31st Congress, 1st Session. Rep. No. 334. Ho. of Reps.

CONDUCT AND RELATION OF THE SECRETARY OF WAR TO THE CLAIM OF THE REPRESENTATIVES OF GEORGE GALPHIN.

May 17, 1850.

Ordered that the said report be made the special order of the day for the fourth Tuesday in June next, and be printed.

Mr. Burt, from the Select Committee appointed to investigate the connexion and relation of the Secretary of War to the claim of the representatives of George Galphin, made the following

REPORT:

The Select Committee to whom were referred a communication from the Hon. George W. Crawford to the Speaker of the House, of the second of April, in the following words: "My official connexion with the government authorizes me, in my judgment, to ask, and have acceded to me by the House over which you preside, a prompt and full investigation, in such manner as it may think proper, of my conduct and relation to the claim of the representatives of George Galphin, which claim has been adjudicated and paid at one of the departments of the government, and is now attracting public attention;" and a resolution of the House, of the tewelfth of the same month, instructing them "to make full investigation, and report to this House the origin and nature of said claim, the circumstances attending its prosecution before the departments of government, and the passage of the bill authorizing the payment of said claim; the names of agents who have so prosecuted and urged the same; the amount paid on said claim, both of interest and principal, and whether the same has been paid in conformity with law or precedent; the names of the individuals to whom the money has been paid, and the amount received by each; the interest of the persons so receiving said money in said claim; and how said interest in said claim has originated to each of said persons; and all matters in anywise pertinent to the inquiry"—have made full and diligent inquiry touching the whole subject, and submit the following report:

Prior to the year 1773, George Galphin, the original claimant, was a licensed trader amongst the Creek and Cherokee Indians in the province of Georgia. These Indians became indebted to him and other traders in large sums of money. George Galphin held against them demands in his own right and as assignee of other traders. The Indians are represented to have been destitute of the means of paying these debts without selling a part of their lands, and in 1773 they ceded, for that purpose, to George the Third, King of Great Britain, a tract of healthy and fertile country, containing about two million five hundred thousand acres. The

trust was accepted, and commissioners were appointed to sell the lands and pay the debts due to the traders. The lands were considered ample for that purpose, but the King carefully protested that the government of Great Britain should not be liable for any part of the debts of the traders, in the event of the lands producing an insufficient fund. In that case, they agreed to lose in proportion to the amount of their debts. The traders, in consideration of the cession of the lands by the Indians, released their demands against them. Commissioners were appointed to sell the lands and apply the proceeds to the payment of the debts. The governor and his council ascertained the sums due the traders respectively, and found due to George Galphin nine thousand seven hundred and ninety-one pounds fifteen shillings and five pence. For this sum a certificate was issued to him, dated the 2d day of May, 1775. The commissioners disposed of a portion of the lands, but how much does not appear, and applied the proceeds to the payment of expenses which had been incurred in making the cession, and in performing their duties under it. They applied none of the money to the debts of the traders. George Galphin received nothing from them. Meantime the war of the Revolution commenced, and by its successful result the execution of the trust was defeated, and the lands themselves were no longer subject to the control of the King.

The State of Georgia in 1777, and subsequent years, granted to actual settlers, and to soldiers who had been faithful to the cause of independence, considerable portions of her vacant lands, including the lands which had been ceded by the Indians for payment of their debts to George Galphin and others. But no means are accessible of ascertaining the quantity or value of these, or the other vacant lands which Georgia granted as bounties to revolutionary soldiers, although there is evidence that a considerable portion of the lands ceded by the Creeks and Cherokees in 1773 was thus applied.

The fidelity of George Galphin to the cause of independence having been made a question, the committee made full inquiry into the matter, and are quite satisfied that he promptly and firmly refused to take the side of the Crown, and was a decided advocate and supporter of the independence of the colonies. His great influence with the Indians caused them to resist the importunities of England, and refrained from taking part in the war. He was especially and peculiarly the means of averting, to a great extent, from Georgia and Carolina, the cruelties and atrocities of Indian warfare. In 1790, Great Britain made an appropriation for the payment of the debts of the traders with the Indians, although the lands which had been conveyed for the purpose were no longer subject to her jurisdiction. An act of the legislature of Georgia, passed at Augusta the 23d of January, 1780, asserted the right of that State to the lands which were ceded to the King of England in 1773, and provided "that any person having, or pretending to have, any such claim, do lay their claims and accounts before this or some future house of assembly to be examined. Whatever claims shall be found just and proper, and due to the friends of America, shall be paid by treasury certificates for the amount, payable within two, three, and four years, and carrying six per cent. interest." George Galphin died in 1780. Thomas Galphin, his son and executor of his will, presented his claim to the legislature of Georgia in 1789, and a favorable report was made upon it by the commit-

tee; but the report was not acted upon by that legislature. In 1791, he sent an agent of intelligence and influence to England to present it to the government; but it was rejected, because George Galphin had been a friend of America in the Revolution. After its rejection by the government of Great Britain, it was again presented to the legislature of Georgia in 1793. The committee to whom it was referred reported "that the debt and demand of Mr. Galphin's estate ought to be provided for agreeably to the act of assembly of this State, passed 23d of January, 1780, as being not only plainly within the meaning and letter of that act, but also fully substantiated as a debt against the State, who has sold and disposed of the lands ceded for the payment thereof to its own use, by which, your committee are of opinion, the State has made itself liable for the same, on every principle of justice and equity;" and they recommended "that audited certificates should be directed to be issued to the memorialist's attorney and agent for the sum of nine thousand seven hundred and ninety-one pounds fifteen shillings and five pence sterling money of Georgia." This report was agreed to by the senate. A committee of a subsequent legislature reported that the claim of George Galphin was clearly just, and was provided for by the act of 23d of January, 1780, and recommended that especial provision be made for the payment of nine thousand seven hundred and ninety-one pounds fifteen shillings and five pence. The committee of another legislature reported as follows: "It appears to your committee that this claim is based upon justice and equity; that it is recognised by the act of 1780, and that it is the obligation of the State to discharge it, which the honor and honesty of the State impose;" and recommended "that there be paid to the heirs, executors, and legal representatives of George Galphin, deceased, their agent or attorney, the sum of nine thousand seven hundred and ninety-one pounds fifteen shillings and five pence, with so much interest as may be considered just and equitable from the date of the certificate." A committee of another legislature reported: "Impressed with the justice of claims similar to Mr. Galphin's, the legislature of this State, in the year 1780, did pass the act set forth in the memorial, thereby not only having assumed the debt, but guarantying its payment with interest; that the memorialist, shortly after the establishment of independence, applied to the general assembly of this State to comply with their solemn engagements, but the funds of the country being small, and a report having gained ground that a provision for the discharge of such claims had been made by Britain, the memorialist was in the first instance referred to Great Britain;" and they recommended "the propriety of making such arrangements for the satisfaction of the claim as may at once demonstrate the high estimation in which patriotic services in the revolutionary war are at this day held, and evince the justice of the State of Georgia." A committee of the legislature, in 1827, recommended the payment of the debt, in certificates bearing six per cent. interest from the 31st of December, 1794, as the State of Georgia had appropriated the lands charged with this debt, by granting them to her citizens. In 1813, a committee of the legislature reported: "Your committee differ in the construction put upon the act of 1799 by the memorialist. It must, in the opinion of your committee, appear that the act of 1799 can only apply to such claims as were unascertained at the time of its passage. This does not appear to be the case of the memorialist. Your committee, from the whole view

of the case, are compelled to report, that the claim of the memorialist is not well founded against the State of Georgia;" but they add, the claim is just against Great Britain. This report was agreed to by the senate.

In the treaty of New Echota, concluded with the Cherokee Indians in 1835, provision was made for the payment of this claim by the United States, but without expense to the Indians. This provision was rejected by the Senate, and the treaty ratified without it. In May, 1836, the Senate of the United States instructed its Committee on Indian Affairs to inquire into the propriety of paying this claim. That committee reported a resolution, which was adopted by the Senate, requesting the President of the United States to apply to the executive of Georgia for all the information which that State could furnish on the subject of this claim. In January, 1837, the President communicated to the Senate the information he had received. In his reply, Governor Schley informs the President that the following facts may be taken as true: "That there is justly due to the heirs of George Galphin the sum of nine thousand seven hundred and ninety-one pounds fifteen shillings and five pence, sterling money of Great Britain; that by the treaty of 1773, this claim was provided for, and became a debt due by the British government to Mr. Galphin; that Mr. Galphin failed to receive payment from that government because he had espoused the cause of the United States, and was, in the estimation of the English, a rebel; that neither he nor his heirs have ever received payment from Georgia or the United States; and the true question now is, whether Georgia or the United States ought to pay the money. It is true that the lands acquired from the Cherokee Indians by the treaty of 1773, being within the jurisdictional limits of Georgia, were subject to her disposition; and it is also true that a considerable portion of them was granted as bounties to the soldiers of the Revolution. George Galphin was a true whig, and rendered important services to the cause of independence, not for Georgia alone, but for all the States. His claim was not against Georgia, but originally against Great Britain, and subsequently against the United States; because it arose under a treaty stipulation, the fulfilment of which devolved, by a change of government, not on Georgia, but on the government of the United States, which had succeeded to that of Great Britain, receiving the benefits and bearing the burdens. The claim of Mr. Galphin has always been considered just by Georgia, but she has denied that she is liable to the payment of it, and has therefore uniformly refused to do so, although there have been some reports made by committees of one or the other branch of the legislature, recommending the payment by Georgia."

Commissioners were appointed to examine this claim by the State of Georgia, and they made a report against its payment by that State. Their report was committed to a committee of the house of representatives of that State in 1839, and the committee approved the report of the commissioners. The house agreed to their report. Resolutions were then offered in the house, requesting the senators and representatives of the State of Georgia to urge the payment of the claim of Galphin by the United States. These resolutions were laid on the table.

In 1840, a committee of the house of representatives of the Georgia legislature made a report in favor of the claim, and recommended the payment of interest on the same from 1793. A minority of the committee of one made a report adverse to the payment of the claim by Georgia. The

house agreed to the minority report. A resolution instructing the delegation in Congress to urge the payment of the claim by the United States was then introduced.

The committee do not find that any further or subsequent proceedings were had in the legislature of Georgia on the subject.

In 1838, the Senate Committee on Indian Affairs reported "that if the trust-fund, at the close of the Revolution, had inured to the benefit of the United States, or if, by virtue of the Revolution, they had acquired the power to dispose of it, there ought to be no hesitation in satisfying this demand out of the treasury of the United States; but this was not the case. The fund was land; this land was situate within the limits of one of the United States. The State where it was situate acquired the control over it, and had a right to dispose of it, when and to whom she pleased, and to apply the proceeds according to her own pleasure, without consulting the government of the United States. As the government of the United States acquired no title to this land, and no power to carry into effect the trust, or in any way to control the fund, the committee can see no ground upon which they are authorized to recommend its payment." This report does not appear to have been acted on by the Senate.

This claim was presented to the House of Representatives the 9th of January, 1844, and referred to the Committee of Claims. That committee made no report upon it. The Committee on the Judiciary of the Senate made a report the 7th of July, 1846, in favor of this claim, accompanied by a bill for its payment. This report and bill do not appear to have been acted upon by the Senate. A favorable report, accompanied by a bill, was made by the same committee of the Senate in 1847. The bill was sent to the House of Representatives the 8th of February, 1847, and referred to the Committee on the Judiciary the 19th of the same month. The 24th of the same month the bill, accompanied by an unfavorable report, was reported to the House, which was not acted on by the House. This report proceeded on the grounds, "that no part of the property conveyed, for the purpose of creating a trust-fund to pay the debt of the petitioner, had ever inured to the benefit of the United States, and that the whole benefit of the fund had been received by the State of Georgia, which could apply the proceeds to the payment of all equitable claims upon it, whereas the United States had no power to control the fund or execute the trust." A bill for the payment of this claim passed the Senate early in the first session of the thirtieth Congress, and was sent to the House of Representatives the 19th of January, 1848. The 21st of that month it was referred to the Committee on the Judiciary, who reported it to the House the 29th of February, 1848. The Senate report which accompanied this bill was based on the grounds, that the claim was established by the commissioners appointed to dispose of the lands which had been ceded by the Indians to pay the debts due to the traders; that there could be no question as to the justice of the claim; that the revolution which George Galphin had contributed to effect, and which wrested these lands from the Crown of Great Britain, was the act of all the States, and not that particularly of the State of Georgia; that the government of the United States succeeded to all the obligations which rested on the Crown, as far as claims of a character similar to this were concerned; that the lands charged with these debts had been appro-

priated to the public defence, and as bounties to the officers and soldiers of Georgia who served in the war of the Revolution. They further maintained that the principles on which the United States, in 1832, assumed the payment of certain claims for which Virginia had become liable to her revolutionary officers, embraced this claim. The House committee made no written report, and are supposed to have recommended the passage of the bill for the reasons assigned in the report of the Senate committee. The bill thus reported to the House was committed to the Committee of the Whole House, as are all private bills, under the rules. The bill remained on the private calendar and in the Committee of the Whole House until Saturday, the 12th of August, 1848. On that evening, about 8 o'clock, on motion by Mr. Rockwell, chairman of the Committee of Claims, the House resolved itself into the Committee of the Whole House, to consider Senate bills on the private calendar to which there should be no objection. Those bills were taken up in their order, and this amongst them. It was acted upon in the Committee of the Whole House without debate, or a division of the committee. If a single member in the committee had objected, the bill could not have been reported to the House. In the House the bill was passed, with several others, without a separate vote being demanded by any member, or taken by the House. From a minute and thorough investigation of the circumstances attending the action of the Committee of the Whole House and of the House itself on this bill, the committee are satisfied there was nothing improper, irregular, or unusual in the conduct of the members or clerks, or other officers of the House, in relation to it, and that it passed in the regular and usual mode.

In investigating his relation and conduct to this claim, the committee deemed it their duty to request Governor Crawford to appear before them, and make such statement as would enable them to understand his connexion with this claim, and as he should think proper on his own part. He did appear and made a statement, which he subsequently reduced to writing, and also answered inquiries proposed by the committee. From his statements, it appears that he became agent or counsel for this claim by a power of attorney executed by Milledge Galphin, executor of Thomas Galphin, who was the son and executor of George Galphin, the 7th of February, 1833. By agreement between the parties, 23d May, 1833, he was entitled to receive for his services, without any other charge to his principal, one-half of the whole claim, or of such part of it as should be realized. A supplemental agreement by the parties, explanatory of the foregoing, was entered into the 19th of January, 1835, by which it was stipulated that the pecuniary advances and professional services of Governor Crawford should be the consideration for one-half of the net profits of the claim; and that all advances to, or contracts made by him with, other persons concerning the claim, should be deducted from the sum to be realized from the claim before its division. Governor Crawford endeavored to obtain payment of the claim by the treaty of New Echota with the Cherokee Indians in 1835. Failing in that, it was presented to the legislature of Georgia in 1837, and continued to be urged before the legislature of that State until 1842. During that period, excepting the year 1841, Governor Crawford was a member of that body, avowed his interest in this claim, and urged in debate its payment, but declined to vote upon it. In May, 1848, he arrived in this city, on his way to the

Philadelphia convention, and remained about a day, and on his return from Philadelphia he reached this city in the morning, and departed for his residence in Georgia that night. He did not again visit this city until after the passage of the law, and was absent from it when the bill passed the Senate and the House of Representatives. In February, 1849, he again came to this city. In March following he entered upon the duties of Secretary of War, and from that time he took no steps to prosecute the claim for interest, until he was urged to do so by his principal. As his interest was contingent and secondary, he did not think he could refuse to have it urged as desired. About the middle of May, 1849, he disclosed to the President the condition of the claim, and his relation to it; that he had been prosecuting it before Congress and elsewhere since 1833; that it had been allowed by Congress, was pending before the Treasury Department, and he had an interest in it. He did not state the character or amount of the claim, the extent of his interest in it, or the name of the claimant, nor did he enter into any of the details of the claim. The President replied, that, in his opinion, none of the pre-existing individual rights of Governor Crawford had been curtailed by his acceptance of office. He employed Judge Joseph Bryan to prosecute the claim, and promised him three thousand dollars if the claim should be allowed and paid. He supervised and aided in preparing Mr. Bryan's arguments in support of the claim, but denies that his interest in it was, at any time before the payment of the claim, made known to any officer of the government who was charged with its adjustment, by his authority or with his consent.

On the 8th of May, Governor Crawford addressed a communication to the committee, informing them that he desired to state a conversation of his with the President, in March, 1850. From this statement, it appears that in the latter conversation the President had the impression, from the first conversation, that the claim was before Congress, although, as to this, his memory was indistinct, the matter having passed from his mind, until the claim attracted public notice; that the President told Governor Crawford, although he did not recollect to have been told by him, that the claim had been allowed by Congress, and was pending before the Treasury Department, yet he did not see, if he had been so informed, how he could have given any other opinion than he had given; that being at the head of the War Department, and agent of the claimants, did not deprive him of the rights he may have had as such agent, nor would have justified him in having the examination and decision of the claim by the Secretary of the Treasury suspended. The President added, that in his opinion, if the claim was a just one, under the law of Congress it should have been paid, no matter who were the parties interested in it; and that this was due to the credit and good faith of the government.

The decision of the question of interest on the claim by Mr. Walker, the late Secretary of the Treasury, was urged by Governor Crawford, and some of his friends insisted on it with so much earnestness as induced Mr. Walker to conclude that Governor Crawford would be a member of the present cabinet. Governor Crawford alluded to it on one occasion, in conversation with the Attorney General, as one in which some of his Georgia friends were concerned, but only to ask him to examine it at his leisure. He alluded to it three or four times in conversation with Mr.

Meredith, before its decision, but only to ask that it might be decided without delay. Mr. Johnson, Mr. Meredith, and Mr. Whittlesey, testified that Governor Crawford did not, by any act or expression, make known to them his interest or agency in the claim, nor were they informed of it by any other person, whilst it was undecided, and there is no evidence before the committee to the contrary. The bundle of papers relating to the claim was sent by the Comptroller to the Secretary of the Treasury, and by him to the Attorney General. Amongst them was the power of attorney, already referred to; another from Milledge Galphin to Governor Crawford, dated 30th December, 1848; and one or two letters written by Governor Crawford to some officer of the Treasury Department, in the month of February, 1849. Neither of these papers stipulated any compensation for his services. Judge Joseph Bryan appeared on all occasions as the agent and counsel of the claim, and submitted all the arguments in support of it. No other person was known to the officers of the government as agent or counsel for it.

The committee have not been able to discover any evidence that Governor Crawford ever availed himself of his official position, or of the social relations it established between himself and the other members of the cabinet, to influence the favorable determination of this claim. The claim was never the subject of cabinet deliberation; and it is due to candor and truth that the committee express their conviction that nothing has been disclosed by the testimony to induce them to believe that the Secretary of the Treasury or the Attorney General was aware, until this claim had been adjudicated, that Governor Crawford had any agency or interest in it.

There was nothing unusual in the circumstances attending the adjustment or payment of the principal or interest of this claim, nor any departure from the ordinary course of business in the Treasury Department.

A draft for the principal—being forty-three thousand five hundred and eighteen dollars and ninety-seven cents—was delivered by the Hon. A. H. Stephens to Governor Crawford, in the city of Augusta, Georgia, early in March, 1849. From that sum was deducted seven hundred and fifteen dollars, composed of the following items, to wit: five hundred dollars paid to the legal representatives of an agent, who died in 1841, for services prior to his death; one hundred and fifty dollars to an agent in Georgia, for services in 1834; and sixty-five dollars for transcripts of records and the collection of testimony in Georgia. Of the residue, Governor Crawford retained twenty-one thousand four hundred and one dollars and ninety-eight and a half cents—being one-half; and the other half he paid to Milledge Galphin, executor of Thomas Galphin, by whom it is believed to have been promptly paid to the legatees of George Galphin.

The following is a statement of the amount of the interest, and how and to whom it was paid:

A statement of the interest paid on the Galphin claim.

Interest on $43,518 97 for 73 years 3 months and 12 days,		$191,352 89
Less fee of Joseph Bryan - - - - -		3,000 00
		188,352 89
Less one-half under contract with G. W. Crawford -		94,176 44
		94,176 44

Less commissions of Dr. Galphin, as executor of George Galphin, at 5 per cent. - - - - -	$4,708 82
	89,467 62
One-third due Ann Milledge, executrix, under award, &c., (a)	29,822 54
Balance to heirs of T. Galphin - - - -	59,645 08
Of Mrs. Milledge's portion as executrix, paid to her son and agent, (in cash) - - - - - -	$250 00
In treasury draft, (No. 6,925) - - - -	29,572 55
(a)	29,822 55
Of Dr. Galphin, as executor, &c.—	
In cash - - - - - -	$1,000 00
In treasury draft, (No. 6,924) - - - -	63,353 90
	64,353 90

GEO. W. CRAWFORD, *Agent, &c. &c.*

WASHINGTON CITY, *March* 2, 1850.

Approved:

MILLEDGE GALPHIN,
Executor of George Galphin, deceased.

Mrs. Ann Milledge, who received one-third, is the widow and executrix of John Milledge, whose first wife was the daughter of George Galphin. The relation of Milledge Galphin to George Galphin has been previously stated to be that of a grandson.

The committee have thus performed all the duties imposed on them by the House, excepting those which relate to the payment of the principal and interest of the claim under consideration. On that subject, they have come to the conclusions expressed in the following resolutions, which they recommend the House to adopt:

1st. *Resolved*, That the claim of the representatives of George Galphin was not a just demand against the United States.

2d. *Resolved*, That the act of Congress made it the duty of the Secretary of the Treasury to pay the principal of said claim, and it was therefore paid, "in conformity with law" and "precedent."

3d. *Resolved*, That the act aforesaid did not authorize the Secretary of the Treasury to pay interest on said claim, and its payment was not "in conformity with law" or "precedent."

The statement of facts contained in this report was agreed to by Mr. Burt, Mr. Breck, Mr. Conrad, Mr. Grinnell, Mr. Jackson, and Mr. King, and disagreed to in part by Mr. Disney, Mr. Featherston, and Mr. Mann. The first resolution was agreed to by Mr. Burt, Mr. Disney, Mr. Featherston, Mr. Jackson, and Mr. Mann, and disagreed to by Mr. Conrad, Mr. Breck, Mr. Grinnell, and Mr. King. The second resolution was agreed to unanimously. The third resolution was agreed to by Mr. Burt, Mr. Disney, Mr. Featherston, Mr. Jackson, and Mr. Mann, and disagreed to by Mr. Breck, Mr. Conrad, Mr. Grinnell, and Mr. King.

MINORITY REPORT.

MAY 17, 1850.

Mr. BRECK, *from the Select Committee appointed to investigate the connexion and relation of the Secretary of War to the claim of the representatives of George Galphin, submitted, in behalf of himself, Mr. Conrad, Mr. James G. King, and Mr. Grinnell, the following argument:*

The undersigned, members of the Select Committee of investigation in reference to the claim of the representatives of George Galphin, not concurring in portions of the report of the committee, and more especially in so much thereof as relates to the allowance of interest on said claim, beg leave to submit the following as embracing their views in regard to that question:

In the examination of this question, it is deemed important to inquire—

1st. Whether, in view of the peculiar character and merits of this claim, justice and equity required that interest should be allowed; and, if so,

2d. Whether the act of Congress of August, 1848, authorized its payment.

The facts of the case are so fully set forth in the report of the committee, that a minute recapitulation of them is not considered necessary. Some of the most prominent and material will only be noticed.

It appears that, in 1773, the Creek and Cherokee Indians ceded by treaty to Great Britain, in payment of debts due by them to certain licensed Indian traders, among whom was George Galphin, about two millions and a half of acres of very valuable land in the then colony of Georgia.

The aggregate amount of these debts was about forty-five thousand pounds sterling. Great Britain accepted the trust and undertook to dispose of the land, and to apply the proceeds, after defraying the expenses incident to the negotiation of the treaty and the execution of the trust, to the payment of the debts, and, should they prove insufficient, to apply them *pro rata*. It was also understood that Great Britain was not otherwise to be responsible for the debts, nor were the Indians—the cession being accepted by the traders in full payment and discharge of their demands.

In 1775 these claims were liquidated under the treaty, and there was found due Galphin, in virtue of his own original claim and of others, which he held by assignment, nine thousand seven hundred and ninety-one pounds fifteen shillings and five pence, lawful money of the then province of Georgia; and a certificate of the settlement and amount of his claim was issued to Galphin by authority of the governor and council of said province. Under the provisions of the treaty, some portion of the land was disposed of prior to the commencement of the Revolution, but no part of the proceeds was applied to the payment of Galphin's claim,

nor, so far as appears, to the claim of any other trader. Such being the state of things, the legislature of the *State* of Georgia, in January, 1780, with a view to sustain and aid her in the revolutionary struggle, passed an act recognising the treaty of 1773 in regard to these *ceded lands*, providing for the payment of the liens thereon, in favor of the traders who were friends to America, in treasury certificates, bearing six per cent. interest, and also for disposing of the lands.

To show most satisfactorily that the claim of Galphin was a valid lien upon these lands, and that he was entitled to the benefit of this act, we need only refer to the testimony of a single witness, who was intimately acquainted with him, and who was a member of the legislature which passed the act referred to. This witness was George Walton, one of the signers of the declaration of American independence. The following is an extract from his testimony:

"This (January, 1780) was a period of deplorable hostility and suffering to the good people of this State; and an act was then passed having expressly for its object the more extensive settlement of that land, for the purpose of improving the interest, increasing the strength of the State, the better to oppose the ravages of the time. That the said act did further recognise the principle of the treaty and the claims of the traders, and did, moreover, provide for their adjustment and payment in favor of such as were friendly to the Revolution; but the act, being referred to, will speak for itself.

"The undersigned has only mentioned it because he was chairman of the committee that reported it; because he attended to its passage, and well recollects its motives, its sincerity, and intention of justice. Was George Galphin a friend of the Revolution and of this State? can be the only question asked upon the claim of his representatives. And the affirmation of this question is answered by public notoriety and universal consent. Having, however, enjoyed his friendship in his lifetime—having fully known his sentiments as to the Revolution, and been a frequent witness to his exertions in favor of it—he cannot resist the occasion of paying his own individual tribute of gratitude to his memory and services. Who is there that has forgotten the exercise and weight of his influence in restraining the inroads, and consequent murders and ravages of the savages, especially the Creeks? Now, the undersigned is of opinion, therefore, that to dispense with the claim of this venerable man, founded as it is, is to dispense with the justice and laws of the land."

This statement was made in 1800. George Galphin died in 1780. In 1789, his representatives petitioned the legislature of Georgia for the payment of this claim. A favorable report in regard to it was made by a committee, upon which, however, no action appears to have been taken by the legislature. Application was afterwards, in 1791, made to Great Britain for payment, but it was refused upon the ground that Galphin had been a *rebel*, and, by espousing the cause of independence, had aided in depriving her of the very fund or lands upon which his claim was a charge. The claims of all the other traders, however—they having been loyalists—were paid about that time by Great Britain, and *with* interest. In 1793, the legislature of Georgia was again appealed to for payment, and the application was perseveringly renewed and continued till 1839. The justice of the claim, and the meritorious character and eminent services of Galphin as a revolutionary patriot, were always ad-

mitted in the reports to the legislature, and with two or three exceptions its payment recommended. Still no provision was made for it. It appears that the claim of Galphin constituted the only charge upon these ceded lands after the claims of the other traders were paid by the liberality of Great Britain, and that they have at all times been greatly more than adequate to pay his claim with interest. No part of his claim was ever paid till paid by the United States; nor, prior to that time, had either the United States or Georgia ever paid anything in any way for these lands. They were disposed of by Georgia in aid of the Revolution—a portion of them gratuitously to actual settlers, with a view to the defence of the country, at a period of great suffering and peril, and a portion in discharge of military bounty claims.

In view of these facts, it is believed the position may be incontrovertibly assumed, that the claim of Galphin was a charge upon these ceded lands to the extent of the ascertained and liquidated amount due him in 1775, and interest thereon from that time; and it is deemed equally clear that Georgia, having acquired jurisdiction and control over them by the Revolution, took them, nevertheless, with the charge upon them, and, having disposed of them, was bound, in equity and good conscience, to discharge this claim; and, as the fund or land was greatly more than sufficient to pay both the principal and the interest, that she was equitably as much bound to pay the one as the other. Such appears to have been her own sense of justice, and the view of her legislature in the passage of the act of 1780.

The principle relied on, that a trustee is not responsible for interest, unless he makes interest, has not the slightest application to this case; nor is the principle, without qualification, true in any case.

If a trustee refuses to pay over a trust-fund when properly demanded, and converts it to his own use, he renders himself responsible for interest, and no authority to the contrary can be found. But, in this case, whether interest was made or not is wholly immaterial, as the fund itself was sufficient to pay both principal and interest, and still leave for the trustee the lion's share.

Without pursuing this branch of the case further, we proceed to inquire whether the payment of interest was authorized by the act of Congress. The act is as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and required to examine and adjust the claim of the late George Galphin, under the treaty made by the governor of Georgia with the Creek and Cherokee Indians, in the year 1773, and to pay the amount which may be found due to Milledge Galphin, executor of the said George Galphin, out of any money in the treasury not otherwise appropriated."

It is manifest that Congress passed this act in view of most of the important facts in regard to this claim. They are substantially set forth in the report of the committee which reported the bill to the Senate, (which is hereto appended, marked A;) and it has been held that accounting officers may very properly refer to the report of a committee reporting a bill, when there is doubt as to the construction of the law. (Opinions of Attorneys General, 1159; also, opinion of Attorney General Johnson in the case of De Francia, 30th May, 1849.) The report in this case says: "As there can be no doubt as to the justice or equity of this claim, the question presents itself, Who is bound to pay it—the government of the

United States, or the State of Georgia?" The conclusion was, that the former ought to pay it. The grounds relied on in support of this conclusion were—

1st. That the obligations of the treaty of 1773 upon Great Britain devolved, by reason of the Revolution, upon the government of the United States, which, having failed to discharge them, became liable for the payment of this claim.

The report states—

2d. "That the State of Georgia appropriated these lands, set apart as they were by the treaty of 1773 for the payment of these debts, to the public defence, and that the bounty warrants of the officers and soldiers of the Georgia line in the revolutionary army were located upon them. By an act of Congress, approved July 5, 1832, the government of the United States provided for certain claims which Virginia had assumed to the officers of that State engaged in the public service during the revolutionary war. It is believed that the principles of that act are applicable to the present claim, which the committee think ought to be allowed, and accordingly report a bill for relief."

The undersigned concur in the opinion expressed in this report, that the principles of the act of 1832, passed for the relief of Virginia, are applicable to this case. Virginia promised a class of her revolutionary officers half-pay; and as this liability was contracted for the benefit of all the States, it was justice that all should contribute to discharge it.

The claim in this case is admitted to have been a charge upon lands which Georgia had appropriated for the support of the common cause of all the States. Congress has not assumed it as a payment to Georgia for lands which she had thus appropriated, but to relieve her from the *charge* or incumbrance upon them. So far as Georgia appropriated these lands for her defence and in discharge of her liabilities to her State troops, to the extent of this claim she incurred a pecuniary liability. She, to the extent of this claim, in effect appropriated Galphin's land. Congress, therefore, in the payment of it, discharges Georgia, as she did Virginia, from a pecuniary liability, incurred for the benefit of *all* the States. Both cases virtually, therefore, rest upon the same principles.

Whether Georgia had applied to Congress to pay this claim cannot be material. Nor does it vary the case that Georgia had failed to pay it. It is fairly to be inferred, however, that her failure has resulted from the conviction that the United States ought to pay it. The communication of the governor of Georgia to President Jackson upon the subject of this claim placed her refusal upon that ground.

But it is urged that the United States have been released from any obligation to Georgia to pay this claim by the settlement of all accounts between them in 1793, under the act of Congress of 1790. Such settlement was no doubt made, and some instrument equivalent to a receipt given, as alleged. It is not pretended that this claim did, in fact, enter into that settlement; but it is contended that, whether it did or did not, the United States were thereby released from any obligation they might be under to Georgia in regard to it. As it is believed such a plea would not be available to an individual, under similar circumstances, in a court of equity, it should, in the opinion of the undersigned, be held *bad*, if relied on by a great nation. But the government has never set up such a de-

fence, regarding it, no doubt, as alike incompatible with the principles of justice and its own dignity and high character.

When the act of 1832 was passed for the relief of the State of Virginia, it does not appear that any plea of the kind was relied on, although there had been a similar settlement with that State, and a similar receipt taken. Nor does it appear that, prior to the passage of the act for the payment of this claim, during the ten years or more it was before Congress, this objection or plea was ever urged against it. Relief in each case was evidently granted upon the broad principles of justice and equity.

But the obligation of the United States to pay this claim has been placed upon another and additional ground, although not contained in the report to the Senate. In the cession by Georgia to the United States, in 1802, of that extensive and valuable territory now composing the States of Alabama and Mississippi, the United States undertook, as part of the consideration, to extinguish the Indian title to all the lands within the limits of Georgia. It is conceded that the Indian title to these lands, upon which this claim was a charge, passed to Great Britain by the treaty of 1773, and that the Revolution vested it in Georgia. But Georgia took it in trust, as Great Britain took and held it, for the payment of the debts due the traders. To the extent of Galphin's claim he had a lien, expressly created by solemn treaty stipulations, upon the Indian title to these lands. Was the Indian title, therefore, perfect in Georgia, so long as this incumbrance upon it remained? It was the Indian title, no matter who held it, if it were not perfect in Georgia, which the United States were bound to quiet and extinguish.

Could Georgia, before the claim of Galphin was paid, say the Indian title to these lands belonged unconditionally to the State? or was it not a living, unextinguished title, which Georgia, to the extent of this lien, in equity and good faith, had no claim to? Besides, the Indians, as a party to the treaty of 1773, had a just right to insist and require that its stipulations should be performed. It is submitted, then, whether the extinguishment of the lien of Galphin does not come within the spirit if not the letter of that clause in the cession or agreement referred to. And as the net proceeds already realized by the United States out of the sales of land obtained by that cession exceed twenty millions of dollars, Georgia would seem entitled to a very liberal construction of it.

