

EWING INVESTIGATION.

SEPTEMBER 6, 1850.

Laid upon the table and ordered to be printed.

The SELECT COMMITTEE appointed under resolutions adopted by the HOUSE OF REPRESENTATIVES on the 22ND OF APRIL, 1850, submit the following Report:

THE committee, in pursuance of the first resolution of the House, requested the Secretary of the Interior to furnish them with copies of all papers in his office embraced within said resolutions. The Secretary, after informing the committee that there was no case in his department, as he conceived, coming within the terms of said resolution, transmitted copies of papers in cases in which the said G. W. and W. G. Ewing were interested, which the committee append to this report as part of the same.

The second of the resolutions under which your committee were appointed, directs them to inquire "whether the Secretary of the Interior re-opened and paid interest to the amount of thirty-one thousand dollars, on the pension granted to Commodore James Barron, for services rendered in the Virginia navy during the revolutionary war, after the principal had been fully paid and discharged; and if said interest was paid, was it simple or compound; who was the agent or attorney for said claim; and the authority for such claim, if any."

In obedience to this resolution, your committee report, that James Barron was an officer in the Virginia navy from the 25th of December, 1775, until the end of the war, and that during the latter part of that time he was a commodore. He died on the 14th of May, 1787. On the 15th day of December, 1823, the State of Virginia, in pursuance of a judgment of the superior court of Henrico, paid to the administrator of Commodore James Barron's estate the sum of two thousand and eighty dollars and fifty-two cents, that being the amount of his half pay, together with interest thereon, as adjudged by the Henrico superior court. On the 21st of July, 1849, James Lyons and Frederick Vincent, attorneys for Commodore Barron's administrator, applied to the Commissioner of Pensions for "the commutation pay and interest" alleged to be due the Commodore's estate. The Commissioner of Pensions disallowed the claim

thus set up, on the 1st of August 1849. On the next day, James Lyons appealed from this decision of the Commissioner of Pensions to the Secretary of the Interior; and on the 2d of November, 1849, the Secretary of the Interior submitted to the Attorney General, for his opinion, the question "whether the officers who served in the Virginia State navy to the close of the war, are entitled to commutation and interest, in lieu of the half pay for life." On the 31st of December, the Secretary of the Interior addressed a communication to the Commissioner of Pensions, stating that in his opinion the claim of Commodore James Barron for commutation should be allowed. In that communication, the Secretary also states, "an opinion of the Attorney General to the same effect will be transmitted to you in a few days." On the 2d of January, 1850, the Commissioner of Pensions, in conformity with the opinion of the Secretary of the Interior, allowed the claim of the administrator of Commodore Barron, a part of which allowance is in these words:—

"I accordingly certify, *under an order from the said secretary*, that commutation of five years full pay is due, and interest thereon up to this date. The amount of commutation is \$4,258 31 $\frac{1}{4}$; interest is to be calculated at six per centum per annum on this sum, from the 22d of April, 1783, to the 15th of December, 1823; add the amount of the interest up to December 15, 1823, to the commutation, and deduct from the total of those sums the amount paid in December, 1823, viz., \$2,008 52, and upon the balance struck calculate the interest from that time up to the present date." This statement was submitted to the Secretary of the Interior, and approved by him. On the same day the Third Auditor of the Treasury Department, in accordance with the above-mentioned allowance of the law of pensions, and approval of the Secretary of the Interior, passed an account in favor of James Barron, deceased, for the sum of \$32,382 50, which was made up as follows:

Commutation	\$4,258 31
Interest to December 15th, 1823	10,385 83
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	14,644 14
Deduct amount paid in Virginia, 1823	2,008 52
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Remainder	12,635 62
Interest from December, 1823, to January 2d, 1850	19,746 88
	<hr/>
Total	\$32,382 50

The account thus passed by the Third Auditor was approved by the Second Comptroller on the same day; and on the same day also it was receipted for by James Lyons. At the time that the Secretary of the Interior allowed the claim of James Barron's administrator, the opinion of the Attorney General relative thereto does not seem to have been reduced to writing. It was, however, reduced to writing on the 31st of January, 1850, and communicated to the Commissioner of Pensions "as a guide for his future action." From the foregoing statements your committee draw the following conclusions:—First, that the Secretary of the Interior ordered the payment of interest, to the amount of \$28,122 19, to the representative of Commodore James Barron, for services rendered in the Virginia navy during the war of the revolution, twenty-seven years and more after the principal had been fully paid and discharged.

Secondly, that a large portion of the sum so ordered to be paid was interest upon interest, or compound interest. And, Thirdly, that such payment was without the authority of law.

The law under which the Commodore Barron claim was paid by the department is the third section of the "Act to provide for liquidating and paying certain claims of the State of Virginia," approved July 5th, 1832. That section is in the following words:—"Sec. 3. And be it further enacted, that the Secretary of the Treasury be and he is hereby directed and required to adjust and settle those claims, for half pay, of the officers of the aforesaid regiments and corps, which have not been or prosecuted to judgment against the State of Virginia, and for which said State would be bound on the principles of the half pay cases already decided in the Supreme Court of Appeals of said State, which said sums of money, herein directed to be settled and paid, shall be paid out of any money in the treasury not otherwise appropriated by law."

This section, in the opinion of your committee, does not authorize the payment of commutation in any case whatever. It directs the Secretary of the Treasury to adjust and settle claims for half pay. In no part of the section is commutation, in lieu of half pay, mentioned. It would, therefore, seem clear that such commutation cannot be paid under the law. Half pay is one thing. Commutation in lieu of half pay is another, and an entirely different thing. They were given by different laws of Virginia, and at different times, and under different circumstances. By her act of May, 1779, Virginia promised half pay for life to the officers of her army, "both in the State and continental lines." By her act of May, 1780, she declared the officers of her navy to be entitled "to the same pay and rations, the same privileges and emoluments," as the officers of her army. By virtue of these acts Virginia was liable for half pay for life; and not commutation, to the officers of her revolutionary army and navy. On the 19th day of December, 1790, her legislature passed another act, under which her highest courts decide, that the officers of her revolutionary army, *and they alone*, are entitled to commutation and interest, *that is to say, five years full pay and interest*, in lieu of half pay for life.

From this brief reference to history it will be at once perceived, that the allowance by Virginia of half pay for life was made under totally different circumstances from her allowance of commutation. When the former was granted we were engaged in a war. All of our means and exertions were required to bring that war to a successful termination. And it was with a view of contributing her full share to our success, that Virginia promised half pay for life, to commence from the termination of their service, to the officers of her army and navy. But when she allowed commutation in lieu of half pay, the war was over, and peace had been established for more than six years. Whatever, therefore, may be said of the propriety of the Virginia act of 1790, it cannot be pretended that it contributed to the success of the American revolution. Hence the obligations of the government with reference to the Virginia half pay claims, and her commutation claims, is not at all the same. The former having been incurred by the State of Virginia for the purpose and with the view of establishing American independence, might well be assumed by the United States. The latter having been *voluntarily* incurred by that State after our independence was achieved, was a mere bounty, for

which the nation is not and cannot be bound, in the same sense at least in which it is bound for the half pay for life promised by Virginia during the progress of our revolutionary contest.

It should be borne in mind that, according to the decisions of the Supreme Court of the Appeals in Virginia, interest is not allowable upon half pay,* and that it is allowable upon commutation from the 22d of April, 1783, until paid. The difference between discharging a claim without interest, and a claim for nearly the same amount with interest, at the rate of six per centum per annum for sixty-seven years, is not difficult of comprehension. This difference is rendered most obvious in the instance of Commodore Barron. His half pay for life, without interest, amounted to \$1,729, which is all that his administrator could have received from the treasury, if his claim for half pay had been settled under the third section of the act of 5th July, 1832; while the department allowed and paid the sum of \$32,382 50, as commutation and interest in lieu of half-pay. It appears a most unnatural construction which supposes that Congress, in directing the payment of half pay claims,—claims that never bear interest, means to direct the payment of commutation claims also,—claims which always bear interest from the close of the war of the revolution.

The views of your committee as to the true meaning of the act of 1832 are confirmed by the circumstances attending its passage. On the 19th of December, 1831, Thomas W. Gilmer, Commissioner on behalf of the State of Virginia, memorialized Congress in relation to certain claims of the State of Virginia, &c., on account of the services of the troops of her State line during the war of the revolution." This memorial was before Congress when the act of the 5th of July, 1832, passed. It is not for your committee to determine whether the statements made by Mr. Gilmer, the accredited agent of Virginia, were correct or not. It cannot be doubted that Congress believed those statements to be true, and were influenced by them in passing the law under consideration. Now in the memorial of Mr. Gilmer it is distinctly alleged, that "with the exception of a few cases, it is the principal only of these half pay claims which" Congress "are asked to refund to Virginia, as no interest was allowed on the claims which have been adjudicated by the courts. The State of Virginia has never commuted the half pay of her officers, as was done by Congress in relation to the half pay of the continental officers." And in certain supplemental notes, submitted by Mr. Gilmer, he states,—*"The third class, which includes those claims for half-pay which have not been prosecuted against the State, or on which no judgments have been rendered. The amount of these cannot be accurately known until the officers or their representatives come forward and establish their claims. As the State of Virginia never commuted the half-pay claims of her officers," &c.*

Now, in the face of these repeated declarations on the part of Virginia, through her duly appointed commissioner, that her officers were not entitled to commutation, your committee cannot believe that Congress de-

* The decision of the Supreme Court of Appeals is correctly stated in the report, as relates to the allowance of interest or half pay. The inferior courts of Virginia have sometimes allowed interest upon half pay. The Superior Court of Henrico allowed interest on the half pay on the estate of Commodore Barron from 1821, the time when the half pay was first demanded of the State of Virginia. But no interest is allowed by the Supreme Court of that State on half pay *See Markham's case, and Lilly's case, 1st Leigh.*

signed, by the third section of the act of 1832, the payment of commutation to those officers. Virginia said that she owed her revolutionary officers half pay, and half pay alone, and expressly declared that she did not owe them commutation. Congress accordingly directed the Secretary of the Treasury "to adjust and settle those claims for the half-pay, &c., for which Virginia would be bound on the principles of the half-pay cases, already decided by her court of appeals." How, under these circumstances, it can be seriously maintained, that the third section of the act of 5th of July, 1832, authorizes the payment of commutation and interest, your committee cannot understand.

The construction adopted by your committee, is the one which had been uniformly adopted by this government, until the incoming of the late administration. On the 26th of March, 1833, Mr. Secretary McLane decided in the case of George Walls, that commutation and interest were not payable under the act of Congress of the 5th of July 1832. In his letter to Charles J. Faulkner, Esq., disallowing the claim to George Walls, Mr. McLane says: "The 3d section of the act of Congress does not mention commutation or interest. The judgment for interest has been obtained since the passage of the act of Congress, and is consequently in no way binding on this department. Under all these circumstances, I do not consider the case embraced by the act of Congress, and do not consider myself authorized to pay the claim." On the 21st of March, 1833, Mr. Taney, as Attorney General of the United States, in deciding the case of Wm. Vawters, said "whatever may be the obligations of Virginia, Congress have only authorized *half pay to be given*," &c. An effort has been made to invalidate the opinion of Attorney General Taney, just quoted, by saying "that he does not seem to have had his attention brought to the law of Virginia, of 16th December, 1790." The ground on which this assertion is based, is not known to your committee. It is certain that, in order to understand the case of Lieutenant Vawters fully, an examination of the Virginia act of 1790 was necessary. Your committee, therefore, presume that Mr. Taney had that act before him when he decided the case, and will not suppose him derelict in the discharge of his duties, without some proof to sustain the accusation. But be that as it may, on the 26th of February, 1834, Mr. Taney again decided that commutation was not payable under the 3d section of the act of 5th July, 1832. At this time he was Secretary of the Treasury, and in deciding the cases of General George R. Clark, and James Merriwether, he said, "When I came into this department, I found the question of allowing commutation, or commutation with interest, under the act of Congress of the 5th of July, 1832, settled; and as far as appears by the record of the department, finally settled. I do not, therefore, feel authorized to disturb it. I am strengthened in this conclusion by the opinion of the committee of the House of Representatives who reported the bill, which finally passed into the act of 5th of July, that the act would be so construed by the United States as not to allow commutation. * * * Under these circumstances, the difference between commutation with interest, and half pay for life, cannot be paid by this department in the case of General George R. Clarke, and in the case of James Merriwether, half pay for life, only, has been allowed by this department."

On the 27th of July, 1843, Mr. J. M. Porter, Secretary of War, rejected nine claims for commutation, saying, "If I had any doubt about the case,

I would refer it to the Attorney General; but it is so perfectly clear that I cannot hesitate. The act of 5th July, 1832, provides that the Secretary of the Treasury (by a subsequent act, the duty is enjoined upon the Secretary of War,) be directed and required to adjust and settle those claims for half pay of the officers of the aforesaid regiments and corps, &c. * * The plain reading of this act is, that the United States are to adjust and settle claims for half pay. There is no provision to adjust and settle claims for the five years full pay allowed by the State of Virginia to her revolutionary officers."

On the 8th day of April 1844, Mr. Attorney General Nelson gave his opinion with regard to the same nine claims, which had been rejected by Mr. Porter. In that opinion he says, "The question submitted to me is whether, under the 3d section of the act of Congress of the 5th July, 1832, the liability of the United States is for the half pay for life to the persons therein named; or whether it extends to the commutation for five years full pay, they having died within ten years after the close of the revolutionary war. The question is not altogether free from difficulty; and if it were an open one, I should feel myself called upon, in any opinion I might express, to give a very full and particular statement of the reasoning by which that opinion was controlled. But in view of the uniform action of the several departments of the government, founded upon an interpretation placed on the law by an eminent jurist then at the head of the Treasury department, immediately after its passage; and fortified by the subsequent decisions of a Secretary of the Treasury, and an Attorney General, no less distinguished, I regard the matter as having passed into judgment, and the construction of the law to which the late Secretary of War has conformed his decision, as far as the Executive departments of this government are concerned, as fixed, and as properly subject to modifications or change by the power of Congress alone. I am of opinion, therefore, that the claims in question ought not to be paid without an act of Congress to authorize it." The Commissioner of Pensions, in a letter of the 24th of May last, addressed to one of your committee, states, "I cannot discover that under the act of July 5, 1832, either the Treasury department, or the War department, or this office, ever admitted a claim to commutation until after the case of Dr. John M. Galt's heirs was submitted to the Attorney General, in March, 1847."

Your committee believe that these repeated and multiplied decisions should conclusively settle the construction of the law with regard to which they were pronounced. It has, however, been said that the act of 5th July, 1832, has received a construction from Congress which extends the provisions of its 3d section to claims for commutation. To support this position, reference is made, in the first place, to the 6th section of the act of March 3d, 1835, entitled "An act to continue the office of Commissioner of Pensions." That section is in these words: "Section 4th, And be it further enacted, that the duties heretofore required of and performed by the Secretary of the Treasury, under the provisions of the act approved on the 15th of May, one thousand eight hundred and twenty-eight, granting allowances to the officers and soldiers of the revolutionary army, and in relation to Virginia claims for revolutionary services and deficiencies of commutation, be, and the same are hereby transferred to, and made the duties of the Secretary of War, from and after the first day of June next." Your committee cannot perceive, in

the section just cited, anything to alter in the slightest degree the act of the 5th of July, 1832. That section simply transfers certain pre-existing duties from one department to another. It expressly provides "that duties heretofore required of, and performed by the Secretary of the Treasury," under certain acts of Congress, should belong to the Secretary of War. Those duties are not defined in express terms. But they are rendered certain by reference to laws then in force. The act of 5th of July, 1832, is one of those laws. The duties which were imposed by that act upon the Secretary of the Treasury, were transferred by the act of 1835 to the Secretary of War. If, therefore, the 3d section of the act of 1832 allowed commutation, the act of 1835 directed that allowance to be adjusted by the Secretary of War. But if the act of 1832 did not allow commutation, then the Secretary of War had no right to allow it under the act of 1835.

But it is said that claims for commutation are mentioned in the act of 1835, and hence Congress must have understood the third section of the act of 1832 as embracing claims of that character. To this conclusion your committee could not assent, even if the act of 1835 did mention claims for commutation. But the truth is, no such claims are mentioned in that act. Its language is, "Virginia claims for revolutionary services and *deficiencies of commutation.*" Now, deficiency of commutation is certainly not commutation in lieu of half pay. Commutation in lieu of half pay is demanded because it is considered more valuable; that is, because it exceeds the half pay for life. Hence, to term a claim for commutation in lieu of half pay for life, the same as a claim for deficiency of commutation, is to do violence to the plainest meaning of language. What then does the expression in the act of 1835, "deficiency of commutation," mean? It is believed to embrace cases of this kind. Before the passage of the act of 1832, some of the officers of the Virginia army, or their representatives, had received from that State commutation in lieu of half pay. In some instances it was discovered that the commutation received was less than the half-pay for life. Under these circumstances, application was made to that government, under the third section of the act of 5th July, 1832, for the half pay, deducting the commutation, which had been paid. In these cases there was substantially a claim for "a deficiency of commutation." The claim rested on the ground that the act of 1832 directed the allowance of half pay. And although commutation in lieu of half pay had been paid by Virginia, yet it was contended that such payment, being less than the half pay for life, should be considered not a total, but only a pro tanto discharge of the claim for half pay. In 1833, in the case of Christopher Roane, Mr. Taney allowed the difference between the half pay and the commutation which had been paid by the State of Virginia. And since that time, although the decisions of the department upon the subject have been very far from uniform, yet many similar claims have been paid under the act of 1832. Your committee, therefore, believe that it is claims of the kind just mentioned, and not claims for commutation in lieu of half pay, that properly come within the meaning of claims for a deficiency of commutation. But, besides this, the proper officers of this government never, until recently, considered the act of 1835 as authorizing the payment of commutation in lieu of half pay. The Secretary of War, in 1843, and the Attorney General, in 1844, decided that commutation could not be paid to Virginia revolutionary offi-

cers, notwithstanding the act of 1835 was then in full force. Whatever weight, therefore, the views of your committee, with reference to the long-continued construction of the act of 1832, may be entitled to, would seem to attach equally to the act of 1835. For from the passage of the last mentioned act until the year 1849, a period of fourteen years, it was never construed to sanction the payment of commutation. It is still further contended, that a clause in the act making appropriations for the civil and diplomatic expenses of government for the year ending the 30th day of June, 1849, is a construction on the part of Congress, that commutation was payable under the third section of the act of July 5th, 1832. The clause relied upon is as follows:—"For repayment to Virginia of money paid by that State under judgments of her courts against her to revolutionary officers and soldiers, and their representatives, for half pay and commutation, a sum not exceeding \$81,273 17; provided, however, that the Agent of said State shall first deposit authenticated copies of the acts or judgments under which the money was paid by the State of Virginia."

Your committee cannot perceive how the act of 1832 is affected by the clause just recited. That clause simply appropriates *not more than* \$81,273 17 for the repayment to the State of Virginia of certain sums of money. But no allusion, directly nor indirectly, is made to the act of 1832. If Congress had supposed that prior laws authorized the repayment to Virginia of the sums provided for in the Civil and Diplomatic Appropriation act of 1848, that provision would not then have been made. The fact of its being made, is evidence that without it no such repayment to Virginia would have been legal. But this is not all. The clause which has been quoted from the Appropriation act of 1848, provides that a sum *not exceeding* \$81,200 17 shall be paid to Virginia for commutation or half pay. The very terms of the clause are inconsistent with the idea that Congress intended to decide, that commutation was payable under the 3d section of the act of 1832. That section contains an indefinite appropriation for the purpose therein provided. If, therefore, commutation for half pay be payable under it, the Treasury of the United States is liable for whatever amount, even if it be millions, that Virginia can be required to pay according to the principles established by her Court of Appeals. But the act of 1848 expressly provides that *not more than* \$81,200 17 shall be paid for commutation. To say, then, that such an act limiting the amount which should be paid for commutation, authorizes the payment of a greatly larger amount to the same purpose, is a position that your committee cannot assume. If then Congress declares that no more than a given sum shall be applied to a certain purpose, and the Executive department is justified in construing that declaration into an indefinite appropriation for the same purpose, the will of Congress will be completely nullified; and that clause of the constitution which provides that "no money shall be drawn from the treasury, but in consequence of appropriations made by law" will become a mockery. Again, the 3d section of the act of 5th of July, 1832 directs the payment of those claims for half pay only, which had not "*been paid or prosecuted to judgment against the State of Virginia.*" Now the administrator of Commodore James Barron's estate obtained a judgment against the State of Virginia in 1823, for the Commodore's half pay, which was discharged by that State in the same year. The Barron claim was, therefore, both prose-

cuted to judgment and paid. Hence it came within both of the exceptions of the act of 1832, and its payment, recently, was not only without the authority of law, but was in direct contravention of it.

Finally, whatever doubt may exist as to the propriety of allowing commutation at all, under the 3d section of the act of 1832, it is certain, that commutation can be paid only in those cases in which Virginia would be liable for it, according to the decisions of her Court of Appeals. Now the Court of Appeals of Virginia have expressly decided that the naval officers of that State are not entitled to commutation under her laws. The decision referred to was pronounced in the case of Markham's administrator vs. the Commonwealth, in April, 1830. In that case the Court said "it was only by force of the provisions of the act of 1790, that commutation and interest, in lieu of half pay for life, could be allowed. That act was confined, in its terms, to officers of the State line, not extending to officers of the navy; and the former laws, putting the officers of the navy upon the footing of those of the army, in respect to all privileges, emoluments and advantages, referred only to such as was then allowed them, and not to such as might thereafter be allowed; consequently, officers of the navy could not claim commutation under the act of 1790, and Markham was entitled to half pay from the 1st of May 1783, when he was exchanged, until his death, according to the opinion originally given in this case; *but without interest*, for the reasons assigned in Lilly's case." From the language just quoted, it will be seen, that the Supreme Court of Appeals of Virginia has expressly decided, that officers of her navy are not entitled to commutation in lieu of half-pay. But the act of 1832 directs that claims for half pay should be settled according to "the principles of the half pay cases already decided in the Supreme Court of Appeals" of the State of Virginia. Markham's case had been already decided, when the act of 1832 passed. The principles of that case are, therefore, binding upon the Executive departments of of this government when adjudicating Virginia half pay claims under the act of 1832. And as one of the principles of that case is, that naval officers are not entitled to commutation, your committee cannot perceive any rule that justifies the payment of commutation to such officers under existing laws. The authority of Markham's case has been attacked on this ground, that the opinion mentioned was an *obiter dictum*. But such is not the fact. The point was expressly made whether commutation was payable in the case. And the court expressly decided that commutation was not payable, although they say "that Markham was in active service until the end of the war, within the spirit of the act of 1790." The opinion expressed in Markham's case with reference to commutation was not only an *obiter dictum*, but it contains a principle which seems to have been acted upon by the Virginia courts from 1790, down to the present time. Your committee believe there is no case, in which any court of that State has ever allowed commutation to officers of her navy. This fact is sufficient of itself to protect the decision in Markham's case from all the assaults which have been lately made upon it.

Your committee cannot dismiss this subject without again referring to the mode of computing interest which was adopted by the Secretary of the Interior, in the case of Commodore Barron. In 1823, Virginia paid the Commodore's administrator all that he claimed, which was \$2,008 52. Yet in settling the claim for commutation, in the Barron case, last

winter, the department made the payment by Virginia in 1823 the ground for computing interest upon interest from that date. The effect of this mode of computation was, that there was paid to the administrator of Commodore Barron, near \$12,500 more than he would have received, had Virginia not made the payment of 1823. Your committee are not acquainted with any principle of law or of justice, that will sanction such a result. The blame for making such a calculation, it has been attempted to throw upon the Commissioner of Pensions. This effort is grossly unjust to that officer. He rejected, and properly rejected, the Barron claim for commutation. An appeal was taken from this decision to the Secretary of the Interior. The Secretary allowed the claim, and directed the Commissioner of Pensions accordingly. The Commissioner, in obedience to the instructions of his superior, adjusted the claim, and submitted his adjustment to the Secretary of the Interior for his approval, which was given. The case being before the Secretary on an appeal, it was his duty to examine it and to see that such an award was made as accorded with his views. There is no room to say that the allowance of compound interest was a mistake of the Commissioner of Pensions. The allowance of compound interest was precisely in accordance with a previous decision of the Secretary of the Interior. The decision referred to was in the case of John M. Galt's administrator. That was a Virginia claim for commutation, and the first that was ever paid by the United States under the 3d section of the act of 1832. Compound interest was claimed in that case. The subject was brought to the especial consideration of the Secretary of the Interior, by the Second Comptroller, as will appear by the evidence herewith communicated. And the Secretary directed the compound interest to be paid. The decision of the Secretary in the case of John M. Galt was, as your committee believe, uniformly followed by the department until after the allowance of the Barron case. The Commissioner of Pensions but followed the Secretary's decision, in allowing compound interest in the Barron case. Whatever censure, therefore, attaches to such allowance, does not belong to the Commissioner. It is proper to state that in the Galt case, compound interest was allowed by the judgment of one of the the inferior courts of Virginia. But that judgment having been rendered since 1832, was in no way binding upon this government. The act of 1832 expressly directs the department to be bound by decisions which had already been made, and not by those which might be made after the passage of that act. The judgment in the Galt case was also by an inferior court, and therefore not binding on this government. For the act of 1832 declares that the decisions of the Court of Appeals shall furnish the evidence by which the claims for half pay shall be allowed.

Your committee trusts, that the foregoing statement, imperfect as it may be, will enable the House to understand the principles involved in the allowance of commutation in the case of Commodore Barron, and will induce the Interior Department to return to that rule of construction with reference to the act of 1832, which has been so long adopted, and has so long prevailed.

The third resolution referred to your committee is in the following words, to wit: "3d. Whether said Ewing re-opened and paid a claim to a person or persons on behalf of the Chickasaw Indians, of one hundred and eight thousand dollars, after the same had been adjudicated and

rejected by the proper officer of the government, before said Ewing was inducted into the office of the Interior; who was the agent or agents, attorney or attorneys, and who was the party or parties in interest, and whether said agent, attorneys, or parties in interest, held, at the time of such payment, any office under this government, or now hold such office; and if so, what office." The investigation of this branch of the subject led your committee to an inquiry into the provisions of the treaty of 1834, between the United States and the Chickasaw tribe of Indians. By the eleventh article of that treaty, it was stipulated that the Chickasaw country should be sold as public lands of the United States, and the funds resulting from said sales, after deducting all necessary expenses, were to be invested for the benefit of the Indians; and the United States undertook to guaranty the payment of the interest on said investment.

