7, 1794, 9 years,	761 66
	<hr/> 2,182 15
To half of Captain's pay, from November 3, 1783, to March 7, 1794,—11 years and 4 months,	2,720 00
	<hr/> 4,992 15
March 7, 1794, leaving a balance of Captain's pay of	4,992 15
March 7, 1794, deduct payment by certificate of registered debt for	1,638 17
	<hr/> 1,638 17

Here there was a balance due Capt. Hicks, exclusive of commutation, (or half pay as paymaster after Nov. 3, 1783,) \$3,263 98

To this balance is to be added his half pay as Captain, from

March 4, 1794, to June 20, 1817, the time of his death,	5,818 00
Interest on same to that date,	4,306 52
	<u>\$13,488 50</u>

To this sum is to be added interest from June 20, 1817, to the time of payment.

Also, half pay as paymaster, from Nov. 3, 1783, at \$30 per month, (agreeably to act of Jan. 12, 1781,) to June 20, 1817,	6,120 00
And interest on that sum to day of payment,	
	<u> </u>

The whole amount of pay credited by the Government to Capt. Hicks, is only 4,081. Whereas it will be seen there was due him at that time for pay alone with interest \$5,360, payable in specie.

Interest.

It will be remembered by the court, that interest was allowed in the case of Dr. Baird. Also, the resolve of February 27, 1783, (vol. 4, p. 168,) making provision for the settlement of all claims not provided for by any previous law of Congress previous to the 1st day of January, 1782, to be settled at the treasury, and any balance to be on interest. Also, the resolve of June 4, 1784. (1.) The claim for interest is established by the decisions (2) of the highest authorities.

(1) Passed June 8, 1794, which provides "That an interest of six per cent. shall be allowed to all the creditors of the United States for supplies furnished or services done, from the time that payment became due." In alluding to this resolve, Chief Justice Gilchrist, of the Court of Claims, in a recent decision says: "No language could be more express or free from doubt than this. The resolution was passed from a feeling that it was just and right that interest should be paid from the time the half-pay became due, and it was a voluntary contract on the part of the United States, constituting a legal claim against them which no subsequent legislation could release without the consent of the other party"—Thos. H. Baird *vs.* United States.

(2) The release by a creditor, or a receipt for the amount of damages due on a bond, is not a release of the *interest*. "The legal right to interest attaches to all contracts for the payment of money."—United States *vs.* Gurney, 4 Cranch Rep. 345. The law appears to have been settled in the case of Stockton and Stokes. That the Government must render interest in the same manner in which they would be entitled to receive as creditors from their debtors—12 Peters, 613.

The rule allowing interest against the United States, is well settled in the case of Thorndike in error, *vs.* United States, 2 Mason, C. O. Rep. 18. And cannot be repeated too often, where the interest was resisted on the ground of sovereignty or the unsuitability of the Government, &c.

Justice Story, delivering the opinion of the court, said:

"If the present, then, were a contract between private citizens, there can be no doubt that the court would be bound to give interest upon the contract up to the time of payment. And if by law the amount due on the contract could be pleaded as a tender or a set-off to a private debt, it would be a good bar, to the full extent of the principal and interest due at the time of such tender or set-off; nay, more—if the note or promise were given by the citizen to the Government, the latter might enforce its claim to the like extent. Can it make any difference, in the construction of the contract, that the Government is the debtor instead of the creditor? In reason, in justice, in equity, it ought to make none; and there is not a scintilla of law to justify any. And if a suit could be maintained against the Government, I do not perceive why it would not be as much the duty of the court to render judgment on such suit for the principal and interest, in the same manner and to the same extent as it would in the case of private citizens. The United States have no prerogative to claim one law upon their own contracts as

Sometimes the Statute of Limitations are urged in Defence of these Claims.

At common law no lapse of time creates a bar to an action, although it may raise a presumption of payment.—Attleborough vs. Middleborough, 10 Pich'g. So far, however, as relates to these claims, all presumption of payment is rebutted by the utter insolvency of the old confederation.

The limitation of actions is prescribed by 21 James 1. All these statutes require that the action shall be commenced within six years—and assumes the important fact that there is somebody who can be sued. (1.) Now all persons are prohibited the opportunity of suing the U. S. They are only, therefore, required to present (2) their claims for settlement within the

creditors, and another as debtors. If as creditors they are entitled to interest, as debtors they ought to pay it.

“It has been asked whether, upon all contracts of the Government which are not strictly performed according to their terms, interest is to be allowed in the same manner as upon private contracts? In point of justice or law, no reason is perceived by the court why the Government, if it were suable, ought not to pay what, as creditor, it could compel its own debtor to pay.

“If a different measure of compensation could be dealt out by judicial tribunals, in my judgment it would seem as little to comport with the dignity of the Government, as it does with sound policy and the eternal dictates of justice.”

(1) Where the creditor is deprived of the opportunity of serving a legal process upon his debtor, it will deprive him during that time of the benefit of the statute.

“No presumption can arise against a party for not suing in a foreign country, nor “until there is somebody within the jurisdiction whom he can sue.”—2 Greenleaf, Part “4, 3436—37.

The statute of limitation cannot be plead by the United States, because by the Judiciary act of 1789, of the United States, it has been so construed that no individual could maintain any suit against them, that there is no person to be sued. If one of the parties has gone out of the State, his return within the jurisdiction must be open, and such as would enable the plaintiff, with reasonable diligence, to serve a process upon him. If the defendant concealed himself, except on Sundays, so that he could not be arrested, it is not such a return as to bring the case within the operation of the statute.—§439, Fowler vs. Hunt, 10 John, 464, 467; White vs. Bailey, 3 Mass. 271, 273; Byrne vs. Crowninshield, 1 Pich. 263; Little vs. Blunt, 16 Pich. §259. An acknowledgment of a debt by one of several joint debtors binds them all. See 441, Patterson vs. Patterson, 4 Wend, 441. A payment made by one of several joint debtors is evidence against them all, §441. So the promise to one of several joint and several payees of a contract is a promise to all, and will suspend the statute of limitation as to all the others.