Apart from the grounds suggested as constituting an equitable obligation upon the government for the payment of this claim, it might with some propriety be urged that the interest of Galphin in these lands having been appropriated by one member of the firm of States, virtually for the benefit of all, the whole firm should be held responsible, and that he might, therefore, irrespective of any direct liability as to any one, very properly apply to all for relief.

Such are the grounds on which this claim rested prior to the act of 1848, and the undersigned are by no means prepared to admit that they constituted no obligation upon the government to pay it; on the contrary, they are of opinion that, taken in connexion with the eminent services of Galphin, they present a strong claim to its justice as well as to its liberality. But even if it be conceded that the government was under no obligation to pay it, and that its payment had been gratuitously assumed, it would not, in the opinion of the undersigned, in the slightest degree affect the question as to the payment of interest. The act of 1848, in

the language of the former Secretary, Mr. Walker, "recognised the claim, and the United States became bound to pay it, whatever it might be."

The act referred it to the Secretary for examination, and to ascertain the amount due. It was not to ascertain whether anything was due, or whether the claim was just. The Senate report says, "there can be no doubt as to its justice or equity." It was admitted just in 1775; and it has been so admitted always, and whenever it has been examined. The only question has been, who ought to pay it? It was not referred to ascertain the amount due in 1775, for the precise amount was stated in the Senate report. The certificate of its liquidation at that time, and of the amount due, was before the Senate. But it was referred as a just and meritorious claim, that the amount due thereon at the passage of the act might be ascertained and paid.

Having shown, as we think, that the claimant was entitled to interest, did the act authorize its allowance? It is conceded that the accounting officer had no authority to allow it, unless the act conferred it. But it was not necessary that the authority should be conferred in express terms. It would be equally available, and equally the duty of the accounting officer to act upon it, if implied. We do not understand this position to be seriously controverted; but if it is, the authorities in support of it are numerous and conclusive. A list of cases, in which the accounting officers have allowed interest, although the acts referring them were silent in regard to it, is hereto annexed. If the expression in the opinion of Attorney General Crittenden, relied on, be construed to mean that interest is never allowed by an accounting officer, unless the act *expressly* directs its allowance, it is manifestly erroneous. But we apprehend it must have reference to the particular class of cases to which the case in which the opinion was given belonged. In that case there was nothing in the act or in the merits of the claim to justify the payment of interest.

In view of the Senate report, and of the peculiar character and merits of the claim, the presumption may be fairly indulged that Congress passed the act in a spirit of liberality as well as justice. Should it not, therefore, be construed in the same spirit, liberally, as a remedial and not as a penal statute? The intention was to do an act of justice, long delayed, to the representatives of a revolutionary patriot and public benefactor.

The naked return of the amount justly due their ancestor in 1775 without interest, when a fund charged with its payment, and amply sufficient for the payment of both, had been appropriated in aid of the cause of freedom and independence, would fall far short, not only of the imperative demands of justice, but of the presumed intention of Congress. But the relief granted by the act is not thus limited. It expressly requires the payment of whatever amount, upon examination, may be found due; and can any chancellor or judge be found who, having jurisdiction of the case, would decree the meagre return of the amount due in 1775 as all that was now due—as the measure of relief to which the claimant is entitled? We apprehend no such judge can be found, and that it would be difficult even to *pack* a jury who would return such a verdict. But the allowance of interest does not depend upon a liberal construction of the act: even the strictest construction would authorize its payment if found due. If interest was due, as we think it manifestly was, then the act *expressly* required its payment, for it is imperative in directing the payment of *the amount which may be found due.*

And what rule or usage of the government has been violated by the payment of the interest on this claim? If, as we believe, the act of 1848 confers an authority to pay it, then it has been paid according to both law and usage, and in discharge of an imperative duty which the act imposed. It is true, as applicable to the great majority of disbursements by this and no doubt every other government, that interest is not paid; but it is equally true that this and every other honest government pays interest in all cases where, upon the principles of justice and equity, interest is due. Vattel says:

"All the promises, the conventions, all the contracts of the sovereign, are naturally subjected to the same rules as those of private persons." (Vattel, lib. 2, chap. 14, 213.)

That eminent jurist, the lamented Justice Story, says, in Thorndike *vs.* the United States, (1 Mason's Reports, 20:)

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

The opinion of Chief Justice Taney, while Attorney General, in the case of Tharp, (Opinions of Attorneys' General, 841,) places the subject also upon the true ground. He says:

"I am not aware of any statute of the United States that forbids the Secretary of War or the accounting officers to allow interest to a claimant, if it should appear that interest is justly due him. As the United States are always ready to pay when a claim is presented supported by proper vouchers, it can rarely, if ever, happen that they are justly chargeable with interest; because it is the fault of the claimant if he delays presenting his claim, or does not bring forward the proper vouchers to prove it and justify its payment. But if in Major Tharp's case, or in any other, the Secretary of War, upon a review of the whole evidence, should be of opinion that interest is justly due to the claimant, I think he may legally allow it."

But, whatever may be the general usage of the government as to interest, it is not applicable to this case, as it was not originally a claim against it. It was a claim against a third party, the State of Georgia, which the government has assumed to pay, and to pay all that was *due* upon it, whatever the third party was in justice and equity bound to pay. The word *due* in this act means what is justly and equitably due. It can mean nothing else. All claims against the government are adjusted upon

the same principles—upon the principles of justice and equity. But the payment of the interest in this case violates no precedent, because no analogous case has been cited, nor can any be found, unless it be under the act of 1832, by which the government assumed the payment of claims due by Virginia. In that case, the entire liability of Virginia, interest as well as principal, was assumed and paid. In this case, the liability—not a part, but the entire liability of Georgia in regard to this claim—has been assumed, and, as we think, justly paid.

It is not perceived that the case relied on of the claims of Georgia against the Creek Indians under the treaty of 1821, and which the United States, to a certain extent, had stipulated to pay, has any application to this case as an authority against the payment of interest. The only claim asserted by Georgia in that case was for the return of specific property. The Attorney General, Wirt, says:

"The claim ought to be liquidated against the United States exactly on the principles that it would be liquidated against the Indians; and it is believed that a claim of interest against a nation of Indians, under circumstances like these, would be unprecedented."

The Attorney General decides against the payment of interest; and assigns, among other reasons, that the property, a return of which was claimed, had been assessed, on an average, at nearly double prices; that the claims were in the nature of unliquidated damages, upon which, as a general rule of law, interest was not allowed; that the principles of equity did not call for the allowance of interest—so far from it, that they forbid it. Under *circumstances like these*, it is believed it would not only be unprecedented to charge a nation of Indians, but any other nation, with interest. But the case seems to be relied on as authority to show that, because it was held unprecedented, under *the circumstances* of that case, for a nation of Indians to be charged with interest, therefore Georgia and the United States were not bound to pay interest on Galphin's claim. The case would not have been so particularly noticed were it not relied on as a prominent authority why interest should not have been allowed in the present case. But before leaving it, we must be permitted to say, as Georgia claimed interest against the Indians, under *the circumstances* of that case, she ought to be *estopped* from denying the claim of Galphin to interest in this case; and as the United States have thought proper to step into the shoes of Georgia, they should be subject to a similar *estoppel*.

The great antiquity of this claim will be found entitled to no weight as an objection against it, when it is understood that every material fact upon which its justice depends is incontrovertibly established. It has, in fact, for three-fourths of a century, constituted a part of the history of the country, and there is little hazard in the prediction that it is destined to give a more extended notoriety to the name of the claimant than it would otherwise probably ever have obtained.

The amount of the claim, although large, constituted no reason against its payment. In regard to the payment of the principal, it is conceded on all sides that it has been paid in conformity to law and precedent. In *this* all the accounting officers of the late as well as the present administration concur; but different opinions are entertained in regard to the payment of the interest.

The Auditor to whom the former Secretary of the Treasury referred the claim reported in favor of paying the interest as well as the principal.

The Comptroller reported against the interest. Mr. Walker directed the payment of the principal; but his impression being against the payment of interest, and not having time to examine the subject, he left the question as to the interest an undecided, open question for his successor. In his testimony, however, before the committee, he says, if the claimant had presented to him such an argument as that of the opinion of the Attorney General, he should have referred the case to the Attorney General, and been guided, he thinks, by his opinion.

The present Secretary referred the claim to the Comptroller, who decided against the payment of interest. He then requested the opinion of the Attorney General; and in pursuance of his opinion—which indicates a thorough investigation of the case, and fully sustains the deservedly high character of that distinguished jurist—directed the interest to be paid.

Whether the Secretary was required to pay the interest was a question of law, upon which it was the duty of the Attorney General, when requested, to give his opinion. The law has constituted the Attorney General the legal adviser of the executive department of the government; and rarely, if ever, in its history, has his opinion, when sought, been disregarded. In the adjustment and payment of this claim, therefore, it appears that all the requisitions and forms of law have been complied with. The proper officer has decided the law, and payment has been made accordingly. The revision of his opinion, or decision by a committee of the House of Representatives, is believed to be without a precedent in the history of the government. The committee being of opinion, however, that the resolution of the House required the merits of this claim, and whether its payment had been made in conformity to law and precedent, to be investigated; the undersigned, as members of the committee, after a laborious examination and full consideration, have come to the conclusion—

1st. That the claim was just, and that the government was under an equitable obligation to pay it.

2d. That the interest, as well as the principal, have been paid in conformity to law and precedent.

The undersigned, as appears from the report of the committee, fully concur in the statement of facts therein.

DANIEL BRECK,
C. M. CONRAD,
JAMES G. KING,
JOSEPH GRINNELL.

MEMORANDA.

Act approved 21st February, 1823, entitled "An act to provide for the settlement of the accounts of Daniel D. Tompkins, late governor of the State of New York," provided "that the proper accounting officers of the treasury be, and they are hereby, authorized to adjust and settle the accounts and claims of Daniel D. Tompkins, late governor of the State of New York, on principles of equity and justice, subject to the revision and final decision of the President of the United States."

Amount allowed for interest on advances made by him, settled through the Third Auditor's office, and approved by the President, $14,438 68.

Act approved March 3, 1841, entitled "An act making appropriations for the support of the army for the year one thousand eight hundred and forty-one," provided in the second section that the Secretary of War cause to be audited the account of the city of Mobile for advances of money and expenses incurred in equipping, mounting, and sending to the place of rendezvous two full companies of mounted men, under a call from the governor of Alabama, at the beginning of the hostilities of the Creek Indians, in the summer of 1836; and the amount or balance found due is directed to be paid out of any money in the treasury not otherwise appropriated, as soon as the Secretary of War shall approve the same.

Interest to the amount of $11,758 50 was paid under this section, through the Third Auditor's office, under the authority of the Secretary of War.

Joint resolution respecting the application of certain appropriations heretofore made, passed April 30, 1844, provides that in settling for supplies furnished to militia in the service of the United States under the act of 23d August, 1842, the accounting officers are directed to discharge the claims for said supplies: first, the amounts due to individual claimants; and secondly, those due to the Territory of Florida.

Joint resolution amendatory of the above, passed March 1, 1845, provides that nothing contained in the above or any other resolution shall be understood or construed to prevent the Secretary of War from allowing and paying any just and equitable claims for supplies furnished, or advances or loans of money made to provide for the defence of the inhabitants, and suppression of hostilities in the Territory of Florida, provided that the amount so allowed and paid shall not exceed the sums already appropriated by law.

By direction of the Secretary of War, there was paid through the Third Auditor's office, to sundry persons, in redemption of bonds issued by the territorial government of Florida in the Indian war, including interest, the sum of $30,996.

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Payments on account of interest made under authority of the Secretary of War, in cases where interest had been paid on money borrowed and expended for the use of the United States, and on bills, drafts, and warrants, unpaid when at maturity, (not provided for by any act of Congress.)

Union Bank of Alexandria, on drafts lying over; February, 1816	$325 47
Union Bank of Charleston, S. C., on drafts lying over; June, 1816	3,800 00
Lukens, cashier, advances to General Pinckney, 1816	3,091 79
Lukens, cashier, advances to General Pinckney, 1816	3,118 03
Bank of Georgia, advances to General Pinckney, July 15	3,190 10
State Bank of North Carolina, on drafts; December, 1816	3,800 00
Governor of the State of New Jersey, on loans by the State in 1815 and 1816	2,558 33

Corporation of Charleston, on money advanced - -	$8,531 36
Bank of the Metropolis, drafts lying over - - -	6,670 69
J. J. Astor, on drafts on the War Department - -	1,139 80
Pittsburg Bank, on drafts - - - - -	630 00
Mechanics' Bank of Alexandria, on drafts - - -	2,600 00
Miami Exporting Company, on drafts - - -	5,220 76

TREASURY DEPARTMENT,
Third Auditor's Office, April 25, 1850.

JNO. S. GALLAHER,
Auditor.

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The following cases, where interest has been allowed in settlements in this office where no reference was made in the acts, serve to show the practice, to a certain extent, of the government in the payment of interest.

By the act of 2d July, 1836, (vol. 6 United States Laws, p. 679,) entitled "An act for the relief of James Thomas," the accounting officers are "authorized and directed to adjust and settle the accounts between the United States and James Thomas, upon principles of equity and justice;" "and that in the settlement of his accounts as contractor," * * "to recognise the judicial decision of the district court of the southern district of New York."

Under the above authority, and the opinion of the Attorney General in November, 1837, interest was allowed amounting to $28,643 55, and the principal amounted to $37,232 06.

By the act of 12th April, 1848, (acts 1847 and '48, p. 64,) entitled "An act for the relief of the legal representatives of George Fisher, deceased," the Second Auditor was "authorized and required to examine and adjust the claims of the legal representatives of George Fisher, deceased, on principles of equity and justice," &c. Under the above authority, and by the opinion of the then Attorney General, interest amounting to $9,062 73 was allowed, and, subsequently $10,004 89. The principal allowed was $8,973.

Had I sufficient time and force to examine, other cases settled on the same authority, as to the allowance of interest, where the same is not expressly provided for by law, might be found. The above, however, will serve to show the practice of this office.

P. CLAYTON,
Second Auditor.

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The act of 3d March, 1839, making appropriations for the civil and diplomatic expenses of the government, (sec. 2, p. 348, Statutes at Large, vol. 5,) provides * * * "but whenever it shall be shown to the satisfaction of the Secretary of the Treasury that in any case of unascertained duties, or duties paid under protest, more money has been paid than the law requires, it shall be his duty * * to refund the same out of any money in the treasury," &c.

Under the above section, interest in the above class of cases on the ex-

cess of duties was allowed both by the decisions of the courts and the Secretary of the Treasury.

The act of 8th August, 1846, entitled "An act to refund to certain persons an excess of duty exacted on the importation of foreign merchandise," (Stat. at Large, vol. 9, p. 84,) in the 2d section thereof, says: "That the Secretary of the Treasury be, and he is hereby authorized, out of any money in the treasury not otherwise appropriated, to refund to the several persons entitled thereto such sums of money as have been illegally exacted by collectors of the customs, under the sanction of the Treasury Department, for duties on imported merchandise since the 3d March, 1833: *Provided*, That before any such refunding the Secretary shall be satisfied, by decisions of the courts of the United States upon the *principle* involved, that such duties were illegally exacted: *And provided, also*, That such decisions of the courts shall have been adopted or acquiesced in by the Treasury Department as its rule of construction."

Under said authority, by the usage of the department, duties were refunded to claimants, and generally with interest.

Act of 29th April, 1816, (6 vol. Stat. at Large, p. 173,) entitled "An act for the relief of Elizabeth Hamilton," provides as follows: "That the proper accounting officers of the treasury be, and they are hereby, required to settle the account of Elizabeth Hamilton, widow and representative of Alexander Hamilton, deceased, and to allow her five years' full pay for the services of her deceased husband," &c.

Under this act principal was allowed, amounting to $3,600, and interest amounting to $7,009 64. Audited July 1, 1816; report No. 32,467.

The foregoing is but an example of a large class of claims adjusted for commutation of half pay, in a number of which interest has been allowed, though not provided for in the acts for the relief of the parties.

Act of 23d August, 1842, (Stat. at Large, vol. 6, p. 864,) entitled "An act for the relief of Charles F. Sibbald," provides "that the Third Auditor of the Treasury, under the direction of the Attorney General, be, and he is hereby, directed to ascertain the actual damages which Charles F. Sibbald has sustained, and would be entitled to recover upon the principles of law, as applicable to similar cases;" * * * "and that the Secretary of the Treasury, after the said damages shall have been ascertained in the manner aforesaid, in case any sum shall be found due, shall pay the same out of any money in the treasury," &c.

Under the above, in addition to *damages* amounting to $14,296 64, interest was allowed amounting to $12,836. Audited December 9, 1845; report No. 92,699.

Also, under resolution (vol. 9 Stat. at Large, acts 1845–'6, p. 34) requiring the Secretary of the Treasury to audit and liquidate the claims and demands of said Sibbald upon principles of law and equity, and in such manner as to secure to said Sibbald an indemnification for the injuries and damages sustained by him," &c., an allowance for damage, interest, and costs was made, amounting to $26,029 70. Audited June 3, 1847; report No. 96,494.

T. L. SMITH, *First Auditor*.

A.

IN SENATE OF THE UNITED STATES—*December* 29, 1847.

Mr. ASHLEY, from the Committee on the Judiciary, to whom was referred the petition of Milledge Galphin, heir and legal representative of George Galphin, deceased, made the following report:

That this case was before the Senate at the last Congress, and received the favorable action of the Committee on the Judiciary, to which it was referred during both sessions. At the first session of the 29th Congress, it received a full and particular examination by the Committee on the Judiciary, whose views, as set forth in the annexed report, are adopted by this committee and made a part of their report.

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IN SENATE OF THE UNITED STATES—*July* 7, 1846.

Mr. ASHLEY, from the Committee on the Judiciary, to whom was referred the petition of Milledge Galphin, legal representative of George Galphin, deceased, made the following report:

That George Galphin was, prior to the year 1773, a licensed trader with the Creek and Cherokee Indians in the then colony of Georgia. That he was also, by the assignment to him of their several claims, the representative of other traders, to whom, with himself, those Indians had become largely indebted. In the same year Sir James Wright, governor of the colony of Georgia, in pursuance of instructions from the British government, concluded a treaty with the said Indians, by which a considerable extent of territory (now forming the counties of Wilkes and Lincoln, and portions of the counties of Oglethorpe and Green, in the State of Georgia) was ceded to the Crown of Great Britain; and by an express provision inserted in the treaty the debts of the Indians to these traders were secured to be paid from the proceeds of the lands ceded, which thus became charged with their payment.

The King afterwards, in the year 1775, ratified the treaty, and directed instructions to be issued for the appointment of commissioners under it, to liquidate the claims of the traders, with a view to their payment out of the fund thus provided for that purpose. Before these commissioners Galphin's claims were proven, to the amount of nine thousand seven hundred and ninety-one pounds fifteen shillings and five pence sterling money of Great Britain, and would unquestionably have been paid by that government had not an event occurred which totally changed the relations which existed between the colonies and the mother country, and arrested and, as it has resulted, entirely destroyed all prospect of a settlement in that quarter.

That event was the war of independence, which broke out in 1776, the year after the liquidation of Galphin's claims by the commissioners; and disregarding all other considerations than those of patriotism and love of liberty, he, with a magnanimity and self-devotion, the extent of which was proved by the entire loss of his claims, threw himself into the ranks

of the opponents of tyranny and oppression, and manfully and faithfully adhered to them and their cause throughout the trying period during which that struggle continued. And such was his devotion to his country, and the efficiency of his services against her enemies, and so important did the British government regard his destruction to the success of their cause within the sphere in which his services were rendered, that a resolution *passed the Parliament* attainting him of high treason, and a price was set upon his head as an outlaw and a rebel.

The price of his patriotic devotion to his country was the loss of his claim against the British government, which was liquidated, and would have been paid but for this cause. Other Indian traders, whose claims rested on precisely the same grounds as that of Galphin's, and were provided for by the same treaty, but who adhered to the British side in the Revolution, were paid by that government; while that of Galphin's heirs, he being now dead, was rejected because of his adhering to the side of popular rights against an arbitrary and unjust government.

The lands ceded by the Indians in 1773 to the Crown of Great Britain, for the sole purpose of discharging their debts to the traders, on the success of the struggle for independence, passed into the possession of the State of Georgia, and now constitute several counties and parts of counties within her limits. Believing the liability of those lands for the payment of their debt still to follow their change of ownership, the heirs of Galphin prosecuted their claim before the legislature of that State, but were never able to procure its recognition by more than one or the other branch of that body; for while all agreed in its justice and equity, doubts entertained by many as to the obligation of the State to pay it operated to defeat its success.

As there can be no question as to the justice or equity of this claim, the question presents itself, Who is bound to pay it—the government of the United States, or that of the State of Georgia? Here was a debt secured by express treaty stipulation between the British government and certain Indians, and no obstacle remained in the way to its payment as provided for in the treaty; it had become a vested right, and but for the Revolution which intervened, would have been acquitted and discharged. The Revolution was not the act of the State of Georgia. She was merely a participant in what was the common, glorious act of all; it was by no *special act* of hers that the treaty by which this debt was secured was set aside; and it would seem that, being only a sharer in the act which caused the rights secured under it to be disregarded, she could scarcely be called on to meet the whole responsibility, which should be the joint responsibility, as its benefits were the joint benefits, of all who contributed to its accomplishment. As well might any single State be called on to indemnify a citizen of the United States against the act of the general government, because he resided within her limits, as that the State of Georgia should be called on to discharge this debt, which was arrested in its payment by the Revolution; which may, considering its consequences, be called a national act, and which transferred from the British government, against which Galphin's heirs could now have no claim, to that of the United States, their right of appeal for its settlement. By the act of the Revolution the government which followed, and of which Galphin, as he had contributed to its establishment, claimed the protection, transferred to itself all the obligations which existed prior thereto on the part

of the government which by it was set aside, as far as the claims of a similar character with the present were concerned. The government of the United States now stands in the relation to the Indian tribes that Great Britain did prior to the Revolution. And the obligations of the treaty entered into by that government with the Creek and Cherokee Indians before that event, which had for its object the payment of the just debts of the traders, would seem to devolve on the United States, wherever it could be shown that the claimant had fixed that obligation by his support of the government substituted. That the obligation runs no further is sufficiently manifest, and needs no argument. The government of Great Britain paid the debts of the Indians to such traders as had espoused her cause, and rejected Galphin's, who opposed it. And it was the duty of the United States, of whose government Galphin's heirs were now *the subjects, to prosecute theirs, and, failing to do so, have made themselves justly liable for its payment.*

Apart from the considerations above set forth, *the State of Georgia appropriated these lands—set apart as they were by the treaty of* 1773, *as a fund for the payment of these debts—to the public defence, and the bounty warrants of the officers and soldiers of the Georgia line in the revolutionary army were located upon them.* By an act of Congress approved July 5, 1832, the government of the United States provided for certain claims, which Virginia had assumed to the officers of that State engaged in the public service during the revolutionary war. It is believed that the principles of that act are applicable to the present claim, which the committee think ought to be allowed, and accordingly report a bill for relief.

MINORITY REPORT.

MAY 17, 1850.

Mr. DISNEY, *from the Select Committee appointed to investigate the connexion and relation of the Secretary of War to the claim of the representatives of George Galphin, submitted, in behalf of himself, Mr. Featherston, and Mr. Job Mann, the following argument:*

The undersigned, members of the committee appointed to make investigation into the origin and nature of the Galphin claim, together with such other matters connected therewith as may be necessary to a full understanding of its merits and its mode of settlement, beg leave to report:

That the facts of this case, as set forth in the report of the majority of the committee, exhibit its history; and a brief examination of the opinion of the Attorney General will enable us not only to determine the character of the claim, but to decide upon the propriety of the allowance of interest upon it. The obligation of the United States to pay the debt is claimed to be derived from the fact that, "upon the cession by Georgia (to use the language of the Attorney General) to the United States in 1802, the latter became liable for the stipulations of the treaty of 1773, and bound in law and honor to execute them." How the United States became liable, we are not told. We, however, are left to infer that, inasmuch as the United States became bound by the terms and conditions of that cession to extinguish the Indian title to all the other lands within the State of Georgia, they became bound to extinguish any outstanding title which might be in these lands. But whether this was so, depends entirely upon the fact of its being an Indian title. The United States were bound to extinguish no other; but their obligation to extinguish that was perfect.

The treaty of 1773 conveyed the Indian title to the British Crown: it passed, to be sure, loaded with the incumbrance of this claim of Galphin, together with the claims of others; but the entire title of the Indians passed. The traders executed releases to the Indians, and the Indians ceded the lands, and all the liabilities between the two were settled and definitively closed. The legal title vested in the Crown: Galphin, it may be, had an equitable lien; but the remainder was in the Crown, and no reversionary interest was left behind. No event short of actual repurchase could reinvest the title in the Indians. They had neither title nor interest left, present, prospective, or contingent. The proceedings of the war of the Revolution placed the State of Georgia in the stead of the British Crown, and she became seized of the latter's title, and subject to its liabilities; but what stipulations or part of the stipulations of the treaty of 1773 the United States became liable for by the conditions of the cession of 1802, it is not easy to understand. The burden of the stipulation

to apply the proceeds of the land to pay Galphin's claim, if it rested anywhere, was on Georgia, and the title to the lands was in her. There was no title to extinguish for Georgia's benefit. The lien of Galphin and the Indian title were two quite different things. The title had been successively the title of the Indians, of the British Crown, and of the State of Georgia; but the lien remained the lien of Galphin. It was but a lien at best, and could be converted into a title only by proceedings for that purpose. As a lien it might have been discharged. So far as it had effect, it *impaired and weakened the Indian title; and from the moment of its creation, it stood in opposition to it.*

If there could be any doubt about the meaning of the phrase, as used in the agreement and cession of 1802, a brief consideration would explain it. Georgia had been harassed and annoyed by the inroads of the Indians, and by conflicts between them and her citizens in regard to the occupancy of certain tracts, and she desired to have "the Indian title" extinguished throughout her entire domain. It was to accomplish this that she inserted the condition which bound the United States to extinguish it "to all the other lands within the State of Georgia." There was no dispute in regard to the occupancy of the Galphin lands. These had been settled and occupied by the whites, and they had remained undisturbed for nearly thirty years, when the agreement of 1802 was made. The Indians set up no claim to them, but they did to other lands, the occupancy of which they either retained or claimed; and these were the lands which Georgia sought to have relieved. The title of occupancy was the Indian title, and it was the title of occupancy which she conditioned should be extinguished.

"The ultimate fee, incumbered with the right of Indian occupancy, was in the Crown previous to the Revolution, and in the States of the Union afterwards, and subject to grant." (Clark *vs.* Smith, 13 Pet., 195.—See United States Statutes at Large, Indian Treaties, 11.)

"Indian possession or occupation was considered with reference to their habits, &c., and their rights were as much respected until they abandoned them, made a cession to the government, or an authorized sale to individuals. In either case their rights became extinct, &c. Such was the tenure of Indian lands by *the laws of* (all the original thirteen States as well as) *Georgia.*" (Cherokee nation *vs.* the State of Georgia, 5 Peters, 1.)

The *laws of Georgia* thus acknowledged no Indian title to the Galphin lands. Then by what reasoning can we attach a meaning to the phrase in the deed of cession of 1802, which the *laws of Georgia* herself deny? To come directly to the case, had the Indians a right in 1848 to pay Galphin, and resume *pro tanto* their title in the lands?

The stipulation of 1802 was inserted by Georgia. It was inserted for her own benefit; and for the purposes of this case, it will be admitted that she knew whether it was intended to cover the Galphin claim; whether she held those lands by an "Indian title," within her meaning, as expressed in the agreement of 1802. What is her testimony? Uniformly and constantly she has denied her own obligation for the debt, and when asked to recommend its payment by the government of the United States she has refused. Such has been her construction of the obligations of the United States towards her. She was the party in interest; the obligation was due to her: she knew the title which she intended to describe, and

she denied its existence in regard to the lands incumbered by Galphin's claim. This alone disposes of the case. Besides, the obligations on the part of the United States existed as between her and Georgia. They were the fruits of stipulations entered into between two independent governments from motives of policy for the benefit of each, and either party had a right to relieve the other from all or any part of the agreement. To deny this would be subversive of the very end and object of government. If individual rights could arrest the action of the government in this respect, its policy would no longer be within its own control. It would cease to be a government. That Georgia had an undoubted right to annul that particular stipulation, and release the government of the United States from its fulfilment, cannot be denied, and her right to release it from any part of that stipulation is equally clear. That she did release it, (even if we admit that the obligation had existed,) when, on formal application, her legislature refused to acknowledge it as the duty of the government of the United States to pay the debt, follows as a consequence, from which we can see no escape.

The various treaties by which the Indians ceded additional lands and removed their boundary lines further from the original settlements of the whites, of necessity included a confirmation of their previous grants. A number of treaties of this sort were held subsequent to the treaty of 1773. They were held at Hopewell, New York, on the Holston, at Philadelphia, Colerain, and at various other places.

By the treaty of New York, in 1790, the Creek nation expressly "release, quit claim, relinquish, and cede all the land to the northward and eastward of the boundary line herein described." A similar provision is to be found in the treaty of 1792, made with the Cherokees.

In the treaty of Indian Spring, made in 1821, it was agreed "that all the talks had upon the claims, together with all claims on *either side, of whatever nature or kind*, prior to the act of Congress of 1802," &c., should be referred to the decision of the President, &c., and that "the decision thus made should be binding." And in consideration of two hundred and fifty thousand dollars, paid to the State of Georgia, her commissioners released the Creek Indians "from every claim and claims, of *whatever description, nature, or kind* the same may be, which the citizens of Georgia now have or may have had prior to the year 1802 against the said nation." And in 1825, by the treaty of the Indian Springs, the Creek nation ceded "to the United States all the lands lying within the boundaries of the State of Georgia, as defined by the compact hereinbefore cited, now occupied by said nation, or to which said nation have title or claim." This completed the cession of Indian lands, so far as the Creek nation was concerned, within the boundaries of Georgia, and fulfilled the contract and discharged the obligation imposed upon the United States by the agreement of 1802. And by the treaty of New Echota, in 1835, the Cherokees did "cede, relinquish, and convey to the United States all the lands owned, claimed or possessed by them east of the Mississippi river." Thus no Indian title remained in 1848 to either of these tribes within the limits of Georgia; and whatever title may have remained in the Galphin lands, that title was certainly not in the Indians. But, admitting, for the argument, that Georgia took the lands in question, and held them by the Indian title for the purposes of the trust, that title was merged when she made her grants. The misapplication of the proceeds did not

affect the title. The grantees were not bound to see that the State of Georgia paid Galphin's lien, if he had one, nor could the lien have been enforced against them. In contemplation of law, the grantees would have done enough when they relied on the dignity of the State. It was a time of war and revolution, and the sovereign seized the fund and appropriated it to the public use. The necessities of State demanded the destruction of the trust, and it fell before her sovereignty. The lien of Galphin vanished; and whatever obligations her action may have imposed on Georgia, it was for Georgia and the representatives of Galphin to settle. It certainly left no Indian title. Thus, examine it as we may, the claim or lien of Galphin was not within the meaning of the agreement of 1802. It is suggested, however, that there is another point of view from which an obligation might accrue on the part of the United States to pay this debt. The Attorney General does not present it. He probably saw its weakness. It is supposed by some, that as the lands in question were a trust-fund in the possession of Georgia, but which she, by appropriating them as bounties to the soldiers of the revolutionary war, transferred in point of fact to the government of the United States, and Galphin having a right to pursue this fund, the general government became bound to pay his claim.

It is, however, essential to this conclusion that the fact should be first established that the government of the United States received the benefit of the fund. Was this so? At the time of the war of the Revolution, Georgia, North Carolina, Virginia, Maryland, Pennsylvania, New York, Connecticut, and Massachusetts, each possessed and owned vacant and unappropriated lands, and each of them, with the exception of Connecticut, donated them in bounties to their own soldiers. These were State donations. The old Congress donated in a similar manner bounty lands to all the soldiers of that war, without regard to the States in which they might have served. The donations of the States were held to have been peculiarly for themselves; the donations of Congress were for the interest of all: to have indemnified the States for the grants they made would, in point of fact, have made the general government itself the donor. And thus it would have given twice or thrice, as the case might be, the quantity of bounty land to the soldier of a State owning such unappropriated lands, that it would have given to the soldier of a State which owned none—a discrimination forbidden at once by every consideration of justice and of right. The soldier of Georgia received from the general government his bounty land, to an extent as great as did the soldier of any other State, and here the obligation ended. Georgia's donations were from her own bounty, and not from the common fund. As possessor of the eminent domain within her limits, she could appropriate her vacant lands as she willed, regardless of the bounty of the United States. She did so; and any obligations which she incurred in the disposal of her lands were peculiarly her own, and she must discharge them. These lands, then, were not used for the *benefit* of the United States; the United States derived no benefit from the fund, and, of course, incurred no liabilities on account of any incumbrances charged upon it. Besides, if the fund had actually been appropriated for the common benefit, it by no means followed that the government of the United States would be liable for the charges on it. The States were quite unequal in wealth and generosity, as well as in population, and it well might be that a wealthy or a

generous State might make donations larger than the common interest required. If this were so, it would be a subject of consideration how far the federal government should discharge an obligation thus imposed. Equity and right, with regard to the other States, would, under such circumstances, deny indemnity to its full extent; and the precise amount to be allowed could be properly determined only by an agreement. Nor would the case be altered if the property donated had been a trust-fund in the possession of the State. In such a case the liability or the extent of the liability of the United States would flow only from its agreement, and it is not pretended that any such was made in regard to the lands incumbered by Galphin's claim. If Georgia appropriated the fund charged with the payment of Galphin's debt, Georgia must answer for it: no obligation devolved upon the United States.

By the act of 5th August, 1790, Congress made provision for "the settlement of the accounts between the United States and the individual States." The act created a board of commissioners to receive and examine all the claims of the individual States, and "to determine on all such as shall have accrued for *the general* or *particular* defence during the war," and made most liberal provision for their allowance. It directed each State to be debited with all advances made to it by the United States, and to be credited for its disbursements and advances. Under its provisions the commissioners discharged the duty imposed upon them, and made the settlement required; and on the 29th June, 1793, reported that they had maturely considered the various claims, and find that there is due to and from the different States therein named the sums as stated. Among these States is Georgia; and there was found due to her the sum of nineteen thousand nine hundred and eighty dollars, including interest to the 31st May, 1789, which, "by virtue of the authority to them delegated," they declare to be "the final and conclusive balances due to and from the several States." This closed the accounts of Georgia for receipts and expenditures during the war of the Revolution; and if Georgia appropriated any lands as bounties to her soldiers, the presumption is, that it gave her no claim on the federal government, or, if it did, that she presented it; and whether allowed or refused, the claim was closed. It is too late now either for Georgia, or for others for her, to raise a claim in her behalf on account of expenditures or liabilities growing out of the war of the Revolution, the obligation for which was fixed and ascertained prior to the date of the settlement referred to.

