43D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 262.

WAR-CLAIMS AND CLAIMS OF ALIENS.

MARCH 26, 1874.—Recommitted to the Committee on War-Claims and ordered to be printed.

Mr. LAWRENCE, from the Committee on War-Claims, submitted the following

REPORT:

[To accompany H. R. 2659.]

The Committee on War-Claims, to whom was referred so much of the annual message of the President as refers to war-claims and claims of aliens, having considered the same, submit the following:

PART I.

OF WAR—REBELLION—THE CLASSES OF WAR-CLAIMS—GENERAL PRINCIPLES.

During the progress of the wars in which the United States have been engaged, many claims[1] have been from time to time made against the Government, by citizens, corporations under national, or state, or foreign authority, and by aliens[2]. Some of these may be properly arranged into *classes*, with a view to consider the questions of law which arise as to the liability of the Government to make compensation either under the Constitution, the laws of nations, common or statutary law. The expediency of providing compensation where no legal liability exists, involves questions which a powerful and just nation should be ever ready to consider.

[1] For claims see American State Papers, class IX, vol. 1, "Claims."

House list of private claims, vols. 1, 2 and 3, from 1st to 31st Congress, entitled "Digested Summary and Alphabetical List of Private Claims," &c. House Mis. Doc. 109, 42d Cong., 3d sess., digested summary private claims, presented to House of Reps. from 32d to 41st Congress inclusive. See an article on "Government claims," 1 American (Boston) Law Review, 653, (July, 1867.)

[2] Claims of aliens have frequently been made the subject of diplomatic arrangements. See report of Hon. R. S. Hale, November 30, 1873, to Secretary of State, of proceedings of commission under 12th article treaty of 8th May, 1871, between United States and Great Britain.

See "opinions of heads of executive departments and other papers relating to expatriation, naturalization, and change of allegiance" in House Ex. Doc. 1, part 1, 1st sess. 43d Congress, Report of Secretary of State on Foreign Relations, p. 1177, part 1, vol. 2.

The act of July 27, 1868, (15 Stat. 243, sec. 2,) gave aliens a right to sue in the Court of Claims, when the government of such aliens gave a similar right to our citizens.

In Fichera *v.* U. S., 9 Court Claims R., decided in 1873, Nott, J., said:

"The only question presented by this case is whether, under the Italian law, an American citizen may maintain an action against the government of Italy. As we have before found, the perfected justice of the civil law made the government, in matters of ordinary obligation, subject to the suit of the citizen, in the ordinary tribunals of the country. We have found this right to be preserved under modern codes in Prussia, Hanover, and Bavaria, (*Brown's Case*, 5 C. Cls. R., p. 571;) in the republic of Switzerland, (*Lobsiger's Case*, id., p. 687;) in Holland, the Netherlands, the Hanseatic Provinces, and the Free City of Hamburg, (*Brown's Case*, 6 C. Cls. R., p. 193;) in France,

During the late rebellion, or civil war, property of immense value, of every kind, was taken, used, or destroyed, on sea and land, by rebel and Union civil authorities and military forces, without any compensation rendered. It is, of course, a duty of the Government to patiently and attentively hear every claimant for compensation or damages, and pass upon the merits of the claim in the light of reason and law.

Perhaps no classification can be made which would comprehend every claim that has been or could be made. The liability of the Government for any class of claims growing out of the war of the rebellion depends somewhat upon the status of the so-called rebel States and the people thereof, their relations to the National Government, and the place where the right to demand compensation arose.

It is now determined, by the highest court, that the civil war *began*, at least for some purposes and at some localities, as early as April,

(*Dauphin's Case*, id., p. 221;) in Spain, (*Molina's Case*, id., p. 269;) and in Belgium, (*De Gives's Case*, 7 C. Cls. R., p. 517.)

It was also shown in *Brown's Case*, (5 C. Cls. R., p. 571,) by a distinguished historical writer who was examined as a witness, Mr. Frederick Kapp, that this liability of a government under the civil law is not a device of modern civilization, but has been deemed inherent in the system, and has been so long established that, to use the phrase of the common law, the memory of man runneth not to the contrary. Therefore, it is to be expected that in Italy, the seat and fountain of the civil law, this same liability of government is to be found existing. The "Civil Code of the Kingdom of Italy" of 1866 recognizes, rather than establishes, the fundamental principle of liability; but it expressly provides (article 10) that, "in suits pending before the judicial authority between private persons and the public administration, the proceedings shall always take place formally at the regular session.

It is also provided, by the third article of the same code, that "the alien is admitted to enjoy all the civil rights granted to citizens." These provisions establish the right of an Italian citizen to maintain his action in this court, within the meaning of the *Act July* 27, 1868, (15 Stat., p. 243, § 2,) which prohibits the subject of a foreign government from maintaining a suit for captured property, unless "the right to prosecute claims against such government in its courts,' is reciprocal, and extends to citizens of the United States.

In England aliens have a remedy by "petition of right," regulated by act 23 and 24 Victoria, July 3, 1860. U. S. *v.* O'Keefe, 11 Wallace, 179; Carlisle *v.* U. S., 16 Wallace, 148. See Whiting's War Powers of the President, 51; The Venus, 8 Cranch; The Hoop, 1 Robinson, 196; The Army Warwick, Sprague, J.

See Whiting's "War Claims," affixed to 43d ed. of "War Powers," p. 333, ed. of 1871; Perrin *v.* U. S., 4 Court Claims. 547.

For the acts relating to debts due by or to the United States see act of 3 March, 1797, chapter 20, volume 1, page 512; act of 6 June, 1798, chapter 49, sections 1, 3, volume 1, pages 561, 562; act of 3 March, 1817, chapter 114, volume 3, page 399; *act of 19 February, 1833, chapter 33, volume 4, page 613; *act of 30 June, 1834, chapter 153, volume 4, page 726; *act of 18 January, 1837, chapter 5, volume 5, page 142; act of 14 October, 1837, chapter 5, volume 5, page 204; act of 7 July, 1838, chapter 177, volume 5, page 288; resolution of 31 May, 1838, number 4, volume 5, page 310; act of 3 March, 1839, chapter 93, section 1, volume 5, pages 537, 538; act of 27 February, 1841, chapter 13, volume 5, page 414; act of 23 August, 1842, chapter 185, volume 5, page 511; act of 3 March, 1843, chapter 103, volume 5, page 648; act of 15 June, 1844, chapter 73, section 2, volume 5, page 673; act of 29 July, 1846, chapter 66, volume 9, page 41; act of 6 August, 1846, chapter 90, section 19, volume 9, page 64; *act of 2 March, 1847, chapter 39, volume 9, page 154; act of 3 March, 1849, chapter 129, volume 9, page 414; act of 31 August, 1852, chapter 108, section 2, volume 10, pages 97, 98; act of 26 February, 1853, chapter 81, sections 1, 7, volume 10, pages 170, 171; act of 1 March, 1862, chapter 35, volume 12, page 352; act of 17 March, 1862, chapter 45, section 1, volume 12, page 370; act of 17 July, 1862, chapter 205, volume 12, page 610; act of 3 March, 1863, chapter 76, section 10, volume 12, page 740; act of 3 March, 1863, chapter 78, section 5, volume 12, page 743; act of 25 June, 1864, chapter 150, volume 13, page 182; act of 4 July, 1864, chapter 240, sections 2, 3, volume 13, page 381; act of 28 July, 1866, chapter 297, section 8, volume 14, page 327; resolution of 18 June, 1866, number 50, volume 14, page 360; resolution of 28 July, 1866, number 99, volume 14, page 370; act of 21 February, 1867, chapter 57, volume 14, page

* Acts distinguished by a * have been heretofore repealed.

1861.[3] By the President's proclamations of April 15 and 19, 1861, an insurrection was declared to exist in certain States. Under, and it may be correct to say by virtue of, the act of Congress of July 13, 1861, the proclamation of insurrection was extended so as to declare eleven States, with unimportant exceptions, in rebellion.[4]

War was continued in those States until the President's proclamation of August 20, 1866,[5] proclaimed the "insurrection at an end." A "state of war" continued beyond this time, more or less extensive in its theater—"non flagrante bello sed nondum cessante bello."[6]

This condition of war is recognized by the law of nations.[7]

The existence of what is called "*a state of war*" after flagrant war has ceased is recognized on the same principle as the personal right of self-defense. This is not limited to the right *to repel an attack;* but so long as the *purpose of renewing it* remains—the *animus revertendi*—so long as the danger is imminent or probable, the party assailed may employ reasonable force against his adversary to disarm and disable him until the danger is past, and in doing this and judging of its necessity precise accuracy as to the means and time is not required, but only the exercise of reasonable judgment in view of the circumstances.[8]

If after the forces under the command of Lee surrendered in April, 1865, the United States forces had been immediately withdrawn, the rebellion would possibly have resumed its hostile purposes.

It was upon this theory, coupled with the constitutional duty of Con-

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397; resolution of 2 March, 1867, number 46, volume 14, page 571; act of 20 April, 1871, chapter 21, section 27, volume 17, page 12.

[3] The Prize Cases, (2 Black, p. 636.) The court held that war commenced with the President's proclamation of blockade, April 27, 1861. The dissenting judges held that it commenced with the act of Congress of July 13, 1861. (12 Stat. p. 257.) See proclamations of April 15, April 19, and April 27, 1861, (12 Stat. pp. 1258–1260;) Lawrence's Wheaton, second annotated ed., sup., 44; proclamation of July 1, 1862; act June 7, 1862. The treaty of Washington fixes the commencement April 13, 1861. (17, Stat. p. 867, sec. 12.) See the diplomatic correspondence with Great Britain, April and July, 1865, pp. 362, 365, 367, 388, 394, 397, 407, 421, 422, 423; proclamations May 10, 1835, (13 Stat. p. 757,) May 22, 1865, (13 Stat. p. 758.) See schedule of proclamations in Appendix B to this report.

[4] The Venice, 2 Wallace, 277. See proclamation of August 16, 1861, &c., and July 1 1862, 12 Stat. 1260–1266. Proclamation September 22, 1862, and January 1, 1863, 12 Stat. 1267–1269. See letter of Quartermaster-General, M. C. Meigs, in appendix to this report, February 26, 1874.

[5] McPherson's History. Reconstruction, 194; 13 Stat. 763. Tennessee, June 13. 1866; 14 Stat., 812, 816. Sundry States, April 2, 1866. Texas, August 20, 1866, Fleming *v.* Page, 9 Howard, 615. Cross *v.* Harrison, 16 Howard, 189. United States *v.* Anderson, 9 Wallace, 56. Grossmeyer *v.* United States, 9 Wallace, 72. Lawrence's Wheaton, 513, note. 7 Court of Claims, Protector *v.* United States, 9 Wallace, 687. Treaty of Washington of May 8, 1871, art. 12; 17 Stat. 867. Act March 2, 1867, sec. 2; 14 Stat. 428. Grossmeyer *v.* United States, 4 Court of Claims. Martin *v.* Mott, 12 Wheaton. 29 Law Reporter, July, 1861, p. 148.

[6] Mrs. Alexander's Cotton, 2 Wallace, 419.

[7] Cross *v.* Harrison, 16 Howard, 164; Whiting War Powers, 55; Article 2 of Francis Leiber, rules for government of the armies, Scott's Digest Military Laws, p. 442, sec. 1142; Elphinstone *v.* Bedreechund, 1 Knapp's. P. C. R., 300, cited in Coolidge *v.* Guthrie, by Swayne, J., U. S. circuit court, southern district Ohio, October, 1868. Appendix to 43d edition Whiting's War Powers, 591, edition 1871. Letter of Hon. Hamilton Fish, Appendix C to this report.

For sundry cases relating to the rebellion, see The Prize Cases, 2 Black, 635; Mrs. Alexander's Cotton, 2 Wallace, 404; The Venice, 2 Wallace, 258; The Baigorn, 2 Wallace, 474; Mansan *v.* Insurance Company, 6 Wallace, 1; The Ouachita Cotton, 6 Wallace, 52; Hanger *v.* Abbott, 6 Wallace, 532; Coppell *v.* Hall, 7 Wallace, 542; McKee *v.* United States, 8 Wallace, 153; United States *v.* Grossmayer, 9 Wallace, 72; Vallandigham's case, Appendix to Whiting's War Powers, (43 ed. of 1871,) 524; The Circassian, 2 Wallace, 150; Cummings *v.* Missouri, 4 Wallace, 316; Ex-parte Garland, 4 Wallace, 374; Mississippi *v.* Johnson, 4 Wallace, 497.

[8] 1 Bishop Crim. Law, (5th ed.,) secs. 301, 305, 838, and numerous authorities cited. Stewart *v.* State, 1 Ohio State R., 66–71.

gress to "guarantee to each State a republican form of government," that the reconstruction [10] acts of Congress were passed, and military as well as civil measures adopted in pursuance of them. During some portions of the period of rebellion flagrant war existed, not only in the States proclaimed as in rebellion, but, as we all know as a matter of history, in Missouri, Kentucky, Maryland, West Virginia, and temporarily in parts of Indiana, Ohio, and Pennsylvania. The war in the three former States partook of the character of civil war, and of an invasion from the rebel States, while in Indiana, Ohio, and Pennsylvania, it was purely of the character of invasion.[11] The war in Missouri, Kentucky, Maryland, and West Virginia, so far as resident insurrectionists organized or engaged in rebellion, was none the less civil war, because these States were not proclaimed as in rebellion.[12]

The lawful State governments were not subverted in these States as they were in the eleven rebel States, but the fact of flagrant war without any proclamation or declaration by Congress is a matter of history, and is judicially recognized by the courts.[13]

War, either foreign or civil, may exist where no battle has been or is being fought.[14]

The rights, duties and liabilities of governments in cases of foreign war or invasion are generally well defined by the laws of nations. But before stating these as they are established by the usage of nations and laid down by writers, it is important to see how far they apply in cases of a civil war.

It may be stated, then, in comprehensive terms, that the usages and laws of nations, applicable in cases of war between independent nations, apply generally to civil wars, including the recent war of the rebellion, and especially when as in the States proclaimed in insurrection the lawful State governments were entirely overthrown, and the courts and civil authority of the National Government equally disregarded and powerless.

The Supreme Court of the United States decided in December, 1862, while the war was in progress, that—

> The present civil war between the United States and the so-called Confederate States has such character and magnitude as to *give the United States* the same rights and powers which they might exercise in the case of a national or foreign war."[15]

The court determined also that citizens in the rebel States owed "su-

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[9] Constitution, art. 4, sec. 4.

[10] See McPherson's Hist. of Rebellion, 317, &c., and McPherson's Hist. Reconstruction, *passim*.

Act of March 2, 1867, 14 Stat., 428.

Act of March 23, 1867, 15 Stat., 2.

[11] Ex parte Milligan, 4 Wallace, 140.

See report of the Judge-Advocate-General to the Secretary of War, on the "Order of the American Knights," or "Sons of Liberty," a western conspiracy in aid of the southern rebellion. Washington Government Printing Office, 1864.

[12] Prize Cases, 2 Black, 636.

[13] Prize Cases, 2 Black, 636; Ex parte Milligan, 4 Wallace, 140; Whiting's War-Power of the President, 140; President Grant's veto message, June 1, 1872; id., June 7, 1872; id., January 31, 1873; id., February 12, 1873; Lawrence's Wheaton, 513, note.

[14] Const., art. 3, sec. 3, clause 3; Ex parte Milligan, 4 Wallace, 127, 140, 142. *Luther* v. *Borden*; *Grant* v. *United States*, 1 Nott & Hopkins, Court Claims, 41; S. C., 2, id, 551; Whiting's War-Powers, 43; Ex parte Milligan, 127. The court say to justify martial law "the necessity must be actual and present;" Paschal, Annotated Const., 212, note 215; Ex parte Bollman, 4 Cranch, 126; *United States* v. *Burr*, 4 Cranch, 469–508; Sergeant, Const., ch. 30, [32;] *People* v. *Lynch*, 1 Johns, 553.

[15] The Prize Cases, 2 Black, 636; Vattel, 425, § 294.

preme allegiance to the" National Government, and that "in organizing this rebellion they have *acted as States*."

In the prize cases it was insisted by counsel "that the President in his proclamation admits that great numbers of persons residing" in the rebel States "are loyal," and the court were asked to hold "that they * * * have a right to claim the protection of the Government for their persons and property, and to be treated as loyal citizens."

But the court answered this by declaring that—

> *All persons* residing within this territory whose property may be used to increase the revenues of the hostile power are in this contest liable to be treated as *enemies* though not foreigners.[16]

The inhabitants of the invaded States of Indiana, Ohio, and Pennsylvania, never having rebelled, are all to be deemed loyal except on proof to the contrary.

Having thus marked out the boundaries of the theater of the war of the rebellion, and ascertained the *status* of all within the States proclaimed in rebellion, or where actual rebellion existed, and in the invaded but not rebellious States, it becomes proper to ascertain the rights of the National Government over these, and its liability to the inhabitants for injuries to person or property of whatever kind. It may be proper to say first, however, that the power of a nation over its own rebel citizens is greater in a civil war than over alien enemies, because over the former it "may exercise both belligerent and sovereign rights"[17]—that is, the belligerent rights of war, and the sovereign right to confiscate and punish for treason—while over alien enemies it can only exercise belligerent rights.

The inquiry also arises, within what boundaries are citizens to be regarded as enemies? Certainly not in Indiana, Ohio, or Pennsylvania, for there was no insurrection in those States.[18] There was only invasion. In some portions of Kentucky, Missouri, and Maryland, and for limited times there was insurrection, but these States were not proclaimed as in insurrection, and, as States, they never were so in fact. These States are therefore to be deemed loyal, and the citizens thereof as having all the rights of loyal citizens, except so far as they were in fact disloyal, and subject only to the sovereign and belligerent rights of the Government.[19]

In the prize cases, Nelson, J., said, "This act of Congress, [July 13, 1861,] we think, recognized a state of civil war between the Government and the Confederate States, and made it territorial." The Government was at war with all the rebel States, just as much so as it was in other wars with England or Mexico. In the Venice, 2 Wallace, 274, Chief Justice Chase said: "Either belligerent may modify or limit its operation as to persons or territory of the other, but in the absence of such modifica-

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[16] Prize Cases, 2 Black, 674, 678, 693; Halleck's Laws of War, 425, 446; Mrs. Alexander Cotton, 2 Wallace, 419; Whiting's War-Power of the President, 58; Vattel, 425, § 293; Bynkershoek, Laws of War, 25; United States *vs.* Anderson, 9 Wallace, 64; Whiting's "War-Claims" affixed to "War-Powers" (43d ed.) of 1871, p. 335; Marcy's Letter to Jackson, January 10, 1854, House Ex. Doc. 41, 1st sess. 33d Cong.; Huberus, tom. ii, l. i, tit. 3, De Conflict Lex., § 2; Jecker *vs.* Montgomery, 18 Howard, 112; The Peterhoff, 5 Wallace, 60.

[17] Prize Cases, 2 Black, 673; 4 Cranch, 272; Whiting, War-Powers, 44–47. But see Lawrence's Wheaton, 2d anotated ed., sup., 33. Whiting, in his War-Powers, says: "*Rebels in civil war*, if allowed the rights of belligerents, are not entitled to all the privileges usually accorded to *foreign* enemies," 43d ed. of 1871, p. 331.

[18] Ex parte Milligan, 4 Wallace 3, 127.

[19] Prize Cases, 2 Black, 274; Ex parte Milligan, 4 Wallace, 127; President Grant's veto messages of June 1 and June 7, 1872, and February 12, 1873; Debates on Sue Murphy, claim 71, Globe, 299, 386, 86, 161, 278.

tion or restriction judicial tribunals cannot discriminate in its application." The District of Columbia was never declared in insurrection, but martial law was proclaimed, and it was subjected to the laws of war. It was a fortified military stronghold, and all civil authority was superseded so far as deemed necessary, and the civil safeguards of the Constitution withdrawn from the inhabitants.[20]

The obligation of a government after a civil war is terminated to those whom the severe rules of the laws of war denominate "enemies," is on the strict principle of such laws as stated by writers on the subject no greater than to alien enemies whose territory is invaded in an international war. But a humane government may always in such a case discriminate between alien enemies in fact, and its own citizens who are not so in fact, but only by legal construction. It is also conceded that the rule of law which stamps as "enemies" in a rebel State men who

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[20] DEPARTMENT OF STATE,
Washington, February 6, 1874.

SIR: By direction of the Secretary of State, I have to acknowledge the receipt of your letter of the 3d instant, in which you request to be informed as to the date of the proclamation declaring martial law in the District of Columbia, and, second, the period of continuance of martial law within the same.

The date of the President's proclamation declaring martial law in the District of Columbia is September 15, 1863, (13 Stat. at Large, p. 734,) and the continuance thereof in the language of the proclamation was "throughout the duration of the said rebellion."

There might and probably would be a difference of opinion as to the date at which martial law ceased to exist in the District. The President's proclamation of the second of April, 1866, (14 Stat. at Large, p. 811,) may without impropriety be taken to fix the limitation referred to, but the Department does not wish to be understood as expressing an opinion on that point, as it would seem more properly to present a question for the opinion of the Attorney-General.

I am, very respectfully, your obedient servant,

SEVELLON A. BROWN,
Chief Clerk.

HENRY H. SMITH, Esq.,
Clerk of the Committee on War-Claims, House of Representatives.

See the trial of the conspirators, May, 1865; Attorney-General's opinion, July, 1865; 11 Opinions, 297.

In Ex parte Milligan, 4 Wallace, 137, Chase, C. J., said:

"The Constitution itself provides for military government as well as for civil government. And we do not understand it to be claimed that the civil safeguards of the Constitution have application in cases within the proper sphere of the former.
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"We think, therefore, that the power of Congress, in the government of the land and naval forces, and of the militia, is not at all affected by the fifth or any other amendment. It is not necessary to attempt any precise definition of the boundaries of this power. * * * * * * *

"There are under the Constitution three kinds of military jurisdiction: one to be exercised both in peace and war; another to be exercised in time of foreign war, without the boundaries of the United States, or in time of rebellion and civil war, within States or districts occupied by rebels treated as belligerents; and a third, to be exercised in time of invasion or insurrection within the limits of the United States, or, during rebellion, within the limits of States maintaining adhesion to the National Government, when the public danger requires its exercise. The first of these may be called jurisdiction under military law, and is found in acts of Congress prescribing rules and articles of war, or otherwise providing for the government of the national forces; the second may be distinguished as military government, superseding, as far as may be deemed expedient, the local law, and exercised by the military commander under the direction of the President, with the express or implied sanction of Congress; while the third may be denominated martial law proper, and is called into action by Congress, or temporarily, when the action of Congress cannot be invited, and in the case of justifying or excusing peril, by the President, in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights." * * *

are in fact loyal to the flag, sometimes operates harshly. But the highest court has declared them enemies at given times and under certain circumstances, and this has been done upon principles recognized among civilized nations which antedate our Constitution.

Harsh as the rule sometimes is in its application there are reasons of State policy on which it rests, or it would not exist as law. It may be proper to refer to some of them. It is a matter of history that secession was carried in the rebel States, with one or two exceptions, against the real wishes of a decided majority of the voters and people.[21] They

[21] *Alabama.*—Delegates to convention elected December 24, 1860. Popular majority claimed at 50,000. Ordinance of secession passed by a vote of 61 to 39, January 11, 1861, the minority being from counties where the free population predominated. (Greeley's American Conflict, vol. 1, p. 347.)

Arkansas.—Legislature voted a call for convention, which met November 16, 1860. The popular vote showed a majority for Union. Subsequently another convention was called for March 1, 1861, and after listening to a message from Jeff Davis, that convention voted 39 to 35 *not* to secede from the Union. This last convention decided to provide for a vote of the people on August 1, 1861, and adjourned to meet August 17. On receiving the news of the firing on Fort Sumter the convention was reconvened at the instance of the governor, and May 6, 1861, passed an ordinance of secession by a vote of 69 to 1. (Ibid., vol. 1, pp. 348–486.)

Florida.—Legislature voted December 1, 1860, to call a convention for January 3, 1861, and January 10 passed an ordinance of secession by yeas 62, nays 7, many delegates expressly elected as Unionists voting for secession. (Ibid., vol. 1, p. 347.)

Georgia.—Was the first State to follow South Carolina. Legislature passed an act November 13, 1860, appropriating $1,000,000 to arm and equip the State, and called a convention for January 9, 1861. On the 18th it passed ordinance of secession by a vote of 208 to 89, A. H. Stephens and Herschel V. Johnson voting no, though the day previous a resolution declaring it to be the right and duty of Georgia to secede, was adopted by a vote of 165 to 130, and on March 16 following it ratified the confederate constitution by a vote of 96 to 5. (Ibid., vol. 1, p. 347.)

Louisiana.—Legislature met December 10, 1860, and called a convention for December 17. On the 26th of January, 1861, it passed an ordinance of secession by a vote of 103 to 17. The convention voted 84 to 45 to submit the ordinance of secession to a vote of the people. The popular vote stood 20,448 for secession to 17,296 against, only two-fifths of the vote cast for President just before. (Ibid., vol. 1, 348).

Mississippi.—Legislature assembled November 26, 1860, and fixed upon December 20 as date of election of delegates to a convention; the same to meet January 7, 1861. On January 9 it passed an ordinance of secession by a vote of 84 to 15. The slave population of Mississippi was at that time next to that of South Carolina. (Ibid., vol. 1, pp. 347, 348.)

North Carolina.—Legislature called a convention in November, 1860. This convention was strongly for the Union, and December 22, 1860, adjourned, having provided that it should not again meet. A State's-right convention was called for March 22, 1861, but no action was taken. After the firing on Fort Sumter, the governor called an extra session of the legislature for May 1, which called a convention for May 20, 1861, the delegates to be elected May 13. On that day an ordinance of secession was passed by a unanimous vote, inspired largely by a resolution reciting grossly false statements. (Ibid., vol. 1, pp. 347, 485.)

South Carolina.—Legislature called for November 5, 1860, and a convention was called for December 17, delegates to be elected on the 6th of December. On the 20th of December an ordinance of secession was reported from a committee of seven, and immediately passed without dissent; the yeas being 169. (Ibid., vol. 1, p. 347.)

Tennessee.—Legislature met January 7, 1861. On the 19th it decided to call a convention, subject to a vote of the people. That vote was taken early in March, and on the 10th the result was officially proclaimed as follows: for the Union, 91,803; for disunion, 24,749; a Union majority of 67,054, many counties not rendering any returns.

After the firing on Fort Sumter, the legislature on May 1, 1861, secretly adopted a resolution authorizing the appointment of "three commissioners on the part of Tennessee, to enter into a military league with the authorities of the Confederate States, and with the authorities of such other slave-holding States as may wish to enter into it; having in view the protection and defense of the entire South against the war which is now being carried on against it." These commissioners framed a convention "between the State of Tennessee and the Confederate States of America," which practically placed the military force of the State under the control and direction of the Confederate States, and turned over to said Confederate States all the public property,

had power to avert it. If they had reflected that secession and rebellion would stamp them all as *enemies* of the lawful National Government, subject to have their property taken or destroyed, by or in aid of its military operations, or to weaken the power in revolt, without any compensation, it might have induced a vigilance which would have averted the calamity of civil war. Their inaction or want of energy in resisting secession brought death and all the woes of war. Even loyal men were not everywhere or in all cases guiltless. Their moral guilt was an omission of duty. In the transgression of active secessionists all in legal contemplation transgressed. If now, all loyal citizens should be compensated for all property taken or destroyed by the Union Armies

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naval stores, and munitions of war, belonging to the State of Tennessee, which had been acquired from the United States.

This convention was submitted to the legislature, in secret session, and was ratified in the senate by yeas 14, nays 6, absent or not voting, 5; in the house by yeas 43, nays 15, absent or not voting, 18. On the preceding day the legislature had passed an ordinance of secession to be submitted to the people June 8, 1861. The State was covered with confederate soldiers, so that freedom of opinion and expression on the side of the Union was completely crushed out, as is illustrated by the following article from the Louisville *Journal*, of May 13, 1861.

The Louisville *Journal* of May 13 said:

"The spirit of secession appears to have reached its culminating point in Tennessee. Certainly the fell spirit has, as yet, reached no higher point of outrageous tyranny. The whole of the late proceeding in Tennessee has been as gross an outrage as ever was perpetrated by the worst tyrant of all the earth. The whole secession movement, on the part of the legislature of that State, has been lawless, violent, and tumultuous. The pretense of submitting the ordinance of secession to the vote of the people of the State, after placing her military power and resources at the disposal and under the command of the Confederate States, without any authority from the people, is as bitter and insolent a mockery of popular rights as the human mind could invent."

On the 24th of June, Governor Harris issued his proclamation, declaring that the vote of the 8th had resulted as follows:

	Separation.	No separation.
East Tennessee	14,780	32,923
Middle Tennessee	58,265	8,198
West Tennessee	29,127	6,117
Military camps	2,741	none.
	104,913	47,238

A convention was held at Greenville, in East Tennessee, in which 31 counties were represented. This convention adopted a resolution which declared the result of the election as in no sense "expressive of the will of a majority of the freemen of Tennessee." (Ibid., vol. 1, pp. 481, 482, 483, 484.)

Texas.—Convention assembled January 28, 1861, and passed ordinance of secession, yeas 166, nays 7, February 1, 1861, which was submitted to popular vote and ratified by a considerable majority, in many districts it being safer to vote secession than not vote at all, and not to vote at all rather than vote Union. (Ibid., vol. 1, page 348.)

Virginia.—Legislature met January 7, 1861, on call of Governor Fletcher; and, on the 13th, passed a bill calling a convention, a Union majority being returned. April 4 the convention decided, by a vote of 89 to 45, *not* to pass an ordinance of secession. Subsequently, April 17, three days after the firing on Fort Sumter, the convention passed an ordinance of secession by a vote of 88 to 55, the convention being largely influenced by an act of the confederate congress forbidding the importation of slaves from States out of the confederacy, a blow at Virginia's most important and productive branch of her industry. (Ibid., vol. 1, pp. 348, 452.)

The Louisville *Journal* of June 1 said:

"The vote of Virginia last week on the question of secession was a perfect mockery. The State was full of troops from other States of the Confederacy; while all the Virginia secessionists, banded in military companies, were scattered in various places to overawe the friends of Union or drive them from the polls. The Richmond convention, in addition to other acts of usurpation, provided that polls should be opened in all the military encampments, besides the ordinary voting places. * * * No man voted against secession on Thursday last but at the peril of being lynched or arrested as an incendiary, dangerous to the State."

West Virginia.—The people of West Virginia hostile to the confederacy met at Kingwood, May 4, 1861. A similar meeting was held at Wheeling, May 5, and another May

the rebellion might be to some of them, with the opportunity which always exists to fabricate fraudulent claims, rather a profitable pastime, and future attempts at revolt would stimulate them to no earnest resistance to prevent it.

Grotius, referring to foreign invasion and the liability of an invaded city to make compensation, assigns as a reason why "no action [that is, no claim] may be brought against a city for damages by war," that it is "in order to make every man more careful to defend his own."[22]

Vattel assigns as reasons that the damages would be so great that "the public finances would soon be exhausted. * * * Besides these indemnifications would be liable to a thousand abuses, and there would be no end of the particulars. It is therefore to be presumed no such thing was ever intended."[23]

There is a maxim, too, the force of which cannot be overlooked: *Salus populi suprema lex.*

It is a principle of law, applicable alike to nations and individuals, that there is no wrong without a remedy. A nation has its rights—its remedies.

Citizens have their rights and remedies as well when a right of person or property is invaded by the nation as by individuals. The Constitution recognizes all these, leaving details to common or statutory or international law.

The fifth article of amendments to the Constitution provides that—

> No person shall be * * deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation. Article V, amendment.

The phrase "due process of law," in this connection means that:

> The right of the citizen to his property as well as life or liberty could only be taken away upon an open, public, and fair trial before a judicial tribunal, according to the forms prescribed by the laws of the land.[24]

If there were no other provision in the Constitution on the subject of life or property, the life of a rebel citizen could never be lawfully taken by command of the Government, even in battle, and property for army supplies, hospitals, and other military purposes, could never be taken for

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13, 1861; on the 13th, a convention of delegates, representing thirty-five counties of West Virginia, and, after calling a provisional convention for June 11, adjourned on the 15th. June 20 a unanimous vote in favor of ultimate separation was cast, the convention having voted, two days previous, that the separation of Western from Eastern Virginia was one of its paramount objects. Congress ratified the action taken, and January 6, 1862, admitted the State of West Virginia into the Union. (Ibid., vol. 1, pp. 519, 520.)

The following table exhibits the population of the States declared in insurrection in 1860, with the vote cast in each at the presidential election of that year:

	Population.	Vote cast.
Alabama	964,201	90,357
Arkansas	435,450	54,053
Florida	140,424	14,347
Georgia	1,057,286	106,365
Louisiana	708,002	50,510
Mississippi	791,305	69,020
North Carolina	992,622	96,230
* South Carolina	703,708	
Tennessee	1,109,801	145,333
Texas	604,215	62,657
Virginia	1,596,318	167,123

[22] Book 3, ch. XX, sec. 8, p. 290.
[23] Vattel, ch. XV, p. 403.
[24] Paschal, Annotated Constitution, 260, note 257; Whiting's War Powers, 60.

* Elects by legislature.

the public use against the owner's will, except by the tedious process of a judicial proceeding in court, in the exercise of the civil right of eminent domain.

In a foreign war the Government, of course, does not organize an army for the purpose of taking the life of our citizens, and it may be said that the constitutional provisions referred to may in such case be operative, and is not violated. But in a civil war the very object of organizing an army is to take the life of rebel citizens without any "process of law," and the fifth article of amendments has no application to such case.

But if it be said that on some principle recognized among nations, justified by reason and necessity, rebels forfeit all constitutional rights, yet some of the provisions of the fifth amendment still cannot apply to a state of war, because a citizen who is conscripted against his will, arrested, and carried into the army, is deprived of his "liberty" without any "process of law." The war-power in such case is operating, and the fifth amendment so far yields to it and is not applicable to such case.[25]

In what has been said no reference is intended to be made to the last clause of the fifth amendment, which requires compensation for private property taken for public use. That presents a separate inquiry as to what is a "public use," and whether compensation is to be made by force of that clause or on general principles of international law.

Since war could not be carried on if all the provisions of the fifth amendment applied in time and on the theatre of war, the Constitution, in view of the fact that war would or might exist, gives to Congress the power—

"to define and punish * offences against the *law of nations*."
"to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;"
"to raise and support armies;"
"to provide for the common defence and general welfare of the United States,"

and makes other equally emphatic provisions relative to a state of war.[26]

The Constitution recognizes and, *for their appropriate uses, adopts* "the law of nations," and these include the *laws of war*.

The *laws of war*, equally with the amendments to the Constitution, determine certain rights of person and property. Here, then, *in the Constitution* are two systems of law, each having a purpose. By well-known legal rules of construction they are to be construed *in pari materia;* effect is to be given to each, so that neither shall fail of having an object or be defeated in its application to that object exclusive, when necessary to accomplish it.

Both systems of law cannot have full or exclusive force, effect, and operation at the same time and place or over the same rights of person and property.[27]

The laws of peace, and the amendments to the Constitution for the

[25] In ex-parte Milligan, 4 Wallace, 137, Chief Justice Chase said: "The Constitution itself provides for military government as well as civil government. And we do not understand it to be claimed that the civil safeguards of the Constitution have application *in cases within the proper sphere of the former*." P. 137. (See 11 Opinions, 297.)

[26] Whiting's War Powers, 27.

[27] Whiting's War Powers, 51.

security of life and property, apply in time of peace and in time of war where no war or state of war exists.[28]

But where war is actually flagrant, or a state of war and the exercise of military authority exist, the laws of war prevail; and, so far as clearly necessary for all purposes of the war, they are so far exclusive that no antagonistic law or exercise of jurisdiction can be allowed.[29]

It is not to be inferred from this that there is no protection for life or property. The laws of peace, the ordinary tribunals, may be allowed, even on the theater of war, to be operative, so far as practicable. And in all cases the laws[30] of nations, including the laws of war, promise protection to life and property, as clearly and as sacred as if written in plain terms in the Constitution. The *laws of war* are, therefore, *constitutional laws*, as obligatory for their purposes as any other.

Loyal men residing in loyal States during the rebellion but having property, real or personal, in States proclaimed in rebellion, held it not as enemies, but nevertheless subject to the laws of war as affecting loyal citizens in a theater of war.[31]

From what has been said it will be seen that the laws of war prevailed—

1. Generally in the eleven States proclaimed in rebellion, subject to some limitations, from the commencement to the close of the state of war.

2. In large portions of Missouri, Kentucky, Maryland, and West Virginia, during a less period, including only the actual state of war.

3. In the District of Columbia, while under martial law.

4. In a small portion of Ohio and Indiana, for a few days, during the actual existence of the "Morgan raid."

5. In a small portion of Pennsylvania, during the actual existence of Lee's invasion and the battle of Gettysburgh.

The citizens of the eleven seceded States, for the period of war and by strict law, can only claim those rights of property accorded by the law of nations under the principles of the Constitution.

Elsewhere where actual war existed, and during its legal continuance, the rights of person and property, so far as they were interrupted by warlike operations, are, in considering the liability of the Government, to be determined by the laws of war.