The thirteenth article of the same treaty stipulated, that in the event of the Chickasaw Indians, or any part of them, desiring to remove to any newly acquired home, within the limits of the United States, and upon their giving notice of such desire, then the United States undertook to furnish competent persons safely to conduct them to their future destination, and with supplies necessary for the maintenance of the same, and for one year after their arrival at the west—provided the Indians should desire to be supplied for so long a period. These supplies were to be charged to the general Chickasaw account.

It will be remembered, that the supplies were only to be furnished at the desire of the Indians.

On the 17th of February, 1837, the chiefs and head men of the Chickasaws gave notice to the President, that a considerable portion of the tribe would be ready to emigrate about the first of May in that year.

On the 30th of March, 1837, C. A. Harris, writing from the office of Indian Affairs in this city, informed the Indians, that their wishes had been anticipated by the department, and that some preliminary measures had been taken and were then in progress to carry them into effect—such as the appointment of agents, and the purchase of provisions, and that further steps would be taken to accomplish their wishes in relation to their removal.

On the 11th of March, 1837, and as appears from the correspondence, before the receipt of the notice from the Indians dated February 17 of that year, C. A. Harris directed Lieutenant J. D. Seawright to repair to Cincinnati forthwith, for the purpose of securing proposals and concluding contracts for furnishing rations to Chickasaw emigrating Indians.

Your committee have been unable to find any official report, showing in what manner and to what extent Lieutenant Seawright executed this commission, or that it was executed by him at all. Contracts were concluded, however, for the purchase of provisions, cost of transportation, &c., &c., amounting in the aggregate to one hundred and forty-four thousand six hundred and seventy-seven dollars and sixteen cents. The Indians submitted to a charge of \$32,631 80 on account of such purchases, costs of transportation, &c., having received that amount, as they admitted; but as they alleged the purchases and contracts to have been irregular and without their authority, they would not recognize their validity, and refused to allow the residue, \$112,045 34, to be charged to their general account.

On the 7th of April, 1845, Dr. W. M. Gwin, in a paper addressd to the Second Auditor of the Treasury, brought this refusal to the notice of the government. Meantime, the amount (\$112,045 34) had been charged to the Chickasaw account by the accounting officer of the Treasury.

On the 18th of April the Secretary of War, in reply to a letter of Dr. Wm. M. Gwin, calling his attention to this charge, gave the opinion that as an error had been committed, it ought to be corrected, unless there existed some legal prohibition against opening and re-considering the matter.

On the 4th of September, 1846, the Secretary of the Treasury, in a written communication to the Second Auditor of the Treasury, advised him, in substance, that if there was evidence before him to justify the conclusion that error existed in the original statement of the Chickasaw account, he was authorized to re-open and audit it again.

Sept. 5th, 1846, the Second Auditor of the Treasury certified to the Second Comptroller of the Treasury, that there was due to the Chickasaw nation \$112,240 99, being the amount of their account for moneys *erroneously* paid by the United States out of the Chickasaw fund to sundry persons, for provisions purchased at Cincinnati in 1847. At this time, there were \$58,124 14 subject to requisition for the payment due the Chickasaws.

On the 8th of September, 1846, the Second Auditor of the Treasury certified to the Second Comptroller for his decision, that there is due Wm. M. Gwin \$56,021 49, as appears from statements and vouchers transmitted—that being one half of the \$112,042 99 previously ascertained to be due the Chickasaws; and on the 9th of September, the Second Comptroller transmitted to the Commissioner of Indian Affairs the report of the Second Auditor, and all the papers connected with the claim, in order that they might receive proper administrative examination, as required by law, they being, he said, connected with Indian affairs, and had been improperly sent to him.

The Commissioner of Indian Affairs refused payment; and June 27th, 1849, in a letter addressed to the Secretary of the Interior, gave the reasons for his having so long withheld payment. They were, as your committee gather them from his letter, 1st, that there were no funds subject to such a demand; 2d, that the Secretary of War had previously, when thereto requested, peremptorily refused to make a requisition; 3d, that the general fund could not be used for this purpose, and that a special appropriation by Congress was necessary; 4th, that the claim of Wm. M. Gwin, of one half of \$182,042 99—say \$56,021 49 for his services, was enormous, and that any contract or agreement entered into with the Indians, without the sanction of the department, was invalid and of no binding effect.

This brings your committee to consider the contract under which Dr. Gwin appeared as the agent or attorney of the Indians, and by virtue of which he claimed the fee of \$56,021 49.

On the 2d of January, 1845, Dr. Gwin wrote to the Commissioner of Indian Affairs, inquiring if Ish-ta-ho-to-pa, the king, Isaac Albertson, Benjamin Love, Sloan Love, James Wolfe, James Gamble, and Joseph Colbert, were acting commissioners of the Chickasaw nation—and whether they were authorized under the treaty of 1834 to transact the business of the nation.

On the 17th of the same month, the Commissioner replied in the affirmative to both these inquiries.

April 3d, 1845, Ish-ta-ho-to-pa, writing from the Chickasaw nation, informed the Commissioner of Indian Affairs, that a power of attorney, making Dr. Gwin the agent of the Chickasaw nation, was never signed by him.

April 27, Dr. Gwin admitted, in a letter to the Commissioner of Indian Affairs, that Ish-ta-ho-to-pa, the king, did not sign the *memorial* in person, but says the king's name was signed by Isaac Albertson, who represented that he had the king's authority to act for him.

A copy of a power of attorney to Dr. Gwin, without date, was transmitted to your committee by the Secretary of the Interior, in which reference is made to certain written agreements, and another power of attorney, executed by the Indians to Dr. Gwin, November 26th, 1844. As neither the written agreements nor the first power of attorney has been before your committee, we are unable to say by whom they were executed, or what they contained. They are doubtless the papers alluded to by Ish-ta-ho-to-pa, as having been signed with his name without his authority.

It appears from the copy of the contract or power of attorney sent to the Commissioner by the Secretary of the Interior, and which does not bear the name of Ish-ta-ho-to-pa, that Dr. Gwin was to retain all the money then in his possession, belonging to the Chickasaws. He was to have one half of all that should be declared due the Indians on account of provisions purchased erroneously at Cincinnati in 1837, (and which was afterwards ascertained to be \$112,042 99,) and he was to have one half of what should be found due the Chickasaws on account of lands sold at Choe-chee-ma, or Columbus, and which amounted to ten or eleven thousand dollars.

This contract or power of attorney is signed by Wm. M. Gwin, Isaac Albertson—Chief—Benjamin Love, Sloan Love, James Gamble, James Wolfe, Joseph Colbert, Illap Combe, Joh-tuck-s-w-ka-tubby, Ish-kel-li-ha, and Chickasaw-wa-nabby; and it is witnessed by William Barnett, Supreme Judge, C. Dist., and Cyrus Harris, generally, and by S. F. Butterworth as to Wm. M. Gwin. The contract or power of attorney is without date, and your committee have been unable to ascertain with certainty the time of its execution.

On the 21st of July, 1845, A. M. M. Upshaw, Chickasaw Agent, transmitted to the Indian Bureau, through Wm. Armstrong, Superintendent Indian Affairs West, the resignation of the Chickasaw commissioners, they being the same persons who with others signed the contract with Dr. Gwin, excepting Ish-ta-ho-to-pa, the king, who, as before remarked, did not sign that paper. These commissioners resigned July 18th, 1845.

If this resignation took place before the execution of the contract with a power of attorney to Dr. Gwin, it is perfectly clear that such contract and power of attorney were of no binding effect upon the Indian tribe, the paper being without date. Your committee have looked to such evidence as was found in the Department of the Interior, to establish the date of its execution.

An affidavit of Charles Johnson, a Chickasaw trader, (a copy of which has been supplied your committee by the Secretary of the Interior,) discloses the following facts: 1st. That the contract and power of attorney was sent to him in blank, through the hands of Wm. Armstrong; 2d. That Commissioners Albertson, Benjamin Love, and Sloan Love,

upon the matter being explained to them by Johnson, refused at first to sign the paper; 3d. That a Chickasaw Council was held soon after, and at that Council the commissioners resigned in a body, in consequence of dissatisfaction among the Indians; 4th. That about *two weeks* after their resignation, the commissioners went to Fort Washita and there signed the power of attorney. This affidavit is dated 29th of January, 1850. It was before the Secretary of the Interior at the time when he made a final settlement of the matter in controversy, and was the only evidence so far as your committee have been enabled to discover, which tended to establish the date of the execution of the contract and power of attorney: It was not presented until after the resignation of the Indian commissioners.

September 9th, 1846, Dr. Gwin transferred his interest under this contract to Messrs. Corcoran & Riggs.

It appears that the contract and power of attorney was lost or mislaid, and on the 5th day of January, 1850, Mr. W. W. Corcoran, one of the firm of Corcoran & Riggs, made an affidavit of this fact, and furnished what he testified to the best of his belief to be a true copy of the original. It does not appear that the Secretary of the Interior had any other evidence of the contents of the original paper, than was supplied by this copy.

The same papers present abundant evidence that the Indians, through their agents and attorneys, were diligent and persevering in their resistance to the claims set up by Dr. Gwin under this contract and power of attorney. From time to time they protested; and at all times, and by all the means in their power, they resisted what they termed a fraud upon their rights.

On the 8th day of March, 1850, the Secretary of the Interior transmitted the papers to the Commissioner of Indian Affairs, that arrangements might be made for the payment to Messrs. Corcoran & Riggs, under the opinions of the Attorney General, from January 3d, and March 7th.

On the 12th of March, 1850, Messrs. Corcoran & Riggs received for a requisition on the Treasury for \$56,021 49, in full payment of the claim transferred to them by Dr. Gwin.

R. G. Corwin and Caleb B. Smith were the attorneys who seem to have prosecuted the case. Mr. Smith is and was, at the time he prosecuted this claim, a member of the Board of Mexican Commissioners.

In view of the foregoing facts, your committee do not hesitate to say, that the claim was rejected by the Commissioner of Indian Affairs, who was the proper officer of the government to adjust and settle it; and that said rejection was subsequently approved by the late Secretary of War, Wm. L. Marcy, under whose supervision the Indian Bureau then was; and that it was afterwards paid by order of Thomas Ewing, Secretary of the Interior, to Messrs. Corcoran & Riggs, assignees of Wm. M. Gwin. It was so paid against the earnest protest and remonstrance of the Indians, under a copy of a power of attorney without date, and which had been executed under circumstances which cast great doubt upon its validity—a power of attorney which had been rejected by the Indians as spurious, and the original of which had been lost. Your committee feel called upon to note the fact, that although there were subscribing witnesses to this power of attorney, their testimony seems not to have

been taken as to the correctness of the copy in which the money was paid. The copy sworn to and prosecuted by the party in interest, appears to have been the only evidence required by the Secretary of the Interior, to justify the payment to Messrs. Corcoran & Riggs.

The testimony taken under the fourth resolution, is reported to the House for their consideration. The Secretary of the Interior admits he has made removals in the General Land Office, but denies that he has appointed any clerks in that department, which denial is sustained by the evidence.

The fifth resolution is as follows: 5th. Whether any person or persons in office by appointment from said Ewing, are correspondents or editors of newspapers, and what papers they edit or write for, and what are their salaries. There is testimony before the committee, that clerks under the control of the Secretary of the Interior have been in the habit of writing to, and corresponding with, editors of newspapers; but it does not appear that such letters were written during office hours. The committee report the following resolutions:

Resolved, That the payment by the Secretary of the Interior, of \$32,382 50 to the administrator of Commodore James Barron, as commutation pay for the naval services of said Barron during the revolutionary war, was made in violation of law.

Resolved, That officers of the Virginia navy during the war of the revolution, are not entitled to commutation pay.

Resolved, That the payment of compound interest in the case of Commodore James Barron was made in violation of law.

Resolved, That the sum of \$56,021 49 paid to Messrs. Corcoran & Riggs, as assignees of Wm. M. Gwin, was justly due to the Chickasaw Indians, and was improperly paid to Corcoran & Riggs.

The following is a list of the names of the persons who have been admitted to the office of the Secretary of the Board of Education, since the first meeting of the Board, on the 1st of January, 1845, to the present time. The names are given in the order in which they were admitted, and are taken from the records of the Board.

1. Mr. J. C. Smith, Secretary, 1845.

2. Mr. W. H. Jones, Secretary, 1846.

3. Mr. T. R. Green, Secretary, 1847.

4. Mr. A. B. White, Secretary, 1848.

5. Mr. C. D. Black, Secretary, 1849.

6. Mr. E. F. Gray, Secretary, 1850.

7. Mr. G. H. Brown, Secretary, 1851.

8. Mr. I. J. Clark, Secretary, 1852.

9. Mr. K. L. Evans, Secretary, 1853.

10. Mr. M. N. Foster, Secretary, 1854.

11. Mr. O. P. Gibson, Secretary, 1855.

12. Mr. Q. R. Hall, Secretary, 1856.

13. Mr. S. T. Hill, Secretary, 1857.

14. Mr. U. V. King, Secretary, 1858.

15. Mr. W. X. Lee, Secretary, 1859.

16. Mr. Y. Z. Martin, Secretary, 1860.

17. Mr. A. B. White, Secretary, 1861.

18. Mr. C. D. Black, Secretary, 1862.

19. Mr. E. F. Gray, Secretary, 1863.

20. Mr. G. H. Brown, Secretary, 1864.

21. Mr. I. J. Clark, Secretary, 1865.

22. Mr. K. L. Evans, Secretary, 1866.

23. Mr. M. N. Foster, Secretary, 1867.

24. Mr. O. P. Gibson, Secretary, 1868.

25. Mr. Q. R. Hall, Secretary, 1869.

26. Mr. S. T. Hill, Secretary, 1870.

27. Mr. U. V. King, Secretary, 1871.

28. Mr. W. X. Lee, Secretary, 1872.

29. Mr. Y. Z. Martin, Secretary, 1873.

30. Mr. A. B. White, Secretary, 1874.

31. Mr. C. D. Black, Secretary, 1875.

32. Mr. E. F. Gray, Secretary, 1876.

33. Mr. G. H. Brown, Secretary, 1877.

34. Mr. I. J. Clark, Secretary, 1878.

35. Mr. K. L. Evans, Secretary, 1879.

36. Mr. M. N. Foster, Secretary, 1880.

37. Mr. O. P. Gibson, Secretary, 1881.

38. Mr. Q. R. Hall, Secretary, 1882.

39. Mr. S. T. Hill, Secretary, 1883.

40. Mr. U. V. King, Secretary, 1884.

41. Mr. W. X. Lee, Secretary, 1885.

42. Mr. Y. Z. Martin, Secretary, 1886.

43. Mr. A. B. White, Secretary, 1887.

44. Mr. C. D. Black, Secretary, 1888.

45. Mr. E. F. Gray, Secretary, 1889.

46. Mr. G. H. Brown, Secretary, 1890.

47. Mr. I. J. Clark, Secretary, 1891.

48. Mr. K. L. Evans, Secretary, 1892.

49. Mr. M. N. Foster, Secretary, 1893.

50. Mr. O. P. Gibson, Secretary, 1894.

51. Mr. Q. R. Hall, Secretary, 1895.

52. Mr. S. T. Hill, Secretary, 1896.

53. Mr. U. V. King, Secretary, 1897.

54. Mr. W. X. Lee, Secretary, 1898.

55. Mr. Y. Z. Martin, Secretary, 1899.

56. Mr. A. B. White, Secretary, 1900.

P A P E R S

IN THE CASE OF

COMMODORE JAMES BARRON.

P A P E R S

OF THE CASE OF

COMMODORE JAMES BARRON.

CASE OF JOHN M. GALT.

PENSION OFFICE,
March 22, 1849.

SIR: The papers in the case of John M. Galt, deceased, are herewith returned, and conformably to your instructions, I make the following report.

Under the 3d section of the act of the 5th of July, 1832, his administrator drew half pay at the Treasury Department. A claim is now presented for commutation of five years full pay, with interest, as the amount of half pay does not equal the commutation and interest. The Secretary of War, in August last, entertained the opinion that he was not authorized by the terms of the act of July 5, 1832, to pay commutation, but declined any positive action. Mr. Lyon's printed statement, herewith enclosed, contains a statement of the facts. The question is whether there is any provision made in the 3d section of the act of the 5th July, 1832, or in the 4th section of the act of the 3d March, 1835, (vide page 779, chap. 46, U. S. Statutes at Large, by Peters,) or in the act of the 12th of August, 1848, "making appropriations for the civil and diplomatic expenses of the government for the year ending the thirtieth day of June, one thousand eight hundred and forty-nine, and for other purposes." (Vide 3d paragraph, page 155, pamphlet edition of U. S. Laws passed at the 1st session of the 30th Congress.

I have the honor to be,
your obedient servant,

J. S. EDWARDS.

Hon. T. EWING,
Secretary of the Interior.

Endorsed on the above letter,

This being the first of a class of cases, and a question of law only arising in it, I respectfully refer it to the Attorney General for his decision.

T. EWING,
Secretary of the Interior.

ATTORNEY GENERAL'S OFFICE,
27th March, 1849.

SIR: If the question presented by the case of the representative of John M. Galt, which you have referred to this office, was a new one, and

depended alone on the third section of the act of July 5th, 1832, I should entertain little or no doubt upon it.

I should have construed that section, as embracing all claims of a like character with those included with the *first* and *second* sections not prosecuted to judgment, and paid, or prosecuted to judgment. These consisted, amongst others, of claims for commutation, as well as half pay.

It would seem to be singular that Congress should provide for claims sued to judgment, and although apparently meaning to cover all such claims as Virginia was responsible for, and could be sued for and made to pay, should, by the imperfection of the terms adopted, fail to include all.

But the question, as far as that act alone is concerned, is not, according to the practice, and the proper practice of this office, to be considered an open one. My predecessors entertained a different view of the act, and have more than once so decided.

But although this is the rule of the office, yet when Congress have often expressed an opinion in conflict with that of the office, it has been considered as in the nature of a legislative interpretation, which becoming courtesy to the legislative department of the government requires the Executive to observe. In this case I think there is such an interpretation. The doubt, under the act of 1832, was, whether commutation claims were provided for by its *third* section.

When the opinion of Attorney General Taney was given, he does not seem to have had his attention brought to the law of Virginia, of 16th December, 1790, (13 Henning 131,) under which, as I think, her courts decided that the officers referred to in that law were entitled to commutation. The judgments against her for such claims were not, I think, given by way of compromise, but of right, arising under this act of 1790.

His opinion was also prior to the act of Congress of 3d of March, 1835, (it was given 21st March, 1833,) which evidently contemplates *commutation* claims, and was of course prior to the act of 12th August, 1848, making appropriations for the civil and diplomatic expenses of the government, by which eighty-one thousand two hundred and seventy-three dollars and seventeen cents were appropriated for "re-payment to Virginia of money paid by that State under judgment of her courts against her, to revolutionary officers and soldiers, and their representatives, for half pay and *commutation of half pay, &c.*"

These two acts, in my judgment, are to be considered legislative interpretations of the act of 5th July, 1832, and as the expression of an opinion by Congress, with whom the propriety of paying the claims altogether rests, that it was the purpose of the *third* section of the act of 1832, to provide for commutation of half pay, as well as half pay. I think this should be, and is binding on the Executive, and of course that the claim in the particular case should be allowed.

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

REVERDY JOHNSON.

HON. THOMAS EWING,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
March 27, 1849.

SIR: Your letter of the 22d inst., with the accompanying papers, in relation to the claim of John M. Galt, having been referred to the Attorney General for his opinion, I enclose herewith a copy of the decision of that officer, dated this day, by which you will be pleased to be governed in this and similar cases.

The papers are returned.

Very, &c.,
T. EWING, Secretary.

COMMISSIONER OF PENSIONS.

CASE OF THOMAS EWELL.

DEPARTMENT OF THE INTERIOR,

July 14, 1849.

SIR: The case of Thomas Ewell's heirs is respectfully referred to you for an opinion, on the single question whether the applicants are entitled to interest upon the commutation due their ancestor, and if so, from what time.

Sovereigns never pay interest unless it be due by special contract, or by direct assumption. It is presumed that they are at all times able and willing to pay their debts, and comply with their contracts, whenever demand is made, and proof adduced to establish the claim. Hence delay of payment is, in theory, chargeable to the laches of the claimant in not presenting his claim.

This claim rests upon the resolution of Congress of the 22d March, 1783, which provides "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 bearing interest at six per cent." The securities are to bear interest, but from what time? from the time they are issued, or from the termination of the service? Nothing is said of interest if the payment be in money; and by the act of Congress of July 5, 1832, 3d sec., it can be made in money only. Can interest be allowed on this money by the accounting officers? I confess I entertain strong doubt on the subject, and if it were *res integra*, my opinion would be against it.

But the Virginia courts have in all cases given judgment for interest as well as principal; in some cases for interest alone where the principal had been fully paid; and this claimant could, I suppose, go before their courts and recover interest and then come and present his claim, and under the act the United States must pay it.

Yet is it not the safer course, under all the circumstances, to reject the claim for interest until the claimants shall so recover it? or until an act of Congress in direct terms provide for its payment? The case of Galt, in which you gave an opinion (March 27) was one in which a judgment had been recovered against Virginia, and which recovery the United States had expressly assumed to pay. In Ewell's case there is no judgment; and the decisions in Virginia not being in the direct case, are not absolutely binding upon us, though entitled to great respect as authority. A judgment of the courts of Virginia, when obtained, must, as I have already said, be paid, *interest* and all. It is therefore no ad-

vantage to the United States to withhold the payment of interest; but is the case actually made out, in which the accounting officers can pay it?

I throw out these hasty suggestions to call your attention to the difficulties which I find in the matter, and wish your early attention to it.

Very, &c.

T. EWING, *Secretary.*

To the ATTORNEY GENERAL
of the United States.

ATTORNEY GENERAL'S OFFICE,
July 20th, 1849.

SIR: The point suggested in the case of the claim of the heirs of Thomas Ewell, upon which you have desired my opinion, I have considered.

It is certainly true that, as a refusal or delay in the instance of a debtor sovereign to pay a debt, is never to be presumed, that interest, as a general rule, is not to be exacted. But there are exceptions, and in my opinion this claim furnishes one. It is now too late to inquire whether, originally, interest could be demanded upon commutation pay.

The opinion I gave on the 27th of March last in Galt's case, to which you refer, and under which you have acted, I see no reason to question. It is true that in the claim now before me, a judgment has not been obtained against Virginia for the amount demanded, but it is clear that she is liable for it, and that her courts will so decide. In that event you concede that the United States will be compelled to indemnify Virginia if she pays, or to pay the claimants, if they then present their claims to the United States.

This being so, and I think it is, beyond all doubt, I am of opinion that the interest should be paid as well as the principal, and at once. To compel the claimants to incur the expense of a suit against Virginia, which can but result in one way, and to be subjected to delay consequent upon it, whilst it could not possibly enure to the benefit of the United States, would be to do great unnecessary injustice; I repeat, therefore, that the interest as well the principal of the claim, in my opinion, should be allowed.

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

REVERDY JOHNSON.

HON. THOMAS EWING,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
21st July, 1849.

SIR: I enclose you herewith a copy of the opinion of the Attorney General in the case of Thomas Ewell, by which you will be governed in your further action in the case.

Very, &c.,

T. EWING

To the COMMISSIONER OF PENSIONS,

CASE OF COMMODORE JAMES BARRON.

WASHINGTON CITY,
July 31, 1849.

DEAR SIR: The undersigned, on behalf of the administrators of Commodore James Barron, the commander of the State navy of Virginia during the war of the revolution, and of Captain Richard Barron, respectfully ask that a requisition may be issued for the commutation pay and interest due to those officers respectively.

The evidence herewith submitted shows that they served during the whole war—the one as commander-in-chief, the other as captain.

By mistake, they received only half pay, or rather, their administrator *did*, instead of the commutation and interest to which they were entitled. The payment will, of course, be credited. We deem it unnecessary to offer any comment upon the cases, because the acts of November, '81, of May, '82, and of October, '82, placed all officers of the State line and continental lines, including officers of the navy, upon the same footing; and the decision in the case of Dr. John Galt's administrator, in March, has removed all difficulty as to the application of the law and the power of the department. That case was decided, we may add, in conformity with the decision of the Supreme Court of Virginia, in Marston's case—9th Leigh.

With high respect,
we have the honor to be,
your obedient servants,

JAMES LYONS,
FREDERICK VINCENT.

HON. J. L. EDWARDS,
Commissioner of Pensions.

Know all men by these presents, that I, George W. Camp, administrator de bonis non of James Barron, deceased, Commodore and Commander-in-chief of the navy of Virginia during the war of the revolution, for divers good causes and considerations, me thereunto moving, have made, constituted, and appointed, and do by these presents make, constitute, and appoint James Lyons, of the city of Richmond, my true and lawful attorney in fact, for me and in my name, and for my use and benefit as administrator, as aforesaid, to demand, sue for, and recover of the government of the United States, all half pay, commutation, or other money or compensation, in whatever form and under whatever name, due from the said government to the said James Barron, and now due to me, as his administrator, for his services during the war

of the revolution, and all interest thereon, with full power and authority in my name, as administrator as aforesaid, to grant full and complete discharges and acquittances for the same to the said government and its proper officer or officers, and one or more attorneys under him, to make, constitute, and appoint, if necessary in his opinion, to act in his absence, with full power and authority as he might; and for myself and my heirs, I do hereby ratify and confirm whatever my said attorney, or any attorney he may appoint, may do in the premises. In testimony whereof, I have hereunto set my hand and affixed my seal as administrator as aforesaid, this first day of August, in the year 1849.

G. W. CAMP, [SEAL.]

Administrator de bonis non of J. Barron, deceased.

VIRGINIA, }
City of Norfolk, to wit. }

I, S. Hartshorn, do hereby certify that George W. Camp, administrator de bonis non of James Barron, deceased, personally appeared before me, a Justice of the Peace of the city aforesaid, and acknowledged the annexed power of attorney to James Lyons, to be his act and deed, and desired me to certify the said acknowledgement.

Given under my hand and seal this first day of August, in the year 1849.

S. HARTSHORN, J. P. [SEAL.]

STATE OF VIRGINIA, }
City of Norfolk, to wit. }

I, John Williams, Clerk of the Hustings Court of the city of Norfolk, in the State of Virginia, do hereby certify that Sylvanus Hartshorn, Esquire, who has given the above certificate, is a justice of the peace in and for the said city, duly appointed and qualified; that his name, "S. Hartshorn," thereto subscribed, is, as I do verily believe, in his proper handwriting, and that full faith and credit are due to all his official acts.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Hustings Court, this first day of August, [SEAL.] eighteen hundred and forty-nine, in the seventy-fourth year of the commonwealth.

JOHN WILLIAMS, C. C.

PENSION OFFICE,
August 1, 1849.