From these considerations our mature conclusion is, that there was neither a legal nor an equitable obligation on the United States to pay this claim. The terms of the act of 1848, however, have properly been held as directing it, and it was paid; and the question next arises, Was it proper to pay interest on it? To determine this, we are naturally first led to examine the act itself. Its terms authorize and require the Secretary of the Treasury "to examine and adjust the claim," and to "pay the amount which may be found due to Milledge Galphin, executor," &c. The claim is described as "the claim of the late George Galphin, under the treaty made by the governor of Georgia with the Creek and Cherokee Indians, in the year 1773." The words of the act contain nothing in their arrangement, so far as they point out and direct the duty of the Secretary, which indicates an attention on the part of Congress to take the examination and adjustment of the claim from under the established

and ordinary rules which govern the accounting officers in similar cases. The language employed seems to be that in common use: "*to liquidate and settle*," "*to adjust and settle*," "to audit and settle," "to audit and pass," "to settle," "to liquidate and adjust," "to audit and adjust;" and in this case, "to examine and adjust" is the phraseology of the acts of Congress in relation to the settlement of claims. Sometimes additional words are added; as, "according to the principles of equity," or "according to the principles of equity and justice;" and these words have been held to be directive of the rule by which the adjustment shall be made, while their absence has been considered as leaving the settlement under the rules ordinarily applied. But there are no such words in the act of August, 1848; and if it were admitted that the language which describes the claim could be held as directive of its settlement as a claim under the treaty of 1773, still that settlement was required to be made according to the ordinary rules in such a case. It was to be examined and adjusted under the ordinary application of the established rules.

In relation to interest on claims against it, the rule of the government is well established. The government does not allow it.

"The act of Congress does not direct the payment of interest, nor does it refer to any *principles* of settlement from which it can be inferred that interest was intended to be allowed."—(Opinion Attorney General Wm. Wirt, April 3, 1819.)

"The claim for interest it appears the accounting officers do not think a proper allowance, because the law does not *expressly* give interest. As a general rule their view is the correct one."—(Opinion Attorney General B. F. Butler, 1158.)

"I am given to understand that it has not been the practice of the accounting officers of the Treasury Department to allow interest upon an account directed to be settled or paid by an act of Congress, unless there be in the act itself special words to that effect."—(Opinion Attorney General R. Rush.)

"There may be cases in which I might think the head of a department authorized to allow interest, but they would be rare and singular exceptions."—(Opinion Attorney General H. S. Legaré, 2d April, 1842.)

"It is confidently believed that in all the numerous acts of Congress for the liquidation and settlement of claims against the government, there is no instance where interest has ever been allowed, except only where those *acts* have expressly directed or authorized its allowance."—(Opinion Attorney General Crittenden, 17th June, 1841.)

In his reply to a call of the House of Representatives on the 23d March, 1816, Mr. Crawford said (as quoted in the report of Mr. Whittlesey) that "the general usage of the War Department has been to pay no interest." Mr. Whittlesey himself, in this case, testifies to the same rule.

"It is admitted that the government in general ought not to pay interest in the absence of special contract to that effect. It is admitted that this is a stern but necessary rule."—(Opinion Attorney General H. S. Legaré, 20th December, 1843.)

So rigidly is the rule adhered to, that interest is not allowed, though the principles of equity and the rulings of the law, as between individuals, may demand it.

"There can be no doubt that the well-established, equitable principle *between man and man*, is, in general, *the other way*. The *exception* in

favor of the government has been established by the policy of society, and for the protection of the public."—(Opinion of Attorney General H. S. Legaré, 20th December, 1843.)

"I am also confirmed in this conclusion by a conviction, after looking into the original contract and all the papers, that the claim to interest *is agreeable to equity and justice*. This conviction, in the absence of a special reference, &c., &c., might not perhaps have been sufficient to take the case out of the general rule stated by the accounting officers, &c."—(Opinion of Attorney General B. F. Butler, 1160.)

Nor will the executive departments permit this usage to be set aside, even by judicial authority, if it be inferior to that of the Supreme Court of the United States.

"The right of the judge to allow interest was therefore unwarranted." (Opinion of Attorney General Crittenden, 17th June, 1841.)

"I am fully aware of the great weight that ought to be attached to the decision of the circuit court for the first circuit, and I have no objection to admit that, *as between individuals*, the claim for interest in such a case would *be an equitable and reasonable one;* but that is *not enough* to *justify* the executive department in deviating from what I have always understood to be one of the *best ascertained* and *most inflexible* rules of its administration."

Again:

"If courts of justice allow of a set-off against the United States, on alleged principles of justice and equity, by way of mere *defence*, there is, of course, no remedy for the government against a final decision to that effect. But when, on the strength of such decision as *an authority* collaterally binding upon the executive department, these are required to depart from their clear and fixed rules, I must say that I cannot assent to the doctrine."—(Opinion of Attorney General H. S. Legaré, 2d April, 1842.)

"I am bound to adhere to the course of the executive department until *Congress* shall see fit to change it. * * * The accounting officers are bound by the *law*. The *courts* have authority under that statute (1797) to admit equities."—(Ibid.)

It is not the duty of your committee to inquire either into the propriety or the reason of the rule; it is sufficient for us to learn that the rule exists—that it is well established.

"Usage cannot alter the law; but it is evidence of the construction given to it, and must be considered *binding on past transactions*. Hence, of necessity, usages have been established in every department of the government, which have become a kind of common law, and regulate the *rights* and *duties* of those who act within their respective limits."—(United States *vs.* McDaniel, 7 Peters, 1.)

This would seem to be conclusive. The general rule is clear. That there are exceptions is a matter of course. These are: 1st, when interest is directed to be paid by special act of Congress, either by express terms, or by strong implication; 2d, when it is stipulated for in the contract; 3d, when the claim is for advances made to the United States, though this exception has its limits; and 4th, under decisions of the Supreme Court of the United States. When the act directs *damages* to be paid or *indemnification* to be given, or authorizes the accounting officers to adjust the claim upon principles of "equity" and "justice," the usage permits

an *inquiry* into the propriety of allowing interest; but in every other case it is not an open question.

The present case was not within either of these exceptions; and if it had been, it would have been subject to another rule. Interest could only be allowed from the time that the claim was presented with the proper vouchers.

"As the United States are always ready to pay when a claim is presented supported by proper vouchers, it can rarely, if ever, happen that they are justly chargeable with interest, because it is the fault of the claimant if he delays presenting his claim, or does not bring forward the proper vouchers to prove it and justify its payment."—(Opinion of Attorney General R. B. Taney, 841.)

"He has never made application for payment, and therefore there has been no withholding payment against his consent. If he conceives himself aggrieved by the practice of the treasury in similar cases, he has his remedy before Congress."—(Opinion of Attorney General William Wirt, 195.)

To apply the principle to this case raises the inquiry, When did the parties "present their claim and bring forward the proper vouchers?" Its history shows that the first application to the government of the United States was made in 1837. It was not allowed until the passage of the act of 1848.

"The whole adjustment of these claims being confided exclusively to the Secretary of the Navy, the amount allowed by him becomes a debt due from the United States *at the time of the allowance.*"—(Opinion of Attorney General William Wirt, p. 455.)

Then, how could interest be allowed prior to that date? It is clear that if, instead of being issued by the commissioners of Great Britain, the certificate held by Galphin had been issued under the authority of the United States, interest would not have been allowed upon it prior to the date of the demand for payment. Then, we may ask, did the obligations of the United States become stronger because, instead of issuing the certificate themselves, they acknowledged the responsibility upon them as arising from the acts of others? This hardly will be claimed.

The Attorney General says that—

"As the lands were used in a great measure for the common benefit of all the United States, the United States, in 1848, when they agreed to pay this particular claim, agreed to assume a liability coextensive with that of Georgia. In this respect, (he adds) I am unable to distinguish between this case and that of the Virginia commutation cases assumed by the United States by the act of July, 1832."

And again he remarks:

"Here, beside the obligation resulting from assuming, as was done by the act of 1848, this debt of Georgia, because of the appropriation by her of the lands charged with the debt to the common cause which was all that existed in the Virginia cases, there exists this *additional ground*, that, by taking the cession of Georgia in 1802, we bound ourselves to extinguish all outstanding titles to the lands within the limits of Georgia."

The "additional ground" here spoken of we have heretofore examined. The other point rests upon the assumption, that, by the act of 1848, the United States assumed the debt *as the debt of Georgia*, and did so because the lands were used in the common cause, from which it

is claimed to follow that the United States must discharge the full extent of liability which *Georgia* had incurred. But are we to decide whether this was the debt of Georgia? She was not a party to these proceedings. Congress did not sit in judgment on her. The claim was not directed to be paid as the debt of Georgia. The act describes it as "the claim of the late George Galphin," and in no way implicates the State. Then by what authority does the Attorney General undertake to pronounce it to be her debt? The implications of his position are, that this was a debt of Georgia; that she broke her good faith, and that the United States undertook, in her behalf, to pay the debt and satisfy the damages inflicted by her—this, too, in opposition to her wish.

It is pronounced to be her debt, and the extent of the debt is measured; though, by her action, Georgia had protested and denied the rule by which the extent of the debt was ascertained, as well as the existence of the debt itself. The claim of Galphin is one thing, and the debt of Georgia is another; and it was not the latter, but the former, which the act of 1848 directed to be examined and adjusted.

The Attorney General can see no difference between the act of August, 1848, and that of July, 1832, in relation to the Virginia commutation cases. Is there any? This latter was "An act to provide for liquidating and paying certain claims of the *State* of Virginia." The former was an act to adjust and pay the claim of the executor of George Galphin. The latter was to indemnify Virginia for moneys paid or to be paid by her, for services in the common cause. The former was to pay a claim arising out of goods sold to the Indians, the payment of which was intended by the parties to be secured by a fund, no part of which inured to the general benefit. The act of 1832 did not pass in judgment upon the rights of the claimants against Virginia. She had fixed these rights before, and the act of Congress was to *indemnify the State*. Was the act of 1848 to indemnify Georgia? Georgia had neither paid nor fixed an obligation to pay Galphin. She had suffered nothing for which indemnification could be asked or given. The act of 1832 was for reimbursement to the State, but the act of 1848 was to pay the claimant. Interest was allowed under the act of 1832, because Virginia was compelled *to pay* it, and this is the doctrine of Attorney General Johnson himself in the Ewell case. Interest under the act of 1848 was allowed, though Georgia denied both debt and interest. The act of 1832 allowed the State to decide upon her obligations, and yet the Attorney General assumes that the act of 1848 denied this power to her.

In the case of Trezevant, for supplies furnished to the army in 1777, Georgia allowed and paid the debt, but she refused interest on it; and this rule would have refused interest to the representatives of Galphin. What similarity, then, is there between the acts of 1848 and 1832? We can discover none. But if the principles of the latter could have applied, they would have refused interest under the act of 1848.

The Attorney General presents another point. As Congress knew the amount of the principal, its reference of the claim for an adjustment indicated a reference of something beside the principal, and this of course must have been the interest. This, we apprehend, is simply a mistake in a point of fact. The certificate held by Galphin was for pounds, shillings, and pence, "lawful money of the *province;*" and to bring that amount to dollars it required to be examined. In what, perhaps, may be

considered as his supplemental opinion, he remarks that the act was to adjust and pay the claim, the whole claim; and the interest was as much a part of the claim as was the principal. Such, however, we must be permitted to observe, does not seem to have been the opinion of his predecessors.

"Interest on the amount of such *losses* is certainly a thing very distinguishable and different from the *losses* themselves. It may be that *justice would have required in this case* the allowance of interest as well as of the principal; but *Congress* alone was competent to determine the extent of its obligations, and to give or withhold authority for the allowance of the principal—that is, the value of the property lost, with or without *interest*. The whole subject was before them for consideration and legislation, and the question of interest was as *important in amount* as the principal."—(Opinion of Attorney General Crittenden, June 17, 1841.)

And this, unquestionably, is the doctrine of the law. Interest is not a part of the debt, but something added to the debt by way of damage for the detention of it. Formerly, all interest was considered unlawful in every country in Europe. In France particularly, a few years since, and perhaps yet, so thoroughly did the laws condemn it, that, with the exceptions of minors, marriage-portions money, and the price of lands, a party who had paid interest voluntarily might recover it back at pleasure. Even in England, the allowance of interest is not given by express law, but rests on the discretion of judges and juries, as the arbiters of damages. It is a measure of damage. It may be payable in cases of delay, if a jury in their *discretion* shall think fit to allow it. It is not a part of the debt, *neither comprehended in the thing nor in the term*, and words which pass the debt do not give interest necessarily. It depends altogether on the discretion of the judges and jurors; and where *the party cannot make profit out of the money in his hands, it ought not to be allowed.*—(Letter of Mr. Jefferson to Hammond, State Papers, vol. 1, p. 213. Opinion of Attorney General William Wirt, 413.) There is no general statute of the United States allowing interest; and if, for the argument, we admit that the trust-fund had passed into the possession of the United States, one of the authorities relied on by the Attorney General would not have given interest in the case.

"Interest will not be allowed against a trustee holding a fund, where he had made no interest, if there be no laches or neglect or use of the money on his part."—(Cassels *vs.* Verner, 5 Mason, 332.)

The exceptions grow out of the profit which the trustee may or might have made by the use of the money; but as the law will raise no such presumption against it, they will not lie against the government.

Such are the principles which ought to govern the accounting officers in settling claims against the United States, and the records show how closely they have been observed in practice.—(See Auditors' reports, *post*.)

Mr. Crawford was appointed agent and counsel for this claim as far back as the year eighteen hundred and thirty-three. As such he asked payment from the legislature of Georgia, from the Indians at the treaty of New Echota, and lastly from the government of the United States. Up to the year 1835, with the exception of the application to the British government, the claimants had besieged the government of Georgia alone.

No one concerned seemed to have thought that the United States were under any obligation either legal or moral to pay the debt; but at the treaty of New Echota the United States commissioners agreed that the federal government should guaranty its payment "without expense" to the Indians. The claim was, however, rejected by the Senate, as is shown in the history of the case; but that event marked the first development of the thought that the United States might be induced to pay it. More than half a century had rolled away from the time that the war of independence had closed; the claim had been kept alive by the industry of Galphin's representatives; it had been urged and argued again and again before the legislature of Georgia, but no intimation had dropped from any quarter that the government of the United States ought to be answerable for the debt. The proceedings at New Echota, however, opened a new quarter from which payment might be obtained, but in the first instance the effort failed. The Senate of the United States rejected the provision, and the untiring claimants renewed their application to the Georgia legislature, though again without success. Not yet discouraged, in 1844 they again applied to Congress; and finally, in 1848, Congress passed the act requiring the Secretary of the Treasury to examine and adjust the claim. Mr. Crawford still maintained his relations to it, and by agreement virtually owned the one-half of its entire amount. Under the terms of the act, the late Secretary of the Treasury felt it to be his duty to pay the *principal;* but his term of office being about to close, he was unable to devote the time necessary to that examination which alone could enable him to decide the question of interest; and though his impressions were against its allowance, he left the matter open for his successor to decide. The principal was paid, and Mr. Crawford received his share. Such was the position of the matter when Mr. Crawford entered the cabinet as Secretary of War. Desiring his relations to be fairly understood, he availed himself of an early moment to advise the President of the facts. He informed him that he was connected with a claim then pending before one of the departments for decision, and solicited his opinion upon the propriety of that position for a member of the cabinet. The President replied that he did not know that he had forfeited any of his rights by becoming a member of his administration. This he felt to be a sanction, and Mr. Crawford at once employed counsel to prosecute the claim. He, however, assisted in revising and in the preparation of the arguments, and on several occasions spoke to the Secretary of the Treasury, urging him to make an early disposition of the case. He spoke also to the Attorney General to the same purpose; but he declares that he never apprized either of these gentlemen of his interest in the matter, nor did he authorize any other person to give them the information. The general power of attorney in the case, executed by Milledge Galphin, executor, to Mr. Crawford, as well as a similar power to receive and receipt for the money, were among the papers on the file, as well as several letters, showing that Mr. Crawford was acting in the affair. All these papers were before the Secretary of the Treasury, the Attorney General, and the First Comptroller; but the two former deny that they had any knowledge of Mr. Crawford's interest. The Secretary of the Treasury admits that, at some time, he heard that Mr. Crawford had been connected with the claim, but the remark left no impression on his mind; and the Attorney General says

that he examined no papers not necessary for him to understand its merits. The opinion of the Attorney General was given; and the Secretary of the Treasury ordered that *inasmuch* as the Attorney General's opinion decided the principle that, in point of law, interest ought to be allowed, it should be done. The matter was referred to the First Auditor for a statement of the account. This passed to the office of the First Comptroller, who appended his approval, with the pithy remark that "the signing of this certificate is an administrative act." The money was paid; and after abating the sum paid for expenses incident to the prosecution of the case, Mr. Crawford received, in conformity with his agreement with the heirs, the one-half of the amount, as his own proper share. The interest amounted to one hundred and ninety-one thousand three hundred and fifty-two dollars and eighty-nine cents: from this three thousand dollars were paid as fees to counsel. His receipts were twenty-one thousand four hundred and one dollars and ninety eight cents from the principal, and ninety-four thousand one hundred and seventy-six dollars and forty-four cents from the interest allowed: in all, one hundred and fifteen thousand five hundred and seventy-eight dollars and forty-two cents.

Such are the facts connected with Mr. Crawford's conduct in relation to the affair; and we submit them without comment to the judgment of the House.

The matter involved was not a debt due from the United States. The payment of the principal was a matter of grace on the part of Congress, and the extent to which it carried its bounty was fixed by the act of 1848. The duty of the Attorney General in such cases is limited to the construction of the law. Whatever may have been liberal or illiberal was not within his province to determine. He is not the almoner of the public bounty; nor has he a right to superadd to his duty of determining the obligations of the law, the kinder office of dispensing the liberality of the government. The administration is the legal custodean of the public treasure. As the guardian of it, the people have a right to look for its protection; but if the members of the cabinet are to become feed counsel against the treasury, it requires but little knowledge of human nature to anticipate what must be the inevitable result. The instinctive notions of every man, and the common judgment of the public, will condemn a position of the kind; but it becomes doubly dangerous when it is deliberately sanctioned by the President of the United States.

The representatives of Galphin had no rights as against the general government, and no one had a right to extend its bounty beyond the limits fixed by the act of Congress. That act did not direct interest to be paid; and we feel compelled to say that, in our opinion, its allowance was unsanctioned by either the law or the usages of the government. The supplemental reasons of the Attorney General bring no different conviction to our minds. (See cases cited, appended to this report.) In the history of our government, many cases of grievous hardship have arisen, where interest has been denied. The stern rigor of the law has refused to yield to their appeals, and they now stand in rigid contrast to this case. In our judgment, under the phraseology of the act, this stands without a precedent to sustain it. Such is our most mature opinion, and we submit it with an unshaken conviction of its truth.

We recommend the adoption of the following resolutions:

1. *Resolved*, That the claim of George Galphin was one that the United

States was under no obligations to pay prior to the passage of the act of 1848, which authorized and required the payment of the principal only.

2. *Resolved*, That the interest thereon was paid without authority of law or usage.

3. *Resolved*, That Congress should pass a law prohibiting the payment of interest in any case by any officer of the government, unless expressly directed by law.

4. *Resolved*, That Congress should pass a law prohibiting any member of the cabinet from deciding on any claim or demand against the government in which any other member of the same cabinet shall be interested, while they may be thus associated together in the administration of the government.

5. *Resolved*, That we recommend the passage of a law making final the decisions made by the heads of the different departments, and regulating the right of appeal, &c.

D. T. DISNEY,
W. S. FEATHERSTON,
JOB MANN.

CASES CITED BY THE ATTORNEY GENERAL.

1st. *The case of Mrs. Hamilton.*—The question in this case was: Is it intended to place her under the operation of the resolution of March 22, 1783? *That resolution allowed interest by its terms.* "I am given to understand that it has not been the practice in the accounting offices of the Treasury Department to allow interest upon an account directed to be settled or paid by an act of Congress, *unless there be in the act itself special words to that effect.* * * * Nor is it supposed that the above opinion will imply any contradiction. * * * The resolution of the 22d March, 1783, appears to me, on full consideration, to enforce the construction that it was the intention of Congress to place her upon a footing of equal advantage in all respects with the officers entitled to commutation under that resolution."—(Opinion Attorney General Richard Rush, Revolutionary Claims, 116.)

The act in relation to Mrs. Hamilton referred to principles of settlement, from which it can be inferred that interest was intended to be allowed.—(Opinion Attorney General William Wirt, 195.)

The cases referred to in the compendium of Revolutionary Claims are thus divided: The

First class embraces those whose settlement was provided for according to former acts; those where, instead of payment, the debt was registered, and those where the act specially directed the payment of interest.

Second class.—Where it is *believed* that interest was allowed, this opinion being formed from "the peculiar phraseology of several of the acts."

Third class.—Cases arising under the resolution of 23d March, 1783. Interest allowed by the bill as it passed the House of Representatives, but stricken out in the Senate, with the understanding that the principle in

such cases was not settled, and the parties should stand without prejudice.

These classes, with but few exceptions, arose under acts passed in relation to revolutionary services; the original act having provided for the payment of interest, and all the cases being settled in conformity with the respective acts.

Mary O'Sullivan.—A case of *indemnity* for damages done by a commercial and political agent of the United States, and compensation for "actual loss" was by the act directed to be paid.

James Thomas.—Interest was allowed, because of the judicial decision of the district court of the United States, which the act recognised.

Major Tharp's case.—"It is the fault of the claimant if he delays presenting his claim, or does not bring forward the proper vouchers to prove it and justify its payment. If the Secretary shall be of the opinion that interest is justly due, he may allow it."—(Opinions Attorneys General, p. 841.)

Charles T. Sibbald's case.—The act directed "to ascertain the actual *damages* sustained, and would be entitled to recover upon the principles of law as applicable to similar cases." "I understand the act, in terms, to authorize it" (interest.)—(Opinion Attorney General, 30th September, 1844, Mr. Nelson.)

Same case.—Resolution 10th August, 1846, required to audit and liquidate upon principles of law and equity, and in such manner as to secure to said Sibbald an *indemnification* for the injuries and damages, &c.

Loans for Florida.—Resolution that nothing shall be understood or construed to prevent the Secretary of War from allowing and paying any just and equitable claims for *supplies furnished*, or *advances* or *loans of money* made to provide for the *defence* of the inhabitants, &c. Interest allowed.

George Fisher.—12th April, 1848.—"So as to afford a full and fair *indemnity* for all *losses* and *injuries*." Interest allowed by the Second Auditor. Attorney General refrained from an opinion, the Auditor having decided it.

Corporation of Mobile.—Advances of money by the corporation in equipping and sending troops under a call at the beginning of Indian hostilities. Interest allowed.

De la Francia.—Is not noted, because it is understood to be under examination by another committee.

Champneys Terry.—Under the act of 18th April, 1814, "on principles of equity and justice," *advances* made by inhabitants of West Florida, &c. Interest allowed.

Paper No. 37.—To show that in cases of set-off, the judicial courts of the United States allow interest to individuals as against the government.

Paper No. 38.—Opinion of Attorney General Crittenden, 17th June, 1841:

"Are the United States bound to pay interest on the damages awarded in these cases when it has been awarded?"

By the terms of the act, he is "authorized to receive and *examine* and *adjudge* all cases of claims for losses occasioned by the troops."

Opinion.—Interest on the amount of such *losses* is certainly a thing very distinguishable and different from the losses themselves. It may be that justice would have required, in this case, the allowance of *in-*

terest, as well as of the principal; but Congress alone was competent to determine the extent of its obligation, and to give or withhold authority for the allowance of the principal—that is, the value of the property lost, with or without interest. The whole subject was before them for consideration and legislation; and the question of interest was as important in amount as the principal. They did legislate, and provided for the liquidation and payment of claims for losses, but made no provision for any claims of interest. The inference, to my mind, is irresistible that they did not intend to authorize the allowance of interest. It is confidently believed that, in all the numerous acts of Congress for the liquidation and settlement of claims against the government, there is no instance where interest has ever been allowed, except only where those acts have expressly directed or authorized its allowance. "The power of the judge to allow interest was therefore unwarranted."

Thomas Ewell.—Virginia commutation pay.—Decided upon the ground of *indemnification* to Virginia.—(See opinion Attorney General R. Johnson, 20th July, 1849.)

Supplemental opinion of the Attorney General.—Reasons:

First. Claims presented under circumstances not stronger than this. The United States have uniformly demanded interest. Cases cited: Convention of St. Petersburgh, under the treaty of Ghent, and convention with Brazil. The first was for slaves and other property carried away in violation of the treaty of Ghent. Under the convention, an award was made, "that the United States are entitled to a *just indemnification*," &c. Sir John Nicholl said: "To reimburse to claimants the original cost of their property and all the expenses they have actually incurred, together with interest on the whole amount, would, I think, be a just and adequate compensation. This, I believe, is the measure of compensation usually made by all belligerent nations for losses, costs, and *damages* occasioned by *illegal* captures." Sir William Scott seems to have held the same doctrine.—(See opinion of Attorney General William Wirt, May 17, 1826.—Life of Wm. Pinckney, by Wheaton, p. 198.)

The case with Brazil is precisely similar—*indemnification* for *wrongs*, allowance for *damages*.

Second. The bounty of Congress takes them from under the law. The discretion of Congress is not extended to the executive officers.

Third. No cases cited.

Fourth. No cases cited.

Fifth. Sometimes as set off. Each case forms its own rule.

Sixth. The decisions of prize courts are for *indemnification*, and come under the rule laid down by Sir John Nicholl.—(See above.)

Seventh. See report.

Eighth. See report.

MINORITY REPORT.

MAY 17, 1850.

Mr. BURT, *from the Select Committee appointed to investigate the connexion and relation of the Secretary of War to the claim of the representatives of George Galphin, in behalf of himself and Mr. Joseph W. Jackson, submitted the following argument:*

It is made the duty of the committee, by the resolution of the House, to say whether the principal and the interest of this claim have been paid "in conformity with law or precedent." To the determination of this question a recapitulation of the points made by the testimony is necessary. The indebtedness of the Indians to George Galphin and the other traders was admitted by themselves by the treaty of 1773, and extensive and valuable lands in the State of Georgia were ceded to the Crown of Great Britain to discharge them. The lands were to be sold by the Crown, and the proceeds of the sales thus appropriated. The sum due to George Galphin was ascertained by commissioners to be nine thousand seven hundred and ninety-one pounds fifteen shillings and five pence, and a certificate for that sum delivered to him. The commissioners of the Crown were proceeding to sell the lands, when the Revolution arrested them. Its result defeated the performance of that duty, overthrew the sovereignty of Great Britain in Georgia, and gave to that State not only the title to the lands, but the sole jurisdiction and control over them. She disposed of them as bounties to her officers and soldiers who were faithful to the cause of America in the Revolution, and in grants to actual settlers, for the protection of her frontier against the Indians. It is believed that Georgia derived no revenue from these lands. It is equally clear that she paid nothing for them, as did not Great Britain, and that the Indian title to them was conveyed to the Crown solely for the purpose of paying the debts of the traders. These creditors, in consideration of this cession of lands by the Indians, executed a solemn release of their debts against them, and relied on the engagement of Great Britain to apply the proceeds of the sales of these lands to the payment of their demands. The act of the British colonies, and of Georgia amongst them, rendered the performance of this engagement impossible, and gave to Georgia the lands. All the benefits and advantages that constituted the consideration for this compact on the part of the Crown accrued to Georgia. She took the lands subject to the charges upon them, and became bound, as was the Crown, to dispose of them for the purposes for which they were ceded. Having appropriated them to her own use, she became liable for the debts. The Crown having paid the debts of the Indian traders who remained loyal to their government, only the debt of Galphin remained a charge upon the lands. Georgia has always admitted the debt of Galphin against the Indians to be clearly just and unpaid; and, in the opinion of the committee,

she was clearly liable to pay it, unless the lands were an inadequate fund. This she has never alleged. Besides, the evidence is satisfactory, from the quantity and description of the lands, that their value was immensely greater than the amount of all the debt to be paid. Whether Georgia was liable for interest on Galphin's debt could be determined only by her own sense of her duties. She alone could prescribe the measure of her justice or her bounty. The committee cannot doubt that she has ever met her obligations in justice and good faith, according to her understanding of them. But the payment of the principal and interest by Great Britain of the debts of the Indian traders who adhered to her fortunes, would seem an admission that, according to her sense of their rights, interest was due to them. Georgia seems to have entertained the same opinion, as, in 1780, she passed a law authorizing the payment, with interest, of the claims against these lands, held by those whose claims should be found to be just, and who had been friends to America. But, whilst she has always admitted the justice of Galphin's claim, and his valuable services in the war of the Revolution, she has steadily refused to pay it. It is a fair inference, however, that her refusal was the consequence of her conviction that the United States, and not Georgia, was bound to pay it. Yet it is undeniable that she was liable, in the first instance, to pay this claim, and could call upon the United States to relieve her from that obligation only on the ground that these lands had been appropriated not to her use exclusively, but to the common use of all the States, or that the latter had assumed, expressly, the obligation to pay the claim.

The report of the Senate Committee on the Judiciary which accompanied the bill that passed for the payment of this claim must be presumed to contain the reasons that influenced Congress to assume it. The chief ground relied on in this document of the liability of the United States is, that these lands were taken from the jurisdiction and control of Great Britain, not by the act of Georgia alone, but of all the States, and that they were applied by Georgia to the common cause of all the States. The facts on which this allegation is made have been already fully and accurately narrated, and need not be stated again. Whether they sustain the allegation, it is unnecessary to decide. It may be conceded that they do support the position; and yet it by no means follows that the liability of the United States is established, as will be seen from a brief but decisive statement. All the States, except Connecticut, that owned public lands, granted portions of them to their own troops, in addition to the bounties in land which were granted by Congress. No uniform rule was observed by the respective States in conferring these bounties. The quantities and values of the lands granted were different in the several States. They were mere gratuities or rewards of the States for the patriotism or gallantry of their own citizens. They were never supposed to constitute a demand on the part of the States making them against the United States. They were never recognised as such by the United States. But if they had constituted just demands against the United States, they were embraced by the provisions of the act of Congress of 1790. This act was intended to effect a full and final settlement between the United States and the individual States of all claims of the latter, "for the general or the particular defence" during the war of the Revolution. The 3d section of the act is as follows:

"It shall be the duty of the said commissioners to receive and examine

all claims which shall be exhibited to them before the first day of July, one thousand seven hundred and ninety-one, and to determine on all such as shall have accrued for the general or the particular defence during the war, and on the evidence thereof, according to the principles of general equity, (although such claims may not be sanctioned by the resolves of Congress, or supported by regular vouchers,) so as to provide for the final settlement of all accounts between the United States and the States individually; but no evidence of a claim heretofore admitted by a commissioner of the United States for any State or district shall be subject to such examination, nor shall the claim of any citizen be admitted as a charge against the United States in the account of any State, unless the same was allowed by such State before the twenty-fourth day of September, one thousand seven hundred and eighty-eight."

The commissioners under this act did state the account between Georgia and the United States, and found a balance due to her. But Georgia did not then, nor has she at any time since, set up this claim, either on her own part or in behalf of George Galphin or his representatives, against the United States, as having "accrued for the general or particular defence during the war." On the contrary, the legislature of that State has declined even to instruct her delegation in Congress to urge its payment by the United States. The claimant himself does not appear to have looked to the United States for payment until a recent period, and until all hope of obtaining it from Georgia was finally extinguished by her peremptory refusal in 1840. It is thus shown that the authorities of Georgia have never preferred this claim against the United States, and that this ground of the report of the Senate committee has been repudiated by the legislature of that State.

The remaining ground in that report—that is to say, the principles of the act of Congress of 1832, which assumed the liabilities of Virginia for the half-pay pension to her officers of the Revolution unpaid—remains to be examined. Certain officers of Virginia had been promised by that State, in 1790, a pension of half-pay for life, which had been commuted to five years' full pay. For reasons that do not appear, Virginia paid some of these pensions, and refused to pay others, but permitted those claiming them, or their representatives, to prosecute suits against her. Suits were accordingly brought, and in many cases judgments recovered for the commutation and interest. Others had either not obtained judgments, or had not commenced suits. The act of 1832 directed the money paid by Virginia on these claims to be refunded, the judgments recovered to be paid, and the claims which had not been put in suit, but which Virginia was liable to pay, on the principles of the cases already decided in the supreme court of that State, to be paid also. These claims belonged to a class that had in other instances been recognised by the United States as just against them, and paid. They were for pensions to officers for meritorious services and personal sacrifices in the war of independence, and the State of Virginia applied to Congress to assume them and pay them. The undersigned do not feel that it is any part of their duty to vindicate or to condemn, or even to consider, the policy of the pension system of the United States. But they are yet to learn that a pension can, with any propriety, be regarded as a debt. It is enough that the claim of Galphin bears not the remotest analogy to such claims, and the

committee do not perceive how it could have been embraced by the principles on which Congress assumed them.