The laws of war affecting rights of person and property exist independent of legislative sanction back of the Constitution itself. It does not make but recognizes them as existing and known laws. This com-

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[28] Ex parte Milligan, 4 Wallace, 127.

This view is taken in *Grant* vs. *U. S.*, 1 N. and H. Court Claims, 44; but that case cannot be sustained in some other respects.

[29] In Ex parte Milligan, 4 Wallace, 127, the test applied as to whether the laws of war were in force *quo ad rights of person*, was whether the civil courts were open, and it was held that the court was the judge of this. And see Coke, Com. Lit., lib. 3, ch. 6, sec. 412, p. [249 *b*.]

Lawrence's Wheaton 526, (2 Am. ed.) Lawrence says this is the English rule, and applies to the seizure of real estate, "so as the courts were shut up, *et silent inter leges arma.*"

Grant v. *U. S.*, 1 N. & H. Court Claims, 41.

But the *mere fact* that under the protection of military power civil courts aided the administration of justice could not exclude rightful military authority. The civil courts were open more or less in the District of Columbia and some of the States during a portion of the period of the rebellion.

[30] There is a summary of these by Francis Lieber, p. 441 et seq., in Scott's Digest of Military Laws United States, and in the appendix to report of trial assassination of President Lincoln.

[31] Lawrence's Wheaton, 565–576; The Gray Jacket, 5 Wallace, 342–364; Whiting's War Powers, (43d ed., 1872,) p. 582; Attorney-General's opinion, November 24, 1865; 11 Opinions, 405; Elliott's claim, September 7, 1868; 12 Opinions, 488; Prize cases, 2 Black, 674; Senator Carpenter, in Cong. Record of March 20, 1874, p. 22.

mon law of war is liable to change by treaty stipulations, by circumstances, and for all internal purposes Congress may, and during the rebellion did, materially change it,[32] and has since wisely ameliorated[33] its rules or made concessions gratuitously in the interest of justice, humanity, or benevolence.

But the right of military authorities to seize, use, or destroy property by the laws of war, is not abridged merely because Congress has provided other modes of seizing and disposing of property. A statute which does not by negative words necessarily abolish a common-law rule leaves the latter in force.[34]

As during and since the war rights of property were and are affected by the laws of war and by statutes independent of them, it becomes necessary to consider rights of property as affected by both classes.

Questions may arise in several classes of cases relating to compensation for property, *real* or *personal*, taken, used, destroyed, or damaged on land or sea:

1. By the enemy.
2. By the Government military forces in battle, or wantonly or unauthorized by troops.
3. By the temporary occupation of, injuries to, and destruction of property caused by actual and necessary Government military operations in flagrant war.
4. And as to property useful to the enemy, seized and destroyed, or damaged, to prevent it from falling into their hands.

Questions arise as to these in wars with foreign nations, in the late civil war as to States proclaimed in rebellion, in other States and Territories and the District of Columbia, during the period of flagrant war, and the succeeding state of war, in behalf of resident and non-resident citizens, aliens, and corporations.

Upon ordinary claims the Government is not liable for interest unless by contract so providing.[35]

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[32] U. S. *vs.* Klein, 13 Wallace, 128.

[33] Act March 12, 1863—12 Stat., 591; Mrs. Alexander's Cotton, 2 Wallace, 404; act May 18, 1872—17 Stat., 134; act March 3, 1871—16 Stat., 524; act May 11, 1872—17 Stat., 97; act March 3, 1873—17 Stat., 577; House Mis. Doc. 16—2d sess. 42 Cong.; Mis. Doc. 21, Mis. Doc. 213, Mis. Doc. 218, all, 2 sess. 42 Cong.; Mis. Doc. 12, 3 sess. 42 Cong.; Joint Res. No. 50—1 sess. 39 Cong., June 18, 1866; Joint Res. No. 99—1 sess. 39 Cong., July 28, 1866; act July 4, 1864, ch. 240, 1 sess. 38 Cong. U. S. *vs.* Klein, 13 Wallace, 128.

[34] Mrs. Alexander's Cotton, 2 Wallace, 404, held "cotton in the Southern rebel districts was a proper subject of capture by the Government during the rebellion *on general principles of law relating to war*, though private property; and the legislation of Congress authorized such captures."

See Planters' Bank *vs.* Union Bank, 16 Wallace, 496. Sedgwick on Construction of Statutes.

Congress has power to make rules concerning captures on land. But this does not exclude the exercise of the military right of capture by the common law of war: Brown *vs.* U. S., 8 Cranch, 110, 228, 229.

[35] In an able article in the Boston Law Review, it is said:

"A few leading principles affecting the responsibility of the United States, which have now received the sanction of judicial approval, may be briefly noticed.

"First, the United States is not liable for interest unless upon special agreement, as in the public loans. Such was the uniform rule, from the earliest times, in accordance with the advice of the attorneys-general. This question was fully discussed in *Todd's case*, and the principle sustained by the court. It was held that the right of individuals to interest is merely conventional in its origin, depending upon law and usage, and that neither law nor usage can be found to render government liable. As this decision has been re-affirmed, and an act of Congress, recently passed, forbids the payment of interest on Government claims, the principle is finally settled. It was also held, in *Keith's case*, that a resolution of Congress, directing the settlement of an account 'upon principles of equity and justice,' does not imply the payment of interest."

PART II.

OF PROPERTY TAKEN, USED, DAMAGED, OR DESTROYED IN THE STATES PROCLAIMED IN REBELLION.

As to the eleven States proclaimed in rebellion during the period of flagrant war, it may be said in general terms that the United States, by the strict rules of international law, incurred no liability whatever for property taken, used, damaged, or destroyed therein by Government authority, so far as dictated by the necessary operations of the war, nor by the operations of the enemy. This is well settled by every writer on the laws of war.

Halleck says:

War * * makes legal enemies of all the individual members of the hostile States; * * *it also extends to property, and gives to one belligerent the right to deprive the other of everything which might add to his strength and enable him to carry on hostilities.*[36]

A firm possession is sufficient to establish the captor's title to personal or movable property on land, but a different rule applies to immovables or real property. A bel-

(American Law Review, Boston, July, 1867, vol. 1, p. 657; Court of Claims Reports, &c.)

In an argument by John A. Andrew and Albert G. Browne, jr., it is said:

"Interest has always been paid upon the advances of the *States* for war purposes.

"*The Revolutionary war.*—By the acts of Congress of 5th August, 1790, and May 31, 1794, providing for the settlement of their advances during the revolutionary war, interest was allowed and paid.

"*The war of* 1812–'15.—The whole subject of interest upon advances of States, during the war of 1812–'15, was discussed in 1824–'25, in a message of President Monroe, and accompanying papers, upon the case of Virginia. (See Senate Documents, 18th Congress, 1st session, 3d volume, document 64.)

"The act of March 3, 1825, (United States Laws, vol. 4, page 132,) was the result and settled the principle upon which interest has been allowed for advances in 1812–'15, and since. Virginia was allowed interest, but not "on any sum on which she has not paid interest.' Interest, upon this rule, has been allowed to every State except Massachusetts, which made advances in the war of 1812–'15.

"See the following cases:

"Maryland, United States Laws, vol. 4, page 161.

"Delaware, United States Laws, vol. 4, page 175.

"New York, United States Laws, vol. 4, page 192.

"Pennsylvania, United States Laws, vol. 4, page 241.

"South Carolina, United States Laws, vol. 4, page 499.

"The same principle was applied to the case of the advances of the city of Baltimore. (See act of April 2, 1830.)

"*Indian and other wars.*—See the following cases of the allowance of interest:

"Alabama, United States Laws, vol. 9, page 344.

"Georgia, United States Laws, vol. 9, page 626.

"Washington Territory, United States Laws, vol. 17, page 429.

"New Hampshire, United States Laws, vol. 10, page 1.

"*The Mexican war.*—The rule of allowing interest has been applied not only to States, but to corporations and individuals. See (U. S. Laws, vol. 9, p. 236) third section of the act to refund advances, &c., for the Mexican war, as follows:

"'That, in refunding moneys under this act, and the resolution which it amends, it shall be lawful to pay interest at the rate of six per centum per annum on all sums advanced by States, corporations, or individuals, in all cases where the State, corporation, or individual paid or lost the interest, or is liable to pay it.' (See H. Rep. No. 119, 38th Cong., 1st sess.)"

The interest on the Massachusetts advances was paid by act of July 8, 1870, (16 Stat., 197. See Sumner's Sen. Rep. No. 4, 1st sess. 41st Cong., April 1, 1869; Ela's H. Rep. No. 76, 2d sess. 41st Cong.)

[36] International Law, 446; id., 457–460; 71 vol. Globe, 300, Sumner's Speech, January 12, 1869; Prize Cases, 2 Black, 671–674; Lawrence's Wheaton, 596. This includes cotton. The rebels destroyed $80,000,000 in value to prevent it from being captured by Union forces. (Mrs. Alexander's Cotton, 2 Wallace, 420.)

ligerent who makes himself master of the provinces, towns, public lands, buildings, &c., of an enemy, *has* a perfect right to their possession and use. * * The possession * * gives a right to its *use* and its *products*.[37]

By modern usage there are, and ought to be, humane limitations on the ancient right of seizure, which restrict it to what is useful in the prosecution of the war or necessary to disable the enemy.[38]

By General Order No. 100, approved by the President April 24, 1863, "instructions for the government of the armies" were issued, which were prepared by the eminent jurist, Francis Lieber, LL. D., embodying the laws of war as recognized among civilized and Christian nations, in which it is declared that—

Churches, hospitals, or other establishments of an exclusively charitable character, establishments of education, museums, &c., * * may be taxed or *used* when the public service may require it.[39]

The Supreme Court has determined that during the rebellion—

Cotton in the Southern rebel districts—constituting, as it did, the chief reliance of the rebels for means to purchase munitions of war, an element of strength to the rebellion—was a proper subject of capture by the Government during the rebellion *on general principles of public law relating to war, though private property;* and the legislation of Congress during the rebellion authorized such captures.

And the court said as to cotton—

Being enemy's property, the cotton was liable to capture and confiscation by the adverse party. It is true that this rule, as to property on land, has received very important qualifications from usage, from the reasonings of enlightened publicists, and from judicial decisions. It may now be regarded as substantially restricted "to special cases, dictated by the necessary operation of the war," and as excluding, in general, the seizure of the private property of pacific persons for the sake of gain. The commanding general may determine in what special cases its *more stringent application is required by military emergencies;* while considerations of public policy, and positive provisions of law, and the general spirit of legislation, must indicate the cases in which its application may be properly denied to the property of non-combatant enemies.

In the case before us, the capture seems to have been justified by the peculiar character of the property and by legislation. It is well known that cotton has constituted the chief reliance of the rebels for means to purchase the munitions of war in Europe. It is matter of history that, rather than permit it to come into the possession of the national troops, the rebel government has everywhere devoted it, however owned, to destruction. The value of that destroyed at New Orleans, just before its capture, has been estimated at eighty millions of dollars. The rebels regard it as one of their main sinews of war; and no principle of equity or just policy required, when the national occupation was itself precarious, that it should be spared from capture and allowed to remain, in case of the withdrawal of the Union troops, an element of strength to the rebellion. And the capture was justified by legislation as well as by public policy.[40]

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[37] Halleck, 447; Wheaton, Int. Law, pt. 4, ch. 2, §§ 5–11; 1 Kent, 110; Heffter, Droit International, § 130; Martens Précis du Droit des Gens, § 280; Requelme, Derecho Pub. Int., lib. 1, tit. 1, cap. 12.

[38] United States *v.* Klein, 13 Wallace, 138; Whiting's War-Powers, 48, 52, 53; Lawrence's Wheaton, 630; Dana's Wheaton, section 256, note 171; Halleck, 448–451; Vattel, Law Nat., 365, book 3, chapter 9; Binkershoek's Laws of War; Brown *v.* United States, 8 Cranch, 122, 228; 71 Globe, 383; 1 Kent, 92, 93, 120; Alexander *v.* Duke of Wellington, 2 Russell and Mylne, 35; 1 Kent's Com., 357. In United States *v.* Paddleford, 9 Wallace, 531, the court said: "The rights in private property are not disturbed by the capture of a district of country or a city or town until the captor signifies by some declaration or *act, and generally by actual seizure*, his determination to regard a particular description of property as not entitled to the immunity usually conceded in conformity with the humane maxims of the public laws."

Cooledge *v.* Guthrie, United States circuit court, southern district Ohio, October, 1868, Appendix 591 to (43d ed., 1871) Whiting's War-Powers.

Mrs. Alexander's Cotton, 2 Wallace, 419; 1 Kent, 92, 93 United States *v.* Klein, 13 Wallace, 137.

[39] Scott's Digest, Military Laws, 446. See McPherson's chapter "The Church and the Rebellion," History of Rebellion, 460, &c.

[40] Mrs. Alexander's Cotton, 2 Wallace, 419.

Tobacco and other property was also an element of strength, and by the laws of war might equally with cotton, and upon the same principles, be destroyed.[40a]

Bynkershoek says:

It is a question whether our friends are to be considered as enemies, when they live among the latter, say in a town which they occupy. *Petrinus Bellus de R. Milit.*, part 2, tit. 11, note 5, thinks they are not. *Zauch, de Jure Fec.*, part 2, § 8, q. 4, gives no opinion. For my part, I think that they must also be considered as enemies. * * * They say that our friends, although they are among our enemies, yet are not hostilely inclined against us; for if they are there, it is not from choice, and the *quo animo* only is to be considered. But the thing does not depend only on the *quo animo;* for, even among the subjects of our enemy, there are some, however few they may be, who are not hostilely inclined against us; but the matter depends upon the law, because those goods are with the enemy, and because they are of use to them for our destruction.[41]

[40a] The commissioners of claims, under the act of March 3, 1871, in their third annual report of December 8, 1873, House Mis. Doc. No. 23, 1st sess., 41st Cong., p. 3, say:

"As we now, for the first time, present reports allowing for tobacco taken for Army use, we desire to state the reasons for such allowances.

"Tobacco was by law never made an Army supply till the act of March 3, 1865, provided that it might be furnished at cost to those who desired it, and at their expense. All the claims for tobacco which have been examined by us are for tobacco taken before that date.

"After the capture of Atlanta, in September, 1864, General Sherman found that he was short of rations for his army, and that the soldiers were subject to many privations. To make his army contented, and, as far as possible, to make up to them for their usual rations, of which they were for the time deprived, he issued an order on the 8th of September, 1864, authorizing the chief commissary of subsistence to take possession of and issue to the troops all the tobacco in Atlanta, and give certificates thereof to the owners, to be accounted for in accordance with existing orders.

"Pursuant to this order, tobacco belonging to George J. Stubblefield was taken, and upon his making claim for payment the commissary department recommended, 'As this tobacco was taken *by order of General Sherman* and issued to the troops *in lieu of other rations*, and as the loyalty of the claimant is clearly established,' that payment should be made. This was approved by the Secretary of War, Mr. Stanton, and the claim was paid.

"The payment stands upon the ground that when an army is deprived of its usual rations the commanding general can, in his judgment, authorize an article not a supply to be taken and used for the time being as a supply, and *in lieu of other rations;* and in such case the Government is bound to pay for it. We have strictly followed this precedent, and have not allowed for tobacco except when taken under this order."—(3d Genl. Rep. Com. of Claims, art. 6, p. 3.)

The commission of claims, under 12th article of treaty of 8th May, 1871, between the United States and Great Britain, adopted the same principle. Hale's report to the Secretary of State, November 30, 1873, page 45, showing an award only when it was "allowed as an army ration."

[41] Laws of War, 25; Manning's Law of Nations, ch. iv, p. 122; Thomas Jefferson vindicated the confiscation of property of colonists who adhered to Great Britain during the revolution on this principle. Jefferson's Works, vol. 3, p. 369. Sumner's speech, 71, Globe, 380.

On the 30th January, 1866, the House of Representatives passed the following:

Resolved, That, until otherwise ordered, the Committee of Claims be instructed to reject all claims referred to them for examination by citizens of any of the States lately in rebellion, growing out of the destruction or appropriation of or damage to property by the Army or Navy while engaged in suppressing the rebellion.

(See debates in Globe, vol. 56, pp. 509–512.)

This resolution was reported from the Committee of Claims by Hon. C. Delano, now Secretary of the Interior. (See House Rep., No. 10, 1 Sess. 39 Cong., January 18, 1866.)

In the debate, Mr. Delano said:

"I do not deem it necessary to go into an argument to show that *there is no responsibility resting on Congress* to pay those damages that are the result of the necessary ravages of war."

As to claims for "damages resulting from the appropriation of property by our Army for subsistence," he said that "an effort to discriminate between the loyal and disloyal would be an impracticability."

As a question of law, he said, "I am not furnished with any authorities that would enable me to draw a distinction" between loyal and disloyal claimants.

While these are the rights which the Government *might* lawfully enforce against all the inhabitants of the seceded States during actual insurrection, yet in practice they were wisely and humanely modified by acts of Congress, and the military authorities in virtue of their general power in special cases advised departures from strict rules.[42]

The nation has power to make a rule, however, and reason and justice, the bases of all law, would draw a line when necessary or practicable.

Mr. Delano, in the report of the committee unanimously made in favor of that resolution, said:

"The committee are therefore of the opinion that, in view of the magnitude of these losses, as well as the magnitude of the public debt, and the thousand abuses necessarily resulting from an attempt to satisfy these claims, in the words of Vattel, 'the thing is utterly impracticable,' and ought not to be encouraged.

"It may be suggested that a distinction should be made between losses arising out of the destruction of property incident to the ravages of war and damages growing out of the appropriation of property for the uses of the Army. Without controverting the propriety of this distinction, so far as citizens of the loyal States are concerned, it is suggested that it will be dangerous and inexpedient to apply it to claims coming from States lately in rebellion. It will be difficult to determine with a sufficient degree of certainty the question of individual loyalty; and, if it be established as a rule that property taken from loyal citizens in rebellious States for military supplies shall be paid for, it may be conceded that every claimant will find *some* proof to present of his devotion and suffering in the cause of the Government."

The report also says that in our former history some claims had been allowed "in cases of doubtful propriety;" but the cases were not such as to impose great burdens on the nation. And the report says:

"Appeals to our sympathy, humanity, and benevolence are not easily resisted, and it is a credit to human nature that we are so constituted as to be accessible to such appeals. It is to be remembered, however, that such appeals ought *not to induce* and *cannot authorize* us to levy extraordinary taxation upon our constituents in order to gratify our charitable impulses. We are not *almoners* merely *for the nation*, and *have no just right to impose increased taxation in order to gratify our feelings of benevolence*, nor to establish principles of abstract justice and equity, *when there is no rule or law requiring it*, and particularly when the attempt is to be attended with great uncertainty, and be subjected to *innumerable impositions and frauds*."

[42] General Halleck, in his instructions of March 5, 1863, to the commanding officers in Tennessee, said:

"The people of the country in which you are likely to operate may be divided into three classes: "First. The truly loyal, who neither aid nor assist the rebels, except under compulsion, but who favor or assist the Union forces. Where it can possibly be avoided, this class of persons should not be subjected to military requisitions, but should receive the protection of our armies. It may, however, sometimes be necessary to take their property, either for our own use or to prevent its falling into the hands of the enemy. They will be paid at the time the value of such property; or, if that be impracticable, they will hereafter be fully indemnified. Receipts should be given for all property so taken without being paid for."

(Lawrence's Wheaton, supplement, p. 40.) This related only to Tennessee, and after March 5, 1863, the general rule was prescribed, by an order of the War Department, July 22, 1862, as follows:

"Ordered, that the military commanders within the States of Virginia, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Arkansas, in an orderly manner, seize and use any property, real or personal, which may be necessary or convenient for their several commands as supplies or for other military purposes, and while property may be destroyed for military objects, none shall be destroyed in wantonness or malice."

(Lawrence's Wheaton, note, page 625.)

Halleck's International Law and Laws of War, p. 460, § 17, cites Mr. Marcy, Secretary of War, as giving directions to our commanding generals, during the war with Mexico, that they might obtain supplies from the enemy.

1. "By buying them in open market at such prices as the enemy might exact," (this, of course, they could do if they saw fit.)

2. They might take the supplies and pay the owners *a fair price, without regard to what they might themselves demand on account of the enhanced value resulting from the presence of a foreign army.*

3. They might require contributions without paying or engaging to pay.

Halleck says:

"There can be no doubt of the correctness of the rules of war as here announced by the American Secretary."

Congress has also, as a gratuity, provided for the payment—

"To those citizens who remained loyal adherents to the cause and the Government of the United States during the war, for stores or supplies taken or furnished during the rebellion for the Army and Navy of the United States in States proclaimed as in insurrection, including the use and loss of vessels or boats while employed in the military service of the United States."[43]

The right to take property in the insurgent States, *by the common laws of war*, remained generally in force, but Congress also provided modes of taking property *in statutory modes*.[44]

He cites many authorities, and the letters from Marcy to Scott and Taylor, &c. (See Ex. Doc. 60, House Reps., 1 sess. 30 Cong., p. 963.)

As to cotton, &c., act March 12, 1863, 12 Stat., 591; act May 18, 1872, 17 Stat., 134; House Ex. Doc. 97, 39 Cong., 2 sess.; Senate Ex. Doc. 37, 2 sess. 39 Cong.; House Ex. Doc. No. 114, 2 sess. 39 Cong.; Senate Ex. Doc. No. 22, 2 sess. 40 Cong.; House Rep. No. 7, 1 sess. 40 Cong.; Senate Ex. Doc. 56, 2 sess. 40 Cong.; House Ex. Doc. 82, 3 sess. 40 Cong.; House Ex. Doc. 113, 3 sess. 41 Cong.; House Ex. Doc. , 1 sess. 43 Cong.

[43] Act March 3, 1871, 16 Stat., 524; May 11, 1872, 17 Stat., 97; March 3, 1873, 17 Stat., 577. See the reports of commissioners of claims, House Mis. Doc. 16, 2 sess. 42 Cong.; Mis. Doc. 21, Mis. Doc. 213, Mis. Doc. 218, 2 sess. 42 Cong.; Mis. Doc. 12, 3 sess. 42 Cong. Joint Res. No. 50, 1 sess. 39 Cong., June 18, 1866; Joint Res. No. 99, 1 sess. 39 Cong., July 28, 1866; act July 4, 1864, ch. 240, 1 sess. 38 Cong.

[44] In United States *vs.* Klein, (13 Wallace, p. 128,) the court said:

It may be said, in general terms, that property in the insurgent States may be distributed into four classes: [1.] That which belonged to the hostile organizations, or was employed in actual hostilities on land; [2.] That which at sea became lawful subject of capture and prize; [3.] That which became the subject of confiscation; [4] A peculiar description, known only in the recent war, called captured and abandoned property.

1. The first of these descriptions of property, like property of other like kind in ordinary international wars, became, wherever taken, *ipso facto* the property of the United States. (Halleck's Int. Law.)

2. The second of these descriptions comprehends ships and vessels, with their cargoes, belonging to the insurgents, or employed in aid of them; but property in these was not changed by capture alone, but by regular judicial proceeding and sentence.

Accordingly it was provided, in the abandoned and captured property act of March 12, 1863, (12 Stat., p. 820,) that the property to be collected under it "shall not include any kind or description used, or intended to be used, for carrying on war against the United States, such as arms, ordnance, ships, steamboats and their furniture, forage, military supplies, or munitions of war."

3. Almost all the property of the people in the insurgent States was included in the third description, for after sixty days from the date of the President's proclamation of July 25, 1862, (12 Stat., p. 1266,) all the estates and property of those who did not cease to aid, countenance, and abet the rebellion became liable to seizure and confiscation, and it was made the duty of the President to cause the same to be seized and applied, either specifically or in the proceeds thereof, to the support of the Army. (12 Stat., p. 590.) But it is to be observed that tribunals and proceedings were provided, by which alone such property could be condemned, and without which it remained unaffected in the possession of the proprietors.

It is thus seen that, except to property used in actual hostilities, as mentioned in the first section of the act of March 12, 1863, no titles were divested in the insurgent States unless in pursuance of a judgment rendered after due legal proceedings. The government recognized to the fullest extent the humane maxims of the modern laws of nations, which exempt private property of non-combatant enemies from capture as booty of war. Even the law of confiscation was sparingly employed. The cases were few indeed in which the property of any not engaged in actual hostilities was subjected to seizure and sale.

The spirit which animated the Government received special illustration from the act under which the present case arose. We have called the property taken into the custody of public officers under that act a peculiar species, and it was so. There is, so far as we are aware, no similar legislation mentioned in history.

As to captured and abandoned property, see—

39th Congress, 2d session, House of Representatives. Ex. Doc. No. 97. Captured and forfeited cotton.

39th Congress, 2d session, Senate. Ex. Doc. No. 37. Relative to proceeds of sale of cotton, &c.

The statutes in relation to captured and abandoned property authorized the Secretary of the Treasury to appoint special agents to receive all abandoned or captured property in the States proclaimed as in insurrection, and required the military and naval authorities who took or received any such abandoned property, or cotton, sugar, rice, or tobacco, to turn the same over to the Treasury agents, who were required to sell the same, and pay the proceeds into the Treasury. These acts provide, also, that any person claiming to have been the owner of any such property might, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims, and, on proof of ownership and loyalty, he shall receive the proceeds, less costs and expenses.[45]

The act of May, 1872, required the Secretary of the Treasury to pay to the lawful owners, who filed claims within six months, the net proceeds of sales of cotton seized after June 30, 1865, and actually paid into the Treasury by agents of the Government unlawfully and in violation of their instructions.

No proof of loyalty was required under this act, and under the prior acts it was held that a pardon restored loyalty so as to give a right to recover.[46]

39th Congress, 2d session, House of Representatives. Ex. Doc. No. 114. Relative to cotton claims.

House Report, No. 7. 1st session, 40th Congress. November 25, 1867.

40th Congress, 2d session, Senate. Ex. Doc. No. 22. Letter from Secretary of the Treasury relative to captured and abandoned property.

40th Congress, 2d session, Senate. Ex. Doc. No. 56. Relative to sales of captured and abandoned property.

40th Congress, 3d session, House of Representatives. Ex. Doc. No. 82. Letter from Secretary of Treasury relative to proceeds of captured and abandoned property.

41st Congress, 3d session, House of Representatives. Ex. Doc. No. 113. Sale of captured vessels, cotton, &c.

Alexander's Cotton, 2 Wallace, 421.

[45] See acts of March 12, 1863, and July 2, 1864. See a compilation of acts of Congress and rules and regulations prescribed by the Secretary of the Treasury, concerning commercial intercourse with the States declared in insurrection, and as to captured, abandoned, and confiscable property, reprint, 1872.

[46] It was also held that the Government became a trustee for the benefit of those whom it should thereafter recognize as entitled. United States *vs.* Klien, 13 Wallace, 128, the court say:

"That it was not the intention of Congress that the title to these proceeds should be divested absolutely out of the original owners of the property seems clear upon a comparison of different parts of the act.

"We have already seen that those articles which became by the simple fact of capture the property of the captor, as ordnance, munitions of war, and the like, or in which third parties acquired rights which might be made absolute by decree, as ships and other vessels captured as prize, were expressly excepted from the operation of the act; and it is reasonable to infer that it was the purpose of Congress that the proceeds of the property for which the special provision of the act was made should go into the Treasury without change of ownership. Certainly such was the intention in respect to the property of loyal men. That the same intention prevailed in regard to the property of owners who, though then hostile, might subsequently become loyal, appears probable from the circumstance that no provision is anywhere made for confiscation of it; while there is no trace in the statute-book of intention to divest ownership of private property not excepted from the effect of this act, otherwise than by proceedings for confiscation.

"In the case of Padelford we held that the right to the possession of private property was not changed until actual seizure by proper military authority, and that actual seizure by such authority did not divest the title under the provisions of the captured and abandoned property act. The reasons assigned seem fully to warrant the conclusion. (The Government constituted itself the trustee for those who were by that act declared entitled to the proceeds of captured and abandoned property, and for those whom it should thereafter recognize as entitled.) By the act itself it was provided that any person claiming to have been the owner of such property might prefer his claim to

The time has expired within which claims can be made for proceeds of cotton and other captured and abandoned property, and many claimants are now asking that they be permitted to make proof either before the Court of Claims or the proper committees of Congress, with a view to receive the proceeds of property which they allege to have been sold by the Treasury agents.

There are claims also for pay for cotton and other property seized by the military authorities and used in military operations as breast-works for defense, and otherwise.[47]

On the 12th July, 1862, before the date (March 12, 1863) of this "captured and abandoned property act," the Union General Curtis seized cotton owned by private citizens at Helena, Arkansas. This was sold by the military authorities July 26, 1862. The proceeds were in part applied to support the starving negro population, and a portion otherwise appropriated.

This seizure was determined to be lawful.

Since the act of March 12, 1863, cotton has been seized by Union forces in the insurrectionary States and used in fortifications, and otherwise disposed of, by virtue of general military authority.

But this was a lawful exercise of power and created no liability on the part of the Government.[48]

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the proceeds thereof, and, on proof that he had never given aid or comfort to the rebellion, receive the amount after deducting expenses.

"This language makes the right to the remedy dependent upon proof of loyalty, but implies that there may be proof of ownership without proof of loyalty. The property of the original owner is, in no case, absolutely divested. There is, as we have already observed, no confiscation, but the proceeds of the property have passed into the possession of the Government, and restoration of the property is pledged to none except to those who have continually adhered to the Government. Whether restoration will be made to others, or confiscation will be enforced, is left to be determined by considerations of public policy subsequently to be developed."

Carlisle *vs.* United States, 16 Wallace, 147.

United States *vs.* Paddleford, 9 Wallace, 531.

Planters' Bank *vs.* Union Bank, 16 Wallace, 496.

For the circular letter of the Secretary of the Treasury of June 27, 1865, being instructions to officers relative to captured and abandoned property, see the reprint pamphlet copy of 1872, of acts, rules, and regulations as to such property. The act of May 18, 1872, was based on the letter of June 27, 1865.

[47] The judge-advocate general decided that cotton taken to strengthen fortifications and so destroyed has been regarded as a "loss by casualty of war." (Digest of Opinions Judge-Advocate, 97–8.) (See Opinions, vol. 26, p. 247; Parham *v.* The Justices, 9 Georgia, 341.) The act of February 9, 1867, 14 Stat., 397, indicated the sense of Congress by declaring that no payment should be made for property destroyed in the insurrectionary States.

The act of June 1, 1870, 16 Stat., 640, authorized payment to Cutler for cotton seized by General Grant for military purposes, 78 Globe, 3085, April 29, 1870. But Cutler had raised the cotton by contract with the Government made under the captured and abandoned property act.

The commissioners of claims allowed for cotton used for beds in hospitals, see first report, Mis. Doc. 16, 2 sess., 42d Cong., p. 7.

[48] Coolidge *v.* Guthrie, Swayne, J., October term, 1868, southern district Ohio, United States circuit court, Appendix, p. 591 to (43d ed., 1871,) Whiting's War Powers.

The right to seize and destroy cotton to impair the power of the enemy to carry on war, and in the "enemy's country," has been much discussed. It was considered before the commission under twelfth article, treaty of May 8, 1871, between the United States and Great Britain. (See Hale's report to Secretary of State, November 30, 1873.) Authorities were cited: Vattel, book 3, c. 9, §§ 161, 163, 164; Twiss, vol. 2, (war,) pp. 122 to 124; Rutherford, book 2, c. 9, § 16; Mrs. Alexander's cotton, 2 Wall., 404; The United States *vs.* Padelford, 9 *id.*, 531; The United States *vs.* O'Keeffe. 11 *id.*, 178; 1 Kent's Com., pp. 92, 93.

Commissioner Frazer in his opinion said:

The capture or destruction of property on land belonging to individual enemies is justified by the modern law of nations, if there be military reasons for it; in the

The question now arises whether provision should be made, in any mode, and, if so, what, in behalf of these classes of claimants, or any of them.

There is no longer any claim resting on any law. The acts of Congress referred to fixed a limit of time, and said, in effect, that no claim should be made beyond it.

By the common law of war, as has been shown, no claim can be made.

The questions therefore arise, Is it *practicable*, at this late day, to do justice alike to the Government and claimants, and are there reasons for now admitting claims to be made?

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absence of good military reasons such captures are generally without the support of the public law. When such reasons do exist, such capture or destruction is, in the nature of things, quite as proper as the capture or destruction of such property on the high seas.

The latter is maintained because an enemy's commerce and navigation are "the sinews of his naval power," to take or destroy which is, therefore, a legitimate act of war. (Wheat. Int. Law; Lawrence, 626.)

"The sinews" of his *military* power on land must, in view of the natural law, be equally the subject of capture or destruction by an invading army. Cotton was held to be such by the Supreme Court, in the case of Mrs. Alexander's cotton, (2 Wall., 404.) The reasoning of the opinion of the Chief Justice in that case is, I think, unanswerable.

The war of the American rebellion was a civil war—an immense one, too, and the Government had all the rights of war which it would have had if its enemy had been an independent nation. Even the rebel organization was recognized by Her Majesty's government as a belligerent, *i. e.*, having the rights of war; and certainly that government is thereby estopped from denying, and, indeed, never has denied, that belligerent rights also belonged to the Government of the United States. Every act of war recognized as lawful by the public law between independent states at war was, therefore, lawful on the part of the United States, and involved no cause for reclamation on the part of neutrals. On this gound only, as a lawful belligerent act, could a blockade be maintained. The subject is discussed very fully by the Supreme Court in the prize cases, 2 Black; and I think the reasoning of that court is conclusive.

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But are we to be told that the Government of the United States is compelled by its Constitution to pay its rebellious citizens for their property destroyed as a lawful, *belligerent* act? Has its Constitution thus tied its hands as against a rebellion? Might the rebels, without liability, exercise all recognized belligerent rights against it, including the capture of the property of British subjects found in the loyal States, and yet it do the like only subject to the duty of making compensation?

From all this absurdity there is no escape if the belligerent right of capture and destruction shall be confounded with the sovereign right of eminent domain. And, indeed, captures on the high seas must then go into the same general category.

In fine, a constitution provision—the condition of compensation for property taken for public use—intended only to restrain civil administration, would be held to so trammel belligerent rights in time of civil war that effective hostilities against rebels might sometimes be practically impossible.

The commission held that property in the rebel states might lawfully be destroyed "as a means of weakening the enemy."

The report, p. 49, says:

"Also claims for property available to the enemy for military purposes, or for the prosecution of the war, and purposely destroyed in the enemy's country as a means of weakening the enemy, as in the cases of Samuel H. Haddon, No. 107, and John Murphy, No. 326. Also, for property incidentially involved in the destruction of public stores, works, and means of transportation of the enemy, as in the cases of John K. Byrne, No. 200; Charles Black, No. 128, and A. K. McMillan, No. 250. In these claims for the destruction of property * * * no awards were made against the United States."

The claim of Henry E. and Alfred Cox, No. 229, was for a saw-mill and its motive power, machinery, &c., destroyed by raiding parties from General Sherman's army, near Meridian, Miss., in February, 1864. The expedition by which the mill was destroyed was sent out by General Sherman for the express purpose of destroying the confederate mills, supplies, railroads, and means of transportation.

The proofs showed that the saw-mill in question had been actually employed in the

Congress doubtless prescribed the period of two years after the suppression of the rebellion within which claims should be filed in order that some end should exist to demands of this class on the Treasury. And the act of March 30, 1868, required all money arising from captured and abandoned property to be covered into the Treasury, (15 Stat., 251.) This was intended to put an end to payments from the Treasury, except on judgments in pursuance of prior statutes. This policy so settled should not be changed unless for urgent reasons.

The policy of the law was not to allow claims in favor of those who had organized or aided rebellion. They had no legal claims on the Gov-

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sawing of railroad-ties for the confederate government, and was available for this and similar purposes.

On the part of the defense it was claimed that the destruction was a lawful act of war.

The claim was unanimously disallowed.

The case of William Smythe. No. 333, was a claim for an iron and brass foundry, machine-shop, and machinery, fixtures, supplies, &c., for same, destroyed by General Sherman in Atlanta, after the capture of that city, and before his advance upon Savannah. The establishment had been employed in the manufacture of shot, shell, and other military supplies for the confederate government.

The claim was unanimously disallowed.

In Mr. Hale's report it is also said "A large number of claims was brought for cotton destroyed by the United States forces at various points in the insurrectionary States."

In several of these cases the proof was clear and undisputed that the cotton was destroyed under express orders of the commanding officers, and for the purpose of preventing it from falling into the hands of the enemy, and of weakening the resources of the enemy.

On the part of the United States it was maintained that a belligerent might lawfully in the enemy's country destroy any property, public or private, the possession or control of which might in any degree contribute to sustain the enemy and increase his ability to carry on the war. That the occasion for such destruction and its extent must always be left solely to the discretion of the invading belligerent, who is of necessity the sole judge as to the requirements of his military position, and of the necessity or propriety of the destruction of property, and of the extent to which such destruction shall be carried.