(2) 1. They were *presented* by their commission duly recorded.

2. By the resolve of May 20, 1785, and supplementary ordinance of July 9, 1788. In the first the Secretary of War is directed to ascertain and return, or present the names of all the officers and soldiers who are entitled to land and to issue warrants.

3. They were *presented* by the issuing and recording of their land warrants. Therefore the Court of Claims, in the case of E. B. Chamberlain and others against the United States, say that “if Joshua Chamberlain was a captain in the Revolutionary war, “as alleged in the petition, the same evidence which would be sufficient to substantiate “the claim for half-pay for life, would establish also the right to the bounty land.”

“The evidence and record of the one would be the evidence and record of the other.”

The payees of the half-pay contract were joint as well as several, and the promise or any law which affected one would extend to each and all the others. The land portion of the contract was extended to June, 1858, which extended the half pay.

They were *presented* by the admission and restoration of the claim to all the survivors of the joint and several obligees of the half-pay contract under the act of May 15, 1828, which restored the right of all the joint and several obligees who were deceased. Congress, by successive acts, passed at intervals from two to five years, continued to authorize the issuing of military land warrants to the officers and soldiers of the Continental lines, whose claims for bounty land remained unsatisfied—the last of which acts of extension was passed February 8, 1854, which extended the time for discharging this portion of the contract up to the 26th of June, 1858.

All these claims for half pay for life were again opened, and they were presented by the joint resolution of the Senate of January 16, 1828, wherein it is required that the

time, &c. These creditors claiming half pay, contend their contract embraced land as well as money, and that by the Ordinances of Congress of May 20, 1785, and July 9, 1788, the Secretary of War was directed "to make a return of the names of all who were entitled to land, certify therein the rank or station of each officer, the line, regiment, corps and company, in which the officer and soldier served." The government cannot say in excuse that they have not complied with a positive law of Congress. And this Court in the case of Chamberlain vs. U. S., decided the evidence in the land would be the same as is required to entitle the claimant to half pay. In the case at bar, the account is returned as having been presented, the warrant for 300 acres land issued in 1794, and was not carried into Patent until 1800.

The amount for Half Pay is fixed by law, just as much as the number of acres of land. When the presentation shall have been proved by the issuing of the warrant or Patent, it seems to me to be the highest character of evidence of presentation, all of which becomes a matter of law and of record. Statutes of limitation are not looked upon with any degree of favor, and slight evidence prevails to avoid their effect.

The Court of Claims, which was not established until 1855, furnishes the only opportunity of the examination of a claim, but there is no power to enforce the payment of a judgment of this Court vs. the United States.

As it has been often held, that the issuing out of process, is so construed as to mean any resort to legal means for obtaining payment of the debt, such as, filing the claim in set-off, in a former action between the same parties which was discontinued.—*Hunt vs. Spaulding*, 18 Pinch. §521.

We, in the statement of this claim, allowed to government the full amount instead of the value of the certificates charged to Capt. Hicks, and we now ask that the balance due the estate for his half pay, with interest, may be paid their representatives agreeably to the contracts, which embraced land as well as money. The warrant for his land did not issue until 1794, and not even then, agreeable to the contract, but embraced in a tract of 4,000, which he must defend against the Indians to have his 300 acres, and the patent was not issued to him until 1800. There is not an instance to be found wherein these contracts have been complied with by the Government.

I have never had any doubt but these claims are not only justly due, or that they are legal subsisting contracts, which could be enforced in any court of law, fully authorized to consider the same—nor have I ever seen any lawyer who did not conform to my views in this decision. These claims ought not to be prejudiced by any lapse of time. They have never abandoned their claim or doubted their justice. The early history of the Government repudiates all such presumption, as well as possibility of payment.

I have shown that as early as 1790, by the funding law, all the public lands, and all the revenue, were to be *applied solely* to the payment of the funded debts—that all claims funded on obligations, not negotiable, were not included, and therefore, for the first succeeding thirty years, there could be none paid. Hence Congress to this day, in all bills direct that the sum may be payable "out of any money not otherwise appropriated." Then came the non-intercourse acts, then a long embargo, then a second and long war with England, when the survivors were again found defending the liberties they had acquired. But during all this time the Government was insolvent and

names of all those who were entitled, and who had not received their land warrants, should receive the same.

The accounts of these officers were again reopened, and their legal rights admitted by this court and Congress, in the case of Dr. Baird—in 1855, 1856, as well as 1886.

the people were poor, and the creditors of the country were sacrificed to the ravages of war, or war contractors. But there never was the time when some one of these joint and several payees was not presenting his claim to Congress, never since they were suspended at the departments, but I need not say that most of them were obliged to abandon them in despair. One of them came before this court, in the name of the son of Dr. Baird, after the father had been worn out and died in the struggle to enforce his claim, and in the course of some sixty-one years the legal rights, through this one promised, were duly acknowledged by this court and Congress. But it is said that these claims ought not to have any preference over any others. No more than the indebtedness for a barrel of flour. In the first place, all that class of debts were to be settled and were settled by the several States, and makes a part of the 114 millions paid by the States. But the idea of a debt which cost a fortune and eight years of the best of life, not being more sacred than the same amount purchased for fifty dollars, needs only to be stated to be refuted. These creditors ask merely that the Government should pay the balance due on contract. But it is sometimes urged that the Government never guaranteed that their certificates should be paid or secured. This reasoning would apply for their land as well as certificates, and if they should be ousted for failure of title, the Government would say the claim was too old and had never been pressed. Is it not enough to show that all suits against the Government were prohibited? If a banking house shall post up a notice that all claims against the same are suspended, and all creditors are prohibited demanding the same for sixty years, it would be thought strange to set up lapse of time or abandonment of the claim, because a demand was not made for payment. Who, I ask again, ought to pay a debt, the creditor or the debtor? Has the Government shown that any provision was ever made for the payment of these certificates agreeably to the express understanding by the act of January 25, 1783?—or made any for the half pay debts? (1) It was the duty of the Government to have allowed the officers, in failure of payment or security, to have returned the certificates. (2)