SIR: Upon reading the report in Markham's case, (vide Leigh's Reports, vol. 1, p. 516,) I find that the court of appeals decided that navy officers

were not entitled to commutation and interest. The claims of the heirs of Commodore James Barron and Captain Richard Barron, for commutation and interest, cannot therefore be allowed.

With much respect,
your obedient servant,

(Signed) J. L. EDWARDS.

FREDERICK VINCENT, Esq.,
at Willard's Hotel.

NORFOLK, *August the 1st, 1849.*

MY DEAR SIR: I received your favor of the 30th ult. this morning, and immediately put the letter and the power into the hands of Captain Barron, who took them to Mr. Camp, and I confidently expect that they will have them executed this day, and sent forward to you at Washington.

My father never made a will. I think I have frequently heard him say, that the law, as it then stood, should be his will—an equal division of his property amongst his heirs.

Very respectfully, I am,
your obedient servant,

JAMES BARRON.

WILLARD'S HOTEL,
August 1st, 1849.

DEAR SIR: Mr. Vincent has this moment put into my hands your note to him, in which you say that you cannot allow the claims of Commodore Barron, the commander of the navy during the revolutionary war, and of Captain Barron, who served under him, because upon reading the report of Markham's case, you find the court of appeals of Virginia to have decided that officers of the navy are not entitled to commutation and interest. I confess that this took me a little by surprise, because I understood the matter to be settled by your opinion this morning, and to wait only for the papers from Norfolk for its final completion and satisfaction. Nevertheless, I admit that it was perfectly proper in you to re-examine the cases, and to decide as you should deem proper; and your having done so, only affords additional evidence of your right to the high character for fidelity to your trust which you enjoy. Allow me, however, to suggest, that Markham's case in no wise settles these cases, for the following reasons, to wit: first, because the act of May 1782 expressly provides and guaranties, that "the navy officers, sailors, and marines, shall in all respects have the same claims, &c., as are allowed to the officers and soldiers in the land service." Now one of the "claims" of the officers in the land service who served to the end of the war, was "commutation" and interest, and the hypercriticism of the Court of Appeals, or rather of the judge who pronounced the opinion

in Markham's case, is in no wise justified by the terms of the act aforesaid—so far from it, it is a strained and most unnatural and unreasonable provision of it. One simple illustration will, as it seems to me, show this conclusively, viz: It is admitted on all hands that naval officers who served to the end of the war are entitled to *half pay*, and all the decisions of the courts and Congress, and especially the decision in Galt's case, establish that *commutation* is nothing but *half pay* in another form, or under another name; that it is the substitute for half pay. Now it would seem to follow, that those who were entitled to *half pay*, are entitled to commutation, necessarily, unless there be some words excluding them; and here the words used, instead of excluding, are in the largest sense inclusive, because they are, "SHALL in all respects, have," &c. The term "all" is certainly the most comprehensive which could have been used. Captain Lilly was an officer of the navy, who sat in the same board for reorganizing the navy of which the Barrons were members, and the Commodore Parnaens, as the papers before you show. Lilly was a "*supernumerary*," but yet the court of appeals of Virginia gave him half pay for life, although frequent decisions previously made had denied the right of supernumerary naval officers to *half pay*. The decision in Lilly's case is admitted to be correct, and was approved by the court of appeals in Marston's case, 9 Leigh, 36. Now, I submit that the authority which gives to the *supernumerary* naval officers half pay for life, established the right of the naval officer, who served for the whole war, to his *commutation*, because the half pay to the supernumerary is authorized only by the law which, as to their pay, places the naval and land officers upon the same footing; and it must be taken to its full extent or not at all. It gives to the naval officer "all" the claims, or it gives him none. Lilly's case, therefore, (decided after Markham's) and, indeed, Markham's too, he being a naval officer and receiving half pay, establish all that I contend for—but,

Secondly, Markham's case does not decide these cases, because Markham did not serve to the end of the war, but was a *supernumerary*, and supernumerary officers were not entitled to commutation. The court of appeals of Virginia have, I respectfully submit, never decided that a naval officer who served UNTIL THE END OF THE WAR was not entitled to his commutation; and I cannot conceive of any reason why the government of the country should deem the naval officers less entitled to its bounty than a land officer, and design to make an unequal discrimination against him, when his service was not only equal, but more hazardous, as the naval service was.

Thirdly, But if the courts of Virginia had expressly decided against the claim of a naval officer who served to the end of the war, to commutation, would that be a sufficient reason, or any authority for rejecting the claim now, and should not the claim be decided upon the just view here of the law and the facts, and not upon the authority of the Virginia decision? It seems to me that the settled practice of the departments here settles that it should. In Jones's case, I sent to the Honorable Commissioner a copy of the judgment rendered in Virginia, and asked for payment. His reply, which I have, was, that I must send him a copy of the entire record, because the government here examined for itself into the facts as well as the law, and if the claimant was not entitled, it would not pay, although there was a judgment; and it is moreover now settled by Ewell's case, that a judgment is immaterial, and such has been the uniform course of

the department here. If therefore the court in Virginia should decide that one had a claim, when the evidence, properly regarded with the law, showed he had not a valid claim, the judgment would be disregarded and the consequence is, that if the court erroneously decided against a *good* claim, the judgment is no bar, for it is said to be a bad rule that will not work both ways. The court of appeals, according to the opinion it then entertained, which was clearly erroneous, could not have given Markham commutation even if he had been an officer in the *land* service, because he was a supernumerary, and of course a naval supernumerary could not recover commutation; but the moment it was decided that a naval supernumerary was entitled to *half pay*, the *principle* was established which gives to the officer *who served to the end of the war*, commutation, because, as I have said, the same law which gives to the *supernumerary half pay* gives to the *officer who served until the end of the war commutation*—and as the Barrons *served to the end of the war*, they are entitled to commutation. Commodore Barron, in fact, continued to serve until 1784 as I can show. But would it not be very odd, and a severe reproach to the government, that a Lieutenant of the *army* who served until the end of the war should receive his commutation, and the *Commander-in-chief of the navy* be denied it.

Again: In Marston's case, 9 Leigh, 36, the court of appeals affirmed the true law, viz.—“that officers *in the State service*, who served until the end of the war, were entitled to demand commutation of five years full pay, with interest, in lieu of half pay for life.” Now, the simple questions are, was Commodore Barron “*in the State service?*” “*Did he serve until the end of the war?*” The answer to both questions is in the affirmative. The conclusion is, that he is entitled to commutation; and upon the authority of the Virginia court, as well as upon the true interpretation of the statutes, I ask for satisfaction of the claims.

I acknowledge, my dear sir, your kindness in passing so promptly thus far upon the case. Pardon me for asking a continuation of this indulgence, as I have a sick family waiting upon my movements here.

With high respect, I am,
your obedient servant,

JAMES LYONS,
Counsel for Commodore Barron.

HON. J. L. EDWARDS.

WASHINGTON CITY,
Willard's Hotel, Aug. 2d, 1849.

DEAR SIR: I submitted the accompanying papers to Mr. Edwards, and, as counsel for Commodore Barron, asked an allowance of the claims, which was at first granted, but on the same day reconsidered and rejected, and I beg leave now to submit them to you; and as I am myself in bad health, and have left a sick family at home, waiting for me to take them to the Springs, I beg that you will do me the favor to consider the case to-day, so that I may go home to-morrow. My note to Mr. Ed-

wards will present to you, without repetition here, my views principally upon the case. To these I will only add,—

First. That the opinion of Judge Green, in Markham's case, which is relied on by the Honorable Commissioner of Pensions, is emphatically obiter dictum, rendered upon a point, coram non iudice, and therefore entitled to no weight. The court, it will be perceived, first decided that Markham was entitled to *half pay*, and then the question was raised and submitted, whether he, Markham, was not entitled to commutation, and the judge, not confirming himself as it seems to that question, expressed an opinion as to the rights of naval officers generally, which is supposed by Mr. Edwards to embrace the case of the Barrons, and all other naval officers who served until the end of the war. Now I submit that such an opinion is emphatically "obiter dictum"—and you, a learned lawyer, know better than I, the proper appreciation of such opinions. They are not authority. If it had been confined to Markham's case, or even to cases of officers "in consimili casu," that is, to *supernumerary* naval officers, there would be force in it, unless the error of the opinion, because that was the case before the court, and that was the judgment proper to be pronounced in the case, whether the proposition as affirmed in respect to all naval officers be true or false, because, if true, *Markham* was not entitled to the benefit of it. He had no right to commutation, whatever others might have.

Secondly. The opinion is inconsistent in principle with the judgment which was actually pronounced in the case, by the court, by which *half pay* was given to Markham; for the same law which gives to Markham half pay, gives to naval officers serving to the end of the war, commutation, and the denial in such case of half pay is to repudiate the decision just previously pronounced, giving half pay. And it is not a little remarkable that in the very opinion under consideration, the judge admits, that after the passage of the act of 1790, the courts gave judgment for commutation in favor of every officer who was entitled to *half pay*, and yet he denies that naval officers who served until the end of the war were entitled to commutation, although he admits they were entitled to half pay, and although he admits (p. 519, 20.) that by the act of October, 1782, officers of the navy are "*entitled to the same bounty in land, AND OTHER EMOLUMENTS, as the officers and soldiers of the State line,*" and that under this act half pay is to be allowed to naval officers. How he could suppose the terms of this act to be satisfied by confining them to half pay, I can't perceive, but he supposed that the difficulty was removed by ascribing the right to commutation to the act of 1790, when, in point of fact, that act gives no commutation nor says one word about it, and the right to commutation is given by the resolution of Congress of the 22d of March, 1783, and after enumerating officers of the line, it expressly provides that all officers entitled to half pay shall be entitled to commutation. That it will be seen that all the acts prior to the revolution of March, 1783, put officers of the army and navy on the *same footing*, and that resolution expressly embraced all officers who were entitled to half pay—naval officers were entitled to half pay and of course entitled to commutation. Thus it is shown that the opinion was given not only on a point not before the court, but was founded in a clear mistake of the law regulating the subject. But there is still another most remarkable error in the opinion, viz:—The act of 1790 could be considered only as

affecting the question of commutation only by considering "half pay" and "commutation" as identical (which was proper,) and thus deducing that he who was entitled to half pay became *thereby* entitled to commutation; and yet, while the right of the naval officer to half pay is admitted, his right to commutation is denied!

These errors in so able a judge are only to be accounted for by the fact that the subject was wholly new to our courts at the time, and for more than twenty years had been regarded as settled against the claimants. In the very next case of Silly and Leigh, the same judge admits, that upon some points he has been further enlightened, and changed his opinion.

I beg leave to call your attention to the case of Lilly, in which two of the most eminent judges held that Lilly, although a naval supernumerary in fact, was entitled to commutation and interest. And I ask also your attention to the opinion of Judge Coalter, p. 542, in which he states that Markham's case had settled "*that officers of the navy are equally entitled with officers of the State line,*" and that the acts subsequent to the act of 1779 which gave the half pay, are to be construed as parts of or explanatory of, that act,—and this is not denied. Now if the acts of 1782 and 1783 are to be considered as *parts* of or *explanatory* of the act of 1779, the question is too plain for argument.

And as I have said, why should the Legislature be accused or suspected of any purpose to do rank injustice, by preferring a lieutenant in the *line* to a commodore or lieutenant in the navy. The language to convict it, must be clear and plain, certainly it can never be effected by intendment.

With great confidence I submit the claim of my venerable and patriotic client, himself on the verge of the grave, to your enlightened and impartial judgment.

I have the honor to be,
with great respect,
your obedient servant,

JAMES LYONS,
of Richmond.

HONORABLE THOMAS EWING,
Secretary Interior.

WILLARD'S HOTEL, August 2, 1849.

SIR: I submitted the accompanying papers, touching the claims of the representatives of Commodore James Barron and Captain Richard Barron, to commutation and interest for the revolutionary services of those officers, to Mr. Edwards, and as the counsel of Commodore Barron's representatives, and representing for the moment the counsel of the representatives of Captain Barron, asked for the proper requisition of the several amounts. After examining the evidence, the Commissioner allowed the claims, there being no doubt of any fact involved in the cases, the proof of which was necessary to establish the right to recover. But upon further consideration, on the same day the Commissioner of Pen-

sions reconsidered his determination, and refused to allow the claims, upon the ground that the Court of Appeals in Virginia had determined, in the case of Markham, 1 Leigh's Reports, p. 516, that naval officers were not entitled to "commutation." See his note, marked No. 1. Of course I make no complaint of the Commissioner for this. It was not only his right, but his duty, to reconsider the opinion which he had formed and expressed, and regardless of any question of consistency, or pride of opinion, to change his opinion and reject the claim, if the law and the evidence, or either of them, required him to do so. Indeed, I would not have the claims allowed, if I could, if they be not sustained both by the law and the evidence. If the amount claimed be not justly and fairly due, I would not dishonor myself, and the gallant and distinguished officer whom I represent, by asking the payment of it. But as it is my right and duty to my client to do, I respectfully appeal from that decision to you, as the head of the department to whom the adjustment of such claims belongs.

In presenting the cases to you, I shall not discuss the evidence, because there is no doubt or difficulty as to the facts. It will suffice to say, that Commodore Barron was the commander of the navy of Virginia, and served as such throughout the whole war of the revolution, and his representatives have received his "half pay" and land bounty for his services. See Doc. Nos. 2, 3. Capt. Barron was a captain in the same service, also served until the end of the war, and his representatives have received the like compensation. See the same Doc's. Upon these facts the question arises, Whether an officer of the navy, who served until the end of the war, is entitled to his "commutation" of five years' full pay and interest? Does he not stand upon an equal footing with an officer of the army, who performed no more service than he did? To me, I confess, it seems that to state the question is to resolve it, as I can conceive of no motive for a conclusion so dishonoring to the intellect and patriotism of the governments, both state and national, as that would be which convicted them of so unequal and unjust a discrimination between the defenders of the country, in the different branches of the service, and at such a time as that of our revolution. In this opinion I cannot doubt that your superior intelligence will concur with me. But as I know your habit of investigating thoroughly every question which is submitted to you, and of requiring a reason, as well as a fact, for every conclusion, I beg your indulgence while I present briefly, but in detail, the grounds of my opinion.

1. By an act passed on the _____ day of May, 1779, Hen. Stat. at Large, vol. 10, p. 25, concerning "officers, soldiers, sailors and marines," Virginia offered half pay for life to all the officers, physicians, surgeons, chaplains, &c. who served until the end of the war.

Doubts arose as to the meaning of this act, whether it embraced officers of the State line as well as continental officers, (a very strange doubt,) and by another act, passed on the 16th of December, 1790, that doubt was removed by an express provision that the *same* compensation of half pay should be given to officers of the State line as was given to the officers of the continental line.

Looking to the act of 1779, the "doubt" is most remarkable, as that act expressly includes those "on the continental establishment, or serving in the battalions raised for the immediate defence of the State, or

for the defence of the United States." It is hardly possible to conceive of a definition of State troops more complete than this. Still doubts did exist, as it appears by the preamble to the act of 1790; and that act was in reality merely declaratory, explanatory of the act of 1779. The two together stand therefore as one act, and that the act of 1779. So that the act of 1779 gave half pay to all the officers, State and continental, who served until the end of the war, or became supernumerary.

At the May session of the legislature in the year 1780, a series of resolutions was reported by a committee, one of which recommends the reduction of the navy, and is in the following words, to wit: "*Resolved*, That all commissioned officers, the master, surgeon and surgeon's mate, in the service of the navy, be entitled to half pay during life, under the limitations and restrictions as are contained in the act 'concerning officers, soldiers, sailors and marines.'" The act here referred to is the act of 1779, before cited. In consequence of these resolutions, an act was passed at the same session for the purpose of carrying these resolutions into effect, and after providing for the reduction of the navy and the enlistment of sailors and marines, which it declares to be of great importance, and after providing a bounty of \$1000 for the sailors, and that they shall have all the privileges and emoluments granted by the act of 1779, it provides for the organization of the marine corps, and then provides that "the captains, together with the subalterns, *and all other commissioned officers in the service of the navy*, the master, surgeon, and surgeon's mate, shall be entitled to the same pay and rations, the same privileges and emoluments, and rank in the same degree with officers of the like rank belonging to regiments heretofore raised for the internal defence of the State." 10 Hen. Stat. at Large, p. 298. Thus it appears that Virginia first gave half pay for life to the officers, &c. of the line, state and continental; secondly, she ordered a reform of her navy, to make it more efficient; and thirdly, she placed the naval officers upon the same footing, as to rank, pay and emoluments, with the officers of the line, according to the act of 1779. The act of 1780 was carried into effect by the reduction of the navy, as appears by the report of the navy board, of which Commodore Barron was the president. Doc. No. ; and also by the act of November, 1781, 10 Hen. Stat. at Large, p. 462, 7, the 14th section of which provides, that "the officers and seamen of the navy of this State, as they stand arranged by a late regulation, shall be entitled to the same *advantages* as the officers belonging to this state in the land service, according to their respective ranks." Commodore Barron was not only one of the officers retained by that regulation for service to the end of the war, but he was the president of the board who made the arrangement, and continued as commander-in-chief of the navy. Now it would seem to me, that if it were possible to have doubted before, whether the officers of the army and navy stood upon the same footing in all respects according to rank, such could not be entertained after the passage of this act of 1781. That act entirely removed it; for the legislature, not confining itself to the term "pay," declares that the naval officers shall be entitled to the *same advantages*, that is, to *all* the advantages to which the officers in the land service were entitled. Is not the *pay*, whether full or half pay, an advantage? And is not commutation an advantage? Was it not given expressly upon the ground that it was more advantageous than half pay? And was not that the ex-

press ground upon which it was asked by the officers? If then it be an advantage to which the officer of the land service is entitled, how can it be denied to the naval officer in the face of this act? I confess I cannot perceive—I cannot understand how any advantage, any gain, profit, privilege, perquisite, or emolument, which the officer in the land service was entitled to, can be denied to the officer of the naval service, and this conclusion is more clear and irresistible when you recollect the resolutions in favor of the navy, before cited, from which this act ultimately proceeded.

But the legislature did not stop here, but continued to legislate for the protection of her navy, and by the act of May 1782, 11 Hen. Stat. at Large, p. 85, declared “that the navy officers, sailors and marines of this State, shall in all respects have the same *claims, &c.*, as are allowed to the officers and soldiers in the land service:” and again, in October, 1782, 11 Hen. Stat. at Large, p. 161, it was by another act provided “that all officers, seamen and marines, or (and) their representatives, shall be entitled to the same bounty in land and other emoluments as the officers and soldiers of the Virginia line on continental establishment.” Surely it may be safely affirmed, upon these acts, that Virginia placed her land and naval forces upon the same footing, as far as it was in her power to do so. She provides,

1st. That all officers, soldiers, surgeons, &c., who serve to the end of the war, or become supernumerary, shall receive half pay.

2d. She expounds this act by another shortly after, declaring that the State, as well as continental troops, are entitled to the benefit of it.

3d. She declared that the officers of the navy should have all the *advantages* belonging to the officers in the land service.

4th. She declared that the officers of the navy should have, in all respects, the same *claims* as are allowed to the officers of the land service; and

5th. She declared that the officers of the navy should have the same bounty in land, “and other emoluments, as the officers and soldiers of the Virginia line on continental establishment.”

If these laws do not place the army and navy upon the same footing, as far as Virginia could do it, what language would have that effect? Whatever debt, then, she incurred to her land forces for her defence and emancipation from the power of a tyrant, she incurred to the officers of the navy and her gallant tars, and whatever debt for that cause, she incurred to them, the government of the United States assumed, and is bound to pay. That this is true as to the “half pay,” and all other emoluments, except “commutation,” is perfectly clear, has been so adjudged to be, by all the courts, Supreme and others, of Virginia, by Congress. (in the acts of 1832 and 1848,) and the departments at Washington; and half pay has been allowed, and paid to every naval, as well as land officer, who served until the end of the war, or became supernumerary, and the Barrons have received half pay. But it is said that although true to the extent indicated, it is not true as to “commutation of half pay”—and it is maintained that while every officer in the land service, who served until the end of the war, even the lowest subaltern, is entitled to “commutation,” the chief of the navy, the most distinguished by service, as he was by rank, is not entitled to it. That here the “claim” of the subaltern is higher than that of his superior, and his “advantages”

greater; and that there are "other emoluments" than the "bounty in land," to which the officers and soldiers in the land service are entitled, and to which the officers of the navy are not entitled, although the act of 1782 expressly declared that the officers of the navy should have "the same bounty in land and all other emoluments" which were allowed to the officers of the line; and for this anomaly, the authority of the Supreme Court of Virginia, in the case of Markham, is cited. Although Judge Coalter, in Lilly's case, decided after Markham's, 1 Leigh, expressly declares, without dissent from any judge, that Markham's case had settled that the acts passed subsequent to the act of 1779, were to be considered as explanatory of that act, or as *substantive provisions placing the army and navy upon the same footing.*

To the authority of that court I bow at all times with great respect; but eminent as it is, it is not infallible, and the value of its decisions as authority in parallel cases, must depend upon the force of its reasoning, and the soundness of its learning. With the candor which is always characteristic of the best judge, it subjects its own decision to the trial by these tests, and sustains or reverses them as that trial shall indicate. You, sir, sitting as an independent judge, cannot do less. Justice to your own reputation as a lawyer and a high functionary of the government, to that government whose organ you are, and to the parties, demands it. I proceed then, to examine that authority, and with all respect, I submit that it should have no weight with you.

First, because it is an "*obiter dictum*," a decision upon a point not properly before the court—and

Secondly, because it is founded in manifest error as to fact as well as law.

First. The general question whether a naval officer who served until the end of the war was entitled to commutation, was not properly before the court. Markham having been made a prisoner in 1781, was paroled, and continued on his parole until the end of the war—that is, so far from being in actual service, he voluntarily entered into and engaged that he would not serve again until exchanged, and, therefore, could not serve by the laws of war without forfeiture of his honor and his life; and he was, therefore, at the most, a supernumerary. If he had chosen to remain a prisoner until retaken or exchanged, the case would have been different. He would have been, in fact, in the service, laboring under a physical and temporary disability, at liberty to enter the field the moment that disability was removed; but preferring freedom at home to confinement among the enemy, he expressly contracted not to serve. How can it be said, then, that he actually served until the end of the war?

Now, it is my opinion, that the supernumerary who held himself in readiness to re-enter the service, is as much entitled to commutation as one who served until the end of the war; but that was not the opinion of the court of appeals at that day, and, therefore, the decision in Markham's case as to commutation, was not pertinent to the case; for, under the opinion then entertained in that court, Markham was not entitled to commutation, however the law might be as to officers who served until the end of the war. Hence, I say, the decision was *obiter dictum*, and you, sir, who are more learned in the law than I am, know what weight attaches to such decisions.

Secondly. But if the question was properly before the court, the error

of the opinion is most manifest. To show this, it is necessary now to trace up the right to commutation by State officers of any kind.

Congress, by a resolution passed on the 21st of October, 1780, "*Resolved*, That the officers who shall continue in service to the end of the war shall be entitled to half pay during life, to commence from the time of their reduction." Virginia, by her act of 1779, gave half pay to all officers who should serve to the end of the war, or become supernumerary; and by her explanatory act, she declared that this provision should apply to State and continental troops, if Congress did not make some tantamount provision for them.

In May, 1783, professing its willingness "to compensate those whose services, sacrifices, and sufferings, have so just a title to the approbation and rewards of their country," Congress

Resolved, 1. That all officers then in service in the lines of the States, under the command of Washington, should have commutation of five years' full pay in lieu of half pay.

2. That the same commutation should extend to the corps not belonging to the lines of particular States, and who are entitled to half pay for life, as aforesaid.

3. That it shall extend to the officers of the hospital department and to retired half-pay officers—and

4. To all officers entitled to half pay for life, not included in the preceding resolution.

In May, 1790, Virginia, by her act, declared that the *same* compensation of half pay which had been allowed to officers of the continental line, "should be extended" [using the very language of the resolution of Congress] to the officers of the State line; and the court of appeals of Virginia decided, in the very first case that came up after the war, and always since that time, that every officer who made out a good case for half pay was entitled to commutation, after the passage of the act of 1790. [See Markham's case in 1 Leigh, and Marston's case, 9 Leigh.] Well, the question is, how was this done, as the act of 1790 speaks of half pay only, and has not the word commutation in it? The answer is obvious, viz.: that half pay and commutation were the same thing in substance, the one being a mere substitute for the other, and the only mode of establishing a claim to commutation was to prove a claim to half pay, with service to the end of the war; because commutation was not an independent right, but a consequential one, being given to the *half-pay officers* in lieu of *half pay*. And as this was the right of the continental officer, as a half-pay officer, and then the same compensation of half pay, which had been allowed to the continental officer, was allowed to the State officer, by a necessary consequence the State officer was entitled to his commutation, and accordingly he has always received it.

This was the "*principle*" established by the court of appeals of Virginia, and Congress, seeing the manifest justice of it, approved and expressly adopted it in the acts of 1832, 1835, and 1848; and you, sir, under the advice of the Attorney General, in the case of Dr. John Minson Galt, which I had the honor to present to you, decided that "half pay" was the generic term embracing "commutation," and, therefore, commutation might and should be paid under the act of 1832, without any further appeal to Congress, and accordingly the claim of Dr. Galt's representative was paid to me.

How, then, is the officer of the State navy excluded from his commutation? Because, as it is said by Judge Green, in Markham's case, the officers of the *line* are mentioned in the act of 1790, and the word "navy" is not there. Now, it seems to me, that the fallacy of this reasoning is perfectly clear. First, because I have shown that the officers of the army and the officers of the navy stand precisely upon the same footing as to half pay, and have exactly the same rights as to it; and the act of 1779, and the subsequent acts, being, as Judge Coalter properly says, in Lilly's case, without dissent from any judge, to be construed as if they were one. Now, if these positions be true, viz.:

1. That the officers of the army and navy stand upon the same footing as to half pay—and
2. That by virtue of the provisions as to half pay, the officers of the army are entitled to commutation, how can it be denied to the officers of the navy?