The counsel for the United States, in his arguments, cited the letter from Earl Russell to Lord Lyons of 31st May, 1862, from the British Blue-Book, relating to the United States, 1863, vol. 2, p. 33, in which his lordship said:

"Mr. Seward, in his conversation with your lordship, reported in your dispatch of the 16th instant, appeared to attribute blame to the confederates for destroying cotton and tobacco in places which they evacuate on the approach of the federal forces. But it appears to be unreasonable to make this a matter of blame to them, for they could not be expected to leave such articles in warehouses to become prize of war, and to be sold for the profit of the Federal Government, which would apply the proceeds to the purchase of arms to be used against the South."

He cited also Vattel, (Am. ed. of 1861,) pp. 364 to 370, §§ 161 to 173; the case of Mrs. Alexander's cotton in the Supreme Court of the United States, (2 Wall., 404, 420; and the opinion of Sir Hugh Cairns and Mr. Reilly, given in March, 1865, on the application of the Canadian government, and published in the "St. Albans Raid," compiled by L. N. Benjamin, Montreal, 1865, page 479, as follows:

"Though in the conduct of war on land the capture by the officers and soldiers of one belligerent of the private property of subjects of the other belligerent is not often in ordinary crisis avowedly practiced, it is yet legitimate."

Her Majesty's counsel cited the case of the United States *vs.* Klein, in the Supreme Court of the United States, (13 Wall., 128;) also, the case of Mitchell *vs.* Harmony, in the same court, (13 How., 115;) also, the case of W. S. Grant *vs.* United States, (1 C. Cls., 41;) also, Brown *vs.* The United States, (8 Cranch, 110;) also, Lawrence's Wheaton, Part IV, c. 2, pp. 586 to 626, 635*n*, 640*n*; Halleck, p. 546, § 12; Calvo, §§ 434, 436, 443, 444, 550; Vattel, pp. 368-9, § 173.

All the claims for cotton destroyed in the enemy's country, with a single exception, (that of A. R. McDonald, No. 42,) were disallowed by the unanimous voice of the commissioners.

In the argument of this case it was said that, by the United States and Mexican Claims Commission, "it has been decided at the date of the 23d of February, 1871, in the test case of Fayette Anderson and William Thompson *vs.* Mexico, (No. 333,)

ernment. Nearly ten years have passed since much of this cotton was seized, and if the time is extended for making claims, very many, if not most of those who were really disloyal, will be able to assert and prove loyalty. The evidence of disloyalty will be almost entirely lost. The commissioners of claims, in their first annual report, in December, 1871, say:

It is easier and more profitable to be loyal now than it was during the war, and much of the proof of disloyalty has perished or been forgotten in the lapse of time.

In their second annual report, December 9, 1872, they say:

We find by experience that, to form a correct opinion as to whether a claimant was or was not loyal during the war, *we cannot safely rely upon* the *mere* opinion of witnesses as to his loyalty, and upon statements at this late day of alleged conversations[48a].

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that governments are entitled, in time of war, and owing to the necessities of war, to take the property of private citizens, or destroy it, &c., but that this is always done with the understanding that the government which has taken or destroyed said property is bound to pay for it. Such is the view held by the American commissioner.

This rule of law has been constantly applied by said commission to claims of American citizens against Mexico, and *vice versa*.

Furthermore, the United States have recognized the solemn obligation to compensate for the destruction of property through positive treaty stipulations. Thus, in the ninth article of the treaty of 1819, between the United States and Spain, it was agreed between the high contracting parties, that they "respectively renounced all claims to indemnity for any of the recent events or transactions of their respective commanders and officers in the Floridas," thus releasing both parties from their respective international obligations.

But at the same time, inasmuch as extensive destruction of private property had been the result of the invasion of Florida by the United States forces, the following provision was inserted in the same article:

"The United States will cause satisfaction to be made for injuries, if any, which by process of law shall be established to have been suffered by Spanish officers and individual Spanish inhabitants by the late operations of the American Army in Florida." (See treaties and conventions concluded between the United States of America and other powers, Forty-first Congress, 3d sess., Senate Ex. Doc. No. 36, pp. 791, 792.)

In accordance with this treaty provision, Congress passed an act conferring jurisdiction upon the United States courts in Florida, and appropriated money to pay its decrees.

But the practice of this Government is shown to be against this in the case of Perrin *vs.* United States, 4 Court of Claims, 545, and Seward's letter, therein referred to.

In the case of A. R. McDonald, Nos. 42 and 334, the commission made an award in favor of the claimant, Mr. Commissioner Frazer dissenting. In that case the cotton was alleged to have been purchased by the claimant principally in Ashley County, Arkansas, under permits issued by the proper officers of the United States Treasury, under the statutes regulating trade in the insurrectionary States, and the regulations of the Secretary of the Treasury made pursuant to said statutes, and to have been destroyed in the same region by United States forces under the command of General Osband, in February, 1865. These statutes and regulations only authorized trade in the insurrectionary States within the lines of military occupancy of the United States forces; and it was contended on the part of the claimants that the issuing of such permits by the Treasury officers was controlling evidence that the region covered by the permits, and within which the cotton was alleged to have been purchased and destroyed, was actually within the military lines of the United States.

The entire claim of this claimant amounted, including interest, to over $3,000,000. The award was for the sum of $197,190, including interest. I am advised that, in the making of this award, the majority of the commission did not intend to depart from the principle held by them in the other claims for cotton destroyed; but that they regarded the permits as controlling evidence that the region where the cotton was situated was within the lines of Federal occupancy.

After the capture of Knoxville, Tenn., the cotton of Cowan & Dickinson in a warehouse was taken by Union military forces for fortifications, to repel the rebel attack of Longstreet, whose forces beleaguered the city November 17, 1863, and made an assault upon the defenses November 28. (See Senate Claims Committee report, No. 85, 2d sess. 42d Cong., March 27, 1872.)

As to claim of Cowan & Dickinson, of Knoxville, Tenn., see 93 Globe for January and February, 1873; House proceedings, 93 Globe, 697, 1022, 1088, 1196, 1200, 1401, 1468, 1492; Senate, 1039, 1061, 1214, 1360, 1434, 1474, 1477. A bill passed Congress February 19, 1873, to pay for this cotton, but Congress adjourned in less than ten days from the time the President received it, and it failed for want of his approval.

[48a] See Lawrence's House Rep. No. 91, 1 sess. 43 Cong., Feb. 9, 1874, p 7.

The immense number of claims rejected for disloyalty, yet supported by much of apparent proof of loyalty, shows how unreliable the evidence is at this late day.

Mr. Delano, with his experience as chairman of the Committee on Claims in the Thirty-ninth Congress, said in the House of Representatives as to claimants from the States proclaimed in rebellion:

> If we go into an inquiry as to the loyalty of these individuals, my word for it every one of them will give us some evidence of loyalty. You will find that they will be able to procure *ex-parte* affidavits or evidence of some sort apparently sufficient for the establishment of their loyalty. These, and like considerations, have brought the committee to the conclusion and that conclusion was unanimous—that an effort to discriminate between the loyal and the disloyal would be an impracticability, and that the result of it would be to bring this House to the payment of all this class of claims."[49]

The net proceeds of captured and abandoned property remaining in the Treasury February 27, 1874, was $14,410,429. The awards made by the Court of Claims, and not yet paid, out of this fund are $1,834,011, and the claims still pending in that Court aggregate over $20,000,000. To this is to be added claims now pending before Congress, reaching some millions.

The cotton captured after June 1, 1865, approximates $5,500,000, representing about fifty thousand bales, nearly all seized as owned by the so-called confederate government, which had purchased it of citizens in exchange for confederate bonds delivered them. Yet, on this fund, most of it confessedly arising from cotton of this character, claims are filed before the Secretary of the Treasury by individual claimants, under the act of May 18, 1872, covering 136,000 bales, nearly three times the amount seized, and aggregating nearly $18,000,000.[50]

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[49] 56 Globe, 509, January 30, 1866.

[50] *Memorandum.*

TREASURY DEPARTMENT, *February* 27, 1874.

Gross proceeds of captured and abandoned cotton, (including premium on coin proceeds)	$21,500,000 00	
Expenses of collection, sale, &c	3,000,000 00	
Net proceeds		$18,500,000 00
Gross proceeds of miscellaneous property	1,375,000 00	
Expenses of collection, sale, &c	86,000 00	
Net proceeds		1,289,000 00
Miscellaneous receipts, rents of abandoned houses, &c		1,121,656 44
Total amount covered in from above sources		20,910,656 44
Refunded to claimants upon awards of the Court of Claims under section 3, act of March 12, 1863	6,300,463 80	
Refunded to claimants upon awards of the Secretary of the Treasury under section 5, act of May 18, 1872.	97,734 10	
Paid for expenses, &c., under section 3, joint resolution of March 30, 1868	75,000 00	
Upon judgments of United States circuit court, New York, under act of July 27, 1868	27,029 37	
Amounting in the aggregate to		6,500,227 27
The balance of said fund still remaining in the Treasury is		14,410,429 17

Additional amount awarded by the Court of Claims, and claims still pending for captured and abandoned lands.

Awards made by the Court of Claims not yet paid, amount to	$1,834,011 00
The claims still pending in the Court of Claims under the captured and abandoned property acts aggregate over	20,000,000 00
The claims filed before the Secretary of the Treasury, under the act of May 18, 1872, cover 136,000 bales of cotton; estimated value about	18,000,000 00

From all this it is apparent that no committee of Congress could with any degree of justice either to the Government or claimants investigate separate claims. This could only be done by a body clothed with power to visit southern localities and ascertain facts by a searching scrutiny and personal conferences with witnesses. If any provision should be made in this class of claims it should be in a mode very different than that of an examination of claims in detail on *ex-parte* evidence by a committee of Congress.

Loyal citizens residing in the loyal States during the rebellion, but having property, real or personal, in the States proclaimed in insurrection, can by the strict rules of international law claim for it no immunity. Its local *situs* imparts to it the character and *status* of enemy's property. It may be lawfully used for military purposes, or destroyed if it will be useful to the enemy.[51]

The property situated in the enemy's country owned by corporations existing by virtue of charters granted by foreign governments, or loyal States, or rebel States, before or since secession, can claim no protection beyond that accorded to other enemy's property. A large part of the property in the insurrectionary States might be held by corporations, and thus be a means of strength to the rebellion.[52]

Loyal citizens residing in the loyal States, or in the States proclaimed in rebellion, can, as a general rule, by the strict rules of law, make no claim to compensation for use and occupation of real property in the States proclaimed in insurrection of buildings or lands by military authorities during the rebellion.

As by the laws of war the lawful military authorities might destroy houses in these States to prevent them from being a means of aid and comfort to the rebellion, or to hasten its speedy overthrow, so they may much the more be used without liability to make compensation.[53]

The proceeds of cotton collected after June 1, 1865, and paid into the Treasury, approximates $5,500,000, representing about 50,000 bales, of which over 40,000 bales, it is estimated, had been sold to the confederate government.

Moneys covered into the Treasury to credit of captured and abandoned property fund.

Proceds of captured and abandoned property, including premium on coin proceeds	$20,910,656 44
Profits to Government arising from purchase and resale of products under section 8, act of July 2, 1864	3,441,548 09
Amount expended from proceeds of captured and abandoned property and returned	2,465,833 69
Total	26,818,038 22
Deduct premium on coin proceeds of Savannah, Charleston, and Mobile cotton	2,566,768 29
Amount covered in as proceeds of captured and abandoned property	24,251,269 93

M. L. NOERR,
In charge of captured and abandoned property.

[51] Lawrence's Wheaton, 565–576; The Gray Jacket, 5 Wallace, 342–364; Whiting, War Powers, (43d ed., 1872, p. 582;) Attorney-General's opinion, November 24, 1865, 11 Opinions, 405; Elliott's Claim, September 7, 1868, 12 Opinions, 488; Perrin *vs.* United States, 4 Court Claims, 543. See note 31, *ante.*

[52] This rule is not changed by the fact that the confiscation acts do not apply to corporate property. Planters' Bank *vs.* Union Bank, 16 Wallace, 483.

As to Southern railroad companies, see House Report 34, 39th Congress, 2d session, March 2, 1867: House Rep. No. 3, 2d sess. 40th Cong., Dec. 11, 1867; Ex. Doc. No. 73, 2d sess. 40th Cong., Jan. 7, 1868; House Rep. No. 15, 2d sess. 40th Cong., Feb. 7, 1868; House Rep. No. 78, 2d sess. 41st Cong., June 9, 1870; see opinion of Stanton in House Rep. No. 7, 1st sess. 40th Cong., Nov. 25, 1867.

[53] See letter of Quartermaster-General M. C. Meigs of February 26, 1874, in appendix to this report.

No claim was made for use and occupation in the insurrectionary States before the

The policy determined on by Congress is clearly expressed in the act of February 21, 1867, which prohibits "the settlement of any claim for

commission held under twelfth article of the treaty between the United States and Great Britain of May 8, 1871, except "within the *loyal* portions of the United States, or within those portions of the insurrectionary States permanently reclaimed by the United States, and for damages resulting from such use and occupation."

It was conceded that use and occupation should be paid for in loyal States, and the only objection made to the consideration of such claims was, that the Court of Claims had jurisdiction.

In Mr. Hale's report, it is said:

"The counsel cited the letter of Earl Granville to Mr. Stewart, (No. 23 of parliamentary papers, No. 4, on the Franco-German war, 1871, British State Papers;) Professor Bernard's "Neutrality of Great Britain," &c., pp. 440, 454; also the note of Mr. Abbot (Lord Tenterden) relating to this identical claim of Mr. Crutchett, id, 456; also, the case of William Cook before the commissioners under the convention of 1853 between the United States and Great Britain, (United States Senate Documents, first and second sessions Thirty-fourth Congress, vol. 15, No. 103, pp. 169, 463; also the case of the United States *vs.* O'Keeffe, in the Supreme Court of the United States, (11 Wall., 178;) and the cases of Waters, (4 C. Cls. Rep., 390;) Russell, (5 id., 120;) Filor *vs.* United States, (9 Wall., 45;) also Campbell's case, (5 C. Cls. Rep., 252,) and Provine's case, (id., 455.)

On the part of the claimant it was contended that, while the claimant was entitled to compensation for the use of his property under the Constitution of the United States, the jurisdiction of the Court of Claims in the case was taken away by the act of Congress of July 4, 1864, (13 Stat., 381,) citing Filor *vs.* United States, (9 Wall., 45.)

An award was made in favor of the claimant for the value of the use and occupation, in which all the commissioners joined.

The cases decided by the commission under art. 12, treaty 8th May, 1871, between United States and Great Britain, hold the same principle. Compensation was only demanded by British subjects owning real estate "within the *loyal portions of the United States*, or within those portions of the insurrectionary States *permanently reclaimed by the United States*, and for damages resulting from such use and occupation." See Hale's report to Secretary of State, November 30, 1873, p. 46. The Government has always paid for any substantial use and occupation of real property in the loyal States when voluntarily taken by contract or impressment, and not as a military necessity by reason of hostile military operations.

This will be seen from the following:

"WAR DEPARTMENT, QUARTERMASTER-GENERAL'S OFFICE,
"*Washington, D. C. February* 19, 1874.

"SIR: I have to acknowledge receipt of your letter of February 16, 1874, asking information in regard to the laws under which this Office recommends payment 'for occupation of real estate during the war,' and 'what has been the usage of the Government in such cases,' &c.

"The fifth amendment to the Constitution of the United States provides that private property shall not be taken for public uses without just compensation.

"The law of March 3, 1813, chapter 513, section 5, authorizes the Secretary of War to 'fix and make reasonable allowances for the store-rent, storage, &c., for the safe keeping of all military stores and supplies.'

"By the 42d Article of Revised Regulations of the Army, August 10, 1861, approved by the President, and published for the information and government of the military service, it is made the duty of the Quartermaster's Department to provide quarters, store-houses, offices, and lands for encampments for the Army. When public buildings, &c., are not sufficient to quarter troops, authority to hire private property for such uses is given by said regulations to the commanding officer of the department, who reports the case, and his orders therein, to the Quartermaster-General.

"Claims for such rents due and not already paid, arising in loyal States during the war, when presented for payment, are investigated by the officer of this department in the district wherein the claim originated, and reported to this Office. If they are found, on examination here, to be correct and just, the claims are forwarded with all the facts to the Secretary of War with report, and recommendation that authority be given to transmit the same to the Third Auditor of the Treasury, with recommendation for settlement.

"(The act of March 3, 1817, chapter 218, section 2, for the 'prompt settlement of accounts,' &c., provides that all claims against the United States shall be settled and adjusted in the Treasury Department.)

"If the accounts before referred to are approved by the Third Auditor and Second Comptroller, they issue a Treasury certificate showing the sum which those officers consider to be legally due to the claimants, and the appropriation to the credit of the War Department applicable to the payment of their award.

the occupation of or injury to real estate when such claim originated during the war for the suppression of the southern rebellion in a State or part of a State declared in insurrection." [54]

"The Treasury settlement is returned to this Office for entry, when the Secretary of War is asked to make a requisition on the Treasury for payment for the amount.

"These are in brief the law and the usage governing the disposition of rent-claims arising in loyal States filed in this Office.

"It has been decided that the law of July 4, 1864, providing for settlement of claims for quartermaster stores taken during the war, does not apply to claims for rent.

"Very respectfully, your obedient servant,

"M. C. MEIGS,

"*Quartermaster-General, Brevet Major-General U. S. A.*

"Hon. WILLIAM LAWRENCE, M. C.,

"*House of Representatives, the Capitol, D. C.*"

[54] 14 Stat., 397; 11 Opinions, Nov. 24, 1865, p. 405; 12 Opinions, 486, Sept. 7, 1868, declares that "a claim for use and occupation of real estate in Tennessee by the Army in January 1863, cannot be settled by the Executive Department of the Government, under act July 4, 1864, and February 21, 1867." Filor *vs.* United States, 9 Wallace, 45; Provine's Case, 5 Court of Claims, 455; Kimball's Case, id., 252.

For some time after the passage of the act of July 4, 1864, the Quartermaster-General's Department paid for rents in certain parts of the rebel States under regulations of that Department, as follows:

"Proofs required in support of the above classes of claims, (claims for supplies furnished for use of the Army.)

"That the claimant is a citizen of a State not in rebellion. Claims of citizens of the following States and parts of States, declared by the President of the United States, by his proclamation of 1st January, 1863, to be in rebellion, will not be considered, viz: Arkansas, Texas, Louisiana, (except the parishes of Saint Bernard, Plaquemines, Jefferson, Saint John, Saint Charles, Saint James, Ascension, Assumption, Terre Bonne, La Fourche, Saint Mary, Saint Martin, and Orleans, including the city of New Orleans,) Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia, (except the forty-eight counties designated as West Virginia, and also the counties of Berkeley, Accomac, Northampton, Elizabeth City, York, Princess Anne, and Norfolk, including the cities of Norfolk and Portsmouth.")

See letter of Quartermaster-General M. C. Meigs of February 26, 1874, in appendix to this report.

But after the act of February 21, 1867, the regulations were altered as follows:

I. CLAIMS TO BE SUBMITTED TO AND EXAMINED BY THE QUARTERMASTER-GENERAL.

All claims of loyal citizens, in States not in rebellion, for "quartermasters' stores" actually furnished to the Army of the United States, and receipted for by the proper officer receiving the same, or which may have been taken by such officers without giving such receipts.

II. CLAIMS TO BE SUBMITTED TO AND EXAMINED BY THE COMMISSARY-GENERAL OF SUBSISTENCE.

All claims of loyal citizens, in States not in rebellion, for "subsistence" actually furnished to said Army, and receipted for by the proper officer receiving the same, or which may have been taken by such officers without giving such receipts.

III. PROOFS REQUIRED IN SUPPORT OF THE ABOVE CLASSES OF CLAIMS.

1st. That the claimant is a loyal citizen of a State not in rebellion. (Claims of citizens of the following States, declared by the President of the United States, by his proclamation of the first day of July, 1862, to be in insurrection, will not be considered, viz: Arkansas, Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia.)

2d. Citizenship.—The claimant will be required to show by his own affidavit, supported by the certificate of the clerk or recorder of the town or county of which he claims to be a citizen, that said claimant is a citizen of said town or county.

3d. Loyalty.—The claimant will be required to file with his claim the oath of allegiance," &c.

Claim of Joseph Segar.—Claim for compensation for use and occupation of his farm near Fortress Monroe in Virginia, during the late war, by the United States military forces. For Senate proceedings and debates, see Globe, vol. 89, second session Forty-second Congress, pages 2261, 2262, 2674, 2675; see Senate Report No. 95, second session Forty-second Congress. For House proceedings and debates, see Globe, vol. 91, page 3844. See Stat., vol. 17, page 670.

The act of June 10, 1872, 17 Stat., 699, paid for damages done to leased premises.

By the strict rules of law literary institutions are equally subject to use by the lawful military authorities. But on grounds of public policy nothing but urgent necessity could justify such use. The proper military authorities must, as a general rule, be allowed to judge of the necessity, or military operations could not be successfully carried on. And certainly when such institutions are a source of strength to the enemy, or are engaged in actually inculcating the sentiment of rebellion, it may be a necessity to withdraw them from a work so dangerous and destructive of public interests.[55]

In the application of the general principles stated there are some recognized exceptions.

The Government, in honor and in law, is bound to make compensation for property of citizens used, damaged, or destroyed when—

1. The commander of an army, under proper authority, or other officer duly authorized, in advance or at the time of the use, damage, or destruction, distinctly *agrees* with the owner of the property that the Government shall make compensation, and when, *upon the faith of this*, the *promise is accepted* and the property voluntarily surrendered.[56]

[55] In the Senate, January 12, 1869, Mr. Sumner said: "From the beginning of our national life Congress has been called to deal with claims for losses by war. Though new in form, the present case belongs to a long list whose beginning is hidden in revolutionary history. The folio volume of State Papers now before me, entitled 'Claims,' attests the number and variety. Even amid the struggles of the war, as early as 1779, the Reverend Dr. Witherspoon was allowed $19,040 for repairs of the college at Princeton damaged by the troops. [Claims, pp. 197, 198, 6 Stat., 40.] There was afterward a similar allowance to the academy at Wilmington, in Delaware, [Claims p. 6 Stat., 8,] and also to the college in Rhode Island. These latter were recommended by Mr. Hamilton while Secretary of the Treasury, as 'affecting the interests of literature.' On this account they were treated as exceptional. It will also be observed that *they concerned claimants within our own jurisdiction.*"

See Globe, vol. 71, 3d sess. Fortieth Cong., p. 301, Jan. 12, 1869.

It might be added, *they were loyal to the Government.* Congress has considered the subject since the close of the rebellion.

See claim of William and Mary College. Claim for indemnity for destruction of buildings and property by "disorderly soldiers of the United States during the late rebellion."

For House proceedings and debates see Globe, vol. 87, 2d Sess. 42d Congress, pages 784, 785, (February 2, 1872,) and vol. 88, pages 934, 940, 941, 942, 943, 1190, 1191, 1192, 1193, 1194, 1195.

The bill was defeated.

See House Report No. 9, 2d Sess. 42 Congress, January 29, 1872.

East Tennessee University.—Claims for damages by reason of use and occupation of buildings by United States troops.

For Senate proceedings in 42d Congress, see Globe, vol. 89, page 2288, 2d Sess. 42d Congress (April 9, 1872.) For House proceedings, see Globe, vol. 93, page 697, (January 18, 1873.) See Senate Report No. 17, 2d Sess. 42d Congress.

No debate in either House.

Vetoed, January 30, 1873.

See Senate Ex. Doc. 33, 3d Sess. 42d Cong.

See Globe, vol. 93, page 991, January 31, 1873.

Kentucky University.—Claim for damages by reason of use and occupation of buildings by United States troops.

For Senate proceedings, 41st Congress, see vol. 78, p. 3145, (May 2, 1870) vol. 80, p. 5538 (July 13, 1870.)

For House proceedings, see Globe, vol. 82, page 480, (January 13, 1871.)

Approved January 17, 1871. See Statutes at Large, vol. 16, p. 678.

[56] Steven *vs.* United States, 2 Court Claims 95; Elliott's Claim, 12 Opinions Attorneys-General, 485; Provene *vs.* United States, 5 Court Claims, 456; Kimball *vs.* United States, id., 253; Waters *vs.* United States, 4 Court Claims, 390; Filor *vs.* United States, 9 Wallace, 45; Ayres *vs.* United States, 3 Court Claims.

As to unauthorized contracts see act March 2, 1861, ch. 84, sec. 10, vol. 12, Stat., 220; joint res. No. 8, January 31, 1868, 15 Stat., 246; act June 2, 1862, 12 Stat., 411; 4 Court Claims, 75, 359, 549; 5 Court Claims, 65; 1 Opinions Attorney-General, 320; 7 Wallace, 666; 4 Court Claims, 176, 401, 495; 5 Court Claims, 302; 8 Wallace, 7.

But a *contract* is not necessarily created by the mere fact that the highest military authority gives instructions to subordinate officers, or issues orders *to them*, advising them that enemies "will be paid at the time," or that "they will hereafter be fully indemnified." A contract is an agreement between competent parties, upon a sufficient consideration, to do or omit some lawful act. Where the assent of both parties is not given there is no contract.

The Government is not bound, either, by the unauthorized promise of an officer.[57]

The mere fact that a voucher or receipt is given for property taken in enemy's country by a military officer does not make the Government liable to pay for it.[58]

The acts in relation to public contracts are:

[Acts distinguished by a * have been heretofore repealed.]

Act of 8 May, 1792, chapter 37, section 5, volume 1, page 280; act of 16 July, 1798, chapter 85, sections 3, 6, volume 1, page 610; act of 21 April, 1808, chapter 48, volume 2, page 484; act of 3 March, 1809, chapter 28, sections 3, 5, volume 2, page 536; act of 14 April, 1818, chapter 61, section 7, volume 3, page 427; act of 1 May, 1820, chapter 52, sections 6, 7, volume 3, page 568; resolution of 10 February, 1832, number 1, volume 4, page 605; act of 3 March, 1835, chapter 49, section 1, volume 4, page 780; act of 23 August, 1842, chapter 186, section 5, volume 5, page 513; act of 3 March, 1843, chapter 83, volume 5, page 617; reesolution of 18 February, 1843, number 2, volume 5, page 648; act of 17 June, 1844, chapter 107, section 2, volume 5, page 703; act of 17 June, 1844, chapter 107, sections 5, 6, volume 5, page 703; act of 3 March, 1845, chapter 77, sections 3, 12, volume 5, pages 794, 795; act of 10 August, 1846, chapter 176, section 6, volume 9, page 101; act of 3 August, 1848, chapter 121, section 11, volume 9, page 272; resolution of 9 May, 1848, number 6, volume 9, page 334; act of 28 September, 1850, chapter 80, section 1, volume 9, page 513; act of 28 September, 1850, chapter 80, section 1, volume 9, pages 513, 515; act of 3 March, 1851, chapter 34, section 1, volume 9, page 621; act of 5 August, 1854, chapter 268, section 1, volume 10, pages 583, 585; resolution of 27 March, 1854, number 8, volume 10. page 592; act of 4 May, 1858, chapter 25. section 4, volume 11, page 269; * act of 23 June, 1860, chapter 205, section 3, volume 12, page 103; act of 21 February, 1861, chapter 49, section 5, volume 12, page 150; act of 2 March, 1861, chapter 84, section 10, volume 12, page 220; act of 2 June, 1862, chapter 93, sections 1, 2, 3, 5, volume 12, page 411; act of 14 June, 1862, chapter 164. section 1, volume 12, page 561; act of 17 July, 1862, chapter 200, sections 13, 14, 15, volume 12, page 596; act of 17 July, 1862, chapter 203, volume 12, page 600; resolution of 12 July, 1862, number 53, volume 12, page 624; resolution of 3 March, 1863, number 32, section 2, volume 12, page 828; act of 4 July, 1864, chapter 252, section 7, volume 13, page 394; act of 2 March, 1865, chapter 74, section 7, volume 13, page 467; act of 23 June, 1866, chapter 138, section 3, volume 14, page 73; act of 13 July, 1866, chapter 176, section 4, volume 14, page 92; act of 28 June, 1868, chapter 72, volume 15, page 77; act of 25 July, 1868, chapter 233, section 3, volume 15, page 177; resolution of 31 January, 1868, number 8, volume 15, page 246; act of 11 July, 1870, chapter 243, volume 16, page 229; act of July 15, 1870, chapter 292, volume 16, pages 291–296; act of 3 March, 1871, chapter 117, section 3, volume 16, page 535.

See letter of Quartermaster-General M. C. Meigs, February 26, 1874, in Appendix to this report.

[57] In Filor *vs.* United States, 9 Wallace 45, the court refer to a case, at Key West, of promises for the use of the Quartermaster's Department, and say it was not "binding upon the Government until approved by the Quartermaster-General."

Ayres *vs.* United States, 3 Court Claims, 1; Gibbons *vs.* United States, 8 Wallace, 269.

See letter of Meigs in note 53, *ante*. Also Appendix B to this report.

See the acts relating to the Court of Claims; Act March 3, 1863, 12 Stat, 767, section 12, and other acts cited in the volumes of reports of that court.

"The law of agency, as applicable to the United States, is far more strict than to individuals, for the agent must have *actual authority* in order to bind the Government." 1 Boston American Law Review, § 58.

[58] The Revised Army Regulations of 1861, as corrected to June 25, 1863, edition of 1867, p. 512, sec. 22, provides that "all property, public or private, taken from alleged enemies, must be inventoried and duly accounted for. If the property be claimed as private, receipts must be given to such claimants or their agents." But this does *not change the laws of war*, and give a liability which does not exist by such law. The laws of war are prescribed by another power, and cannot be abrogated by Army regulations.

In the report of November 30, 1873, of Hon. R. S. Hale to the Secretary of State, of

Military officers frequently organize a "board of survey" or commission to assess the value of property taken in the enemy's country, or destroyed on loyal territory. This is done to preserve the history of military operations, to enable superior officers to hold subordinates to a proper responsibility in the conduct of war, and in cases where, from special causes, Congress may deem it advisable to make some compensation, it may furnish a means of judging of the proper amount.[59]

But such assessment is for the benefit of the Government, and imposes no liability on it. The liability is determined by the laws of war.

2. When, by the terms of the capitulation of a hostile city or army, there is a distinct stipulation by the proper officer commanding the Union Army that rights of person and property shall be respected, this pledge is to be respected, and a violation of it by military officers clothed with authority to act in the name of the Government would create a liability to repair any damages. But this protection only extends to such enemies as strictly observe neutrality and the terms of the capitulation, and to property the nature of which does not take it out of the condition of neutrality.[60]

And it cannot be an absolute guarantee against unauthorized pillage or other damages incident to surrounding circumstances.

3. The same rule of protection is extended to persons and property where there is no capitulation, but an authorized military proclamation promising it, when a city or district of the enemy is subdued and occupied.[61] This principle will apply generally to duly-authorized safeguards.[62]

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claims allowed by the commission under the 12th article of the treaty of 8th May, 1871, between the United States and Great Britain, it is said:

"In the case of John Kater, No. 19, claimant was allowed for two horses taken by Sheridan's army on its raid through the Valley of Virginia, in August, 1864, all the commissioners joining in this award, General Sheridan's order of August 16, 1864, directing the seizure of mules, horses, and cattle for the use of the Army, having in effect promised compensation for such property to loyal citizens."

[59] Such valuation was made by order of General Jackson, after the battle of New Orleans, of certain damages to real estate. American State Papers, class ix, claim 752. Such boards were frequently organized during the rebellion.

[60] Case of Thorshaven, Edwards, 107; Alexander's Cotton, 2 Wallace, 421; Vattel, book 3, ch. 18, sec. 294, p. 425. The Venice, 2, Wallace, 258; Winthrop's Digest Opinions of Judge-Advocate-General, 1862 to 1868, p. 86, (ed. of 1868,) vol. xviii, p. 511, Records of Bureau of Military Justice.

Planters' Bank *vs.* Union Bank, 16 Wallace, 468.

The commission under the 12th article of the treaty of 8th May, 1871, between the United States and Great Britain, held substantially thus: The report of Hon. R. S. Hale shows that where aliens claimed compensation for property used by the United States troops, taken by proper authority, the commission were unanimous in the allowance of claims for property coming under this head when taken within the loyal States or within those portions of the insurrectionary States permanently occupied by the Federal forces, except when something in the nature of the property or in the conduct of the claimant took him out of the condition of neutrality. Thus, for instance, in the case of Robert Davidson, No. 66, the claim was for gun-carriages and other artillery apparatus, manufactured by the claimant for the use of the confederate government, and remaining in his possession at the surrender of New Orleans, together with material for use in the same manufacture, which was taken and appropriated by the Federal forces, under the orders of General Banks, some months after the capture of New Orleans. The claim was unanimously disallowed.

In the case of Samuel Brook, No. 99, the claim was for certain tarpaulins taken by an authorized officer for the use of the United States, at Memphis, Tenn., in June, 1862, shortly after the capture of that city by the Federal forces.

An award was made in favor of the claimant, Mr. Commissioner Frazer dissenting upon the question of the sufficiency of proof, but the commissioners all agreeing as to the principle involved.

[61] And while the conditions of the proclamation are observed by the enemy, and hostilities are not renewed by them, the pledge of protection cannot be revoked by military authority. Planters' Bank *vs.* Union Bank, 16 Wallace, 496. See also act July 13, 1861, sec. 5, (12 Stat., 257,) and President's proclamation, August 16, 1861, (12 Stat. 1262.)

[62] See act February 13, 1862, sec. 5; Army Regulations of 1861 revised to June 25, 1863, (ed. of 1867,) pp. 112, 113.

A passport may be given which does not amount to a safeguard, and which will impose less of liability and no absolute guarantee of safety. But a safeguard for the purpose of protection under a flag of truce may amount to a guarantee of the safety of persons, and of such property as may be named, or may reasonably accompany the person, excluding unnecessary valuables.[63]

The following is a copy of one issued by General Grant:

HEADQUARTERS DEPARTMENT OF THE TENNESSEE,
Vicksburgh, Miss., September 18, 1863.

By authority of Maj. Gen. U. S. Grant.

A safeguard is hereby granted to Mrs. Eugenie Bass, her plantations, houses, horses, cattle, sheep, hogs, poultry, and all other property, real or personal, situated near Princeton, in the county of Washington, and State of Mississippi.

All officers and soldiers belonging to the armies of the United States are therefore commanded to respect this safeguard, and to afford, if necessary, protection to the said Mrs. Eugenie Bass and property.

"Whoever, belonging to the armies of the United States in foreign parts, or at any place within the United States or their Territories during rebellion, against supreme authority of the United States, shall force a safeguard, shall suffer death." (55 Art. of War.)

By order of Maj. Gen. U. S. Grant.

JOHN A. RAWLINS,
Brig. Gen. and A. A. A. Gen.

Under this the question has been made whether the award of a military board of survey for property taken by Union military authorities should be paid, or a less sum awarded by the commissioners of claims. By submitting a claim to the latter there is an implied agreement to accept their award, subject to revision by Congress. But without this the Government can determine by law how valuations shall be made. The loyalty of this claimant was proved to the satisfaction of the commissioners.

[63] Chancellor Kent defines the general rule with regard to flags of truce:

"He who promises security by a passport is morally bound to defend it against any of his subjects or forces, and make good any damages the party might sustain by violation of the passport. The privilege being so far a dispensation from the legal effects of war; it is always to be taken strictly, and must be confined to the purpose and place and time for which it was granted. A safe-conduct generally includes the *necessary* baggage and servants of the person to whom it is granted." (1 Kent's Com., 161.)

Also as to the inviolability secured under a flag of truce, Vattel, ch. xvii, p. 416: "A safe-conduct given to a traveler naturally includes his baggage or his clothes and other things *necessary* for his journey." (Id., 417, § 270; Woolsey's International Law, p. 250.)

"The sovereign can revoke the passport even before the fulfillment of its terms, by giving to the bearer the liberty of return" (Bello, p. 265.)

"Passports should not be granted for the purpose of attracting persons or effects with the object of confiscating them afterward by means of revocation, because to act thus would be a perfidy contrary to the laws." (1 Bello, p. 265.)

"The violation of the good faith pledged by passports and documents of that character draws after it the most condign punishment. If it is committed on the part of the authorities or agents of the Government which gives it, its bearer will be amply indemnified for the consequences that result from the violation; and the person who commits the violation will be punished in accordance with the laws of his country." (Calvo, 2 v., p. 87, edition of 1868.) On the same page, Calvo confirms the principles stated by a citation of the most distinguished writers on the laws of nations of all civilized countries from the time of Grotius to the present.

In 1863, while General Banks was in command at New Orleans, Mrs. Flora A. Darling, intending to go North, was received through the enemy's lines from Mobile, on a flag-of-truce boat at New Orleans, with baggage, including a trunk containing, as alleged, confederate bonds. She claimed to have a passport, or safe-conduct, and alleged that while on the boat she was arrested, her baggage taken, including money and confederate bonds, and never returned to her. Several years after this she applied to the War Department for redress for money taken. The War Department found it impossible to ascertain the facts as to the alleged loss. The Judge-Advocate-General, as to this case, among other things, said:

"In regard to the merits of such claim, it need only be said that as far as the rebel securities are concerned the seizure was clearly authorized.