(1) I have shown that the contract embraced the promise of *land* as well as *half pay*—and, therefore, as the record of grants to citizens, the law always presumes the Government bound to preserve and protect its citizens in their property and persons. No final settlement of these claims could have been presumed until the patent of the land had issued.—Story on contracts, chap. 23, pages 16 and 17—Minor vs. Bradley, 22 Pich'g 459. Until that time the officers were merely the factors or bailies of the Government, as such for said certificates. The party receiving a bill or note, is bound strictly to the performance of all the duties of holder or endorser, as the case may be—and until security is due, his right to sue upon his original claim is suspended. So it was with the officers—the right to sue the United States has been ever since the judiciary act of 1789, not only suspended, but positively *prohibited*.—See story on Contracts, 979, chap. 1, page 1083. Upon the dishonor of the bill or note, the original rights of the creditor revive, and are the same as if the bill or note had never been given.

What, therefore, is there to be found in the case at bar, or these claims generally, to furnish the slightest evidence, to support the plea of *accord* and *satisfaction*.. I have shown that there never was any agreement between these parties to substitute these certificates unconditionally as an equivalent, and in satisfaction of the half pay.

It is a well settled law, that in all cases the thing substituted must be advantageous to the party accepting it. It must be in full satisfaction. It must be perfectly executed. The facts find, in the present case, that this second contract never was executed—and if it had been, there was not the slightest possibility of certainty of payment—that it could not have been advantageous to have lost by such a substitute seven-eighths of the original debt.

(2.) There was no provision ever made by Congress by which the officers were authorized to return them, provided the interest was not paid annually, nor provided they were not made secure by act of Congress. But it is well settled by the highest legal authorities, that an agreement to pay fifty per cent. on the dollar, in full satisfaction of the

But it is utterly impossible for those who know only the present condition of the country to appreciate the contrast between the utter poverty of our Government in 1783 and 1859—between the time while Congress was flying from place to place before the enemy and this splendid palace—when the paper of the Government was worth less than one cent on the hundred, and when, instead of paying the debts actually due, we pay sixteen per cent. above their face—a contract of 115 per cent. for debts not due for many years, (1) showing no greater contrast in value of the credit than in the depreciation of justice by the present Gov-

whole debt, creates no bar to an action for a full debt, there being no consideration to support the agreement.—Story on Contracts—sec 982, 6. Not only so—the ninth section of the funding act expressly provides—“That nothing in this act contained shall be construed in any wise to alter, abridge, or impair the rights of those creditors of the United States who shall not subscribe to the said loan, or the contracts upon which their respective claims are founded; but the contracts and rights shall remain in full force and virtue.”

(1) PRESENT VALUE OF UNITED STATES STOCKS.

Statement showing when the public debt of the United States is redeemable, the rate of interest, and the rates of premium paid upon its purchase at different periods.

LOAN.	Rate of interest.	When redeemable.	PREMIUM PAID.				
			From July 30 to Dec. 31, 1853.	From Jan. 1, 1854, to Aug. 25, 1854.	From Aug. 26, 1854, to Jan. 2, 1855.	From 3d Jan., 1855, to 3d March, 1857.	From March 4, to Octb'r 31, 1857.
1842.....	6 per cent.	Dec. 31, 1862	16 per cent.	15½ per cent.	11 per cent.	10 per cent.	10 per cent.
1846.....	6 per cent.	Nov. 12, 1856	8½ per cent.	6 per cent.	3 per cent.	2½ to 1½ p. ct.	
1847.....	6 per cent.	Jan. 1, 1868	21 per cent.	21 per cent.	16 per cent.	16 per cent.	16 per cent.
1848.....	6 per cent.	July 1, 1868	21 per cent.	21 per cent.	16 per cent.	16 per cent.	16 per cent.
Texan indemnity.....	5 per cent.	Jan. 1, 1865	.....	10 per cent.	6 per cent.	6 per cent.	8 per cent.

ernment. Not only so—behold the extent of our public domain! (1)—all pledged for the payment of debts. (2. See page 46.)

STATISTICS OF THE PUBLIC LANDS.

(1) *Estimate of unsold and unappropriated Lands in each of the States and Territories, including surveyed and unsurveyed, offered and unoffered lands, on the 30th June, 1856:*

States and Territories.	Acres.	Number of quarter sections.
Ohio.....	43,553 34	272
Indiana.. ..	36,307 41	227
Illinois.....	511,682 85	3,198
Missouri.....	13,365,319 81	83,533
Alabama.....	9,459,367 74	59,121
Mississippi.....	5,519,390 69	34,496
Louisiana.....	5,933,373 83	37,083
Michigan.....	10,056,298 06	62,852
Arkansas.....	15,609,542 84	97,560
Florida.....	18,067,072 75	112,919
Iowa.....	6,237,661 03	38,985
Wisconsin.....	15,222,549 50	95,141
California.....	113,682,436 00	710,515
Minnesota.....	82,502,608 33	515,641
Oregon Territory.....	118,913,241 31	743,208
Washington ".....	76,444,055 25	477,775
New Mexico ".....	155,210,804 00	970,067
Utah ".....	134,243,733 00	839,023
Nebraska ".....	206,984,747 00	1,293,655
Kansas ".....	76,361,058 00	477,256
Indian ".....	42,892,800 00	268,080
Total.....	1,107,297,572 74	6,920,607

THE WESTERN TERRITORIES.

A comparative statement of the area of the present States with that of the territory destined to be erected into States exhibits the interesting fact that the area of the latter in square miles exceeds that of the former. The superficial area of the Territories, organized and unorganized, is set down as follows:

	Square miles.		Square miles.
Kansas Territory.....	136,000	New Mexico Territory.....	210,000
Minnesota do.....	141,000	Nebraska do.....	528,000
Oregon do.....	227,000	Mesilla do.....	78,000
Washington do.....	113,000	Indian do.....	187,000
Utah do.....	187,000		

Square miles.....1,807,000

To these Decotah is to be added, of the extent of which we have seen no estimate. The superficial area of the present States is as follows:

(1).—WESTERN TERRITORIES—CONTINUED.