I confess that to me the conclusion appears to be irresistible, that if the officer of the State line of the army is entitled to commutation, the officer of the navy is, and that the decision in Markham's case is direct authority upon the "principle" involved, in my favor. Thus, then, the argument runs. The officers of the navy are entitled to half pay, because they have been placed upon the same footing with the officers of the army. The officers of the army are entitled to commutation, because it is but a substitute for half pay, and the consequence of the right to half pay, therefore, the officers of the navy, who, upon the same grounds, are entitled to half pay, are entitled to commutation. Markham's case, then, is authority directly in favor of my client, under the act of 1832, because it establishes, or rather, it re-affirms, the *principle* which entitles the officer of the navy to commutation, and errs in the application of it, and the act of '32 adopts the *principles* of decision which had been established by the court of appeals of Virginia. But suppose the decision in Markham's case to be out and out against the naval officer, would that warrant the rejection of his claim, when the principle established by every other court, and recognized by Congress in the act of '32, is in his favor? Congress did not adopt the decision in any particular case; but "the principles" of decision established by the court of appeals of Virginia in half-pay cases, and the principles established by that court, give the naval officer an undoubted right to commutation. Congress must be presumed to have seen this, and to have had a motive in directing, by the act of 1832, payment to revolutionary officers, according to the "principles" established by the court of appeals of Virginia, and yet more emphatically when it admitted the principle expressly as applied to naval officers, by providing for the payment to Virginia of the judgments which had been rendered in favor of officers of the State navy. This was a clear and distinct admission that Congress was bound to pay to officers of the State navy whatever they were entitled to demand of the State government.

The error of the opinion in Markham's case, in this respect, is very remarkable, as the judge who pronounced it was one of the most eminent that Virginia has produced, and I speak of him with great veneration; but the error is not the less palpable, and it is most remarkable, because it is in direct conflict with the principle established in the same case, by which commutation is given to the officers of the army under the act of '90, because half pay was considered as embracing commutation. It is

manifest that the judge would have had no hesitation in giving the commutation to officers of the navy as well as the army, if the act of '90 had mentioned officers of the navy, although the act speaks only of *half pay*. But what matters it whether the officers of the navy are mentioned in that act or not, if by other acts they are entitled to half pay, and the title to half pay gives the right to commutation ?

Having demonstrated, as I respectfully submit I have, the right of the naval officers to commutation upon every principle of justice as well as strict law, I proceed now to consider the only other question in the case, to wit, the power of the honorable Secretary to order the payment of the claim.

Upon this point, the first and most obvious remark to me made, is, that if the claim be due upon the principles of decision settled by the court of appeals of Virginia, there is no need for further argument, for that settles the question ; but as I understand the doubt, for I do not understand that it is more than a doubt, arises from the use of the term "corps," I proceed to examine the question more minutely.

The act of 1832 provides for the payment of five classes of claims, viz. :

1. Gibson's regiment, the amount of judgments recovered and remaining unsatisfied.

2. The State regiment commanded by Brent and Dabney, judgments unsatisfied.

3. The regiments of Clarke and Crockett, and Rogers's cavalry, being the Illinois troops, judgments unsatisfied.

4. The State artillery under Marshall and Mutter, and the State cavalry under Nelson, judgments unsatisfied.

5. The officers of the navy of Virginia, judgments unsatisfied.

And then follows the last clause of the act, which directs the Secretary of the Treasury to settle "those claims for half pay of the officers of the aforesaid regiments and corps which have not been paid or prosecuted to judgment."

In this enumeration there is a distinct admission of the rights of the naval officers and of the obligation to pay them, because Congress, by this act, did not intend to create a new liability, but to discharge an old one, in directing the payment of all judgments which had been rendered in their favor against the State of Virginia, therefore, Congress admitted the original liability of the United States to the naval officers.

But the act intended to do more than to provide for those cases in which judgments had been rendered. It intended to provide for, and direct the payment of all the claims for which Virginia was liable "upon the principles of the half-pay cases already decided by the supreme court of appeals of Virginia," "which have not been prosecuted to judgment," and hence, the last clause in the act before recited. This is not denied by any one, as I understand, and it has been recently settled, indeed, in Ewell's case, that in cases of officers of the line, no judgment is necessary if the evidence in support of the claim be otherwise satisfactory. But it is said that naval officers are not embraced by this act unless they have obtained judgments, because the Secretary is directed in express terms to pay those naval officers who have obtained *judgments* ; and in truth that I understand to be the whole ground of the doubt. But this argument can be of no avail, because the direction in that respect is identical with

the direction in all the others cases enumerated, and yet officers of the line who had not obtained judgments have been paid; and it is now settled that judgments are not necessary, not only because of the terms of the act aforesaid, but because it is absurd, as well as dishonest, for a debtor, and especially a government debtor, to require itself to be sued and convicted before it will pay its just debts; and above all others, such a debt as the nation contracted with its liberators and defenders. But it is said that these payments and positions are justified by the terms "*aforesaid regiments and corps*," and these terms do not embrace *naval officers*. Now, I submit in all respect, to those who entertain such an opinion, that it does gross injustice to the obvious meaning of Congress, and is in no wise justified by the words of the act—and does even greater injustice to the naval officers. The terms "*aforesaid regiments and corps*," mean by the plainest rules of grammar and interpretation, *all* the regiments and corps previously enumerated, and therefore embraces the naval officers, unless the terms "*regiments and corps*" exclude them, because having been previously enumerated as the fifth class to be paid, they are embraced by the term aforesaid, which means, before said, that is, before or already enumerated. Now, so far from excluding the naval officers, I submit that the terms cannot be satisfied without embracing them; for except the naval officers and Rogers's troop of cavalry, none but regiments are enumerated, and the plural would not be used to cover a single troop of cavalry, and it cannot be satisfied without embracing the corps of naval officers.

Again: The term "*corps*" as much defines a naval as a military body, and, indeed, one branch of the naval arm is known only by that term, to wit, the marine corps. The term properly means a body of men in the armed service of the country, and a "*corps of officers*" may as well be naval as military, or *vice versa*. Again: Congress having, by the fifth enumeration of the act, admitted the claims of the naval officers and directed payment of all the judgments, if it had intended to make a distinction between naval and military officers where there was no judgment, would it not have expressly excepted them? and does not the failure to except show clearly that there was no intent to except them? And why should they have been excepted? Can any reason be given why Congress should make such a distinction between the naval and military officers? Why should it direct the payment of all military officers to whom it was indebted without judgment, and withhold payment from the naval officers until they obtained judgments? The discrimination would be unjust and absurd; and, therefore, the attempt to make it is not to be ascribed to Congress, by any strained interpretation at least. The language must be plain which will justify any officer of the government, or other person, in imputing to the legislature the design to do a useless and absurd, as well as unjust, act.

That Congress owed the military officers and intended to pay them without waiting for a judgment, is clear. That it owed the naval officers and meant to pay them, is equally clear; and then the simple question is, did it in the latter case intend to require the judgment against, not itself, but Virginia, before it would pay? It is impossible to believe so. No man can doubt that Congress intended to do equal justice—to mete out the same measure to the naval and military officers. It intended to satisfy the just and blood-bought claims of each, and that intent is not to be

defeated by a little inaccuracy of expression, if there be any, or by a strained or rigid construction of the words of the act. The merit of the naval officers, and especially of such as the Barrons, who served through the whole war, in the highest grades, was at least as great as that of any other body of men, and the members of the revolutionary Congress, appreciating their merits, and the hazard of their service, placed them upon the same footing in all respects with the officers of the line. Is it lightly to be supposed that a later Congress, when enjoying the benefits of their services and perils, in the inestimable blessing of free government, which they assisted to procure, intended to repudiate their claim—to degrade them from their equal rank, which those who employed them assigned them in advance?

But the act of 1835, transferring the duty of settling these claims to the treasury department, expressly directs the payment of the commutation claims—the deficiency of commutation—meaning clearly, and so practically interpreted, the balance due to those officers who had received only half pay when entitled to commutation. If, then, commutation be properly due to the naval officers, this department is bound to pay it, because the act of 1832 makes no discrimination but provides for the payment of all commutation claims.

But I submit that the uniform practice of the department has settled the question, that it is not limited to the payment of judgments only in favor of naval officers, and, therefore, that the last clause of the act of 1832 and the whole spirit of the act embraces them. I allude to the settled practice, pursued in every case where the claim has been proved to the satisfaction of the department, of paying naval officers half pay who have recovered judgments since the passage of the act, and those who have obtained no judgments at all.

Now, it is clear that the act of 1832 does not limit the payment to judgments then recovered, if a naval officer may be paid half pay upon judgments since rendered. It is equally clear that it does not limit the payment to judgments only, if naval officers may be paid half pay without a judgment at any time—and it is equally clear that if the department may allow half pay without judgment when commutation was due, it not only may, but is bound to pay the commutation by the authority of all the acts of Congress and the express decision in Galt's case. Now, all the allowances of half pay to naval officers who had obtained no judgments, and to such of them as have obtained judgments since 1832, were erroneous, or the act of 1832 does not limit the power of the department to judgments *then* rendered; and if it does not, then the only limitation is, to pay what is really due; half pay where that is due; commutation where that is due.

If, then, I have shown, as I respectfully think I have, that the gallant and patriotic commander of the navy of Virginia, in the war of the revolution, was entitled to his commutation of half pay, then the department has ample authority to pay, and with confidence I appeal to it, satisfied that with you, sir, authority to pay a just debt so long deferred, will be regarded as imposing an *obligation* to pay it, which with pleasure you will discharge; as I am satisfied that no man will do justice with more pleasure than you, and especially to a gallant officer of the revolution, now represented by one who has inherited his father's gallantry and patriotism,

and like him has devoted his life to his country. When they shall meet again, let him be able to say to his venerable parent, "Our country has done you justice."

With great respect,
I have the honor to be, sir,
your obedient servant,

JAMES LYONS.

HON. THOMAS EWING,
Secretary of the Interior,
Washington City.

DEPARTMENT OF THE INTERIOR,
Aug. 2, 1849.

SIR: At a late hour to-day I received your letter of the present date, and the accompanying papers appealing from the decision of the Commissioner of Pensions, on the claims of Commodore James Barron and Capt. Richard Barron, and requesting that the matter be decided to-day.

The want of the necessary papers, and information from the Pension Office, I regret to say, prevents a compliance with this request, but the case shall be disposed of as speedily as possible.

I am, &c.

T. EWING, *Secretary.*

JAMES LYONS, Esq.
Willard's Hotel.

WASHINGTON CITY,
(Willard's) Aug. 6, 1849.

DEAR SIR: Finding that it would be impossible for me to return here until after my return from the Springs, and it would then be very inconvenient to do so, because of my engagements in the Court of Appeals of Virginia, which will then be in session, I concluded to await your decision here, as you said you would be able to decide upon my case to-day.

I hope you will excuse me then for earnestly invoking a decision this morning, as I must go home to-morrow.

With great respect, Sir,
I have the honor to be,
your obedient servant,

JAMES LYONS.

HON. THOMAS EWING.

RICHMOND, Oct. 29, 1849.

DEAR SIR: I have the honor now to enclose you my note on the case of Commodore Barron, together with the papers in the case.

As my engagements in the Court of Appeals, which is now in session, render it very inconvenient for me to leave Richmond, and it is therefore very important to me that my absence, when I do leave, should be as short as practicable, I beg leave to say that I will be in Washington on Thursday next, for the purpose of conferring with you on the case, and receiving your decision, if that time will be agreeable to you, and respectfully ask, if that time will not suit your convenience, that you will do me the favor to apprise me what day will suit you, so that I may not be compelled to make two trips.

With great respect,
I have the honor to be,
your obedient servant,

JAMES LYONS.

HON. THOMAS EWING,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR.

November 2, 1849.

SIR: In a claim for commutation and interest under the act of July 5, 1832, now pending before this department, a question arises upon which I desire your opinion.

The claim is that of Commodore James Barron, and also that of Capt. Richard Barron, of the Virginia State navy, during the war of the Revolution.

The question submitted for your opinion is whether the officers who served in the Virginia State navy to the close of the war, are entitled to commutation and interest, in lieu of the half pay for life.

The papers are herewith enclosed.

Very, &c.,
T. EWING, *Secretary.*

HON. REVERDY JOHNSON,
Attorney General.

RICHMOND, December 10, 1849.

DEAR SIR: When I had the honor to submit the claims of Commodore and Captain Barron to you, and you referred them to the Attorney General, you entertained the opinion that he would decide them in a few days. I have now waited for much more than a *month*, and yet [he] has not been able to consider the case, and now that the Supreme Court is in session, he probably will not be able to do so for some time, if during the winter; under these circumstances, my dear sir, could you not take the case back into your own hands and dispose of it?

I have sent to Mr. Johnson elaborate opinions upon the case, concurring *fully* and entirely with mine, of all our most eminent lawyers, viz: J. M. Patton, W. H. Macfarland, Samuel Taylor, Robert C. Stannard, and Robert G. Scott, which, it seems to me, ought to settle the question, it being one of Virginia law.

I regret very much to see the state of things in Washington—what our Southern friends can expect to accomplish which will benefit the party or the country, by the opposition to Mr. Winthrop, I cannot perceive.

With great respect,
I have the honor to be,
your obedient servant,

JAMES LYONS.

HON. THOMAS EWING.

DEPARTMENT OF THE INTERIOR,
December 11, 1849.

SIR: In reply to your letter of the 10th inst., on the subject of the claims of Commodore and Captain Barron, I have to state, that having submitted them for the opinion of the Attorney General, I do not like to withdraw them as you request, but will call his attention.

Very, &c.

T. EWING, *Secretary.*

JAMES LYONS, Esq.,
Richmond, Va.

DEPARTMENT OF THE INTERIOR,
Dec. 31, 1849.

SIR: In the cases of Commodore Barron, and Captain Richard Barron, I am of opinion that *the claims for commutation and half pay* should be allowed.

An opinion of the Attorney General to the same effect will be transmitted to you in a few days.

Very, &c.,

T. EWING, *Secretary.*

To the COMMISSIONER OF PENSIONS.

DEPARTMENT OF THE INTERIOR,
January 30th, 1850.

SIR: You will oblige me by stating in writing, in a note addressed to the Commissioner of Pensions, the ground of your decision in Barron's case, that it may serve as a guide for his future action.

I am, &c.,

T. EWING, *Secretary.*

HON. REVERDY JOHNSON,
Attorney General.

ATTORNEY GENERAL'S OFFICE,
31st January, 1850.

SIR: At the request of the Secretary of the Interior, communicated to me in an official note of yesterday, that I would state to you "in writing," the grounds of my decision in the Barron case, "that it may serve as a guide for further action," I have the honor state, that the decision was founded on the opinion, that upon the principles of the judicial decision of the Virginia courts, officers of the navy of that State, during the revolutionary war, who served to its close, were equally entitled with officers of their line to commutation pay under the act of 1790, and upon the grounds stated in the several opinions I have given in relation to such pay to officers of the line, that their claim is also due by the United States, under the act of 5th July, 1832.

Very respectfully,
your obedient servant,

(Signed,) REVERDY JOHNSON.

Mr. EDWARDS,
Comm'r. &c., &c., Washington.

STATE OF VIRGINIA,
Elizabeth City County, to wit.

At a court of quarter sessions held for the county of Elizabeth City, 27th day of November, 1845,

On the motion of George W. Camp, who made oath, and with James Barron, by George W. Camp, his attorney in fact, and Samuel Barron, his securities, entered into and acknowledged a bond in the penalty of five thousand dollars, conditioned according to law,—certificate is granted him for obtaining letters of administration in the estate of James Barron, deceased, in due form:

I, John H. Howard, deputy for S. S. Howard, Clerk of the county court of Elizabeth City County, of the State of Virginia, do hereby certify that the above is a true and correct copy of the records of said court.

In testimony whereof, I have hereunto set my hand and affixed the
[SEAL.] seal of the said court, this 2d day of August, 1849.

JOHN H. HOWARD,
Deputy for S. S. HOWARD, Clerk.

No will of the late Commodore Barron can be found.

G. W. CAMP.

COUNCIL CHAMBER, June 2d, 1783.

I do certify that James Barron is entitled to the proportion of land allowed a commodore of the State navy, for services from December 25th, 1775, to April 7th, 1783.

THOMAS MERIWETHER.

BENJAMIN HARRISON.

A warrant for 7777 $\frac{2}{3}$ acres, issued to James Barron, Esq., June 2d, 1783. No. 711.

A copy from the records of the Virginia Land-office.

TEST.

S. H. PARKER, *Reg. L. Office.*

April 4th, 1831.

James Barron is allowed the land bounty of a Brigadier General in the state line, for services from the 25th of December, 1775, to the 7th of April, 1783, the amount of land bounty heretofore received by him to be deducted therefrom,

Attest.

JOHN FLOYD.

J. W. PLEASANTS.

Warrant No. 6891, for 1087 $\frac{1}{2}$ acres, issued to Elizabeth B. Armistead, sole heiress at law of ———, only daughter of Samuel Barron, one of the two heirs at law of James Barron, deceased. No. 6892, issued for 1087 $\frac{1}{2}$ acres to Samuel Barron, one of the two heirs of Samuel Barron, one of the two only heirs of James Barron, and No. 6893 issued for 2175 $\frac{2}{3}$ acres, issued to James Barron, one of the only two heirs of James Barron, deceased.

All the above mentioned warrants issued 8th April, 1831.

A copy from the records of the Virginia Land office.

Test.

S. H. PARKER, *Reg. Land Office*

Extract from an act of the Virginia Assembly, of May, 1779, entitled, "An act concerning officers, soldiers, sailors, and marines."—Vol. 10, p. 25:—

"All general officers of the army, being citizens of this commonwealth, and all field-officers, captains, and subalterns, commanding, or who shall command, in the battalions of this commonwealth, on continental establishment, or serving in the battalion *raised for the immediate defence of this State*, or for the defence of the United States; and all chaplains, &c., &c., being citizens of this commonwealth, and not being in the service of Georgia, or of any other State, provided Congress do not make some tantamount provision for them, who *shall serve henceforward*, or from the time of their being commissioned until the end of the war; and all such officers who have or *shall become supernumerary on the reduction of any of said battalions*, and shall again enter the said service, if required so to do, in the same or any higher rank, and *continue therein until the end of the war*, shall be entitled to half pay during life, to commence from the determination of their command or service.

See various acts concerning navy, November, 1781, May, 1782, October, 1782, and May, 1783, all of which are construed as referring to the above act of May, 1779, under the provisions of which the court of appeals of Virginia have decided, that supernumerary navy officers—

that is, officers of the navy *not* serving until the end of war, are entitled to *half pay* only. The question, that an officer "in the service of the State," whether continental, State line, or navy, serving until the end of the war, is entitled to five years' commutation and interest, (see Marston's case, 9th Leigh,) settles the principle beyond all controversy.

Proceedings of a board of officers (late of the State line and navy) that sat at Richmond, in consequence of a requisition of the supreme executive, on Thursday the 13th May, 1784. Present:—

Commodore Barron,
Colonel Muter,
Colonel Meriwether, and
Captain Lilly,

The board examined the list of officers of the navy which is subjoined, and find, from the best evidence they can procure, that it is agreeable to the arrangement of the officers of the navy, next preceding the fall session of assembly, in 1781; and that the officers that are now alive, whose names are included in the said list, have always behaved themselves in such a manner as to be justly entitled to all the emoluments given by law to the officers of the State navy. The board, however, are informed, that L. Gray, in his lifetime, and while he commanded the *Cormorant*, behaved much amiss in making away with stores entrusted to his care. This happened in the year 1783.

List of officers of the State navy, agreeable to the arrangement next preceding the fall session of assembly, in 1781:—

James Barron, Commodore,	commissioned	July 3, 1780.
Richard Barron, Captain,	do.	Jan. 6, 1776.
Thomas Lilly, Captain,	do.	Jan. 14, 1776.
Richard Taylor, do.	when commissioned,	not known.
Ciley Saunders, do.	do.	since dead.
Edward Travis do.	do.	same.
Willis Wilson, do.	do.	
James Markham, do.	do.	
Wright Waistcott, do.	do.	since dead.
— Elliott, do.	do.	
John Harris, do.	do.	since dead.
William Saunders, do.	do.	
Michael James, Lieutenant,	do.	
— Gray, do.	do.	since dead.
Thos. Chandler, do.	do.	same.
Wm. Steel, do.	do.	
Wm. H. Parker, do.	do.	

JAMES BARRON, *President.*

M.—Co., May 27th, 1784.

BENJ. HARRISON.

I certify that the foregoing document is a true copy of the original on file in this office. I further certify, that of the officers named in the

foregoing report, there was paid to the administrator of Commodore James Barron, on the 15th day of December, 1823, the sum of two thousand and eight dollars and fifty-two cents, amount of his half pay for life, computed from the 22d of April, 1783, to the 14th of May, 1787, the time of his death, of which sum, two hundred and seventy-nine dollars fifty-two cents was composed of interest. Given under my hand at the auditor's office of Virginia, this 30th day of July, 1849.

JAMES E. HEATH, *Auditor.*

The Commonwealth of Virginia, to James Barron, Esquire.—GREETING.

Know you, that our Governor, with the advice of the Council of State, do constitute and appoint you Commodore of the armed vessels of this commonwealth.

In testimony whereof, these our letters are sealed with the seal of the commonwealth and made patent. Witness Thomas Jefferson, Esquire, our said Governor, at Richmond, this third day of July, in the year of our Lord, one thousand seven hundred and eighty.

[SEAL.]

TH. JEFFERSON.

City of Norfolk, to wit :

I, Wm. D. Delany, Mayor of said city, do hereby certify that the above is a true copy of the *original commission*, now in the possession of Commodore James Barron. Given under my hand this 25th day of July, 1849.

WM. D. DELANY, Mayor.

PENSION OFFICE,
January 2, 1850.

Upon an appeal to the Secretary of the Interior, he has decided, after obtaining the opinion of the Attorney General, that the representatives of the late Commodore James Barron, who was commander-in-chief of the Virginia State navy during the revolution, are entitled to commutation and interest, under the acts of July 5, 1832, and March 3, 1835, in lieu of half pay for life, which was paid by that State on the 15th of December, 1823. I accordingly certify, under an order from the said Secretary, that commutation of five years' full pay is due, and interest thereon up to this date. The amount of commutation is \$4,258 31 $\frac{1}{2}$; interest is to be calculated at 6 per centum per annum on this sum, from the 22d April, 1783, to the 15th December, 1823; add the amount of the interest up to December 15, 1823, to the commutation, and deduct from the total of those sums the amount paid in December, 1823, viz: \$2,008 52, and upon the balance struck calculate interest from that time up to the pres-

ent date. The amount is payable to James Lyons, Esq., of Richmond, Va., attorney of George W. Camp, administrator of said Barron.

J. L. EDWARDS,
Commissioner of Pensions.

Approved.

T. EWING,
Secretary of the Interior.

THE UNITED STATES

Dr.

To JAMES BARRON, deceased,
Commodore of the Virginia State Navy.

For commutation of five years' full pay	\$4,258 31
Interest upon the same from April 22nd, 1783, to December 15th, 1823—40 years, 237 days at 6 per cent. per annum	10,385 83
	<hr/>
	\$14,644 14
Deduct the amount paid in Dec., 1823,	2,008 52
	<hr/>
	Dolls. 12,635 62

Interest from December 15, 1823, to January 2, 1850, upon said balance—26 years and 17 days at 6 per cent. per annum	19,746 88
	<hr/>
	\$32,382 50

Allowed by decision of the Secretary of the Interior, dated January 2, 1850.

Act to provide for liquidating and paying certain claims of the State of Virginia, approved July 5th, 1832.

TREASURY DEPARTMENT,
Third Auditor's Office.

January 2nd, 1850.

Stated by

J. B. KIRKPATRICK.

SECOND COMPTROLLER'S OFFICE.

Jan. 2, 1850.

Examined—J. N.

No. 8583.

James Barron, deceased.

Commutation 5 years' full pay and interest thereon.

Act to provide for liquidating and paying certain claims of the State of Virginia.

Approved July 5th, 1832.

Dolls. 32,382 50.

Reported January 2, 1850.

Returned " " "

Received. 2d January, 1850, of the Third Auditor, Registration No. 441, dated this day, for thirty-two thousand three hundred and eighty-two dollars and fifty cents, in full of the within account—\$32,382 50.

JAMES LYONS,

Attorney in fact.

At a Circuit Superior Court of Law and Chancery for the County of Henrico and City of Richmond, on the common law side, held June 24, 1847, John M. Galt, administrator of Doctor John Minson Galt, deceased, appellant, against the Commonwealth; upon an appeal from a decision of the Auditor of Public Accounts, disallowing a certain claim of the appellant for services rendered by his intestate in his lifetime as a surgeon in the army, in the revolutionary war.

This day came as well the appellant by his attorney, as the Attorney General on behalf of the commonwealth, who being heard, and the evidence produced on the part of the appellant, as well as the answer now filed of the Auditor of Public Accounts to the claim aforesaid being seen and inspected, it appears to the Court by the evidence aforesaid, that the said John Minson Galt was a surgeon in the army in the revolutionary war, and continued to serve as such until the end of the war, and that he was entitled to the commutation of five years' full pay, and that the said Auditor erred in rejecting the claim thereto presented by the appellant. It is therefore ordered that the said Auditor do issue and deliver to the appellant administrator as aforesaid, a warrant on the Treasurer of this commonwealth for the said five years' full pay, with interest thereon from the 22d day of April, 1783, till the 30th day of June, 1833, then deducting from the amount the sum of eight thousand seven hundred and fifty-nine dollars thirty-four cents then received by the representatives of the said John Minson Galt, deceased, at the Treasury Department of the United States, and with interest on the balance then due, from that time till the date of such warrant.

A copy.—TESTE:

J. ROBINSON, *Clerk.*

DEPARTMENT OF THE INTERIOR,
October 23d 1849.

SIR: I have examined, and herewith return, the papers in the case of William Graves, and I am of the opinion that, taking into view the action of the legislature and executive officers of Virginia, respectively, the claim should be allowed, and that under the opinion of the Attorney General of 27th March, and 20th July, 1849, in the cases of John M. Galt and Thomas Ewell, that claimant is also entitled to interest.

You are therefore requested to settle the claim, allowing commutation and interest, as a cornet and quartermaster, deducting the amounts heretofore received for commutation and half pay.

Very, &c.,

D. C. GODDARD,
Acting Secretary.

To the COMMISSIONER OF PENSIONS.

TREASURY DEPARTMENT,
Third Auditor's Office, May 6th, 1850.

SIR: I have the honor herewith to hand you a copy of the decision in the case of William Graves, deceased, for commutation of half pay and interest thereon, made October 23d, 1849; in compliance with a verbal request from your department.

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

JNO. S. GALLAHER, *Auditor.*

To the Hon. THOMAS EWING,
Secretary of the Interior.

[COPY.]

PENSION OFFICE,
October 23d, 1849.