Having disposed of the grounds on which Congress is presumed to have authorized the payment of Galphin's claim, the undersigned proceed to a brief notice of another ground on which the officers of the government confidently rely to establish this claim against the United States. It is, that the act of 1802, by which Georgia conveyed to the United States the immense territories which constitute the States of Alabama and Mississippi, required the former to extinguish the Indian title to all the lands within the State of Georgia; and that as the Indians had conveyed their lands in 1773 to pay Galphin's debt, it was an equitable Indian title, and the United States were bound by express engagement to extinguish it. That act makes it the duty of the United States to extinguish, for the use of Georgia, the Indian title to certain lands specifically described, and then in the possession of the Indians, "as soon as could be done peaceably, on reasonable terms," and that the United States should "in the same manner extinguish the Indian title to all the other lands within the State of Georgia." The act recites that the President had ordered a treaty to be held for "these several purposes." Now, the only title which Indians have to lands within the United States, is the right of occupancy. That extinguished in Georgia the lands belonging absolutely to the Crown before the Revolution, and to the State of Georgia since that event. The Indian title—the right of occupancy, of possession—was to be extinguished, as soon as it could be done "peaceably, on reasonable terms," to all the lands within the limits of Georgia; and a treaty had been ordered to be held with the Indians for that purpose. Can a doubt be raised in the mind that lands in the occupancy of the Indians, or to which they had then the right of occupancy, were alone contemplated? The Indian title to the lands charged with Galphin's debt was extinguished, effectually and forever, in 1773; and, in 1802 they had long been in the possession of citizens of Georgia. It is quite clear that, whether the debt of Galphin should be paid or not paid by the Crown of Great Britain or by the State of Georgia, the Indian title was totally extinguished by their cession of that title to the Crown in 1773. The Indians could have had no interest in the application of the proceeds of these lands to the debts of the traders, because the cession to the Crown for the benefit of the traders was accepted in satisfaction of their debts, and releases given to the Indians. In the opinion of the committee, a shadow of foundation for the obligation of the United States to pay the claim of Galphin cannot be found in the cession of 1802.

But, notwithstanding the undersigned entertain a decided opinion that upon none of the grounds relied on could the United States be justly held liable for the claim of Galphin, it must be conceded that Congress assumed its payment for the reasons set forth in the report of the Senate committee. The act is as follows: "That the Secretary of the Treasury be, and he is hereby, authorized and required to examine and adjust the claim of the late George Galphin, under the treaty made by the governor of Georgia with the Creek and Cherokee Indians in the year seventeen hundred and seventy-three, and to pay the amount which may be found due to Milledge Galphin, executor of the said George Galphin, out of any money in the treasury not otherwise appropriated." No doubt has been suggested since 1775, the date of the certificate, that nine thousand seven hundred

and ninety-one pounds fifteen shillings and five pence were due to George Galphin under the treaty of 1773. The Secretary of the Treasury was required to ascertain what sum was due under the treaty, and to pay that sum. This was his whole duty. It embraced no other inquiry or consideration. The law was imperative. The undersigned are, therefore, of the opinion that the principal was paid "in conformity with law" and "precedent."

Whether the interest was paid "in conformity with law or precedent" demands a special and more extended inquiry. It must be kept in remembrance that it is not a question whether the United States were bound to pay the interest, or whether there are equities in the claim itself, that, in justice and conscience, entitled Galphin to demand it of his debtor, whether that debtor be the United States or Georgia. But the question is, whether the act under consideration authorized and required the Secretary of the Treasury to pay it? That question cannot find an appropriate answer in any precedent or usage of the Treasury Department, or any other department. It cannot be answered by consulting the rules that apply to the transactions of individuals. It was the sole and incontestable prerogative of Congress to prescribe the measure of justice or of grace that should be dispensed to Galphin; and its decision was as imperative upon the officers of the government as it was conclusive against the claimant. In the examination of this question, it is a consideration not to be forgotten, that the act of Congress conferred the only authority, and all the authority, the Secretary of the Treasury could exercise. Without that act, he would have had no authority whatever to pay even the principal. He is an officer of the executive department, and his duties are to execute the law, and not to make it. As the law is written, so shall he conform to it, without inquiry whether it is wise or unwise, just or unjust. His care should be to forbear the exercise of a doubtful power, rather than hazard the exceeding of his authority. And he best conforms to his duty, and best consults the public interest, when he obeys the clear prescriptions of the law, and leaves it to Congress to remove ambiguity or uncertainty by supplemental or explanatory legislation. On the question of interest, the officers of the Treasury Department held different opinions. Mr. Jones, the acting First Auditor under the administration of Mr. Polk, first examined this claim under the law of 1848, and came to the conclusion that the debt and interest should be paid. His report was submitted to the Comptroller, Mr. McCulloh, who thought the principal, but not the interest, ought to be paid. Mr. Walker, the Secretary of the Treasury, decided that the principal should be paid, and left the interest an open question, with an impression against its allowance, which he expressed in his decision. It is true that the question came before him towards the close of his term of office, and the pressure of his engagements did not allow time for a full and satisfactory investigation. After Mr. McCulloh went out of office, he modified his opinion so far as to think interest should be allowed for a part of the time, and communicated that opinion to his successor, Mr. Whittlesey. Mr. Whittlesey examined the question at length, and made a report to Mr. Meredith, with an emphatic expression of his opinion against allowing interest. Mr. Meredith, upon whom the act had imposed the duty of deciding it, entertained doubts whether it should be allowed, and referred it, as a question of law, to the Attorney General, Mr. Johnson. He ex-

amined it, and formed and expressed a clear and confident opinion that it should be allowed; and upon that opinion Mr. Meredith ordered interest to be paid. The inquiry whether it was properly allowed will be materially aided by a clear understanding of what interest is. In a very able correspondence with the British minister, (Mr. Jackson,) in 1792, Mr. Jefferson, the Secretary of State, maintained that "interest is not a part of the debt, but something added to the debt for the detention of it." This is believed to be the received definition of interest. It is recovered in courts of justice by way of damages, on account of the detention of a debt. It is a rule well established and universally admitted, that sovereigns and governments do not pay interest to each other or to individuals. The reason of the rule is, that they are presumed to be always ready to pay their debts, and that it is the duty of the creditor to present his demand, and submit the proof to establish it. This rule is stated by Mr. Jefferson in the correspondence referred to, and is as well vindicated by argument as it is fortified by authority. In 1822, Mr. Wirt, Attorney General, referred to this correspondence of Mr. Jefferson as a clear and able statement and illustration of the rules on the subject of interest. In an opinion delivered the 17th of June, 1841, Mr. Crittenden, the Attorney General, uses this language: "It is confidently believed that in all the numerous acts of Congress for the liquidation and settlement of claims against the government, there is no instance in which interest has ever been allowed, except only when those acts have expressly directed or authorized its allowance." In an opinion of Mr. Legaré, the 2d of April, 1842, he asserts the general rule that governments do not pay interest, and says: "There may be cases in which I might think the head of a department authorized to allow interest; but they would be rare and singular exceptions." Mr. Legaré, by request, reconsidered this opinion the 20th December, 1843, and affirmed the principles stated in it, and maintained that the rule on the subject of interest is an exception to that which exists between individuals in favor of governments. But he insisted, that however it overlooked or disregarded the equitable principle, "that interest is an incident to the debt," yet the rule is stern and inflexible.

That there are exceptions to the general rule disallowing interest against the government will not be denied. These exceptions are enumerated by Mr. Walker, Mr. Meredith, and Mr. Whittlesey. They are mainly rules adopted by the executive departments in settling demands that grow out of the operations of the government, and are incident to the public service. In the opinion of the committee, the principle of none of the exceptions to the general rule would, by any fair interpretation, embrace the case before them. The allowance of interest by the executive departments, in cases referred to them by acts of Congress, appears to have invariably depended on the intention of the legislative department that it should be allowed. This intention is usually expressed by directing it in terms; but it has been sometimes manifested by reference in the laws to principles of settlement which make the cases exceptions, and save them from the operation of the well-established general rule. Cases which direct that the claimant shall be indemnified for losses, or injuries, or damages sustained, or that the claim shall be settled according to the principles of justice and equity, are examples of this kind, and have been held to allow a discretion to pay interest in proper cases. It is believed that no instance

can be found in which it has been allowed by an executive officer by virtue of any usage of a department, or by analogy to any rules which apply to the transactions of individuals, unless the law directing the settlement intended it should be paid. But a view of this question remains to be presented which seems to be decisive against the allowance of interest.

By the treaty with the Creek Indians, of the 8th January, 1821, the United States engaged to pay certain claims of the citizens of Georgia against that nation. Interest was demanded on the amount found due to the claimants. The question was submitted by the President, Mr. Monroe, to Mr. Wirt, the Attorney General. On the 20th of July, 1822, Mr. Wirt delivered his opinion against the claim of interest, and said: "The United States in this case have taken the place of the Indians; they have agreed to be responsible, as the Indians were responsible; and therefore the same principles and usages should be applied to the liquidation of these claims in relation to the United States, as if they were still to be paid by the original debtors, the Indians; and it is believed that a claim of interest against a nation of Indians, or the payment of interest by them, would be without a precedent." Galphin's claim was originally against the Indians, against whom Mr. Wirt said "a claim for interest is without a precedent." The United States have assumed the debt of the Indians to Galphin under the treaty of 1773. They have taken the place of the Indians: have made themselves responsible, as they were responsible, and the claim should have been settled and paid according to the same principles and usages as if it were to have been paid by the Indians. These principles and usages forbid the idea of allowing interest in such a case.

It is worthy of special remark in this case, and should have received earnest consideration in examining the claim of interest—

1st. That the claim of Galphin was originally against an Indian nation, and that there is no precedent for a claim of interest against an Indian nation.

2d. That the treaty of 1773 contained no stipulation for interest.

3d. That the certificate of the sum due in 1775 did not bear interest.

4th. That the claim was first presented against the United States in the treaty of New Echota, in 1835.

5th. That the memorial of the claimant was first presented to Congress in 1844, and did not claim interest.

6th. That the report of the Senate committee did not recommend the payment of interest.

7th. That the act of 1848 for the relief of the claimant did not authorize the payment of interest, *eo nomine*.

8th. That the act did not direct the settlement to be made according to special or unusual principles.

The inference, almost irresistible from these facts, is, that interest was not in the contemplation of any of the parties to this claim—either the Indians, the claimant, or the United States. There is, certainly, nothing in the act for the relief of the claimant to show that an inference so well deduced from the history of this case was not the intention of Congress, and should have been the guide of the executive officers. It may be supposed that the claim of Galphin was peculiar in its character and its merits, and that its equities commended it strongly and earnestly to favorable consideration. This may be admitted; and yet the appeal was to Congress alone; and as that body did not think fit to provide for the peculiar hard-

ships of the case by directing compensation commensurate with them, its omission ought not to have been supplied by a mere executive officer.

The duty of the Secretary was plainly prescribed to be the ascertainment and payment of what was due to George Galphin from the Indians, under the treaty of 1773, and that was his entire duty. It was not delegated to him to pay interest, by way of damages, on that sum, to any amount, especially to an amount more than four fold greater than the debt itself. A well-founded doubt in the mind of the Secretary, in a case in which the principal bore so small a proportion to the interest, whether he had authority of law to pay it, should have been decisive against it. Congress could have readily and promptly interposed to remove the doubt.

A thorough investigation of the facts of this case, and a patient and deliberate consideration of the arguments and authorities adduced to justify the payment of interest, have brought the undersigned to a confident conclusion that it was paid against precedent, and without the authority of law.

ARMISTEAD BURT,
JOSEPH W. JACKSON.

PAPERS APPENDED TO THE REPORT.

TREASURY DEPARTMENT,
First Auditor's Office, September 6, 1848.

SIR: Upon an examination of the papers in the case of George Galphin, deceased, referred to this office for a report under the act of August 14, 1848, I find that this claim originated in certain debts due to the said Galphin and other traders from the Creek and Cherokee Indians, the payment of which was provided for by the treaty of 1773, between the said Indian tribes and the British Crown. That on the 2d May, 1775, an account of those debts was examined and adjusted by a commission, composed of the governor and council of the colony of Georgia, and the sum of nine thousand seven hundred and ninety-one pounds fifteen shillings and five pence (£9,791 15*s.* 5*d.* = $43,518 97) was found due to the said George Galphin, in his own right and as assignee of various other individuals, to be paid out of the proceeds of the sale of the lands ceded by the said Indians to the British Crown by the said treaty, provided the same should be sufficient for that purpose; but if insufficient, then in a ratable proportion to each of the claimants, as appears from a certificate rendered in his favor, and recorded in the journal of the proceedings of said governor and council on that day. That after the said adjustment, and before the payment of any portion of the said claims, the war of the Revolution intervened, and ultimately resulted in a transfer of all the rights and interests acquired by the British Crown, under the aforesaid treaty of 1773, to the government of the United States. That during the revolutionary struggle, the said George Galphin warmly supported the cause of independence, and by that act excluded himself from a participation with other Indian traders, who took part with the Crown in that contest, in the payments made by it on account of the said treaty, after the close of the war, amounting to the sum of £49,556 17*s.* 6*d.*,

as appears from the general appropriation act of Parliament for 1790, (Pickering's Statutes, volume 37, page 36.) That various committees of both branches of the legislature of Georgia have at different times reported in favor of this claim, setting forth its justice, and recommending its payment by that State. That these recommendations failed to receive the concurrence of both Houses at any one session, upon the ground that this was a claim properly against the government of the United States, which, after the establishment of our independence, had succeeded to all the rights, and consequently incurred all the obligations of the British Crown in regard to this matter, and that, therefore, the payment should be made by the United States as a whole, and not by the single State of Georgia.

It further appears by the testimony filed in this case, that the lands ceded by the Indians under the aforesaid treaty very far exceeded in value the amount of all the debts charged upon them, and that a considerable portion of them were, in fact, diverted from their application to the purposes of the treaty, and applied to the settlement of revolutionary bounty land claims.

Under this state of facts, thus briefly recited, but which are more fully presented in the papers and documents filed in the case, there can be no doubt about the obligation on the part of the United States to pay the whole amount ascertained to be due to the claimant, by the settlement made by the governor and council of the colony of Georgia in May, 1775, the sole contingency by which that obligation could have been properly effected, viz: a deficiency in the value of the ceded lands not having occurred. The only question of difficulty in this case relates to the payment of interest. This is usually withheld, upon the principle that the government is supposed to be ever ready to pay all just demands against it. The propriety of this principle, in its application to unliquidated claims, will not here be questioned. But when a claim has been once fully examined and adjusted, and a specific amount found due to a party, it would seem that such claim should stand on different grounds, and that the principle of even-handed justice would impose the same obligation upon the government as that which rests upon individuals in similar cases; and inasmuch as the latter would be properly liable for the payment of interest, the government ought not to be released from a corresponding liability to pay interest upon its debts. But in addition to this, there is yet another consideration, which, in the determination of this question, should have its due weight. In paying the claims of such of the Indian traders as sustained the interests of the British government in the war of the Revolution, that government allowed interest. These claims originally occupied no higher ground than that now under consideration. If they were entitled to interest, this should be equally so. The patriotism of this claimant, the more praiseworthy because he stood alone among his former associates, surely should not be converted into the means of injury to his private interests—as would be the case if, after having his just and established rights withheld from him for nearly three-fourths of a century, the interest thereon should now be also withheld.

In reducing the amount to our own currency, parenthetically stated above, not being able to ascertain certainly what was the established

rate of exchange at that day, I have adopted the one usual in other cases, viz: $4 44 to the pound sterling.

I enclose herewith a statement of the account of George Galphin, drawn up in accordance with the views above presented.

I have the honor to be, very respectfully, your obedient servant,

GEO. H JONES, *Acting Auditor.*

Hon. McC. Young,
Acting Secretary of the Treasury.

First Comptroller's report on the claim of Milledge Galphin, executor of Thomas Galphin, executor of George Galphin.

Treasury Department,
Comptroller's Office, February 15, 1849.

Sir: In compliance with your request, I have read the evidence which has been submitted by and on behalf of Milledge Galphin, of South Carolina, to this department, under the act of Congress approved August 14, 1848, for the relief of Milledge Galphin, executor of the last will and testament of George Galphin, deceased, and now have the honor to report:

First. That Milledge Galphin aforesaid is not, in my opinion, lawfully authorized to demand the sum of any debt that might be found due under the aforesaid act of Congress, nor empowered to execute a valid discharge for such sum, if the same were now to be paid to him by the government of the United States; for, although it may be true, as gentlemen learned in the law have intimated to you, that he might lawfully receive the sum of any debt found due to said testator in South Carolina, and, upon receipt thereof, might execute a valid discharge for the same—but which, however, I neither admit nor deny, for reasons that will be hereinafter mentioned—still, it does not therefore necessarily follow that he could lawfully demand and receive any debt so found due elsewhere than in South Carolina; nor, especially, that, in the District of Columbia, he could fully discharge the debtor who might pay such debt to him merely by virtue of his being the sole surviving qualified executor of the will of Thomas Galphin, and of the *fact*—if, *indeed*, it be *one*—that said Thomas was, before his decease, (which happened in the year 1812,) the sole surviving qualified executor of the last will and testament of George Galphin aforesaid, *because* the power which the said Milledge may lawfully exercise over any debt found due in the District of Columbia to the estate of said George, can only be what the testamentary law in force here would confer on said Milledge.

By the first section of the act of Congress concerning the District of Columbia, approved 27th of February, 1801, it is enacted that the laws of the State of Maryland, as they then existed, shall be and continue in force in that part of said District which was ceded by that State to the United States and by them accepted. (2d Statutes United States, 104-5.) And by the testamentary laws *then* in force in Maryland, (chap. 101, sub-chap. 5, sec. 6,) passed January 20, 1799, it is enacted that, in case any executor shall die before the estate shall be fully administered, letters of administration *de bonis non* shall be granted to the person entitled agreeably

to the rules before laid down, and the proceedings shall in all respects be the same as if administration had been originally granted, and in no case shall the executor of an executor be entitled, *as executor*, to administration *de bonis non* of the first deceased; and the letters, bond, and oath of an administrator *de bonis non* shall be in the form before directed, except the words *not already administered* shall be added in the proper places.

And by the 11th section of the act of Congress, approved 24th June, 1812, to amend the laws within the District of Columbia, it is enacted that it shall be lawful for any person or persons, to whom letters testamentary or of administration hath been or may hereafter be granted, by the proper authority in any of the United States, or the Territories thereof, to maintain any suit or action, and to prosecute and recover any claim in the District of Columbia, *in the same manner* as if the letters testamentary or of administration had been granted to such person or persons by the proper authority in the said district; and the letters testamentary or of administration, or a copy thereof, certified under the seal of the authority granting the same, shall be sufficient evidence to prove the granting thereof; and that the person or persons, as the case may be, hath or have administration. (2d U. S. Statutes, 758.)

But in the evidence produced to support this claim, I do not find any letters testamentary that may have been issued under the will of George Galphin, or under the will of Thomas Galphin aforesaid; nor any copy of any of said letters testamentary.

I do find, however, amongst the papers submitted, a copy of the will of said George, certified on the 9th November last by the judge of the court of ordinary for the district of Abbeville, South Carolina, who, upon said copy, has also certified, from the records of his office, *of date the 6th April*, 1782, that Thomas Galphin, George Galphin, and William Dunbar were qualified as executors of said will; also a copy of the will of Thomas Galphin, certified on the 18th January, 1836, by the judge of the court of ordinary for the district of Barnwell, South Carolina, who, upon said copy, *then* also certified that said will was proved 8th May, 1812; that Barna McKenna qualified as executor of said will 9th July, 1812; that Milledge Galphin also qualified as executor of said will 30th March, 1822; and that John Milledge, nominated in said will as an executor, never qualified as such; and that the said John Milledge and Barna McKenna were both dead when, in the year 1836, said certificates were made. I likewise find amongst said papers proof that William Dunbar, one of the qualified executors of George Galphin, testator aforesaid, died prior to the year 1800—his co-executors, Thomas Galphin and George Galphin, surviving him; but which of the two executors last mentioned survived the other is not proved; nor is the death of George Galphin, executor last above mentioned, proved, although he is most probably dead; and several affidavits procured in January, 1849, have been produced, in which rumors of his death, founded simply upon hearsay, are mentioned.

Why, in view of the uncertainty of his death, and of the period when it may have happened, and consequently of the possible invalidity of the claim of the aforesaid Milledge Galphin to act as the executor of the will of George Galphin, testator aforesaid, by reason of his being an executor of the will of Thomas Galphin, and the assumption that said Thomas survived George, his co-executor, the said Milledge Galphin has

not applied for and obtained letters of administration, with the will annexed, either in South Carolina or in the District of Columbia, I cannot imagine, as they could have been obtained with less effort than has been made to obtain the aforesaid affidavits, unless, indeed, more of the sum of said claim might inure to the use of said Milledge Galphin and his aforesaid attorney if said Milledge Galphin, by reason simply of his being the sole surviving qualified executor of the will of Thomas Galphin, were recognised also as the qualified executor of the will of George Galphin, first testator aforesaid, *than* would inure to the said Milledge Galphin, or to his attorney, if letters of administration, with the will of George last aforesaid annexed, should be obtained by said Milledge Galphin in South Carolina or in the District of Columbia. Yet, if his omitting to obtain these letters could produce such a difference, or might otherwise prejudice the rights of the creditors, devisees, or legatees of George Galphin, testator aforesaid, the possibility of such results—*independently of other considerations*—indicates the justice and propriety of requiring him to procure such letters; to obtain for the government of the United States such a discharge as will defend it against equitable demands that might arise if an absolute release were not taken from a person indisputably authorized to demand and receipt for the sum of said claim. Moreover, I must remark that, if the letters testamentary that were issued in Abbeville district, South Carolina, to Thomas Galphin, nominated executor in the will of George Galphin, testator first aforesaid, and the letters testamentary that were issued in Barnwell district, South Carolina, to Milledge Galphin, nominated executor in the will of said Thomas, or copies thereof, certified as is required by the act of Congress, approved 24th June, 1812, above cited, should be produced, they would not establish the right of Milledge Galphin, executor of the will of Thomas Galphin, to act in the District of Columbia as the executor of the will of George Galphin, testator first aforesaid; for, if letters testamentary had been granted here to said Thomas Galphin on the estate of said George Galphin, and to Milledge Galphin on the estate of said Thomas Galphin, the said Milledge Galphin could not thereunder lawfully demand, and, receiving the sum of said claim, thereupon execute a valid discharge to the government of the United States for the same, as will be very manifest upon due consideration of the testamentary law of the State of Maryland, made applicable to such cases by the acts of Congress hereinbefore cited; for, if the proper authority in this district had granted letters testamentary to Thomas Galphin on the estate of George Galphin, and to Milledge Galphin on the estate of said Thomas, a debt due to the estate of said George would not, under the testamentary laws in force within this district, be discharged by reason of the payment of said debt having been made to Milledge Galphin as executor of the will of Thomas Galphin.

Immediately after the aforesaid act of Congress, approved August 14, 1848, for the relief of Milledge Galphin, executor, &c., could be procured, the papers that had been filed to establish his claim were obtained from the Secretary of the Senate; and having been referred to the accounting officers for report, I cursorily read them and explained to said Galphin and his aforesaid attorney the objections to said claim which presented themselves to my mind, including the fact that I did not find the letters testamentary which had been issued to him under the will of George

Galphin named in said act, nor copies of said letters; and then, to facilitate the final settlement of said claim, expressed the opinion that letters of administration *de bonis non*, with the will annexed, must be obtained by Milledge Galphin aforesaid, either in South Carolina or the District of Columbia, and be produced, or copies thereof duly certified to this department; and, as further consideration of this point has served but to confirm that opinion, I respectfully submit that, for reasons hereinbefore specified, he should now be required to procure and submit to this department such letters of administration, or copies thereof, certified as aforesaid, and especially because I believe you may find a debt to be due from the United States, and payable under said act of Congress to the duly appointed and qualified legal representatives of George Galphin, therein named.

I should now proceed to the examination of the aforesaid claim *upon its merits;* and, in so doing, will have the honor to report to you—

Second. That it satisfactorily appears, from the accompanying copy of a letter purporting to have been written 14th June, 1773, to the Earl of Dartmouth, &c., &c., by Sir James Wright, then governor of the province of Georgia, and James Stewart, then Commissioner of Indian Affairs, that the Creek and Cherokee nations of Indians had ceded, on the first day of said month, to his Majesty, a large body of very valuable lands in said province, to pay the debts due by said Indians to traders and those claiming under them; and, from the accompanying extract taken from a letter written 28th October, 1773, by the Earl of Dartmouth, to Sir James Wright, governor aforesaid, that the said cession was accepted for the said purpose, with remainder, if any, to the Crown, and was highly approved by his Majesty. And,

Third. From a certificate that was issued on the 2d of May, 1775, per order of the governor and council of the province of Georgia, signed Alexander Wylly, clerk, with these endorsements annexed:

SAVANNAH, *June* 6, 1775.

Entered on the books of the receiver's office of ceded lands.

JOHN GRAHAM, *Receiver.*

RICHMOND COUNTY:

Personally appeared before me Timothy Barnard, who, being duly sworn, saith that he well knows the above signature of Alexander Wylly, clerk, to be the handwriting of the said Alexander Wylly.

TIMY. BARNARD.

Sworn to, the 20th day of October, 1788, before

D. HUNTER, *J. P.*

RICHMOND COUNTY:

Personally appeared before me Edward Keating, esq., who, being duly sworn, saith that he well knows the signature of John Graham, receiver, to be the handwriting of the said John Graham.

EDWARD KEATING.

Sworn the 4th of February, 1789.

GEORGE HANDLY, *J. P.*

That the sum of £9,791 15*s*. 5*d*, lawful money of said province, was found to be due and payable to George Galphin in his own right and as assignee of John Miller, Timothy Barnard, Benjamin Stedham, Robert Toole, Edward Haynes, James Macqussa, jr., John Mealy, Thomas Mosely, Jos. Rippon, Richard Brown, Francis Lewis, John Rock, James Durongeaux, John Pegg, James Burges, and William Newton, who were Indian traders and had legally assigned over their debts and claims on the Creek and Cherokee Indians, and upon the lands ceded by said Indians to the said province, or to his Majesty the King of Great Britain, unto the aforesaid George Galphin, with authority and power to him to receive the same, as is set forth in said certificate. And,

Fourth. From an extract taken from a letter written on the 12th of December, 1772, by the Earl of Dartmouth, to Sir James Wright, governor, &c., that he was thereby instructed so to obtain said cession as that the Crown be not on any account pledged either to the Indians or to the traders for the discharge of any part of the debt due from the one to the other; and that all moneys arising from the sale were to be vested in the hands of a receiver appointed by said governor; and that all surplus, after the debt to the traders was discharged, should be applied as his Majesty should think fit to direct. And,

Fifth. From a writing purporting to have been made the 21st of December, 1791, from a copy transmitted by Sir James Wright and James Stewart to the Earl of Dartmouth, Secretary of State, remaining in the office at Whitehall, that the traders, for whose benefit said cession of lands was obtained, did execute, in consideration thereof, on the 1st of June, 1773, in conformity with the tenor of said cession, an absolute release to the Creek and Cherokee Indians from all of the debts which they owed to said traders. And,

Sixth. From a writing purporting to have been made on the 21st December, 1791, from a copy transmitted and remaining in like manner, that said traders did further execute, in consideration of said cession of lands, on the 1st of June, 1773, a release to the Crown of Great Britain and province of Georgia, from all demands on account of said debts, and declared themselves perfectly contented that their demands should be paid out of the moneys that would arise by the sale of said lands, after defraying incidental charges and expenses, and, in case of deficiency, that they would each abate in proportion to the sum or sums due to them respectively; and, further, did severally release and discharge all their claims, demands, and expectations of payment, or satisfaction, in any other manner than out of the moneys arising by the sale and disposal of the aforesaid lands, in manner aforesaid. And,

Seventh. From an extract purporting to have been presented to lords of the trade by Dartmouth and others, the price which the British proposed to demand for said lands, which are described to be of uncommon richness and fertility, is stated to be sixpence per acre, which would produce £62,500; consequently their area would comprise 2,500,000 acres, and that the aggregate sum of the debts due from the Indians was £45,000; but that said lands, if sold free from quit-rents for ten years, and from provincial taxes for five years, and an exemption to settlers from attending at Savannah as jurors, and all other duties except the militia, would produce £125,000. And,

Eighth. From the proclamation published by Sir James Wright, gov-

ernor of said province, 24th of October, 1774, that persons were invited to purchase and settle the lands that were ceded by the Creeks and Cherokees as aforesaid, and that they would be sold exempt from the payment of quit-rents for the term of ten years from the date of each grant; and that some other exemptions would be granted to said settlers by the legislature of said province. (American Archives, vol. 1, folio 888.) And,

Ninth. From extracts purporting to have been made from the minutes of the council held in said province on the 27th of March, 4th of April, and 2d of May, 1775, that measures were adopted, in compliance with the wishes of said traders, for the survey, sale, and allotment of lands upon terms which required that a portion of each sale or allotment should be settled, to add strength to the province and augment the value of the remainder of the lands allotted to and held by each trader. And,

Tenth. From affidavits made on the 18th of July, 1791, by Thomas Sherman, that he purchased a parcel of said ceded lands from commissioners appointed by Governor Wright to sell said lands, for which parcel he paid, and obtained a grant under the hand of said Wright and the great seal of the province, dated 21st of March, 1775. And,

Eleventh. From an affidavit made on the 13th of July, 1791, that he and three other persons were appointed by Governor Wright, and did act as commissioners to sell the aforesaid lands; that they disposed of some parcels thereof; gave certificates upon which grants were issued in many instances; and received pay for the same, and handed it over to John Graham, receiver appointed by said governor. And,

Twelfth. From a statement made on the 13th of November, 1800, by George Walton, that the Declaration of Independence and the war of the Revolution interrupted and prevented further proceedings in the premises by the aforesaid commissioners; and that the legislature of the State of Georgia afterwards—to wit, in the year 1780—passed an act to dispose of said lands, and therein provided for paying the debts which said Indians had contracted *to such of said traders as were friendly to the republic*, or the State of Georgia. And,

Thirteenth. From an extract purporting to have been taken from the colonial records, volume 15, in the executive department, that a memorial was presented to the assembly of said province on the 6th of June, 1780, by Lamhbin McGillivrey, then a member of the executive council, wherein he stated that he knew George Galphin well; that he had faithfully served his King and country; and that, at the commencement of the rebellion, he declared that he would never take any part therein further than to prevent the merciless savages from murdering the helpless women and children, which he had happily effected: wherefore said petitioner hoped the house would be pleased to extend their mercy and forgiveness to him; which memorial was laid on the table for the perusal of members. And,

Fourteenth. From a manuscript purporting to be the actual bill of attainder that was passed by the provincial legislature of Georgia *in the year* 1780, and now in the possession of Peter Force, esq., of this city, that the name of George Galphin is not contained in said act of attainder. And,

Fifteenth. From the Royal Gazette, published at Savannah on the 23d of May, 1782, that said McGillivrey, in company with several British officers, sailed in the mail packet, on the 7th of May, 1782, from Charleston, South Carolina, for Falmouth. And,

Sixteenth. From the Georgia Gazette, of the 11th of September, 1783,

that said McGillivrey—and who is named as an executor in the will of George Galphin, testator aforesaid—was inscribed on a bill of attainder that was passed by the legislature of the *State of Georgia*, at Augusta, May 4, 1782. And,

Seventeenth. From the act of said legislature, passed January 23, in the year 1780 or 1783, (see Prince's new Digest, 517–21,) that the State of Georgia, asserting the right of eminent domain over the lands that had been ceded by the Creek and Cherokee Indians to the Crown for the purpose of discharging their debts to the traders above mentioned, and proceeding to dispose of said lands—aware that certain persons, citizens of this State and the State of South Carolina, friends to the independency of the same, claim that the lands in the county of Wilkes were originally given up and ceded to the government of Great Britain by the Creek and Cherokee Indians in satisfaction and discharge of certain debts and arrears due by said Indians to the said certain persons, commonly called Indian traders—did, by the 23d section thereof, enact "that any persons having, or pretending to have, any such claim, do lay their claims and accounts before this or some future house of assembly to be examined; and whatever claims shall be found just and proper, and due to the friends of America, shall be paid by treasury certificates for the amount, payable within two, three, and four years, and carrying six per cent. interest." And,

Eighteenth. From the acts passed by the legislature of the State of Georgia on the 7th of February, 1783, (sections 1 and 2, ibid., folios 521–22,) and 22d of February, 1784, (section 10, ibid., folios 529–30,) and 22d of February, 178–, (section 1, ibid., folio 531,) that said State did set apart certain portions of the unlocated lands within her limits, to be granted to persons who had been soldiers in the continental or State service and were entitled to bounties in lands, and what the prices were for which she offered to sell her other lands in small parcels to actual settlers. And,

Nineteenth. From an act of Parliament passed in 1790 (Pickering's Statutes, vol. 37, p. 36) that the sum of £49,556 17*s.* 6*d.* was appropriated to indemnify those subjects of Great Britain and traders aforesaid who were entitled to claim out of the proceeds of the sales of the lands that had been ceded in the year 1773 to the Crown by the Creek and Cherokee Indians, to discharge debts that were then due from them to said traders. And,

Twentieth. From copies of many memorials purporting to have been addressed and presented to the legislature of Georgia by Thomas Galphin, executor of the will of George Galphin, testator aforesaid; and by Caleb Goodwin, attorney of Thomas Galphin aforesaid, and Willian Dunbar, executors of the will of said testator; and by Barna McKenna, qualified executor of the will of said Thomas; and by Milledge Galphin, also executor of the will of his father, the testator last aforesaid; that many applications have been made to the legislature of the State of Georgia between the years 1793 and 1840, and that favorable reports have been made thereon almost as frequently; yet without relief having been granted, notwithstanding the obligation of the said State to pay this claim has been almost uniformly acknowledged in the most absolute terms, and expressly upon the ground that said State had succeeded to the tract originally accepted by the Crown *primarily* for the use of the aforesaid traders; and that having appropriated the aforesaid ceded lands for the

general benefit of her citizens, she had simultaneously assumed such of the debts, for the discharge whereof they had been ceded, as were due to the friends of America. And,

Twenty-first. From an affidavit made 10th December, 1793, and a certificate made 31st October, 1816, by Charles Goodwin, that he went as agent and attorney of the executors of George Galphin to London in the fall of 1791, and applied for the payment of the debt aforementioned, as being due to the said George out of the proceeds of the sales of the aforesaid ceded lands, but without success; because the said George had not removed to Great Britain, and proof that he had not remained loyal to the Crown had not been produced; and it was understood in London that he, on the contrary, had espoused the cause of America; and moreover, because the British government had paid nearly all that was due to said traders, notwithstanding it had been deprived of said ceded lands, whilst the State of Georgia had seized all of said lands, and neglected to pay to any one of said traders the sum that had been charged thereon in his behalf by the said Indians to pay the debt which they owed to him. And,

Twenty-second. From the report made to the Senate *January* 13, 1836, by Mr. White, for the Committee on Indian Affairs, that the aforesaid claim of the legal representatives of George Galphin, testator aforesaid, was first brought under their consideration, as an inquiry into the propriety of the United States making provision for the payment thereof, in conformity with the general stipulation contained in the section that was prepared as a supplemental or 20th section to the treaty with the Cherokees, concluded at New Echota, in Georgia, on the 20th December, 1835, but was rejected by the Senate. And,

Twenty-third. From the information obtained from the governor of Georgia, and communicated by the President of the United States to the Senate at their request; and from the report made by Mr. White, March 5, 1838, to the Senate thereon, and upon the memorial of Milledge Galphin, executor of the will of Thomas Galphin, referred 29th December, 1837, that the Committee on Indian Affairs were of the opinion that if the trust fund at the close of the Revolution had inured to the benefit of the United States, or if, by reason of the Revolution, they had acquired the power to dispose of it, there ought to be no hesitation in satisfying the demand out of the treasury of the United States; but that this was not the case. The fund was land situate in one of the thirteen States; the State where it was situate acquired the control over it, and had a right to dispose of it when and to whom she pleased, and to apply the proceeds according to her own pleasure, without consulting the government of the United States; and that the prayer of said petitioner ought not to be granted. And

Twenty-fourth. From the memorial presented by Milledge Galphin, executor of the will of Thomas Galphin, to the House of Representatives, 9th January, 1844, and referred to the Committee of Claims, that said executor then held in opposition to the views which had been repeatedly expressed in memorials by the said Thomas and himself to the legislature of Georgia; that the government of the United States, as the war and treaty-making victorious party, are justly bound to pay to the legal representatives of George Galphin, testator aforesaid, the sum of money that was due to him from the Creek and Cherokee Indians, and for the payment whereof he had ceded to the Crown of Great Britain about 2,500,000

acres of land; control over and possession whereof had been taken by Georgia. And,

Twenty-fifth. From the petition presented 2d February, 1846, to the Senate, by Milledge Galphin, executor aforesaid, that the aforesaid ceded land became a part of the unappropriated lands of the State of Georgia; that a portion of it was applied to the payment of continental troops during the Revolution in satisfaction of military bounty warrants, the secretary of said State having certified that in the years 1784 to 1789 596,154 acres had been granted on military bounty warrants, and that, from the number of acres contained in numerous other grants, he thought others had also been made in satisfaction of similar warrants; also, for want of proof that credit had been allowed to Georgia by the United States for the value of the grants of land which had been actually or presumptively made by Georgia in satisfaction of such warrants; that you ought, in the absence of vouchers, to infer that but for the conflagration of the Treasury Department they might have been produced to prove that such credits had been allowed. On this point, however, the burden would rest upon Georgia to show that a larger, and what part of the credits actually allowed to her in settlement with the United States had not been allowed for the value of the lands granted by said State, in payment of land bounties, to persons who had served as Georgia or continental soldiers, or militia. And,

Twenty-sixth. From the reports made to the Senate of the United States, by the Committee on the Judiciary, upon the merits of this claim, and the memorial last aforesaid—and especially by their report made thereon to the Senate 7th July, 1846—that said committee are of the opinion that the government of the United States stands in this case, in relation to the Indian tribes, as Great Britain did prior to the Revolution, notwithstanding the said lands, ceded as aforesaid, had passed into the possession and control of Georgia; and that the *United States* having, by act of Congress approved July 5, 1832, provided for the payment of certain claims, which Virginia had assumed, to the officers of that State engaged in the public service during the revolutionary war, *therefore* they ought to provide for the payment of certain debts that were due from the Creek and Cherokees to Indian traders in Georgia and South Carolina, for the payment whereof said Indians had redundantly provided, by the aforesaid cession of lands, notwithstanding the greater part of said lands had been granted by the State of Georgia to her own citizens. And,

Twenty-seventh. From the certificate given 22d August, 1848, by W. B. Trusly, treasurer of the State of Georgia, that the pound was rated at $4 44, in a settlement made under an act of her legislature approved 25th December, 1847, which provided for the payment of several auditor's certificates, issued by her authority 9th December, 1794, to a citizen of South Carolina, for the value of certain goods sold by him to the constituted agents of the State of Georgia.