Square Miles.		Square miles.	
Maine	30,000	Delaware.....	2,120
New Hampshire.....	9,200	Maryland.....	9,674
Massachusetts.....	7,800	Virginia.....	61,352
Rhode Island.....	1,300	North Carolina.....	45,000
Connecticut.....	4,674	South Carolina.....	24,500
Vermont.....	10,211	Georgia.....	58,000
New York.....	46,085	Alabama.....	50,722
New Jersey.....	8,320	Florida.....	53,786
Pennsylvania.....	46,000	Louisiana.....	46,431
Ohio.....	39,964	Arkansas.....	52,198
Indiana.....	33,809	Mississippi.....	67,380
Illinois.....	55,405	Missouri.....	47,156
Wisconsin.....	53,924	Tennessee.....	45,600
Michigan.....	56,243	Kentucky.....	37,680
Iowa.....	50,914	Texas.....	237,321
California.....	188,000		
	<hr/>		<hr/>
	622,190		838,820
			622,190

1,461,010

It is seen that the area of Kansas is nineteen thousand square miles greater than that of all New England, New York, and New Jersey; and that the area of Nebraska is ninety-five thousand miles greater than that of all the non-slaveholding States except California. Oregon is nearly equal in extent to all New England, New York, Pennsylvania, Ohio, and Indiana. It is possible that New Mexico and Mesilla will be embraced in one territorial organization by Congress at the present session, containing 288,000 square miles—exceeding all New England, New York, Pennsylvania, Ohio, Indiana, and Illinois. Washington exceeds in extent all New England and New York.

Estimate of the quantities of land which will inure to the States under grants for railroads up to June 30, 1857.

States.	Acres.	Date of Law.
Illinois.....	2,595,053.....	September 20, 1850.
Missouri.....	1,815,435.....	June 10, 1852; Feb. 9, 1853.
Arkansas.....	1,465,297.....	February 9, 1853.
Michigan.....	3,096,000.....	June 3, 1856.
Wisconsin.....	1,622,800.....	June 3, 1856.
Iowa.....	3,456,000.....	May 15, 1856.
Louisiana.....	1,102,560.....	June 3, and Aug. 11, 1856.
Mississippi.....	950,400.....	August 11, 1856.
Alabama.....	1,913,390.....	{ May 17, June 3, and August 11, 1856, March 3, 1857.
Florida.....	1,814,400.....	May 17, 1856.
Minnesota.....	4,416,000.....	March 3, 1857.
Total.....	24,247,335	

Statement showing the quantity of Swamp Lands approved to the States up to June 30, 1859

States.	Acres.
Ohio.....	25,650 71
Indiana.....	1,250,937 51
Illinois.....	2,369,140 72
Missouri.....	3,615,966 57
Alabama.....	2,595 51
Mississippi.....	2,834,796 11
Louisiana.....	7,601,535 46
Michigan.....	5,465,232 41
Arkansas.....	5,920,024 94
Florida.....	10,396,982 47
Wisconsin.....	1,650,712 10
Total.....	40,133,564 51

(2) The twenty-second section of the funding act of August 4, 1790, provides:—
“That the proceeds of the sales which shall be made of lands in the Western Terri-

The History of these Debts Command a Retrospect of Events,

Such as human vision was never before permitted to enjoy. A history, which is to the American people, above all price, sacred to humanity throughout the civilized world—a record of the honor, patriotism, suffering and blood of the fathers of our revolutionary struggle—a history of heroic daring and perseverance, which surpasses any thing of Greece or Rome. I will not attempt to describe the value of liberty, and the stupendous results and blessings of this Government, to this nation, to humanity, to the world! As well may I attempt to compute the value of the lives of those who were killed in the struggle, by weighing the dust of the dead. As the American people profess to revere the memory of those brave, patriotic men; so may this Government make haste to fulfill, at least, the legal obligations, which still remain uncanceled. These creditors seek merely the discharge of legal obligations. The children and grand-children of these brave men, ask no pension or gratuity; they come before this court with the constitution, and the solemn contract of the United States in their hands, and ask, by the eternal principles of justice that this contract may be fulfilled. It is true, they fought and suffered not for money; they fought, and bled, and sacrificed their fortunes for liberty, and to establish the principles of justice; they contended at that early day, while America numbered only three millions of people; her army branded as rebels, surrounded by internal as well as external enemies, without pay or security, or the hope of any reward, yet, thank God! they persevered against all obstacles, and America triumphed, and was enshrined a saint, and millions of all lands were ready to worship her, not only as a Goddess of Liberty, but as a herald of a new millenium upon earth. The eight years war left an indebtedness of some two hundred millions of dollars. But the great work of freedom had been finally accomplished. The Government was utterly bankrupt, and the officers and their families were suffering for the necessaries of life; the people as well as army were poor, and the many sacred debts against the Government, must necessarily continue undischarged. There is no doubt that the great mission of America, thence forward, was peace? Public policy dictated it, and justice to a generation who had made such sacrifices, demanded it; her creditors and her own poverty required it; was she true to herself? Was she just to her creditors? Alas! let the history of these days answer. The wise councils of Washington were weakened by time, and when America should have enjoyed the prosperity and great advantages of a neutral nation, surrounded then, as now, by a class of speculators, who live and amass fortunes by war contracts, America was again turned into a hostile position, then an embargo, and, finally, into a second war, and the survivors of these brave men were again found defending the liberties, which their eight years previous struggle had obtained; after three years more of strife, and all the calamities of war, America was again victorious. Will the country be ungrateful to the memory of these men? Our national motto signifying one of many, applies to each individual as it does to the United States; whatever is a reproach to the individual is a reproach to the honor of the nation.

tory now belonging, or that may hereafter belong to the United States shall be, and are hereby, appropriated towards sinking or discharging the debts for the payment whereof the United States now are, or, by virtue of this act, may be holden, and shall be applied solely to that use until the said debts shall be fully satisfied."