Upon an appeal from the decision of this office, the acting Secretary of the Interior having decided that the claim of the administrator of the late William Graves, who was a cornet and quartermaster in the Virginia State troops during the war of the revolution, should be admitted, I find that under his decision the administrator is entitled by the provisions of the act of the 5th July, 1832, and the amendatory act of the 3d of March, 1835, transferring the settlement of the Virginia half pay claims to the war department, to the amount of five years' full pay, twenty-five hundred dollars, with interest thereon at the rate of six per cent. per annum, from the 22d April, 1783, to the 25th February, 1820, deducting the amount of \$2,500 then received by the heirs, and with interest on the balance to the 13th August, 1833, deducting the amount of eleven dollars and seventy-eight cents, then received by the representatives, and with

interest on the balance to this date. The amount is payable to Joseph Segar, Esq., attorney of William B. Lamb, Esq., administrator on the estate of William Graves, deceased.

J. L. EDWARDS,
Commissioner of Pensions,
 By J. J. COOMBS,
Chief Clerk.

(Approved.)
 D. C. GODDARD,
Acting Secretary of the Interior.

I certify that the foregoing is a true copy from the original, on file in this office.

TREASURY DEPARTMENT,
Third Auditor's Office, May 6th, 1850.

JNO. S. GALLAHER, *Auditor.*

DEPARTMENT OF THE INTERIOR,
November 21st, 1849.

SIR: The Third Auditor of the Treasury has transmitted to this department your letter of this date, in reference to the error in the amount allowed to the representatives of William Graves, in which you say "that if there has been any error, the Secretary of the Interior should direct a re-examination of the claim."

As it is very obvious that the certificate of the Commissioner of Pensions is erroneous in directing the manner in which interest should be calculated in the settlement of the account, if authority from me is necessary in the premises, as you suppose, you are hereby directed to re-open the case to the extent required, in order to settle the account upon the proper basis.

Very, &c.,

T. EWING, *Secretary.*

To the COMMISSIONER OF PENSIONS.

DEPARTMENT OF THE INTERIOR,
January 7th, 1850.

SIR: The certificate signed by you in the case of Ann Hubbard, formerly Ann Barron, dated this day, and sent here for my written approval, is herewith returned without it.

You have been heretofore advised, that in the settlement of such claims interest could not be allowed upon interest; and I now have to request that those instructions may be adhered to by you in this and all similar claims.

Very, &c.,

T. EWING, *Secretary.*

To the COMMISSIONER OF PENSIONS.

January 10th, 1850.

SIR: When my attention was called to your certificate in the case of William Graves, I perceived that you had cast interest upon interest, and immediately wrote to you, stating that your mode of calculation was erroneous, and that it should be corrected. I did not lay down a rule for the calculation, not deeming it necessary.

Since that time several certificates sent up by you have been signed in the ordinary way, without examination on my part; and now I find, on looking to them, that they contain the same error with the one which I sent back to you, namely, an allowance of interest upon interest. They differ from the first-named case in this only, that there were two compoundings of interest in that case at first, one of which was omitted in the second certificate, and there is but one in the other cases.

The error is an unfortunate one, but is excusable on your part, as I perceive that both you and the Third Auditor were misled by the opinion of the court of appeals of Virginia in the case of Galt's administrator against the commonwealth.

You have adopted, in terms, the mode of calculation prescribed by that decree, which was very correct in the particular case, where all the interest and part of the principal had been paid at the time fixed upon to commence the calculation of interest on the balance. This did not involve interest upon interest, but merely interest upon the remaining principal, whereas, when applied to these cases, it involves interest upon interest, and in some of them to a large amount.

This must be corrected in all the cases heretofore passed upon, and the money reclaimed as paid by mistake, and in all future cases you will give simple interest merely.

Very, &c.,

T. EWING, *Secretary.*

COMMISSIONER OF PENSIONS.

TREASURY DEPARTMENT,
Third Auditor's Office, May 3, 1850.

SIR: I have the honor to enclose you a copy of the letter addressed to James Lyons, Esq., attorney for the heirs of Commodore James Barron, by your direction, on the 10th of January last.

Mr. Lyons made no official reply, but addressed me a letter, which I had the honor of transmitting to you the day after its receipt.

With great respect,
your obedient servant,

JNO. S. GALLAHER, *Auditor.*

HON. THOMAS EWING,
Secretary of the Interior.

[Copy.]

TREASURY DEPARTMENT,
Third Auditor's Office, Jan. 10, 1850.

SIR: The Secretary of the Interior having decided to review the allowance in the case of Commodore James Barron, in reference to the interest upon it, I am directed by him to request you not to pay over the amount to the claimants until such review can be had.

With great respect,
your obedient servant,

JNO. S. GALLAHER, *Auditor.*

JAMES LYONS, Esq.,
Richmond, Va.

THIRD AUDITOR'S OFFICE,
January 14th, 1850.

SIR: I have just received the enclosed letter from James Lyons, Esq., in reply to mine of the 8th, which he requests me to submit to your consideration.

I may be permitted to remark, that on recurring to the papers in the Galt case, I find the payment of \$8,759 34 on the 19th June, 1833, was *not* sufficient to pay the *interest* then due, (\$10,910 16 ;) and that interest on the *balance*, according to the judgment, included interest on *interest* as well as on the *principal*.

I find that the *corrected* settlement in the Graves' case, (the *first* settled by me,) is in exact conformity to the directions of the court in Virginia, whilst the Galt case *itself* was not correctly settled, (in March preceding,) in my humble judgment.

I have written to the attorneys in each of the cases referred to.

Very respectfully,
your obedient servant,

(Signed) J. S. GALLAHER.

HON. THOS. EWING.

RICHMOND, Jan. 10th, 1850.

DEAR SIR: I have this moment received your letter touching the settlement of Commodore Barron's case, with infinite surprise.

The moment my business here will permit me to do so, I will visit Washington, and in the mean time, I hope nothing will be done to affect the interest of my client, to whom the government must look, if it has the right to look to any one, as the funds had been transferred to Norfolk before your letter came.

I am much surprised, as I say, because the principle upon which interest was paid in Barron's case was the voluntary act of the government; without one word from me upon that subject.

The requisition was made out by the Commissioner of Pensions before I knew how he would state the account, and passed without one word of objection afterwards, from any officer before whom it passed.

I am moreover surprised, because I cannot perceive upon what principle the government can expect to recover back any part of the money paid to Barron.

1st. Because, in justice, she has not paid him one cent more than she ought to have paid; for if, when she settled the half pay, she had settled fairly what she owed, the result would have been precisely as it is, as Barron would have had the whole fund in his hands from that time, so made the interest upon it, and the government would have of course lost the interest, *which she has made by a false settlement* at that time. Can she fairly claim to retain that interest now? Surely not. This would be to give her the benefit of her own wrong, which is contrary both to law and justice. The payment therefore is just. If there be any thing against it, it is a technical rule of law, and from the days of Maris and McFarland, to the present time, money paid under such circumstances, with a full knowledge of the facts, but under mistake of the law, cannot be recovered back. This is law too well settled to be now disturbed.

But in truth, is the law not against you as to the principle of calculation? By settled law, every fiduciary who has interest accruing in his hands, which he ought to pay over, or invest, is made to *account* for interest upon it, as if it were invested. In the case of guardians, the court of appeals of Virginia expressly settled this in the case of Garrett, vs. Carr, 3d Leigh, 407. Nay, they went farther; they decided that an executor who held funds of a ward, which should have been invested, should account annually for the interest, and then interest upon that. And as to trustees, the law is equally well settled in the same way. Now how is it here? The government of the United States owed a debt, which her agents refused to pay at all for thirty years. They then professed a settlement, and paid a trifle, not as part payment, but refusing to pay what now it is *adjudged* they should have paid *then*, and by doing so *have made* the interest which the *creditor would have made* if they had settled fairly. Can they now justly withhold it? Has not the money *then* due, and not paid, been ever since in the use of the government, rendering interest? Was it not *then properly* the money of my client, *improperly* withheld from him? and being so, is he not entitled to the interest upon it? It seems to me that he clearly and justly is, and that the condition of the government is that of a trustee for the party entitled, bound in like manner to account.

The chance of recovering back, therefore, is hopeless. Again, what a figure will the government cut in raising this question now, after repeatedly adjudicating and settling accordingly? What other purpose will it answer but to raise a clamor to the prejudice of the officers for mistaking the law, if indeed they have mistaken it, which I have endeavored to show they have not. Nobody will be hurt but those who confess the mistake, and those probably convict themselves, not of several mistakes merely, but of a double mistake. The situation of the government is really that of a trustee for those with whom they settled falsely, and should settle accordingly. Congress paid Virginia interest upon all the *interest* she had paid to the officers. Why? Because Virginia paid

what the government of the United States *should have paid*. Does not the same principle apply here? Is the government of the United States less bound to pay the interest now than she would be if some one had first paid for her, and then called upon her to refund?

As I cannot write to Mr. Ewing to-night, do me the kindness to present my respects to him, and show him this letter. Sec. 11th, Vesey's Reports, 82; Johnson's Chancery Reports, 620.

Very respectfully,

your obedient servant,

(Signed,) JAMES LYONS.

Hon. J. S. GALLAHER, *Auditor*.

DEPARTMENT OF THE INTERIOR,

March 5th, 1850.

SIR: You will be pleased hereafter, when a certificate under the act of the 5th July, 1832, should be sent from your office for my signature, also to send the papers upon which said certificate was issued.

Very, &c.,

T. EWING, *Secretary*.

To the COMMISSIONER OF PENSIONS.

WASHINGTON, 19th February; 1850.

SIR: It is with deep regret that I am compelled to complain of the conduct of the Commissioner of Pensions; but I cannot submit and allow one measure of justice to be extended to those whom I represent, and see another extended to some others. Whether this is caused by a loss of memory, by incapacity to weigh evidence, or whatever other cause, matters not to me. It is so, and I make the charge. I charge that the evidence which was sufficient to admit the claim of James Kennedy for Judge Bibb, and the claim of Wharton Quarles for Colonel Montague, who is the editor of a paper, is sufficient to prove the same services in the case of Granville Smith, Samuel Cary, and Robert Boush, for me.

I ask that this matter may be investigated, and justice done.

Yours, very respectfully,

FRANCIS A. DICKINS.

Hon. T. EWING,

Secretary of the Interior.

PENSION OFFICE,

January 4, 1850.

SIR: I have examined the papers in the case of Robert Boush, de-

ceased, whose administrator claims additional half pay on account of the service of Boush as paymaster.

There is no evidence as to the period when he served as paymaster. If he was not in that office when his service terminated, he had no right to claim half pay for such staff service. Upon this point positive proof is required.

I am, respectfully,
your obedient servant,

J. L. EDWARDS,
Commissioner of Pensions.

FRANCIS A. DICKINS, Esq.,
Present.

PENSION OFFICE,
January 9, 1850

SIR: I have examined and filed the papers in the case of Samuel Cary, deceased, who was a lieutenant and adjutant in the Virginia State line during the revolution. Half pay, as a lieutenant, was allowed in December, 1832, under the act of July 5, 1832. Half pay, as an adjutant, is now claimed; but I cannot allow the claim unless it can be clearly shown that when his service terminated he was an adjutant. Upon this point positive proof is required.

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

J. L. EDWARDS,
Commissioner of Pensions.

F. A. DICKINS, Esq.,
Present.

DEPARTMENT OF THE INTERIOR,
February 20, 1850.

SIR: I enclose you herewith a letter this day received from Francis A. Dickins, Esq., of this city, and to request that you will transmit to me the papers in the several cases mentioned by Mr. Dickins, together with a report of the reasons upon which you based your decisions in favor of some of the claimants and adversely to others, and wherein the facts of the several cases referred to differ from each other.

Very, &c.,

T. EWING, *Secretary.*

To the COMMISSIONER OF PENSIONS.

PENSION OFFICE,
February 26th, 1850.

SIR: In reply to your letter of the 20th inst., calling for the papers in the cases of James Kennedy, deceased, Wharton Quarles, deceased,

Granville Smith, deceased, Samuel Cary, deceased, and Robert Boush, deceased, and asking for the reasons upon which I have based my decisions in favor of some of the claimants and adversely to others, I have to state that I admitted the claims of the representatives of James Kennedy, and Wharton Quarles, upon the certificates of Mr. Auditor Heath, showing that Kennedy was an adjutant, and that Quarles was a quartermaster, in the Virginia State troops during the revolution. I searched the rolls in order to ascertain whether there was more than one adjutant in the State garrison regiment of Virginia, and finding no evidence that there was more than one, I concluded that Kennedy was that one, and that he was an adjutant when he left the service, and that therefore under the decision of the acting Secretary of the Interior, the heirs were entitled to the half pay for such service. In the case of Quarles, I was also satisfied from an examination, that he was a quartermaster when he left the service; but in the case of Samuel Cary, which required a further examination, I was not able to complete the search till this morning. I am now satisfied that he was the adjutant of Col. Brent's regiment when he left the service. There is, therefore, no objection to the claim on account of the staff service.

The evidence and the brief in the case of Robert Boush, show very clearly in my mind that he did not serve to the end of the war, and that therefore there is no lawful claim to commutation; but I have no doubt that the heirs are entitled to half pay on account of his services as paymaster.

The case of Granville Smith is one in the same category with Boush. Commutation was claimed, but it is very clear from Smith's own petition, made in September, 1791, and addressed to the judges of the circuit court, then sitting at Richmond, that he became supernumerary in 1781, and the heirs are not therefore entitled to commutation. (See paper marked A.) The agent in this case, in a letter addressed to Mr. Coombs, says that he only claimed half pay, and so informed the Commissioner. I have no recollection of such an intimation to me. It certainly was not made to me in writing. Smith belonged to the State garrison regiment, and he was probably a quartermaster in that regiment when he left the service. I see no objection to allowing for service as a regimental quartermaster.

The papers in these cases are all herewith enclosed. The papers in the case of Kennedy are twelve in number; in Quarles' case they are fourteen in number. These two sets of papers belong to the Third Auditor's office, where I have promised to return them, when they shall have been inspected by you.

Smith's papers are twenty-one in number; those of Cary being eight in number, and Boush's are nine in number. In the case of Smith, some papers belong to the Register's office, to which I am bound to return them; and in Boush's case, some of them belong to the Third Auditor's office.

I have the honor to be,
your obedient servant,

J. L. EDWARDS,
Commissioner of Pensions.

Hon. THOMAS EWING,
Secretary of the Interior.

WASHINGTON, 16th March, 1850.

SIR: The Commissioner of Pensions having replied to my charges, and acknowledged that my claim should be paid, I did not feel disposed to pursue the matter any further; but on calling on Mr. Goddard, after the payment of the claim of Boush, to know what action had been had on the others, I was informed that they were yet before you; and knowing that the Commissioner's report might mislead you, I consider it a duty I owe to those whom I represent, as well as to myself, to submit to you a few remarks.

1st. The Commissioner of Pensions says, in relation to the case of Kennedy, that he examined the rolls and did not find more than one adjutant in the State garrison regiment, and concluded that Kennedy was that one. The fact is that he has no roll of the State garrison regiment, showing who was the adjutant, or that there ever was an adjutant to the regiment.

2d. In regard to the case of Samuel Cary, you will observe, by the Commissioner's letter to me, of the 9th January, that he refused to allow the claim; and on my making the charge, he reports to you that the claim should be allowed, and that he was not able to complete his examination until the 26th February, and that he consequently rejected it without examination. This claim was filed in the office of the Commissioner of Pensions on the 11th December last. There is in this case exactly the same evidence that there is in the case of Kennedy, and in addition thereto, the original rolls of the regiment to which he belonged are on file in the Pension Office, and show Cary to have been the adjutant.

3d. In the case of Robert Boush, I have only to remark, that the enclosed letter of the Commissioner shows that on the 4th January he refused to allow the claim, although on the 26th February he thought it ought to be paid, and that he had lost or mislaid part of the evidence.

4th. In the case of Granville Smith, it would appear from the Commissioner's report that he has misunderstood my application, and therefore I have only to ask that the case be referred to him for his action.

Yours, very respectfully,

FRANCIS A. DICKINS.

HON. THO. EWING,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
April 7th, 1849.

SIR: You are requested to send to this department all the papers and evidence on file in your office connected with the following claims, to wit:—

Against the Lower Band of Pottowatamies:—

E. & J. W. & Thomas W. Polke,	John B. Jontrois,
W. W. Cleghorn,	Massey,
P. Chouteau, Jr. & Co.,	Ewings & Clymer,
Andrew Jackson,	W. G. & G. W. Ewing.

Against the Upper Band of Pottowatomies:—

P. Chouteau, Jr. & Co.,
J. H. Whitehead,

Pearson & Cooper,
W. G. & G. W. Ewing.

Against the Miamies:—

W. G. & G. W. Ewing,
Taber & Hamilton,

James H. Kintner,
A. Coquillard & Co.

Against the Sacs and Foxes:—

W. G. & G. W. Ewing,

P. Chouteau, Jr. & Co.,
W. A. & J. B. Scott.

Against the Weas and Piankeshaws:—

Ewings & Clymer.

The foregoing are a portion of the suspended claims referred to in the last annual report of the Commissioner.

Very, &c.

T. EWING, *Secretary*.

To the COMM'R OF INDIAN AFFAIRS.

DEPARTMENT OF THE INTERIOR }
OFFICE INDIAN AFFAIRS, }

April 9th, 1849.

SIR: I have the honor herewith to transmit the claims referred to in your letter of the 7th instant, together with such papers and evidence as are connected with them—except the claims of Massey and Andrew Jackson, which do not appear to have been presented at this office. The copy of the awards of Messrs. Murray, Graham & Fitch, filed in support of the claims of the Messrs. Ewing, M. Kintner, and Messrs. Taber & Hamilton, has been loaned to the Hon. Mr. Thompson, as per his receipt filed with the papers.

Very respectfully,
your obedient servant,

W. MEDILL.

Hon. T. EWING,
Secretary of the Interior.

St. Louis, May 8th, 1849.

W. MEDILL, Esq.,

SIR: I enclose you a letter from the Fur Company of Mr. Chouteau, which states a very plain case, that of the act of the last session, abrogating Indian contracts. They only ask that it shall not apply to exist-

ing contracts. This is both reasonable and legal. I should certainly have made it explicit to that effect, if it had caught my attention when the act was on its passage, but I knew nothing of it. I solicit the attention of the department to the case.

Respectfully, &c.,

THOMAS H. BENTON.

ST. LOUIS, *May 8, 1847.*

HON. THOMAS H. BENTON,
U. S. Senator.

We would most respectfully call your attention to the passage of the act of the 3d March last, in relation to trade and intercourse with the Indian tribes.

We herewith enclose copy of the 3d section of said act, which repeals the 11th section of the act of 30th June, 1834.

Under the said law of 1834, which has been in force for nearly thirteen years, it has been the custom with some tribes to contract national agreements for the payment of individuals and family debts existing against the tribe—as, for instance, in the case of the Pottowatomies, having made a partial provision in the 5th article of their treaty of 5th June, 1846. They did at that time assume and contract to pay, nationally, the claims against the tribe—the commissioners, on behalf of the United States, sanctioning and witnessing these contracts.

At the time of the payment of cash annuities in 1846, we and other traders were requested by the Indians not to ask them for any part of the sums they owed us at that time. We, as usual, granted their request, with the understanding that they would pay us out of the money accruing from the treaty. To this they consented, and we now hold their obligation. Had we then refused to grant their demand, we could have collected a large portion of our debts; but they were in need of all their annuity funds, and we did not ask them to pay us a dollar.

We fear that under the new law, (see section 3d,) where the matter is left entirely at the discretion of the President and Secretary of War, and that not understanding the situation of our business under the former law, they might issue such instructions as would entirely destroy our rights and those of many others.

We would most respectfully request that the instructions may not have a retrospective action, and will not interfere or destroy contracts and debts made prior to the passage of the late law, but let it declare all subsequent national debts void.

It cannot have been the intention of Congress that the law should be *retrospective*, for that would be the ruin of many of our citizens (western); but the *discretion* has such an extent that we entertain fears what the nature may be of the instructions which the President or Secretary of War may issue.

We doubt not that you will readily perceive the dangers threatening the claims of the traders.

If the instructions would provide that debts made payable to the 3d

March last shall not be interfered with, that is all that we would ask, and that as an act of justice.

It has been a custom of long standing with the tribes of Indians, and has been admitted by the government, to contract and make national debts. It has consented that such debts should be paid.

Such is the miserable condition of these Indians, and so destitute of game are their hunting grounds, that but for the aid given them by their traders in advance of the payment of their annuities, they must have greatly suffered. The Indians view it so, and will pay us if the government does not forbid it.

We would, as citizens of your own State, and also your constituents; appeal to you, and that, in our behalf, you would ask the President or Secretary of War not to issue such instructions as will operate RETROSPECTIVELY, but let them operate ONLY on such transactions as may take place from the date of the passage of the late law.

The department will, no doubt, issue very soon its instructions under the new law; and as we feel a great deal of anxiety on that subject, we would ask of you to address the President of the United States, or such department of the executive, in our behalf, so soon as you may find it convenient.

Very respectfully,
your most obedient servants,

P. CHOUTEAU, JR., & CO.

WAR DEPARTMENT,
Office Indian Affairs, May 18th, 1847.

SIR: I have the honor to acknowledge the receipt of your letter of the 8th instant, enclosing one from P. Chouteau & Co., urging that the law of the last session declaring said contracts made by Indians for money or goods be not made to operate retrospectively. I beg leave to assure you, sir, and, through you, Messrs. Chouteau & Co., that it is the purpose of the department so to frame the instructions to the different agents and sub-agents when the annuities are remitted as to prevent any injustice in any case.

Yours, very respectfully,

WILLIAM MEDILL.

HON. THOS. H. BENTON,
St. Louis, Missouri.

ST. LOUIS, 10th May, 1847.

HON. WILLIAM MEDILL,
Commissioner Indian Affairs.

SIR: Herewith please find a petition, signed by ourselves and others, which we desire most respectfully, through your kindness, to cause to be laid before the Honorable Secretary of War.

We also respectfully request the Honorable Commissioner of Indian Affairs to give it a careful and dispassionate perusal, as it involves interests of vast importance to the undersigned and others.

We remain, with great respect,
your most obedient servants,

P. CHOUTEAU, JR., & CO.
W. G. & G. W. EWING.

To the Honorable WILLIAM L. MARCY,
Secretary of War of the United States.

SIR: The undersigned have lately become aware of the provisions of the act of Congress of the 3d March, 1847, which is substantially an act repealing the Indian intercourse law of the 30th June, 1834.

Having for years past been engaged in the Indian trade, and having considerable demands against different tribes and nations of Indians, they have become anxious and alarmed, when they learned the passage of a law which would prove ruinous, not only to themselves, but to many other traders, if its provisions were carried into immediate effect. Therefore, they feel justified in laying before your Excellency, a statement of facts connected with the Indian trade, and asking a suspension of the provisions of the act of 3d March, 1847, until such time as an enforcement of the same shall work no injustice. It is not unknown to your Excellency that the traders, in their intercourse with Indians, are necessarily *compelled* to make considerable advances to the tribes; these advances to be met by successful hunts, or by means obtained from the government. Such advances have sometimes been forced, through threats of violence, because the governmental supplies had, by mischance, not reached the Indians, and they were destitute of the ordinary means of living; but usually they have been cheerfully made by the traders, in the ordinary course of business.

A contract with an Indian tribe, made under the sanction of law, is doubtless as valid as a contract made with the whites. But whilst the general government has permitted such contracts, it has unfortunately made no provisions for their enforcement, but has left the trader to collect his dues by such means as can be derived from the sense of truth and justice, and prosperity of the different tribes. Having no means for the legal enforcement of claims, the traders could not avoid following the example set by the government itself, when it acted and contracted with the Indians all contracts and obligations, which in the form of treaties are considered as binding on all the individual members of a tribe, are made, not with the individuals, but with chiefs, headmen, and braves, and whatever they have undertaken to do, the United States enforced as against all. Following this example, the traders have uniformly taken as a guarantee for the payment of their claims, the solemn written obligations of the chiefs, headmen, and warriors of the tribe. Such obligations have always been recognized by the tribe, and have been paid with more or less punctuality, according to their means.

Many such obligations are now outstanding and unsatisfied; they are

not claims against individuals, but against the tribe alone, as represented by their principal men, can the trader look for payment.

Apart from the example set by the government as to the mode of securing contracts and obligations with the Indians, the traders have always supposed that as the 11th section of the act of 30th June, 1834, directed that the payment of all annuities, or other sums stipulated by treaty to be made to any Indian tribe, should be made to the chiefs of such tribe, or to such persons as said tribe should appoint, &c. The more proper way to secure their claims would be to take obligations, such as have heretofore been mentioned. Having in this mode of dealing the example of the government, the quasi direction of the act of 1834, and the tacit sanction of the agents of the Indian department, who have never to our knowledge hinted at the impropriety of such a course, but, on the contrary, have, in many instances advised and attested such obligations; and having on our side the entire willingness of the different tribes that such obligations should be met honestly and fully, can we be blamed for the anxiety which we feel, when we look to a vigorous enforcement of the act of 1847? Should that law be thus enforced by your Excellency, not only are those whose solemn national obligations we hold deprived of the means of meeting them, but even the just and recognized claims which we have are declared to be a nullity.

We cannot conceive upon what principle of reason or justice the third section of the act of 1847 has been framed, if the terms "*executory contracts*" used in that section, are intended to embrace outstanding obligations, such as we have mentioned. Certainly our constitution forbids the passage of any *ex post facto* law, and the spirit of our institutions is at war with any law which would "impair" the obligation of contracts.

If, however, as we trust, according to your Excellency's interpretation, the declaration of nullity does not include such obligations as we have alluded to, but applies only to undertakings based upon considerations subsequent to the passage of the act of 1847, then we have merely to call your attention to the practical operations of the provisions of that section.

According to this section, annuities, goods, &c., instead of being paid over to the chiefs, as for the last thirteen years it has been done, may, at your Excellency's discretion, be divided and paid over to the heads of families, and other individuals entitled to participate therein, under such regulations as you may prescribe.

The making of treaties implies sovereignty, and it would seem that the mere fact of the United States treating with an Indian tribe admits their sovereign power to create a national obligation for debts, which cannot be annulled by the act of another sovereignty. If, then, our claims cannot, upon any principle be rendered null by legislative enactments of the United States, will it consist with your Excellency's sense of justice, by the framing of regulations immediately effective, to render unavailable, claims so just, so recognized, and so unassailable?

If payments of annuities are to be made, not as usual, to chiefs, but to "heads of families," it follows that the chiefs, head men, and braves, whose obligations we hold, can never meet them, and the traders must bear consequences enormously injurious to them.