Twenty-eighth. And as, upon due consideration of these conflicting, contradictory, and very extraordinary views and opinions about the validity of the demand of Milledge Galphin upon the government of Great Britain, or that of the State of Georgia, or that of the United States, for the payment of the claim of the late George Galphin, under the treaty made by the governor of the province of Georgia with the Creek and Cherokee Indians in the year 1773, I did not perceive the privity in

said case between the said Galphin and the government of the United States, which I believe the act passed by Congress for the relief of Milledge Galphin, executor, &c., approved August 14, 1848, should be understood as requiring you to find, I have not felt, and do not feel, at liberty to advise you to pay, in settlement or on account of said claim, any amount of money out of the treasury, by reason of any of those views or opinions.

Nevertheless, *because* I find that the lands lying between Little and Broad rivers, on the Savannah and north of the Ogechee, were ceded to the Crown of Great Britain, by treaty made 1st January, 1773, with the Creek and Cherokee Indians—*primarily* for the purpose of paying the debts which they then owed to sundry persons known as Indian traders, and including the debt or sum of £9,791 15*s.* 5*d.*, hereinbefore mentioned as having been ascertained on the 2d May, 1775, by commissioners appointed under said treaty, and certified by Alex. Wylly, their clerk, to be due from the said Indians to George Galphin, testator aforesaid, in his own right and as the assignee of other Indian traders, as aforesaid; and *because* the said debt was thus charged upon the said lands, and these were by the aforesaid treaty created a trust-fund, under the control of his Majesty the King of Great Britain, that passed, per force of the Revolution, into the possession and under the control of the government of the State of Georgia, with the debt due and payable to said Galphin, as aforesaid,—a friend of America—charged and chargeable in equity thereon, as is absolutely acknowledged, although in general terms, by the act passed by the legislature of said State on the 23d day of January, in the year 1780 or 1783, above cited,—I find it to be my duty to advise you to pay to Milledge Galphin, when he shall have duly obtained and shall produce letters of administration *de bonis non* on the estate of George Galphin, testator aforesaid, the sum ascertained as aforesaid to be payable to him in his own right, and as the assignee of Carter and other Indian traders, and certified as aforesaid to be £9,791 15*s.* 5*d.*, which, at the rate of $4 44, amounts to $43,518 97: because, in view of the powers conferred upon and exercised by commissioners appointed under the 1st section of the act of Congress, entitled "An act for an amicable settlement of the limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi territory," approved 7th April, 1798, (U. S. Laws, vol. 3, pages 39–41,) and of the articles of agreement and cession entered into on the 24th April, 1802, by James Jackson, Abneh Baldwin, and John Milledge, duly appointed by and on the behalf of the State of Georgia, and the commissioners of the United States, James Madison, Albert Gallatin, and Levi Lincoln, duly appointed by and on the part and behalf of the United States, (Laws United States, vol. 1, pages 488–490,) confirmed by an act of the said State, passed 16th June, 1802, (ibid., p. 491,) and by act of Congress passed 3d March, 1803, (Laws United States, vol. 3, pages 546–553,) in and by which proceedings, and especially by the fourth sub-division of the first article of said agreement of cession, it is expressly stipulated "that the United States shall, at their own expense, extinguish for the use of Georgia, as early as the same can be peaceably obtained on reasonable terms, the Indian title to the county of Talassee to the lands left out by the line drawn with the Creeks, in the year one thousand seven hundred and ninety-eight, which had been previously granted by the State of Georgia, both which tracts had formerly been

yielded by the Indians, and to the lands within the forks of Oconee and Oakmulgee rivers; for which several objects the President of the United States has directed that a treaty should be immediately held with the Creeks; and *that the United States shall, in the same manner, also extinguish the Indian title to all the other lands within the State of Georgia*," —the obligation of this government to extinguish the equitable Indian title held by the legal representatives, seems to have been made imperative.

It remains only that I should say, with reference to the interest demanded by the claimants upon said debt under the act passed by Congress for the relief of Milledge Galphin, executor of George Galphin, testator aforesaid, approved 14th August, 1848, that as said act does not direct or expressly authorize the payment of interest thereon, and as even the sum of the principal of said claim was not demanded by the executors of the will of George Galphin, testator aforesaid, or the executors of the will of Thomas Galphin, executor of the will of said first testator, from the United States, so far as I am advised, prior to the year 1836, to allow interest on said principal would be contrary to the common practice of the department and the just economy of this government, which requires its creditors to demand whatsoever may be owing to them aptly and promptly, or to forego any and every demand for interest thereon.

Respectfully submitted by your obedient servant,

J. W. McCULLOH, *Comptroller.*

Hon. R. J. WALKER,
Secretary of the Treasury.

TREASURY DEPARTMENT,
February 28, 1849.

By an act of Congress approved August 14, 1848, entitled "An act for the relief of Milledge Galphin, executor of the last will and testament of George Galphin, deceased," it was enacted, "That the Secretary of the Treasury be, and he is hereby, authorized and required to examine and adjust the claim of the late George Galphin under the treaty made by the governor of Georgia with the Creek and Cherokee Indians in the year seventeen hundred and seventy-three, and to pay the amount which may be found due to Milledge Galphin, executor of the said George Galphin, out of any money in the treasury not otherwise appropriated."

This case having been referred to the First Auditor and First Comptroller of the Treasury to report thereon to me, and the acting Auditor having reported that the sum of $43,518 97 as principal, and $191,512 47 as interest—together, $235,031 44—was due to the said Milledge Galphin as executor aforesaid, and this report having been communicated to the First Comptroller, he has expressed the opinion that the principal is due under the law, being $43,518 97, but not the interest.

In my judgment, after a full examination, I am of the opinion that the principal sum of $43,518 97 is due, and direct the same, by virtue of the power vested in me by the above recited act, as commanded by the law, in case any sum should be found due, to be paid to "Milledge Galphin, executor of the said George Galphin, out of any money in the treasury not

otherwise appropriated," or to the duly authorized attorney in fact of said Milledge Galphin.

As regards the question of executorship, by the law of South Carolina, where the testator died, and where the will was made, the executor of an executor represents the first testator; which principle is recognised so far as regards its application to this case by this special act, not only in the title of the act, but also in the body of the law, which commands me "to pay the amount that may be found due to Milledge Galphin, executor of the said George Galphin."

My impression is against the allowance of the interest; but there being a difference of opinion about the interest, between the acting Auditor and the First Comptroller, and the facts being of a peculiar character, the claim for interest remains an open question.

The First Auditor and First Comptroller will cause to be paid to Milledge Galphin, executor of the said George Galphin, or the duly authorized attorney in fact of said Milledge Galphin, the above mentioned sum of forty-three thousand five hundred and eighteen dollars and ninety-seven cents.

R. J. WALKER,
Secretary of the Treasury.

FIRST AUDITOR'S OFFICE,
March 2, 1849.

GEO. H. JONES.

COMPTROLLER'S OFFICE,
March 2, 1849.

WM. ANDERSON.

TREASURY DEPARTMENT,
March 1, 1850.

Inasmuch as the Attorney General's opinion decides the principle that, in point of law, interest ought to be allowed under the act of Congress above recited, I direct interest to be allowed accordingly.

W. M. MEREDITH.

TREASURY DEPARTMENT,
Comptroller's Office, June 15, 1849.

SIR: The honorable William M. Meredith, Secretary of the Treasury, having on the 19th ultimo requested my attention to the enclosed argument, numbered one, submitted by Joseph Bryan, attorney in the case of the claim of George Galphin, under the act of Congress approved August 14, 1848, and said attorney having consequently submitted the enclosed additional arguments, numbered two, three, and four, in said case, I duly considered the same, and, having carefully reviewed the facts of the case and laws applicable to these, formed the following opinions in the premises, without, however, having heretofore reduced them to writing, which I now do, in accordance with the request orally made by said Secretary and yourself, upon the suggestion of said attorney, because he apprehended that the interests of the claimant would otherwise suffer

prejudice, by reason of the respect that would be shown to the objections expressed in the report which I made as First Comptroller on the 15th day of February, 1849, to the honorable R. J. Walker, then Secretary of the Treasury, against the payment of interest on said claim, under the aforesaid act, viz:

1st. Because said act of Congress did not direct or expressly authorize the payment of interest on said claim;

2d. Because the executor of George Galphin had not demanded from the government of the United States the payment of the principal of said claim prior to the year 1836; and,

3d. Because the common practice of this department, and the just economy of the government, require that its creditors shall aptly and promptly demand whatsoever may be owing to them, or forego any and every demand for interest which might otherwise accrue thereon.

Under the circumstances above mentioned, I have the honor to state, that in the progress of the review which I made of the aforesaid claim, I formed the opinion that the sum certified on the 2d day of May, 1775, by commissioners appointed by the colonial government of Georgia, to be *then* due to George Galphin, £9,701 15*s*. 5*d*. = $43,518 97, should be paid, with interest thereon, out of the proceeds of the sales of the lands that were ceded by the Creek and Cherokee Indians to the King of Great Britain, to be applied ratably, and so far as might be necessary for that purpose, and that said interest should be computed from said day of May, 1775; the fund, consisting of 2,500,000 acres of land, and all other claims thereon, having been satisfied by the government of Great Britain; and the government of Georgia, by act of assembly passed in the year 1780 or 1783, having virtually assumed to pay this claim out of the proceeds of said lands, with interest, up to the 3d day of March, 1803, when, by confirming the agreement that had been duly made by the commissioners of Georgia and of the United States, in and by which it was stipulated that the government of the United States should quiet the titles to all such lands, Congress did so undertake and promise to pay the aforesaid claim, principal and interest, forasmuch as the titles to said lands could only thus be forever quieted; the claimant not being chargeable by the State of Georgia with laches, he having promptly, aptly, and unremittingly demanded from her government the payment of said debt, with interest; and that government having appropriated said lands to the use of the people of Georgia; consequently, to this extent, and for these reasons, I formed the opinion, and now think, that the report which I made on the 15th of February last, to Secretary Walker, is justly open to amendment.

On the other hand, because the agreement made between Georgia and the United States, as aforesaid, was confirmed by the public act of Congress approved 3d March, 1803, above-cited—and thus gave notice to the claimant in said case, that the government of the United States had assumed every obligation of the class to which his claim belonged, and thereby laid him under the obligation to demand its settlement promptly and aptly, or to forego all claim for interest that would otherwise have continued to accrue on the principal sum of said claim. I consequently formed the opinion, and now believe, that interest could not be justly computed and demanded thereon after the 3d of March, 1803, as a charge against the United States, for the term during which the claimant

has remissly forborne, in his own wrong, to demand from their government the settlement of said claim, viz: from the 3d March, 1803, to the 13th January, 1836.

Yet, because the claimant did apply to this government for the payment of the aforesaid obligation, and it was refused for extrinsic reasons, specified in an adverse report that was erroneously made in the premises, by the Committee on Indian Affairs, to the Senate, 13th January, 1836, I formed the opinion, and now believe, that the United States are justly chargeable with interest on $43,518 97, the principal sum of the aforesaid certificate, from the 13th January, 1836, when said settlement was refused, as aforesaid, until payment thereof shall have been provided for by Congress: nevertheless, for the reasons first specified in my aforesaid report, made 15th February, 1849, viz: that the act of Congress passed for the relief of Milledge Galphin, on the 14th August, 1848, does not direct or expressly authorize the payment of interest, I formed the opinion, and now believe, that the Secretary of the Treasury could not, consistently with the uniform, long-established practice of this department, pay interest to the claimant, on the aforesaid principal sum, under the act of Congress last cited, for the term beginning on the 13th January, 1836, as aforesaid.

With great respect, your obedient servant,

J. W. McCULLOH,
Late Comptroller.

Hon. ELISHA WHITTLESEY,
First Comptroller of the Treasury.

APRIL 24, 1850—*James W. McCulloh's examination.*

Question. Were you predecessor in office of Mr. Whittlesey?

Answer. Yes, sir.

Question. Did you examine the Galphin claim?

Answer. I examined it fully in reference to the principal of the claim; and with reference to interest, I paid no further reference to it, as the act did not expressly direct the payment of interest, than to forbear to advise that any should be allowed, for the reasons stated, that the practice of the department was not to pay interest when the law was silent on the subject. This was all prior to 4th March, 1849.

Question. Did your subsequent reflections modify or change your views in relation to the interest on this claim?

Answer. When the present Secretary of the Treasury referred the claim to me, for the purpose of my examining the question of interest upon the facts of the case and the law applicable to them, that question having been expressly left open by his predecessor because I had not made such an examination, I proceeded to make the required investigation. The counsel then employed for the prosecution of the claim (Joseph Bryan, esq.) appearing and presenting an argument in favor of the allowance of interest, which was read, considered, and filed amongst the papers, as were subsequent arguments of the same party, which he addressed to remove doubts which I had expressed in regard to the measure of interest that should be allowed, I finally determined, as I told him, that I would advise the payment of interest from the date

of the liquidation of the debt by the officers of the province of Georgia to the date of the act of Congress confirming the agreement that was made between the United States and the State of Georgia, for the relinquishment of her claims to the lands now constituting Alabama and Mississippi, and not to recommend the payment of interest from the date of said act of Congress to the period of the claimant's first application to the United States for the settlement of his claim, (I think in 1836;) and not to advise payment of interest from the last-named period until the date of the act of 14th August, 1848; all for reasons assigned in my communication to Mr. Whittlesey, dated 15th June, 1849. In that communication I did not so fully consider as I should have done the right of the party to interest, by reason of his claim being a charge upon land.

Question. Did you not consider the obligation of the United States to pay this debt or interest as resting entirely upon the agreement of 1802 between the United States and Georgia?

Answer. I did; but, in my first report, I advised only the payment of the principal, not having examined the facts with special reference to their merits in regard to the question of interest; and in my communication to my successor, without so fully considering the right of the claimant to be allowed interest as I should have done, as the claim was a charge upon land, the title to which I consider the United States bound to perfect by their aforesaid agreement.

JAMES W. McCULLOH.

TREASURY DEPARTMENT,
Comptroller's Office, August 13, 1849.

The papers in the case of Milledge Galphin, executor of the last will and testament of George Galphin, deceased, having been referred to me, to report more fully on the question of interest, I submit the following, in obedience to your request:

The amount to be paid under the act approved on the 14th day of August, 1848, for the relief of said executor, was ascertained and sanctioned by the Secretary of the Treasury on the 28th day of February, 1849. This was the first liquidation of the claim by the United States. The first and only admission that the United States were bound to pay this claim was by the act aforesaid; and whether any and what amount was due depended on the decision of the Secretary of the Treasury, after he should examine the evidence.

The treaty made in 1773 was a treaty between the Creeks and Cherokees and the King of Great Britain, by which the Indians ceded certain lands, and the Crown was to hold the same in trust, and dispose of them to pay the debts the Indians owed to Indian traders.

A paper lettered "B, extract of treaty 1773," contains the following extract:

"In consideration whereof, it is agreed, on the part of his Majesty, that the moneys arising from the sales of the land ceded as aforesaid, after defraying the expenses of this congress and such other charges and expenses as will necessarily arise in carrying this measure into execution, shall be applied towards the payment and satisfaction of such debts as shall be jointly due and owing from the Indians to their traders aforesaid."

The colonial government created a commission to sell the lands and to

liquidate the amounts respectively due to each Indian trader; and said commission, on the 2d of May, 1775, did liquidate the claim of George Galphin, and gave him a certificate for the amount, £9,791 15*s*. 5*d*. As the sums awarded were to be paid out of a trust, the finding of the commissioners only ascertained the amount of the debt, and the proportion that would be paid must depend on various contingencies.

The governor and council, on the 6th day of June, 1775, sanctioned the report, and found due to George Galphin the said sum of £9,791 15*s*. 5*d*, and entered upon their record that the same was "payable out of such moneys as have and may arise by the sale of the lands lately ceded to his Majesty by the Creek and Cherokee Indians, after the payment of the expenses attending congress held with the Indians for obtaining the cession aforesaid, and the other necessary charges consequent thereof, if so much money shall be received; and if not, then to abate in proportion to the other creditors."

This was in accordance with the instructions given to Sir James Wright, governor of Georgia, by the Earl of Dartmouth, on the 12th of December, 1772, preparatory to holding the treaty, wherein he said: "The principal object of attention recommended by their lordships is, that care be taken, in the negotiation with the Indians, that the Crown be not, on any account, pledged either to the Indians or to the traders for the discharge of any part of the debt due from one to the other."

The Crown never admitted any indebtedness to George Galphin, nor to any of the Indian traders; and when Mr. Goodwin, in 1791, pointed out to Mr. George Rose, the principal secretary of the treasury, that there was no discrimination in the act of parliament between those who adhered to the British government and the creditors who remained in the United States, he replied "that the whole act for remunerating the royalists was an act *ex gratia*, and not *ex debito*."

There is no data on which to estimate how much the lands held in trust would have sold for at that time. The traders petitioned the governor and council, on the 27th of March, 1775, to take the land in severalty, and to sell and settle it in five years. This proposition was substituted by the colonial authorities, on the 4th of April, 1775, by another one, that the land should be sold and settled within three years, according to the proclamation of the governor issued on the 24th of October, 1774. A sale at that time, and under such circumstances, would greatly have lessened the probability that the full amount of the claims would have been realized.

The proceedings of the governor and council show clearly that the land might not sell for enough to pay the expenses and debts, and therefore they provided for paying a ratable proportion. The war of the Revolution soon followed, and neither the Crown nor the colonial government did sell the land and pay said debts.

"In 1780 Georgia, with a view of strengthening her frontier, and to have the rich and healthy lands of Wilkes speedily settled, passed an act with this provision:

"Whereas certain persons, citizens of this and the State of South Carolina, and friends to the independency of the same, claim that the lands in the county of Wilkes were originally given up and ceded to the government of Great Britain by the Creek and Cherokee Indians, in satisfac-

tion and discharge of certain debts and arrears due by said Indians to said certain persons, commonly called Indian traders:

"*Be it therefore enacted*, That any person having or pretending to have any such claim, do lay their claims and accounts before this or some future house of assembly to be examined, and whatever claims shall be found just and proper, and due to the friends of America, shall be paid by treasury certificates for the amount, payable within two, three, and four years, and carrying 6 per cent. interest."

Here was an opportunity given to George Galphin to prove his claim, to make the amount certain, which was uncertain before, and place it on interest. This he failed to do. Georgia legislated on this subject, with a knowledge of what the proceedings were in 1773 and 1775, and she does not admit that any claims which might be established were to be augmented by interest, before they should be found just and proper by her assembly.

She held in her archives the evidence that the commissioners had allowed George Galphin the above-mentioned sum, and yet she does not admit it to be a liquidated debt, and requires generally that all claims and accounts against the Indians, who had ceded their lands to pay their indebtedness, should be laid before her legislature to be examined, and what part was just and proper, and due to the friends of America, she agreed to pay.

As to Mr. Galphin, his patriotism was known not only in Georgia, but in England, and that knowledge abroad defeated Mr. Goodwin in 1791 in obtaining a settlement of the claim there. After the lapse of some years, an application was made to the assembly of Georgia to pay the claim, which was renewed from time to time, down to 1839; and whether later, the documents do not show. The claim never has been liquidated by Georgia, nor its validity admitted. By a bill reported, (but at what date does not appear,) it was proposed to pay the amount in ten annual instalments, with interest from the 7th December, 1794.

The claim was prosecuted against the British government in 1791, and continued until 1792, by Charles Goodwin, attorney and agent of George Galphin, as appears by his statement on the 31st of October, 1816. In it he mentions that he applied to the legislature of Georgia for the claim in 1794; and the date of the application was probably selected as the day on which interest was to commence, if the payment of the principal should be assumed.

A committee of the Georgia legislature, on the 5th December, 1838, reported a bill for the relief of George Galphin, and also a resolution requesting their senators and representatives in Congress to urge the general government to refund to the State of Georgia the sum of £9,791 15*s*. 5*d*. sterling, being the amount that the said legislature appropriated for the relief of the legal representatives of George Galphin, deceased, who was an Indian trader, and comprehended in the treaty of 1773.

This resolution was presented on the supposition that the bill reported would pass, and it establishes the fact that the committee made no provision for interest.

The question whether interest shall be allowed arises on a claim in no instance admitted by Georgia or by the United States to be due before the 14th August, 1848, nor by the British government, as due from her; and whatever amount should be paid was contingent on the trust fund. It

was settled as a general rule in the early history of this government, that interest was not to be paid on claims unless directed by law.

On the 10th October, 1786, Congress adopted a resolution that South Carolina pay to a description of her officers the sum of $10,276 12, for which the State was to have credit on her specie proportion of the last requisition. Drafts were drawn on the commissioner of loans for the said State, payable to bearer, which not having been paid, they were returned and taken up by the board of the treasury, and an application was made to Congress by the officers for the interest. It was the practice at that time to refer new and important questions to the head of one of the departments. This was referred to Mr. Hamilton, and he reported his opinion on the 18th March, 1790, against allowing interest.—*State Papers, Claims, page* 8.

The House of Representatives, on the 23d March, 1816, requested William H. Crawford, then Secretary of War, to state the usage of the War Department in allowing interest. He answered, "that the general usage of the War Department has been to pay no interest upon any demand whatever, without regard to its origin." He mentions that during the war of 1812, officers and contractors had in some cases been directed to obtain money on loan; and when bills were presented and not paid, for want of funds, and the banks had been requested to take them up with the assurance that interest would be paid in these cases, interest was paid.

Interest had also been paid on bills drawn by contractors according to their contracts, and not paid for want of funds, and where it formed a part of the agreement.

Interest was allowed by general and special acts in many instances during the American Revolution, because the credit of the government needed to be sustained when the treasury was without the means to pay.

The same cause was the reason that Congress passed the following resolution on the 3d of June, 1784:

"*Resolved*, That an interest of six per cent. per annum shall be allowed to all creditors of the United States for supplies furnished, or services done, from the time that the payment became due."—(Journal of old Congress, volume 4, page 443.)

Extract from a resolution passed on the 22d of March, 1783:

"*Resolved*, That such officers as are now in service, and continue therein to the end of the war, shall be entitled to receive the sum of five years' full pay in money, or securities on interest at six per cent. per annum, at the option of Congress, instead of the half-pay promised for life by the resolution of the 21st of October, 1780."—(Journal of the old Congress, volume 4, page 178.)

The principles mentioned by Mr. Crawford have governed Congress in allowing interest, and no power has been exercised more uniformly or with greater caution. It is a power that has not been delegated to the accounting officers, nor to the heads of the departments, and it is submitted that it should not be exercised by inference, nor because the case is supposed to be a hard one. If it should be the pleasure of Congress to allow interest in this case, the party can sustain no damage by the delay, because it would be allowed to the passage of the act or the time of payment.

If I were to advise to allow interest, I could not fix on any date before

the demand was first made by the claimant on the United States. The earliest application on file fixes this date in 1837.

Interest was not mentioned in the treaty of 1773, nor do I see anything to convince me it would have been paid if the land had been sold. When Georgia invited, in 1780, a settlement of the claims arising under the treaty of 1773, she did not fix on the date of the treaty for the period of commencing the payment of interest, nor on the 2d day of May, 1775, but on the date of her own proceedings.

The committees in their reports, as has been mentioned, designated the 7th of December, 1794, as the day from which to compute interest.

It is said in the argument, that the United States having assumed the responsibility of Georgia, they are bound to pay the interest as well as the principal. Georgia has at all times denied that any claim was due from her to the said George Galphin or to his representatives, and the assumption of the United States, in the language of Mr. Rose, is "an act *ex gracia*, and not *ex dibito*." If it was a debt in 1773, I cannot perceive how it assimilates to a commutation case.

The act of July 5, 1832, has been cited in support of the claim for interest. A very brief history of that act is, that the State of Virginia, by a resolution passed in the month of May, 1779, promised certain of her officers half-pay pension for life. Some of them she placed on the list of pensions, and paid them their annual stipends; and others, from various causes, were refused. Soon after the organization of the general government, and on the 4th day of August, 1790, the domestic debt was funded, bearing an interest of 6 per cent. The pension debt of Virginia was not funded. The State of Virginia was suable, and suits were commenced against her by several of the officers, and judgments were recovered. As the payments for pensions were made to those who had served during the Revolution in the common cause, and as the judgments were in favor of the same meritorious class of officers, and as provision had been made to pay the debts of other States, Congress thought it right and just to pay these debts, which were of a class that had been assumed at various times, and for that purpose passed the act of July 4, 1832. The 1st section directs the accounting officers to liquidate and pay the accounts of Virginia for payments made on account of half-pay promised the officers by that commonwealth. The 2d section directs them to liquidate and pay the judgments the officers had recovered against the State under the act of May, 1779.

The 3d section directs the Secretary of the Treasury to adjust and settle those claims which had not been paid nor prosecuted, but which the State would be bound to pay, on the principles of the half-pay cases decided in the supreme court of appeals of the State of Virginia.

I have before cited the resolution of the 22d of March, 1783, in which Congress agreed to pay interest on the commutation securities, and the resolution of June 3, 1784, in which interest on all the public debts was stipulated to be paid.

As is stated by Judge Bryan in his argument, interest is not directed to be paid by the act of July 4, 1832, nor was there any necessity that it should be mentioned to carry interest in these cases. This principle was decided by Mr. Attorney General Rush, in the case of Mrs. Hamilton, on the 29th of June, 1816.

On the 29th of April, 1816, Congress directed the accounting officers

to settle the account of Elizabeth Hamilton, widow and representative of Alexander Hamilton, deceased, and to allow her five years' full pay for the services of her deceased husband as a lieutenant colonel in the revolutionary war, which said five years' full pay is the commutation of his half pay for life, to be paid out of any money in the treasury not otherwise appropriated. A question arose whether she was entitled to interest, and the opinion of Mr. Rush was requested by the Secretary of the Treasury; and, after stating the case, in answer to the question, Does the spirit and true meaning of the said act require that interest be allowed on the five years' full pay therein granted? he said: "I think it does. I am given to understand that it has not been the practice of the accounting officers of the Treasury Department to allow interest upon an account directed to be settled or paid by an act of Congress, unless there be in the act itself special words to that effect. This rule, taken as a general one, it is not my part to controvert, nor is it supposed that the above opinion will imply any contradiction. I ground it on the peculiar words of the act of April 29, 1816, which, taken in connexion with the resolution of March 22, 1783, appears to me, on full consideration, to enforce the construction that it was the intention of Congress not merely to make an independent grant to Elizabeth Hamilton, but to place her upon a footing of equal advantage, in all respects, with the officers entitled to commutation under that resolution. The consequence will be, that, as was the case with the officers themselves, (none of whom, it is believed, received the amount in money,) she, too, will be entitled to interest at six per cent., the rate specified in the resolution."

The allowance of interest to the representatives of George Fisher is referred to by Judge Bryan in the following language:

"And the claim of George Fisher, recently decided by the Second Auditor, under an opinion of the Attorney General, is also adduced as another instance when the term 'interest' is not used in the act of Congress which authorized and required the Second Auditor to examine and adjust; and yet, in making the award, interest in full to the date of payment was allowed by that officer."

So far as the acts of the Second Auditor are authority, they bear on this case; but in this concession, the power granted by the act for the relief of the representatives of George Fisher should be examined. The Second Auditor is required to examine the claim on principles of equity and justice; and he is to afford a fair and full indemnity for all losses and injuries occasioned by the troops, and allow the claimants accordingly.

The language of the act is unusual, and confers more than ordinary powers. Interest was allowed from the time the injuries were committed to the payment; but I do not find that Mr. Attorney General Toucey or Johnson decided, as an original proposition, that interest ought to be allowed.

Mr. Toucey, on the 20th of December, 1848, gave an opinion in the affirmative on this point: Whether, inasmuch as the Second Auditor had ruled out proof for informality, and reported on a part of the claims, he could afterwards receive new evidence in support of the claims rejected? Nothing was said about interest. On the 18th of January, 1849, the Second Auditor, having decided to allow *interest*, to afford a full and fair indemnity, and having reported the allowance of interest from the 13th of February, 1832, he asked the opinion of the Attorney General as to the

time when the calculation of interest should begin. The Attorney General says: "It being held by the Second Auditor that the value of the property taken or destroyed, with interest upon it, is to be paid '*as a fair and full indemnity*,'" it would seem to follow, of course, that the interest should be computed from the time when the property was taken. Mr. Clayton, on succeeding Mr. McCalla, found this opinion of the Attorney General, and he requested the Secretary of the Treasury to obtain the opinion on two points:

1st. Is the opinion of the late Attorney General upon the decision of the Second Auditor obligatory on me?

2d. Ought interest to have been allowed?

Mr. Attorney General Johnson decided the first question in the affirmative.

2d. He decided that the allowance of interest under the act was solely within the province of the Second Auditor; and whether he had acted discreetly, was not for the Attorney General to decide.

So that the allowance of interest in this case was the sole act of Mr. McCalla, and depended on the unusual phraseology of the act requiring him to allow *a fair and full indemnity*.

Reference is also made to the claim of the representatives of John M. Galt.

John M. Galt was a surgeon in the Virginia line during the American Revolution, and a suit having been commenced against that State for five years' full pay, a judgment was rendered in the circuit superior court in June, 1847. The claim was settled and paid under the provisions of the act of July 4, 1832, with the usual allowance of interest. Additional evidence was produced by the certificates of the auditor of public accounts, and of the Attorney General, that interest was allowed and paid on this class of claims by the law of Virginia.

The opinion of Mr. Attorney General Taney in the case of Wm. Tharp is referred to, to sustain the position that the Secretary of the Treasury can allow interest if he thinks proper.—(Page 841, Opinions of Attorneys General.)

The Secretary of War desired the opinion of the Attorney General on the question whether he could allow interest. Mr. Taney says: "I answer, that I am not aware of any statute of the United States that forbids the Secretary of War or the accounting officers to allow interest to a claimant, if it should appear that interest is justly due to him. As the United States are always ready to pay when a claim is presented supported by proper vouchers, it can rarely, if ever, happen that they are justly chargeable with interest; because it is the fault of the claimant, if he delays presenting his claim, or does not bring forward the proper vouchers to prove it and justify its payment. But if in Major Tharp's case, or in any other, the Secretary of War, upon a review of the whole evidence, should be of the opinion that interest is justly due to the claimant, I think he may legally allow it."