This Government ought, through the influence of her schools, courts, and legislatures, to cultivate, in her people, the respect and love of justice, by the administration of its divine principles. It should seek to discharge its obligations with the same good faith it exacts from its citizens. It must pay its debts! It is vain for this great and rich nation to strive to check the hand of the recording angel, as she blots the pages of history with the repudiation of her sacred obligations. In vain may the officers of the United States Government attempt to obscure the clear vision of justice, or seek to change the balance of the scales, she will be weighed and found wanting, in spite of her boasted ascendancy. We cannot, if we would, and should not, if we could, wish to live for ourselves and present generation; we must live and act as well for the future as the present, for good or for evil. The eyes of all nations are upon us as a people, while we are viewed as leaders in the progress of the human race.

We have solved the problem that courts of justice as well as order, can be preserved without a standing army—freedom of religious faith enjoyed without a national church.

This is a great commercial and business country, and, I must say, that this court, with its relations with Congress, is one of the most important tribunals of the United States—a court while its decisions mingle with and become a part of the records of the Congress of the United States, is that court, above all others, which is to reflect the liberality, justice and honor of a great nation. The people are looking forward to the result of your deliberations as a national court, with deep interest.

In arguing this case, I am aware I have occupied much space, but my own connections (in the examining the history of these claims,) have been more and more confirmed in their legal right, that they are morally, legally and equitably due; and I have pledged for them what they pledged for the country and liberty. I hope I have been able to satisfy this court that these claims were stated, and all that was done was so done by the imperative law of Congress, which passed, only because the great and imperative necessity demanded it, and that the acts of January 25th, March 22nd, and July 4th, 1783, were all blended, and were the result of that great exigency of the Government, and furnished no excuse for continued suspension of these just debts. To all which considerations, I most respectfully and earnestly invite the attention of the court, and Congress, and creditors generally, to examine the laws herein cited, and I would invoke the aid of all in the good endeavors in behalf of these meritorious, just and legal debts, and as the American people profess to revere the memory of Washington. I beg leave to add his letter in support of these debts. (1.)

(1) "The path of our duty is plain before us; honesty will be found, on every experiment, to be the best and only true policy. Let us, then, as a nation, be just; let us fulfill the public contracts which Congress had undoubtedly a right to make, for the purpose of carrying on the war, with the same good faith we suppose ourselves bound to perform private engagements.

"In this state of absolute freedom and perfect security, who will grudge to yield a very little of his property to support the common interest of society, and to insure the protection of Government?—Who does not remember the frequent declarations, at the commencement of the war, that we should be completely satisfied, if, at the expense of one-half, we could defend the remainder of our possessions?

"Where is the man to be found who wishes to remain indebted for the defence of his own person and property, to the exertions, the bravery, and the blood of others, without

The creditors of this Government ask for justice in the payment of debts long, too long deferred. Daniel Webster said, "public opinion of the civilized world, may be silenced by military power, but it cannot be conquered. It is elastic, irrepressible and invulnerable to the weapons of ordinary power. It follows the conquerer back to the scenes of his ovations, and pierces his ear with the cry of injured justice—it denounces against him the indignation of a civilized and enlightened age, it turns to bitterness the cup of rejoicing, and wounds him with the sting which belongs to the consciousness of having outraged mankind."

In all the great progress and improvements among the nations, and the extension of our territory, and the rapid increase of the business relations of this country, God grant that America may be true to her great and glorious destiny—God grant that no worship of false Gods may prevent her entrance into the promised land, the beautiful Canaan of her future.

I would only add, that should these suggestions be printed, and find their way to any of the creditors, I shall be glad to hear from them.

NATHANIEL HATCH,

No. 514, Twelfth Street,

Washington, D. C.

making the generous effort to pay the debt of honor and gratitude? In what part of the continent shall we find a man, or body of men, who would not blush to stand up and propose measures purposely calculated to rob the soldier of his stipend, and the public creditor of his due? And were it possible that such a flagrant instance of injustice could ever happen, would it not excite the general indignation, and tend to bring down upon the authors of such measures the aggravated vengeance of Heaven?

"As to the idea which I am informed has, in some instances, prevailed, that half pay and commutation are to be regarded merely in the odious light of a pension, it ought to be exploded forever.

"That provision should be viewed as it really was, a reasonable compensation offered by Congress, at a time when they had nothing else to give to officers of the army for services then to be performed.

"It was the only means to prevent a total dereliction of the service; it was a part of their hire.

"I may be allowed to say, it was the price of their blood and your independence."

"It was more than a common debt; it is a debt of honor; it can never be considered as a pension or gratuity, nor cancelled until it is fairly discharged."

THIRTY-SIXTH CONGRESS.

The following is a correct list of the members elected to the next Congress, with the names of their post offices attached. The Senate comprises 66 members; the House of Representatives 237.

Four vacancies are to be filled in the Senate from the following States, viz: Texas, California, Minnesota and Oregon. :

SENATORS.

MAINE.

Hannibal Hamlin, R., Hampden
Wm P Fessenden, R., Portland

NEW HAMPSHIRE.

Daniel Clark, R., Manchester
John P Hale, R., Dover

VERMONT.

Solomon Foot, R., Rutland
Jacob Collamer, R., Woodstock

MASSACHUSETTS.

Charles Sumner, R., Boston
Henry Wilson, R., Natick

RHODE ISLAND.

Jas F Simmons, R., Providence
H B Anthony, R., Providence

CONNECTICUT.

Jas Dixon, R., Hartford
L F S Foster, R., Norwich

NEW YORK.

Preston King, R., Ogdensburg
Wm H Seward, R. Auburn, Cayuga
county

NEW JERSEY.

John R Thompson, D., Princeton
*J C Ten Eyck, R., Burlington

PENNSYLVANIA.

Simon Cameron, R., Harrisburg
Wm Bigler, D., Clearfield

DELAWARE.

Jas A Bayard, D., Wilmington
*W Saulsbury, D., Georgetown

MARYLAND.