"No flag of truce could protect such bonds—which have invariably heretofore been held as illegal and disloyal publications, intended to give aid and comfort to the ene-

4. During the rebellion the ordinary laws of war as to enemy's country were by the general policy of the Government, sanctioned by Congress and the President's proclamation of August 16, 1861, so far modified that in such parts of the rebel States as were permanently occupied and controlled by the Union military forces, and where rebellion had ceased and was no longer probable, the Government assumed to interfere no further with the rights of person and property of the enemy than should be required by necessary subjection to military government.[64]

But this immunity would only extend to those who were loyal, or who ceased to engage in or aid or encourage rebellion.

PART III.

CHAPTER I.

OF DAMAGES DONE BY THE ENEMY.

When private property is destroyed by the unlawful acts of individuals, governments seek to give redress by civil action or to punish for acts which are criminal. But they do not indemnify the parties who may lose by such depredations.

If a loss is sustained by arson, burglary, theft, robbery, or by an act

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my—from confiscation and destruction. On the contrary, a party availing himself of a flag of truce to bring such securities within our lines would be guilty of a violation of the truce, and become amenable to trial and punishment.

"It was probably the discovery of these bonds in Mrs. Darling's baggage which led to her subsequent detention by the military authorities."

[64] The Venice, 2 Wallace, 259; Planters' Bank *vs.* Union Bank, 16 Wallace, 483; Mrs. Alexander's Cotton, 2 Wallace, 419; Prize Cases, 2 Black, 674; Senator Carpenter in Cong. Record, March 20, 1874, p. 22. See letter of February 26, 1874, of Quartermaster-General M. C. Meigs, in appendix to this report; Senate Claims Committee's Report, No. 85, 2d sess. 42d Cong., March 27, 1872. In the claim of Cowan & Dickinson, referred to in this report, it was insisted that Knoxville, Tenn., was not "enemy's country." Early in September, 1863, General Burnside occupied Knoxville with Union forces. The city was beleagured by the rebel General Longstreet on the 17th November, and his forces made an assault upon the defenses on the 28th. In this assault three brigades of assailants lost about 800 men, and the Union forces about 100. The cotton of Cowan & Dickinson was seized on the nights of the 17th and 18th November, by order of General Burnside, for fortifications. The siege of the city was raised on the 5th of December, and the enemy left that part of Tennessee. This report asserts that Knoxville was not "enemy's country" at the time the cotton was seized. The authority relied on is the case of The Venice, 2 Wallace, 259. The report was made March 27, 1872. But afterward, in December, 1872, the Supreme Court decided the case of Planters' Bank *vs.* Union Bank, 16 Wallace, 495. That case will give some idea as to what is such "permanent occupancy and control by Union forces" as will show that a district is no longer enemy's country. In that case the court, referring to the exercise of military authority ordering a seizure on the 17th of August, 1863, say: "Then the city of New Orleans was *in quiet possession of the United States.* It had been captured more than fifteen months before that time, and *undisturbed possession* was maintained *ever after its capture. Hence* the order was no attempt to seize property '*flagrante bello.*'"

But this described a very different condition of affairs than existed at Knoxville. There was *no* "undisturbed possession." There the seizure was *flagrante bello.* In this case the Judge-Advocate-General, in an opinion to the War Department, December 4, 1867, said: "The cotton was seized in the enemy's country and on the theater of the war, and was appropriated to the strengthening of one of our forts, then threatened, with an attack by an advancing column of rebel forces. For this act of legitimate warfare the Government incurred no responsibility."

which constitutes only a trespass, governments do not make good the loss. And this is so whether the illegal acts are done by one or many persons.

Nations apply the same rule when their citizens suffer losses by a foreign or domestic enemy. They are no more bound to repair the losses of citizens by the ravages of war than to indemnify them against losses by arson or other individual crimes or the destruction of flocks by wolves.

In a report made by Alexander Hamilton, Secretary of the Treasury, to the House of Representatives, November 19, 1792, he stated the rule of law to be—

> That according to the laws and usages of nations a State is not obliged to make compensation for damages done to its citizens by an enemy or wantonly or unauthorized by its own troops.[65]

The rule, as thus stated, applies to all damages, whether in battle, or by the seizure of army supplies, or the wanton destruction of private property on a raid or march.

This was declared to be the law as to property destroyed in battle, and not controverted, in the Senate of the United States on the 4th of January, 1871, in these words:

"I admit that it is the law of nations, it is a principle of universal law, that property destroyed in the course of a fight, in the progress of a fight as it is going on, is not to be paid for by even the United States where it is a party to such conflict. I admit that the Constitution of the United States does not bear the interpretation that property destroyed under such circumstances should be paid for by the United States."[66]

Vattel says:

> There are damages caused by inevitable necessity; as, for instance, the destruction caused by the artillery in retaking a town from the enemy. These are merely accidents. They are misfortunes, which chance deals out to the proprietors on whom they happen to fall.
>
> The sovereign, indeed, ought to show an equitable regard for the sufferers, if the situation of his affairs will admit of it; but no action lies against the state for misfortunes of this nature—for losses which she has occasioned, not willfully, but through necessity and by mere accident, in the exertion of her rights. The same may be said of damages caused by the enemy. All the subjects are exposed to such damages; and woe to him on whom they fall! The members of a society may well encounter such risk of property, since they encounter a similar risk of life itself. Were the state strictly to indemnify all those whose property is injured in this manner, the public finances would soon be exhausted; and every individual in the state would be obliged to contribute his share in due proportion—a thing utterly impracticable. Besides, these indemnifications would be liable to a thousand abuses, and there would be no end of the particulars. It is therefore to be presumed that no such thing was ever intended by those who united to form a society.[67]

The same rule of law was adopted in England when, during the American Revolution, the property of British loyalists in the colonies was destroyed.

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[65] American State Papers, class ix, vol. 1 of Claims, p. 55; Pitcher *vs.* United States, 1 Court Claims, R., 9; Mitchell *vs.* Harmory, 13 Howard, p. 115.

This is the rule adopted in a resolve of the Continental Congress June 3, 1784, Journals, vol. 4, p. 443. It was reiterated and approved by a committee of House of Representatives March 29, 1822, American State Papers, Claims, 858.

[66] Senator Davis, January 4, 1871, 82 Globe, p. 297. His State of Kentucky was largely interested in insisting on the liability of the United States wherever the laws of nations or the Constitution would admit.

[67] Vattel, book 3, chap. xv, § 232, p. 403.

Mr. Pitt said in Parliament:

The American loyalists could not call upon the House to make compensation for their losses as a matter of strict justice; but they most undoubtedly have strong claims on their generosity and compassion.[68]

[68] Hansard's Parliamentary History, vol. 27, p. 610–618, June 3, 1788; Sumner's speech January 12, 1869, 71 Globe, 301. He shows that the British loyalists at the close of the war appealed to Parliament. The number of their claims was 5,072; the amount claimed £8,026,045, of which commissioners appointed allowed not quite half.

This subject was discussed before the American-British Claims Commission, under the twelfth article of the treaty of May 8, 1871, between the United States and Great Britain.

Mr. Hale, in his report, says:

AMERICAN-BRITISH CLAIMS COMMISSION.

3.—*Claims for property alleged to have been destroyed by the rebels.*

In the case of John H. Hanna, No. 2, the memorial alleged in effect that the claimant was the owner of 819 bales of cotton, situated within the rebel States of Louisiana and Mississippi, and that "without fault of petitioner, against his consent, and by force and arms, said cotton was destroyed by rebels in arms against the Government of the United States prior to the year 1863." By the schedules annexed to his memorial and made a part of the same, it appeared that the cotton in question was destroyed by orders of the authorities of the Confederate States and of the rebel State of Louisiana, for the purpose of preventing the same from falling into the hands of the Federal forces.

A demurrer to the memorial was interposed on behalf of the United States.

On the argument of the demurrer it was contended by Her Majesty's counsel, on behalf of the claimant, that the acts of destruction alleged in the memorial appearing to have been deliberately committed under the orders of the commander of the forces of the Confederate States, and with the concurrent authority of the governor of the State of Louisiana and commander of the troops of that State, reclamation must lie on behalf of the British government, in the interest of the claimant as a subject of that government, against the United States as representing and including the State of Louisiana, as well as all the other States forming the so-called Confederate States; that the persons engaged in these acts of destruction were not liable, either civilly or criminally, either for reparation or punishment in respect of those acts, they having been committed in the course of military operations under the authority of the existing government, whether lawful or usurped.

That for the wrongful acts of the several States in respect to foreign nations or their subjects, reclamation could be made only against the United States, to the Government of which, by its Constitution, was reserved the power of making treaties, declaring war, and making peace, and all international powers generally, the same being denied to the individual States; that no foreign nation could negotiate with or make demand upon individual States in respect of such acts, but could deal only with the Government of the United States; that in case of wrongs committed by any State upon foreign nations, in regard to which that State, if wholly independent and not a member of the Federal Union, would be liable to reclamation, and to be called to account in the mode practiced between nations—by treaty or by war—these remedies against such State being denied to foreign powers by the Constitution of the United States, the liability for reparation devolved upon the United States, and the Federal Government must be held to answer as well for the acts of the authorities of its several constituent States as for those of the Federal Government.

That the so-called secession of the State of Louisiana and the other States forming the so-called Confederate States did not extinguish or suspend the liability of the United States for wrongful acts committed by said States.

That by the treaties of 1794, 1815, and 1827, the United States had stipulated with Great Britain for the protection of her subjects in the State of Louisiana, as well as in all other territory of the United States; that the United States not having allowed the claim of Louisiana to be released from her constitutional obligations and restrictions, but having held her to her constitutional obligations, and having insisted that their political relations with foreign powers were in no wise affected by the insurrection in the Southern States, and that the Government of the United States was rightfully supreme in Louisiana and the other States in rebellion, and having finally maintained its authority over those States, its liability to Great Britain for violation of these treaties by those respective States remained precisely as if there had been no insurrection or civil war.

Her Majesty's counsel further contended that, as a principle of international law, if the rightful government of a country be displaced and the usurping government becomes

Nations sometimes do grant relief even for ravages of war, not as a

liable for wrongs done, such liability remains, and devolves on the rightful government when restored; that this principle equally applied when the usurpation was only partial; that the restored and loyal government of Louisiana was liable for wrongs done by the insurrectionary government of the same State; and that it was only by the provisions of the Constitution of the United States that the State of Louisiana was prevented from being compelled to discharge that liability toward foreign governments, and that on this ground the Government of the United States must be held responsible for the acts of the State of Louisiana.

He cited in support of these propositions the treaties of 1815 and 1827 between the United States and Great Britain, (8 Stat., p. 228, art. 1; id., 361, art. 1;) Phillimore, vol. 1, pp. 86, 94, 139; Wheaton, p. 77; Constitution of the United States, art. 1, sec. 10; Works of Daniel Webster, vol. 3, p. 321; id., vol. 6, pp. 209, 253, 265; U. S. Att. Gen. Op., vol. 1, p. 392; The United States *vs.* Palmer, 3 Wheat. Sup. Ct. R., 210; The Collector *vs.* Day, 11 id., 113, 124 to 126; The Prize Cases, 2 Black, 635; the treaty between the United States and Great Britain of August 9, 1842, (8 Stat., 575, art. 5;) and the acts of Congress of December 22, 1869, (16 Stat., 59, 60,) and of April 20, 1871 (17 id., 13 to 15.)

The argument on behalf of the United States was summed up as follows:

"First. That whatever may be the relations of the separate States of the Union to the Government of the United States, it is manifest that no responsibility can attach to the United States for the destruction of the claimant's property under color of the authority of the State of Louisiana, because its destruction was not authorized by any officials representing or authorized to represent or act for the State of Louisiana under the Constitution and laws of the United States. There can be no legitimate officers of a State to constitute its government, except such as have taken an oath to support the Constitution of the United States. All others are usurpers and pretenders. But, further, a State of the Union has no political existence which can be or has been recognized by Great Britain, except as a part of the United States, in subordination to the National Government. The rebels, who, by usurpation, undertook to act for the State of Louisiana, declared their action to be in behalf of the State, which they claimed as a component part of another and hostile nation.

"Secondly. The destruction of the claimant's cotton was done under the order of the commander of a military force engaged in hostilities against the United States, and whose acts Great Britain had recognized as those of a lawful belligerent, having all the rights of war against the United States that any foreign invader could have had. The men professing to act as the local authorities, in concurring in the order of destruction, acted as the assistants and allies of the hostile and belligerent power, and subject to its control. It is as absurd to hold the United States responsible in the case of Hanna as it would be to hold France responsible for the destruction of the property of a British subject in the part of France held by the German armies in the late war, on the ground that a French official, at the head of some *arrondissement* or *commune*, might have joined in the order of the German forces for its being done, he having been put in office or retained there by the German forces for the very purpose, and having first renounced his allegiance to France and taken an oath of allegiance to Germany."

The commission unanimously sustained the demurrer in the following award:

"The claim is made for the loss sustained by the destruction of cotton belonging to the claimant by men who are described by the claimant as rebels in arms against the Government of the United States.

"The commissioners are of opinion that the United States cannot be held liable for injuries caused by the acts of rebels over whom they could exercise no control, and which acts they had no power to prevent.

"Upon this ground, and without giving any opinion upon the other points raised in the case, which will be considered hereafter in other cases, the claim of John Holmes Hanna is, therefore, disallowed."

Mr. Commissioner Frazer read an opinion, which will be found in the appendix, H.

This was among the earliest of the decisions of the commission, and it is understood that in consequence of it a large number of claims of similar character awaiting presentation were never presented to the commission.

Opinion of Mr. Commissioner Frazer, in the case of John H. Hanna vs. The United States, No. 2. (*See p. 58, ante.*)

This is a claim for the destruction of 819 bales of cotton belonging to the claimant by rebels in arms against the United States. The property was destroyed in Louisiana and Mississippi in 1862 by the confederate forces, with the concurrence of the rebel authorities of Louisiana, one of the confederate States so called. Her Britannic Majesty had recognised the so-called confederate States as a belligerant, and the contest of arms then prevailing as a public war. After such recognition by the sovereign, the subject

matter of strict right by principles of international law, but as a gratuitous act of benignity.[68a]

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of such sovereign cannot, in his character as such subject, aver that the fact was not so. The act of his government in that regard is conclusive upon him.

Aside from this recognition by Her Majesty, it is public history of which this commission will take notice without averment or proof, that the confederate forces were engaged at the time in a formidable rebellion against the government of the United States. It may not be important to the question in hand, therefore, that Her Majesty had taken the action already stated.

It should be further observed that the particular "State of Louisiana" which concurred and participated in the destruction of the claimant's property was a rebel organization, existing and acting as much in hostility to the Government of the United States as was the confederate States so called. It was in form and fact a creature unknown to the Constitution of the United States, and acting in hostility to it. It was an instrumentality of the rebellion. Its agency, therefore, in the spoliation of this cotton cannot be likened to the act of a State of the American Union claiming to exist under the Constitution; and any argument tending to show that under international law the National Government is liable to answer for wrongs committed by such a State upon the subjects of a foreign power, can have no application to the matter now under consideration. The question presented is simply whether the Government of the United States is liable to answer to a neutral for the acts of those in rebellion against it, under the circumstances stated, who never succeeded in establishing a government. It is not deemed necessary in this case to inquire whether the claimant, having a commercial domicile in Louisiana at the time, is to be deemed a British "subject of Her Britannic Majesty" in the sense of Article XII of the treaty which creates this commission. That question is argued by counsel, but it is thought better to meet the question above stated for the reason that the case will thereby be determined more distinctly upon its merits.

The statement of the question would seem to render it unnecessary to discuss it. It is not the case of a government established *de facto* displacing the government *de jure;* but it is the case merely of an unsuccessful effort in that direction, which, for the time being, interrupted the course of lawful government without the fault of the latter.

Its acts were lawless and criminal, and could result in no liability on the part of the Government of the United States.

[68a] Senator Howe, in Senate Report No. 412, third session Forty-second Congress, February 7, 1873, said:

"In September, 1871, immediately upon the close of the Franco-German war, France, although defeated and subjected to the payment of a fine of 3,000,000,000 of francs to her conquerors, did not ask to avoid the obligation of making compensation to her despoiled subjects. Accordingly the national assembly provided not only for the payment of all private damages inflicted by the French authorities, but also provided for the repayment of all exactions made upon French subjects in the name of taxes by the German authorities. The same decree appropriated 100,000,000 of francs, to be placed at once in the hands of the ministers of the interior and of finance, to be apportioned between the most necessitous victims of the war, and appropriated a further sum of 6,000,000 of francs to be distributed by the same ministers 'among those who suffered the most in the operations attending the attack made by the French army to gain entrance into Paris.' A translation of the whole decree is appended to this report."

[Official journal of the French republic, Versailles, September 11, 1871.]

The National Assembly has adopted—the President of the French Republic promulgates the law, the tenor of which is as follows:

Considering that, during the late war, the portion of the territory invaded by the enemy bore exactions and suffered devastations without number; that the sense of patriotism which animates the heart of the French people enjoins upon the government the duty of indemnifying those who have, in the common conflict, undergone these exceptional privations, the National Assembly, without intending to depart from the principles laid down in the law of July 10, 1791, and the decree of August 10, 1853, decree:

ARTICLE 1. An indemnification will be allowed to all those who have borne, during the invasion, the contributions of war requisitions, either in money or in kind, fines, and material damages.

ART. 2. These contributions, requisitions, fines, and damages will be verified and estimated by the cantonal commissions who act for the time being under the direction of the minister of the interior. A departmental commission will revise the labor of

CHAPTER II.

PROPERTY DESTROYED OR DAMAGED IN BATTLE BY THE GOVERNMENT FORCES, OR WANTONLY, OR UNAUTHORIZED BY ITS OWN TROOPS.

The American rule of international law was early adopted that the Government was under no obligation to compensate its citizens for

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the cantonal commissions and fix the definite sum total of the losses proven. This commission will be composed of the *prefét*, president, four counsellors-general, designated by the council-general, and of four representatives of the ministers of the interior and finances.

ART. 3. When the extent of the losses shall have been thus verified, a law will fix the sum the state of the public treasury will permit to be appropriated for their indemnification, and determine the distribution of the same.

A sum of one hundred millions will be immediately placed at the disposition of the minister of the interior and of the minister of finances, and apportioned between the departments *pro rata*, according to the losses respectively proven, to be distributed by the *prefét*, assisted by a commission appointed by the council-genetal and taken from its number, between the most necessitous victims of the war, and the *communes* the most involved in debt. This first allowance will be part of the sum total assigned to each department to be distributed among all the claimants.

ART. 4. A sum of six million francs is placed equally at the disposition of the ministers of the finances and of the interior, to be, without further legislative enactment, distributed among those who suffered the most in the operations attending the attack made by the French army to gain re-entrance into Paris.

ART. 5. Independently of the preceding provisions the contributions in money collected under the title of taxes by the German authorities will be settled as follows:

SECTION 1. The *communes* that have paid any sums under the title of taxes will be re-imbursed their advances by the treasury.

SEC. 2. The tax-payers who will prove payment of any sum under the same title, either into the hands of the Germans or to the French municipal authorities, will be permitted to apply the whole sum on account of their contributions for 1870 and 1871. They will be required to produce their vouchers within the period of a month.

SEC. 3. The settlement specified above will comprise:

1. The whole sum of the French direct tax.

2. The double of that tax, as showing the indirect taxes levied by the Prussians. All that which in the payments will exceed the direct tax doubled will be considered as simple contribution of war, and governed by the principles laid down in the preceding article.

Deliberated in public sessions, at Versailles, July 3, August 8, and September 6, 1871.

President:
JULES GRÉVY.

Secretaries:
PAUL BETHMONT.
VISCOMPTE DE MEAUX.
PAUL DE RÉMUSAT.
BARON DE BARANTE
MARQUIS DE CASTELLANA.
N. JOHNSTON.

President of the republic:
A. THIERS.

Minister of the Interior:
F. LAMBRECHT

By the act of March 30, 1802, 2 Stat., 143, the United States, subject to certain limitations, "guarantee to the party injured an eventual indemnification in respect to" certain property "taken, stolen, or destroyed" by Indians, under certain circumstances. The act of June 30, 1834, 4 Stat., 731, does the same. But these look to reclamation from Indian tribes.

And see act February 28, 1859, sec. 8, 11 Stat., 401; joint resolution June 25, 1860, 12 Stat., 120; act July 15, 1870, sec. 4, 16 Stat., 360; act May 29, 1872, sec. 7, 17 Stat., 190.

Certain other statutes secure compensation for damage done by the enemy: Act April 9, 1816, 3 Stat., 263, sec. 9. (See as to this American State Papers, Claims, 486, Report Dec. 17, 1816.) Act March 3, 1817, 3 Stat., 397, sec. 1, injury to military deposits. Act March 3, 1849, ch. 129, sec. 2, 9 Stat., 414, loss or destruction of property in service by contract or impressment.

property destroyed or damages done in battle or by necessary military operations in repelling an invading enemy.[69]

Act June 25, 1864, 13 Stat., 182, horses of military persons surrendered by order of superior officers. *See Senate Rep. 137, 1 sess. 34 Cong., April 18, 1856, in favor of paying for personal property destroyed by the enemy in the war of 1812.* The committee held that where property was used by the Government, and the enemy destroyed it in consequence of that use, it should be paid for. Congress did not pass the bill recommended by the committee.

The legislature of Ohio, by act of March 30, 1864, (61 Ohio Laws, 85,) provided for a commission "to examine claims of citizens of this State for property taken, destroyed, or injured by rebels or Union forces within this State during the Morgan raid in 1863."

This act makes three classes of claims:

1. For property taken, destroyed, or injured by rebels.
2. By Union forces under command of United States officers.
3. By Union forces not under command of United States officers.

On the 15th December, 1864, the commissioners made their report to the Governor, showing claims made, $678,915.03, on which was allowed $576,225. This consisted of "damages by the rebels," $428,168; "damages by Union forces under command of United States officers," $141,855; and "damages by Union forces not under command of United States officers," $6,202. The report does not distinguish between property taken and that damaged or destroyed.

The act of April 27, 1872, (69 Laws, 176,) authorized a re-examination of these claims.

The act of May 5, 1873, appropriates $11,539.56 to pay claims under class three, as classified under the act of April 27, 1872. (70 Laws, 260.) The same act, (p. 265,) requires the Governor to appoint a commissioner to proceed to Washington to urge upon the proper officers of the Government or Congress the payment of all just claims of the people of Ohio growing out of the Morgan raid.

The legislature of Pennsylvania also made provision for indemnifying citizens of Chambersburg for property destroyed by the rebel invasion.

See act approved April 9, 1868, No. 39, laws of 1868, p. 74. This act provides for the appointment of commissioners to investigate claims of citizens in counties invaded by rebel forces "for the amount of their losses in the late war."

The preamble to this act recites that "during the late war to suppress the rebellion several of the southern counties of this State were several times invaded by the rebels in great force," and that "there was occasioned great destruction, devastation, and loss of property of citizens," and "these losses were sustained in the common cause, and for the general welfare of the whole people of this commonwealth, and it is *reasonable and proper* that citizens who have thus suffered should receive *generous consideration* and active relief from this great commonwealth," &c.

The governor of Pennsylvania has furnished the following:

EXECUTIVE CHAMBER,
Harrisburgh, Pa., March —, 1874.

Statement of war-claims.

Adams County	$489,438 99
Fulton County	56,544 98
Franklin County, burning of Chambersburgh	1,625,435 55
Franklin County, other claims	846,053 30
Cumberland County	211,778 95½
York County	214,720 05
Bedford County	6,818 03
Somerset County	120 00
	3,450,909 85½

Amounts paid.

Under act of August 20, 1864	$100,000
Under act of February 15, 1866	500,000
Under act of May 27, 1871	300,000

Commission to re-examine and re-adjudicate was raised under act of May 22, 1871. (P. L. 1871, p. 272.)

It will be seen that this act does not put the claims upon the ground of a *legal right* to demand compensation, but on the *ground of generosity.*

[69] American State Papers, Claims, 199, February 15, 1797: A committee of the House of Representatives made a report on a claim for "compensation for a dwelling-house burned in Massachusetts, in March, 1776, by order of General Sullivan, commanding the American troops. The house was in possession of British troops, and for the pur-

To this rule Alexander Hamilton added that:

According to the laws and usages of nations a State is not obliged to make compensation for damages done to its citizens * * wantonly or unauthorized by its own troops.[69a]

This is the general rule which is recognized now.[70]
It has been said, again, that—

No government, but for a special favor, has ever paid for property even of its own citizens, destroyed in its own country, on attacking or defending itself against a common public enemy, much less is any government obliged to pay for property belonging to neutrals domiciled in the country of its enemy which may possibly be destroyed by its forces in their operations against such enemy.[71]

Mr. Seward, Secretary of State, said, in relation to a claim made upon

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pose of dislodging them General Sullivan sent troops with orders to set fire to the building, which was done."

The committee say: "The loss of houses and other sufferings by the general ravages of war have never been compensated by this or any other government. In the history of our Revolution sundry decisions of Congress against claims of this nature may be found. Government has not adopted a general rule to compensate individuals who have suffered in a similar manner."

[69a] Report to Congress, November 19, 1792; American State Papers, Claims, 55.

[70] In the report made November 30, 1873, by Hon. Robert S. Hale, counsel of the United States before the commission of claims under the 12th article of treaty of 8th May, 1871, between the United States and Great Britain, is a statement of claims made by citizens of Great Britain against the United States, and the decision thereon as follows:

"In the case of Thomas Stirling, No. 12, were included as well claims for property destroyed by the United States Army in its marches and encampments in the State of Virginia, as for horses, carriages, cattle, hogs, flour, corn, and bacon alleged to have been taken and carried off by the soldiers. The proofs showed nothing beyond the disappearance of the property in the presence of the United States Army. The decision of the commission, in which all the commissioners joined, was made in the following words:

"The acts done upon which this claim is based seem to have been the ordinary results incident to the march of an invading army in a hostile territory, with possibly some unauthorized acts of destruction and pillage by the soldiery, with no proof of appropriation by the United States. Under such circumstances there is no ground for a valid claim against the United States. The claim is, therefore, disallowed."

"In the case of the Misses Hayes, No. 100, milliners, at Jackson, Miss., a claim was made for a stock of millinery goods and like property, alleged to have been taken by soldiers of the United States Army on the first capture of Jackson, in May, 1863. The acts complained of appeared, if committed by United States soldiers, to have been acts of pillage merely, and the claim was unanimously disallowed."

"In the cases of Michael Grace, No. 132, Elizabeth Bostock, No. 133, Thomas McMahon, No. 136, and others, at Savannah, being claims for property alledged to have been taken and appropriated by United States soldiers, the same appeared to have been by acts of unauthorized pillage, and were rejected."

And Mr. Hale says, again, as to property taken, "where the property was in its nature not a proper subject of military use, or, being such, was not applied to military use, or where the taking appeared to be mere acts of unauthorized pillage or marauding, the claims were disallowed."

And again, page 50:

"In several cases there were allegations of the wanton destruction of property by United States troops, and in some cases satisfactory proof was made of the fact of such destruction by soldiers without command or authority of their commanding officers and in defiance of orders.

"In the case of Anthony Barclay, No. 5, allegations were made of wanton destruction of property, including valuable furniture, china, pictures, and other works of art, books, &c. The proof was conflicting as to whether the injuries alleged were committed by soldiers or not; but if committed by soldiers, it was plainly not only without authority, but in direct violation of the orders of General Sherman. In the award made in favor of Mr. Barclay, I am advised that nothing was included for property alleged to have been destroyed.

"For property alleged to have been wantonly and without provocation or military necessity destroyed or injured in the enemy's country, as in the cases of Anthony Barclay, No. 5; Godfrey Barnsley, No. 162, and in the Columia cases."

The claims were not allowed.

[71] Perrin *vs.* U. S., 4 Court Claims, 547.

the United States by a French subject for property destroyed by the bombardment of Greytown, in July, 1854, that—

The British government, upon the advice of the law-officers of the Crown, declared to Parliament its inability to prosecute similar claims. In 1857 Lord Palmerston applied the decision in the case of Greytown as a precedent for refusing compensation to British merchants whose property in a Prussian port had been destroyed by a British squadron during the Crimean war. (See note in Lawrence's Wheaton, p. 145.)

The governments of Austria and Russia have applied the doctrine involved in the Greytown case to the claims of British subjects injured by belligerent operations in Italy in 1849 and 1850. (See note p. 49, vol. 2, of Vattel, Guilaumin & Co.'s edition, 1863.)

We have applied the same principle in declining to make reclamations for citizens of the United States whose property was destroyed in the bombardment of Valparaiso by a Spanish fleet, and in resisting the claims of subjects of neutral powers who sustained injury from our military operations in the Southern States during the recent rebellion. It will probably be found a sufficient answer to the reclamations of many of our citizens who have sustained losses from belligerent operations on both sides during the recent occupation of Mexico by French troops.[72]

This is the rule recognized by Vattel, who says: "But there are other damages caused by inevitable necessity; as, for instance, the destruction caused by the artillery in retaking a town from the enemy. These are merely accidents. They are misfortunes, which chance deals out to the proprietors on whom they happen to fall. * * No action lies against the State for misfortunes of this nature; for losses which she has occasioned, not wilfully, but through necessity and by mere accident in the exertion of her rights."[73]

These principles are generally recognized, and any departure from them rests on mere gratuity or other exceptional reasons.[74]

CHAPTER III.

TEMPORARY OCCUPATION OF, INJURIES TO, AND DESTRUCTION OF, PROPERTY CAUSED BY ACTUAL AND NECESSARY GOVERNMENT MILITARY OPERATIONS TO REPEL A THREATENED ATTACK OF, OR IN ADVANCING TO MEET, AN ENEMY IN FLAGRANT WAR.

By the principles of universal law recognized anterior to the Constitution, in force when it was adopted, and never abrogated, every civilized nation is in duty bound to pay for army supplies taken from its loyal citizens, and for all property voluntarily taken for or devoted to "public use."

But there is a class of cases in which property, real or personal, of loyal citizens may be temporarily occupied or injured, or even destroyed, on the theater of and by military operations, either in a loyal State or in enemy's country, in time of war, as a military necessity. The advance or retreat of an army may necessarily destroy roads, bridges, fences, and growing crops.

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[72] Letter to Hon. Charles Sumner, Feb'y 26, 1868, 4 Court Claims R., 548.

[73] Vattel, Book 3, Ch. XV, § 232, p. 403.

[74] In report of Hon. R. S. Hale to Secretary of State, Nov. 30, 1873, of the proceedings of the commission under 12 art., treaty of 8 May, 1871, between United States and Great Britain, it is said, "In the case of Watkins and Donnelly, administrators, No. 329, an award was made against the United States, in which all the commissioners joined, for property pillaged by United States soldiers in the night from a country store in Missouri, a State not in insurrection, upon proof showing great neglect of discipline on the part of Colonel Jennison, the commanding officer, and his neglect and refusal to take any steps for the surrender of the stolen property or the punishment of the offenders when notified of the facts, and that a part, at least, of *the stolen property was then in possession of his troops.*

In self-defense an army may, of necessity, erect forts, construct embankments, and seize cotton-bales, timber, or stone, to make barricades.

In battle or immediately after, and when it may be impossible to procure property in any regular mode by contract or impressment, self-preservation and humanity may require the temporary occupancy of houses for hospitals for wounded soldiers, or for the shelter of troops, and for necessary military operations which admit of neither choice nor delay.

In these and similar cases the question arises whether there is a deliberate voluntary taking of property for public use requiring compensation, or whether these acts arise from and are governed by the law of overruling military necessity—mere accidents of war inevitably and unavoidably incidental to its operations—and which by international law impose no obligation to make recompense. It seems quite clear that they are of this latter class.

This is so upon reason, authority, and the usage of nations.

Most of the considerations applicable to the destruction of property in battle, or to prevent it from falling into the hands of the enemy, are equally appropriate here. Some of these have been and others will hereafter be more fully stated. And if property may be so destroyed without incurring liability, why may not property temporarily occupied or even damaged, when the purpose is the same to prevent it from being useful to the enemy? The greater includes the less. These cases rest on principles entirely distinct from those which relate to and govern ordinary army supplies. There is no reason why one citizen should furnish quartermaster's or commissary supplies rather than another. The Government can, as to these, exercise a discretion; it can buy from any who may have to sell, or select those from whom it will impress. Here is a deliberate voluntary taking for public use.

But an army advancing to meet an enemy has no discretion in selecting its route. The public safety compels it to pursue that which is most practicable.

If crops stand in the way, their destruction by the march may be inevitable and unavoidable, a mere accident and incident of military operations, as much so as the destruction caused by battle.

On principle, the Government cannot be liable to make restitution for the damage, unless it has assumed to do so by an implied contract or has been guilty of a wrong.

There is in such case no contract, for this implies consent, deliberation, choice. It implies that what is done is not done as of right or by lawful authority, but by consent of all parties in interest. "If a man is assaulted, he may (lawfully) fly through another's close," and he does not thereby become a party to a contract to pay any damage he does[75] because his act is lawful. It is the exercise of a legal right.

So a nation, on the same principle, makes no implied promise to pay when its army retreats from a pursuing enemy or advances to prevent his blow.

Nor is a nation in such case liable as a trespasser or wrong-doer. "A trespass * * from the very nature of the term *transgressio* imports to go beyond what is right."[76] An army in its march performs an imperative duty—justified by the law of nations—required by the public safety.

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[75] 5 Bacon, Abr., 173; Respublica *v.* Sparhawk, 1 Dallas, Pa., 362.

[76] 5 Bacon, Abr., 150; Respublica *v.* Sparhawk, 1 Dallas, 362.

In Perrin *v.* United States, 4 C. of Cls. R., 547, where a French subject made a claim against the government for property destroyed by the bombardment of Greytown, the court said:

"The claimant's case must necessarily rest upon the assumption that the bombardment and destruction of Greytown was illegal, and not justified by the law of nations."

The rule has been thus stated by the late solicitor of the War Department:

If one of our armies marches across a corn-field, and so destroys a growing crop, or fires a building which conceals or protects the enemy, or cuts down timber to open a passage for troops through a forest, the owner of such property, citizen or alien, has no legal claim to have his losses made up to him by the United States. Misfortunes like these must be borne wherever they fall. If any government is obliged to guarantee its subjects against losses by casualties of public war, such obligations must be founded upon some constitutional or statute law. Thus far no such obligations have been recognized in our system of congressional legislation. (Whiting's War-Powers, 43d ed., 1871, p. 340.)

Damages done by the erection of forts, the seizure of timber or materials for barricades, under pressure of military necessity, give no legal right to compensation.

"In time of war," said the supreme court of Pennsylvania, "bulwarks may be built on private ground, and the reason assigned is * * because it is for the public safety." [77]

It is a lawful act, imposing no liability on the government, which is guilty of no wrong, and which makes no promise by the act.

In principle it can make no difference whether a forest or cotton-bales are destroyed by cannonading in battle, in case an army seeks shelter behind them, or seizes them in advance to throw up breastworks for safety.[78] Yet all writers agree that a nation is not bound to make compensation in such cases as these.

The same position has been judicially assumed. The supreme court of Georgia has said:

It is not to be doubted but that there are cases in which private property may be taken for a public use without the consent of the owner, and without compensation, and without any provision of law for making compensation. There are cases of urgent public necessity, which no law has anticipated, and which cannot await the action of the legislature. In such cases the injured individual has no redress at law—those who seize the property are not tresspassers—and there is no relief for him but by petition to the legislature: for example, the pulling down of houses and raising bulwarks for the defense of the State against an enemy, seizing corn and other provisions for the sustenance of an army in time of war, or taking cotton-bags, as General Jackson did at New Orleans, to build ramparts against an invading foe.[79]

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[77] Respublica *v.* Sparhawk, 1 Dallas. 362; Dyer, 8; Brook's Trespass, 213; 5 Bacon, Abr., 175; 20 Viner, Abr., (trespass,) B. a, sec. 4, fo. 476.

[78] The report of Hon. R. S. Hale to the Secretary of State, November 30, 1873, as to claims of British subjects before the American-British claims commission, under article 12, treaty of May 8, 1871, shows that claims of this character were unanimously rejected. The report says, p. 49:

"2.—*Claims for property alleged to have been wrongfully injured or destroyed by the forces of the United States.*

"These claims were also numerous, and involved a large variety of questions. They included claims for property injured or destroyed by the bombardment of towns of the enemy, as in the case of Charles Cleworth, No. 48; and in other ordinary operations of war, such as the passage of armies, the erection of fortifications, as in the case of Trook, administrator, No. 58, &c.

"Also, for timber felled in front of forts and batteries to give clear range for the guns and deprive the enemy of cover, as in the cases of Trook, administrator, No. 58, and of William B. Booth, No. 143.

"In these claims for destruction of property, it may be stated generally that, with very few exceptions, and those mostly insignificant, no awards were made against the United States.

"The claims for injuries by bombardment, the passage of armies, the cutting of timber to clear away obstructions, the erection of fortifications, &c., in the enemy's country, were all disallowed by the unanimous voice of the commissioners.

"The same may be said of the incidental destruction of innocent property involved in the destruction of public stores and works of the enemy." These were in the States proclaimed in insurrection compensation for property damaged or destroyed in battle.

[79] 1. Parham *vs.* The Justices, &c., 9 Georgia R., 341. See report, November 30, 1873, of Hon. R. S. Hale to Secretary of State, of claims decided by commission under 12th article of treaty of 8th May, 1871, between United States and Great Britain, page 44–235.