The opinion of Mr. Attorney General Butler, referred to on page 1119, was given in the case of Mrs. O'Sullivan. Her husband, John O'Sullivan, owned a vessel which was detained by John M. Forbes, commercial and political agent of the United States at Buenos Ayres, in 1823, and finally sent by him to the United States. By an act approved July 2, 1836, the

Secretary of the Treasury was directed to settle the claim, "and to pay the amount of *actual loss* which might be shown."

In ascertaining the "*actual loss*," the Attorney General thought that interest might be estimated on the value of the vessel. The accounting officers, by the act, were clothed with the same power that a jury is in giving damages in a case of tort. They arrived at a result by considering various accompanying circumstances, and interest may, with propriety, be one element in deciding what amount of damages the defendant should pay. Your attention is invited to the opinion of Mr. Attorney General Wirt, in the case of Aquilla Giles, as containing the general principles which have governed the accounting officers and the heads of departments in deciding the question whether interest should be allowed.

On the 3d March, 1819, Congress passed an act for the relief of Aquilla Giles. He held a warrant issued by B. Lincoln, dated 28th December, 1782, expressing on its face to have been issued for the balance of his pay as a major, for that year, for five hundred dollars. The accounting officers were directed to settle the claim.

Mr. Giles having claimed interest, the opinion of the Attorney General, Mr. Wirt, was asked, and given as follows, viz:

"I have examined the case of Aquilla Giles, and see no reason, in this instance, to depart from the usual practice of the Treasury Department. The act of Congress does not direct the payment of interest, nor does it, as in the case of Mrs. Hamilton, refer to any principles of settlement from which it can be inferred that interest was intended to be allowed. The act merely refers to the warrant for $500 as the basis of settlement. The warrant, thus referred to, does not carry interest on its face, and I understand it to be the sole fault of Mr. Giles himself, that it has not long since been presented and paid or funded. Interest is in the nature of damages for withholding money which the party ought to pay, and would not or could not. But here it appears, on the face of Mr Giles's own memorial, that he has never made an application for payment, and, therefore, there has been no withholding payment against his consent. If Mr. Giles conceives himself to be aggrieved by the practice of the treasury in similar cases, he has his remedy before Congress, who, if they think it equitable, can direct the payment of interest, as they did in the case of John Thompson."

The result of my examination is:

1st. That as a general rule the accounting officers do not allow interest.

2d. The allowance of interest in the commutation cases is by contract.

3d Interest is allowed in time of war and an empty treasury, in cases where disbursing officers and contractors have been directed to raise money by loans and have paid interest; and where bills have been drawn and not paid, and banks have taken them upon an assurance that interest would be paid; and where bills have been drawn by contractors, agreeable to contract, and not paid for the want of funds.

4th. Where interest is stipulated to be paid by contract, and an act is passed for the relief of the contractor, directions are given to pay interest, as in the case of the Springfield Manufacturing Company, 22d August, 1842.

5th. During the war of 1812, several of the States expended money for the benefit of the United States. When the same was borrowed by

the State and interest paid, such interest was repaid; but when the money was taken from the treasury of the State, the principal was refunded, without interest. (Virginia—6 vol. Stat. at Large, page 132; Delaware—6 vol. Stat. at Large, page 175; Maryland—6 vol. Stat. at Large, page 161.)

6th. The accounting officers have allowed interest in cases referred to them by Congress, when interest, under a law pertaining to a class of cases, would have been allowed to the person performing the services if he had applied; but, being dead, relief is granted to the representative or heir, as in the case of Mrs. Hamilton.

I find no general principle or rule which authorizes the Secretary to allow interest in this case. The phraseology of the law does not indicate that it was the intention of Congress that interest should be allowed. The position is assumed in the argument that the question of the principal was not doubted, and therefore that the interest was the main subject referred for decision. I am obliged to dissent from this assumption. In my opinion, it was strictly within the power of the Secretary of the Treasury to ascertain what would have been realized if the land had been sold under the proclamation of the governor, or under the substituted proposition of the governor and council, or under the proposition of the creditors in 1775, as mentioned above. This could not have been reduced to an absolute certainty, but an approximation might have been obtained from the population of Georgia, and the sale of other lands open for settlement in that colony at that time. Much reliable information might be obtained from ascertaining the price paid for land in other colonies about the same time, and the progress made in their settlement. The Crown being a trustee, without restriction, had the right to sell at such time as it thought proper to fix, and at such price as it could obtain, acting in all things in good faith. In exercising this discretion as to the time, three years were limited by Governor Wright in his proclamation.

If the principal was ascertained and established by Congress, there was no necessity to refer the computation of interest to the Secretary of the Treasury. If interest had been in the contemplation of Congress, some rules would have been laid down, according to precedent, making known its will in regard to it, or its views would have been made known in some other way.

If further information is desired, and time shall be given to me, I will enter more fully into the examination of the question of interest by referring to numerous reports, and tracing out the action of Congress on them, and by special acts allowing interest and setting forth the circumstances attending each case, and showing the reason for the allowance, without departing from the general principle that interest is not allowed on debts against the United States; and the examination will show great harmony in the various decisions by the action of the accounting officers, the heads of departments, and Congress.

I am not able to record the extent of my examination, in consequence of the business of the office requiring my undivided attention during the day; and the pressing importunities of the representatives of the claimants forbids my asking for more time.

Most respectfully submitted.

ELISHA WHITTLESEY.

Hon. Wm. M. Meredith, *Secretary of the Treasury.*

ATTORNEY GENERAL'S OFFICE,
February 2, 1850.

SIR: The question you have submitted to me, upon the claim of the executor of George Galphin, under the act of the 14th of August, 1848, I have examined with all the care due to the circumstances attending it—its supposed intrinsic difficulty and the large amount which it involves.

The opinion I have formed I am clear in; and although my official engagements in the Supreme Court will not enable me to give my reasons at length, I do not feel at liberty to refuse the request of the claimant, that I would state to you the opinion itself.

The question is, whether interest should be allowed on the claim; and if it should be, from what period?

First. Should it be allowed?

I think it should. The material facts are these: George Galphin, the testator of the claimant, antecedent to 1773, was an authorized trader among the Creek and Cherokee Indians, in the colony of Georgia. In that capacity and as the assignee of the claims of other legal traders, he was a creditor of the Indians for a large amount. In 1773, under instructions from the mother country, the governor of the colony, Sir James Wright, negotiated a treaty with the Indians, by which they ceded a large extent of territory, now constituting, it is believed, two entire counties of the State of Georgia (Wilkes and Lincoln,) and part of two others (Oglethorpe and Green,) and by an express stipulation the debts due by the Indians to the traders were secured to be paid from the proceeds of the lands.

The treaty was ratified by England in 1775, and a commissioner duly constituted to liquidate the payment of these debts out of the fund so by the treaty provided for that end. Under this authority Galphin's claim, and others of like character, were ascertained, and the amount due to him found to be £9,791 15*s*. 5*d*. sterling, and for this sum he obtained a proper certificate. The revolutionary war occurring soon afterwards, and ending in the independence of the colonies, the territory ceded became the property of Georgia. All the debts due the traders provided for by the treaty, except Galphin's, were afterwards paid, principal and interest, by the British government, and his excepted only because of his patriotic adherence to this country during the war. The others who were loyal to England were fully indemnified by that government, under a just and high sense of the obligation imposed upon her by the treaty; although, as to her, the consideration as to the payment of the debts, in fact, failed, by the loss of the entire territory ceded. But as the fault was hers, and the traders were innocent as to that result, and did all they could, as loyal subjects, to avert it, she stood between them and harm, and fully paid their claims. That Galphin's would also have been paid had he, following the fortunes of England, been regardless of the duty which patriotism in such an emergency demanded, it is impossible to doubt.

The loss of his claim is, therefore, to be referred exclusively to a cause which should commend it to the favor of the American government, and induce the government to be, if necessary, even generous to the claimant, instead of causing it to apply to the claim a narrow rule of responsibility, often in its effects placing its justice upon a level far below that which by the law, as between man and man, is daily declared to be the proper and only level of justice.

These lands were to a considerable extent disposed of by Georgia in bounties to the soldiers who achieved our independence, or given by her to settlers to guard her on her frontier from Indian outrages.

From time to time the claim was demanded of Georgia; and although its merits were never denied, but, on the contrary, in various ways admitted, it was never paid.

In 1802 a large tract of country, now comprising the States of Alabama and Mississippi, was ceded by Georgia to the United States, but until the law of August, 1848, no provision was made by the United States for the liquidation of the debt. Since that act, it is now too late to dispute the justice of the demand. That question was settled by the law itself—looking only to its terms—the memorial which prayed the relief, and the report of the committee who reported the bill; and if not, is now put beyond all doubt, if any ever existed, by the decision of your predecessor, Mr. Walker, in paying the principal of the debt.

As I have already said, I am of opinion that interest should be allowed, and from the date of the certificate, in 1775. My reasons are briefly these:

1. The effect of the treaty of 1773 was to charge the lands themselves with the payment of the debt, principal and interest.

2. This charge in equity remained an incumbrance on the lands, in whosesoever hands they might come, except so far as, by a right of war, the claims were confiscated.

3. As against Galphin, that right never existed. He struggled in common with the patriots of the day in arresting the territory from British rule, and in subjecting it to the sovereignty of Georgia.

4. That upon the cession by Georgia to the United States in 1802, the latter became liable for the stipulations of the treaty of 1773, and bound in law and honor to execute them.

5. That the minimum of their responsibility being the value of the lands, and this being far beyond the amount of the claim, with interest, their liability for the entire amount is manifest.

6. That if the British government was liable for the debt, as it clearly, under her law, was not, as between her and Galphin, because of Galphin's disloyalty, it was the duty of the United States to have prosecuted it upon that government.

7. That Georgia was responsible originally, as between herself and the claimant; but as the lands were used in a great measure for the common benefit of all the States, either as means of giving soldiers bounties, or as furnishing a resource to guard against Indian ravages, the United States in 1848, when they agreed to pay this particular claim, agreed to assume a liability co-extensive with that of Georgia. In this respect I am unable to distinguish between this case and that of the Virginia commutation cases assumed by the United States by the act of July, 1832.

8. That the allowance of interest in such a case in no way conflicts with the prior custom of the government in relation to such allowances. That the act of 1848 gives the power to allow it, cannot be, nor do I understand it to be, denied.

It is by assuming that there is a settled and almost universal rule adverse to such allowances, that the claim is thought to be invalid.

For want of time, I am unable now to go into an examination of the cases in which interest has been paid where there was no express provision for

it in the law embracing the claims. As I have already said, I think the Virginia commutation claims are an answer to the objection; but the claim in question stands upon grounds higher and stronger than these.

Here, besides the obligation resulting from assuming, as was done by the act of 1848, this debt of Georgia, because of the appropriation by her of the lands charged with the debt to the common cause, which was all that existed in the Virginia cases, there exists this additional ground—that, by taking *the cession from Georgia in* 1802, *we bound ourselves to extinguish all outstanding titles to the lands* within the limits of Georgia, and therefore compelled in good faith to pay this debt, which, by a solemn treaty stipulation, was then, and must remain until paid, a lien on such lands. And in the last place, that, looking to the circumstances preceding the act of 1848, as stated in the memorial of the claimant, and in the report of the Judiciary Committee, and looking to the words of the law itself, I have no doubt it was, and should have been, the purpose of Congress to pay the interest as well as the principal of the claim.

This, in my opinion, was due to the services and sacrifices of the ancestor of the claimant—to the mere legal and equitable responsibility of the United States as trustee of the lands charged with the debt—to the obligation to Georgia to indemnify her against it, because of her application of the lands as far as disposed of to the promotion of the common cause of the Revolution; and, above all, to the duty which Congress must have felt of securing to her own citizens that full measure of justice demanded by the treaty stipulation of 1773, which England, under much less imperative circumstances, so promptly rendered to her subjects.

As I am not able to find a reason why the interest should be made to cease short of the passing of the act of 1848, I am, for the reasons already stated, of opinion that it ought to be allowed to that date.

That the amount is a large one, although it calls for, as it has received at my hands, a most careful examination, is, of course, no reason against its allowance.

A government never presents itself in a more commanding and elevated condition than when it answers fully to all just demands. Whilst guarding, as it should, against unjust claims, and resorting to all proper precautions to that end, it should, with the same care, and with a view alike to its true interests and character, sedulously abstain from doing in each case anything but full and ample justice.

It is under a conviction that this will not be done in the present instance by anything short of the entire payment of the demand, and from a full conviction that the law of 1848 authorizes and calls for its payment, that I have come to the conclusion here stated.

I have the honor to be, with high regard, your obedient servant,

REVERDY JOHNSON.

Hon. WM. M. MEREDITH,
Secretary of the Treasury.

The verbal statement of Mr. Crawford before the committee, reduced to writing.

In the early part of 1833, (I think in February,) I was first connected with the Galphin claim. I then received of Dr. Milledge Galphin, of

South Carolina, a letter of attorney, with authority to prosecute the claim of his ancestor, George Galphin, whose sole legal representative he then was, and now is.

The first attempt was to procure its payment through the Cherokees east of the Mississippi river. The inducement may be found in the preamble of the treaty of 1773. The treaty of New Echota contained an article which provided for its payment. This article was rejected by the Senate, on the ground, as it is supposed, that the claim, if valid against the United States, should be presented in the usual form. It was so presented to the Senate of the United States; and in 1837, as I remember, reported on unfavorably by a committee of that body. In 1837 the claim was returned to the legislature of Georgia, of which I was then a member, and continued as such until 1842, with the exception of one year, 1841. During this period I advocated its payment in open sessions, disclosed my interest in it, but claimed, as it was my right and duty, not to vote on the question of its payment. These applications were not successful.

The claim was then urged on Congress, and, after encountering the usual delays, was finally allowed by Congress in 1848.

In February, 1849, the principal was paid at the treasury of the United States; the question of interest was left open.

Such was the condition of the claim when I became a member of the present cabinet.

The legal representative and heirs of Galphin insisted on the settlement of the claim, and, as my interest was contingent and secondary, I did not deem that I could postpone it. Accordingly, in the month of May, 1849, I went and disclosed to the President the condition of the claim and my relation to it. I stated to him that I had been prosecuting this claim, before Congress and elsewhere, since the year 1833; that I had an interest in it; that it had been allowed by Congress and was pending before the Treasury Department. He replied that he did not consider, by the acceptance of office, any of my pre-existing individual rights had been curtailed.

I determined to disembarrass the claim of all influence, official or otherwise, and engaged the services of an agent, Mr. Joseph Bryan, which I was authorized to do under the contract with Dr. Galphin. I disclaim and deny that, at any time before the final payment of the claim, any officer of the government, charged with its adjustment, derived from myself, or any person by my authority or consent, any knowledge of my interest in the claim. Acting on this motive, I was willing that the claim should be decided on its own merits.

GEO. W. CRAWFORD.

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Supplemental statement in answer to questions propounded by the committee.

I was in the city of Washington in the month of May, 1848, on my way from the Philadelphia convention. I arrived Saturday morning, and left for Georgia, my residence, that night. I had been in Washington in 1836, and was a member of the House of Representatives during the short session of 1843, to fill a vacancy. I had not been in Washington after that time until I passed through the city in May, 1848, on my way to

Philadelphia, where I staid about one day. I was not in Washington when the bill to pay the claim of Galphin passed either house of Congress.

My contract with Dr. Galphin entitled me to one-half of the amount that should be paid by the government on the claim, after deduction of the expenses incident to the prosecution of it. The only deduction made on a settlement with Dr. Galphin was the sum of three thousand dollars, paid to Joseph Bryan, the agent appointed by me. I have received one-half of the sum allowed after that deduction. The interest of the claim amounted to about two hundred and thirty-four thousand five hundred dollars. The paper marked "A" is a statement of a settlement made with Dr. Galphin of the interest allowed on the claim. In my conversation with the President, I did not communicate to him the amount or character of the claim, or the extent of my interest in it, or the name of the claimant. I entered into no details of the claim, except as before stated by me.

The paper marked "B" is a copy of my contract with Dr. Galphin. My conversation with the President was before the middle of May. From the time of my appointment as Secretary of War, until the delegation of my authority to Mr. Bryan, no steps had been taken to prosecute the claim to interest. I took no steps whatever, nor would I have moved in the matter but for the instructions of the claimant. I then appointed Mr. Bryan, and furnished him with all the facts. I also supervised and aided in preparing the written arguments which were offered in support of the claim to interest. These arguments were not signed by myself.

GEO. W. CRAWFORD.

B.

Memorandum of an agreement made and entered into this third day of May, 1833, between Dr. Milledge Galphin, of Beach Island, State of South Carolina, the sole executor of the last will and testament of Thomas Galphin, deceased, late of said State of South Carolina, and George W. Crawford, of the city of Augusta, in the State of Georgia, of and concerning a certain claim held by the said executor under a treaty between the colonial government of Georgia and the Cherokee and Creek tribes of Indians, in the year seventeen hundred and seventy-three:

It is agreed on the part of the said George W. Crawford, that he is to use his exertions to procure the liquidation of a part or whole of said claim, without any other charge to the said executor than hereinafter provided; and the said executor agrees on his part to allow and pay to the said George W. Crawford one-half of the amount which may be recovered on the said claim.

In witness whereof, each party hath hereto set their hands the day and year above written.

MILLEDGE GALPHIN,
Executor of Thomas Galphin, deceased.
GEO. W. CRAWFORD.

To the end that the above agreement may be fully understood, it is this day agreed between the said parties, in the event of the said claim or

a part thereof being established and paid, the said George W. Crawford is to be first indemnified and paid in full for any advances to, and contracts with others, that he may make concerning said claim, before the contemplated division thereof is to take place as aforesaid. And further, all pecuniary advances and professional services of the said George W. Crawford, and only of himself, shall be considered as an equivalent to one moiety of the net profits of said claim.

Given under our hands this 19th January, 1835.

MILLEDGE GALPHIN,
Executor, &c.
GEO. W. CRAWFORD.

This is to certify that the foregoing is a true copy of the original agreement which this day has been delivered up to me by George W. Crawford; also, a copy of receipt in the following terms, endorsed on the original contract:

"I hereby acknowledge to have received full payment of all dues and demands from Milledge Galphin, executor of George Galphin, deceased, under the foregoing contract.

"GEO. W. CRAWFORD."

The foregoing is a true copy, this 2d March, A. D. 1850.

MILLEDGE GALPHIN,
Executor of George Galphin, deceased.

Witness:
JOSEPH BRYAN.

STATE OF GEORGIA:

Know all men by these presents that I, Milledge Galphin, executor of the last will and testament of Thomas Galphin, late of Barnwell district, in the State of South Carolina, deceased, for divers good causes and considerations me hereunto moving, have appointed, and by these presents do constitute and appoint, George W. Crawford, of Augusta, in the county of Richmond, and State of Georgia, my true and lawful attorney, for me and in my name, as executor aforesaid, to liquidate and settle all and singular the debts, dues, claims, and demands whatsoever which the heirs or representatives of the said Thomas Galphin, deceased, have or hold against the Cherokee tribe of Indians, under a treaty between said tribe and the then colony of Georgia, made in the year of our Lord one thousand seven hundred and seventy-three.

And I, the said executor, do by these presents fully authorize and empower my said attorney, for me and in my name, as executor aforesaid, to ask, demand, and receive all or any part of the claims and dues aforesaid from the said Cherokee tribe of Indians, their chiefs, head men, or agents in this behalf, or of any department of the government of the United States or State aforesaid on whom the payment thereof may in any manner devolve, and for such payment, and in consideration thereof, full and complete receipts, discharges, and acquittances, under seal or otherwise, for me and in my name as such executor, to execute and deliver to the individuals or officers paying the same.

And, for the more ready settlement of said claims, my said attorney is hereby further fully authorized, for me and in my name as said executor, to negotiate the settlement thereof with the chiefs, head men, or agents of the tribe, on such terms as he may deem expedient, and to submit the same to reference or arbitration should that become necessary, or to settle the whole in any manner whatsoever that he may find advisable. And I, the said executor, do hereby fully ratify and confirm all that my said attorney may hereafter do in the premises, and all instruments which he may execute in my name, touching the same, as fully and completely as if myself present at the doing thereof and thereto consisting.

In testimony whereof, I, the said executor, have hereto set my hand and seal this seventh day of February, in the year of our Lord one thousand eight hundred and thirty-three.

[L S.] MILLEDGE GALPHIN,
Executor of the estate of Thomas Galphin.

Signed, sealed, and delivered in presence of—
F. JNO. MCKINNE, JR.,
HENRY H. CUMMING.

STATE OF GEORGIA, *Richmond county:*

Know all men by these presents that I, Milledge Galphin, of the district of Edgefield and State of South Carolina, sole surviving executor of the last will and testament of Thomas Galphin, late of Barnwell district, in said State of South Carolina, who was the sole surviving executor of the last will and testament of George Galphin, formerly of said State of South Carolina, deceased, have appointed, and by these presents do appoint, George W. Crawford, of the county of Richmond and State of Georgia aforesaid, my true and lawful attorney, for me and in my name, as executor aforesaid, to ask, demand, and receive, of the proper officers of the treasury of the United States of America, all sums of money that have been, are, or may become payable to me, under and by virtue of an act of Congress passed at the first session of the thirtieth Congress of said United States, entitled "An act for the relief of Milledge Galphin, executor of the last will and testament of George Galphin, deceased."

And I do, by these presents, fully authorize and empower my said attorney, for me and in my name, as aforesaid, to manage and control all claims that I may have, as aforesaid, under the act aforesaid, upon the government of said United States, and to make any settlement, arrangement, disposition, or composition of the same, in his discretion; and for me, and in my name, as aforesaid, to sign, seal, and deliver, all acquittances, receipts, discharges, or acknowledgments, by matter of record, under seal or otherwise, touching the settlement, payment, or composition of said claim; and for any or all the above purposes, to appoint other attorneys under him, and to revoke their powers at pleasure.

And all and singular the lawful acts of my said attorney, or his substitutes in the premises, I hereby fully and forever ratify and confirm.

In testimony whereof, I have hereto set my hand and seal, at Augusta, in the county of Richmond aforesaid, this thirtieth day of December, eighteen hundred and forty-eight.

M. GALPHIN, [L. S.]

Signed, sealed, and acknowledged, in presence of
WM. T. GOULD, *Notary Public.*

STATE OF GEORGIA:

I, William Tracy Gould, a public notary for the county of Richmond, and State aforesaid, duly commissioned and sworn, and residing in the city of Augusta, in said county, do certify that on the day of the date of the foregoing letter of attorney, at the city aforesaid, Milledge Galphin, the constituent thereof, who has long been well individually known to me, did in my presence sign and seal the same, and acknowledge and declare it to be his own free act and deed, for the purposes therein mentioned.

In testimony whereof, I have hereto affixed my notarial firm and seal, [L. S.] on the same day and year aforesaid.

WM. T. GOULD, *Notary Public.*

Mr. Meredith's Statement.

Judge Bryan alone prosecuted the Galphin claim before me, and I knew of no other attorney, agent, or counsel for it than himself. After I had received, or about the time that I received, the Attorney General's opinion, Mr. Berrien called on me and introduced Mr. Galphin, whom I took to be the claimant. I presumed Mr. Berrien came merely as his friend.

Until some days—probably a week or ten days—after the claim for interest had been allowed, and actually paid, I had no knowledge, belief, or impression, nor had the idea presented itself to my mind, that Governor Crawford had any existing connexion, as party, counsel, agent, or attorney, with the Galphin claim, or that he would derive any pecuniary or other benefit from, or by reason of, a decision in its favor.

At some time during the pendency of the claim, and I think after I had referred it to the Attorney General, it was incidentally mentioned to me by one of the officers of the treasury that Governor Crawford had formerly been concerned for the claim. I understood the reference to be to some time indefinitely anterior to the coming in of the present administration. This did not turn my mind in the direction of a surmise of any continuing connexion of Governor Crawford with the claim, which Judge Bryan was actively prosecuting as its sole representative, and in regard to which Governor Crawford's whole deportment (on the three or four occasions on which alone we exchanged a very few words on it) had been, and continued to be to all appearance, that of an indifferent person—a friend of the claimant, but having himself no motive or desire to interfere in the argument or decision, and no interest in the result.

I never observed among the papers anything which showed that Governor Crawford had at any time been concerned in the matter; but if I had noticed the power of attorney to him which I now find to be on file, it would, I think, have apprized me of nothing more than I have above stated. Whether it was among the papers which were before me during the pendency of the claim, I have no knowledge. It was in no way connected with any question presented for my consideration.

W. M. MEREDITH.

APRIL 23, 1850.—*Wm. M. Meredith's examination.*

Question 1. Do you remember the day of the week when your decision was made?

Answer 1. I think it was the first of March, on Friday.

Question 2. Was there anything unusual or hurried in the decision, or in the payment of the money?

Answer 2. There was not. My decision was not given for nearly a month after the date of the Attorney General's opinion, and the warrant for the money was not signed until next day.

Question 3. Were the conversations with Mr. Crawford, alluded to in your written statement, prior to the decision of the case?

Answer 3. Yes, all prior to the decision of the case.

Question 4. Please state where, and under what general circumstances they were held?

Answer 4. I think one or two in the room of the cabinet meetings, and one or two in my room at the Treasury Department.

Question 5. Did you send all the papers in the case to the Attorney General?

Answer 5. I referred the case to him in the form contained in my letter of September 18, 1849, and took for granted all the papers were sent to him.

Question 6. Prior to the payment of this claim, was it at any time the subject of cabinet consideration, or comment?

Answer 6. It was not.

Question 7. Is it, or not, the usage of the department, in cases of this kind, to take the opinion of the Attorney General?

Answer 7. In cases where there is a doubt upon a question of law in the minds of the heads of the department, it is usual to take such opinion, and to be guided by it, so far as I know.

Question 8. Do you know of a case where the opinion of the Attorney General has not been held to govern?

Answer 8. I know of none, but have heard that there was one some twenty years ago.

W. M. MEREDITH.

The opinion I gave is not as full as I should have made it, had I taken more time in its preparation. But, if the committee desire it, I will supply this in part by putting them in possession of some of the authorities upon which it was formed. These were of several classes:

First. Those in which, under circumstances not stronger than this claim presented, the United States, in their dealings with other nations, have uniformly demanded interest.

Second. In which Congress has itself, in terms, given interest to individual claimants.

Third. In which, without such terms, and under language not *more comprehensive than that of the Galphin act*, the accounting officers have allowed interest with the sanction of the head of the proper department.

Fourth. In which, under the opinions of my predecessors, interest has been allowed.

Fifth. In which the courts of the United States have adjudged it against the United States.

Sixth. In which, by the laws of nations and the decisions of prize courts, it has been allowed.

Seventh. In which words similar to those in the treaty of 1773 have been held a charge on land granted or devised; and in which, also, words similar to those in the fourth article of the cession of Georgia to the United States, of the 24th April, 1802, have been held to embrace such a title or interest as the Indians and Galphin had in the lands ceded by the treaty of 1773.

Eighth. Which show that Georgia held the lands so charged with the claim as a trustee, bound to the same extent that England would have been bound, but for the Revolution, to have paid the claim, principal and interest; and that the United States, by virtue of the cession of 1802, was bound in good faith to Georgia to execute the same trust, and designed to do so by directing the claim, the whole claim, to be examined, adjusted, and paid. I say the whole claim; for no distinction was made or intended by the act of 1848 between the claim for interest and that for principal, although, having before them the fact of the amount of the principal, it would have been a matter of course, had such been the design, to have confined the authority of the Secretary to the payment of the principal.

REVERDY JOHNSON.

Mr. Meredith's communication of April 29, 1850.

The usage of the government on the subject of interest is to be ascertained by referring to the practice in several classes of cases:

1. Cases in which the government has expressly contracted to pay interest. Of course, in such cases interest is always paid.

2. Cases of debts incurred by the government in the course of the ordinary public service. As the creditor in this class acts with a knowledge of the law requiring, as a condition of payment, that his account shall be first presented duly vouched, and regularly passed through the offices of the treasury, he has no just ground to claim interest, and the usage is not to pay interest in such cases. The settlement of accounts connected with the ordinary public service constitutes, of course, a very large proportion of the business of the several accounting offices.

3. Cases in which individuals have performed services, or sustained losses, or expended money, or in which the property of individuals has been lawfully or unlawfully taken, injured, or destroyed by officers, civil or military, of the United States, under circumstances not creating a debt in the ordinary sense of the term, but giving rise to claims on the justice or liberality of Congress. Many acts have been passed granting relief in such cases—sometimes limited to particular individuals—sometimes including a class of cases more or less extensive—sometimes providing both for past cases and for similar cases that might be presented after the passage of the act. Under the acts here referred to, interest has been sometimes allowed and sometimes refused. I suppose the question to depend

upon the particular circumstances of the cases themselves, and the provisions of the acts of Congress relating to them. If the leading intent of the act were protection to an officer, I presume that interest has been allowed, if the officer were liable for it at law.

4. Cases in which Congress, in fulfilment of some obligation, legal or moral, of the United States, to another party, has assumed and directed to be discharged some debt or liability due or incurred by that party. I do not know that these cases have been sufficiently numerous to justify an affirmation of the existence of any usage in regard to them. The question *in them, it would seem, must always be*, not whether interest would be allowed on a similar claim against the United States, but whether in the particular case interest were due by the party whose obligation the United States had assumed.

In regard to the case now under the consideration of the committee, after reading the several reports of officers of the treasury, the letter of Mr. McCulloh, and the written arguments of Judge Bryan, I entertained doubts on the question of the allowance of interest, and therefore referred it to the Attorney General, upon whose decision (in conformity with what I conceive to be the law and usage of the government) I decided the case. Subsequent reflection has only confirmed the belief which I then had, that the conclusion arrived at by the Attorney General was correct. The case falls within the last class which I have above noticed, and I suppose no trustee in a position like that of Georgia could escape the charge of interest in any forum having jurisdiction over the matter. If the United States had stood in the place of Georgia, throughout, as the original party to the trust, I cannot see that the result ought to have been different. I think it is not usual for the government to act as a trustee—not usual, when it does act as a trustee, (which it has occasionally done,) to dispose of the trust estate for its own purposes, in violation of the trust; and therefore I think there can be no usage, if such a case should happen, to deny full, just, and complete redress to the *cestui que trust*.

I make this statement in compliance with the request of the committee.

W. M. MEREDITH.

Received from Mr. Johnson April 23, 1850.

The case of the claim of Galphin's executor was referred to me by the Secretary of the Treasury on the 18th September, 1849. The questions submitted were, whether interest upon the principal of the claim should be allowed; and, if so, from and to what period?—questions not only not decided against, but expressly reserved for future decision by Mr. Secretary Walker, when the claim was before him.

The case remained in my office unexamined until, I think, some time in January last.

In the course of that month I examined it, and with as great care and attention as I am capable of giving to any case, and formed the opinion that interest should be allowed from 1775 to the date of the act under which the claim was submitted to the Secretary of the Treasury—the 14th August, 1848. The reasons for this conclusion are given, and as much in detail as I had time to give them, in the written opinion I

transmitted to the Secretary of the Treasury on the 2d February, 1850. During the entire period that the papers were in my office, I had not the most remote suspicion that Governor Crawford had any interest in the claim or connexion with it in any capacity, either as counsel, agent, or party; nor did I ever hear that he at any time had any such interest or connexion, until after my opinion was given and the money was, as I understood, paid; and then my first knowledge or suspicion was from seeing it stated in an editorial in the "Union" newspaper of this city, or in a letter copied into that paper from some other paper.

The duties of the Attorney General are prescribed by the last section of the judiciary act of 29th September, 1789, chapter 20, and the act of 29th May, 1830, chapter 153. By the first he is, among other things, directed "to give his advice and opinion upon questions of law when requested by the head of any department, touching any matters that may concern that department." As to the effect of this provision. I refer the committee to the case of Kendall *vs.* the United States, 12 Peters, 524.

Except, therefore, so far as they are material to the legal question upon which his advice and opinion is requested, the Attorney General has nothing to do with any of the facts or circumstances which the bundle of papers presented may disclose. In this instance I neither looked for, nor saw accidently or otherwise, any other facts or circumstances except those bearing on the questions of law submitted to me; and, as I have before stated, never dreamed, until learning it in the way I have mentioned, that Governor Crawford had, whilst the case was before me, or had had at any antecedent period, any connexion whatsoever with the claim.

I remember, at some early day after the case was referred to me, when, in a good humored way, complaining to one or two of my colleagues in the administration of the number of questions they were submitting to me, Governor Crawford, who was by, and to whom my complaint was also being kindly made, said to me, "I do not think you can on that ground find much, if any, fault with me, as I think I have sent few cases to you;" and added, "but you have a claim before you, in which some Georgia friends are interested, which I wish you would at your leisure examine." I asked what it was, and he said the claim of George Galphin. From that time he never mentioned it to me until in January, when I had made up my opinion; and casually meeting with him, I advised him of it and what it was, as a matter in which, as he had told me some of his friends were interested, I supposed he would like to know. He then asked me if he could write to the parties, informing them of it, that they might come to Washington, and I told him he could. But neither then, nor at any prior period, nor until after my opinion was given, did he ever say a word to me upon the subject of the justice of the claim, nor as to any fact connected with it, nor intimate that he had the slightest interest or connexion with it. If he had, as I now understand he had, an interest as counsel, that high sense of delicacy and honor that, during the period that I have had the pleasure of his acquaintance, has upon all occasions manifested itself, restrained him, I am sure, from exerting any personal influence which he might well have supposed he had with me, to induce me to take a favorable view of the claim, or from giving me the most remote intimation that he had an interest in it, or from pressing me to its decision.

Governor Crawford did write to the executor of George Galphin, as I had authorized him, and he came to Washington. But when he arrived here the opinion was not written, because of the great pressure of my official engagements in the Supreme Court. The executor and another of the representatives were detained here several days; and it was not until the Hon. Mr. Berrien, of the Senate, told me, a day or two before the opinion was written, that the delay was subjecting these gentlemen to much inconvenience, that I threw other things aside and prepared the opinion. Mr. Berrien's suggestion I did not understand to be made in the character of counsel, but solely as the friend of the parties.