Jas A Pearce, D., Chestertown
Anthony Kennedy, S. O., Baltimore

VIRGINIA.

Jas M Mason, D., Winchester
R M T Hunter, D., Loyds, Essex
county

NORTH CAROLINA.

*Thos Bragg, D., Raleigh
Thos L Clingman, D., Ashville

SOUTH CAROLINA.

Jas H Hammond, D., Beech Island
Jas Chesnut, D., Camden

GEORGIA.

Robert Toombs, D., Washington
A Iverson, D., Columbus

ALABAMA.

Benjamin Fitzpatrick, D., Wetumpha
C C Clay, jr., D., Huntsville

MISSISSIPPI.

Jefferson Davis, D., Hurricane, War-
ren county
A G Brown, D., Terry, Hind's county

LOUISIANA.

J P Benjamin, D., New Orleans
John Slidell, D., New Orleans

OHIO.

Benj F Wade, R., Jefferson
G E Pugh, D., Cincinnati

KENTUCKY.

*L W Powell, D., Henderson
John J Crittenden, S. O.; Frankfort

TENNESSEE.

*A O P Nicholson, D., Columbia
Andrew Johnson, D., Greenville

INDIANA.

Jesse D Bright, D., Jeffersonville
Graham N Fitch, D., Logansport

ILLINOIS.

Stephen A Douglas, D., Chicago
Lyman Trumbull, R., Alton

MISSOURI.

Trusten Polk, D., St Louis
Jas S Green, D., Canton

ARKANSAS.

Wm K Sebastian, D., Helena
Robert W Johnson, D., Pine Bluff

MICHIGAN.

Zachariah Chandler, R., Detroit
*K S Bingham, R., Kensington

FLORIDA.

D L Yulee, D., Homapassa
S R Mallory, D., Key West

TEXAS.

*John Hemphill, D., Austin
Vacancy

IOWA.

Jas Harlan, R., Mt Pleasant
*Jas W Grimes, R., Burlington

WISCONSIN.

Jas R Doolittle, R., Racine
C Durkee, R., Kenosha

CALIFORNIA.

Wm M Gwin, D., San Francisco
Vacancy

MINNESOTA.

Henry M Rice, D., St Paul
Vacancy

OREGON.

Jos Lane, D., Winchester
Vacancy

*New Senators

RECAPITULATION.

Democrats.....	36
Republicans.....	24
Southern Opposition.....	2
Vacancies.....	4

— : 0 : —

REPRESENTATIVES.

MAINE.

- 1 Daniel E Somes, R., Biddeford
- 2 John J Perry, R., Oxford
- 3 Ezra B French, R., Damariscotta
- 4 *Freeman H Morse, R., Bath
- 5 *Israel Washburn, jr, R., Orono
- 6 *Stephen C Foster, R., Pembroke

NEW HAMPSHIRE.

- 1 Gilman Marston, R., Exeter
- 2 *Mason W Tappan, R., Bradford
- 3 Thos M Edwards, R., Keene

VERMONT.

- 1 *E P Walton, R., Montpelier
- 2 *Justin S Morrill, R., Stafford
- 3 *Homer E Royce, R., East Berkshire

MASSACHUSETTS.

- 1 Thos D Eliot, R., New Bedford
- 2 *Jas Buffinton, R., Fall River
- 3 Chas F Adams, R., Quincy
- 4 Alexander H Rice, R., Boston
- 5 *Anson Burlingame, R., Cambridge
- 6 John B Alley, R., Lynn
- 7 *Daniel W Gooch, R., Melrose
- 8 Chas R Train, R., Framingham
- 9 *Eli Thayer, R., Worcester
- 10 Chas Delano, R., Northampton
- 11 *Henry L Dawes, R., Adams

RHODE ISLAND.

- 1 Christopher Robinson, R., Cumberland
- 2 *Wm D Brayton, R., Warwick

CONNECTICUT.

- 1 Dwight Loomis, R., Rockville
- 2 John Woodruff, R., New Haven
- 3 Alfred A Burnham, R., Windham
- 4 Orris S Ferry, R., Norwalk

NEW YORK.

- 1 Luther O Carter, R., Flushing
- 2 Jas Humphrey, R., Brooklyn
- 3 *Daniel E Sickles, D., New York
- 4 *Thos J Barr, D., New York
- 5 *Wm B Maclay, D., New York
- 6 *John Cochran, D., New York
- 7 Geo Briggs, A., New York
- 8 *Horace F Clark, A. L. D., New York
- 9 *John B Haskin, A. L. D., Fordham
- 10 Chas H Van Wyck, R., Bloomingburg
- 11 Wm S Kenyon, R., Kingston
- 12 Chas L Beale, R., Kinderhook
- 13 *Abraham B Olin, R., Troy
- 14 †John H Reynolds, A. L. D., Albany
- 15 James B McKean, R., Saratoga Springs
- 16 *Geo W Palmer, R., Plattsburg
- 17 *Francis E Spinner, R., Mohawk
- 18 *Clark B Cochran, R., Schenectady

NEW YORK—(Continued.)

- 19 Jas H Graham, R., Delhi
- 20 Roscoe Conkling, R., Utica
- 21 R Holland Duell, R., Courtland Village
- 22 M Lindsley Lee, R., Fulton
- 23 *Chas B Hoard, R., Watertown
- 24 Chas B Sedgwick, R., Syracuse
- 25 Martin Butterfield, R., Palmyra
- 26 *Emory B Pottle, R., Naples
- 27 Alfred Wells, R., Ithaca
- 28 Wm Irvine, R., Corning
- 29 Alfred Ely, R., Rochester
- 30 Augustus Frank, R., Warsaw
- 31 *Silas M Burroughs, R., Medina
- 32 Elbridge G Spaulding, R., Buffalo
- 33 *Reuben E Fenton, R., Frewsburg

NEW JERSEY.

- 1 John T Nixon, R., Bridgeton
- 2 John L N Stratton, R., Mount Holly
- 3 *Garnett B Adrain, D., New Brunswick
- 4 Jetur R Riggs, D., Paterson
- 5 Wm Pennington, R., Newark

PENNSYLVANIA.