The same principle was stated in a report made by the Committee on Claims to the House of Representatives December 11, 1820. From this report it appeared that a claimant alleged that—

She was possessed of a plantation, with sundry buildings, situated below New Orleans, and that during the invasion by the enemy in December, 1814, and subsequently, her dwelling-house was occupied, as quarters for some of the officers, and a hospital for the sick and wounded, and, while so occupied, her house, outhouses, fences, &c., were damaged.

She claimed compensation for use and occupation and for damages.

The committee in their report say, in effect, that compensation cannot be claimed by virtue of the constitutional provision as to taking "private property for public use," because this provision—

Seems to imply a *voluntary act* on the part of the Government, which in the present case could hardly be alleged, particularly as it respects a large portion of it. * * * There are no *known rules* or established usage of the Government which would seem to authorize an allowance in a case thus involved in obscurity.[80]

Commissioner Frazer said, as to cotton seized by United States military forces under orders of General Banks, in Louisiana, and used for fortifications, "No citizen of the United States could, under like circumstances, claim compensation." He adds:

"2. The cotton was the property of an enemy of the United States, so recognized by every writer upon international law and so held by all tribunals, both American and British, as well as continental, in every reported case involving the question. The mixed commission, constituted under the convention of 1853, between the two countries so held in Laurent's case. Indeed, it went further, and held that an unnaturalized Englishman voluntarily domiciled in a country at war with the United States was not even to be regarded as a British subject; thus going a little too far, as I think.

"The property of Henderson was as liable to capture as the property of Jeff. Davis himself, or any rebel in arms. I believe this is not questioned. That the property itself was a proper subject of capture on land under the modern rules by which civilized nations govern themselves in war, seems to me to be quite as clear.

"The legislation and the known practice of the rebel authorities made it so. They made cotton the basis of their public credit by a policy which aimed to deal largely in it on Government account, to purchase it even before it was grown, and hypothecate it as security for the payment of loans, with the proceeds of which they did, to a large extent, supply themselves with arms and munition of war, and with a fleet of armed vessels to infest the ocean and destroy American commerce. They committed it to the flames, whether owned by friend or foe, rather than permit it to reach the markets of the world otherwise than through their own ports; thus endeavoring by warlike operations to secure to themselves a monopoly in supplying the foreign demand, that they might thereby constrain nations abroad to aid them in their struggle. In short, cotton was a special and formidable foundation of the rebel military power. It was more important than arms or ships of war, for it supplied these and all else beside. It was more potent than gold, for it not only commanded gold, but it largely enlisted in behalf of the rebels the interests of foreigners whose manufacturing industry was in a measure paralyzed because this staple was needed to keep it in motion. The necessities and purposes of war, therefore, required its capture at every opportunity more imperatively than the capture of munitions and implements of war; indeed, that necessity was quite as pressing and certainly as humane as the killing of men in battle; for it was no less efficient as a means of accomplishing the subjugation of the rebel armies, and re-establishing the national authority. It is to me astonishing if there is a difference of opinion upon this subject.

"The Supreme Court of the United States, recognizing to the fullest extent all the limitations which the practice of nations has lately engrafted upon the right of capture upon land, so held in the case of a loyal American widow. (See the case of Mrs. Alexander's Cotton, 2 Black.) This is high authority, especially when it is remembered that that august tribunal has certainly exhibited no tendency whatever to give undue license to military authority or warlike operations, Complaint, if any, has been altogether in the other direction. But I would be quite content, in the absence of any authority, to trust the question with the common sense of all civilized nations so long as war in any form shall be recognized as a lawful method of deciding differences. If the capture was rightful by laws of war, it would be a novelty in international law that its exercise involves an obligation to make compensation."

The commission allowed the claim, *a voucher having been given by military officer* "by order of Col. S. B. Holabird for the United States Government."

[80] But the report concludes that "in a case of such extreme apparent hardship, it

The Government has always paid loyal citizens for the use and occupation of buildings and grounds in loyal States when used for officers' quarters, regular recruiting camps, and in cases where the occupation was voluntary and the result of choice superinduced by no overruling military necessity, and for this the law provides.[81]

But a temporary occupancy of real estate imposed by overruling necessity—an occupancy continued during the actual existence of such impending necessity—or the application of materials to purposes of defense in an emergency, has not, by the usage of the Government been regarded as giving any claim for compensation.

This has been the uniform usage of the War Department, founded on the opinion not only of the Solicitor, but also of the Judge-Advocate-General.[82]

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would best comport with the dictates of sound policy that in the exercise of the *discretion* of Congress *some* relief should be granted. (American State Papers, claims, class ix, p. 753. Here the relief is put on the ground of a discretion, not *law*.) (See act March 2, 1821, 6 Stat., 258.)

[81] House Ex. Doc. No. 124, 1st sess. 43d Congress; see letter of Quartermaster-General M. C. Meigs, February 19, 1874, in part 2 of this report, and letter February 26, 1874, in appendix to this report; act July 16, 1798, sec. 3, ch. 85; act May 8, 1792, sec. 5; act March 3, 1799, sec. 24, ch. 48; United States *vs.* Speed, 8 Wallace, 83; Stevens *vs.* United States, 2 N. & H. Court Claims; 101 Crowell's case, id., 501; McKenney *vs.* United States, 4 N. & H. Court Claims, 540; Wentworth *vs.* United States, 5 Court Claims, 309; Scott's Digest Military Laws, 1873, p. 102, sec. 96, &c.

[8] See opinions of Judge-Advocate-General, vol. 20, pp. 598–525; vol. 26, pp. 52, 242, 247; id., 27, p. 304; Digest of Opinions of Judge-Advocate, 1868, pp. 97, 98. As an example, the following is presented:

WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,
August 4, 1866.

To the SECRETARY OF WAR:

Dr. W. P. Jones claims $35,000 for damages sustained by the erection by the United States of a fort upon his land near Nashville.

Major-General Thomas reports that he is thoroughly loyal, and recommends allowance of the claim.

In the case of N. Vignie, this Bureau, under date of May 7, 1866, submitted the following remarks:

"A clear distinction has always been recognized between the taking of real estate or personal property for such purposes, and the taking of the same for the ordinary uses of peace."

(Here follows a reference to Whiting's War-Powers, 340, and to 9 Georgia R., 341.)

Entertaining the conclusions pointed to by the two foregoing citations, this Bureau is of opinion that the claim under consideration, and others of like description, for compensation for the use of land taken and occupied by the forces of the United States for the sites of forts or other works of defense against the public enemy, must be rejected by the War Department, and all parties making such claims must be referred to Congress for relief, if they shall be deemed entitled to any under the general principles of the law of war.

If the above views are approved by the Department, this case, notwithstanding the loyalty of the claimant, must be referred to Congress.

W. WINTHROP,
Brevet Colonel and Judge-Advocate, in the absence of the Judge-Advocate-General.

Official copy, for the Hon. William Lawrence, M. C.:

J. HOLT,
Judge-Advocate-General.

The same principles have been reiterated since, (Digest of Opinions of Judge-Advocate-General, 97,) as follows:

"So held in the case of a claim arising in Tennessee during the war, for alleged damages sustained by the claimant in the erection by the military authorities of a fort upon his land. XXII, 304. So held in the case of the claim of an alleged Spanish subject for indemnity for the destruction of buildings and other property in Louisiana, in the course of the erection of fortifications by our forces. XX, 525. So held in the case

The Executive Department of the Government has laid down certain rules of law in relation to some questions growing out of the war of the rebellion.

The President, in his message of June 1, 1872, said:

It is a general principle of both international and municipal law that all property is held subject not only to be taken by the Government for public uses, in which case, under the Constitution of the United States, the owner is entitled to just compensation, *but also subject to be temporarily occupied*, or even actually destroyed, in times of great public danger and *when the public safety demands it*, and in this latter case governments do not admit a legal obligation on their part to compensate the owner. The temporary occupation of, injuries to, and destruction of property caused by actual and necessary military operations are generally considered to fall within the last-mentioned principle. If a government makes compensation under such circumstances, it is a matter of bounty rather than of strict legal right.[83]

CHAPTER IV.

PROPERTY WHICH MAY BE USEFUL TO THE ENEMY SEIZED AND DESTROYED OR DAMAGED TO PREVENT IT FROM FALLING INTO THEIR HANDS.

The question now to be considered is, whether the Government is liable to make compensation for the property of a loyal citizen in a loyal State, seized and destroyed or damaged by competent military authority—*flagrante bello*—to prevent it from falling into the hands of the enemy, as an element of strength where warlike operations are in progress, or where the approach of the enemy is prospectively imminent.

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of a claim for the value of certain buildings (with their contents) burned by our troops in West Virginia, in January, 1863, by way of a ruse to deceive and divert the enemy—a legitimate act of ordinary warfare—the loss incurred being one of those casualties for which the Government does not become liable to the individual injured. XXVI, 242. And see XXVI, 247, for a case of a claim (preferred subsequently to the passage of the act of February 19, 1867, and so expressly precluded from settlement) for the value of cotton seized at Knoxville, Tennessee, in the enemy's country and on the theater of war, and used for strengthening a fort threatened with attack by the rebel forces. XXVI, 247."

[83] Senate Ex. Doc. 85, 2 sess. 42 Cong., veto bill for relief of J. Milton Best.

In Senate Rep. 412, 3 sess. 42 Cong., it is said of this statement of the law by the President:

"The committee has not found any such general principle affirmed either in international or municipal law, but has found the very reverse of that to be affirmed by all law, international and municipal."

Among the text writers, Vattel discusses the very question, "Is the State bound to indemnify individuals for the damage they have sustained in war?" But the report *omits to quote the next sentence* in Vattel, in which he says:

"We may learn from Grotius, *that authors are divided on this question.*" Vattel then says:

"The damages under consideration are to be distinguished into two kinds—those done by the State itself or the sovereign, and those done by the enemy. Of the first kind some are done deliberately and by way of precaution, as when a field, a house, a garden, belonging to a private person, is taken for the purpose of erecting on the spot a town rampart, or any other piece of fortification, or when his standing corn or his store-houses are destroyed to prevent their being of use to the enemy. *Such damages are to be made good to the individual, who should bear only his quota of the loss.*" But there are other damages caused by inevitable necessity; as, for instance, the destruction caused by the artillery in retaking a town from the enemy. These are merely accidents. They are misfortunes, which chance deals out to the proprietors on whom they happen to fall. (Vattel, 6th Am. ed., 402.)

The rule stated by Vattel is elsewhere hereafter referred to, and it is shown that its correctness has been denied in a note to the American edition of 1872, referring to 4th Term R., 382, and by Grotius and many other authorities.

The same law prevails when our territory is invaded by a foreign enemy or a loyal State by a rebel invading force.

It has been asserted with great emphasis that the duty to make compensation in such cases as have frequently arisen in each House of Congress—

"Is a principle not recognized by public law, by the law of nations or any other code of law or morals known to the civilized world. It has never been applied by our own Government, by the government of Great Britain, or any other civilized government in the world."[84]

It has been said, on the contrary, with equal earnestness, that there has never been—

One single instance in the whole history of this Government since the Constitution was adopted where a claimant of this kind has been turned from the doors of Congress unsatisfied.[85]

In this conflict of opinion it becomes necessary to consider the question somewhat elaborately.

There are five modes in which the Government has a right to take or use private property:

1. By taxation.[86]
2. As punishment for crime under judicial sentence, or by sentence of a court-martial.[87]
3. In virtue of the right of *eminent domain* for public use, with just compensation.[88]
4. By the law of "*overruling necessity*," which Lord Hale calls the *lex temporis et loci*, and which is both a war and peace power.[89]
5. By the war-power on the theater of military operations, *flagrante bello* for military purposes.[90]

The power to take in these several modes must have for each an appropriate sphere of operation; they all stand *in pari materia*, and the right in no one can be so omnipresent or exclusive as to encroach upon or destroy the other. These are axiomatic principles, universally admitted.

The right to take property in the first, second, and fourth class of cases named exists without any duty to make "just compensation" in money.

The question of the liability of the Government to make compensation for property taken and damaged, or destroyed to prevent it from falling into the hands of an enemy, must be determined by a consideration of the character of the power exercised, and the purpose or reason of the seizure.

This question, as was very well said by the supreme court of Pennsylvania in September, 1788, in the case of *Respublica* v. *Sparhawk*, 1 Dallas, 362, is to be governed—

By reason, by the law of nations, and by precedents analogous to the subject before us

[84] Roscoe Conkling in Senate, December 14, 1870, 82 Globe, 98, on claim of J. Milton Best; see President's veto message, June 1, 1872.

[85] Senator Howe, January 4, 1871, 82 Globe, 302, referring to the claim of J. Milton Best.

[86] Constitution, art. 1, sec. 8, clause 1.

[87] Constitution, art. 3, sec. 1, clause 3, &c.; amendments, art. v, vi, viii. Grotius, b. 2, ch. 14, sec. 7.

[88] Constitution, art. v, amendments. "*Eminent domain* is a *civil* right," Grant *v.* U. S., 1 Court Claims, 45; American Print-Works *v.* Lawrence, 1 Zabriskie, 258. Grotius, b. 2, ch. 14, sec. 7; id., b. 3, ch. 20, sec. 7.

[89] *Hale* v. *Lawrence*, 3 Zabriskie, 728–'9. Grant *v.* U. S., 1 Court Claims, 45; Respublica *v.* Sparhawk, 1 Dallas, p. 362.

[90] 13 Howard, 140; Whiting's War Powers, 26.

First, then, on principles of reason, should the Government be liable to make compensation? This may be considered with reference to the reason as applied to citizens, and as applied to the Government. Upon the plainest principles of right and propriety, a military officer, even in flagrant war, would not be justified in seizing and destroying the property of a private citizen to prevent it from falling into the hands of the enemy, unless the "danger be immediate and impending," or be reasonably certain to happen during hostile military operations; for if this be not so, the officer acting without necessity or excuse would become a trespasser, and his act would be one of lawless violence, for which he would and the nation would not be liable in damages.[91]

It has been determined, also, that under certain circumstances the officer is not the sole judge of the necessity of seizing and destroying.[92]

Now, as a matter of common sense and reason, the owner of property is no more injured if it is destroyed by our own Government than if by the enemy. The loss to him is the same in either case.

Yet no statesman or writer on the laws of nations ever claimed that a Government is bound by any principle or rule of law to make compensation for property taken or destroyed by the enemy in time of war,[93] nor by its own military forces in actual battle.[94]

It has been said, with a force of reason which has not yet been answered, that where property is taken to prevent it from falling into the hands of the enemy, the *position* of property so situated is the owner's misfortune.

He is not to be relieved of it at the cost of the United States, for they are not responsible to him for the circumstances that created it.[95]

To require the Government to pay where it is guilty of no wrong, no omission of duty, in the exercise of both a right recognized by the civilized world and enjoined by the highest duty and for the common good, would be the harshest rule that could be recognized. If the property of a citizen is in a position where it is reasonably certain he will lose it by the seizure of an enemy, he cannot be said to be in any worse position because it is seized by his own government.

All writers agree that the government incurs no liability by destroy-

[91] Mitchell *v.* Harmony, 13 Howard, 115; Grant *v.* U. S., 1 Nott & H., Court of Claims, 45, 47, 48; American State Papers, part ix, Claims, vol. 1, p. 55; Pitcher *v.* U. S., 1 Court of Claims, 9; Gibbons *v.* U. S., 8 Wallace, 269.

[92] Mitchell *v.* Harmony, 13 Howard, 115, perhaps does not necessarily so decide. In that case, property was taken, not from "*necessity*," but "for the purpose of insuring the success of a distant expedition," thereafter to be prosecuted. The property was not *destroyed*. See ex parte Milligan, 4 Wallace, 2; Martin *v.* Mott, 12 Wheat., 19; Whiting's War Powers, 67; Luther *v.* Borden, 7 Howard, 45; American Print-Works *v.* Lawrence, 1 Zabriskie, 260, and cases cited. A ratification by the Government of an act done by military authority relieves the officer from liability; Baron *v.* Denman, 2 Exchequer, 189. This modifies a case found in vol. ix, p. 404, of Niles Register, March, 1816, in which it is said martial law cannot be declared but subsequent to an act of the legislature authorizing it, and that a British farmer in Upper Canada recovered damages from a commissary for taking 100 bushels of wheat under martial law. See Milligan *v.* Hovey, 3 Bissell U. S. Circuit Court R., 13 American Law Register, N. S., 122; Stevens *v.* U. S., 2 Court Claims, 95. See Linds *v.* Rodney, 2 Douglass, 613; Elphinstone *v.* Bedreechund, 1 Knapp's P. C. R., 300; Coolidge *v.* Guthrie, Swayne, J., U. S. circ. court, S. district Ohio, Oct. 1868, in appendix to (43d ed., 1871,) Whiting's War Powers, 591. In Report No. 600, House Reps., 1 sess., 36 Congress, May 26, 1860, Mr. Stanton, of the Committee on Military Affairs, in a case similar to that of Mitchell *v.* Harmony, said the officer "was the proper judge." See ex parte Milligan 4, Wallace 2; Martin *v.* Mott, 12 Wheaton, 19; Whiting's War Powers, 67; Luther *v.* Borden, 7 Howard, 45.

[93] Senator Davis, January 4, 1871, 82 Globe, 297; Alexander Hamilton, Nov. 19, 1792, American State Papers, part ix, vol. 1, Claims, p. 55.

[94] Vattel, ch. xv, p. 402, and authorities heretofore cited.

[95] Loring, J., dissentiente, Grant's case, 2 Court Claims, 552; 1 Id., 41.

ing it in battle, or for destroying it in an attempt to recapture it from an enemy. Bynkershoek says of the property of loyal citizens:

> Those goods may be properly taken by us, by the laws of war, if they have been before taken by our enemies.[96]

What difference can it make to the owner whether his property is destroyed immediately in advance of a battle, or in the conflict, or in an effort to recapture? To say that a nation is not liable if it applies the match and blows up a house a moment after the enemy gets in it, but is liable for doing the same thing a moment before, would seem a very *reductio ad absurdum*.[97]

It may be said the Government should be liable for destroying a house when its seizure by the enemy might be only for the purpose of temporary occupancy, but not with a purpose to destroy it.

But if the enemy occupy a house the Government may in battle destroy it to d slodge him, and in such case incur no liability. It can make no difference to the owner whether it be destroyed a moment before or a moment after the enemy enter it. The destruction is an accident of war growing out of the situation of the house with reference to the conflict.

In such case, too, the reason of the rule mentioned by Grotius, which exempts a nation from liability for damage done by the enemy, may well apply, "in order to make every man more careful to defend his own."

To hold the Government liable under such circumstances would furnish an inducement to owners of property in times of danger to magnify it in order to induce the Government to destroy it and so become an insurer against peril; it would remove the inducement of citizens to throw obstacles in the way of the enemy's approach; it might encourage citizens rather to invite or aid it; it would diminish the motive to furnish supplies and aid to our army in advancing to anticipate or defeat the approach of the enemy, and in all these modes disregard the maxim *salus populi suprema lex*. This overpowering and relentless rule of the supreme law of public safety is one which the stern necessities of war can neither safely omit nor mitigate.

A rule which would hold the Government liable might sometimes furnish an excuse for treacherous officers to omit necessary destruction of property, or induce a nation financially embarrassed to desist from the only means of preserving its existence. These considerations, so immeasurably important, should never be left to turn the hesitating scale in a moment of peril.

A nation should not be liable for property taken to prevent it from falling into the hands of an enemy, because it is impossible to establish any just measure of damages. What is the value of property liable to the imminent impending danger of being taken or destroyed by rebels? Why should the Government pay when the markets of the world could not supply another purchaser?

There are other considerations of public policy connected with this subject which cannot be overlooked.

Vattel, in assigning reasons why an invaded nation is not liable to its citizens for the ravages of war, says, "the public finances would be exhausted," and "these indemnifications would be liable to a thousand abuses."

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[96] 1 Laws of War, ch. v.

[97] See President Grant's veto message, February 12, 1872, Senate Ex. Doc. 42, 3d sess. 42d Cong., as to Manchester, Ky., salt-works.

Now, all these reasons apply with very great if not equal force to the damages now under consideration.[98]

This question involves to some extent the theory and nature of government.

The preamble to the Constitution declares that it was ordained—

> To form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty.

A government organized to insure domestic tranquillity and the common defense is *ex necessitate* clothed with the power to employ the necessary means to secure the end. But it is not necessary to invoke the aid of this well-known rule. The Constitution, in recognizing the laws of nations and the war power, gives the Government a right to employ the means which it may declare necessary, or which nations usually employ, to make the common defense. These laws give the *power* and *create* the *duty* to seize property in time of war to prevent it from falling into the hands of an enemy. Where a nation exercises a lawful power in a lawful mode in the performance of an absolute duty, it would reverse every precept of reason, justice, and the whole logic of the common law to hold it liable and guilty as a trespasser or a *tort feasor*. Nor is there any principle on which to rest an express or implied contract to pay in the class of cases under consideration. No act of Congress has created any such liability.

It cannot grow out of any obligation of the Government, for no prin-

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[98] See 2 Greeley's American Conflict, 611; Sumner's Speech, January 12, 1869, 71 Globe, 301; Alexander's Cotton, 2 Wallace, 420; Senator Conkling, December 14, 1870, 82 Globe, 9[illegible]; Senator Chandler, December 14, 1870, 82 Globe, 100; Senator Howe, January 4, 1871, 82 Globe, 303; Whiting's Opinion, January 15, 1864, in Globe, May 20, 1864, vol. 52, p. 2390.

The President, in his annual message, December, 1873, says to Congress:

"Your careful attention is invited to the subject of claims against the Government, and to the facilities afforded by existing laws for their prosecution. Each of the Departments of State, Treasury, and War have demands for many millions of dollars upon their files, and they are rapidly accumulating. To these may be added those now pending before Congress, the Court of Claims, and the southern claims commission, making, in the aggregate, an immense sum. Most of these grow out of the rebellion, and are intended to indemnify persons on both sides for their losses during the war; and not a few of them are fabricated and supported by false testimony. Projects are on foot, it is believed, to induce Congress to provide for new classes of claims, and to revive old ones through the repeal or modification of the statute of limitations, by which they are now barred. I presume these schemes, if proposed, will be received with little favor by Congress, and I recommend that persons having claims against the United States cognizable by any tribunal or department thereof, be required to present them at an early day, and that legislation be directed as far as practicable to the defeat of unfounded and unjust demands upon the Government; and I would suggest, as a means of preventing fraud, that witnesses be called upon to appear in person to testify before those tribunals having said claims before them for adjudication. Probably the largest saving to the national Treasury can be secured by timely legislation on these subjects, of any of the economic measures that will be proposed."

On the 11th March, 1818, a report was made to the House of Representatives as to war-claims, under the act of April 9, 1816, in which it is said the documents from the commissioners of claims "develop the fact that on the frontiers of New York a system of fraud, forgery, and perhaps perjury, has been in operation, which the committee believe has never been witnessed in this country. It may well be questioned whether, in a national point of view, it would not have been better that the law of April, 1816, had never been passed. It is the duty of a good government to attend to the morals of the people as an affair of primary concern."

There are now pending before the commissioners of claims, under the act of March 3, 1871, 17,048 claims, amounting to $50,000,000.

In a speech in the House of Representatives, February 7, 1874, Mr. Lowndes said:

"By reference to the Quartermaster-General's report for 1871, we find that from 1864 to 1871 there were filed in his department 28,039 claims. Out of that number

ciple of law, no writer, has ever declared it an *insurer* of the safety of its citizens from the perils which exist in all wars. On the contrary the Constitution, by recognizing and conferring war powers, admonishes all who share the privileges of Government of the dangers and perils of war.

There is no constitutional obligation to make compensation in this class of cases, unless it be found in the last clause of the fifth amendment to the Constitution, which, after reciting certain principles, most of which relate to rights of person and property *in a state of peace* and by *civil administration*, concludes by saying:

Nor shall private property be taken for *public use* without just compensation.

This can have no reference to the war seizure and destruction of property, unless—

1. This clause relates to war-measures and the exercise of military powers; nor unless—

2. The destruction indicated is a "public use."

This constitutional provision does relate to property in time of peace. It does relate to property not in the "enemy's country," and not in the immediate theater where armies are operating or war is flagrant, and battle in progress or imminent, in loyal territory. In such cases the laws of peace prevail. By its very terms, and upon the maxim, *noscitur a sociis*, this provision applies wherever the laws of peace prevail. That

4,950 were approved, and claims allowed amounting to the sum of $2,078,083.05. There were 12,923 claims rejected, which amounted to $8,308,254.07; and 6,231 were suspended, amounting to $2,663,036.35; and only 3,935 claims remained to be acted upon, representing the sum of $3,884,094.45.

"A great many of the claims marked suspended are virtually rejected, as they have been laid aside on account of insufficiency of proof; which insufficiency or deficiency can never be given or supplied.

"Since the report of 1871 there have been filed in the department 3,087 claims, representing $3,508,039.34; and during the same time 1,905 claims, representing $2,232.340.59, have been acted upon, leaving about 5,116 claims, amounting to $5,159,793.20, still pending, requiring action by the department."

See also House Executive Document No. 121, first session Forty-third Congress; report Quartermaster-General, page 225, of Executive Document No. 1, part 2, House Representatives, Forty-second Congress, second session.

The following statement of the amount of claims, as made and as allowed by the commissioners of claims under the act of March 3, 1871, in their first three annual reports, will illustrate this subject also:

	Claimed.	Allowed.
Alabama	$533,803 91	$143,529 30
Arkansas	696,539 31	154,566 48
Florida	48,313 19	21,168 00
Georgia	1,057,204 66	84,142 29
Louisiana	1,478,326 85	274,659 51
Mississippi	1,306,469 48	208,715 46
North Carolina	576,332 17	99,853 76
South Carolina	592,901 30	30,173 43
Tennessee	1,253,988 55	257,635 19
Texas	77,460 19	46,926 11
Virginia	2,834,728 63	524,885 47
West Virginia	29,054 60	6,632 00
	10,485,122 84	1,852,887 00

See remarks of Mr. Delano (now Secretary of the Interior) in the House of Representatives, January 30, 1866, 56 Globe, 509–512; and in the report he made from the Committee of Claims, January, 1866, House of Representatives, No. 10, first session Thirty-ninth Congress. In the debate he said that the magnitude of the ravages of war were such that it would be an act of injustice to the people to heap upon the Government the liability resulting from their assumption. He added: "It would result, I think, in shaking the credit of the nation. It would place us in a condition of liability, I imagine, *vastly beyond our capacity of endurance.*"

a provision confessedly so applicable can be ubiquitous or operative in a double capacity in peace and concurrently with the laws of war, operating differently at the same time in different places, may be more difficult to conceive.

That it does admit the right of *eminent domain* is clear, but that it does not extend *such right* to the cases of property seized by *military* authority and destroyed in war, upon principles of *overruling military necessity* analogous to the "belligerent right of capture and destruction of enemy's property in enemy's country,"[99] has been often affirmed.

But there is a law of "OVERRULING NECESSITY," entirely distinct from the right of *eminent domain.*

The Constitution, as originally made, contained no provision requiring just compensation for private property taken for public use. It was silent as to that. But the principle that such compensation should be made, as Story says,

> Is founded on natural equity, and is laid down by jurists as a principle of universal law."[100]

This principle antedates the Constitution, existed when it was adopted, is not abrogated by it, and was therefore in force without the fifth amendment, which only affirms it, but makes no new law in this respect. So the law of overruling necessity antedated the Constitution, existed when it was adopted, is not abrogated by it, therefore admits it,

[99] Senator Carpenter, January 4, 1871, 82 Globe, 300. Senator Edmunds, January 5, 1871, 82 Globe, 311. Grant *vs.* United States, 1 Court of Claims, 45.

Vattel says: "No action lies against the state for losses which she has occasioned, *not willfully*, but *through necessity.*" (Ch. xv., p. 403.)

On the 11th December, 1820, the Committee of Claims of the House of Representatives made a report on a claim for *use and occupation* of houses, and damages thereto, by General Jackson's officers, and for hospitals, during the invasion of the British at New Orleans in 1814, in which it is said, referring to the demand as based on the fifth amendment to the Constitution, that "the taking of 'private property for public use' would seem to imply a *voluntary act* on the part of the Government, which in the present case could hardly be alleged." (American State Papers, Class ix, Claims, vol. 1, p. 753.)

This is possibly more doubtful than the question whether property *destroyed* as a military necessity is taken for a *use.* Such property is not *used.* *All writers* agree that the *destruction* of property *in a battle* is not a taking for *public use* within the meaning of the Constitution. Then how is a *destruction* for war purposes just before a battle a *use* of the property? It cannot be so. The Government does not *use*, but *destroys*, to prevent the enemy from using. A *destruction* of property is very different from an ordinary *taking for the public use.* This belligerent right of destruction is distinct from and should not be confounded with the right of eminent domain. It is agreed by writers that this clause of the fifth amendment recognizes and affirms the right of *eminent domain*, and that this is a peace power—"a *civil right.*"*

Undoubtedly even in time of war Congress may, by law, authorize the exercise of the right of *eminent domain* in aid of military operations. But this is a *peace power.* It operates by or in pursuance of a statute. It employs judicial process.

But the *war power* may act without statute, and in flagrant war may seize supplies where needed. But in time of peace, or in time of war, but away from the theater of war, the war power is as powerless as is the peace power in the conflict of battle.

It was in reference to this supremacy of the laws of peace over military power in time of peace that enabled Lord Chatham to illustrate the celebrated maxim of the English law, that "every man's house is his castle," by a brilliant eulogy, in which he said of it

"The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail, its roof may shake, the wind may blow through it, the storm may enter, the rain may enter, but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement."

[100] 2 Story Const., (4th ed.,) sec. 1790; 2 Kent Com., Lect. 24, pp. 275, 276, (2d ed., 339, 340;) 3 Wils. Law Lec., 203: Ware *vs.* Hylton, 3 Dallas, 194, 235; 1 Blackst. Com., 138–140; Parham *vs.* The Justices, 9 Georgia, 348.

* Grant *vs.* United States, 1 Court Claims, 45: "is a civil right;" Halleck Int. Law, 124; 6 Cranch, 145.

and has through our whole history been recognized in courts, both under national and State authority.

It is a law, too. for peace and war, and may be exercised by civil and military authorities.

And, unlike the right of *eminent domain*, whatever power is exercised in virtue of the law of overruling necessity, does not generally create a claim for compensation or damages on the citizens or Government rightfully using it in a case proper for its exercise. It is law as sacred, valid, and operative as a statute or the Constitution itself.

The exercise of the right of eminent domain admits of a discretion—the choice to condemn in pursuance of a statute one or another location for a post-office, "for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings," roads and other works for "public use." The law of necessity, the "*lex instantis*," on the contrary, admits of neither delay nor choice.

The existence of these two independent rights, and the distinction between them, is fully recognized by the authorities.

Vattel recognizes the law of necessity *in time of war* thus:

> But there are other damages caused by *inevitable necessity;* as, for instance, the destruction caused by the artillery in retaking a town from the enemy. These are merely accidents. They are misfortunes, which chance deals out to the proprietors on whom they happen to fall.[101]

The supreme court of Pennsylvania recognized this law of necessity in time of war as distinct from the civil right of *eminent domain* by saying:

> Many things are lawful in that season (*flagrante bello*) which would not be permitted in time of peace. * * * The *rights of necessity* form a part of our law.[102]

The supreme court of Georgia recognizes this same law of necessity both in peace and *war:*

> There are cases of *urgent public necessity*, which no law has anticipated, and which cannot await the action of the legislature; those who seize the property are not trespassers, and there is no relief but by petition to the legislature. * * * For example, the pulling down houses and raising bulwarks for the defense of the state against an enemy; seizing corn and other provisions, for the sustenance of an army, in time of war; or taking cotton-bags, as General Jackson did at New Orleans, to build ramparts against an invading foe.

These cases illustrate the maxim, *Salus populi suprema lex.* Plate-Glass Co. *vs.* Meredith, 4 T. R., 797; Noys' Maxims, 9 ed., 36; Dyer, 60 b; Broom's Maxims, 1; 2 Bulst., 61; 12 Coke, 13, *the Prerogative case*; id., 63; 2 Kent., 338; 1 Blackst. Com., 101, note 18, by Chitty. Extreme necessity alone can justify these cases.[103]

The supreme court of New Jersey recognize the distinction:

> It is true that by many writers of high authority, the grounds of justification of an act done for the public good and of an act committed *through necessity* are not accurately distinguished. They are both spoken of as grounded on necessity, and they doubtless are so. But the one is a *State* the other an *individual* necessity, though oftentimes resulting in a public or general good. The one is a *civil* the other a *natural* right. The one is founded on property, and is an exercise of sovereignty; the other has no connection with the one or the other.[104]

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[101] Ch. xv, p. 403. In Russell *vs.* Mayor, 2 Denio, 486, it was said: "The first case on the subject was the celebrated saltpeter case. The Government asserted the arbitrary right to provide munitions of war from private property, under pretext of overruling necessity, and all the justices sustained it. 12 Co., 12."

[102] Respublica *vs.* Sparhawk, 1 Dallas, 362, Sept., 1788.

[103] Parham *vs.* The Justices, &c., 9 Georgia, 348, the court fall into the error of referring the seizure to a *public use*, but in effect correct it so as to show it is not a "public use" within the meaning of the fifth amendment, by declaring that the taking is "without compensation, and without any provision of law for making compensation."

[104] *American Print-Works* vs. *Lawrence*, 1 Zabriskie, 258.

And again, contrasting the right of *eminent domain* with the *law of necessity*, the court say:

They are both spoken of sometimes as grounded on necessity, and they doubtless are so. But the latter stands strongly distinguished from that urgent necessity which, for immediate preservation, imperatively demands immediate action. His case who should throw up trenches upon his neighbors' land for the protection of a town from immediate hostile attack, as regards his justification, would certainly stand on a very different footing from one who, under the *authority of law*, should do the same act in order to guard the town from prospective and merely possible future harm.[105]

Again it has been said:

The right arising out of *extreme necessity* is a *natural right* older than States * * It is the right of self-defense, of self-preservation, and has no connection whatever with super-eminent right (*eminent domain*) of the State. The one [eminent domain] may be fettered by constitutional limitations; the other is beyond the reach of constitutions.[106]

There are many cases where the law of *overruling necessity* has been applied in time of peace for individual benefit.[107]

One reason for bearing in mind the clear distinction between the right of *eminent domain* and the *law of necessity* is, that where property is taken by virtue of the former, "just compensation" is to be made, while under the latter, neither individuals on common-law principles nor the Government on principles of public law incur any such liability.

The cases of individuals are numerous.

No well-considered case has determined that where a building is destroyed to arrest the progress of a fire that any liability to make compensation is thereby incurred.

The Government is not liable if by its command property is destroyed to arrest the hostile march of an enemy. This has already been shown from *reason* as applied to the Government and to those whose property may be taken.

The courts, elementary writers, and usage of Government lead to the same result.[108]

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[105] *Hale* vs. *Lawrence*, 3 Zabriskie, 605.

[106] *Grant* vs. *United States*, 1 Court Claims, 45.

[107] *American Print-Works* vs. *Lawrence*, 1 Zabriskie, 248, 3 Zabriskie, 591, 615; *Hale* vs. *Lawrence*, 1 Zabriskie, 728; *Russell* vs. *Mayor New York*, 2 Denio, 473; 82 vol. Globe, 300; *Respublica* vs. *Sparhawk*, 1 Dallas, Pa., 362.

All these cases conceded that *at common* law this law of "overruling necessity" is separate and distinct from the right of *eminent domain*, and that the exercise of the right conferred by the former creates no liability. In New York it is held, also, that a *statute* which regulates the law of overruling necessity is not an exercise of *eminent domain*, but only a regulation of the *law of necessity*. In New Jersey it was at first held that when a *statute* authorizes the destruction of property to arrest a fire, that is an exercise of the right of *eminent domain*. But this was overruled, and the doctrine of the New York court adopted. That which is not a "public use" at common law does not become so because a statutory regulation is made as to it.

[108] Respublica *vs.* Sparhawk, 1 Dallas, p. 372, Sept., 1788; 9 Georgia, 341; Wiggins *vs.* U. S., 1 Nott & H. Court Claims, 182; 2 id., 345. The doctrine of non-liability is approved in 2 Story Const., (4th ed.,) sec. 1790, note 6, saying:

"There may be cases of extreme necessity, as the pulling down of houses and raising bulwarks for the public defense, seizing private provisions for the army in time of war, when the owner has no redress. (See 9 Georgia, R. 341; Mitchell *vs.* Harmony, 13 Howard S. C. R., 115, E. H. B.) (Whether the Government is liable for the destruction of property by a naval officer in the course of hostilities, may depend upon the time and circumstances and the necessity of the act; it will generally be a question of fact. Wiggins *vs.* United States, 1 Court of Claims Report, 182.) 2 id., 345."

Whiting says:

"If one of our armies marches across a corn-field, and so destroys a growing crop, or fires a building which conceals or protects the enemy, or cuts down timber to open a passage for troops through a forest, the owner of such property has no legal claim against the Government for his losses." War-Powers, 43 ed., p. 340.