We therefore earnestly request that the instructions, if any, to be prepared by your Honor, under the 3rd section of said act, may not be so formed as to interfere with existing contracts made nationally (under

the former and then existing law and usage) with tribes and nations of Indians. We pray that such instructions may not operate *retrospectively*, but *prospectively*, and that you may be pleased, in preparing this change (from national to individual dealing,) to do it in such way and manner as will best satisfy the ends of justice, and award equal rights to both the Indians, and citizens of the United States who are engaged in trade and business with them. We ask that existing contracts may not be interfered with, nor declared "null and void;" and that the tribes and nations who owe, and are justly indebted, may be permitted to receive their annuities as heretofore, and as they expected to receive them, when they made national debts, by this means enabling them to pay off all existing obligations in good faith, as they have covenanted and agreed to do, *before* you enforce the rule of paying by "heads of families."

If this course is not pursued, great injustice must be done to ourselves and others, having just claims against the Indians. The Pottowatomies have recently made treaties with the United States, and at the same time *they* have, nationally, made provisions for the payment of their debts; to do this was one of the strong inducements on the part of the Indians to treat. In the case of the Pottowatomies the Commissioner told them they would be enabled to pay their debts, "if they treated," and sanctioned and witnessed the national obligations given at the time (see copy of obligations herewith transmitted, marked A & B,) then entered into at the time of the signing of the treaty, in June, 1846. These and similar debts, thus sanctioned and solemnized, are national debts, and it is in that way alone that the undersigned can ever expect to receive their pay. At the urgent request of the Indians, when making this agreement, (who urged that they were then poor and destitute,) the undersigned and others agreed not to ask them to pay out of their money annuities in the year 1846, but to wait until 1847, as contracts show.

By this we contributed to their relief and greatly discommoded ourselves, yet we stood by and did not ask the Indians for a dollar of their money. Had it not been for the *national* agreement made, we could have collected, at that time, half if not more of the money due us, but now our only remedy is the national one, and with such we hope and trust your Excellency will not interfere, but leave the parties at liberty to settle them as they have agreed.

Similar contracts, growing out of our trade with them, have been made with the Winnebagoes, Osages, Sacs and Foxes, and others, and most generally in open council, in the presence and with the knowledge and approbation of the resident agents, or of the Superintendent of Indian Affairs.

We will here remark, and we appeal to the Superintendent, and other government officers, who personally know that these debts have not been urged by us upon the Indians (far from it,) and the very reverse of this is the fact. It is almost *impossible* to remain in the Indian country, surrounded by the half-starved and destitute people, and avoid letting them have credit; their wants are greater than their means; they are not husbandmen but hunters; they have recently been removed to countries where there is *no hunt*; their annuities are paid to them but once a-year, and during the long interval they would suffer and perish, if they could not, as they have often done with us, *almost force* us to trust them. We appeal to the public officers here in the country (who have been eye-witnesses in many cases) for the truth of what we here ave..

The Indians know and acknowledge the justice of our demands, and want to pay us. It is no *speculation* on our parts; it is not a *lucrative*, but an *adverse* trade, and the undersigned have no anxiety whatever to continue in it, having for many years found it not only unprofitable but decidedly *disastrous*; and having now no other desire than to collect their just debts, and hereafter *immediately* to withdraw from the trade entirely.

We offer no objection to the new law or the contemplated change of making payments after existing contracts are first fully complied with by the tribes and nations who owe us, and who have from time to time had our goods and provisions, at their urgent solicitations, to meet their wants and necessities, and not unfrequently to relieve them from actual suffering.

In the language of the Superintendent, we can say, that we have seen times and occasions when our property "would not have been safe" had we refused to trust the destitute and wretched tribes by whom we were surrounded. In many instances our debts are of long standing, and the loss of interest, and heavy expenses to which we are subjected, forbid that any profit can result from this worn-out trade. This is an exaggeration, but a true statement of the case; and we trust that no instructions will be issued to interfere with the existing conventional arrangements which we have heretofore made with the various tribes for the payment of the debts due to us.

In a few years it is believed that all the national obligations will be paid, and you would never, under the present law, hear of them again. But these tribes, individually and collectively, have had our property at the usual prices of the country, and, in most cases, on long credit. Our business with them has been lawful and proper, and in accordance with the usage and custom of the country.

It has been, in most instances, under the observation of the agent and officers of the Indian department. It has been conducted fairly; and the Indians are satisfied, and wish to pay, and will pay, unless the government refuses to pay them their annuities in the way they expected to receive them when they contracted the debts with us.

Let us here state, that the nations do not, when they receive their annuities by chiefs and headmen, appropriate *all* their money to pay their national debts; but they invariably divide a fair portion of their money to the heads of families, and apply *only* a portion to the payment of their national debts. This accounts for their tardy payments, and its ruinous consequences to their creditors.

The most of these nations and tribes, we think, have provided by their recent treaties and otherwise to pay off their existing debts; after which, it is generally understood that there will be no more *national* debts, but it will change to "heads of families" or "individuals;"—so that the undersigned believe the department will experience no difficulty in effecting the desired change after the national debts are paid.

Our trade with the Indians has been lawful and fair, sanctioned by the custom of the country, and known to the government. We have always given bonds, and resided in the Indian country by *authority* of law, and the fact was known to the department. In transacting business with the tribes in their *national* capacity, we were not violating any law or custom known to us or to the country, but, on the contrary, dealing in a manner which seemed to have been contemplated by the provisions of the former intercourse act of 30th June, 1834, before referred to. We

have not by any act rendered ourselves justly obnoxious to the laws of the country; on the contrary, it has been a part of our ambition to further the views of the government, to respect and maintain the laws and regulations, and thereby we had hoped to merit its approbation and protection. It is not claimed that we were bound to trust Indians; yet it is well known that such is and has been the custom of the trade for the past twenty years, and it has been almost impossible to avoid it. In the fall of the year many of these tribes are destitute, as was the case last September with the Osages. They were in a destitute and *suffering* condition, and had neither guns, ammunition, nor clothing, to enable them to go upon their fall buffalo hunt, almost their only means of subsistence.

They came to the undersigned, who had trading houses in their country, and asked us for rifles, ammunition, provisions, &c. We furnished them. Had we not done so, it is more than probable they would have taken our property by force; as it is, they made a poor hunt, and failed to pay us.

This deficit they have agreed *nationally* to pay to us this year out of their cash annuities due them for 1846. For further particulars on this subject, see the late report of the Superintendent.

Many and detailed instances could be cited, if it were necessary to show that these Western frontier and destitute tribes have urged and almost *forced* the credit system upon their resident traders; and it is useless, and worse than folly, to remain in their country, as they have very little, if any, trade, except that of their annuities. As before remarked, there is but little hunt, and but few furs and skins are now taken. These tribes thus situated, and being as yet unwilling and unable to labor as husbandmen and cultivate the soil, are necessarily *poor* and *destitute* the most of the year. The undersigned find but little inducement to remain in this *disastrous* trade; but in retiring from it they claim that, in common justice, they may be permitted to collect what is justly and honestly due them. This, however, they cannot effect, if the regulations which it is in your Excellency's discretion to make should have any other than a prospective bearing.

We remain, respectfully,
your Excellency's obedient servants,

P. CHOUTEAU, JR., & CO.,
W. G. & G. W. EWING,
S. PHILPS.

The undersigned desire most respectfully to state, that they have seen and read the foregoing petition to the Honorable Secretary of War, on the subject of the contemplated changes as regards the mode of making payments to the Indians in future, and that they fully concur with the petitioners in the views there expressed, and are of opinion that justice to the parties interested can only be done by allowing existing agreements and contracts to be fairly complied with.

The undersigned are not directly engaged in this Indian frontier trade, but do more or less business with persons who are in it; and from the best information we can obtain on the subject, are of opinion that the

trade is not lucrative, but a meagre and precarious, if not entirely a disastrous, business.

We hope, therefore, that the joint claims of citizens against the frontier tribes who receive annuities from the United States may be duly considered by the Honorable Secretary of War, and that his instructions may not operate retrospectively or prejudicial to those who have existing contracts and agreements with them.

We remain, with great respect,
your most obedient servants,

J. & E. WALSH,
GEO. COLLIER, Administrator of
Peter Powell,
CROW, McCREENY & BARKDAL.

ROBERT CAMPBELL.

ST. LOUIS, *May 10th*, 1847.

I am no trader, nor in any manner connected with the trade with the Indians, but have read the petition referred to on the other side, and fully concur in the justness of the position therein taken, and unite in their claims to protection and relief.

JAS. B. BOWLIN.

ST. LOUIS, *May 10*, 1847.

[Copy] A.

\$6,410 70.

We, the chiefs, headmen, warriors and young men of the Pottowatomie nation of Indians, solemnly bind and pledge ourselves to pay to G. W. & W. G. Ewing, or order, six thousand four hundred and ten dollars and seventy cents, without defalcation, for value received in merchandise and provisions, due by us to said W. G. & G. W. Ewing, up to this date; the funds to pay the amount above stated, \$6,410 70, to be taken from the first moneys accruing from the treaty made at Council Bluffs, 6th June, 1846, and Ossage river, S. Agency, 17th June, 1846, payable in two annual instalments.

Given under our hands, this 17th June, 1846.

Interpreter,
J. N. BOWRASSA.

Signed,

{ TOPENABEE,
WERNESSEE,
NIWACKOTO,
LYONWAI,
MAIGAH 'GWOK.
SHAW, WEE,
LOUISON,
POKE-TO,
NES NAH GEE,
CHIMO KEMANSS.

Witness to signatures,
THOS. H. HARNEY, S. Ind. Affairs.

[Copy] B.

\$7,130.

We, the chiefs, headmen, warriors and young men of the Pottowatomie nation of Indians, solemnly bind and pledge ourselves to pay to P. Chouteau, Jr., & Co., or order, the sum of seven thousand one hundred and thirty dollars, without defalcation, for value received in merchandise and provisions, due by us to the above named persons. The funds to pay said amount above stated, to be paid from the first money accruing from the treaty with said Indians, made and concluded at the Council Bluffs, June 5th, 1846, and at the Osage S. Agency on Pottowatomie Creek, June 17th, 1846, said amount to be paid in two annual installments.

Given under our hands, 17th June, 1846.

Interpreter,
J. N. BOWRASSA.

Signed,

TOPENE BEE,
WE WE SEE,
NOACKTO,
IONWAI,
MAIGA CGWUCK,
SHAH WEE,
LOUIS'ON,
POKETO,
NESWAHGEE,
MAH SUK,
CHIMO KEMANSS.

Witness to delegation,

Signed, { J. LYKINS,
 { THOS. H. HARNEY.

AN ACT

To amend an act, entitled "An act to provide for the better organization of the Department of Indian Affairs," and an act entitled "An act to regulate trade and intercourse with the Indian Tribes, and to preserve peace on the frontiers; approved June 13th, 1834; and for other purposes."

Section 1st. Not passed.

Section 2d. do.

Section 3d. Passed. Respecting the limits of agency and sub-agency, to be established by the Secretary of War.

Section 4th. Passed. Respecting the sale of spirituous liquors to Indians; what punishment, &c., &c.

Section 5th. Passed. And be it further enacted, (section 5th has become the 3d section instead of 5th,) that the 11th section of the "Act to provide for the better organization of the department of Indian Affairs," approved June 30th, 1834, be, and the same is hereby, so amended as to provide that all annuities, or other moneys, and all goods, stipulated by treaty to be paid or furnished to any Indian tribe, shall, at the discretion of the President or Secretary of War, instead of being paid over to the chiefs, or to such persons as they shall designate, be divided and paid over to the heads of families, and other individuals entitled to participate

therein, under such regulations as shall be prescribed by the Secretary of War; and no such annuities, or moneys, or goods, shall be paid or distributed to the Indians while they are under the influence of any description of intoxicating liquor, nor while there are good and sufficient reasons for the officers or agents, whose duty it may be to make such payment or distribution, for believing that there is any species of intoxicating liquor within convenient reach of the Indians, nor until the chiefs and headmen shall have pledged themselves to use all their influence, and to make all proper exertions to prevent the introduction and sale of such liquor in their country; and all executory contracts made and entered into by any Indian, for the payment of money or goods, shall be deemed and held to be null and void, and of no binding effect whatsoever.

Section 6th. Respecting dismissal of one clerk in office of Indian Affairs—increase of salary of first clerk, &c., &c.

Section 7th. Appropriation of \$5,000 to enable the department of Indian Affairs to collect and digest such statistics and materials as may illustrate the history, the present condition and future prospects of Indian tribes of the United States. Approved 3d March, 1847. See Acts of Congress, 2847, page 136, chap. 66.

Copy of 11th section referred to in section 3d of the present act, of 3d March, 1847, reads thus:

“And be it further enacted that the payment of all annuities or other sums stipulated by treaty to be made to any Indian tribe, shall be made to the chiefs of such tribe, or to such person as said tribe shall appoint, &c., &c.

WAR DEPARTMENT,
OFFICE INDIAN AFFAIRS.

May 19th, 1847.

GENTLEMEN: Your letter of the 10th inst., and the memorial to the Secretary of War which accompanied it, have been received and duly considered.

Without entering into a discussion of the several points, and the arguments in support of them, and embraced in the memorial, it is deemed sufficient at this time to assure you that the department will endeavor so to frame its instructions to the different agents and sub-agents, in reference to the execution of the law of the last session, on the subject of the payment of annuities, and of contracts entered into by Indians, as to avoid doing injustice in any case to persons who are bona fide and in good faith their creditors.

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

WM. MEDILL.

Messrs. P. CHOUTEAU, JR. & Co., AND
W. G. & G. W. EWING,

St. Louis, Missouri.

DETROIT, *May 18th*, 1847.

SIR: I enclose the accompanying letter, which I have received from Mr. Ewing. I have informed Mr. Ewing that my being the channel of communication would not promote the object which he had in view, but that the department would look at the subject, independent of any opinions which might be presented; still, as he has preferred that I should forward his letter, and express my views in relation to it, I do not hesitate to do so.

I observe that the act of Congress respecting the change in the mode of paying the annuities is not imperative, but vests the discretion in the department. Mr. Ewing has certainly given strong reasons why the change should not operate to defeat the arrangements already made with the consent of the parties.

It might operate as well injuriously as unjustly. And it seems to me that the change, when introduced, should be prospective, leaving existing arrangements to be carried into effect under the present order of things.

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

LEWIS CASS.

HON. WILLIAM L. MARCY,
Secretary of War.

WAR DEPARTMENT,
OFFICE INDIAN AFFAIRS.
May 6th, 1847.

SIR: I have the honor to acknowledge the receipt of your letter of the 18th inst., enclosing one addressed to you by W. G. Ewing, Esq., with respect to the operation of the law of the last session, providing for a change in the mode of paying Indian annuities. All that can at present be said on the subject is, that in framing instructions to the agents when the next annuities—those of the present year—are remitted, due regard will be had to the just and bona fide claims against the Indians, so far as their necessities and essential welfare will admit.

Very respectfully,
your obedient servant,

WM. MEDILL, *Commissioner.*

HON. LEWIS CASS,
U. S. Senator,
Detroit, Michigan.

WAR DEPARTMENT,
Office Indian Affairs, November 20, 1847.

GENTLEMEN: Your letter of the 26th ultimo, asking that further instructions be given to the Superintendent of Indian Affairs in relation to

the investigation and establishment of accounts against the Indians, has been received.

As the department will have nothing to do with the indebtedness of individual Indians, the first step will be to establish the *nature* of the claims. If the President shall be of opinion that they are of a *national character*, and that they "were justified by the circumstances and objects under and for which they were created," suitable arrangements will be made to ascertain the amount which is fairly and justly due. Until this step is taken, and the character of the claims established, it does not appear to me that any farther action is called for on the part of this office. There is certainly no disposition to prescribe any arbitrary mode of satisfying the President's mind on that subject.

Very respectfully,
your obedient servant,

WM. MEDILL.

Messrs. W. G. & G. W. EWING,
St. Louis, Mo.

To His EXCELLENCY JAMES K POLK,
President of the United States.

The undersigned, members of the legislature of the State of Indiana, beg leave respectfully to represent, that they are, informed, and believe, that the *fifty thousand dollars* set apart in the 5th article of the treaty of the 5th June, A. D. 1846, with the Pottowatomie Indians, (part of whom emigrated from this State, and with whom some of the citizens of this State were interested in trade,) was for the purpose of paying their *just debts* then due merchants and traders having stores in their country under license from the United States, and whose rights were beyond the civil jurisdiction of the courts of the United States, and therefore entitled to the protection of their government; and as it is represented that but a *part* of said debts intended to be provided for out of their national fund have been paid,

The undersigned respectfully pray that said debts may be *investigated*, and all thereof found to be *just and due* may be paid out of the national funds of said tribe, in such manner and at such times as you may think just and proper.

INDIANAPOLIS, 14th January, 1848.

J. D. Cassall,
F. Hall,
W. A. Porter,
A. L. Osborn,
M. H. Orton,
Henry Simpson,
A. J. Harlan,
J. J. Shryock,

Elias Murray,
Cyrus Faber,
F. P. Randall,
M. R. Green,
Madison Marsh,
Richard Winchel,
E. G. English,
William Berry,

Davis C. Dunning,
 Thomas D. Walpole,
 John Beard,
 D. P. Holloway,
 Wm. G. Montgomery,
 J. W. Dobson,
 John S. Davis,
 Coryden Richmond,
 S. B. Staunton,
 M. P. Ward,
 S. Meredith,
 W. W. Niff,
 Delaian Martin,
 Grafton F. Cookerly,

Godlove S. Orth,
 H. Levihaut,
 John P. Widney,
 William H. Nimmor,
 J. G. Read,
 A. W. Armstrong,
 Wm. P. Dole,
 E. M. Huntington,
 Jas. S. Frazer,
 James E. Blythe,
 Geo. W. Thompson,
 Abner T. Ellis,
 Amoy Kinney,
 J. C. Graham.

Understanding that \$20,000 of the \$50,000 mentioned in the 5th article of said treaty has not yet been paid to creditors of the said Indians, as contemplated therein, and it being represented that there are valid claims that are entitled to satisfaction from that source, I respectfully ask that so far as it is compatible with law and usage, said investigation may be had, and payment made—without desiring, however, to improperly interfere with the regulated business of the department.

JAMES WHITCOMB.

Jan. 18th, 1848.

I do cheerfully concur in the request above of Governor Whitcomb.

D. REYNOLD.

Jan. 18th, 1848.

I also concur in sentiment with his Excellency the Governor, as above expressed.

JNO. H. THOMPSON.

And I.

SAML. HANNAH.

I also concur.

D. MAGUIRE.

OFFICE SUPERINTENDENT INDIAN AFFAIRS,
St. Louis, January 22d, 1848.

SIR: At the request of Mr. G. W. Ewing, one of the firm of W. G. & G. W. Ewing, I have the honor herewith to forward a letter to your address, said to contain a copy of the obligation of the Pottowatamies of

the C. Bluffs, which was received on yesterday, accompanied by a letter to the Superintendent Indian Affairs, which I also enclose, as it more fully expresses the wishes of the Messrs. Ewing.

With great respect,

I am, sir, your obedient servant,

JOHN HAVERTY, *Clk. Indian Office.*

HON. WM. MEDILL,

Commissioner Indian Affairs.

ST. LOUIS, *Jan. 21st, 1848.*

Major THOS. H. HARNEY,

Superintendent Indian Affairs.

DEAR SIR: Herewith please find a certified copy of our original national obligation, due us from the Council Bluffs Pottowatomies, together with our letter in regard to said claim, all of which we will thank you if you will have the goodness to forward to the Hon. the Commissioner Indian Affairs at the city of Washington.

Our national obligation against the Pottowatomies of the late Osage River sub-agency, we presume has been sent forward to the department by this time, having given instructions to that effect to our clerk in charge of our Sugar Creek post.

Your kind attention to our request will be duly appreciated by

Very respectfully,

your most obedient servants,

W. G. & G. W. EWING.

N. B. Will the Superintendent have the goodness to ask the Hon. Commissioner Indian Affairs, to acknowledge the receipt of our claim, that we may know it has reached him, &c.

ST. LOUIS, *Jan. 21st, 1848.*

To Hon. WM. MEDILL,

Commissioner Indian Affairs.

SIR: In reply to your letter of the 20th Nov., 1847, we have the honor to submit herewith a copy, (attested by the certificate of Major Harney, Superintendent Indian Affairs,) of the national obligation entered into by the Council Bluffs Pottowatomies, on the day of signing the treaty of 1846, recognizing our claims as "*national*," together with the receipts for the amount paid thereon under that treaty, at the payment of 1847.

This obligation was made in open council, witnessed by the sub-agent and others; and the amount endorsed was paid in open council, also witnessed by the sub-agent; and the national indebtedness as to the balance unpaid, has been repeatedly acknowledged in open council.

We are of opinion, and so, as we are informed by him, is the Superintendent of Indian Affairs at this place, that this is sufficient to prove our claims to be "national," under the rule prescribed in your letter; and therefore deem it unnecessary to say more on the subject.

In regard to our national claims against the Osage River Pottowatomies, we desire to state, that we gave directions to our clerk, Samuel Lewis, Esq., to prepare and forward them in like manner as above, and we trust that ere this they have been received at the department, and we beg leave to make the same suggestions in regard to them.

Hoping that you will, at the earliest time consistent with the convenience of the department, take some action in regard to these claims,

We remain,
very respectfully,
your obedient servants,

W. G. & G. W. EWING.

[Copy.]

COUNCIL BLUFFS, June 5th, 1846.

We the undersigned, chiefs and braves of the Pottowatomie nation, for value received, agree to pay to William G. & George W. Ewing, or order, the sum of forty thousand two hundred and seventy-seven dollars, in seven installments, the first installment to be thirteen thousand dollars; the remaining twenty-seven thousand two hundred and seventy-seven dollars to be paid in six equal installments, to be paid after the ratification of the treaty, concluded this date, and at the first payment of annuities to the Pottowatomies the first installment; the second at the payment of 1847, the third in 1848, the fourth in 1849, the fifth in 1850, the sixth in 1851, the seventh in 1852.

	<i>Names.</i>	<i>Marks.</i>
Witness	ME-AN-MUSE,	his X mark.
R. B. MITCHELL,	} OH-TO-KEE-SHUCK,	his X mark.
Sub-Indian Agent.		ME-GIS,
LITE T. TATE,	PUCK-NIM,	his X mark.
F. V. TAGON,	SHON-NIM-DA,	his X mark.
O. G. FLEMING,	WAT-ME-ME,	his X mark.
THOS. D. S. McDONALD,	KIM-ME-KAG-HE,	his X mark.
	SAWS-BUCH-SKUCK,	his X mark.
	SIN-AND-CHE-WIN,	his X mark.
	CAT-NAB-ME,	his X mark.
	KE-AN,	his X mark.
	WAB-KEE-SHUCK,	his X mark.
	E-TWO KEE-SHUCK,	his X mark.
	M. B. BOMBEIN, Clerk for Nation.	
	JOS. LAFOMBOISE, Inter.	his X mark.
	PIERRE LECLAIRE,	his X mark.
	WAB-SAG,	his X mark.
	ME-SHE-KE-TO-NO,	his X mark.

\$12,250.

Received, Point aux Poull, October 1st, 1847, from the nation, the sum of twelve thousand two hundred and fifty dollars, being in part payment of the within national obligation.

Witness,

R. B. MITCHELL,
Indian Sub-Agent.

W. G. & G. W. EWING.

OFFICE SUPERINTENDENT INDIAN AFFAIRS,
St. Louis, December 21st, 1847.

At the earnest request of Col. G. W. Ewing, I have compared the following obligation, and the signatures and receipt, with the original, in the possession of Col. E., and find it a correct copy.

THOS. H. HARNEY,
Superintendent Indian Affairs.

The undersigned is, and has been, the book-keeper at the trading-house of W. G. & G. W. Ewing at Point aux Poul, since April, 1841, prepared the original national obligation, of which the annexed is a true and correct copy. It was executed by the Indians in open council, and was given to cover and pay the amount then owing and due the said firm by the various individuals of the Council Bluffs Pottowatomies. It was assumed and made national at the making of the treaty of that date by said Indians. They agreed to pay it in installments, as stated on the face of the obligation. It was expected, when the arrangement was made, that the first installment would be paid by them in the fall of 1846, but no appropriation being made that year for the new treaty, it was not paid until in 1847.

I was present when the said nation, or tribe, paid over to said Ewings, in open council, the \$12,250, and saw the same endorsed on the obligation. Major Harney, Superintendent of Indian Affairs, and Major Robert B. Mitchell, sub-agent for said Indians, were present also, and saw the money paid.

All the Indian accounts had been, by me, regularly scheduled up to the 5th June, 1846, and said obligation was given by the Indians when they *assumed* their payment.

The books are all regularly kept, showing the items, persons, day and date, which, if required, will show the nature of the indebtedness.

The residue of the said obligation remains yet unpaid. The endorsement shows all that has ever been paid on those debts.

OLIVER G. FLEMING.

SAINT LOUIS, *Dec. 31st, 1847.*

WASHINGTON CITY, D. C.,
March 30th, 1848.

HON. WILLIAM MEDILL,
Comm'r Indian Affairs:

SIR: Herewith please find the following, viz.:

- Marked A.* Colonel A. J. Vaughan, sub-agent. Statement of the Council with the Pottowatomies, on 29th Sept., 1841.
- Marked C.* W. G. & G. W. Ewing's letter to Colonel A. J. Vaughan, dated Nov. 20, 1847.
- Marked B.* Colonel A. J. Vaughan's reply and statement as to Samuel Lewis, Esq., dated 22d Nov., 1847.
- Marked D.* Major A. L. Davis's statement as to Samuel Lewis, dated Dec. 11, 1847.

All of which papers we respectfully ask may be filed with our other papers, now on file, showing that the Sugar Creek Pottowatomies owed us, on the 17th day of June, 1846, a large sum, say \$6,410 70, as from the national obligation to us of that date.

And we desire here further to state that those Pottowatomies would have paid their creditors the installments then due, (viz., in Sept., 1847,) had not the sub-agent, acting under *private* injunctions from Major Harney, convened those people, about the 27th of September last, some two days before the council held with their creditors, and there, in secret council, as we were informed and believed, told them *not to pay* anything on the national debts.

This Colonel Vaughan did in obedience to instructions, and a secret or private letter received from Major Harney, and thus forbid the payment of their part of the \$50,000, or any part of it, on national debts, in direct and positive violation of the stipulations of the Pottowatomie treaty, (*vide*, 5th article,) and in total disregard of the general instructions from the Commissioner of Indian Affairs, of 30th August last, which pointed out *that* \$50,000 as a "specific appropriation" by treaty, and directed that it should be paid accordingly—that the then instructions were not designed nor intended to interfere with that specific fund at all.

We aver that by order of Major Harney the treaty was *violated*, and that money, which justly and legally was applicable to the payment of debts and improvements, was not so paid, and of this there is abundant proof.