- 1 *Thomas B Florence, D., Phila.
- 2 *Edward Joy Morris, R., do
- 3 John P Verree, R., do
- 4 Wm Millward, R., do
- 5 John Wood, R., Conshohocken
- 6 *†John Hickman, R., Westchester
- 7 Henry C Longnecker, R., Allentown
- 8 John Schwartz, A. L. D., Reading
- 9 Thaddeus Stevens, R., Lancaster
- 10 John W Killinger, R., Lebanon
- 11 James H Campbell, R., Pottsville
- 12 George W Scranton, R., Scranton
- 13 *Wm H Dimmick, D., Honesdale
- 14 *Galusha A Grow, R., Glenwood
- 15 Jas T Hale, R., Bellefonte
- 16 Benjamin F Junkin, R., Bloomfield
- 17 Edward McPherson, R., Gettysburg
- 18 Sam'l S Blair, R., Huntingdon

PENNSYLVANIA—(Continued.)

- 19 *John Covode, R., Lockport Station
- 20 *Wm Montgomery, D., Washington
- 21 Jas K Moorhead, R., Pittsburg
- 22 Robert McKnight, R., Alleghany City
- 23 *Wm Stewart, R., Mercer
- 24 Chapin Hall, R., Warren
- 25 Elijah Babbit, R., Erie

DELAWARE.

- 1 *William G Whiteley, D., New Castle

MARYLAND.

- 1 *James A Stewart, D., Cambridge
- 2 Edward H Webster, S. O., Bellear
- 3 *J Morrison Harris, S. O., Baltimore
- 4 *H Winter Davis, S. O., Baltimore
- 5 *Jacob M Kunkel, D., Frederick
- 6 Geo W Hughes, D., West River

VIRGINIA.

- 1 *Muscoe R H Garnett, D., Loyds, Essex co
- 2 *John S Millson, D., Norfolk
- 3 Dan'l C Dejarnette, D., Bowling Green
- 4 Roger A Pryor, D., Petersburg
- 5 *Thos S Boccock, D., Appomattox C H
- 6 Shelton F Leake, D., Charlottesville
- 7 *Wm Smith, D., Warrenton
- 8 Alexander R Boteler, S. O., Shepherdstown
- 9 John T Harris, D., Harrisonburg
- 10 *Sherrard Clemens, D., Wheeling
- 11 *Albert G Jenkins, D., Green Bottom
- 12 *Henry A Edmundson, D., Salem
- 13 Elbert S Martin, D., Lee C H

NORTH CAROLINA.

- 1 Wm N H Smith, S. O., Murfreesboro'
- 2 *Thos Ruffin, D., Goldsboro'
- 3 *Warren Winslow, D., Fayetteville
- 4 *Lawrence O'B. Branch, D., Raleigh

NORTH CAROLINA—(Continued.)

- 5 *John A Gilmer, S. O., Greensboro'
- 6 Jas M Leach, S. O., Lexington
- 7 *Burton Craige, D., Salisbury
- 8 *Zebulon B Vance, S. O., Asheville

SOUTH CAROLINA.

- 1 *John McQueen, D., Society Hill
- 2 *Wm Porcher Miles, D., Charleston
- 3 *Lawrence M Keitt, D., Orangeburg
- 4 *Milledge D Bonham, E., Edgefield
- 5 John D Ashmore, D., Anderson
- 6 *Wm W Boyce, D., Winnsboro'

GEORGIA.

- 1 Peter E Love, D., Thomasville
- 2 *Martin J Crawford, D., Columbus
- 3 Thos Hardeman, jr, S. O., Macon
- 4 *Lucius J Gattrell, D., Atlanta
- 5 John W Underwood, D., Rome
- 6 *James Jackson, D., Athens
- 7 *Joshua Hill, S. O., Madison
- 8 John J Jones, D., Lester's District

ALABAMA.

- 1 *Jas A Stallworth, D., Evergreen
- 2 Jas L Pugh, D., Eufaula
- 3 David Clopton, D., Crawford
- 4 *Sydenham Moore, D., Greensboro'
- 5 *Geo S Houston, D., Athens
- 6 *Williamson R W Cobb, D., Bellefonte
- 7 *Jabez L M Curry, D., Talladega

MISSISSIPPI.

- 1 *Lucius Q C Lamar, D., Abbeville
- 2 *Reuben Davis, D., Aberdeen
- 3 *Wm Barksdale, D., Columbus
- 4 *Otho R Singleton, D., Canton
- 5 John J McRae, D., State Line

LOUISIANA.

- 1 Edward Bouligny, S. O., New Orleans
- 2 *Miles Taylor, D., Donaldsonville
- 3 *Thos Green Davidson, D., Baton Rouge
- 4 ——— Landrum, D., ———

OHIO.

- 1 *George H Pendleton, D., Cincinnati
- 2 John A Gurley, R., Cincinnati
- 3 *Clement L Vallandigham, D., Dayton
- 4 Wm Allen, D., Greenville
- 5 Jas M Ashley, R., Toledo
- 6 Wm Howard, D., Batavia
- 7 Thos Corwin, R., Lebanon
- 8 *Benjamin Stanton, R., Bellefontaine
- 9 John Carey, R., Carey
- 10 Carey A Thimble, R., Chillicothe
- 11 Chas D Martin, D., Lancaster
- 12 *Sam'l S Cox, D., Columbus
- 13 *John Sherman, R., Mansfield
- 14 Harrison G Blake, R., Medina
- 15 Wm Helmick, R., New Philadelphia
- 16 *Cydnor B Tompkins, R., McConnellsville
- 17 Thos C Theaker, R., Bridgeport
- 18 Sidney Edgerton, R., Akron
- 19 *Edward Wade, R., Cleveland
- 20 John Hutchins, R., Warren
- 21 *John A Bingham, R., Cadiz

KENTUCKY.