No record has been found to show that the Russian government compensated the owners of the buildings burned in Moscow to defeat the object of the invasion by Napoleon.

During the revolutionary war, in April, 1777, the Pennsylvania board of war, acting by authority of the legislature, took possession of certain provisions owned by private individuals, in Philadelphia, to prevent them falling into the hands of the enemy, then approaching that city, but with a pledge to the owners that this was not designed to divest the property in the articles, but "that the same should be liable to the order of the owners, provided they were not exposed to be taken by the enemy." They were captured by the enemy. The statute provided for payment by the State "for services performed, moneys advanced, or *articles furnished.*" The proper accounting-officer refusing to pay; the owner of the property brought suit. The supreme court of Pennsylvania held that these were *not* "articles furnished;" in other words, that the taking was *not* for "*public use;*" that the articles were taken by the law of "overruling necessity."

The syllabus of the case is:

During the war of the Revolution, Congress had a right to direct the removal of any articles that were necessary to the Continental Army, or useful to the enemy, and in danger of falling into their hands; and one whose property, so removed, was afterward captured by the enemy, was held not to be entitled to compensation from the commonwealth.[109]

Chief-Justice McKean, in delivering the unanimous opinion of the court, said:

The transaction, it must be remembered, happened *flagrante bello;* and many things are lawful in that season which would not be permitted in time of peace. The seizure of the property in question, can, indeed, only be justified under this distinction; for otherwise, it would clearly have been a *trespass;* which, from the very nature of the term, *transgressio*, imports to go beyond what is right. (5 *Bac. Abr.*, 150.) It is a rule, however, that it is better to suffer a private mischief than a public inconvenience; and the *rights of necessity* form a part of our law.

Of this principle, there are many striking illustrations. If a road be out of repair, a passenger may lawfully go through a private inclosure. (2 *Black. Com.*, 36.) So, if a man is assaulted, he may fly through another's close. (5 *Bac. Abr.*, 173.) In time of war, bulwarks may be built on private ground. (*Dyer & Brook, Trespass*, 213; 5 *Bac. Abr.*, 175.) And the reason assigned is particularly applicable to the present case, because it is for the public safety. (20 *Vin. Abr.*, trespass, B'a sec. 4, fo. 476.) Thus, also, every man may, of common right, justify the going of his servants or horses, upon the banks of navigable rivers, for towing barges, &c., to whomsoever the right of the soil belongs. (1 *Ld. Raymond*, 725.) The pursuit of foxes through another's ground is allowed, because the destruction of such animals is for the public good. (2 *Buls.*, 62; *Cro.* 1 *I*, 321.) And as the safety of the people is a law above all others, it is lawful to part affrayers in the house of another man. (*Keyl*, 46; 5 *Bac. Abr.*, 177; 20 *Vin. Abr., fo.* 407, sec. 14.) Houses may be razed to prevent the spreading of fire, because for the public good. (Dyer, 36; Reed, L. and E., 312; see Puff., lib. 2, c. 6, sec. 8; Hutch Mor. Philos., lib. 2, c. 16.) We find, indeed, a memorable instance of folly recorded in the third volume of Clarendon's History, where it is mentioned that the lord mayor of London, in 1666, when that city was on fire, would not give directions for, or consent to, the pulling down forty wooden houses, or to the removing the furniture, &c., belonging to the lawyers of the temple, then on the circuit, for fear he should be answerable for a trespass; and in consequence of this conduct half that great city was burnt. We are clearly of opinion that Congress might lawfully direct the removal of any articles that were necessary to the maintenance of the Continental Army or useful

[109] Respublica *vs.* Sparhawk, 1 Dallas, 362.

The proclamation of emancipation was declared to be "warranted by the Constitution upon military necessity." (12 Stat., 1267–1269.) It concludes thus: "And upon this act, sincerely believed to be an act of justice, warranted by the Constitution upon military necessity, I invoke the considerate judgment of mankind and the gracious favor of Almighty God."

See this subject fully discussed in Whiting's War-Powers and the authorities quoted. Unless the theory of the Constitution is correct, and but for the XIII and XIV Amendments, the Government would be bound to make compensation for slaves. But their liberation was not a taking for *public use;* it was the destruction of a private right, if so it can be called, to prevent it from giving aid and comfort to the enemy.

to the enemy and in danger of falling into their hands, for they were vested with the powers of peace and war, to which this was a natural and necessary incident. And having done it lawfully, there is nothing in the circumstances of the case which we think entitles the appellant to a compensation for the consequent loss.

This case is especially valuable. It was decided by one of the ablest courts of that period. It gives construction to what is a *public use.* It shows when a taking is referable to the *law of necessity* and when by the law of *public use.* It draws the line between these two laws. In view of that construction, the fifth amendment to the Constitution was afterward adopted, and with a knowledge that the *destruction* of private property for the purpose indicated was *not* a taking for public use, the Constitution made no provision for such case.

It was made in view of the known rule of international law on the subject, and of the impossibility of making payment, and of the fact that no nation had ever done so.[111]

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[111] In Senate Rep. 412, 3d sess. 42d Cong., it is said:

"The war of the Revolution was fought before we had any constitutional prohibition against taking private property for public use without compensation. The troops for that war were furnished by the several States. Congress did not assume the obligation of making compensation for property taken by the military authority; but it clearly recognized the principle that compensation should be made. Accordingly, in 1784, a resolution was adopted from which the following is an extract:

"'That it be referred to the several States, at their own expense, to grant such relief to their citizens, who may have been injured as aforesaid, as they may think requisite, and if it shall hereafter appear reasonable that the United States should make any allowance to any particular State, which may be burdened much beyond others, that the allowance ought to be determined by Congress.'

"In accordance with that resolution, when, in 1818, Mary Brower and others petitioned for compensation to be made to them for property burned and destroyed on Long Island by the American army on the advance of the British forces in August, 1776, the Committee on Revolutionary Claims of the House denied the prayer, not upon the ground that compensation should not be made, but upon the express ground that the sufferers ought to have appealed to the State of New York for such compensation." (American State Papers, Claims, 608.)

It is proper to notice this and to say:

1. There was of course no national constitutional prohibition against taking private property. But the principles of *Magna Charta* were in force here as fully as it adopted in the Constitution.

In Perham *vs.* The Justices, 9 Georgia R., 349, the court, referring to the provision of *Magna Charta*, that no person should be deprived of property "but by the law of the land and by judgment of his peers," said:

"This great rule of right and liberty was the law of this State at the adoption of the Constitution. It is not therefore necessary to go to the Federal Constitution for it. It came to us with the common law; it is part and parcel of our social polity; it is inherent in ours as well as every other free government. At common law the legislature can compel the use of private property, but not arbitrarily. It treats with the citizen as owner for the purchase, and while he cannot withhold it upon offer of compensation, they cannot seize it without such tender."

The authorities are collected on page 350.

And see 2 Story, Constitution, (fourth edition,) sections 1784, 1790. Story says the fifth amendment of our Constitution "is an affirmance of a great doctrine established by the common law."

2. The Senate report 412, above referred to, treats of the claim of J. Milton Best. This was for compensation for his house, destroyed at Paducah, Ky., March, 1864, by Union military authorities, "in anticipation of another attack" from the rebels—"destroyed by order of a commanding officer to save his imperilled army." It was destroyed to prevent it from falling into the hands of the enemy to be used by them. (Senate report No. 69, Forty-first Congress, second session.)

The Senate report No. 134, above referred to, asserts that the Continental Congress by resolution of [June 3] 1784, "clearly recognized the principle that compensation should be made for property taken by the military authority." That is, for property taken as was that of J. Milton Best, and under similar circumstances. It is said this "principle" is found in the resolution of 1784.

But it is clear the resolution asserts no such "principle" as *law.*

The journals of the Continental Congress show the following proceedings:

In Continental Congress June 3, 1784, the following proceedings were had:

Another case will illustrate this law of "overruling necessity" where property had been destroyed to arrest the progress of a fire, and it was claimed to be a taking for "the public use," within the meaning of the constitution of New York.[112]

The court say:

"But I apprehend that the assumption of the plaintiff, that this was a case of the exercise of the right of *eminent domain*, will prove a fallacy. I have arrived at this conclusion after a patient examination of all the authorities, and after adverting to the usual *indicia* that distinguish such a grant from the powers that are frequently granted to municipal corporations. The destruction of this property was authorized by the law of overruling necessity; it was the exercise of a natural right belonging to every individual; not conferred by law, but tacitly excepted from all human codes. The best elementary writers lay down the principle, and adjudications upon adjudications have for centuries sustained, sanctioned, and upheld it, that in a case of actual necessity, to prevent the spreading of a fire, the ravages of a pestilence, or any other great public calamity, the private property of any individual may be lawfully destroyed for the relief, protection, or safety of the many without subjecting the actors to personal responsibility for the damages which the owner has sustained. (See 2 Kent's Com., 4th ed., 338; 15 Vin., tit. Necessity, p. 8; Malevener *vs.* Spink, 1 Dyer, 36, b; 17 Wendell, 297; 18 id., 129; 20 id., 144; 25 id., 162, 163, 174; Respublica *vs.* Sparhawk, 1 Dallas,

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"On the report of a committee consisting of Mr. Spaight, Mr. Gerry, Mr. Lee, Mr. Beatty, and Mr. Sherman, to whom was referred a report of a committee, on a report of the superintendent of finance, dated the 5th of November, 1783, in answer to questions proposed by the commissioner for settling the accounts of the State of Pennsylvania with the United States," it was

"*Resolved*, That the commissioners make reasonable allowance for the use of stores, and other buildings hired for the use of the United States by persons having authority to contract for the same; but that rent be not allowed for buildings which, being abandoned by the owners, were occupied by the troops of the United States. That such compensation as the commissioner may think reasonable be made for wood, forage or other property of individuals taken by order of any proper officer, or applied to, or used for the benefit of the army of the United States, upon producing to him satisfactory evidence thereof, by the testimony of one or more disinterested witnesses.

"That, according to the laws and usages of nations, a State is not obliged to make compensation for damages done to its citizens by an enemy, or wantonly and unauthorized by its own troops; yet humanity requires that some relief should be granted to persons who, by such losses, are reduced to indigence and want; and, as the circumstances of such sufferers are best known to the State to which they belong, it is the opinion of the committee that it be referred to the several States (at their own expense) to grant such relief to their citizens, who have been injured as aforesaid, as they may think requisite; and if it shall hereafter appear reasonable that the United States should make any allowance to any particular States who may be burdened much beyond others, that the allowance ought to be determined by Congress; but that no allowance be made by the commissioners for settling accounts for any charges of that kind against the United States." (See Journals of Congress, vol. 4, from 1782 to 1788, page 443.)

Now, from these proceedings of Congress it will be seen that the *only* principle of law asserted is that "a State is not obliged to make compensation for damage done to its citizens by an enemy, or wantonly and unauthorized by its own troops."

3 The Senate report asserts that "in *accordance* with that resolution" (of the Congress of 1784) the Congress of 1818 denied the claim of Mary Brower, (similar to that of J. Milton Best,) "not upon the ground that compensation should not be made, but upon the express ground that the sufferers ought to have appealed to the State of New York for such compensation."

The report of the committee of the House on the case of Mary Brower is in American State Papers, Claims, 608, November 30, 1818. It asserts that "Congress have not made any general provision assuming to compensate and pay for claims of this description which may have originated in the revolutionary war." It refers to the resolution of the Congress of 1784, and says the claimants "ought, if they did not, to have made application to the State of New York."

But the resolution of 1784 expressly *refers to no such* case as Mary Brower's. And if it did, it only suggested that the States make compensation not as a *legal* duty, but because "humanity requires *some* relief should be granted *to persons who, by such losses, are reduced to indigence and want.*"

The States never did make such compensation. Their usage settled the *law* against such claims.

[112] Russell *vs.* The Mayor, &c., of New York, 2 Denio, 473.

357.) The latter case goes very fully into the discussion of the nature and extent of the natural right arising from pressing and inevitable necessity; and the great fire which occurred in London in 1666 is referred to, when the lord mayor of London refused to destroy about forty wooden houses, and also certain tenements occupied by lawyers, in consequence of which the fire spread and threatened the destruction of the whole city.

There are some unauthoritative dicta, and perhaps a single decided case, apparently in conflict with these views.[113]

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[113] House Rep. No. 43, 42d Cong., 3d sess.; 13 Wend., 372; Vattel, Ch. xv, p. 403; Whiting, War Powers, 15. In Grant *vs.* United States, 1 N. & H. Court Claims, 41, it was held that "the taking of private property for destruction by a military officer [in a state of war, to prevent it from falling into the hands of the enemy] is an exercise of the right of *eminent domain*." That "there is no discrimination to be made between property taken to be *used* and property taken to be *destroyed*," and that a right of action against the Government as upon an implied contract, arises in favor of the party whose property is dedestoyed.

So far as this holds that military officers by right of common military law exercised a power of *eminent domain*, it is contradicted in the same case, which declares that "*eminent domain* is a *civil* right," and it is contradicted by many reliable authorities.

If the seizure was in fact a military necessity in a state of war, the officer was not liable. Buron *vs.* Denman, 2 Exchequer, 189; Mitchell *vs.* Harmony, 13 Howard, 134.

If it was not a necessity, the act was unauthorized and the Government is not liable. (Am. State Papers, Claims, 55; 13 Howard, 115; Res. Cont. Cong., June 3, 1784, Journal, vol. 4, p. 443; Gibbons *vs.* U. S., 8 Wallace, 269.)

So far as it holds the Government liable it is contradicted by the authorities already cited. It is practically overruled in the same court by the learned Chief Justice Casey, and the court in Wiggins *vs.* United States, 1 Court Claims, 182. The case of Grant *vs.* United States goes the extreme length of declaring that a seizure for *destruction* is a taking for "public *use*." If this be so, why is not property *destroyed in a battle* taken for the *public use*? Where is the difference in principle? Yet *no writer* can be found to declare that destruction by battle is a taking for public use.

Senator Davis, of Kentucky, a conceded strict constructionist, declared that property so destroyed, even by the Union military forces, was *not taken for public use*. (In Senate, January 4, 1871; Globe, vol. 82, p. 297.)

The case of Grant *vs.* United States is in principle overruled by the able opinion of the learned Chief Justice of the Court of Claims, who, in Perrin *vs.* United States, 4 Court of Claims, 546, said of a claim for compensation for property destroyed in the bombardment of Greytown: "The claimant's case must necessarily rest upon the assumption that the bombardment and destruction of Greytown was illegal, and not justified by the law of nations." (Gibbons *vs* U. S., 8 Wallace, 269, overrules Grant's case.)

If the destruction was legal, the act was not wrong; and if not wrong, no action would lie for it. An action is only given to redress a *wrong*. No action lies for doing what is right. And it is remarkable that no lawyer has ever since brought a suit in that court on any one of the many cases since of a similar character.

Congress by act of July 4, 1864, prohibited the Court of Claims from taking jurisdiction of "any claim against the United States growing out of the destruction, or appropriation of, or damage to property by the Army or Navy engaged in the suppression of the rebellion, from the commencement to the close thereof."

It is to be presumed Congress would not deny any claim justified by the laws of nations.

In Mitchell *vs.* Harmony, 13 Howard, 134, the court said, not as authority, but on a mere *obiter dictum*, that—

"There are, without doubt, occasions in which private property may lawfully be taken possession of or destroyed to prevent it from falling into the hands of the public enemy; and also, where a military officer charged with a particular duty may impress private property into the public service or take it for public use. Unquestionably in such cases the Government is bound to make full compensation to the owner." (13 How., 134; and see numerous authorities cited *infra*.)

Unquestionably, by the law of nations, where the private property of citizens is by common international military authority impressed into the public service, it is, by *virtue of the same law*, generally to be paid for independently of any constitutional provision; but this is not at all so when property is lawfully taken to prevent it from falling into the hands of an enemy. That is an exercise of the law of overruling necessity, as has been shown.

In Russell *v.* The Mayor, &c., 2 Denio, 484, it was said by one of the judges that—

"A vessel may in time of war be taken from the owner, when the interests of the public demand it, or it may be destroyed to prevent its falling into the hands of an

The Judge-Advocate General held in the case of a claim for the value of certain buildings, with their contents, burned by Union troops in West Virginia, a loyal State, in January, 1863, by way of a *ruse* to deceive and divert the enemy, a legitimate act of ordinary warfare, that the loss incurred was one of those accidents of war for which the Government does not become liable to individuals.[114]

The opinions of elementary writers has not been entirely uniform.

Grotius seems to assert that the government is not liable to make compensation, by saying:

> This also may be constituted by the civil law, that no action may be brought against such a city for damages by war, in order to make every man more careful to defend his own.[115]

Vattel admits the law of overruling necessity by saying:

> But there are other damages caused by inevitable necessity; as, for instance, the destruction caused by the artillery in retaking a town from the enemy. These are merely accidents. They are misfortunes, which chance deals out to the proprietors on whom they happen to fall. [116]

But he differs with Grotius, by saying:

> Of the damages done by the state or the sovereign, some are done deliberately and by way of precaution, as when a field, a house, or a garden belonging to a private person is taken for the purpose of erecting on the spot a town, a rampart, or any other piece of fortification, or when his standing corn or store-houses are destroyed to prevent their being of use to the enemy. Such damages are to be made good to the individual, who should bear only his quota of the loss.

In the edition of 1872 there is a note to this, as follows:

> It is legal to take possession of these for the benefit of the community, and no action lies, that is, no claim for compensation, nor is any recoverable, unless given by act of Parliament. (4 Term. R., 382.)

And he says:

> No action—claim for damages—lies against the state for misfortunes of this nature for losses which she has occasioned, not *wilfully, but through necessity*, and by mere accident, in the exertion of her rights.

The principle here stated applies to the *necessary destruction* of property to prevent it from falling into an enemy's hands, when his approach is imminent.

Notwithstanding anything elsewhere said, the right to compensation finds no sanction by the usage of the Government.

During the revolutionary war, property was often destroyed to prevent it from falling into the hands of the enemy.

It was determined by the courts in Pennsylvania that in such cases there was no claim for redress.

Congress never made provision for paying any such claims.[117]

The States made no such compensation.

During the war of 1812 with Great Britain, property was destroyed by the military authorities of the United States to prevent it from falling into the hands of the enemy. But no general provision was made by act of Congress for paying for such loss. [118]

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enemy, and thereby increase its power of aggression or resistance, and the owner would be entitled upon this principle of the Constitution to be paid a just compensation. In these cases private property is taken for public use. The right of *eminent domain* is here asserted."

This is merely *obiter*, and the same remarks apply as to the cases above noticed.

[114] See Opinions of Judge-Advocate General, vol. 26, p. 242. See Digest of Opinions of Judge-Advocate General from September, 1862, to July, 1868, (3d ed.,) p. 93.

[115] Book 3, ch. xx, sec. 8.

[116] ch. xv, p. 402.

[117] See American State Papers, class ix, vol. 1, Claims, *passim*.

Congress did, by act of April 9, 1816, provide for paying for horses killed while in service, and for paying—

Any person who * * sustained damage by the destruction of his or her house or building by the enemy while the same was occupied as a military *deposite* under the authority of an officer or agent of the United States.[119]

So the act of 3 March, 1849, (ch. 129, sec. 2,) and March 3, 1863, (ch. 78, sec. 5,) provided compensation for the loss or destruction of property in the service by impressment or contract. (Scott's Digest, Military Laws, 1873, p. 112, sec. 115, 116.) And the act of June 25, 1864, (13 Stat. at L., p. 182,) secures compensation to any officer, non-commissioned officer, or private, during the rebellion, who surrendered horses to the enemy by order of superior officer.

But this was, by act of March 8, 1817, limited to—

Houses or buildings occupied as a place of deposit for military or naval stores, or as barracks for military forces of the United States.[120]

But it was said by a committee of Congress that so far as this related to houses destroyed by the enemy it was enacted by Congress as—

A law originating in *its benignity* and aimed gratuitously for the benefit of a suffering portion of the community.[121]

They declared it—

A law originating in the benign and charitable disposition of the Government.

The original act barred all claims not exhibited within two years from its date, and Congress refused to extend the time.

But claims for compensation for property destroyed to prevent it from falling into the hands of the enemy are so rare as to show them entirely exceptional.[122]

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[119] 3 Stat. at L., p. 263, sec. 9 ; 3 Stat. at L., p. 397, sec. 1.

[121] American State Papers, class ix, vol. 1, Claims, 590. See letter No. 150 of Secretary of War to House of Representatives, February 20, 1818, in Ex. Doc., vol 4, for 1817–'18, 1st sess. 15th Congress.

[122] William H. Washington was paid for a house blown up in August, 1814, by order of our military officers. (6 Stat. at L., 151; American State Papers, Claims, 446.) But this was a case which came within the principle of the act of April 9, 1816. The Government placed stores in the house and blew up the house to destroy the stores, to prevent them from falling into the hands of the enemy.

On February 5, 1817, a report was made to the House of Representatives recommending the payment of a precisely similar claim for damages done at Valley Forge in 1777, but Congress did not give the relief. (Claims, vol. 1, p. 522.)

So a rope-walk, destroyed September, 1814, at Baltimore, to prevent it from falling into the hands of the enemy, was paid for, but this is clearly exceptional. (Am St. Papers, Claims, 444; 6 Stat. at L., p. 150.)

A report made February 14, 1816, states a liberal view, by saying "that indemnity is due to all those whose losses have arisen from the acts of our own Government, or those acting under its authority, while losses produced by the conduct of the enemy are to be classed among the unavoidable calamities of war, and do not entitle the sufferers to indemnification by the Government." (Claims, vol. 1, 462; Sumner's speech, 71 Globe, 301, January 12, 1869.)

But a very different *rule of law* was subsequently stated by a committee, December 11, 1820, (Claims, vol. —, 752,) as to property taken at New Orleans. The report says: "There have been thousands of instances during the late war * * * where the loss to the owners can be traced, directly or indirectly, to the acts of the Government. * * * There are no *known rules* or established usages of the Government which would seem to authorize an allowance in a case thus involved in obscurity."

Mr. Sumner, in an elaborate and masterly speech in the Senate, January 12, 1869, (71 Globe, 300,) gives a summary, thus:

"After the battle of New Orleans, the question was presented repeatedly. In one case a claim for "a quantity of fencing," used as fuel by troops of General Jackson, was paid by Congress; so also was a claim for damages to a plantation 'upon which public works for the defense of the country were erected;' also a claim for 'an elegant and well-furnished house,' which afforded shelter to the British army, and was, therefore, fired on with hot shot; also a claim for damage to a house and plantation on which a battery was erected by our troops." (American State Papers, Claims, p. 521.)

The usage of the Government during and since the rebellion is a clear denial of all liability in this class of cases.

No general provision has been made for paying them. This undoubtedly would have been done if there had been any admitted liability.

On the contrary, Congress, while providing for the payment of quartermaster's and commissary supplies taken *in the loyal States*, by the act of July 4, 1864, has made a provision *applicable everywhere :*

> That the jurisdiction of the Court of Claims shall not extend to or include any claim against the United States growing out of the destruction or appropriation of or damage to property by the Army or Navy, or any part of the Army or Navy engaged in the suppression of the rebellion, from the commencement to the close thereof.

Even where provision has been made for special reasons in exceptional cases, the policy of this has generally been denied by the executive branch of the Government, and the broad rule of international law contained in the act of 1864 has been re-asserted by the President.[123]

Where compensation has been made it has been for exceptional reasons.[124]

The rule of law as stated is that recognized by the Executive branch of the Government. The President, in his message of February 12, 1873, says, in relation to the Kentucky salt-works destroyed by order of General Craft, commanding Union military forces:

> I understand him to say, in effect, that the salt-works were captured from the rebels, that it was impracticable to hold them, and that they were demolished so as to be of no further use to the enemy.
>
> I cannot agree that the owners of property destroyed under such circumstances are

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"There was also another case where Congress seems to have acted on a different principle. On the landing of the enemy near New Orleans, the levee was cut, in order to annoy him. As a consequence the plantation of the claimant was inundated, and suffered damages estimated at $19,250. But the claim was rejected on the ground that 'the injury was done in the necessary operations of war.'" (Ibid., p. 835.)

[123] See veto messages of June 1, 1872; Senate Ex. Doc. 8, 2d sess., 42d Cong., act for relief of J. Milton Best; June 7, 1872, Senate Ex. Doc. 86, 2d sess., 42d Cong., act for relief of Thomas B. Wallace; January 31, 1873, Senate Ex. Doc. 33, 3d sess., 42d Cong., act for relief of East Tennessee University; February 12, 1873, Senate Ex. Doc. 42, 3d sess. 42d Cong., bill for relief for destruction of Manchester, Ky., Salt Works.

On the 27th November, 1864, General Sheridan issued an order, which was executed, to destroy all "forage and subsistence, burn all barns, mills, and their contents, and drive off all stock in Loudoun County, Va." (See Senate Report, No. 80, second session Forty-second Congress, Court of Claims.) The stock was used by the Army, in part, and the residue driven into Pennsylvania and sold, and the proceeds paid into the Treasury. Much of the property so used or destroyed belonged to men whose loyalty had never been questioned, many of them members of the Society of Friends. The Senate committee reported in favor of paying not only for property of loyal citizens so destroyed, but for cattle and supplies so used and sold. Congress, by act of January 23, 1873, authorized payment to "loyal citizens of Loudoun County, Va., for their live-stock partly slaughtered and used and partly sold, and the proceeds paid into the Treasury." (17 Stat., 713.) The House refused to pass any bill to pay for property destroyed.

[124] *Claim of Josiah O. Armes.*—Act of January 31, 1867, provides for paying $9,500 "in consequence of the burning of his buildings at Annandale, Fairfax County, Va., by United States troops." (See 14 Stat., page 617; see, also, Senate Report No. 112, second session Thirty-ninth Congress; also, vol. 62, pages 758, 759, second session Thirty-ninth Congress.) The report shows that the house was burned "to prevent its being used by the enemy as a stronghold." For House proceedings and debates in Thirty-eighth Congress, see Globe, vol. 50, pages 313, 758, 759; vol. 51, pages 1286, 2388. For Senate proceedings and debates, see Globe, vol. 54, page 547; vol. 55, pages 1273, 1274, 1275, 1388. For Senate proceedings and debates in Thirty-ninth Congress, see vol. 56, pages 7, 134, 147, 162; vol. 60, page 3873. For House proceedings and debates, see Globe, vol. 56, page 148; vol. 60, page 3907; vol. 61, pages 414, 755, 758, 759, 760, 761.

But this case is exceptional, and seems to have been a reward made in consideration that "Armes was of service to our troops in giving information of the movement and situation of the rebels," and that his wife "came in one dark night *at the risk of her life*" to give information to the Union military authorities.

entitled to compensation therefor from the United States. Whatever other view may be taken of the subject, it is incontrovertible that these salt-works were destroyed by the Union Army while engaged in regular military operations, and that the sole object of their destruction was to weaken, cripple, or defeat the armies of the so-called southern confederacy.

I am greatly apprehensive that the allowance of this claim could and would be construed into the recognition of a principle binding the United States to pay for all property which their military forces destroyed in the late war for the Union. No liability by the Government to pay for property destroyed by the Union forces in conducting a battle or siege has yet been claimed; but the precedent proposed by this bill leads directly and strongly in that direction; for it is difficult upon any ground of reason or justice to distinguish between a case of that kind and the one under consideration. Had General Craft and his command destroyed the salt-works by shelling out the enemy found in their actual occupancy, the case would not have been different in principle from the one presented in this bill. What possible difference can it make in the rights of owners or the obligations of the Government, whether the destruction was in driving the enemy out, or in keeping them out, of the possession of the salt-works?

This bill does not present a case where private property is taken for public use, in any sense of the Constitution. It was not taken from the owners, but from the enemy; and it was not then used by the Government, but destroyed. Its destruction was one of the casualties of war; and though not happening in actual conflict, was perhaps as disastrous to the rebels as would have been a victory in battle.

Owners of property destroyed to prevent the spread of a conflagration, as a general rule, are not entitled to compensation therefor; and, for reasons equally strong, the necessary destruction of property found in the hands of the public enemy, and constituting a part of their military supplies, does not entitle the owner to indemnity from the Government for damages to him in that way.[125]

PAR T IV.

CLAIMS OF ALIENS—INTERNATIONAL-LAW COURT.

The President, in his last annual message, said to Congress:

I recommend legislation to create a special court, to consist of three judges, who shall be empowered to hear and determine all claims of aliens upon the United States arising out of acts committed against their persons or property during the insurrection. The recent reference under the treaty of Washington was confined to claims of British subjects arising during the period named in the treaty; but it is understood that there are other British claims of a similar nature arising after the 9th of April, 1865, and it is known that other claims of a like nature are advanced by citizens or subjects of other powers. It is desirable to have these claims also examined and disposed of.

There are many reasons why such a court should be created. Almost from the foundation of the Government mixed commissions have been

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[125] Veto message February 12, 1873, Senate Ex. Doc. 42, 3d sess. 42d Congress.

Claim of Dr. J. Milton Best, of Paducah, Ky. Claim for compensation for his dwelling-house, taken by United States military authority, and destroyed by order of United States officer as a military necessity, March 26, 1862.

Forty-first Congress, Senate proceedings and debates, for which see Globe, vol. 82, pp. 97, 98, 99, 100, 101, 165, 166, 167, 168, 169, 295 296, 297, 298, 299, 300, 301, 302, 303, 304, 311, 312,, 313, 314, 315, 316, 317, 318, 319.

See Senate Rep. No. 69, 2d sess. 41st Cong. For House proceedings and debates see vol. 84, p. 1934.

Senate proceedings and debates for 42d Cong. See Globe, vol. 89, pp. 2252, 2253, (April 8, 1872;) vol. 91, pp. 4156, 4157, (June 1, 1872.) See, also, Senate Rep. No. 9, 2d sess. 42d Cong.

For House proceedings and debates see Globe, vol. 91, pp. 3621, 3622, 3623, 3624. See veto message, June 1, 1872, Senate Ex. Doc. 85, 2d sess. 42d Cong.

Kentucky salt-works. Claim for indemnity by reason of destruction of salt-works near Manchester, Ky., by order of Major-General Buell as a military necessity.

For Senate proceedings and debates see Globe, vol. 89, pp. 2258, 2259, 2d sess. 42d Cong., (April 8, 1872;) also Globe, vol. 93, p. 1288, (February 12, 1873;) Senate Rep. 50, 2d sess. 42d Cong.

For House proceedings and debates see Globe, vol. 93, pp. 694, 695, 696, 697, (January 18, 1873.)

See veto message, Senate Ex. Doc. 42, 3d sess. 42d Cong.

created, by diplomatic arrangements, to make awards on the claims of our citizens against other nations, and those of subjects of other powers against this nation. The result shows a necessity for a permanent court. If a time shall ever come when such court is no longer needed, it can then be abolished, if it shall now be created.

The rapidly increasing population and commerce of the United States, and the multiplied means of and necessity for intercourse with foreign nations, must necessarily add to the number and magnitude of claims and questions arising on international law.

While the awards of these commissions have been valuable in many respects, they have not resulted in giving to the world a well-defined and authoritative system or uniform rules of international law. Their decisions have sometimes been contradictory in principle.

A court specially organized with a view to pass upon questions of international law would secure a degree of learning and uniformity scarcely attainable by temporary commissions composed of different persons selected for an occasion.

Heretofore the awards of these commissions have been final.

If a court is established, from whose decision an appeal may be taken to the Supreme Court of the United States, the great learning and ability of that court will aid in securing a settled system of international law which will not reach it in any other mode. A court will also be more economical than the plan of a mixed commission.[126]

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[126] TREASURY DEPARTMENT,
Washington, D. C., February 14, 1874.

SIR: Referring to your letter of the 19th ultimo, I transmit herewith an amended statement of the expenses of the several commissions held during the last ten years, showing the total expenditures to the close of the last fiscal year, the detailed items of expenditure, the annual expenditure, and the salaries of the principal officers.

I am, very respectfully,

F. A. SAWYER,
Assistant Secretary.

Hon. WM. LAWRENCE,
House of Representatives.

	Expenditures in detail.	Total expenditures.	Annual expenditures for the fiscal year ending—		Salaries.	
Salaries and expenses of the United States and Spanish claims commission from July 1, 1871, to June 30, 1873.						
Salary of advocate	$2,780 55		June 30, 1872	$12,647 35	Advocate	*$5,000
Salary of secretary, ($5 per diem)	3,860 00		June 30, 1873	16,451 19	Secretary	†5
Salary of counsel	3,043 50				Counsel	*5,000
Salary of arbitrator	10,810 44				Arbitrator	*5,000
Salaries of messenger and porters	1,300 00				Messenger	*300
Copying and translating	715 25					
Contingent expenses, including freight, postage, stationery, &c	6,588 80					
		$29,098 54		29,098 54		
Commission for the settlement of claims of the United States against the United States of Colombia, from September 18, 1865, to October 10, 1866.						
Salary of Thomas Biddle, commissioner	2,500 00		June 30, 1865	12,953 42	Commiss'ner	‡2,500
Salary of Charles W. Davis, sec'y	10,453 42		June 30, 1867	1,000 00	Secretary	‡2,000
Salary of G. Dean, counsel	1,000 00					
		13,953 42		13,953 42		

*Per annum. †Per diem. ‡In full for services.

The whole subject of the necessity and value of such a court has been fully considered by the learned and able Secretary of State, whose enlightened labors have added so much lustre to our diplomatic history. His conclusions on this subject are submitted herewith.[127]

It cannot be doubted that such a court would be a great agency for good in preserving a good understanding between nations and in securing the relations of peace.[128]

	Expenditures in detail.	Total expenditures.	Annual expenditures for the fiscal year ending—		Salaries.
Expenses of carrying into effect the convention with the republic of Venezuela, from October 26, 1867, to October 6, 1868.					
Salary of J. W. Macado, umpire	$1,500 00		June 30, 1869	$4,193 42	Commiss'ner ‡2,500
Salary of D. M. Talmage, commissioner	2,693 42				Umpire §1,500
		$4,193 42		4,193 42	
Compensation of commissioner, and contingent expenses of the commission, to adjust claims of citizens of the United States against New Granada and Costa Rica, from November 7, 1865, to January 30, 1867.					
Allowance to John Lewis, heir at law of Moses Lewis, killed at Panama	5,406 15		June 30, 1866	5,406 15	
Allowance by commissioners	1,588 66		June 30, 1867	3,088 66	Umpire §$1,500
Moiety paid by the United States as compensation to umpire to New Granada	1,500 00				
		8,494 81		8,494 81	
Commission on the part of the United States to carry into effect the treaty, &c., between the United States and Hudson Bay and Puget Sound Agricultural Company.					
Salary of counsel from January 1, 1865, to November 30, 1869, and expenses	19,178 21		June 30, 1865	7,570 00	Commiss'ner*$5,000
Salary of clerk (same date) and expenses	12,656 00		June 30, 1866	9,872 70	Counsel ‡2,500
Witness and other fees	10,979 63		June 30, 1867	20,333 00	Clerk ‡2,500
Messengers and porters	3,247 00		June 30, 1868	18,667 18	
Copying	793 40		June 30, 1869	9,452 79	
Contingent expenses	20,109 27		June 30, 1870	8,526 20	
		66,963 51			
Amount for which no vouchers have been rendered, and with which the parties stand charged		7,458 36			
Total amount expended		74,421 87		74,421 87	
Salaries and expenses of the mixed commission on American and British claims, from April 17, 1871, to June 30, 1873.					
Salary and expenses of E. R. Hoar, commissioner	6,000 00		June 30, 1871	20,000 00	2 commiss'rs. ‡6,000

* Per annum. † Per diem. ‡ In full for services. § Moity paid by United States.

[127] For these, see Appendix C.

[128] See note 2, *ante*. The proposed court would have jurisdiction over many subjects not now within the jurisdiction of the Court of Claims.

And see article in the (Boston) American Law Review, July, 1867, vol. 1, pp. 655, 657

Two bills are herewith submitted, which, with the acts in force authorizing the allowance and payment of claims in the several Departments of the Government,[129] will, it is believed, make a much-needed, proper and adequate provision for all classes of claims against the Government.

The section of one of these bills which proposes to authorize the commissioners of claims to investigate claims presented to either House of Congress, and referred by such House to the commissioners, is deemed very important. These commissioners have the means of procuring evidence for the Government. Their reports show how successfully they have defeated many fraudulent or improper claims. Committees of Congress generally act on mere *ex-parte* evidence, produced by the claimants. This is dangerous in the highest degree, and should only be tolerated in perfectly clear cases. There are such cases arising on record evidence, or where the facts are few, simple, and authenticated beyond reasonable doubt.