I hope I may be permitted to add, in justice to myself, that the opinion I gave was, in my own judgment, the only one which any lawyer of well-earned reputation could have given, and that its effect upon the treasury was a subject which I should have been false to my duty to have considered. That was a matter exclusively for Congress. If, in the exercise of their admitted power, they recognised, as they did, and as I am sure properly did, by the act of August, 1848, the obligation of the United States for the claim of Galphin, "under the treaty made by the governor of Georgia with the Creek and Cherokee Indians in the year 1773," and "authorized and *required* the Secretary of the Treasury to examine and adjust the claim," and "*to pay* the amount which may be found due" to his executor, my duty, when the legal questions were submitted to me in regard to the interest, was the single and imperative one of advising the Secretary upon such questions. The act of 1789 left me no discretion to give him an opinion which I did not believe to be right. The one I gave I conscientiously believed to be correct; and having, under the law regulating my duties, no power to withhold it, I was bound to give it and transmit it to the Secretary, or violate my oath of office; nor, since the opinion was given, have I ever heard or been able to imagine the semblance of a reason against it that would, for a moment, challenge the approbation or excite a doubt in the mind of any lawyer of deserved character who had knowledge of the facts and had fairly considered the law applicable to such a claim. But, however this may be, the responsibility of the opinion is upon me, and not upon Governor Crawford or the Secretary of the Treasury. Whatever censure it may deserve or receive from any quarter should exhaust itself upon me. To visit it upon Governor Crawford, or any one else but myself, would be as unjust as to visit it upon any member of the committee; for, as far as the opinion was concerned, the committee had as much concern or connexion with it as he had. I ask permission to state this, in justice to my own feelings; and to state, also, what is due to Governor Crawford, that I do this without having exchanged a word with him upon the subject of my evidence since the investigation was ordered, except upon one occasion, within a few days since, when I told him, if he had anything to do with the claim, or felt an interest in it, he certainly gave me not the least reason to suspect it whilst the matter was before me.

As counsel, or agent, I knew no one but Judge Bryan, a gentleman with whom I had then no acquaintance, and I never heard from him anything in support of the claim, except through his written arguments, signed by himself, and now amongst the papers.

I state, further, that the claim, to my knowledge, was never mentioned

or referred to at any cabinet meeting, nor do I believe that its existence, even, was known, from the time it was referred to my office until after my opinion was given and the money paid, to any member of the cabinet, except the Secretary of the Treasury, Governor Crawford, and myself.

I ask permission further to say, that I took for granted, when I gave the opinion, that the Secretary of the Treasury would adjust and pay the claim in accordance with it, and should have been greatly surprised if he had not. I had made myself, I think, familiar with the past practice of the government in this particular, and had no knowledge of an instance in which an opinion of the Attorney General to the head of a department had not been considered conclusive; and although the act of 1789 does not, in words, declare it conclusive, I think that upon principle the usage is according to the spirit of the law, and justified by its true construction and object. I refer again to the case of Kendall *vs.* the United States, 12 Peters, 524—(A.)

REVERDY JOHNSON.

APRIL 23, 1850.—*Robert J. Walker's examination.*

The case as brought before me did not present such facts as I thought sufficient to induce me to make an exception to the general rule that the government ought not to pay interest. I consider this a general rule, but not universal. I formed, however, no decided opinion against the allowance of interest, but merely an *impression*, as stated in my decision. Under these circumstances, having only a few days to remain in office, and not having sufficient time to give the subject a full investigation, finding that the accounting officers of the treasury differed in opinion as to the propriety of allowing interest, I thought it best to leave it an open question, but, at the same time, that it was due to the government that I should state the fact that my *impression* was against the allowance of interest. I had, at that time, determined to leave the cabinet on the 5th of March, having accepted an invitation from Mr. Polk to accompany him to the south, and accordingly sent in my resignation, to take effect on the evening of that day, or on the morning of the 6th, and left the city on the night of the 5th; so that only a few days remained before the termination of my connexion with the cabinet; and I was overwhelmed with business. This circumstance induced me to leave the question undetermined. But for this circumstance, had I remained in office, I would have deemed it my duty further to investigate the question. If my mind had been free from doubt, I would have decided it; and if, after a full investigation, I had still entertained such serious doubts as not to be able to make up my mind to my own satisfaction upon any question of law, I would have referred that question to the Attorney General for his opinion. If I entertained serious doubts on a question of law, and demanded the opinion of the Attorney General on that question, I would abide by his opinion. I have read the opinion given by the Attorney General in this case, and I confess it has produced on my mind an impression much more favorable to the claim for interest than I entertained before; and if such an argument had been submitted to me by

the claimants or their counsel, I should have entertained such serious doubts on the subject as to refer the question to the Attorney General; and if he had given an opinion favorable to the claim, I think I would have allowed it. I never referred a case to the Attorney General for my own guidance unless I entertained very serious doubts; and when that opinion was given, I would have carried it into execution, unless, from subsequent investigation and judicial decision, my own mind was very clearly made up otherwise.

Question. Were you governed in your decision in this case, on the principal, by your own opinion of the intrinsic merit of the claim, or did you consider the act of Congress as leaving you no discretion beyond fixing the amount?

Answer. I was not governed exclusively by the act of Congress to such an extent as to consider that it allowed me no discretion. I considered the language of the law, however, as unusual, and of a very imperative character, and not to be disregarded except on grounds that were clear and free from doubt. I considered that the law clearly recognised the obligation of the United States to pay the claim, whatever it might be.

Question. You state that there are exceptions to the rule, that the government does not pay interest on its debts; can you state any such exceptions?

Answer. I consider that the government may be properly called upon to pay interest in the following cases, to wit:

1. Where it is expressly directed by statute, or is clearly to be implied from it as the intention of Congress.
2. Where it is expressly stipulated in a contract.
3. In certain cases of indemnity for losses.
4. By way of damages for wrong done in certain cases.
5. Where there is a decision of the Supreme Court of the United States applicable to the case.

I recollect no other cases at present.

Question. Do you consider the government bound to pay interest in *all* the above cases?

Answer. I do not consider that the government is bound to pay interest on all the above cases. In some cases, the obligation would certainly be absolute—such as where it was expressly stipulated in a contract, or was decided by the Supreme Court of the United States. In the other cases, it would depend upon circumstances and the language of the law.

Question. Where an act of Congress refers a claim to the department for settlement and payment, and is silent on the subject of interest, would not you consider that the allowance of interest by the department would depend upon the character of the claim?

Answer. I should say it would, as a general rule. But I should say, in such a case, that if the contract itself referred for settlement did not expressly stipulate for the payment of interest, and it was not a case of indemnity for loss, or of damage for wrong, or did not come within the provision of some decision of the Supreme Court of the United States, the implication that the government intended to include interest should be exceedingly clear; otherwise, it should not be paid.

Question. Did the doubts which you entertained about the allowance of interest arise from the merits of the case, or from the fact that it was not usual for the government to pay interest?

Answer. My doubts did not arise from the facts or character of the claim, which I had not investigated as fully as I desired, but from the fact that such allowance was not usual, and from the phraseology of the law of 1848.

Question. Do you remember any case similar to this?

Answer. I do not recollect a similar one. The language of the law is more imperative than usual.

The above testimony is all given in reply to special interrogatories.

R. J. WALKER.

APRIL 26, 1850.

Robert J. Walker called again, and, in reply to special interrogatories by the committee, says: I think the first time I saw Mr. Crawford was in February, 1849. He then urged me very strongly to decide this case. After some conversation, I stated that I had no difficulty about the payment of the principal, but that my impression was against the allowance of any interest. He stated some reasons in favor of allowing interest, which did not make any strong impression on my mind. He again urged me to decide the whole claim for principal and interest. I did not then understand the cause of Mr. Crawford's urgency for a decision by me. A day or two afterwards, I met by appointment Messrs. Toombs and Stephens, from Georgia, (then members of Congress,) to whom I stated that my opinion was in favor of paying the principal of the claim, but that I should prefer that the person to whom Congress had directed the money to be paid should take out letters of administration in this District. After some discussion on this point, and being satisfied that the person named in the act of Congress as executor was also recognised as executor by the laws of South Carolina, which were applicable on that point in this case, I determined to pay the money to that person, in obedience to the direction of Congress. They (Messrs. Stephens and Toombs) then stated to me there was a peculiar reason bearing upon Mr. Crawford why the whole case should be fully decided before I retired from the cabinet. They did not state the reason, but I drew the inference at that time that Mr. Crawford would become Secretary of the Navy in the succeeding cabinet, and therefore wished the case decided by me.

In stating that when interest should be paid where the implication from the act was clear that such was the intention of Congress, I mean to say, that expounding a law and construing a statute is judicial in its character; and inasmuch as I would be governed by the decisions of the Supreme Court of the United States in the construction of an act of Congress, I think, in the absence of such a decision, I ought to be guided by the same rules and principles of interpretation. The decisions of any other court I would treat with respect, but would not deem them conclusive; and have, as Secretary of the Treasury, disallowed claims against the government, amounting to millions of dollars, although sustained by the decision of courts other than that of the Supreme Court of the United States.

R. J. WALKER.

APRIL 11, 1850.—*E. Whittlesey's examination.*

Question. Had you any reason to believe or to infer from anything contained in the papers relating to the Galphin claim, or from conversations with Governor Crawford in relation thereto, that he continued to be an agent for the recovery of said claim?

Answer. There was evidence in the papers that Mr. Crawford was agent for the claimant when the subject of the Galphin claim was before Congress. There was no paper, to my recollection, that showed he had withdrawn. I have no knowledge that he was an agent after the principal was paid. When the question was before me to decide on the interest, I had no communication with Mr Crawford, directly or indirectly. Judge Bryan acted for the claimant. After I made a report to the Secretary of the Treasury in the matter submitted to me in regard to this claim, Mr. Crawford came to the Comptroller's office, and asked me in regard to a paper or to the papers in this case. I gave him the information that the papers were sent to the Secretary of the Treasury, and I am under the impression I said I understood they had been referred to the Attorney General.

Question. Did the evidence of which you speak as having been in the papers in relation to Mr. Crawford's agency, limit that agency to the period while the matter was before Congress; or did it show an agency as well after as before, and during the pendency of the matter before that body?

Answer. According to my recollection, the papers showed a general agency, without limitation of time. I spoke of Congress, because there were letters written to members or to a member of Congress, when the claim was pending there.

Question. Were all the papers in the case sent with your report to the Secretary of the Treasury?

Answer. When I sent my report to the Secretary of the Treasury it was my intention to have accompanied it with all the papers, which were somewhat voluminous. A few days afterwards I discovered on my table, I think, three papers, and I sent them to the Secretary. My letter that accompanied these last papers will show what these papers were and when sent. I think one of them was the report of Mr. McCulloh.

Question. When you made your report, were you aware that Governor Crawford had any interest in the Galphin claim?

Answer. I knew nothing more than I have stated. Neither Governor Crawford nor any other person told me he had an interest.

Question. Was the power of attorney or written contract between the executor of Galphin and Governor Crawford for the collection of this claim on file with the other papers in the case when you made your report?

Answer. I cannot say, with certainty, whether there was a power of attorney on file or not. My impression is, there was.

APRIL 24, 1850.—*E. Whittlesey's examination.*

Question 1. If this certificate of Galphin's had been issued by commissioners, appointed by the government of the United States, since its

existence, would the rules of the department have allowed interest upon it?

Answer 1. It would not, according to my understanding of them.

Question 2. What is your understanding of the rules in regard to the allowance of interest as a general principle—that interest is not allowed by the accounting officers?

Answer 2. It is allowed where directed by acts of Congress. It is allowed when it forms a part of the contract, although Governor Cass, in the case of the Springfield Manufacturing Company, when he was Secretary of War, and the claim of said company was referred to him, declined to allow interest when it was a part of the agreement, on the ground that the agent of the government who made the contract was not authorized to charge the government with the payment of interest; and in this case, the articles which the company agreed to manufacture had been received by the government. It is allowed, in some instances, from the particular phraseology of the law, as where the accounting officers are directed to remunerate all losses, or to make the person whole. There may be a few instances where interest has been allowed, when a subject has been referred to be decided upon the principles of equity and justice by the terms of acts of Congress.

Question 3. Suppose the act of Congress was silent as to principles of equity and justice; upon what principles would you settle the claim?

Answer 3. That would be according to the nature of the case referred. If in a case of tort, as in the impressment of property, I should ascertain what the damages were which the person had sustained, and award that amount without interest. If it was in a case of contract, and the proof of the contract was such as to warrant an award in favor of the party, and the contract said nothing about interest, I should find the principal only as due on the contract. The same in all cases of materials delivered, and work and labor done. In no case where the law said nothing about interest, nor about settling upon principles of equity and justice, would I allow interest, except as above specified.

Question 4. Are there any other cases in which interest could properly be allowed by the accounting officers, according to your understanding of the rules?

Answer 4. Interest has been allowed in time of war in cases where disbursing officers and contractors have been directed to raise money by loans and have paid interest; where bills had been drawn and not paid, and banks have taken them under the assurance that it would be paid; and where bills have been drawn by contractors agreeable to contract, and not paid for the want of funds. Interest has been paid to States advancing money to the United States, where the States paid interest. I recollect no other class of cases not embraced in the foregoing answers.

Question 5. What do you mean by the terms "impressment of property" by the United States?

Answer 5. I mean where the United States takes the property of an individual for the benefit of the army or navy, for the use of the United States, without the consent of the owner.

Question 6. If a law of Congress referred such a case to the department for adjustment and payment—saying nothing about interest or the principles of equity and justice—and it was found that something was

due to the claimant, do I understand you to say that the rules regulating the adjustment of accounts would not permit the allowance of interest in such a case?

Answer 6. The rules or the practice of the department would not permit it; and under the law of 9th April, 1816, I have no doubt there have been thousands of cases adjusted for the impressment of property during the war of 1812, and, so far as I know and believe, interest has not been allowed in a single case.

Question 7. Referring to the first question asked, do you know of any such or similar certificate as Galphin's having been issued by the government of the United States?

Answer 7. I know of none such.

APRIL 26, 1850.—Since I was examined before, I have seen the papers in the case of Galphin, to which I alluded in my testimony on the 11th instant.

ELISHA WHITTLESEY.

APRIL 17, 1850.—*James W. Schaumburg's examination.*

Question. What facts do you know in relation to the Galphin claim?

Answer. The only knowledge I have of the matter is what I have from some of the parties concerned, from acknowledgments made to me by these parties, without my seeking. I have never examined into the facts, documents, or records in reference to anything about it. I have no direct knowledge in regard to the Galphin claim. Mr. S. J. Anderson, who was a clerk of the House of Reprensentatives to Congress, as I understand from him—chief clerk of the War Department now—told me, on or about the 20th ultimo, that Mr. Crawford had received over one hundred thousand dollars; I think he said one hundred and fifteen to one hundred and twenty thousand dollars. I will now state what was done to the Galphin bill in the House of Representatives. Mr. Anderson told me that he was at the Clerk's table at the time, and he managed to get the Galphin bill out of its order, in the hurry and bustle of legislation, and thus secured its passage ahead of other bills which had precedence of it on the rolls; this can, if true, be seen by reference to the Journals of the House. Mr. Anderson stated that Mr. Crawford had full knowledge of what he did; and for this great service he (Mr. Crawford) was under a debt of gratitude to him, (Anderson;) and that he (Anderson) through management got Crawford made Secretary of War. That Toombs and Stephens did the business transferred into the office of Secretary of War in preference to Mr. King, of Georgia That Crawford said he would hesitate to be Secretary unless he could have him (Anderson) chief clerk. Lately, within two or three days, I mentioned these revelations to Captain Tyler, of the marine corps in Washington; and after listening to what I had related, he added, that Anderson had told him in presence of a Mr. Provost, (building the Patent Office,) that he (Anderson) expected ten thousand dollars from Mr. Crawford for getting the Galphin claim allowed.

Mr. Anderson came to me at one time and said Mr. Crawford mentioned to him that he (Crawford) had been informed by Judge Bryan that I had declared my intention to have an inquiry into the Galphin business, and asked him (Anderson) if he knew this to be so. Anderson answered in the affirmative, and told him (Mr. C.) that he would not be surprised at this, as he (Mr. C.) had placed himself in an attitude towards me as to greatly excite my resentment; and considering he (Mr. C.) was so much open to attack, he could not have expected less from me, whom he had uselessly and unjustly provoked. I asked him what Mr. C. had said. He said he looked as if he had been struck between the eyes with a grape-shot, and replied that he believed he would moderate himself.

Anderson came to me on the afternoon of the 21st of March, and he begged that I would not stir up the matter. I understood him as coming from Mr. Crawford; but I told him to say to Mr. C. that I would expose the whole transaction. Anderson answered, Mr. Crawford would find able writers and mediators against my attack. I told him that might be, but I believed the whole concern would sink together when the enormity of the transaction was make known. He added that Mr. Toombs would sustain Mr. Crawford. I was told by a resident in Washington, that Mr. Pendleton, ex member from Virginia, had informed him that Mr. Toombs had boasted of his having carried the Galphin bill by inducing the friends of R. M. Johnson's claim to give their support to the Galphin bill.

Question. Is this all you know respecting the passage of the Galphin act of 1848, or with respect to the conduct of Mr. Crawford, Mr. Anderson, or any one else, in reference to it?

Answer. This is all I know.

I was told by Judge Bryan in November or December last—who had some business of mine which was then in progress in the War Department, and who I understood was a faithful agent in Washington for the transaction of business—that when I came to Washington and asked him why my business had not progressed, as was arranged, he told me that he was waiting for Mr. Crawford to get into a good humor; that he had a very important matter prosecuting before the Treasury Department, in the nature of a large claim; that it had been referred to the Attorney General, and there was a great deal of difficulty about it, and that Mr. Crawford was very irritable and could not be approached upon any matter, and that I must wait awhile. I then said to him naturally, without knowing anything of the nature of the claim, or what the claim was, that I should think that Mr. Crawford could have no difficulty in getting an opinion of the Attorney General, being in the cabinet with him, and having daily association. He replied, that Mr. Johnson was very slow in doing business, and that Mr. Crawford had not omitted at any time, in the cabinet and elsewhere, to urge him to make up his opinion, and that it was only yesterday he had repeated to him the like request, and that he himself had been running after the Attorney General, pressing upon him to make his opinion.

In reference to Mr. Meredith. Between the 15th and 20th of March I met Mr. Collins, late First Auditor, at the National Hotel, and spoke to him about this Galphin claim. Whilst in conversation, Mr. Montague, who had been a clerk in that office, was called by Mr. Collins—he (Mr. Montague) sitting in the passage where we were talking—and introduced

him to me, saying, this gentleman can tell you about this matter. Among other things, Mr. Montague told me he had had several interviews with Mr. Meredith about this claim, and I asked him if Mr. Meredith knew that Mr. Crawford had any interest in it; and he said yes, he knew, and it was generally known throughout the departments, and that he could not help but know, and that Mr. Crawford had called upon him (Montague,) and, among various things said about the claim, asked him what he (Montague) thought of his (Mr. Crawford's) position in reference to the claim, whether he ought to abandon it or dispose of it in some way; and he (Mr. Montague) told him that he did not think there was any indelicacy in his (Mr. Crawford's) prosecuting the claim.

I addressed two letters, about three weeks ago, (20th and 23d of March,) to Mr. Crawford, and one to Mr. Anderson—copies furnished herewith—to which I refer; and I also add an original letter from Mr. Anderson to me, returning the first letter to Mr. Crawford, and I have received no reply from the department.

Question. When did you make the memorandum from which you gave your testimony?

Answer. I left Washington on the 23d of March, and commenced making the memorandum in Philadelphia, after hearing that the House of Representatives had appointed a committee on the Galphin claim, to refresh my memory, in order to be examined before that committee. I then addressed a letter to the committee, (copy not furnished,) and stating, so far as I remember, that I was the first to promulgate this matter, and should be prepared to answer any legitimate demands which might be made against me from any quarter, and enclosed a letter, published in the New York Herald, in reference to this whole matter, supposing the committee would summon as a witness the writer of that letter.

Question. How did you first give publicity to this matter?

Answer. First by innuendo, in the article in the "Union" signed "Lottery."

Question. Did you furnish any facts to any letter-writer upon this matter?

Answer. No, sir, I did not; but in conversation I stated to one of them (Mr. Harriman) part of what Anderson had told me, and he replied that he knew all about it; I also wrote an article in the "Union," signed "Inquirendo;" I also talked indiscriminately upon this subject with my friends and others; I wrote a communication, signed "Citizen in Pennsylvania," at Philadelphia.

Question. Where were your conversations with Anderson?

Answer. In the Capitol grounds and on Pennsylvania avenue.

Question. Was any one present during these conversations with Anderson?

Answer. No; it was late at night—11, 12, or 1 o'clock at night—and, after one of these conversations, he asked me to go to his house.

Question. Who was the person referred to as informing Mr. Pendleton of the fact respecting Mr. Toombs?

Question objected to by Mr. Disney; and, upon a vote taken, all said "aye," except Mr. Disney, who said "no," to the question propounded by the Chair, Shall the witness be required to answer this question?

Answer. I should desire not to answer this question; but, under the

injunction of the committee, being compelled to answer, I state that Mr. Hall was that person. Mr. Hall has been engaged in business here; is a stout man, but I do not know his first name.

Question. Have you any feelings of hostility towards Mr. Crawford?

Answer. If you can imagine that a person can have hostile feelings towards another with whom he has no personal relations, then I have such.

Question. Are your feelings friendly to Mr. Crawford?

Answer. If Mr. Crawford needed my assistance, I would have friendly feelings towards him.

Question. Has Mr. Crawford done, or failed to do, anything calculated to excite feelings of hostility on your part towards him?

Answer. Mr. Crawford, in his official conduct towards me, has not been very gratifying.

Question. What has he done, or failed to do, that was not gratifying?

Answer. He has failed, so far as he had any individual power, to act—as I understand—in accordance with repeated acts of the Senate of the United States, as to my rights as an officer of the army, and has taken decided grounds against all my appeals, against justice, and against law; whilst with reference to others similarly situated, having more political influence to bear upon him, he has not hesitated to act.

Question. Have you, on account of his conduct, any feelings of resentment against him?

Answer. I repeat what I have written to him in a letter of the 23d of March, commencing "You may say ——— until associations."

Question. Were you induced to proceed against him in consequence of his official conduct towards you?

Answer. I felt—when taking into consideration the action of the Secretary of War in reference to my case, and what he had done in another case, by first rejecting one and approving the other—that a question arose in my mind as to his official fairness or integrity; and in respect to these, and hearing of his connexion with the Galphin claim, I thought it was time that such a man should not be at the head of the department.

Question. If he had decided your case agreeably to your wishes, would you have had any feelings of resentment against him?

Answer. I cannot tell what I should have done. I might not have been here to know of these things, and I might not have been disposed, even if I did know, to take any part in them; but as these things have been made known to me, and occurring about the time of the adverse action of the Secretary towards myself, doubtless my mind has been stimulated to act in this business, to show that what was done by the Secretary towards me was conscientiously done by him as a Secretary, but prompted by influence brought to bear upon him against me, and which he too willingly acceded with.

JAMES W. SCHAUMBURG.

WAR OFFICE, *March* 19, 1850.

SIR: Yours dated the 20th of March, addressed to the Secretary of War, agreeably to usual practice of the office, has been opened and

read by me as chief clerk, the letter not being marked *private*. I take the liberty of declining to present your letter to Mr. Crawford; and, as one who has endeavored to advance your interest in regard to your claim to be restored to the army—believing, as I do, that your claim is just—I take the further liberty of returning to you your letter, and asking you to reconsider its tone and tenor. At all events, for myself, I must beg leave to add, that no letter of this description can reach Mr. Crawford through me.

I am, very respectfully, your obedient servant,

S. J. ANDERSON.

JAMES W. SCHAUMBURG, Esq.,
National Hotel, Washington.

WASHINGTON, D. C., *March* 20, 1850.

SIR: It has been communicated to me that, since your appointment to the head of the War Department, you have received a large amount of money from the treasury of the United States as *interest* on an adjudicated claim under the late administration. It is alleged that, doubtless, your high official position alone could have effected this. It is due to your position as a man, and as a high officer of the government, that the matter should be clearly understood. As I have doubts myself as to your just conception of what is due to others, and as you have not in more than one instance acted in your office free and independent of outside influence, it may be that others in official proximity, of the same susceptibility, holding the purse-strings of the national treasury, have amiably yielded in a matter concerning your amelioration.

As I scorn to act covertly against even my most malignant enemies, so do I not take you by surprise, and therefore inform you that I shall have the Galphin claim inquired into. I furnish you herein a copy of a resolution which will in due time be presented in the House of Representatives of Congress.

I remain, respectfully, your obedient servant,

JAS. W. SCHAUMBURG.

GEORGE W. CRAWFORD, Esq., *Present.*

Resolved, That the President be requested to communicate to this House copies of all papers in the claim of George Galphin, such as embracing opinions, decisions, and settlement of the same by the officers of the Executive departments of the government, since the 4th March, 1849, and to state whether George W. Crawford, Secretary of War, had any direct or indirect agency or interest in the final settlement of said claim, and whether the said Crawford has directly or indirectly received for himself any part of the money from the treasury of the United States, paid on account of said claim of George Galphin.

NOTE.—This resolution was handed to a member who would have presented it to the House, but he had to be absent for several days, and

wished to examine the transaction before taking action. In the mean time, Mr. Crawford had asked an investigation.

WASHINGTON, *March* 23, 1850.

SIR: I enclose you herein a communication in this morning's "Union," the which I wrote and am responsible for as referring to you as "the *member of the cabinet* to whom near eighty thousand dollars has just been paid as interest." I shall go on with this matter until the end of it.

You may say that I do this from a spirit of resentment for your opposition to me. I shall not hesitate to acknowledge it; but the resentment is not of a *personal* character, for you and I are not acquainted; it is to your official action, in so far as you are concerned, and as I am justified in proceeding against you. I mean that I resent your gross disregard of law and justice, and against the eminent action of the Senate in my case, which you are bound to respect. I resent your total incapacity conscientiously to fill the high office you have been called upon to occupy. Your coming into high place has been made by you to subserve the cupidity of yourself, and to favor those only who are affiliated to you by immoral influences—to servile obedience and prostitute association.

As I informed you in my letter of the 20th, a resolution will be presented in the House of Representatives respecting the Galphin claim.

I remain your obedient servant,

JAMES W. SCHAUMBURG.

GEORGE W. CRAWFORD, Esq., *Present.*

The communication in the "Union," referred to in this letter, was signed "Lottery."

APRIL 17, 1850.—*S. J. Anderson's examination.*

Question 1. Were you one of the assistant clerks of the House of Representatives of the 30th Congress?

Answer 1. I was.

Question 2. What were your duties prior to passage of the Galphin bill?

Answer 2. My duties were to keep the petition books, and incidentally to aid Mr. Gold in making up the journal.

Question 3. Did those duties require you to be at the desk?

Answer 3. Not at all, but in the clerk's office of Clerk of House of Representatives.

Question 4. Did these duties continue until after the passage of the Galphin bill?

Answer 4. Yes; and I had no duties at the desk until the 2d session of last Congress.

Question 5. Were you at the Clerk's desk in the House of Representatives on the night and at the time of the passage of the Galphin bill?

Answer 5. I was not.

Question 6. Have you seen that, by letter-writers, you are stated to

have had some agency in changing the order of bills, among which was the Galphin one, with a view to give advantage to it?

Answer 6. I never had such agency, and never heard of any one doing so, until I recently saw it stated in newspapers.

Question 7. Did you know of anything unusual, irregular, or improper in the conduct of any officer or member of the House in relation to the passage of this bill?

Answer 7. I never did, and am confident none such occurred—certainly not with my knowledge.

Question 8. Had you, at a time prior or subsequent to the passage of the Galphin bill, any pecuniary interest in it?

Answer 8. I had not, direct or indirect, and was not to gain or lose by its passage. I have not, directly or indirectly, been benefited in a pecuniary way or otherwise by its passage.

Question 9. Did you hold conversations with any members of Congress in relation to the passage of this bill? If so, state the substance thereof.

Answer 9. I never held any other conversations than such as were held with Mr. Crawford and my mutual friends, Stephens and Toombs.

Question 10. Had you any conversation with Mr. Venable?

Answer 10. When Governor Crawford was here in May, 1848, he called on Mr. Venable, and I was present at the interview. Mr. Crawford remarked to Mr. Venable that he understood him to be upon principle generally opposed to private claims, and he would desire him, as an old friend in boyhood, to take the claim of Galphin and examine for himself into its merits. Mr. Venable promised to do so. Some time afterwards Mr. Venable and myself met accidentally, and he requested that the papers should be given to him, that he might fulfil his promise. I obtained the papers from Mr. Buck, the file clerk, and handed them to Mr. Venable. I know nothing further in relation to Mr. Venable in the matter.

Question 11. Did you solicit or importune any members of the House in favor of this claim?

Answer 11. I have already stated all I did, and I repeat this question in the negative.

Question 12. What office do you now hold?

Answer 12. I am chief clerk to Mr. Crawford, by his appointment.

Question 13. Did you hold any office under Governor Crawford during his administration as governor of Georgia?

Answer 13. I was one of the secretaries of the governor for four years.

Question 14. Did Governor Crawford request you to make any efforts in behalf of the Galphin bill?

Answer 14. He never did; that is, no unusual efforts, further than to pay attention to it, and apprize him of its progress; and I will add, that all proper efforts such as a friend would use I did use.

Question 15. At what time did Governor Crawford request you to give your attention to this claim?

Answer 15. In 1848. After Governor Crawford was apprized of its passage in January in the Senate, he then requested me by letter from Georgia to give it some attention and information of its stages.

Question 16. Was Governor Crawford here at any time between May, 1848, and the time of the passage of the act in the House of Representatives?

Answer 16. He was not.

 S. J. ANDERSON.

APRIL 17, 1850.—*Hon. Mr. Venable's examination.*

Question 1. Do you know anything of the passage of the Galphin claim?

Answer 1. In May, two years ago, I saw Governor Crawford, whom I had not met for thirty years, when we were at Princeton, and asked him if I could do anything to serve him. He replied no; and the next day he said he had a claim before Congress, and wished me (whom he understood to be set against allowing private claims) to take the papers, examine them, and determine them according to their merits. I asked the clerk (Anderson) subsequently to get the file of Galphin papers for me, obtained them, took them to my room, and examined them. I have no recollection of ever having voted upon it.

A. W. VENABLE.

APRIL 17, 1850.—*Hon. Mr. Toombs's examination.*

Mr. Toombs was member of the Georgia legislature from 1837 to 1843 inclusive, except 1841, and the Galphin claim was several times before the legislature within that period; the justice of the claim on the part of Galphin was never disputed, but always considered as properly pertaining to the United States government, and not to Georgia, inasmuch as no money or other proceeds from the lands in question ever reached the treasury of Georgia; that those lands had been appropriated for bounty to soldiers of the Revolution, and to settlers to aid in defence of the frontier, by way of head-rights. These lands are the most healthy, fertile, and valuable portion of the State, and now constitute several of its most prosperous counties. Mr. Toombs never placed the claim of Galphin upon the terms of the treaty of 1802, not having that point. That land was the fighting-ground of the Revolution, and, during that period, was never subject to the dominion of England. As a representative from Georgia in Congress, I voted for the claim, and know of no improper means used to procure its passage by clerks or any other person.

R. TOOMBS.

APRIL 17, 1850.—*Examination of Daniel Buck.*

Question 1. Were you in charge of the Journal of the House?

Answer 1. I was, as an assistant clerk of the House, and am so still. I had charge of two files of the House—one of the Committee of the Whole House on the state of the Union, and one of Committee of the Whole House on private calendar.

Question 2. Do you remember the Galphin bill?

Answer 2. I do, perfectly.

Question 3. Do you remember the time of its passage?

Answer 3. I do; it was on Saturday night previous to House adjourning on Monday, August 14, 1848.

Question 4. Were you at the Clerk's desk that night, when the bill

passed, in the performance of your duties, and in possession of the files of the Senate calendar?

Answer 4. I was.

Question 5. Did that bill come up in regular order?

Answer 5. It did. The rule of the House requires the Clerk to make up a calendar of all Senate bills reported and committed to either of the two Committees of the Whole prior to the three last days of the session, and this bill was in its regular order upon that calendar.

Question 6. Do you remember the particulars of the passage of the bill in question?

Answer 6. I do. The House resolved itself into Committee of the Whole on the private calendar, at the instance of Hon. J. A. Rockwell, of Connecticut, to consider such Senate bills as should not give rise to debate. Several bills were considered and objected to prior to that in Galphin's claim, and when that came up it was laid aside, without debate or objection, to be reported to the House. It was afterwards read, with other bills, by its title, and passed without objection or separate vote.

Question 7. Do you know if that bill was or was not put out of its regular order on the private calendar?

Answer. 7. I know that it was not.

Question 8. Was S. J. Anderson one of the assistant clerks at the time, and was he at the desk that night?

Answer 8. He was an assistant clerk, but was not at the desk when the bill was passed, which was about 8 o'clock p. m., and was not on *duty there* that night.

Question 9. Could he, or any member, have put that bill out of its order, so as to give it any advantage, without your knowledge?

Answer 9. No one could do so.

Question 10. Was there any connexion on the calendar, or in the passage of this bill, between it and that for the relief of Richard M. Johnson?

Answer 10. Not that I am aware, except that they were both on the private calendar; this one nearly at the head, and Johnson's at the foot of it.

Question 11. Do you know of anything unfair, irregular, or improper, on the part of any member or officer of the House, in connexion with the passage of this bill?

Answer 11. I do not: on the contrary, everything, so far as my knowledge extends, was entirely regular.

Question 12. Were the merits of the bill debated after its introduction?

Answer 12. I think they were not.

Question 13. Did said S. J. Anderson evince any interest in the passage of the bill?

Answer 13. He said he wished the bill to pass, as friends of his in Georgia were interested in it. He also spoke to one or two members about it, for one of whom (Mr. Venable, of North Carolina) he (Anderson) had the papers taken from the files for examination.

Question 14. Were you present when the Speaker signed the enrolled bill in question?

Answer 14. I do not remember.

Question 15. Is it unusual for clerks or other officers of the House to evince interest in the passage of bills?

Answer 15. It is not usual, but they do sometimes evince an interest when the claimants are their friends.

Question 16. Is it usual for persons occupying the situation which Mr. Anderson did at that time, to solicit members of the House to vote in favor of the passage of a private bill?

Answer 16. It has not been usual to my knowledge, since I have been in the office, and never has such a case occurred during that time, that I am aware of.

Question 17. Did Mr. Anderson, to your knowledge, solicit Mr. Venable or any other member of the House to vote for the Galphin bill?