- 1 *Henry C Burnett, D., Cadiz
- 2 *Sam'l O Peyton, D., Hartford
- 3 Francis M Bristow, S. O., Elkton
- 4 Wm C Anderson, S. O., Danville
- 5 John Y Brown, D., Elizabethtown
- 6 Green Adams, S. O., Barboursville
- 7 Robt Mallory, S. O., La Grange
- 8 Wm E Sims, D., Paris
- 9 Laban T Moore, S. O., Louisa
- 10 *John W Stevenson, D., Covington

TENNESSEE.

- 1 Thos A R Nelson, S. O., Jonesboro'
- 2 *Horace Maynard, S. O., Knoxville
- 3 Reese B Brabson, S. O., Chattanooga
- 4 Wm B Stokes, S. O., Smithville
- 5 Robt Hatton, S. O., Lebanon
- 6 Jas H Thomas, D., Columbia
- 7 *John V Wright, D., Purdy

TENNESSEE—(Continued.)

- 8 James M Quarles, S. O., Clarksville
- 9 Emerson Eetheridge, S. O., Dresden
- 10 *Wm T Avery, D., Memphis

INDIANA.

- 1 *Wm E Niblack, D., Vincennes
- 2 *Wm H English, D., Vienna
- 3 Wm M Dunn, R., Madison
- 4 Wm S Holman, D., Aurora
- 5 *David Kilgore, R., Muncietown
- 6 Albert G Porter, R., Indianapolis
- 7 *John G Davis, A. L. D., Rockville
- 8 *James Wilson, R., Crawfordsville
- 9 *Schuyler Colfax, R., South Bend
- 10 *Chas Case, R., Fort Wayne
- 11 *John U Pettit, R., Wabash

ILLINOIS.

- 1 *Ellihu B Washburne, R., Galena
- 2 *John J Farnsworth, R., St. Charles
- 3 *Owen Lovejoy, R., Princeton
- 4 *Wm Kellogg, R., Canton
- 5 *Isaac N Morris, D., Quincy
- 6 John A McClernand, Springfield
- 7 Jas C Robinson, D., Marshall
- 8 Phillip B Fouke, D., Belleville
- 9 John A Logan, D., Benton

MISSOURI.

- 1 J Richard Barrett, D., St Louis
- 2 *Thos L Anderson, D., Palmyra
- 3 *Jno B Clarke, D., Fayette
- 4 *Jas Craig, D., St Joseph
- 5 *Sam'l H Woodson, D., Independence
- 6 *John S Phelps, D., Springfield
- 7 John W Noell, D., Perryville

ARKANSAS.

- 1 Thos C Hindman, D., Helena
- 2 Albert Rust, D., Little Rock

MICHIGAN.

- 1 Geo B Cooper, D., Jackson
- 2 *Henry Waldron, R., Hillsdale
- 3 Francis W Kellogg, R., Grand Rapids
- 4 *De Witt C Leach, R., Lansing

FLORIDA.

- 1 *Geo S Hawkins, D., Pensacola

TEXAS.

- 1 *John H Reagan, D., Palestine
- 2 A J Hamilton, D., Austin

IOWA.

- 1 *Sam'l R Curtis, R., Keokuk
- 2 Wm Vandever, R., Dubuque

WISCONSIN.

- 1 *John F Potter R., East Troy
- 2 *Cadwallader C Washburn, R., La Crosse

- 3 Chas H Larrabee, D., Horicon

CALIFORNIA.

- 1 *Chas L Scott, D., Sonora
- 2 John C Burch, D., Weaverville

MINNESOTA.

- 1 Cyrus Aldrich, R., Chatfield
- 2 Wm Windon, R., Winona

OREGON.

- 1 Lancing Stout, D.

DELEGATE FROM NEW MEXICO.

- Miguel A Otero, D., Albuquerque

DELEGATE FROM UTAH.

- Hooper.

DELEGATE FROM WASHINGTON.

- Isaac I Stevens, D., Olympia

DELEGATE FROM NEBRASKA.

- E Eastabrook, D., Omaha City

Members of the last Congress.

RECAPITULATION.

STATES.	Whole No. of Representatives.	Republicans.	Democrats.	Anti-Lecompton Democrats.	Southern Opposition.
Maine	6	6	.....	.....	.....
New Hampshire.....	3	3	.....	.....	.....
Vermont	3	3	.....	.....	.....
Massachusetts.....	11	11	.....	.....	.....
Rhode Island.....	2	2	.....	.....	.....
Connecticut.....	4	4	.....	.....	.....
New York*.....	33	26	4	3	.....
New Jersey.....	5	3	2	.....	.....
Pennsylvania†	25	21	3	1	.....
Delaware.....	1	.....	1	.....	.....
Maryland.....	6	.....	3	.....	3
Virginia.....	13	.....	12	.....	1
North Carolina.....	8	.....	4	.....	4
South Carolina.....	6	.....	6	.....	.....
Georgia	8	.....	6	.....	2
Alabama.....	7	.....	7	.....	.....
Mississippi	5	.....	5	.....	.....
Louisiana	4	.....	3	.....	1
Arkansas	2	.....	2	.....	.....
Tennessee	10	.....	3	.....	7
Kentucky	10	.....	5	.....	5
Ohio	21	15	6	.....	.....
Michigan	4	3	1	.....	.....
Illinois	9	4	5	.....	.....
Indiana.....	11	7	3	1	.....
Missouri	7	.....	7	.....	.....
Florida.....	1	.....	1	.....	.....
Texas	2	.....	2	.....	.....
Iowa	2	2	.....	.....	.....
Wisconsin	3	2	1	.....	.....
California	2	.....	2	.....	.....
Oregon	1	.....	1	.....	.....
Minnesota.....	2	2	.....	.....	.....
	237	114	95	5	23

* Reynolds classed as an Anti-Lecompton Democrat.

† Hickman classed as a Republican.

Necessary to a choice, 119. Republicans lack, to make a majority, 5. Democrats combined lack, to make a majority, 19; Democrats and Southern Opposition combined have a majority over the Republicans of 9.