	Expenditures in detail.	Total expenditures.	Annual expenditures for the fiscal year ending—		Salaries.
Salary and expenses of G. H. Williams, commissioner	$6,000 00		June 30, 1872	$56,493 13	1 commiss'rs. Exp's.
Expenses of Samuel Nelson, commissioner	1,440 00		June 30, 1873	197,179 81	Agt. & couns'l †10,000
Salary and expenses of R. S. Hale, agent and consel	6,083 23				1 commiss'r . †10,000
Salary and expenses of James S. Frazer, commissioner, from July 29, 1871, to June 30, 1873	20,117 87				Secretary... †3,000
Salary of T. C. Cox, secretary, from October 1, 1871, to June 30, 1873	5,032 61				
Contingent expenses, including messengers, furniture, refreshments, stationery, clerk-hire, printing, newspapers, carpets, telegraphing, labor, &c	132,631 84				
Legal services, witness fees, and pay of stenographer	4,312 60				
		$181,618 15			
Amount for which no vouchers have been rendered, and with which the parties stand charged		92,054 79			
Total amount expended		273,672 94		273,672 94	
Expenses of American and Mexican commission, from July 1, 1869, to June 30, 1873.					
Salary of George H. Gaither, secretary	1,801 76		June 30, 1870	20,981 03	Commiss'ner †$4,500
Salary of R. Coyle, secretary	9,193 74		June 30, 1871	27,048 65	Umpire..... †3,000
Pay of clerks, messengers, and porters	22,448 90		June 30, 1872	28,381 45	Agent ..... †4,000 Secretary... †2,500
Contingent expenses, rent, fuel, stationery, &c	19,938 69		June 30, 1873	20,212 20	Asst. to agent †3,000 2 clerks..... ‖1,400
		53,383 09			2 translators ‖1,500
Amount for which no vouchers have been rendered, and with which the parties stand charged		43,240 24			1 messenger †600 1 assist.mess †300
Total amount expended		96,623 33		96,623 33	

*In full for services and expenses. †Per annum. ‡Each, for salary and expenses. ‖ Each per annum.

[129]See Scott's Digest of Military Laws, pp. 26, 123, 125, 133, 135.

When reports are made by the commissioners, their conclusions of law and fact, with the evidence reported, will furnish the means of a review, which might be had before a properly-authorized tribunal, and this should generally, doubtless, be regarded as final. It will preserve the evidence, also, against as well as for claims.

Without this, claims may, as they have done, come to Congress year after year, and a rejection often leads to the renewal of a claim, with evidence to meet any view of it; and there is danger that, when the means of procuring evidence for the Government is lost, unjust claims may finally succeed.

If the general principles or purpose of the foregoing pages shall be approved, it only remains:

First. To reject the claims now before the Committee of War-Claims for which the Government is not liable by any act of Congress or rule of international law.

Second. To provide for the payment of those which are just and clearly proved.

Third. To refer to the commissioners of claims those where there is, prima facie, a legal claim, where the facts are complicated or doubtful, or require an investigation which the committee cannot give; and

Fourth. As soon as practicable, *when the public finances will admit, as an act of grace and favor,* consider the claims to some measure of recompense of strictly loyal and meritorious citizens, guilty of no omission of duty, whose necessities may commend them to sympathy, or for whom special merit may demand gratitude, and who have suffered losses from the enemy in consequence of their loyalty, or from the Government as an imperative military necessity.

But those who inaugurated and urged rebellion and continued disloyal including corporations and associations of whatever character controled by disloyal men and in the interest of rebellion have no claim to any mitigation of the rules of international law which exempt the Government from liability. Concessions in their favor would be a violation of law, would tax loyal men without reason or justice, would obliterate the distinctions between the demands of merit and the deserts of those who have no just right to expect rewards for duties violated. Humanity, reason, and justice will sanction free and full amnesty. The past of the rebellion should be forgiven, and it should be forgotten, save only as it may serve to preserve peace and secure duty in the future, and even its memories should be, "with malice toward none and charity for all."[130]

Respectfully submitted.

WM. LAWRENCE,
Chairman Committee.

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[130] There are now before the Committee on War-Claims of the House of Representatives about eight hundred claims. Some of these claims, however, propose relief to numerous persons. The clerk of the Committee has made an estimate of claims, as follows:

Amount (estimated) of claims of the following classes pending before committees of the House of Representatives of the 43d Congress, March 1, 1874:

Quartermaster's and commissary stores	$1,000,000
Tobacco	400,000
Cotton	1,500,000
Steamboats, barges, &c., use of and damages	600,000
Use of railroads and damages to same	2,000,000
Rents and use of, and damage to, real estate (rebel States)	2,500,000
Rents and use of, and damage to, real estate (loyal States)	500,000
	8,500,000

From the best examination we have been able to give to the foregoing report, we concur in the positions assumed as to the legal liability of the Government in the several classes of cases therein discussed; but we reserve the right to consider individual cases of peculiar and exceptional merit without embarrassment, notwithstanding such concurrence.

We instruct the chairman to make the report, and to report the bill relating to commissioners of claims, and for other purposes.

DAVID B. MELLISH.
I. W. SCUDDER.
A. HERR SMITH.
G. W. HAZELTON.
JAMES WILSON.
W. S. HOLMAN.

The two bills recommended for favorable consideration are as follows:

A BILL relating to commissioners of claims, and for other purposes.[131]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time within which petitions for the allowance of claims may be presented to the commissioners of claims be, and hereby is, extended to the third day of March, eighteen hundred and seventy-five, in all cases where a sufficient reason is shown, to the satisfaction of said commissioners, for the failure to present such petition within the time prescribed by law; and that all claims within the jurisdiction of the commissioners of claims which shall not be filed in their office on or before the third day of March, eighteen hundred and seventy-five, shall be, and hereby are, forever barred, and the commissioners shall not examine the same.

Property taken, occupied, and destroyed by the United States as a military necessity in the rebel States	$5,000,000
Property taken, occupied, and destroyed by the United States as a military necessity in the loyal States	2,000,000
Property destroyed by enemy on account of military occupation by the United States	5,000,000
Property captured by enemy while in possession or employ of the United States	300,000
Claims of officers, soldiers, &c., for additional pay, bounty, &c	200,000
	16,500,000

Many of these are doubtless test-claims—that is, they are presented, and, if successful, others of like character will follow when once Congress shall be committed to the payment of any particular class.

The claim of J. Milton Best has been before Congress some years. Its success would secure, on the same principle, the payment of other claims arising at the same place, called "the Paducah claims," only recently presented, to the amount of $300,000. And claims of like character would arise from very many localities, amounting to very many millions. And the same may be said of other classes of claims.

In addition to these, there are before the Commitee on War-Claims the allowed and rejected claims reported to the House by the commissioners of claims, and referred to the committee. But it will be seen the claims from Pennsylvania and Ohio alone for damages done by the enemy largely exceed the estimate for all the loyal States. The real damages done in all the loyal States by the enemy during the rebellion could not be compensated, probably, by $50,000,000, or possibly $100,000,000. There are also before the Senate Committee on Claims a very large number of claims involving large sums of money.

[131] As to most of the provisions of this bill, see House Report No. 91, 1st session 43d Congress, February 9, 1874.

SEC. 2. That every petition or memorial for the allowance of a claim shall contain a statement by items of the several amounts claimed on account of the matters set forth in such petition or memorial, and the aggregate amount so claimed shall not thereafter be increased for any cause. Every such petition or memorial shall also contain an explicit statement of any payments already made by or in behalf of the United States on account of property taken, furnished, or used by the forces of the United States during the late rebellion, and a declaration that the said petition or memorial embraces every just item and cause of claim against the United States for property so taken, furnished, or used.

SEC. 3. That, in lieu of the three agents now provided by law, the said commissioners shall be authorized to employ five agents to investigate and report upon claims; and the said agents shall have power to administer oaths and take depositions. And in addition to the clerks now authorized by law, the said commissioners may employ three clerks at a salary not exceeding one thousand eight hundred dollars per annum each.

SEC. 4. That whenever the commissioners are satisfied that a claim is fraudulent in whole or in part, or that the claimant is corruptly attempting to procure, by fraud, false evidence, or collusion, the allowance of a claim, in whole or in part, it shall be their duty to disallow the entire claim.[132]

SEC. 5. That every person who knowingly and willfully swears falsely in any oath or affidavit which is or may be authorized by law, or in any oath taken or affidavit made, to be used as evidence in any court, or before any officer or person acting under the authority of the Constitution or law, shall be deemed guilty of perjury, and shall be punished by fine, not more than two thousand dollars, or imprisonment at hard labor, no more than five years, or both, in the discretion of the court. And in every case where such oath or affidavit is subscribed by the person making the same, proof of such fact shall be sufficient evidence of the official authority of the person before whom the same purports to be made or taken to administer and certify said oath or affidavit.

SEC. 6. That every person who procures, or endeavors to procure, or counsels or advises, another to commit perjury, shall be punishable as if guilty of perjury.

SEC. 7. That any claim within the jurisdiction of the commissioners of claims, as prescribed by law, now pending and undetermined in any Department of the Government, may be presented by the claimant to said commissioners at any time before the third day of March, eighteen hundred and seventy-five, and said commissioners shall have exclusive jurisdiction to hear and determine the same; and they shall receive, examine, and consider the justice and validity of such claims, and make report thereon as required by the laws prescribing their duties. Said commissioners shall receive the evidence on file in any Department in support of or against any claim, with such other evidence as they may procure or deem proper.

SEC. 8. That the commisioners of claims shall receive, examine, and consider the justice and validity of such claims as may be referred to them by either House of Congress, upon the recommendation of a standing committee, or by the head of any Department of the Government, in which there may be filed or presented for settlement, in pursuance of law, any claim against the United States, the justice

[132] As to criminal liability for making fraudulent claims on the Government, see act 2 March, 1863, ch. 67, 12 Stat. 696, secs. 1–3; act 2 March, 1867, ch. 169, 14 Stat., 484, sec. 30; Scott's Analytical Digest Military Laws, sec. 78.

or validity of which he may regard as doubtful, or which the interests of the United States may require to be more fully examined than the law otherwise authorizes; and said commissioners shall make report of their proceedings, and of each claim considered by them, with the evidence in relation thereto, and their conclusions of law and fact thereon, at the commencement of each session of Congress, to the Speaker of the House of Representatives, who shall lay the same before said House.

SEC. 9. It shall be the duty of the commissioners of claims to receive, up to the third day of March, 1875, the claims of citizens of the United States, not within the jurisdiction of the Court of Claims, arising during the rebellion out of express contracts duly authorized, and claims arising from the violation of rights of property entitled to protection by any duly-authorized military proclamation or military safeguard promising protection of property, [and claims for any violation of rights of property in those portions of the States proclaimed as in insurrection, afterward permanently occupied by Union military forces, where rebellion had ceased, was not renewed, and was no longer probable in favor of citizens who did not thereafter engage in, aid, or encourage rebellion, but in such places necessary subjection to military government shall not be deemed a violation of any right of property,] and said commissioners shall consider the justice and validity of such claims, and make report, as herein provided as to other claims, but no claim shall be deemed valid unless the Government is liable therefor by act of Congress, or upon principles of international law.

SEC. 10. That the President of the United States be, and is hereby, authorized to nominate, and by and with the advice and consent of the Senate, to appoint, in addition to the commissioners of claims now authorized, two commissioners of claims, who shall continue in office until the 10th day of March, 1877, with like power and duties as the commissioners of claims now in office. Any two commissioners, with the approval of the president of the board of commissioners, shall be competent to make a report, and the president of the board shall assign to the commissioners the claims, to be by them examined, considered, and reported on.

SEC. 11. That any officer of the Government whose duty it is to audit, settle, or allow any account or claim against the United States shall not audit, settle, or allow any account or claim unless the same shall be filed in the proper department within six years after it accrued; and no evidence in support thereof shall be received later than seven years from the time it accrued. Nothing in this section shall extend the time now limited by any law for presenting any account or claim.[133]

SEC. 12. That the provisions of an act to prevent and punish frauds upon the Government of the United States, approved March 2, 1863, are extended and made applicable to a time of peace, and to persons who shall make, or cause to be made or presented to the commissioners of claims, or to either House of Congress, any claim upon or against the Government of the United States, or any Department or officer thereof, or any evidence in support thereof; and if any person shall fraudulently withdraw or abstract from the files of said commissioners, or from the files of either House of Congress, or of any committee thereof, any document or evidence, every person so offending shall suffer the penalties and be liable to punishment as in said act provided.

Sec. 13. Every petition presented to either House of Congress for the payment of claims may be verified by oath or affidavit.

[133] See Scott's Analytical Digest Military Laws, sec. 123, note 81.

A BILL to establish a Court of Alien and War-Claims.[133a]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of providing a tribunal to hear and determine the claims of citizens of the United States and aliens against the United States for compensation for alleged torts suffered through the acts of persons for whose doings it may be asserted that the United States should be held responsible, there shall be established in the city of Washington a court to be called "The Court of Alien and War-Claims," to consist of three judges, with power to hear and determine all claims on the part of citizens of the United States, who during the rebellion were not citizens of any State[134] proclaimed in rebellion, and who remained loyal to the Government of the United States, or corporations under the authority of and located in any State not proclaimed in rebellion, or citizens or subjects or corporations of any foreign power, upon the United States, arising out of acts committed against the persons or property of such citizens or subjects during a period of recognized war between the United States and a belligerent not the sovereign of the claimant or claimants, which may be brought before it, as hereinafter provided. The said court shall consist of a chief justice and of two associate justices, to be appointed by the President, by and with the advice and consent of the Senate, and to hold office during good behavior. Any two of the justices of the court hereby established shall constitute a quorum, and may hold a court for the transaction of business. The compensation of the members of the said court shall be as follows: For the chief justice, for the term during which the court is actually occupied in the transaction of business, including adjournments, at the rate of thousand dollars a year; and for the associate justices for such period, at the rate of thousand dollars a year. The compensation shall cease when such term ceases, as hereinafter provided, and shall be revived whenever said court shall be again continued by order of the President, and shall then, and in each case, be convened for such time as said court may be occupied in determining the matters for which it may be convened.

SEC. 2. That the first meeting of the said court shall be held on the first Monday of December next, (which shall be the commencement of the first term,) for the purpose of hearing and determining all claims which may be brought before it on the part of said corporations, citizens of the United States, or citizens or subjects of any foreign power, against the United States, arising out of acts committed against the persons or properties of such claimants during the period which intervened between the commencement and the close of the late rebellion, except such claims as are barred by the provisions of the treaty of the eighth of May, eighteen hundred and seventy-one, between Her Britannic Majesty and the United States. It shall be lawful to present said claims, which are to be submitted to the adjudication of said court, up to and including the thirty-first day of December, which will be in the year eighteen hundred and seventy-five, but not later; all claims so presented must be adjudicated and determined by the said court before the first day of January, which will be in the year eighteen hundred and

[133a] The Commissioners of Claims have no jurisdiction over alien claims of any kind. The Court of Claims has no jurisdiction of *torts*.

[134] Provision is made for allowing claims for military supplies by act March 3, 1871, to loyal citizens of *rebel States*, but not in favor of such citizens in loyal States. See House Ex. Doc. No. 121, 1st sess. 43d Cong. Alien claims are not within the jurisdiction of the Commissioners of Claims.

seventy-eight, and the close and determination of such adjudications, and the final adjournment of the court, shall be regarded as the close of the first term. Thereafter the said court may be again convened at the pleasure of the President, as there may be occasion for its services. It shall, in term time, have authority to establish rules and regulations for its government not inconsistent with the provisions of this act; to perform such acts as may be necessary to carry into effect the powers hereby conferred upon it; to administer oaths; to punish for contempt in the manner prescribed by law; to appoint commissioners to take testimony to be used in evidence; to prescribe the fees they shall receive for their services; to issue commissions for the taking of such testimony; and to issue subpœnas for witnesses, either before the court or before such commissioners, which shall have the same force and effect as if issued from a circuit or district court of the United States, and compliance therewith shall be compelled under such rules and orders as the court hereby created may establish. Said court may have a seal, with such device as it may order. It may on its organization appoint the following officers, who shall serve during the pleasure of the court, but not later than its dissolution when the business for which it is organized shall be completed; namely: a reporter, with a compensation at the rate of thousand dollars a year: one stenographer, with a compensation at the rate of thousand dollars a year; a bailiff, with a compensation at the rate of thousand dollars a year; and such other officers as Congress may make appropriations for. Said court may, when again convened by the President, make new appointments to such offices, for the term for which it may be convened, and with like compensation.

SEC. 3. That upon the organization of said court, and whenever the same shall be convened by the President as hereinbefore provided, the court shall appoint a clerk of said court, who shall receive a compensation at the rate of thousand dollars a year for the time for which he shall serve, and who shall, for such period, have the custody of the seal and records of the court, and shall be authorized to administer oaths and affidavits. The said clerk shall disburse, under the directions of the court, the contingent fund which may at any time be appropriated for the use of the court; but he shall, in each case, first give bond in such an amount and in such form as may be approved by the court, and his accounts shall be settled by the proper accounting officers of the Treasury in the same way as clerks of courts of the United States are or may be settled. An assistant clerk may also be appointed by the court for a like term, if necessary, with a compensation at the rate of thousand dollars per annum.

SEC. 4. That on or before the organization of the said court, an agent for the United States to represent the Government before the said court, until its business shall be transacted, shall be appointed by the President, by and with the advice and consent of the Senate. And as often as the said court shall be convened by the President, an agent shall in like manner be appointed. He shall receive a compensation at the rate of thousand dollars a year. With the consent of the Secretary of State, he may employ an assistant, with a compensation at the rate of thousand dollars a year. It shall be the duty of the agent to prepare all cases on the part of the Government for hearing before said court, and to argue the same orally or in writing, as may be ordered by the court; to cause testimony to be taken when necessary in order to protect the interests of the United States; to prepare forms, file interrogatories, and superintend the taking of testimony in the manner prescribed

by said court; and, generally, to render such services as may be required of him from time to time in the discharge of the duties of his said office. Neither such agent nor such assistant agent shall receive any fee or compensation for services rendered in said court, except the salary hereinbefore provided.

SEC. 5. That, as soon as possible after the passage of this act, it shall be the duty of the Secretary of State to give notice thereof to all foreign governments who have presented, or shall hereafter present, on behalf of their corporations, citizens, or subjects, claims against the United States arising out of acts committed against their persons or property during the late rebellion, and to invite each to appoint an agent to present such claims to said court. And whenever and so often as the President shall hereafter convene the said court, it shall be the duty of the Secretary of State to give a similar notice and invitation to each government which may, at the time of such notice and invitation, have diplomatically presented, on behalf of its subjects or citizens, claims against the United States of the character for the settlement of which the said court is created. All claimants whose governments are not represented before said court, and who are not themselves represented by an attorney or attorneys qualified to practice in the Supreme Court of the United States, must, on filing their petitions, notify the clerk of the court, in writing, of some address in the city of Washington where orders and notices in the cause may be served upon them.

SEC. 6. No claim which might have been heard and determined in a district or circuit court of the United States, or in the Court of Claims, shall be heard and determined by the court hereby created, unless it shall appear that such claim was heard and determined in such district or circuit court, or in such Court of Claims, and either that no appeal lay by law to the Supreme Court, or that on an appeal to the Supreme Court and hearing therein the claimant avers that there has been a miscarriage of justice, or that the claimant shall satisfy the court that there was good and sufficient reason why no appeal was taken to the Supreme Court. And all cases shall be heard and determined according to the rules and canons of international law, as accepted in practice by the civilized powers.

Proceedings by claimants in said court shall be commenced by a memorial presented on behalf of the claimant by the agent of the government of which the claimant is a citizen or subject, or, if there be no agent of such government, presented with the assent of the principal diplomatic representative of such government at Washington. The memorial shall set forth a full statement of the claim, with references to dates and places, with the names and residences of the witnesses who are relied upon to establish the claim, and with a reference to any action which may have been had on the claim either in Congress or in any Department. It shall also specify by name each and every person interested in the claim, either directly or indirectly, and shall state when, and upon what consideration, such person became so interested; and it shall declare affirmatively that no other person is interested therein, either directly or indirectly. Such memorial shall be verified by the oath or affirmation of the claimant or party in interest. The memorial, and all other papers offered on behalf of the claimant, shall be printed by him for the use of the court and the other party, in such form as the court may by rule require.

SEC. 7. That the United States shall be allowed such time as the court may direct, not more than six nor less than two months, to answer each petition, in which shall be set up fully and specifically all

matters of law and fact which are relied on. The answer shall not be required to be under oath. The answer, and all other papers offered by the United States, shall be printed by the Government for the use of the court and the other party in such form as the court may order; and the same regulation shall apply to any subsequent pleadings which the court may permit either party to file.

SEC. 8. That evidence shall be taken at the expense of the party offering it on such notice by each party to the other, and in such manner as the court shall direct; except that the court may, if the interests of justice require it, order any witness whose deposition is offered in evidence to appear personally for examination, and also may, on the motion of the United States, make an order in any case pending in said court, directing that the claimant or claimants in such case, or any one or more of them, shall appear upon reasonable notice, either before the court, or before any commissioner thereof, and be examined, on oath or affirmation, touching any or all matters pertaining to said claim. If any claimant, after such order shall have been made, and due and reasonable notice thereof shall have been served according to the rules of the court and the requirements of the order, shall, without just excuse, fail to appear, or shall refuse to testify or answer fully as to all matters within his knowledge material to the issue, or if it shall appear that any claimant has corruptly practiced, or attempted to practice, fraud against the United States touching his claim, or any part thereof, the said court is hereby empowered to find specifically that the claimant has so failed to appear, or has so refused to testify or answer fully, or has so practiced, or attempted to practice, fraud, and thereupon the said court shall give judgment in favor of the United States, and the claimant shall thereupon be forever barred from prosecuting his claim in said court.

SEC. 9. That no evidence shall be received on either side on the trial of the main questions, in any case pending in said court, which is taken *ex parte*, without notice to the other party in such manner as may be required by the rules of said court. In taking any testimony to be used in support of any claim before said court, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe, and like opportunity shall be afforded the claimant in cases where testimony is taken on behalf of the United States under like regulations. If any person shall knowingly or willfully swear falsely before said court, or in proceedings therein, or before any person or persons commissioned by them, or authorized by law to administer oaths or take testimony in a case pending before said court at the time of taking such oath or affirmation, or in a case thereafter to be submitted to said court, such person shall be deemed guilty of perjury, and on conviction thereof shall be subjected to the same pains, penalties, and disabilities which now are, or hereafter shall be, prescribed for willful and corrupt perjury. All evidence shall be printed at the expense of the party at whose request it is taken.

SEC. 10. That the said court shall have power to call upon any of the Departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by committees of each House when deemed to be necessary in the prosecution of the duties prescribed by this act; but the head of no Department shall be required to answer any call for information or papers if, in his opinion, it would be injurious to the public interests.

SEC. 11. That within thirty days after entry of final judgment in any

case pending in said court, either party may appeal therefrom to the Supreme Court of the United States; but the agent of the United States shall not in any case give notice of appeal, except under written instructions from the Attorney-General. It shall be the duty of the party appealing to cause to be printed, for the use of the justices of the Supreme Court, all the papers in the case, including the memorials, the answers, the evidence, the arguments, all interlocutory motions and orders, the judgment, the opinions of the judges, (if any are given,) and the record or judgment-roll. The appeal shall be entered at the first term of the Supreme Court held in Washington after the entry of final judgment in the court below, within ten days after the opening of the term. If not entered within that time, the judgment of the court below shall stand. If entered within that time, the case shall be heard upon the printed papers, without further argument, unless the Supreme Court shall order an argument, and shall give notice thereof to the Secretary of State. Final judgment may be rendered by the Supreme Court in all such appealed cases; and in each case the clerk of that court shall give notice thereof to the Secretary of State.

SEC. 12. That at the close of their labors at the first term of the court, as hereinbefore provided, and at the close of any term for which the court may be hereafter convened, the said judges shall transmit to the Secretary of State, under their hands and seals, a statement showing in detail the decisions and awards made by them, with the nationality of each claimant, and the amount awarded to each; also, showing, in like detail, and with like statements, the claims which were presented for allowance, and which were not allowed; also, showing, in like detail, and with like statements, the cases in which appeals may have been taken to the Supreme Court of the United States. They shall also deposit in the Department of State the original records and other papers of the court (including all original papers on file and the seal of the court) during the period for which it may have been in session, which shall thereafter constitute a part of the archives of that Department. And it shall be the duty of the Secretary of State in each case, as soon thereafter as may be, to transmit to Congress a copy of the said statement, and to notify each government whose citizens or subjects may have presented claims for adjudication by said court, of the judgments made in favor of or against such citizens or subjects. And it shall also be the duty of the Secretary of State to give similar notice to Congress and to foreign governments of judgments rendered by the Supreme Court of the United States on appeals taken from the judgments of the court established by this act. And the result of the proceedings of the said courts are to be regarded as a full, perfect, and final settlement of all claims of aliens which were, or which might have been, presented before the court established by this act.

SEC. 13. That whenever and as often as said court may be convened, the Secretary of State shall provide proper rooms and accommodations for the transaction of its business.

SEC. 14. Said court shall have jurisdiction of and power to hear and determine all claims and rights of action against the United States which shall be presented to the Secretary of State, by petition, in the nature of a petition of right, and which shall be by him referred to said court, and all claims and rights of action which shall be referred to said court by the President of the United States or by either House of Congress. And the provisions of this act shall, so far as applicable, govern the proceedings on such claims and rights of action.

SEC. 15. That this act shall take effect upon its passage.

APPENDIX A.

WAR DEPARTMENT,
Washington City, February 24, 1874.

SIR: In reply to your letter of the 16th instant, requesting information concerning the practice of the Government in regard to the payment of war-claims, the Secretary of War has the honor to inform you that there is nothing in the records of the War Department illustrating the practice of the Government in that regard during the Revolutionary war, or that of 1812.

It may be remarked, however, that those were wars with foreign powers, when no portion of the inhabitants of the United States occupied the relation of enemies to the other portion, and no distinction prevailed between loyal and disloyal territory. At such periods, therefore, there could have arisen none of that class of claims which, during the late rebellion, grew out of such relation or distinction.

With reference to the three classes of claims originating in loyal States, specified in your letter, the following remarks are presented, not as exhausting the subject, but as affording you, without delay, a general statement of the present usage and opinion of this Department. You say: "I wish to know what has been the practice of the War and Treasury Departments and of the Government during the war of 1812, and the rebellion, and Revolutionary war, in the following cases:

"1. For damage to crops, fences, &c., by an army in its march, (in loyal States.)

"2. For temporary occupancy of houses and lands necessary (A) on a march, (B) preparatory to a battle, (C) after battle. These will be required for officers, hospitals, stores, &c.

"3. For cotton-bales, timber, and materials to build a fort or breastwork in war, to meet or repel an enemy—this in a loyal State. This is different from the erection of a fort in time of peace. * * * Now, I want the usage in all our wars. I also want the law and reference to cases, authorities, &c. * * * To save time, I respectfully ask you to send answer direct to me, for if sent to Speaker of House the delay may be considerable."

In regard to claims of the third class mentioned, it is believed to have been the uniform practice of the War Department to abide by the well-established legal principle which precludes the Executive branch of the Government from allowing claims for damages to property destroyed or injured in the common defense or due prosecution of war against a public enemy. This principle is clearly laid down in Parham *vs.* Justices of Decatur County, 9 Georgia, 348, 349, cited in Digest of Opinions of the Judge-Advocate-General, p. 97, and is very fully set forth in "Whiting's War-Powers under the Constitution," (Boston, 1871,) pp. 331–341, a work, indeed, which may throughout be found to throw much light upon the questions propounded in your letter.

The same general principle of law is believed to have been uniformly observed in practice in regard to claims of the *first* class mentioned in your letter, for damages to crops, fences, &c. Cases, indeed, may have occurred, where growing crops, fence timber, &c., may have been seized for the use of the Army in loyal States, and claims for the same may have been legally adjustable by the Quartermaster-General and Commissary-General of Subsistence, under the act of July 4, 1864, as claims for supplies taken under an implied contract. But claims of this sort for

damages are wholly excluded from the jurisdiction of the Executive Departments of the Government. (See Whiting, p. 340.)

As to claims of the *second* class mentioned, (for rent for houses or lands seized and occupied by the military authorities in loyal States during the rebellion,) where such occupation is an intrinsic part of active maneuvers, and the damage is clearly incidental to the critical operations of war, it may be unnecessary to say, that such a claim, if presented, could not be allowed by this Department. In other cases of private lands and buildings, taken for military purposes, the practice is as follows: Claims for rent due, and not already paid, arising in loyal States during the war, when presented for payment, are investigated by the officer of the Quartermaster's Department in the district wherein the claim originated, and reported to the office of the Quartermaster-General. If they are found on examination there to be correct and just, the claims are forwarded, with all the facts, to the Secretary of War, with report, and recommendation that authority be given to transmit the same to the Third Auditor of the Treasury. If approved, they are then transmitted with recommendation for settlement.

This is done by virtue of an implied contract, under the fifth amendment of the Constitution. An act of March 3, 1813, ch. 513, sec. 5, authorizes the Secretary of War to "fix and make reasonable allowance for the store-rent, storage, &c., for the safe-keeping of all military stores and supplies. By the forty-second article of Revised Regulations of the Army, August 11, 1861, approved by the President, and published for the information and government of the military service, it is made the duty of the Quartermaster's Department to provide quarters, store-houses, offices, and lands for encampments for the Army. When public buildings are not sufficient to quarter troops, authority to hire private property for such uses is given by said regulations to the commanding officer of the department who reports the case, and his orders therein, to the Quartermaster-General.

It must be admitted that the regular mode of providing lands and buildings for the temporary occupation of the Army is by express contract, and that there is no specific statutory authority for the allowance of rent-claims on the ground of an implied contract, as there is in the case of quartermaster's stores and subsistence; but it is believed that the practice of the War Department in this regard is well known to Congress, and thus far it has met with no mark of disapproval.

Respectfully,

WM. W. BELKNAP,
Secretary of War.

Hon. WILLIAM LAWRENCE,
Chairman Committee on War-Claims, House of Representatives.

APPENDIX B.

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., February 26, 1874.

SIR: I have the honor to acknowledge the receipt of your letter of the 24th instant, on the subject of this Department paying for rent of property in certain parts of the rebel States, subsequent to the act of July 4, 1864; and to invite your attention to the inclosed printed schedule of

proclamations of Presidents Lincoln and Johnson, respecting the condition of the insurrectionary States.

By reference thereto, it will be seen that the proclamation of July 1, 1862, declares, among other States, Louisiana in rebellion. The proclamation of January 1, 1863, declares Louisiana in rebellion, except certain parishes. The proclamation of April 2, 1863, declares the whole State in rebellion, *except the port of New Orleans.*

The proclamation of January 1, 1863, shows what States and parts of States were, at that time, in rebellion.

The act of July 4, 1864, to restrict the jurisdiction of the Court of Claims, was made applicable to all States, and parts of States, except such as were excluded by proclamation of January 1, 1863.

On June 18, 1866, Congress extended the benefit of the act (4th July, 1864) to the counties of Berkeley and Jefferson, West Virginia.

On July 28, 1866, the same benefits were extended to loyal citizens of Tennessee.

The Judge-Advocate-General having held, February 16, 1866, that a claim for subsistence stores, taken for Army use during the war, in one of the parishes in Louisiana excepted by the President from the operations of his proclamation of January 1, 1863, was not within the provisions of the act of July 4, 1864, authorizing the settlement of such claims, no claim for quartermaster's stores arising in this State was favorably entertained after that date. This decision was also made applicable to the counties of Berkeley and Jefferson, in West Virginia, until the passage of the act of July 18, 1866.

New Orleans having been excepted in proclamation of April 2, 1863, claims for rent in that city were paid, based on certified accounts, and authority of accounting officers of the Treasury, up to close of war, August 20, 1866.

Since the passage of the act of February 21, 1867, which made it unlawful for the Executive Departments to favorably entertain any claim arising in any States declared in rebellion in proclamation of July 1, 1862, none have been recommended by the Quartermaster-General for payment.

Rents, arising in Tennessee during the war, were favorably considered up to *June* 12, 1865, when the Secretary of War made what is known as the "Murfreesborough" decision, (copy inclosed.) Between that date and peace proclamation of August 20, 1866, none have been recommended by this Office.

Rent-claims arising in counties of West Virginia during the war, including Berkeley and Jefferson, have been, and are now being favorably considered, as no law or orders have been found adverse thereto.

Under an opinion of the honorable the Attorney-General, that contracts are not affected by the law of February 21, 1867, it is understood that claims for rent, in which contracts have been proved to the satisfaction of the accounting officers, have been settled by them without regard to locality.

I am, very respectfully, your obedient servant,

M. C. MEIGS,

Quartermaster General, Bvt. Maj. Gen., U. S. A.

Hon. WILLIAM LAWRENCE.

Chairman Committee on War-Claims,

House of Representatives, Washington, D. C.

Memorandum for government of officers charged with the consideration of claims from hostile districts.

QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., June 12, 1865.

Murfreesborough hospital.—Claim of Mrs. S. D. Willard.

Murfreesborough was a hostile town captured by our troops from an enemy who did not surrender on terms, but was driven out by force of arms. Everything in it was prize of war, as at Savannah and Atlanta. Buildings were occupied for shelter of troops, and for sick and wounded soldiers of the capturing enemy.

It does not appear that the military department should order payment of any rents, under such circumstances. When active operations of war are over, and peace is restored to the district, the Government will doubtless give up the property which it does not confiscate as rebel property, or as used against it, or will pay rent from the time of restoration of peace and re-establishment of civil authority.

Claims for destruction of property, fences, crops, &c., in hostile districts, by the march or occupation of troops, are on the same footing as claims for rent of buildings in captured towns.

All these should be left for the consideration of Congress, to be finally disposed of under such general legislation as may be enacted.

The appropriations for the Quartermaster's Department are not sufficient to provide for such claims which will be presented.

The claims for fences burned and crops destroyed by the presence, on the march or in encampments, of the troops, would amount to many millions of dollars.

M. C. MEIGS,
Quartermaster-General, Bvt. Maj. Gen., U. S. A.

August 14, 1865, approved by Secretary of War.

True copy of decision.

M. I. LUDINGTON,
Quartermaster, U. S. A.

Q. M. G. O., Feb. 26, 1874.

Schedule of proclamations of Presidents Lincoln and Johnson respecting the condition of the insurrectionary States.

States.	April 15, 1861.	April 19, 1861.	April 27, 1861.	May 19, 1861.	August 16, 1861, issued in compliance with an act of Congress prohibiting commercial intercourse.			May 12, 1862.
	Militia (75,000) called out, the laws of the United States having been opposed, and the execution thereof obstructed in the following States.	Whereas, an insurrection has broken out in the following States, a blockade of the ports within the States is hereby declared.	Whereas, for reasons assigned in the proclamation of April 19, a blockade was established in States therein named; and whereas, since that date, the collection of revenue has been obstructed in North Carolina and Virginia, a blockade of the ports of these States is proclaimed.	Whereas, an insurrection exists in the State of Florida, the commander of the United States forces is allowed to suspend the writ of habeas corpus if necessary.	Whereas, on the 15th of April, 1861, the militia were called out, in view of an insurrection which had broken out in the following States.	And whereas, such insurrection has since broken out, and yet exists, within the following named States.	Now, therefore, I, Abraham Lincoln, in pursuance of act of Congress, July 15, 1861, do hereby declare the inhabitants of the following States to be in insurrection.	Relaxes the blockade of the following named ports.
South Carolina	South Carolina	South Carolina			South Carolina		South Carolina	Port Royal, S. C.
Georgia	Georgia	Georgia			Georgia		Georgia	
Alabama	Alabama	Alabama			Alabama		Alabama	
Florida	Florida	Florida		Florida	Florida		Florida	
Mississippi	Mississippi	Mississippi			Mississippi		Mississippi	
Louisiana	Louisiana	Louisiana			Louisiana		Louisiana	New Orleans, La.
Texas	Texas	Texas			Texas		Texas	
Virginia			Virginia			Virginia	Virginia, (except the part of Virginia lying west of the Alleghany Mountains)	
North Carolina			North Carolina			North Carolina	North Carolina	Beaufort, N. C.
Tennessee						Tennessee	Tennessee	
Arkansas						Arkansas	Arkansas. And except the inhabitants of such parts of the States hereinbefore named as may maintain a loyal adhesion to the Union and the Constitution, or may be from time to time occupied or controlled by forces of the United States engaged in the dispersion of said insurgents.	

Schedules of proclamations of Presidents Lincoln and Johnson respecting the condition of the insurrectionary States.—Continued.

States.	July 1, 1862.	January 1, 1863.	April 2, 1863.	September 24, 1863.	February 12, 1864.	November 19, 1864.	June 13, 1865.	April 2, 1866.
	Whereas, by the act of Congress approved June 7, 1862, entitled, "An act for the collection of direct taxes in insurrectionary districts," it is made the duty of the President to declare the following States in insurrection.	Emancipation proclamation declares the following States and parts of States to be in rebellion this day. The excepted parts to remain precisely the same as if this proclamation had not been issued.	Whereas certain States, by proclamation of August 16, 1861, were declared in insurrection; and whereas experience has shown that the exceptions made embarrass the enforcement of the act of July 13, 1861, the exceptions are revoked, and the following States declared in rebellion.	Release blockade of Alexandria, Va.	Releases blockade of Brownsville, Texas.	Releases blockade of—	The President declares the insurrection in the State of Tennessee to have been suppressed, and the authority of the United States therein to be undisturbed.	After reciting the various proclamations, the President states that, whereas no armed resistance to the authority of the United States exists in the following States, it is declared that the insurrection which heretofore existed in those States is at an end, and is henceforth to be so regarded.§
South Carolina	South Carolina	South Carolina	South Carolina, (except Port Royal.)					South Carolina.
Georgia	Georgia	Georgia	Georgia					Georgia.
Alabama	Alabama	Alabama	Alabama					Alabama.
Florida	Florida	Florida	Florida, (except port of Key West.)			Fernandina, Pensacola, Fla.		Florida.
Mississippi	Mississippi	Mississippi	Mississippi					Mississippi.
Louisiana	Louisiana	†Louisiana	Louisiana, (except port of New Orleans.)					Louisiana.
Texas	Texas	Texas	Texas		Brownsville, Tex.			
Virginia	*Virginia	‡Virginia	Virginia, (except 48 counties of West Va.)	Alexandria, Va.		Norfolk, Va		Virginia.
North Carolina	North Carolina	North Carolina	North Carolina, (except port of Beaufort.)					North Carolina.
Tennessee	Tennessee		Tennessee				Tennessee	Tennessee.
Arkansas	Arkansas	Arkansas	Arkansas					Arkansas.