The creditors remonstrated earnestly, but respectfully, against it, but by a high-handed act of injustice and oppression their rights were disregarded. The \$20,000 sent to Colonel Vaughan for the Osage River Pottowatomies, as their portion of the \$50,000 was not so paid out to said Indians—not one dollar of it; nor was it faithfully applied to the objects for which it was especially appropriated. It was *misapplied* and squandered, as he alleged, under instructions from Major Harney.

The creditors asked those Indians (as the minutes of the Council show) to pay them one (the first) installment, say \$17,500, as they were

amply able to do, being then about \$74,000 ; and it is confidently believed they would have done so, had not Major Harney improperly forbid it. We acquit Col Vaughan from any willing agency in this act of injustice, for he had openly stated that he believed that money was alone applicable to the objects named in the treaty, and that if left to himself he would so apply it, but if otherwise instructed he would obey instructions. He stated subsequently that he was otherwise instructed, after which he exerted himself successfully in carrying out the unjust and oppressive *private* orders of Major Harney, by which the treaty was *violated*, and great injustice was done to the bona fide and ascertained creditors of those Indians..

Very respectfully,
your obedient servant,
W. G. & G. W. EWING.

The memorial of His Excellency James Whitcomb, Governor of the State of Indiana, and others, to his Excellency James K. Polk, President of the United States, of the 18th January last, on this subject, is respectfully referred to.

(C.)

SUGAR CREEK,
Nov. 20th, 1847.

COL. A. J. VAUGHAN,
Sub. Indian Agent.

SIR : By that part of your late instructions from the Honorable Commissioner Indian Affairs, dated 30th August last, in relation to unpaid national claims against the Pottowatamie Indians of your sub-agency, the undersigned observe that it is expected that all such claims will be drawn off, and filed in the department at Washington, by the first of April next.

Our (S. C.) post, at this place, is, and has been for the last three years, under the sole management of our worthy clerk, Samuel Lewis, Esq., who has transacted all its business. We have supplied him, and visited him once or twice only in each year. This fact has, no doubt, come to your knowledge, residing near by, as you do, and having often visited our trading post.

Judge Lewis came to Sugar Creek in the employ of Messrs. Ewings & Clymer, as an assistant in their Indian trade, in the year of 1840, and has remained at the same post ever since.

In December, 1844, we settled up with our partner, Joseph Clymer, Jr., who, up to that time, had had the supervision and management of the Sugar Creek post. We continued it since that time on our own account, and placed it entirely in the charge of Judge Lewis.

Mr. Clymer retained his interest in the unpaid Indian claims due Ewings & Clymer ; and the little remaining personal property that was then on hand we took in part payment of what was still due us

from Ewings & Clymer on the capital stock, we having been the furnishers. The concern was still in debt to us about \$2,300, and showed no profit, unpaid debts against the Pottowatomies of some five or six thousand dollars, and the small farm where Mr. Clymer had settled was *all* that remained at the close of a five years' trade.

Our object in now addressing you is to ask and request of you that you will be pleased, in reply, to state what you know of the general character and standing of our said clerk, Judge Lewis—what is his general reputation for honesty and accuracy?—what are his business habits and qualifications? Is he, in your opinion, a correct, upright, and honest man? What is his standing in this regard amongst the Indians of your sub-agency—also amongst the white people of this section of country who know him?

You have seen Judge Lewis, and been intimate with him for the last three years, and perhaps he has assisted you in making out your quarterly returns to the department; you have seen him at your Indian payments, and seen him doing business there and elsewhere with the Pottowatomies.

What has been his conduct during all this time?

You will oblige us by giving us your answer freely and undisguisedly, for we are desirous of transmitting it with the accounts which he has kept and will now draw off.

If Judge Lewis merits your confidence, and you think him an honest and upright man, we have no doubt but you will state so in your usual frankness; on the contrary, should it be otherwise, we would not expect you to screen him to oblige

Very respectfully,
your obedient servants,

W. G. & G. W. EWING.

(B.)

OSAGE RIVER SUB-AGENCY.

Nov. 22nd, 1847.

GENTLEMEN: Yours of the 20th instant is received, and in reply, I have to say that I have known Samuel Lewis, your clerk, in charge of your trading house at Sugar Creek, in my sub-agency, ever since I came to the country. My acquaintance with him has been of the most intimate kind, having frequently visited him at his post, seen him at my payments, where he always assists me preparing pay rolls, counting out money, &c.

Indeed Judge Lewis has been my principal clerk, and has aided me in making up my quarterly returns to the department, as by reference will be seen.

His experience, skill, and ability, as a clerk and business man, is not surpassed by any other man in the country.

And it affords me great pleasure to bear testimony to his moral worth, and general good character; from my long acquaintance with him, I have become satisfied that he is a man of strict honesty and integrity, and enjoys the entire confidence here of all who know him.

With the Indians of this sub-agency, Judge Lewis is a great favorite, and in all his business transactions with them, since I have been in this sub-agency, (much of which has come within my personal notice,) I have never known his accounts to be questioned or disputed by the Indians.

They have implicit confidence in him, and I have no hesitation in saying it is well merited.

The Judge has remained constantly at your house for the past three years to my knowledge, never having been absent longer than four or five days at any one time, and then oftener at my agency house, than anywhere else, aiding and assisting me in making and arranging my quarterly accounts, &c.

Judge Lewis's conduct and general deportment during my residence here has been exemplary and every way gentlemanly.

In making this statement, I feel that I am but doing an act of justice to your clerk, whom I esteem as a most capable and worthy man.

Respectfully,

your obedient servant,

ALFRED J. VAUGHAN.

• *Indian Sub-Agent.*

Messrs. W. G. & G. W. EWING.

(D.)

Messrs. W. G. & G. W. EWING.

Your note under date of the 11th December, 1847, is now before me, and in reply, have to say that I have been for several years acquainted with your clerk, Samuel Lewis, and I take great pleasure in stating, that I always had the highest opinion of him as a business man, for correctness and integrity; and as to his knowledge of book-keeping, I have no hesitation in saying it is equal to any; and so far as I have had an opportunity of seeing him in the trade with the Indians, I have always considered him to be a very fair dealer, and personally, I esteem Mr. Lewis a gentleman.

I am, very respectfully,

your most obedient servant,

ANTHONY L. DAVIS.

AT HOME,
Dec. 11th, 1848.

INDIANAPOLIS, INDIANA,
April 13th, 1848.

SIR: In a newspaper published in this State, on the 8th inst., occurs the following sentence:—

“ We have been told that W. G. Ewing boasts of having obtained the signatures of Governor Whitcomb, and several members of the Legislature, to a petition to the President, asking that the debts contracted with them by *individuals* of the Pottowatamie tribe may be regarded as *national*, and deducted from their annuities.”

To the principle of making an Indian tribe responsible collectively, or from the undivided annuity to which it is entitled, for debts contracted by *individuals* of the tribe, I have been strongly and uniformly opposed since the question was first brought to my notice. I have been so opposed, on the score both of justice and of sound policy; and I took occasion, repeatedly, to express my deep gratification with the contrary principle, as laid down in your official letter upon the subject, written soon after you first took charge of your present office. I take occasion further to say, that I never participated to the smallest amount or extent in any payments, debts, claims, fees, reserves, sales, trading, or other valuable matter or transaction whatsoever, in relation to any one or more Indians, or tribes of Indians, in my life.

I feel a strong conviction, therefore, that I have signed no paper, in terms, at least, such as is above imputed to me. I recollect being called on by W. G. Ewing, of Fort Wayne, at this place, last winter to sign a paper in relation to claims against a tribe of Indians, *under a treaty*; but according to my impression it was of a very different character. I am confident that no such objectionable principle as that referred to appeared on its face. And, after all, such was my repugnance to signing papers of that character, easily procured as they too generally are, and although many respectable names appeared to it, that I signed it with such a *qualification* expressed at the time in *writing*, and on the *paper itself*, as I then felt satisfied would prevent any injury. In short, according to my present recollection, I intended, by that written qualification, to refer the facts as represented to me, and on which my signature was based, to the appropriate department, for its decision as to their truth or falsity—that department, which possessed, or could obtain the necessary information as to those facts—that department too which was in possession of the laws and the treaty bearing upon the subject, and in whose intelligence, integrity and firmness I had full confidence.

As the paper in question will, when delivered to the President, be referred according to usage to your office, may I ask of you a copy of it, with the signatures, and especially with the written qualification referred to? In the meantime, to prevent any injury arising from any possible mistake or misunderstanding, I wish it considered that my name is withdrawn from the paper, if the objectionable principle referred to is countenanced by it in the remotest degree, and that this communication may be filed in your office also.

As early a reply as will suit your convenience will much oblige me, addressed to this place. As the newspaper alluded to mentions that Mr. Ewing has “gone to Washington city for the purpose of joining his brother there,” with the view in part of having their claims against the Pottowatamies allowed out of the tribe, I have availed myself of writing the same day in which the newspaper above mentioned has reached

me by mail in the hope that you will receive this communication in time to prevent any possible injury, if indeed there was any danger.

I am, very respectfully,
your obedient servant,

JAMES WHITCOMB.

To the Hon. W. MEDILL,
Commissioner of Indian Affairs,
Washington City, D. C.

WASHINGTON CITY,
April 25, 1848.

To his Excellency JAMES K. POLK,
President of the United States.

The undersigned, W. G. Ewing, of Fort Wayne, Indiana, and Geo. W. Ewing, of St. Louis, Mo., beg leave most respectfully to represent that they have been for many years extensively engaged in trade with the Pottowatamie Indians, and that, according to their customs, and as they only received a cash annuity once a year, and there was but very little game in their country, the undersigned, and other licensed traders from the State of Missouri, credited them largely in goods and provisions suited and necessary to their wants.

That at the time of making the treaty of the 5th of June, 1846, said Indians owed your memorialists and others a large amount; and that in the 5th article of said treaty *fifty thousand dollars* was appropriated "to pay their just debts before leaving their present home." That by reference to the commissioners and to the journal of their proceedings, it is believed (and it can be proven by persons who were present) that said commissioners, at the time of making said treaty, did promise said Indians that they might apply all of said \$50,000 to the payment of their just debts, and in accordance with said pledges, the Commissioner of Indian Affairs, in his instructions of the 30th of August last, did direct that said money might be applied agreeably to said pledges, it being "an appropriation by treaty for a specific purpose," &c., and professing also, "it is a leading object of the department to have all old transactions with the Indians finally arranged and closed."

Nevertheless, that \$20,000 thereof was *not* applied on the just debts of licensed traders, as was meant and intended in the treaty, and by the pledges of the commissioners, by reason of an order to prevent such application from the Superintendent of Indian Affairs at St. Louis to Major Vaughan, Sub-agent of the Lower Pottowatamies, and by reason of which improper proceeding your memorialists and others are *greatly injured*, and therefore pray that said twenty thousand dollars, and also \$6,000 of the \$30,000 paid over to half-breeds and Indians at Council Bluffs, may be replaced out of their annuities of the present year, and applied on their just debts, as was meant and intended in the treaty and the aforesaid proceedings in connection therewith.

2d. Your memorialists further represent that at the time of making said treaty, said Indians, in open council, agreed to pay in installments, out of the joint moneys arising under said treaty, all the debts due to the undersigned at their different trading houses, as has been their custom in all their treaties with the United States.

Your petitioners therefore humbly pray that said debts, and all debts due other licensed traders, may be investigated by some *impartial* commissioner, and that you may see proper to permit said Indians to make payment as they desire and have agreed to do, of all that may be found to be justly due, in yearly installments, without prejudice to their necessities and welfare, out of the large cash annuities they now receive, namely, \$106,000 per annum.

That as said Indians consider and have always treated such debts due at the time of making *treaties* as merged therein, and to be paid out of the joint proceeds of their lands sold, (they living almost in common,) it is now utterly impossible to collect them in any other way, particularly since the amendment to the intercourse law, approved 3d March, 1847, and the instructions issued under the same, to pay all the annuities "to the heads of families."

And as to the national character of our claims, we hope you will read the accompanying argument, marked A. And although the Commissioner Indian Affairs, by his letter to the Hon. Lewis Cass, of the 26th May, 1847, gave assurances that, in framing instructions under the new law, "due regard would be had to the *just* and *bona fide* claims against the Indians, so far as their necessities and actual welfare will admit," yet no provisions have been made to enable American citizens trading under licenses, and entitled to the protection of their government, to have justice done to their rights existing at the time of said change in the mode of making payments.

For receiving payments of debts as heretofore, and as they had been agreed to be paid, it has been considered cause to revoke licenses—and the undersigned have been *wronged* and *oppressed*, and believing that the Commissioner of Indian Affairs is *hostile* and *prejudiced* against your memorialists, and will *not* treat their rights *justly*, the undersigned therefore *appeal* to your Excellency, and hope that you will order their claims investigated by *impartial* and *unprejudiced* Commissioners, and that the Indians may be permitted to pay thereon as before, in installments.

And as in duty bound, your petitioners will ever pray, &c.

W. G. EWING.
GEO. W. EWING.

N. B.—If the investigation can be had at the Kan River Agency, within the Pottowatamie country, or at Westport, or Saint Louis, the parties could attend with their books of original entries, and with their witnesses, and a full and fair investigation could be had. It is too distant and expensive to attend and do this at Washington city.

HOUSE OF REPRESENTATIVES.

April 25th, 1848.

HIS EXCELLENCY JAMES K. POLK.

SIR: If in your opinion it be competent to you to appoint a commissioner or commissioners, as requested by the foregoing memorial, such appointment would gratify my constituents, who have claims against the Pottowatamie Indians. I therefore beg leave to call your attention to this subject.

Very respectfully,
WILLARD P. HALL.

I unite in the request of the Hon. Mr. Hall, having no desire to interfere on behalf of the Messrs. Ewings.

JOHN S. PHELPS.

Endorsement on above Memorial.

Referred to the Commissioner of Indian Affairs, who will report, through the Secretary of War, on the subject. April 29th, 1848.
J. K. P.

The Report of the Commissioner of Indian Affairs of the 4th May, 1848, is satisfactory. This memorial is returned to the Indian Bureau, to be placed on file. June 6th, 1848.
J. K. P.

W. G. & G. W. EWING, }
vs. }
THE POTTOWATAMIE INDIANS. }

In the matter of the claims of W. G. & G. W. Ewing, against the Pottowatamie Indians for national debts, due by said Indians, the said claimants present to the Indian Department the following argument. This 25th day of April, 1848.

1. In pressing upon the Indian Department the propriety of sanctioning and ordering to be paid the claims of the undersigned against the Pottowatamie nation of Indians, according to the stipulations entered into with them by the tribe, through its proper authorities, prior to the act of Congress on the subject of Indian affairs, approved March 3rd, 1847, a variety of considerations present themselves, some of which arise naturally out of the matters involved, and others of which are forced upon the undersigned by the extraordinary views recently put forth by the Indian Department.

2. The instructions of the Commissioner of Indian Affairs to Thomas H. Harney, Superintendent of Indian Affairs at St. Louis, on the subject of Indian indebtedness, annuities, and payments, issued 30th August, 1847, present to the undersigned the singular aspect of virtually *denying*

the validity of all their claims against the Indians, yet ordering the money of the Indians to be applied to the payment of a part of them. As those instructions tend to strike at the rights of the undersigned a fearful blow, and as they are not aware that they have yet forfeited the right of opinion, and of respectfully expressing their opinions, they deem it a duty to themselves to comment on some of the views presented by the Commissioner.

3. In the first place, the undersigned do not conceive (as suggested by the Commissioner, see Instructions, paragraph 7,) that "no such contracts" as they have made "*were provided for either by law or regulations;*" or that their contracts were made "*without legal authority.*" On the contrary, it seems to them that their contracts were made under the sanction of the highest legal authority known to the people of the United States. The constitution of the United States provides, that, "Congress shall have power" to regulate commerce "*with the Indian tribes.*" This power has been exercised by Congress. Laws have been passed regulating "*trade and intercourse*" with the Indians; authorizing the prohibition of improper articles of merchandise, and providing for licenses to citizens of the United States to trade with them, under responsibilities and penalties; and the highest judicial tribunal of the United States has repeatedly declared those laws a part of the "*supreme law*" of the land. Such was the "*authority*" of the undersigned. They were traders under licenses issued according to law; and they have believed their authority not only legal, but higher than could be given by mere "*regulations.*" It emanated from the constitution, and the laws passed under it.

4. The "*authority*" to carry on commerce with the Indians thus granted to the undersigned, carried with it the right to conduct that commerce in the way and manner usual in the affairs of mankind. Being citizens of the United States, civilized themselves, and trading with a people approaching to civilization, they have conducted their business in a manner that was just and fair, and that violated no natural, revealed, customary, or statute law. Among all civilized nations throughout the world, *credit* is an usual incident of commerce; it has been likewise an incident of the Indian trade; and up till 3rd of March, 1847, so far as trade with Indians was concerned, there was no express or implied prohibition of it. The undersigned, and other merchants, dealing under licenses, with a people capable of contracting with them, were left free to sell their goods on any terms consistent with their desires, circumstances, and interests, and those of the other parties to their transactions. They were under no restrictions by law, or regulations, except as to particular articles declared contraband; and this restriction they have never violated.

5. There was even, by the granting of the license to the undersigned, an obligation virtually assumed by the government to protect them in all their just rights. The citizen, so long as he obeys and conforms to the laws of his government, is considered as under its protection everywhere; and the undersigned know of no reason why that protection should not be extended to the Indian country, nor how they have forfeited their right to it. It may not be possible for the undersigned to

secure this protection, but all just men will concede that it better be comes a government to *protect* than to attempt to crush and destroy the rights of its citizens. If the Commissioner of Indian Affairs could, by any possibility, be placed in like circumstances with the undersigned, it is not doubted that he would fully assent to the truth of this proposition.

6. It may be true, as stated by the Commissioner, (see Instructions, paragraph 7,) that "there are no civil courts or remedies in the Indian country." It is the misfortune of the undersigned that such is the case, as they are thereby thrown upon the deponent. But does that fact invalidate their contracts with the Indians? They apprehend that it is a rule unknown to our jurisprudence, and which ought to be unknown to it, that a contract is void, merely because "there are no civil courts or remedies" in the country in which it is made. The law, it is understood, countenances no such dangerous and immoral doctrine. For contracts have their validity on higher grounds than the remedy to enforce them; and an honest man never declares his contract void, merely because it cannot be enforced against him. The essential moral force, the binding obligation, or the legal validity of a personal contract, are not affected by the want of remedy in the place where it is made. But whenever the parties to such a contract, made in a locality where there is no remedy upon it, are found within any jurisdiction reaching the case, the proper tribunal will recognize and enforce the contract, unless void or voidable for some inherent defect other than this original want of remedy. (Story on Conflict of Laws, 477, 478, 479.)

7. The undersigned repeat that until the passage of the act of Congress, March 3rd, 1847, there was not any "law or regulation" in existence, either expressly or by any possible implication forbidding such contracts as they have made, or such a mode of trade as they have pursued. Admitting that under the constitution Congress can, at its pleasure, prohibit the making of all "executory contracts" with Indians, and declare that all such contracts made between citizens and Indians "shall be deemed and held to be null and void;" still, until thus prohibited, the contracts of the undersigned, fairly made under the authority of the constitution, the laws, the regulations and the license, are to all intents and purposes valid and binding. All they ask is, to have the benefit of fair, legal, just, and equitable principles, and not to be made the victims of any *retrospective* and oppressive construction of the act referred to.

8. Statutes are to be construed by their words, their subject matter, their effects and consequences, and their reason and spirit. These indicate and interpret the will of the legislature. And there is nothing in either of these features of the act of Congress of March 3d, 1847, indicating that a *retrospective operation* was intended. The language of the act as to contracts, and indeed all of the objects of it, is *in the future*. All executory contracts made with Indians "shall be deemed and held to be null and void." This language, the subject matter of the act considered, does not admit of a doubt as to its proper construction; and it is believed with full confidence that no court of justice, with learning to guide it, and a mind free from bias and prejudice, would apply it to contracts made *before* the act was passed. Congress could not have

intended to make it a *general bankrupt law* for the Indians, and thus give it effects and consequences most unjust and ruinous to citizens, besides teaching the Indians by statute a lesson of fraud and knavery. If Congress had intended the monstrous enormity of embracing *past transactions*, its language would have been, that "all executory contracts now made or hereafter to be made are declared and shall be held to be null and void;" or language of like import and strength. No aperture for a doubt to creep in would have been left—no room for a suspicion of ambiguity. But, as the act is worded, if there be any ambiguity at all, (which is not admitted,) the benefit of it should be given in behalf of equity, right, and justice. It is deemed certain that no court of justice would ever by construction enlarge the act so as to give it a retrospective operation. The pervading equity of the law—which is nothing more than common sense and common justice—would forbid it. The law abhors retrospective legislation; would never *presume* it to have been intended; and courts of justice always take care to construe with the utmost strictness even those statutes which were manifestly intended to be retrospective, and apply to subjects on which such legislation is permitted.

9. So vitally important to the ends of justice did the framers of the constitution consider the sacredness of contracts, that *the States* are forbidden by that instrument to pass any law "impairing" their obligation. Nor can it be assumed, with proper respect for the Congress and President who passed and approved the act of 3d March, 1847, that they have done a thing, though not expressly forbidden by the constitution, it seems to have been considered by its framers would never in such a case as this be attempted. They could not have intended to pass a *bankrupt law*, (for such in effect a retrospective construction would make it,) that would not be "*uniform*," but would operate only on a particular class of debtors, and a particular class of creditors. It is not believed that the Congress and President were so derelict of duty as to attempt anything of the kind.

10. In this just view of the act referred to, the undersigned are sustained by the letter of the Hon. LEWIS CASS, to the Secretary of War, under date of 18th May, 1847, (a copy of which is in their possession.) Speaking of the change proposed to be introduced by the act, in the payment of Indian annuities, this statesman says, "it should not operate to defeat the arrangements already made with the consent of the parties. It might operate as well *injuriously* as *unjustly*; and it seems to me," he continues, "that the change, when introduced, should be *prospective, leaving existing arrangements to be carried into effect under the present order of things.*" The Hon. THOMAS H. BENTON, Hon. STEPHEN A. DOUGLASS, Hon. JAMES B. BOWLIN, and other distinguished statesmen, have expressed similar opinions.

11. Notwithstanding that this act of Congress virtually admits the competency of the Indians (when not forbidden) to make contracts, by forbidding them to do so, yet the Commissioner intimates, in the instructions already quoted from, that the Indians were incompetent to make "contracts with individuals, of a legal or binding nature, being considered in the light of *wards* under the *guardianship* of the govern-

ment." But the undersigned submit that the government is by no means "guardian" of the Indians in the ordinary sense of that term. If guardian at all, it is only to see that no wrong or outrage is done to them—not because they are incapable of managing their own internal affairs. It is guardian, not for their oppression or destruction, but for their benefit, and it assumes this office as much for the "peace of the frontiers" as for the advantage of the Indians. It is not guardian, the undersigned believe, in the "light" meant by the Commissioner. The sort of guardianship which it exercises has been provided for by treaties, and acknowledged by the Indians; but no such latitude as the Commissioner claims has ever before, to the knowledge of the undersigned, been claimed for or given to it. The Indians have never dreamed that it extended to deprive them of the capacity to transact business for themselves, and, as incident to that, to make contracts. Though placing themselves under the protection of the United States, yet, as to their internal affairs, they have reserved the right of self-government. Congress alone, under the constitution, can forbid them to make contracts, and that only with subjects of foreign powers or citizens of the United States. It is apprehended that under a proper construction of the constitution, and with a proper regard for the rights which they have never surrendered, Congress itself could not forbid Indians to make "executory contracts" with each other, not inconsistent with the public policy of our government, or interfere to "regulate commerce" among the Indians themselves. The reasoning and opinions of the Superior Court of the United States, in many adjudged cases, sanction this view. In a separate opinion of Judge McLEAN, in the case of *Worcester vs. the State of Georgia*, (6 Peters' Reports, 592,) that distinguished jurist says—"Under this clause of the constitution, (to regulate commerce 'with the Indian tribes,') no political jurisdiction over the Indians has been claimed or exercised. The restrictions imposed by the act of 1802, come strictly within the power to regulate trade. * * * It is the same power, and is conferred in the same words, that has been exercised in regulating the trade with foreign countries. * * * The law acts upon our own citizens, and not upon the Indians, the same as the laws referred to act upon our own citizens in their foreign commercial intercourse."

12. To speak of the Indians then, as "wards" of the government, is apt to lead to a confusion of ideas concerning them. A guardian does not make treaties, bargains and compacts with his ward. A guardian does not consult his ward in the management of the ward's estate. A guardian is responsible to the power which makes him guardian, and through that to his ward, for the manner in which he fulfills his trust. But the United States government does make treaties, bargains and compacts with the Indians; it does consult the Indians in the management of their estates, or at least has heretofore done or professed to do so; and it is not known to whom or to what the government is to be responsible for any abuse of its office of guardian, if it is to be self-imposed in the manner and to the extent claimed by the Commissioner of Indian Affairs. In the case of the Cherokee Nation vs. the State of Georgia, (5 Peters' Reports, page 17,) Chief Justice MARSHALL, speaking for the Supreme

Court, says of the Indians, that "their relation to the United States resembles that of a ward to his guardian." But the whole tenor of the opinion in that case shows that he meant this *resemblance*, for it was nothing more—as presented by the claims which the Indians have on the government for protection, and not as arising out of their incapacity to govern themselves, to transact their own business, and make contracts. For in the same opinion he speaks of them as "domestic dependent nations."

13. Again : No one pretends that a "ward" can have any *sovereignty*. Yet the *sovereignty* of the Indian tribes, for certain purposes, has always been recognized, even when located within the boundaries of a State of the Union, (although held not to be "foreign nations" in the sense in which "foreign nations" are spoken of in the constitution,) the tribes have been regarded as presenting, among other anomalies, that of a sort of *imperium in imperio*. In the case already quoted, (5 Peters' Reports, page 16,) Chief Justice MARSHALL, speaking for the Supreme Court, says, "so much of the argument as was intended to prove the character of the Cherokees (within the State of Georgia) as a State, as a distinct political society, capable of *managing its own affairs*, and *governing itself*, has, in the opinion of a majority of the judges, been *completely successful*. They have been uniformly treated as a State from the settlement of our country. The numerous treaties made with them by the United States recognized them as a people capable of maintaining the relations of peace and war, &c., &c. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognize the Cherokee nation as a State, and the courts are bound by these acts." The undersigned may ask if the Indian department is not equally bound by "the acts" of our government? and if the case of the Pottowatamie nation, in all essential features, except that they are not now within a State of the Union, is not the same as that of the Cherokee nation?