Answer 17. Not that I am aware of.

Question 18. What did you mean when you said that Mr. Anderson spoke to one or two members?

Answer 18. I meant merely that he stated to me that he had spoken to his friends in regard to the passage of the bill.

Question 19. Did he or did he not convey to you the impression that he had sought to enlist these members in favor of the passage of the bill?

Answer 19. I have no recollection of the impression conveyed.

DANIEL BUCK.

APRIL 18, 1850.—*J. W. Schaumburg, continued.*

Question 1. At what time did you first have the conversation with Mr. Anderson?

Answer 1. I mentioned yesterday as nearly as I could, and now think it was some time during the past winter.

Question 2. Where was the first conversation?

Answer 2. Somewhere, in walking late at night, along the avenue and about and towards these grounds, or it may have been at Mr. Levin's rooms, at Brown's Hotel.

Question. 3. Who introduced the subject of this conversation—you, or Mr. Anderson?

Answer. 3. I cannot tell whether he or I; it may have been myself.

Question 4. Had the Secretary of War acted or failed to act in relation to your case at the time of this first conversation?

Answer 4. The Secretary of War, I learnt from a letter from the Adjutant General in October, had acted in the matter before I ever knew Mr. Anderson.

Question 5. Were you on terms of intimacy with Anderson prior to or at the time of this first conversation?

Answer 5. On such terms of intimacy as would not have allowed me to have expressed myself in confidence to him freely upon any matter of any importance to me, and I was much surprised by his communications to me, which would have prevented any intimacy with him. I never sought his acquaintance—never looked after him—met him about at gentlemen's rooms, and on the avenue.

Question 6. How long after the first, was the second conversation with him?

Answer 6. The first was in the winter; the second was about the 20th to 23d March; some unimportant ones may have occurred in the interval.

Question 7. Did you announce your determination to expose the transaction in the first conversation?

Answer 7. I may have done so, but do not remember. I know I did in the last one. Yes, I did tell him so in the first conversation; it was the one already alluded to where the expression of Anderson, as to the appearance of Mr. Crawford's being as though struck by a grape-shot, was made.

Question 8. Was your deposition yesterday based upon your memorandum, or upon your recollection, apart from that?

Answer 8. Upon both the memorandum and my memory; the memorandum was not substantially altered by me as to facts since first made and only in changing words for the sake of grammar. I desire to add that Mr. Thomas Blount stated to me last evening that Mr. Stephens of Georgia, in the House of Representatives, told him he did not expect the Galphin bill would be brought up during that session, and that he was surprised when he found it was, and acted upon.

Question 9. Whether you had any knowledge of the Galphin claim prior to, or at the time of your first conversation with Anderson?

Answer 9. Of course I had. I knew there was a large claim, in which the Secretary of War had an interest, without knowing facts or particulars. This prior information was derived from Judge Bryan.

Question 10. You stated that in your conversation last evening with Mr. Blount, allusion was made to what Mr. Stephens, of Georgia, had told him about the passage of the Galphin act. Did Mr. Blount speak of this conversation as having occurred at the time of the passage of that act, or at some subsequent time?

Answer 10. I understood him as referring to this conversation having taken place at the time of the passage of the act.

Question 11. At what time did your dissatisfaction with the Secretary of War, for his supposed injustice towards yourself, commence?

Answer 11. From the day of receiving the letter of last autumn from the Adjutant General, above referred to.

Question 12. Did the course of the Secretary of War in regard to yourself receive the sanction of the President?

Answer 12. I do not know.

Question 13. Do you recollect having conversed with the correspondent of any other newspapers than as referred to yesterday?

Answer 13. I had some few words casually upon this claim with Mr. Grund and Mr. Wallis, and another Mr. Wallace—say some three or four. I never sought them; they came to me.

Question 14. Was the purport of these conversations calculated to convey impressions favorable or unfavorable to the conduct of the Secretary of War?

Answer 14. The conversations were in the main as to the propriety or impropriety of a high public officer being concerned and largely interested in a claim which he directly or indirectly was prosecuting against the government, leaving every one to judge for himself, and to draw inferences favorable or unfavorable from it.

Question 15. Did you express no opinion yourself?

Answer 15. I certainly did think it was a very extraordinary thing, and so stated, and believe I am not alone in thinking so.

Question 16. Did you or not mention in these conversations the reports

you had heard in relation to unfairness in the manner of passing the Galphin act?

Answer 16. I mentioned what Mr. Anderson had himself confessed to me about it.

JAS. W. SCHAUMBURG.

APRIL 18, 1850.—*Mr. E. T. Montague's examination.*

Question 1. Did you at any time have any conversation with Mr. Schaumburg, in the presence of Dr. Collins, upon the subject of the Galphin claim?

Answer 1. I did.

Question 2. Please state conversation, time and place?

Answer 2. Some two or three weeks since—I believe it may have been four weeks; and I had but one. It was at the National Hotel. I found Dr. Collins and Mr. Schaumburg engaged in conversation. The Dr. introduced me to Mr. Schaumburg, remarking at the time that I, having been engaged in settling that claim, could tell him more about it than he, the Dr. himself, could. We then entered into a conversation upon the subject of that claim, in the course of which Mr. Schaumburg spoke of it as having been improperly allowed, and was a most unrighteous claim. I, in reply, stated that I differed with him wholly in regard to it; that upon its examination I, as an accounting officer of the treasury, was satisfied of its justice, or should not have reported it.

Question 3. Did Mr. Schaumburg tell you then how he had got his information about this claim?

Answer 3. I do not remember that he did.

Question 4. Did he refer to statements of others, or did he make statements as of his own knowledge and information?

Answer 4. According to my present recollection, his statements were made as of his own knowledge; he may have referred to others, but I do not remember to whom he did so refer.

Question 5. Was anything in connexion with the claim said of Mr. Meredith? and if anything, what?

Answer 5. I do not remember that Mr. Meredith's name was mentioned in that conversation. Mr. Schaumburg directed his attack mainly, if not exclusively, to Mr. Crawford.

Question 6. In that conversation, did Mr. Schaumburg ask you whether Mr. Meredith knew that Mr. Crawford was interested in that claim?

Answer 6. I do not remember that he did, not remembering that his name was mentioned. So much as relates, in Mr. Schaumburg's deposition, to the conversation between him and Mr. Montague, being read to Mr. Montague, Mr. Montague states emphatically that he never uttered one word about any interview between Mr. Meredith and himself in relation to the Galphin claim, either in that interview or any other; that the only time he was ever in Mr. Meredith's company was a very few minutes in the Secretary's office, shortly after he (Mr. Meredith) entered upon its duties; on which occasion he called with the late Secretary of the Navy, Hon. John Y. Mason, and others, for the simple purpose of being introduced to the new Secretary. He could not, therefore, have made the

statement attributed to him by Mr. Schaumburg; and so far from its being true, he feels very confident that Mr. Meredith's name was not mentioned at all in that conversation. In regard to that portion of Schaumburg's testimony referring to a conversation between Mr. Crawford and myself in relation to his connexion with the Galphin claim, the strong impression on my mind now is, that I did not refer to that conversation at all in my interview with Schaumburg, though I may possibly have done so.

Question 7. Had you any conversation with Mr. Crawford in relation to the Galphin claim?

Answer 7. I had at a visit of courtesy, not being sought by him, shortly after Mr. Crawford became Secretary of War; the substance of which is as follows: I asked Mr. Crawford if the question of interest in the Galphin case had ever been finally settled; and upon learning that it had not, I then inquired whether he did not intend to prosecute it further. He said he did not know; that being himself then connected with the administration, he had some thought of disposing of his interest in the matter. I further replied, that it was a question referred by the act of Congress to the Secretary of the Treasury alone for his decision; that it could not come up before the cabinet as a whole; and that having been left open and undecided by the previous Secretary, I could see no reason why the mere accident of his (Crawford's) being Secretary of War, and being personally interested in the claim, should prevent the Secretary of the Treasury—a department entirely distinct and independent—from performing a duty which the law clearly devolved upon him. This conversation was referred to in a communication from me to the editors of the "Union," and published in that paper about ten days since.

Question 8. Did you know that Mr. Crawford was interested in the Galphin claim before your conversation as just stated with him?

Answer 8. I did.

Question 9. How did you become acquainted with it?

Answer 9. I was a clerk in the First Auditor's office, and had this claim referred to me for examination and report. Mr. Crawford at that time attended to it in person; I did not know whether as agent or one of the distributees; my impression was, as the latter.

Question 10. Did you examine the papers in the case?

Answer 10. Yes, sir.

Question 11. Did you find any papers there showing that Mr. Crawford was agent, or interested in any way in the case?

Answer 11. I do not now remember. My attention was directed solely to an examination of the merits of the case itself, so as to be able to report truly all the facts which I might find.

Question 12. Is it not usual or necessary, or both, in such cases, to examine every paper on file?

Answer 12. It is usual and necessary, where a final report for payment is made—there being two kinds of reports: one of facts, another of the amount due formally—to govern as to the amount to be paid.

Question 13. Is it usual to send all the papers of the case to the officer called upon to examine the report?

Answer 13. I believe it is usual, though not always done.

Question 14. When did you leave office?

Answer 14. In July or August last, I think.

Question 15. Was it generally known to the officers of the Department

of the Treasury, at the time you left, that Governor Crawford was interested in this claim?

Answer 15. I do not know.

Question 16. Whether it is customary for the Secretary, in his final decision, to examine all the papers on file in the case, or to decide it on the facts reported by the Auditor?

Answer 16. I do not know.

E. T. MONTAGUE.

APRIL 18, 1850.—*Captain Tyler's deposition.*

The statement of Mr Schaumburg's deposition, in which Captain Tyler's name is used, having been read to him—

Question 1. Whether said statement is correct?

Answer 1. I ascertained from conversation with Mr. Schaumburg that he had furnished the facts or written the articles which appeared in the "Union" in relation to the Galphin claim. I asked him how he came in possession of these facts. He stated that he received them from Mr. Anderson, chief clerk of the War Department. I then mentioned that I had heard Mr. Anderson say, between two and three months ago, that Mr Crawford had recently received a *large* claim from government, ($90,000 I think was the amount,) and that he thought Mr. Crawford ought to give him $10,000; for, but for his agency in the matter, Mr. Crawford never would have received one cent. I did not understand Mr. Anderson as saying he expected to receive that amount. Mr. Provost was by, and I think he remarked that Mr. Crawford would do what was right. Here the conversation ended. This conversation occurred, as I think, about January, and was held in Mr. Levin's room in the National Hotel, and Mr. Levin and some other gentleman, I think, were present.

Question 2. Did you understand Mr. Anderson as saying that Mr. Crawford was under any engagement to pay him anything?

Answer 2. I did not so understand him.

H. B. TYLER.

APRIL 18, 1850.—*Mr. John Pendleton's examination.*

Upon reading Mr. Schaumburg's deposition in relation to a conversation referred to as between Mr. Hall and Mr. Pendleton—

I do not remember of ever having had a conversation with Mr. Hall upon the subject of the Galphin claim, though I may have had such a one. It is not possible that I could have spoken of Mr. Toombs having boasted of the manner in which he passed the claim to anybody, for I never heard him so boast.

JOHN PENDLETON.

APRIL 18, 1850.—*Dr. Collins's examination.*

Question 1. Were you present at an interview at the National Hotel between J. W. Schaumburg and Mr. Montague, when the Galphin claim was the subject of the conversation?

Answer 1. I met Mr. Schaumburg a short time since at the National Hotel, and he asked me in reference to the Galphin claim. I stated to him that the papers were referred to my office during my temporary absence in Virginia. He then inquired about the allowance of interest on that claim, and I said it was not usual to allow interest, unless required by act of Congress. He had made some other inquiries about the claim; and I seeing Mr. Montague, who had been a clerk in my office, introduced him to him, and said he could give him more particulars than I could myself.

Question 2. Were you the First Auditor at the time of making the report signed "H. Jones, Acting Auditor?"

Answer 2. I was.

Question 3. Are you familiar with the facts of the Galphin claim?

Answer 3. I am not, not having examined them.

Question 4. What is the rule of the office in adjusting claims in regard to interest?

Answer 4. My action has been not to allow interest, except required by act of Congress, which is in conformity with the rule of the department, as I understand it.

Question 5. What exception is made to this rule?

Answer 5. I know of none.

Question 6. Do you think this rule so well established as to cause you to refuse interest when otherwise you were disposed to allow it?

Answer 6. Yes, I do.

Question 7. Do you know of any instance in which an act of Congress refers to the accounting officer of the treasury a claim to be examined and adjusted, and directs interest to be allowed on the sum found to be due?

Answer 7. I do not recollect any such instance.

Question 8. Do you know of any interest having been paid where Congress has not directed by law that interest should be paid?

Answer 8. I do not.

Question 9. How long were you First Auditor?

Answer 9. Five years.

W. COLLINS.

APRIL 19, 1850.—*Judge Joseph Bryan's examination.*

Question 1. At what time did you become agent for the Galphin claim?

Answer 1. Some few days after Secretary Crawford's taking office, in March or April, 1849.

Question 2. By whom were you employed, and whether by power of attorney or not?

Answer 2. By Governor Crawford, and no power of attorney. Gov-

ernor Crawford spoke as being agent or counsel—agreed to give $3,000 to me for my services. The arrangement was mutual.

Question 3. Did you, from the time of being appointed by Governor Crawford, appear as agent for the claim, before the different offices of the Treasury Department?

Answer 3. I did so.

Question 4. Did Governor Crawford appear, after your appointment, before any of the officers of the department in relation to this claim, as agent for its prosecution?

Answer 4. I have no idea that he did.

Question 5. Do you know whether, at the time the opinion of the Attorney General was delivered, or at any previous time, Governor Crawford's interest in the claim was known to the Attorney General?

Answer 5. I have no reason to suppose that he knew of such interest; I did not communicate that fact to him. I had very little personal communication with him; and that not at his office, but in the street, casually.

Question 6. Do you know whether Mr. Meredith had any knowledge of Governor Crawford's interest in the claim, whilst the question was pending before him?

Answer 6. I have no reason to imagine that he did.

Question 7. Did Mr. Meredith appear to have given his attention to this claim?

Answer 7. I think he had, and seemed to understand it perfectly.

Question 8. Did Mr. Meredith appear to be familiar with all the details of the claim?

Answer 8. I suppose that he was, and was led to that conclusion by my conversations with him. Mr. Meredith seemed to feel a difficulty in allowing interest where the act of Congress did not specifically call for it; and hence he suggested to me to direct my arguments to that point.

Question 9. Do you know, from your intimate relations with Governor Crawford, of any improper or unbecoming conduct on his part, as officially connected with the administration, in relation to the prosecution of this claim?

Answer 9. I certainly do not. He was, in my opinion, over-delicate in his conduct, and, as I thought, was thereby hardly doing justice to the interests of those concerned in the claim.

Upon Mr. Schaumburg's deposition as to a conversation with Judge Bryan being read to him, he remarks:

I am inclined to think that when Mr. Schaumburg came here in the confidence between counsel and client, I stated that I had not pressed his claim as I desired to do it when the Secretary of War, before whom it was, was in a good humor; that he was interested as counsel in a cause then before the Attorney General; that I was representing the claim since Crawford came into the cabinet; that I felt perfectly confident that the decision would be a favorable one; and that, if it was decided in his favor, he would get a good fee, and that would put him in a good humor, and that it would be a good time to press his (Schaumburg's) claim. This was said in that confidence which subsists between counsel and client. I have no recollection of stating that Mr. Crawford was mutable, and am confident I did not so say. I think it probable I told him I was urging the Attorney General for a decision; but I am quite confident that Mr. Schaumburg's deposition of my statement about the Secre-

tary of War urging upon that officer to decide this claim in cabinet or otherwise, is entirely without foundation. I am not sure about saying that I was running after the Attorney General, though I did probably state that I urged the matter upon him whenever we met.

Question 10. What was the nature of Schaumburg's claim before the Secretary of War, under your charge?

Answer 10. It was in relation to his restoration to the army, under a resolution of the Senate.

Question 11. Does it come within your knowledge that a conversation took place between the President of the United States and Governor Crawford, in which the latter revealed his former agency or then present interest in the Galphin claim?

Answer 11. A short time, I think, after I was employed by Governor Crawford, he told me of his having had a conversation with the President of the United States in relation to his former connexion with this claim, and, as I understood, of his relation to it when this conversation took place.

Question 12. Please to relate your recollection of what Governor Crawford told you?

Answer 12. I understood from him that, in his conversation with the President, the President saw no impropriety in his continuing his agency in the matter, as he had been concerned in it before he came into the cabinet. Governor Crawford, in a jesting way, has frequently remarked that the fee he gave me was a mere gratuity, as he might have kept it and prosecuted the claim himself.

Question 13. Did Mr. Crawford tell you that he had, in the conversation referred to with the President, stated the name and particulars of the claim, and the interest he had in it, or merely made a general reference to a claim then pending, in which he was counsel?

Answer 13. I understood him to have referred in that conversation to this particular claim, and stated that he had an interest in it.

Question 14. Did you understand from Mr. Crawford that in that conversation he explained to the President that this claim was pending before some of the departments?

Answer 14. The impression on my mind was, and is, that Mr. Crawford explained to the President how and in what manner he was connected with the claim, and how it was then situated.

JOSEPH BRYAN.

APRIL 19, 1850.—*James H. Forsyth's deposition.*

At the instance of Mr. Schaumburg, Mr. James H. Forsyth was sworn. His testimony, as taken, was not deemed material by the committee, and no record was made of it.

APRIL 20, 1850.—*S. J. Anderson's examination.*

Upon reading to Mr. Anderson the deposition of Mr. Schaumburg, in April instant, in relation to his conversations with Anderson, Mr. Anderson replied as follows:

About the time of the opening of the present session of Congress, I was introduced to Mr. Schaumburg by the Hon. Mr. Levin. Mr. S. at that time, or very soon thereafter, sought an occasion to explain to me, in minute detail, the nature and condition of his claim to be restored to the army, his commission in which he had resigned some twelve years ago. He represented to me that he had resigned under most distressing and oppressive circumstances. He alluded to the letter of his dying father, commanding his immediate presence, the tyranny of Col. Kearny, and other incidents, which not only awakened my sympathies, but made a strong impression on my mind that his efforts to be reinstated in the army were just and laudable. I so expressed myself to him, and my subsequent conduct was in accordance with my professions. At all proper times, and, I trust, in a proper manner, I mentioned my personal opinions or argument on this subject. In doing this, I will take the liberty of adding, that I was actuated by no other motives than such as naturally and properly grow out of the convictions and sympathies which I have declared; and on a certain occasion, which Mr. S. will not forget, I told him so.

After the interview and explanation referred to, Mr. S. met me frequently, and his claim and his actings in relation to it were the subjects of our conversation. If I did not meet him at Mr. Levin's room, where I was frequently in the habit of playing whist during the evening, he would very often see me passing from Brown's Hotel as I was returning home, sometimes late at night, and insist upon accompanying me near home, for the purpose of riding his hobby for his own entertainment. On one occasion he accompanied me home about 11 o'clock, (having often expressed a wish to see my family,) my family having retired to bed before we entered my house, and remained until near one o'clock at night.

This will be better understood when I remark that I live some quarter of a mile east of the capitol, and Mr. S. boards at the National Hotel. He was always apparently entirely unreserved in his communications to me; and, although I always was far from feeling that there could exist between Mr. S. and myself any real intimacy or attachment, and whatever he may have said to me in that private intercourse which *I* never sought and for which *I* had no motive, I shall not be provoked to retaliate upon him by violating the character of a man and a gentleman. I shall only speak of those things which are germain to this subject, and necessary to its elucidation. In one of those interviews, when Mr. S. would take my arm on the avenue and accompany me towards or near home, I remember to have held some conversation touching the Galphin case, which was, to the best of my recollection, as follows: Mr. S. was complaining (to use a mild term) that the Attorney General had written him a note, saying that a press of public business would prevent his giving an opinion in his case. I said to him, good-naturedly, Why need you complain about that? Mr. Johnson has had the Galphin claim before him for several months; has sometimes, as Judge Bryan has told me, fixed a day on which a decision should be made; and, to the disappointment of Bryan, and Mr. Crawford too, there is no decision yet. These, I solemnly believe, are the precise words I used, and I know they convey the sense and substance of what I said on the occasion referred to; and if ever, during my much to be regretted intercourse with Mr. S., anything more than a passing remark was made by him or myself in relation to the Galphin claim, the *modus operandi* by which Mr. Crawford was made Secretary of War, or myself

made chief clerk of the War Department, I can only aver *that I have no recollection of it.* I regard and pronounce his statements on these points *wilfully and maliciously false.*

After the Senate had passed their resolution in favor of Mr. Schaumburg, and the President and Secretary of War seemed disinclined to acquiesce, Mr. Schaumburg began to show symptoms of impatience and violence—that impatience and violence which his dear and only daughter had warned him against: he soon began to threaten and bluster. He at last told me of his designs in relation to Mr. Crawford: his determination to have a resolution of inquiry introduced by some one in the House, (mentioning Hon. Jacob Thompson,) in relation to the Galphin claim and Mr. Crawford's interest in the same. I admonished him not to do so, and told him repeatedly that whatever he attempted in this regard would recoil on his own head; that there were those here who understood the claim as well as Mr. Crawford, and were prepared to defend its payment; that Mr. Crawford and his friends had nothing to fear from investigation; that they would rather court than shun it. He replied that he did not care a d—n; that he was satisfied that the claim was just; that it had been legally, fairly, and justly settled; but that his object was *revenge*, and that if the issue could only be got before the country, the injury which he designed to inflict on Mr. Crawford would thereby be inflicted. I replied, that I did not understand how any honorable man could attempt to maintain such a position, and that I would not injure any man by such means, under his declaration, even though he were my worst enemy. He said he did not care a d—n; that he would show Mr. Crawford what it was to take it upon himself to withhold from him his just rights. This was our last interview. I remarked to him, at parting, that we would not quarrel, but we would converse no more on the subject. The substance of this interview I mentioned to Captain Tyler, as the friend of Schaumburg, who has been before you, (and for whom I have a high respect,) a few days after it occurred.

The day following this interview Mr. Schaumburg sent to Mr. Crawford an offensive communication, (which I understood he has placed before you,) which was opened by me in my capacity of chief clerk, and sent back to Mr. Schaumburg without Mr. Crawford having seen it or heard of it.

The day following that, I was addressed in writing by the present chief clerk of the Clerk's office in the House, (Mr. J. H. Steele,) stating that a gentleman had told him that Mr. Schaumburg had stated that Mr. Crawford had sent his chief clerk to him to "*importune*" him to be silent about the Galphin business. I replied by letter, and pronounced the statement "*unqualifiedly false in every respect.*" The next I heard from Mr. Schaumburg was some weeks after, in the "Union" newspaper—I think on the 11th instant.

I did inform Mr. Crawford that Schaumburg was about to assail him, and of Schaumburg's threats to do so. I also informed Schaumburg, in our last interview, that I had so told Mr. Crawford; but as to the rest of his statement in reference to Mr. Crawford's "looks," and the terms in which he represents me to have addressed Mr. C., I have only to say that he has indulged his own too *fertile* fancy.

S. J. ANDERSON.

APRIL 19, 1850.—*Edward Harriman examined.*

Question 1. State to the committee what you know in reference to the Galphin claim?

Answer 1. I met Mr. Schaumburg some four weeks ago, when he called me aside and showed me a letter, or draught of one, he had written to the Secretary of War. I observed to him casually that I knew all about that before. I did not know from records or documents, but from hearsay. I wrote for two newspapers; one letter, "A. B. C.," for Express, I wrote.

Question 2. Do you know of your own knowledge anything connected with the history of this claim, the passage of the law authorizing its payment, the settlement by the Treasury Department, or the conduct or relation of Secretary Crawford to it? If so, communicate it to the committee.

Answer 2. I do not.

Question 3. How have you derived your information upon the Galphin claim?

Answer 3. I derived some information from officers and clerks of departments—among others from Geo. T. M. Davis, who, I understand, corresponds with the Tribune, under signature of "Alpha," and with the Louisville Courier, under signature of "Ashland." Mr. Davis is a clerk in the General Land Office. Also from Mr. Clark, (John C.,) Solicitor of the Treasury. I understand that Mr. Nat. Sargeant, Recorder of the General Land Office, is engaged with Mr. Davis in the "Alpha" correspondence of the Tribune.

Question 4. Can you separate in your memory any fact stated to you by Mr. Clark and Mr. Davis?

Answer 4. I don't know that Mr. Clark has ever given me any history of this claim; he has spoken frankly, and candidly, and openly, and has expressed dissatisfaction with some of the conduct of one or more members of the cabinet. I individually have expressed my condemnation of the allowance of interest upon this claim and other claims to Mr. Davis, and Mr. Davis has acquiesced in my declarations, and made as warm ones to the same effect himself. We spoke politically, and with reference to its effect upon the administration, and did not choose to look into the merits of the allowance itself.

Question 5. Should you consider it a political advantage to an administration to refuse to pay a just claim?

Answer 5. No.

Question 6. Did Mr. Davis state to you any particular facts in relation to this claim as to the conduct of the Secretary of War, the Secretary of the Treasury, or the Attorney General, in reference to it?

Answer 6. I am not sure that he separated the members of the cabinet, but that he stated substantially his opinion that those connected with the allowance of this claim and other claims for interest were bringing ruin upon the administration. Dr. Wm. Jones, I think, is cognizant of facts, and intimately acquainted with the particulars of this claim; he gave me the first information I had in relation to this claim; he also gave me information of the claim (Chickasaw Monico's) before the Secretary of the Interior.

Question 7. With what papers do you correspond?

Answer 7. With the Baltimore Patriot until lately, the New York Express, and New Orleans Bulletin.

E. HARRIMAN.

APRIL 20, 1850.—*S. J. Anderson's examination.*

Question 1. When you stated to Mr. Crawford that Schaumburg told you that he intended to have the matter of the Galphin claim investigated, did Mr. Crawford manifest alarm or apprehension?

Answer 1. None. He asked me in what manner Mr. Schaumburg intended to assail him. I told him that Mr. Schaumburg had shown me a resolution, which he told me Mr. Thompson, of Mississippi, would offer, and stated to Mr. Crawford the particulars of the conversation with Mr. Schaumburg—his threats. Mr. Crawford replied, Well, let him do it; he will not coerce me into reinstating him in the army; and at a proper time I shall court the most rigid investigation into this subject.

Question 2. In your subsequent interview with Mr. Schaumburg—speaking of the conversation between Mr. Crawford and yourself—did you say to Mr. Schaumburg that Mr. Crawford looked as if a grape-shot had struck him between the eyes, or words of similar import?

Answer 2. I said nothing of the kind.

Question 3. Did you ever hear Mr. Crawford speak of his having mentioned his interest in the Galphin claim to the President?

Answer 3. I did; he told me, immediately after his arrival here, (being summoned by telegraph to Washington,) that he would state to the President the condition of this claim, and ask him if there was anything incompatible with his holding a post in the cabinet and the prosecution of the claim. Very shortly—I think only a few days after that—he told me he had done so, and that the President had expressed the opinion that no man's pre-existing rights could be impaired by accepting office.

Question 4. Did you understand Mr. Crawford as saying that the President sanctioned his prosecution of that claim?

Answer 4. I always understood Mr. Crawford as saying that the President had no objection to his prosecuting this claim. I know nothing of the conversation referred to between the President and Mr. Crawford, except what Mr. Crawford related, and Mr. Crawford and I had repeated conversations upon this matter.

Question 5. Did you, in any conversation with Schaumburg, state to him that you were at the Clerk's table at the time of the passage of the Galphin bill, and managed to get it out of its order in the hurry and bustle of legislation, and thus secured its passage ahead of other bills which had precedence of it on the rolls?

Answer 5. No—nothing like it.

Question 6. Did Mr. Schaumburg, in any conversation you had with him, threaten to take revenge upon Mr. Crawford?

Answer 6. Yes; such as I have imbodied in my first testimony.

Question 7. Did you have any conversation with Captain Tyler, of the marine corps, about this claim?

Answer 7. None. At the whist table, at which Captain Tyler and I were in the habit of meeting every evening, I have an indistinct recollection, since Captain Tyler spoke to me about it, that I said: "Well, Mr. Crawford has at last got his money on his old claim, and I wish he would divide."

S. J. ANDERSON.

APRIL 20, 1850.—*George T. M. Davis examined.*

Question 1. Do you hold an office under government? if so, what?

Answer 1. I am clerk in the Land Office.

Question 2. Do you know of any facts in relation to the Galphin claim or its settlement?

Answer 2. I know nothing of my own knowledge.

Question 3. Have you made any statements through the press upon this subject?

Answer 3. I decline answering this question, inasmuch as I am informed that charges have been brought against me, to the Secretary of the Interior, as being the author of certain statements in connexion with this Galphin claim, and that I am not bound to implicate myself by any testimony I may give here.

Question 4. Do you correspond with any newspapers, and which?

Answer 4. For reasons as above given, I decline answering this question also.

Question 5. Can you tell this committee who is the correspondent of the New York Tribune, under the signature of *Alpha?*

Answer 5. I decline, for the same reasons above given, to answer this question.

Question 6. Have you furnished any information upon the Galphin claim to Mr. Edward Harriman?

Answer 6. I have not seen Mr. Harriman since the 1st of April, and I have not furnished him with any information upon that subject to the best of my remembrance. Mr. Harriman, I suppose, was unfriendly to me, thinking I was opposed to his restoration to office in the Land Office, from which he had been dropped, but the reverse was the fact as to my feelings. Mr. Harriman entered upon the duties of office on September 3, 1849, for three months, and was reappointed for three months more, and was discontinued on the 31st of March last.

Question 7. Have you received any such definite information in regard to this Galphin claim from persons whose official position entitled them to be familiar with it, and with the principles of its settlement, as would justify you in stating positively any facts connected with it?

Answer 7. Any opinions I may have formed or stated, were the result of a careful reading of the report of the First Comptroller upon this subject.

GEORGE T. M. DAVIS.

APRIL 20, 1850.—*John C. Clark, esq., examined.*

Question 1. Are you Solicitor of the Treasury?

Answer 1. I am.

Question 2. Have you had any conversation with Mr. Edward Harriman such as related by him? (that part of his deposition being read to Mr. Clark.)

Answer 2. I have no recollection of such a conversation; I would not say I had not.

Question 3. You did not communicate to him any information about the claim, or any opinion in regard to the conduct of the cabinet officers?

Answer 3. I have no recollection of having done so.

Question 4. Can you communicate to this committee any fact connected with the settlement of this claim, which you consider as subjecting any member of the cabinet to censure?

Answer 4. I cannot.

Question 5. Are you familiar with the character of this claim, or the principles upon which it has been settled?

Answer 5. I am not, any farther than I got them from the reports of the Comptroller and the Attorney General.

Question 6. Are you aware of any dissatisfaction among the members of the cabinet in regard to the settlement of this claim?

Answer 6. I am not; I never conversed with but one member of the cabinet about it.

Question 7. Who was that?

Answer 7. Mr. Clayton.

Question 8. What are the principles which govern the settlement of claims upon the government in regard to the payment of interest?

Answer 8. I suppose there are precedents both ways; I have not investigated that matter sufficiently, to entitle my opinion to consideration.

J. C. CLARK.

APRIL 20, 1850.—*Nathan Sergeant examined.*

Question 1. Do you hold an office under the government? If so, state what it is.

Answer 1. I do, as Recorder of the Land Office.

Question 2. Are any facts within your knowledge which tend to show that the allowance of interest on the Galphin claim was improper, or that the conduct of any of the officers charged with the adjustment of the question of interest was improper?

Answer 2. None.

Question 3. Do you know anything about this Galphin claim, of your own knowledge?

Answer 3. Nothing, whatever.

Question 4. Were you correspondent or contributor of the Tribune, under the signature of "Alpha," or otherwise?

Answer 4. I am not, and never have been, except an occasional letter, perhaps, but not within the last six months.

N. SERGEANT.

APRIL 22, 1850.—*Examination of Dr. Wm. Jones.*

Question 1. Do you know any fact touching the merits of the Galphin claim, or the conduct of any public officer concerned in adjusting it?

Answer 1. Of my own knowledge, I do not.

Question 2. Have you made any statement of facts, orally or in writing, touching this matter?

Answer 2. I may have mentioned to one or two persons such facts; which, however, were derived only from sources common to everybody.

Question 3. Did you get any information touching the conduct of any public officer in respect to this claim?

Answer 3. I did not—I merely heard that the claim for interest had been allowed, but nothing touching the conduct of public officers.

Question 4. Was it from an officer of the government that you had your information?

Answer 4. Yes, sir; the first person I heard from was an officer of the government, without any remark as to any impropriety of conduct in any person.

Question 5. Was the communication confidential?

Answer 5. Not exactly—but still I prefer not to disclose the name of the author.

WM. JONES.

APRIL 24, 1850.—*J. W. Schaumburg examined.*

Upon its being stated to the witness that certain testimony had been taken before the committee in which the witnesses disagreed with the testimony of himself (Schaumburg,) and upon an offer made to read to him such portions of their testimony, he declined, saying he did not wish to hear any such testimony, and that he abided by his own, and wished to have no witnesses called in support of his testimony.

WASHINGTON, *May* 8, 1850.

SIR: Having repeated the substance of a conversation with the President in May of the past year, I now beg leave to add the substance of another, so as to avoid all misapprehension on the subject. I allude to an interview with him early in March last.

In this second interview the President said that the impression upon his mind was, that in the first I had stated to him that the claim was before Congress; although as to this his recollection was indistinct, the matter having passed from his mind and never thought of again until the claim itself had attracted public notice. The President on the second occasion also said, that although he did not recollect I had before advised him that the claim had been allowed by Congress, and was pending before the Treasury Department, yet that he did not see, if so informed, how he could have advised me differently from the opinion he had before given—that my being at the head of the War Department and the agent of the claimants did [*not?*] take from me any rights I may have had as such agent, or would have justified me in having the examination and decision of the claim by the Secretary of the Treasury suspended; that in his opinion, if the claim was a just one under the law of Congress, it should have been paid, no matter who were the parties interested in it; that this was due to the credit and good faith of the government.

I have the honor to be, very respectfully, your obedient servant,

GEO. W. CRAWFORD.

Hon. A. BURT, *Chairman, &c., Washington, D. C.*