* Except the following counties: Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Pleasants, Tyler, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmore, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Webster, Fayette, and Raleigh; 39 counties.

† Except the parishes of Saint Bernard, Plaquemines, Jefferson, Saint John, Saint Charles, Saint James, Ascension, Assumption, Terre Bonne, Lafourche, Saint Mary, Saint Martin, and Orleans, including the city of New Orleans.

‡ Except forty-eight counties of West Virginia, as follows: Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmore, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbriar, Monroe, Pendleton, Hardy, Hampshire, and Morgan; and also the counties of Berkely, Accomac, Northampton, Elizabeth City, York, Princess Anne, and Norfolk, including the cities of Norfolk and Portsmouth.

§ August 20, 1866, all the States declared as out of insurrection.

NOTE.—Joint resolution of June 18, 1866, extends act of July 4, 1864, (chap. 240,) to counties of Berkely and Jefferson, W. Va.

APPENDIX C.

DEPARTMENT OF STATE,
Washington, February 27, 1874.

SIR: Referring to my previous letters respecting the "bill to establish a Court of Alien Claims," I have now the honor to inclose a memorandum, showing the several amendments to the bill (H. R. 1739) which have been proposed or suggested by such gentlemen as I have had *time to consult upon it;* and *the views of this Department* in respect of *their suggestions.*

I also take advantage of this opportunity to present for your consideration sundry reasons (1) why it is desirable that Congress should pass an act for disposing of "alien war-claims;" (2) why the provisions of the bill introduced by you, amended by such suggestions as are adopted by the Department of State, should be enacted; (3) why, should it be enacted, the results will be favorable to the United States; and (4) why we may hope that such results will be accepted by other interested powers.

I.—*Reasons why a law should be enacted for disposing of alien war-claims.*

During and after the late war many claims were presented by representatives of foreign powers, for injuries alleged to have been suffered by citizens or subjects of such powers, arising out of acts committed against their persons or property during the war. Especially were such claims presented on behalf of citizens or subjects of Great Britain, France, Germany, and Italy.

No recognition has been made of any possible liability for the claims advanced by the representatives of France, Germany, or Italy. But by the treaty known as the Treaty of Washington it was agreed that the British claims arising out of such acts committed between April 13, 1861, and April 9, 1865, should be submitted to arbitration. The result of this arbitration is thus described in the last annual message of the President:

> It was awarded that the Government of the United States should pay to the government of Her Britannic Majesty, within twelve months from the date of the award, the sum of $1,929,819 in gold. The commission disallowed all other claims of British subjects against the United States. The amount of the claims presented by the British government, but disallowed or dismissed, is understood to be about $93,000,000.

These proceedings practically worked a preference of this class of British claims over all others. It left unrecognized, and without means provided for adjudicating upon, first, the claims of other governments, (as France, Germany, and Italy,) and, second, British claims later than April 9, 1865.

It cannot be doubted that the United States rightfully exercised acts of war after the 9th of April, 1865. That was the date of Lee's surrender. A state of war continued after that time which rendered necessary many or all of the acts which are complained of, and those acts when sifted will probably prove to constitute as little foundation for claims against the United States as the acts committed within the date named in the Treaty of Washington.

The powers whose subjects have had their claims deferred to those of British subjects, as well as Great Britain herself, on behalf of British subjects whose claims arose after April 9, 1865, stand ready to ask us to decide upon the validity of their claims. What answer can the Department of State make to such a request?

This bill proposes to furnish an answer. If passed it will enable us to say, "It is true that British claimants between April, 1861, and April, 1865, had a commission to establish such claims as might be found valid. The United States had then no court in which such claims could be examined. Now we offer to all such claimants a court of law, and invite them to submit their claims to judicial investigation. We thus avoid a number of simultaneous mixed commissions, with possible conflicting decisions, and we render substantial justice to all who shall prove substantial injuries."

II.—*Reasons for the provisions of the proposed act.*

In the intercourse of nations it is an admitted principle of comity that where the local courts afford a remedy, and where there is no reason to distrust the firmness and sense of equity of those courts, a claim will not be urged diplomatically until the local remedies shall be exhausted, unless good and satisfactory reasons can be shown for not pursuing the remedy to the highest court of appeal.

The proposed bill aims to give such complete remedies to the foreign claimants, that substantially nothing will be left for diplomatic discussion.

In order to secure such completeness, it has been thought essential to confer upon claimants the right of appeal to the Supreme Court, from the court of alien claims, in case of adverse decisions.

This has made it necessary to make the tenure of the judges "during good behavior." No other court is recognized by the Constitution as entitled to be "vested" with "the judicial power of the United States," in such a way as to confer upon the Supreme Court "appellate jurisdiction" from its decisions. In order, therefore, to secure the right of appeal, the bill proposes to create a permanent court.

It has been suggested that jurisdiction should be conferred upon this court over claims of citizens of the United States as well as of aliens for torts committed by the United States. Should the House think best to so widen its jurisdiction, the Department of State would not feel disposed to question the wisdom of the act.

It has also been suggested that jurisdiction over this class of cases might be conferred upon existing tribunals.

If the jurisdiction should be conferred upon the United States district or circuit courts, it would greatly increase the expense to the United States, and would make it almost impossible for one person to supervise all the proceedings in defense. I need not say to so intelligent a lawyer as yourself how advantageous, how absolutely necessary, in fact, it will be to the United States to put their defense against these claims under one guidance. This advantage would be lost should claimants be allowed to sue in circuit or district courts. And further, the crowded state of the calendars of those courts in the large towns where probably most of the suits would be conducted would prolong the proceedings beyond what would be desirable.

It has also been suggested that the present Southern claims commission should be empowered to hear and determine upon this class of claims. But this commission is not a court from which appeals can be taken to the Supreme Court; and although greatly respected here, where its members are best known, it could not be expected to command abroad the weight and confidence which would induce foreign governments to accept its decisions as final.

The Court of Claims has also been mentioned as a body justly enti-

tled, by its high character for learning and for patient investigation, to be clothed with the power of deciding these claims. Although the Court of Claims is not so well known abroad as at home, and although foreign governments might, therefore, feel more disposed to question its decisions than would be just, yet this objection might, perhaps, be overlooked if the state of the calendar of that court promised an early settlement of these claims. But, unfortunately, such is not the case. I annex a statement of the condition of the calendar of that court, prepared by the examiner of claims of this Department, which shows that the court is already overburdened with business, and would not be able to perform the great additional labor of deciding these claims.

There seems, therefore, to be no escape from the necessity of creating a court for the purpose and endowing it with the necessary powers.

The proposed bill recognizes the fact that this court is to be the creature of a diplomatic necessity; that it is to take the place of diplomatic action; and that its results may be set up hereafter, diplomatically, as a bar against claims of foreign governments, advanced on behalf of their citizens or subjects. It, therefore, proposes to have the proceedings conducted with the knowledge of and in some respects under the supervision of the Secretary of State.

In order to prevent purely speculative or fictitious claims from being advanced, it requires claimants to print at their own expense all documents and evidence put into the case by them; but, lest a *bona fide* claimant should suffer from this necessity, it will, as amended, authorize such claimant to recover, with an award for his claim, the expenses he may have been put to for such printing.

It guards against surprises on either side, by requiring claimants to furnish to the Government a full statement of the claim, with the names of all the witnesses relied upon to establish it, and by obliging the Government to set forth in its answer all the grounds of law and fact upon which its relies for its defense.

It guards against perjury by provisions for the punishment of the perjurer, and for the disallowance of the claim sought to be maintained by such evidence.

It provides for an appeal to the Supreme Court of the United States. And, in order that such appeal may not unreasonably prolong the term of the court below, it provides that such appeal shall be heard upon the original papers, including the arguments, and that final judgment shall be rendered in the Supreme Court without a remitter; and, in order that claimants may not be vexed by appeals that ought not to be taken, it requires the written assent of the Attorney-General to an appeal by the United States.

It is believed that such a system would work out justice and give satisfaction to all concerned.

III.—*Reasons why a favorable result may be looked for.*

It may be assumed that the claims which it is proposed to adjust through the instrumentality of the proposed act are similar in all respects to those which were adjusted through the instrumentality of the British and American mixed claims commission under the treaty of Washington.

In view, also, of the intimate commercial and social relations between Great Britain and the United States which existed at the outbreak of the war, and of the magnitude of the British-American commerce as compared with the commerce of any other nation with the United States,

it may be assumed that that commission passed upon a large majority of the claims of aliens growing out of the war.

It may also be assumed that the rules of proof which it is proposed to adopt will deter persons from presenting purely speculative claims.

Assuming these facts, let us examine the results of the American-British mixed commission. Four hundred and seventy-eight cases against the United States were presented and tried, and judgment entered within two years from the organization of the commission; of these, 259 included claims for property taken by the United States forces, 181 for property destroyed by the United States forces, 7 for property destroyed by the rebels, 100 for alleged unlawful arrests or imprisonments, 76 for unlawful capture or condemnation of vessels, 3 for unlawfully warning off vessels, and 34 for other matters.

All the expenses of printing in these cases were borne by the two governments jointly—5 per cent. retained from the award being applied toward re-imbursing them. Under the proposed court this expense will be much reduced, but no percentage is deducted.

The aggregate amount of the claims presented was about $96,000,000. The amount allowed was a little less than $2,000,000, the exact sum being, as already stated, $1,929,819.

There is no reason to suppose that, in the cases which remain, there would be a larger proportion of valid claims.

But whether the proportion would be greater or less, it is evident that the opportunities for a judicial examination into the facts and merits in each case would be greater in a court such as it is proposed to establish than in a mixed commission, composed of commissioners trained under different systems of law, and accustomed to different modes of investigating facts.

IV. *Reasons why the judgments of such a court would probably be accepted by other governments.*

It might be enough under this head to say that there is a probability, amounting almost to a certainty, that the judgments of the proposed court as revised by the Supreme Court will be in entire harmony with the recognized principles of international law, and will therefore not be questioned. I believe that such would be the case.

The bill proposes to give the right of appeal to all who feel themselves aggrieved by the decision of the court below.

No claimant who did not exercise that right could properly claim the assistance of his government in a diplomatic prosecution of his claim. And I am persuaded that such is the respect in which the Supreme Court is held throughout the civilized world, that no government would feel disposed to question its decision.

It appears from the reports of the Navy Department that the total number of vessels captured and sent to the courts for adjudication between the dates named in the treaty of Washington was eleven hundred and forty-nine; and that three hundred and fifty-five vessels were burned, sunk, or otherwise injured.

In the proceedings before the late British American Mixed Commission, seventy-six memorials were filed advancing claims against the United States for vessels and cargoes captured, detained, or warned away from blockaded ports. Awards against the United States were made in the case of eleven vessels.

The injuries complained of in the cases of the Boyne and the Monmouth were received in consequence of being illegally warned off the coast. This was an injury for which our courts afforded no remedy; consequently the cases were never brought before our courts.

The injuries in the case of the Tubal Cain and the Labuan were caused by an illegal detention in a port of the United States, for which, also, our laws afforded no remedy.

The Madeira was a collision case, and was never before the Supreme Court.

The York was burned on the coast of North Carolina, consequently no proceedings could be taken *in rem* against the vessel and cargo.

The Circassian, the Hiawatha, the Science, the Sir William Peel, the Springbok, and the Volant were decided adversely to the United States, in whole or in part, after a hearing and decision in the Supreme Court.

In the case of the Circassian there was a dissenting opinion by the late Mr. Justice Nelson. The mixed commission, by a majority vote, sustained the conclusions of the dissenting justice.

In the case of the Hiawatha, there were dissenting opinions by Chief Justice Taney and Justices Nelson, Catron, and Clifford. The mixed commission, by a majority vote, agreed in the results reached by the dissenting justices.

The Science and the Peel were ordered by the Supreme Court to be restored, as not being subject to capture. The mixed commission, by a majority vote, decided that there was no probable cause to justify the seizure, and awarded damages in addition to restitution.

In the cases of the Springbok and the Volant, the commission sustained the decision of the Supreme Court on all the main issues, but rendered in each a trifling award against the United States on collateral issues.

Thus, out of 449 captures sent to the courts for adjudication, the adjudications have been shaken in but six cases—two of which decisions were rendered by a divided court, two of which were sustained by the mixed commission in principle, and reversed only on the question of fact as to the probable cause; and two of which were sustained in principle, and reversed only on unimportant collateral points.

Such a record fully justifies the language used by the late Lord Palmerston, in the House of Commons, during the war: "We have no reason to mistrust the equity and independence of the tribunals of the United States, which have to try questions such as those now under discussion."

It also authorizes the expression of a confident opinion that foreign powers, whose subjects or citizens may be claimants before the court which your bill proposes to establish, will acquiesce in the decisions which that court may make.

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

HAMILTON FISH.

Hon. WM. LAWRENCE,
Chairman of Committee on War-Claims, House of Representatives.

COURT OF CLAIMS.

The present condition of business in the Court of Claims is as follows:

Cases now pending and undisposed of, (December 1, 1873,) 4,802. Of these, between seven and eight hundred are submitted and waiting for decision.

During the year ending November 30, 1873, 1,600 cases were disposed

of, involving claims to the amount of $7,015,223.38, upon which the amount awarded was $3,883,801.09.

Of the above, the miscellaneous cases decided in favor of claimants were 1,477; decided against claimants, 16; cotton cases decided in favor of claimants, 100; cotton cases decided against claimants, 7.

Cases commenced during the year ending November 30, 1873, 1,821.

I find the cases put on the docket since December 1, 1873, 360. It will be seen that, at the rate of cases decided during last year, there is three years' business yet untouched; and it is further noticeable that, taking the number of cases decided last year as an average year's work—and it seems a large number of cases for a year, 1,600—the cases commenced during the same time, 1,821, is 221 in excess of those decided. So that, besides being three years behind with the docket, the accumulation of unreached cases is yearly increasing.

Judge Peck has not been on the bench during the present term. He is prostrated by sickness, and fears are entertained by the court and by his friends that he will not be able to sit again.

Respectfully submitted.

HENRY O'CONNOR.

FEBRUARY 27, 1873.

ALIEN WAR-CLAIMS BILL.

Memorandum of amendments suggested by various persons.

GENERAL.

That the Court of Claims shall be empowered to take jurisdiction in such cases.

Not approved, because the calendar of the Court of Claims is already overcrowded.

That the proposed court shall have jurisdiction over all claims of these classes, whether made by aliens or by citizens.

Not objected to.

That the bill should contain an appropriation clause for the payment of awards.

It will be wiser not to burden the bill with this provision.

That the act should be operative only as to citizens of powers who have similar acts in favor of citizens of the United States.

Objectionable, because it would defeat the object of the bill.

That the Supreme Court should be made judge of law only.

In this class of cases it will be better, both diplomatically and practically, to make them judges both of law and fact—diplomatically, because the highest court will then have passed on both law and fact; and practically, because the court below will then be enabled to finish its work within a reasonable time.

Section 1.

(Printed bill, section 1, line 14.)

For "period of recognized war," substitute the time named in the treaty of Washington.

This would defeat a main object of the bill—*to dispose of all claims.* Much property was destroyed after April 9 1865, the destruction of which can be justified.

To omit the words "period of recognized war."

This would give the court jurisdiction over all such torts, which might not be desirable.

Line 15. For "a belligerent not the sovereign of the claimant or claimant," say "and its insurgent States."

This would limit the powers of the court to the claims arising from acts committed during the rebellion, which would not be theoretically correct.

Line 16. For "referred to," say "brought before."

Accepted.

Line 18. For "judges," say "justices."
Line 20. For "judges," say "justices."

Accepted.

Section 2.

Line 4. For "referred to," say "brought before."

Accepted.

Line 8. For "citizens or subjects," say "claimants."

"Citizens or subjects" is the language of the treaty of Washington.

Lines 10 and 11. For "such claims as are barred by the provisions of the treaty of the 8th of May, A. D. 1871," say "like claims of corporations or individuals subject."

This would exclude British claims after April 9, 1865, which would defeat one of the objects of the bill.

Line 14. For "which are to be submitted for the adjudication of," say "to."

Accepted.

Line 24. For "at all times," say "in term time."

Accepted.

Line 28. For "granted," say "conferred upon."

Accepted.

Lines 29 and 30. For "common law or by the statutes of the United States," say "law."

Accepted.

Lines 31 and 32. For "the investigation of claims that may come before it," say "evidence."

Accepted.

Lines 34 and 35. For "to issue subpœnas for the attendance of," say "subpœnas for."

Accepted.

Line 43. Omit "first."

Accepted.

Lines 44, &c. Omit the provisions as to a reporter.

Accepted.

Line 45. For "two," say "one."

Accepted.

Line 47. For "bailiffs," say "marshal."

"Bailiff" is the word used in the act establishing the Court of Claims.

Line 52. For "salaries," say "compensation.

Accepted.

Section 3.

Line 3. For "Secretary of State," say "said court."

Accepted, if insisted upon.

Line 11. For "in each case," say "before acting."

Accepted.

Lines 12 and 13. For "Secretary of State," say "court."

Accepted, if insisted upon.

Line 11. For "disbursing agents under the Department of State, say 'clerks of courts of the United States."

Accepted, if insisted upon.

Line 16. For "Secretary of State," say "court."

Accepted, if insisted upon.

Section 4.

Line 2. For "agent," say "attorney."

"Agent" is the word used in the case of a mixed commission. It is thought best to assimilate these proceedings to those of a mixed commission. It is probable that foreign governments would prefer to style their representatives "agents." "Does not this appointment break into the system of the Department of Justice?" The questions to be decided are diplomatic and international. The management should, therefore, be under the direction of the Department of State.

Lines 6, 11, and 20. For "agent," say "attorney."

Objected to.

Line 13. For "may be ordered by the court," say "he may deem best.

The court should have discretion to order arguments in writing.

Section 5.

Line 3. After "have presented," insert "or shall hereafter present."

This correction is necessary in order to give full jurisdiction and make a full settlement.

Lines 6 and 7. "Why not let suitors present their claims as they please?"

Because this Government would be better protected by having the claims presented through the responsible agents of the foreign government.

"The agent should also be allowed to employ additional clerical aid subject to the approval of the Secretary of State; and there will, of course, be necessity for the employment of counsel in the taking of testimony at distant points, which does not seem to be specifically provided for in the bill."

These suggestions seem to be reasonable.

Section 6.

Line 1. Instead of "That proceedings," say "No claim which might have been heard and determined in a district or circuit court of the United States, or in the Court of Claims, shall be heard and determined by the court hereby created, unless it shall appear that such claim was heard and determined in such district or circuit court or in such Court of Claims, and either that no appeal lay by law to the Supreme Court, or that on an appeal to the Supreme Court and hearing therein the claimant avers that there has been a miscarriage of justice, or that the claimant shall satisfy the court that there was good and sufficient reason why no appeal was taken to the Supreme Court. And all cases shall be heard and determined according to the rules and canons of international law, as accepted in practice by the civilized powers—proceedings."

The provision in regard to appeals needs no explanation. It is making statute law of what is now understood to be accepted unwritten law between nations.

The provision respecting international law may be important.

Lines 2 to 6. Strike out from "on behalf" to "Washington," inclusive, and insert "by himself or some duly-authorized attorney, who shall be a counsellor of the Supreme Court."

Objected to for reasons already given.

Line 18. After "claimant," insert "or party in interest."

Accepted.

Line 19. For "at his expense," say "by him."

Accepted.

Line 21. For "order," say "by rule established."

Accepted.

Section 7.

Line 3. After "petition," insert "in which shall be set up fully and specifically all matters of law and fact which are relied on."

Not objected to.

Line 5. For "at their expense," say "by the Government."

Accepted.

Section 8.

Line 7. Strike out "agent of the."

Accepted.

Line 15. After "shall," insert "without just excuse."

Accepted in principle.

Line 26. For "in said court," say "against the United States."

A foreign government could not be barred from presenting a claim diplomatically.

Section 9.

Line 1. After "side," insert "on the trial of the main questions."

Accepted. Affidavits should be received in support of interlocutory motions.

Line 20. Add a provision requiring all evidence to be printed at the expense of the party at whose request it is taken.

Section 10.

"Would it not always be thought injurious to public interests to give information which would take money out of the Treasury?"

"The Government ought, I think, to give all such information to a claimant, unless prevented by considerations of 'public interest' quite apart from the question of money liabilities to the claimant."

Comment.—The provision is taken from the act establishing the Court of Claims. The settlement of the question raised is left to Congress.

Section 11.

Line 3. After "States," add "but the agent of the United States shall not in any case give notice of appeal, except under written instructions from the Attorney-General."

This clause, if adopted, will prevent taking appeals for the sake of prolonging the continuance of the office.

Line 7. Strike out "the arguments."

The bill as drawn proposes to leave the decision to the Supreme Court without further arguments, unless ordered by the court. This theory is preferred by the Secretary of State.

"I would favor a provision that, in case of award in favor of a claimant, the court might separately award in favor of such claimant, and, as an additional item, the expense incurred for printing, subject always to the discretion of the court."

Not objected to; although it would seem that the provision ought to be reciprocal.

Line 15. Strike out "without further argument."

Not accepted, for reasons given above.

Line 17. "What has the Secretary of State to do with it? What dealings have the Jews with the Nazarenes?"

The claims are diplomatic in character. They reach the Government originally through the Department of State. It is proper that the evidence of their adjustment should be lodged there.

Section 14.

Line 1. For "immediately," say "upon its passage."

Not objected to.

The bill as originally introduced is as follows:

[*Printer's No.*, 1674.

43D CONGRESS, 1ST SESSION.

H. R. 1739.

IN THE HOUSE OF REPRESENTATIVES.

FEBRUARY 2, 1874.

Read twice, referred to the Committee on War-Claims, and ordered to be printed.

Mr. LAWRENCE, on leave, introduced the following bill:

A BILL to establish a court of alien claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of providing a tribunal to hear and

determine the claims of aliens against the United States for compensation for alleged torts suffered through the acts of persons for whose doings it may be asserted that the United States should be held responsible, there shall be established in the city of Washington a court to be called "The Court of Alien Claims," to consist of three judges, with power to hear and determine all claims on the part of corporations, companies, or private individuals, citizens or subjects of any foreign power upon the United States, arising out of acts committed against the persons or property of such citizens or subjects during a period of recognized war between the United States and a belligerent, not the sovereign of the claimant or claimants, which may be referred to it as hereinafter provided. The said court shall consist of a chief justice and of two associate judges, to be appointed by the President, by and with the advice and consent of the Senate, and to hold office during good behavior. Any two of the judges of the court hereby established shall constitute a quorum, and may hold a court for the transaction of business. The compensation of the members of the said court shall be as follows: For the chief justice, for the term during which the court is actually occupied in the transaction of business, including adjournments, at the rate of thousand dollars a year; and for the associate justices for such period, at the rate of thousand dollars a year. The compensation shall cease when such term ceases as hereinafter provided, and shall be revived whenever said court shall be again convened by order of the President, and shall then, and in each case, be continued for such time as said court may be occupied in determining the matters for which it may be convened.

SEC. 2. That the first meeting of the said court shall be held on the first Monday of December next, (which shall be the commencement of the first term,) for the purpose of hearing and determining all claims which may be referred to it on the part of corporations, companies, or private individuals, citizens or subjects of any foreign power, against the United States, arising out of acts committed against the persons or properties of such citizens or subjects, during the period which intervened between the commencement and the close of the late rebellion, except such claims as are barred by the provisions of the treaty of the eighth of May, eighteen hundred and seventy-one, between Her Britannic Majesty and the United States. It shall be lawful to present said claims, which are to be submitted for the adjudication of said court, up to and including the thirty-first day of December which will be in the year eighteen hundred and seventy-five, but not later; all claims so presented must be adjudicated and determined by the said court before the first day of January which will be in the year eighteen hundred and seventy-eight, and the close and determination of such adjudications and the final adjournment of the court shall be regarded as the close of the first term. Thereafter the said court may be again convened at the pleasure of the President, as there may be occasion for its services. It shall, at all times, have authority to establish rules and regulations for its government not inconsistent with the provisions of this act; to per-

form such acts as may be necessary to carry into effect the powers hereby granted to it; to administer oaths; to punish for contempt in the manner prescribed by the common law or by the statutes of the United States; to appoint commissioners to take testimony to be used in the investigation of claims that may come before it; to prescribe the fees they shall receive for their services; to issue commissions for the taking of such testimony; and to issue subpœnas for the attendance of witnesses, either before the court or before such commissioners, which shall have the same force and effect as if issued from a circuit or district court of the United States, and compliance therewith shall be compelled under such rules and orders as the court hereby created may establish. Said court may have a seal, with such device as it may order. It may on its organization appoint the following officers, who shall serve during the pleasure of the court, but not later than its dissolution when the business for which it is first organized shall be completed, namely: a reporter, with a compensation at the rate of thousand dollars a year; two stenographers, with a compensation each at the rate of thousand dollars a year; a bailiff, with a compensation at the rate of thousand dollars a year; and such other officers as Congress may make appropriations for. Said court may, when again convened by the President, make new appointments to such offices, for the term for which it may be convened, and with like salaries.

SEC. 3. That upon the organization of said court, and whenever the same shall be convened by the President as hereinbefore provided, the Secretary of State shall appoint a clerk of said court, who shall receive a compensation at the rate of thousand dollars a year for the time for which he shall serve, and who shall, for such period, have the custody of the seal and records of the court, and shall be authorized to administer oaths and affidavits. The said clerk shall disburse, under the directions of the court, the contingent fund which may at any time be appropriated for the use of the court; but he shall, in each case, first give bond in such an amount and in such form as may be approved by the Secretary of State, and his accounts shall be settled by the proper accounting officers of the Treasury in the same way as other disbursing agents under the Department of State are now settled. An assistant clerk may also be appointed by the Secretary of State for a like term, if necessary, with a compensation at the rate of thousand dollars per annum.

SEC. 4. That on or before the organization of the said court, an agent for the United States to represent the Government before the said court, until its business shall be transacted, shall be appointed by the President, by and with the advice and consent of the Senate. And as often as the said court shall be convened by the President, an agent shall in like manner be appointed. He shall receive a compensation at the rate of thousand dollars a year. With the consent of the Secretary of State he may employ an assistant, with a compensation at the rate of thousand dollars a year. It shall be the duty of the agent to prepare all cases on the part of the Government for hearing before said court, and to

argue the same orally or in writing, as may be ordered by the court; to cause testimony to be taken when necessary in order to protect the interests of the United States; to prepare forms, file interrogatories, and superintend the taking of testimony in the manner prescribed by said court; and, generally, to render such services as may be required of him from time to time in the discharge of the duties of his said office. Neither such agent nor such assistant agent shall receive any fee or compensation for services rendered in said court except the salary hereinbefore provided.

SEC. 5. That as soon as possible after the passage of this act it shall be the duty of the Secretary of State to give notice thereof to all foreign governments who have presented, on behalf of their citizens or subjects, claims against the United States arising out of acts committed against their persons or property during the late rebellion, and to invite each to appoint an agent to present such claims to said court. And whenever and so often as the President shall hereafter convene the said court, it shall be the duty of the Secretary of State to give a similar notice and invitation to each government which may, at the time of such notice and invitation, have diplomatically presented, on behalf of its subjects or citizens, claims against the United States of the character for the settlement of which the said court is created. All claimants whose governments are not represented before said court, and who are not themselves represented by an attorney or attorneys qualified to practice in the Supreme Court of the United States, must, on filing their petitions, notify the clerk of the court in writing of some address in the city of Washington where orders and notices in the cause may be served upon them.

SEC. 6. That proceedings by claimants in said court shall be commenced by a memorial presented on behalf of the claimant by the agent of the government of which the claimant is a citizen or subject, or, if there be no agent of such government, presented with the assent of the principal diplomatic representative of such government as Washington. The memorial shall set forth a full statement of the claim, with references to dates and places, with the names and residences of the witnesses who are relied upon to establish the claim, and with a reference to any action which may have been had on the claim either in Congress or in any Department. It shall also specify by name each and every person interested in the claim either directly or indirectly, and shall state when, and upon what consideration, such person became so interested; and it shall declare affirmatively that no other person is interetsed therein, either directly or indirectly. Such memorial shall be verified by the oath or affirmation of the claimant. The memorial, and all other papers offered on behalf of the claimant, shall be printed, at his expense, for the use of the court and the other party, in such form as the court may order.

SEC. 7. That the United States shall be allowed such time as the court may direct, not more than six nor less than two months, to answer each petition. The answer shall not be required to be under oath. The answer, and all other pa-

pers offered by the United States, shall be printed at their expense for the use of the court and the other party in such form as the court may order; and the same regulation shall apply to any subsequent pleadings which the court may permit either party to file.

SEC. 8. That evidence shall be taken at the expense of the party offering it on such notice by each party to the other, and in such manner as the court shall direct; except that the court may, if the interests of justice require it, order any witness whose deposition is offered in evidence to appear personally for examination, and also may, on the motion of the agent of the United States, make an order in any case pending in said court, directing that the claimant or claimants in such case, or any one or more of them, shall appear upon reasonable notice, either before the court, or before any commissioner thereof, and be examined, on oath or affirmation, touching any or all matters pertaining to said claim. If any claimant, after such order shall have been made and due and reasonable notice thereof shall have been served according to the rules of the court and the requirements of the order, shall fail to appear, or shall refuse to testify or answer fully as to all matters within his knowledge material to the issue, or if it shall appear that any claimant has corruptly practiced, or attempted to practice, fraud against the United States touching his claim, or any part thereof, the said court is hereby empowered to find specifically that the claimant has so failed to appear, or has so refused to testify or answer fully, or has so practiced, or attempted to practice, fraud, and thereupon the said court shall give judgment in favor of the United States, and the claimant shall thereupon be forever barred from prosecuting his claim in said court.

SEC. 9. That no evidence shall be received on either side, in any case pending in said court, which is taken ex parte, without notice to the other party in such manner as may be required by the rules of said court. In taking any testimony to be used in support of any claim before said court, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe, and like opportunity shall be afforded the claimant in cases where testimony is taken on behalf of the United States under like regulations. If any person shall knowingly or willfully swear falsely before said court, or in proceedings therein, or before any person or persons commissioned by them, or authorized by law to administer oaths or take testimony in a case pending before said court at the time of taking such oath or affirmation, or in a case thereafter to be submitted to said court, such person shall be deemed guilty of perjury, and on conviction thereof shall be subjected to the same pains, penalties, and disabilities which now are, or hereafter shall be, prescribed for willful and corrupt perjury.

SEC 10. That the said court shall have power to call upon any of the Departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by committees of each House when deemed to be necessary in the prosecution of the duties pre-

scribed by this act; but the head of no Department shall be required to answer any call for information or papers, if, in his opinion, it would be injurious to the public interests.

SEC. 11. That within thirty days after entry of final judgment in any case pending in said court, either party may appeal therefrom to the Supreme Court of the United States. It shall be the duty of the party appealing to cause to be printed, for the use of the justices of the Supreme Court, all the papers in the case, including the memorials, the answers, the evidence, the arguments, all interlocutory motions and orders, the judgment, the opinions of the judges, (if any are given,) and the record or judgment-roll. The appeal shall be entered at the first term of the Supreme Court, held in Washington, after the entry of final judgment in the court below, within ten days after the opening of the term. If not entered within that time, the judgment of the court below shall stand. If entered within that time, the case shall be heard upon the printed papers, without further argument, unless the Supreme Court shall order an argument, and shall give notice thereof to the Secretary of State. Final judgment may be rendered by the Supreme Court in all such appealed cases; and in each case the clerk of that court shall give notice thereof to the Secretary of State.

SEC. 12. That at the close of their labors at the first term of the court, as hereinbefore provided, and at the close of any term for which the court may be hereafter convened, the said judges shall transmit to the Secretary of State, under their hands and seals, a statement showing in detail the decisions and awards made by them, with the nationality of each claimant, and the amount awarded to each; also, showing, in like detail, and with like statements, the claims which were presented for allowance, and which were not allowed; also, showing, in like detail, and with like statements, the cases in which appeals may have been taken to the Supreme Court of the United States. They shall also deposit in the Department of State the original records and others papers of the court (including all original papers on file and the seal of the court) during the period for which it may have been in session, which shall thereafter constitute a part of the archives of that Department. And it shall be the duty of the Secretary of State in each case, as soon thereafter as may be, to transmit to Congress a copy of the said statement, and to notify each government whose citizens or subjects may have presented claims for adjudication by said court of the judgments made in favor of or against such citizens or subjects. And it shall also be the duty of the Secretary of State to give similar notice to Congress and to foreign governments of judgments rendered by the Supreme Court of the United States on appeals taken from the judgments of the court established by this act. And the result of the proceedings of the said courts are to be regarded as a full, perfect, and final settlement of all claims of aliens which were, or which might have been, presented before the court established by this act.

SEC. 13 That whenever and as often as said court may be convened, the Secretary of State shall provide proper rooms and accommodations for the transaction of its business.

SEC. 14. That this act shall take effect immediately.

APPENDIX D.

OFFICE POST QUARTERMASTER,
Atlanta, Ga., July 14, 1865.

GENERAL: I have the honor to state that, in compliance with instructions contained in your communication of the 7th instant, herewith inclosed, I instituted a careful investigation into the amount of damage done to Saint Luke's church, in this city, its parsonage and fencing, and caused an estimate to be made by Mr. Frank Day, an architect of this city, of the necessary expense of repairing the same. I found that the church, parsonage, and fencing had been entirely destroyed by our forces at the evacuation of this place by General Sherman, and that the probable cost of rebuilding the same, as estimated by the mechanic above named, is as follows:

Saint Luke's church	$2,500
Parsonage and out-buildings	2,250
Fencing	150

And that the earthworks on the lot belonging to Saint Phillip's church could be leveled at a cost of $150.

I am, general, very respectfully, your obedient servant,
ALONZO CLARK,
Captain Fourth Iowa Cavalry, and A. A. Q. M.

Bvt. Brig. Gen. J. L. DONALDSON,
Chief Quartermaster Military Division of the Tennessee.

[Copy of indorsement.]

HEADQUARTERS OF THE ARMY,
Washington, D. C., January 21, 1873.

I have not the least doubt this paper contains a fair and truthful account of the loss to this church in Atlanta. But instead of appealing to the Congress of the United States for indemnification, I advise the pastor of the church to appeal to the charitable members of the Episcopal Church for aid to rebuild their church and parsonage.

W. T. SHERMAN, *General.*

There are sundry claims before committees of both Houses of Congress for use and occupation of church, college, and school buildings for injuries to them, or for destruction thereof. If Congress shall provide for their payment in whole or in part, either in detail or by some general scheme as a gratuity, there will of course be very many more which will doubtless be presented.

The claims of this character now before the House Committee on War-Claims are as follows:

METHODIST CHURCHES.

Methodist Episcopal Church, Alexandria, Va	$11,000
Methodist Episcopal Church, Charlestown, W. Va	10,000
Methodist Episcopal Church, Decatur, Ala	12,000
Methodist Episcopal Church, Huntsville, Ala	13,354
Methodist Episcopal Church, Harper's Ferry, W. Va	3,000
Methodist Episcopal Church, Martinsburgh, W. Va	1,886
Methodist Episcopal Church, Old Town, W. Va	1,200
Book-Agents' Publishing-House, Methodist Episcopal Church South	457,150
Methodist Episcopal Church Parsonage, Newtown, Va	5,000

EPISCOPAL CHURCHES.

Saint Paul's Episcopal Church, Selma, Ala	$12,000
Saint Paul's Episcopal Church, Sharpsburgh, Md	3,500.
Saint George's Episcopal Church, Accomac, Va	5,000
Saint Phillip's Episcopal Church, Atlanta, Ga	5,000
Saint Mary's Episcopal Church, Fredericksburgh, Va	725

CHRISTIAN CHURCHES.

Christian Church, Woodsville, Ky	2,500
Christian Church, Danville, Ky	

UNIVERSITIES AND COLLEGES, &c.

Alabama University	250,000
East Tennessee University	18,500
Jackson College, Tennessee	11,092
Alleghany College, West Virginia	8,000
Madison Female Academy, Richmond, Va	10,300
Male Academy, Athens, Ga	5,000
Strawberry Plains high school, Tennessee	8,650
Seaman's Friend Society, Charleston, S. C	2,500
Cypress lodge F. and A. M., Florence, Ala	15,000
Columbia lodge F. and A. M., No. 31, Tennessee	11,000

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