14. On their own soil, without the boundaries of any State, the Indian tribes have always been regarded as, in some measure, independent nations—"domestic dependent nations" at least; dependent for protection, independent in their own government; or as having something of the same kind of limited *sovereignty*, which appertains to each separate State of the Union; possessing some of "the attributes of sovereignty," (6 Peters' R. 580) as expressed by Judge McLEAN. The constitution recognizes them as such when it classes them with "foreign nations" and "separate states," and provides for commerce "with the Indian tribes;" nor have the Indians, since the constitution was adopted, in any way parted with the measure of sovereignty then and always theretofore accorded to them, and further acknowledged by the United States and ratified in all the treaties made with them.

15. It may be perfectly competent for the United States, by an act of Congress, so to regulate commerce with the Indian tribes as that no executory contracts shall be permitted to be made between Indians and citizens of the United States. But this must be done, not by virtue of any office of guardian, but, under the constitution, as *one nation regulating its commerce with another*. It is not conceded that the government, acting as "guardian," could do any such thing.

16. In the great case of *Worcester vs. the State of Georgia*, (6 Peters' Reports, 515,) the true condition, character, and capacity of the Indians are most elaborately discussed, and a flood of light poured on the subject of their relations to the government and people of the United States. The decision arrived at by the Supreme Court, sustained by the masterly reasoning which distinguishes the opinions of that body, was, that a law by which the State of Georgia attempted to exercise jurisdiction over the territory and affairs of the Indians, even within her own borders, was *null* and *void*. It is not the proper place here, nor do the undersigned feel disposed for the task, to go into an argument to show that the policy of the act of Congress of March 3, 1847, forbidding contracts to be made with Indians, is doubtful, if not bad. They leave the framers of that law to reconcile its provisions as may be practicable with the principles pervading civilized communities, and shall not stop to inquire what are to be its effects on the Pottowatomies, or among the Cherokees and Choctaws, for example, who have heretofore supposed that God and the world would smile on their efforts to imitate our form of government, to give themselves the benefit of free institutions, and to adopt laws similar to our own. The incompatibility of that act with the actual condition of those and other tribes, and with their progress in civilization, is a matter of but little concern to the undersigned, except so far as it is calculated to retard the general advance of the Indians in civilization, by denying them the common rights of free people, and thus degrading them in their own estimation as well as in that of all mankind. But as the full bearing of the doctrines of the instructions of August 30, 1847, may possibly have not been perceived before they were put forth, and as they may influence unguarded minds to adopt them too hastily, it is deemed not inappropriate to present a few extracts from the pen of Chief Justice MARSHALL, contained in the opinion of the Supreme Court, in the case of *Worcester*, above cited. These go to show, by facts and argument, that even considered (as the Pottowatomies are by the Commissioner of Indian Affairs) "in the light of wards under the guardianship of the government," they were still perfectly competent to contract with the undersigned.

17. "The relation between the Europeans and the natives was determined in each case by the particular government which asserted and could maintain this pre-emptive privilege in the particular place. The United States succeeded to all the claims of Great Britain, both territorial and political, but no attempt, so far as is known, has been made to enlarge them. * * * Soon after Great Britain determined on planting colonies in America, the king granted charters to companies of his subjects who associated for the purpose of carrying the views of the crown into effect, and of enriching themselves. * * *

"The actual state of things, and the practice of European nations on so much of the American continent as lies between the Mississippi and the Atlantic, explain their claims and the charters they granted. * * Instead of rousing their resentment (of the Indians) by asserting claims to their lands, or to *dominion over their persons*, their *alliance* was sought by flattering professions, and purchased by rich presents. The English, the French, and the Spaniards, were equally competitors for

their friendship and their aid. Not being well acquainted with the exact meaning of words, nor supposing it to be material whether they were called the subjects or the children of their father in Europe, lavish in professions of duty and affection in return for the rich presents they received, so long as their *actual independence* was untouched, and *their right to self-government acknowledged*, they were willing to profess dependence on the government which furnished supplies of which they were in absolute need, and restrained dangerous intruders from entering their country; and this was probably the sense in which the term was understood by them.

“Certain it is that our history furnishes no example, from the first settlement of our country, of any attempt on the part of the crown to *interfere with the internal affairs of the Indians*, further than to keep out the agents, who, as traders or otherwise, might seduce them into foreign alliances. The king purchased their lands when they were willing to sell at a price they were willing to take, but never coerced a surrender of them. He also purchased their alliance and dependence by subsidies, but never *intruded into the interior of their affairs or interfered with their self-government* so far as respected themselves only. * * *

“Such was the policy of Great Britain toward the Indian nations inhabiting the territory from which she excluded all other Europeans; such her claims, and such her practical exposition of the charters she had granted. She considered them as *nations* capable of maintaining the relations of peace and war; of *governing themselves under her protection*; and she made treaties with them, of which she acknowledged the obligation.

“This was the settled state of things when the war of our revolution commenced. * * *

“The Indians perceived in this protection only what was beneficial to themselves—an engagement to punish aggressions on them. It involved, practically, *no claim to their lands, no dominion over their persons*. *

“The same stipulation entered into with the United States, is undoubtedly to be construed in the same manner.

“This relation was that of one nation claiming and receiving the protection of one more powerful, not that of individuals abandoning their national character, and submitting, as subjects, to the laws of a master. * * *

“The settled doctrine of the law of nations is that a weaker power does not surrender its independence—its right to self-government—by associating with a stronger, and taking its protection. A weak State, in order to provide for its safety, may place itself under the protection of one more powerful, *without stripping itself of the right of self-government, and ceasing to be a State*. Examples of this kind are not wanting in Europe.” (See the case of Worcester against the State of Georgia, 6 Peters’ Reports, 515.)

18. In the same case a separate opinion was given by Judge McLEAN, which also contains many valuable suggestions on the subject of the rights of the Indians, and the relation of the government towards them. In the case of Mitchell and others against the United States, (9 Peters’ Reports, 711,) the subject of Indian affairs is again examined with

great ability by the Supreme Court, and the right of the Indians to *contract*, even for the sale of their lands to individuals, with the license of government, is fully sustained; a right which is clearly *implied* by the 12th section of the Intercourse Law of June 30th, 1834, *forbidding its exercise*. Indeed, if space permitted, the undersigned could produce such an array of authority from the Supreme Court of the United States, and other high sources, bearing on the question, that any unprejudiced reader would wonder how the competency of the Indians to make "contracts with individuals of a legal or binding nature," should ever have been doubted or questioned.

19. It is worthy of remark, that in the act of Congress of June 30th, 1834, the sovereignty of the Indians is so far recognized that *they are expressly excepted from the operation of the criminal laws of the United States*; also, that the provisions of that law, on the subject of *depre-dations*, do not apply to cases to which none but Indians are parties; and that the United States undertook, in the same act, to pay the annuities as the authorities of *the tribe* should direct. And even in the Pottowatamie Treaty of June 5th, 1846, made under the orders of the present Commissioner of Indian Affairs, *this sovereignty* is expressly admitted, not only in the purchase of their lands, but in the compact of "peace and friendship" made with them. True, the United States, in that treaty, gave "promise of all proper care and parental protection;" but this is only, in fact, a pledge to "act in good faith towards a dependent people. In acknowledging this protection, in accepting this pledge, the Indians, as has already been shown, (see cases quoted,) do not become less a *distinct nation*; not less "a State," as the Supreme Court declared the Cherokee tribe to be, even within the boundaries of the State of Georgia.

20. As the luminous, comprehensive, and just opinions of the Supreme Court illustrate so fully the capacity of the Indians to make contracts, (before forbidden by act of Congress,) the undersigned beg leave respectfully to refer the Commissioner of Indian Affairs to the cases quoted, and others to be found in the reports.

21. The undersigned have been led to these extended remarks by the course of reasoning and conclusions, intimated too clearly to be mistaken, in the instructions referred to, which, in some parts, more than hint the entire invalidity of all their contracts with the Indians—even those made before the act of March 3d, 1847—on the ground of the legal incompetency of the Indians to make them, and the absence of judicial tribunals in the country where made. The undersigned are sensible and feel that they have been making an argument to sustain a proposition, the truth of which has heretofore been considered self-evident, and to refute a counter proposition, the unsoundness of which is equally self-evident. But the new and extraordinary views of the Commissioner of Indian Affairs have served to render this course necessary.

22. But if possible a more conclusive argument in support of the validity of the claims of the undersigned against the Pottowatamies—a sort of estoppel on the government, forbidding its denial of their validity—is to be found in the fact, that the very men who have thus contracted with the undersigned on the part of the Indians, have been frequently recog-

nized most solemnly by the United States as the supreme power of the tribe. Even fewer than these, as delegates to Washington, were recognized by the department in that city in the fall of 1845, and an unwritten treaty agreed upon and solemnized with them, to be afterwards perfected in their own country. To go further back. The treaty-book shows that in October, 1834, *seven men* of the Pottowatomies ceded to the United States the rich and valuable country west of the Nodaway River, and south of the north line of Missouri, describing themselves as "delegates" to do so, but not placing any of their full powers on record.

23. In all the councils in the Pottowatomie country, the men who have contracted on the part of the nation with the undersigned, have been the undisputed authority or government of the nation—known, regarded, and most solemnly recognized as such by the agents and officers of the United States. Acting in full view of, and supported by, their people, *they perfected the treaty of June 5, 1846*, at the Council Bluffs, and on the 17th June, 1846, in the Osage River Sub-agency—the same treaty which had been agreed on by the commissioners and the delegates in Washington, in the fall of 1845, and which the Senate has ratified. At the same time, in open council, and with equal solemnity, they contracted with the undersigned. If those men were incompetent to bind *the nation* to the undersigned by their obligations to pay money, (copies of which are hereto attached, marked "A" and "B");—if they could not for their people, who stood round, urged, favored, and applauded the act, make such pecuniary contracts, how could they alienate the domain of the tribes, and bind *the nation* to leave that country and go to another? And why has the treaty been ratified and partly carried into effect? These questions are susceptible of but one solution; and when the undersigned are told that men who can contract with the *government* cannot make contracts with *them*, is not the humiliating conclusion almost forced on them that the government, in so doing, discredits its own acts when they operate in injustice to the citizen?

24. And it may be here remarked, that another strange feature is presented by the paragraph of the instructions of August 3d, 1847, relative to the claims of Mr. Joseph Robidon against the Iowas and the Sacs and Foxes of the Missouri. In the instructions those claims are fully sustained; yet in the same paper it is virtually stated that *the contracts of the undersigned*, made under the law, in the Indian country, under license to trade with the Indians, were made "without legal authority," and an intimation is given that they are invalid, because made in a locality "where there are no civil courts or remedies" to enforce them. Persons familiar with the manner in which Mr. Robidon has conducted his trade, know that most of *his* sales and contracts have been made at the town of St. Joseph, in the State of Missouri, *against the positive laws of the State*; although perhaps as between him and the Indians they are not for that reason less just than if they had been "provided for either by law or regulation." It is not charged that Mr. Robidon has defrauded the Indians—far from it; the undersigned only say that his claims, thus sustained by the department, have been made under circumstances *forbidden by the laws of Missouri*, and in which the "civil

courts" would *deny* all "remedy." Nor have the undersigned any disposition to interfere between this personal friend of theirs and the department. They are pleased to learn that justice has been done between him and his debtors ; and they only ask that the same prompt assistance which has been rendered to him, may be rendered to them also. They believe that their claims against the Pottowatomies are not less just than his against the Iowas and Missouri Sacs and Foxes ; and they have the additional negative merit of *not having violated the laws of either the State or Union in contracting them*. If the department (acting as it seems on the principles relating to the validity of contracts set forth in the 6th paragraph of this argument,) could take jurisdiction in favor of Mr. Robidon, the undersigned conceive that the reasons are much stronger why this jurisdiction should be exercised *in their favor* also.

25. Another point suggested by the instructions in regard to *per capita* payments, deserves notice. It is true that such payments have been made in the St. Louis superintendency for several years past, particularly to the Pottowatomies, against whom the present claims are urged ; but it is also true that those Indians, by their chiefs and headmen, have been in the constant habit of setting apart funds, whenever occasion required it, *to pay debts recognized as national* ; nor were their right and power to do so, up till last year, ever questioned. Sometimes these moneys have been paid for provisions ; sometimes for the services of the national clerk ; sometimes, as in 1843, for the expenses of delegates to distant Indian councils ; and sometimes for presents to neighboring Indians, or visitors to their country ;—and always, when the claim was just, without objection on the part of the government or its agents, as to the "legal authority" or capacity of the Indians so to do. The argument, therefore, drawn from the previous *per capita* payments proves nothing against the claims of the undersigned ; for the mode of paying out their money in national payments, has been equally known, recognized, and sanctioned. (See the accounts of disbursing officers, on file in proper department at Washington.)

26. Besides, the act of Congress of March 3d, 1847, in regard to *per capita* payments, (in the language of Gen. Cass to the Secretary of War, contained in the letter before quoted from,) "*is not imperative, but vests the discretion in the department,*" [or President.] The term "discretion," when applied to the action of a public officer, is never construed to authorize or justify *a wrong* ; but when conferred by the law, he is bound to carry out the ends of justice according to law and equity. The spirit of our institutions forbids any other course ; and the undersigned ask no more than that this "discretion" may not be exercised to defeat the ends of justice in their case, and to inflict a grievous wrong upon them.

27. The undersigned now call attention to the customs of the Indians, against whom they claim their dues, to show that the *lex loci* fully sustains their contracts. For the past thirty years it has been customary to do a business in some measure based on credit with those Indians. Even many years ago, when they depended almost exclusively on the chase for support, credit was usual, and their wants required in many instances that the returns of their hunt should be anticipated. Before

their removal from Indiana, Illinois, Michigan, and Wisconsin, as their hunt became less, and, owing to the sale of their lands, their annuities became larger, credit was still usual and necessary on the books of their traders. Since their location on the Missouri River and its waters, it has been indispensable to their necessities and condition. They are not an agricultural people, except to a very moderate extent, and their country has afforded them but little game. Hence they have mainly depended on their annuities for support; and, as their wants frequently exceeded their means of ready money, or of supplies from the chase, *the undersigned have been compelled to credit them*, or withdraw from their business. Credits have been indispensable, from the system of trade among them, and their actual condition. This has been so often shown to the department, that it need not be enlarged upon now; but the undersigned beg leave to refer to their memorial of 8th May, 1847, on the subject. Individual Indians, in great want, have become indebted—they would pay part when able—and then the undersigned would be obliged to yield further credit, in order, by not giving offence, to get anything at all, at the ensuing payment, for their advances—advances which were often involuntarily and unwillingly made on their part, but urgently asked for and insisted upon by the Indians.

28. The prices of the undersigned, even when selling on credit, have not been exorbitant. They have furnished good and substantial articles at fair prices,—at prices which would not have been unreasonable, even had their pay been certain, but which, all risks, expenses, and difficulties of collection considered, were certainly *low* and advantageous to the Indians—as they and the government officers among them well know, and have time and again acknowledged. It should not be forgotten either, by the department, that the undersigned have been compelled to keep up all the year at their posts in the Indian country, stocks of goods “suited to the wants” of the Indians, which could only be done at very great expense.

29. If it appear that some individual Indians are indebted to the undersigned in sums greater than others, any one acquainted with their mode of life and dealing can be at no loss to account for this fact. The Indians are a patriarchal, and among themselves an hospitable people. They live much in common, and hence it sometimes happens that one family will, by Indian visitors, and gifts to their friends and relations, consume much more than others, and consequently have larger store bills. It sometimes happens that the chief or head of a little band, or “village,” will find himself obliged to run in debt, in order to support his “village,” by which is meant his family, relatives, dependents and friends, who urge him to do so—the credit being given to the chief as the most responsible and capable person; and in former years life annuities have been granted to individuals, at the solicitation of the tribe, (numerous instances of which might be quoted,) principally on account of this usage. It sometimes happens, too, that individual Indians whom the traders hesitate to credit further, procure chiefs to become their sureties, in which cases the goods are charged in the name of the chief, who makes it his business to assist in the collection of the

money at the payment, from the real debtor—as he knows that if it is not all paid, (which has too often been the case,) the balance of the account will stand against him in his own name. This course and custom of trade have been well known to the government agents as a necessary feature of the system; and as growing naturally out of the habits, wants, and sentiments of the Indians. And such being the manner in which indebtedness is made, it is not strange that the annuity moneys and proceeds of treaties should not always reach to pay all the accounts in full; nor is it strange that the Indians have contracted to pay, *nationally*, debts thus created.

The cash sales of the undersigned at the payments being equal to, if not more than half of their entire yearly sales, owing partly to competition, have almost always been as low as cost and charges, and sometimes below them. But they claim no merit for this, because they were driven to it by circumstances; although the fact itself goes to rebut the charge that they have taken advantage of the Indians by extortion and exorbitant prices; and it matters not what motive prompted these sales, the benefit of them enured none the less to the Indians. In order to procure ready money to meet their engagements, since the Indians have removed to the Missouri, the undersigned have been compelled to take this course, and to that end have frequently sacrificed their goods. For this and for other reasons, they have, in their memorial to the department, of May 8, 1847, characterized the trade as “disastrous.”

31. That the Pottowatomies, both in the Council Bluffs and Osage River sub-agencies, have always expected and intended to pay the whole indebtedness of their people by or through the late treaty, is a fact too well known for question. At former treaties they had done so—it was a custom and a law amongst them; and but for the resolution of the Senate of March 3d, 1843, their just debts would have been *fully* and *specifically* provided for in the late treaty, and they would not have treated on any other terms. As it was, they did all they could to act the part of honest and just men, both before and at the making of the late treaty, as a few facts will show.

32. When the Council Bluffs Pottowatomies made a proposition to Major Harney, in June, 1845, they particularly expressed a desire to provide for their debts. They said their people had gotten their goods and provisions of the traders, and they wished to pay for them. So, too, in Washington city during the ensuing fall, in the course of counselling with Gen. Gibson and Major Andrews, this subject was frequently discussed. It was well understood by those gentlemen, who assured the Indians that the funds arising from the treaty would enable them to pay their debts, and carry out any agreement they might make in regard to them; for the truth of which statement; those honorable gentlemen are referred to. And while in Washington at that time, the Indians presented a formal memorial to the Senate, praying; among other things, for leave to provide *nationally* and *in the treaty* for the payment of their debts; that is, the debts of all the individuals of the tribe, which they and their people had determined to pay in that way; and again, when they came to conclude the treaty in their own country, they inserted a pro-

vision recognizing the *nationality* of their debts, which it was understood *became national when the treaty was made*; and they provided in the fifth article of the treaty, that a sum should be set apart to pay those debts, so far as it would go, and for other purposes. They were limited in this provision by the commissioners, acting under instructions from the department, to \$50,000. It was well known at the time that this sum was not sufficient to "wipe out the old books," as the Indians expressed it, and other and further arrangements to pay out of the proceeds of the treaty were contemplated.

33. Hence, *on the same day that the treaty was made at Council Bluffs*, the authorities of the tribe there executed their obligation to the undersigned, (see copy herewith, marked "A," on the part of the nation,) merging all their individual claims in a national obligation. This obligation was executed with the same solemnity, the same full understanding of the act and its consequences, with which the treaty itself was executed. The agents and officers of the government were present, and acquiesced. They knew that the individual claims were then and there *merged* in the claim thus given the undersigned against *the nation*. There was no concealment, no misunderstanding. The contract of the undersigned was identical with the treaty, and, so far as the \$50,000 could go among the traders, was *a part of the treaty*.

34. This arrangement was made under the act of Congress of June 30th, 1834, which provided that "the payment of annuities or other moneys stipulated to be made to any Indian tribe, shall be made to the chiefs of such tribe, or to such person as said tribe shall appoint."—The chiefs and headmen, acting under that law, which was then in force, and the laws and customs of their people, had a *right* to make it. They could as well create and recognize a *national* debt, based on the *individual* indebtedness of each member of the tribe, for goods and provisions bought and consumed by those individuals, as they could recognize or provide for a national debt based on any other consideration, or become parties to a treaty with the United States on behalf of their nation, for the sale of their large domain, in which each individual of the tribe had an interest.

35. A similar engagement was made with the undersigned by the chiefs and head men of the Pottowatomies of the Osage River sub-agency, (see copy marked "B") with the knowledge and acquiescence of Thomas H. Harvey, Esq., Superintendent Indian Affairs at St. Louis, and witnessed by his affixing his signature thereto, on the 17th day of June, 1846, the same day on which those Indians agreed to and signed the treaty made with the United States at the Bluffs on the 5th of June, 1846. This obligation was also identical with the treaty; and as to the \$50,000, a part of it, (on this point the undersigned refer to the decision of the Hon. J. R. Poinsett, then Secretary of War, made in May or June, 1838, on the validity of a national obligation by the Wabash Pottowatomies for \$6,000, in which he declared that the obligation was "*identical with the treaty*," because made with the knowledge and consent of the treaty-making commissioners, and that any attempt by the government to discredit said obligation, having on the face government officers for witnesses, would be a fraud upon the country).

36. These arrangements having been made, *no moneys were collected from the Indians by the undersigned, on account of the debts due them at the annuity payments for 1846.* Both parties regarded the debts as having become payable *nationally*, under the treaty and out of its proceeds, and *in that way alone.* Therefore, not a dollar was collected of the claims in 1846.

37. The Senate of the United States ratified the treaty, containing the provision for the debts in part in the 5th article, and thus, to the extent of the sum named therein, *recognized the nationality of these claims*, for it was not pretended that the Indians, as a *nation*, were in any other way indebted so as to require any such provision in the treaty.

38. Again; by the appropriation of money to carry out the treaty, Congress virtually recognized not only the *national character* of these claims, but *the propriety of paying them.*

39. Again; the instructions of the department to Major Harvey, of August 30th, 1847, notwithstanding the argument against *all* claims, recognize the *nationality* and *justice* of these and other claims, so far as the \$50,000 would go to pay them, by *explicitly ordering them to be paid*, according, to the "understanding."

40. Acting on those instructions, at the payment for 1847, Major Harvey permitted the Pottowatomies at Council Bluffs (in presence of the sub-agent, who made and witnessed the payment) to pay the undersigned \$12,250; and they would have paid \$750 more if Major Harvey had not deemed it his duty to intercede for other claimants (Messrs. Pearson and Cooper) and persuade the Indians not to pay the first installment to the undersigned in full, to the exclusion of his friends the other claimants. And the Pottowatomies of the Osage River Sub-agency, would also have paid debts with their \$20,000 of the \$50,000, if the sub-agent had not *disregarded the instructions of the Commissioner and the law, by refusing them permission to do so*; telling them that his orders from the Superintendent of Indian Affairs (Major Harvey) forbade it. Thus, by a palpable violation of the supreme law, the undersigned have been kept out of their share of this \$20,000, paid in the Osage River Sub-agency, not one dollar of that fund having been applied as had been stipulated, and as ordered by the department, to the payment of the just debts of the Indians.

41. It will be observed that the agreement was to pay off those obligations *out of the funds arising under the late treaty.* This was the inducement with many—almost all—of the Indians to assent to the treaty. They gave up their lands and homes, looking to this result *to clear themselves of individual indebtedness* as part of the consideration. They now regard themselves *as entirely freed from their individual accounts*; and in fact each one could plead in bar of the claims of the undersigned, in an action at law, the higher security which has been taken, and the change which, with the consent of both parties, has taken place in the *character* of the debts. The undersigned have no claims *now* against individual Indians. The *nation* is now their debtor, not the *individuals*. And apart from the impossibility of going back to the individual debtors that were, when part has been paid on the

claims, such a step would be entirely fruitless, for *the individuals would pay nothing*, and *the whole amount of the claims must be an absolute and irreparable loss to the undersigned*, if the department stands in the way of, or interdicts, their collection.

The only way in which the undersigned can ever get this money, justly due and owing to them, as they can show, and have always been willing and anxious to show, by irrefragable proofs, and acknowledged and recognized to be due by the Indians, is, by having it paid in bulk, as agreed by the nation, out of the funds arising under the late treaty. Considered in reference to the amount of the annual income of the Indians, the installments will be small, and can, the undersigned believe, "properly and consistently with the individual wants and necessities" of the Indians, "be spared for that purpose."

42. The undersigned, therefore ask that their claims may be so paid.

1. *Because* their commerce with the Indians has been carried on under the sanction of the constitution, treaties, laws, and regulations of the United States.

2. *Because* their commerce has been carried on under the legal authority of license to trade with the Indians.

3. *Because* their claims have arisen as the necessary consequence of the condition of the Indians, and the system of trade among them.

4. *Because* their claims have been made according to the customs, and in obedience to the wants of the Indians.

5. *Because* their commerce has been beneficial and satisfactory to the Indians.

6. *Because* their prices have been low, and their claims are just.

7. *Because* the individual Indians who purchased and consumed their goods have a right and power to do so.

8. *Because* the individual debtors desired and intended their debts to be assumed by *the nation*, at the making of the treaty, as part of the consideration.

9. *Because* the authorities of the tribe, in the presence and with the sanction of their people, *did assume* the debts as *national*.

10. *Because* the said authorities, by the act of Congress of June 30, 1834, and their own laws and usages, had the right and power to do so, and were competent to *bind the nation*.

11. *Because* this arrangement was made in the presence, and with the acquiescence, of the officers of the United States.

12. *Because* their claims were to be paid out of the funds arising from and under the late treaty, the provision for their payment and the expectation of that result having been part of the consideration for the cession of lands made by the treaty.

13. *Because* the obligations entered into by the nation with them, on the 5th June, 1846, at Council Bluffs, and on the 17th June, 1846, at Osage River Sub-agency, were executed in open council, in presence of government officers, in the same solemn manner in which the treaty was executed.

14. *Because* those obligations, entered into and executed on the same days with the treaty, are identical with, and a part of it.

15. *Because* the treaty of June 5, 1846, recognized their claims, and in part provided for them.

16. *Because* the Senate, by ratifying the treaty, recognized their claims in part, so far as the \$50,000 would go among the traders.

17. *Because* Congress, in appropriating money to carry the treaty into effect, recognized and confirmed their claims, so far as the \$50,000 would go among all the claimants.

18. *Because* the Indian department, in the instructions of August 30, 1846, recognized and confirmed their claims to the extent of the \$50,000, by directing that sum to be paid according to the "understanding" at the time the treaty was made.

19. *Because* part of the claims arising in the Council Bluffs Sub-agency, have been paid under the the direction of the Superintendent Indian Affairs, Major Harvey, out of the funds arising under the treaty.

20. *Because* in making that payment the Indians again recognized the *national character*, justice, and validity of the claims.

21. *Because* they have no claim or recourse upon the *individual Indians*, the indebtedness of all having been *merged in the national obligations*, and thus assumed by the nation.

22. *Because* the national obligations call for small annual installments, which the Indians can pay out of their large annuities "properly and consistently with their individual wants and necessities."

Believing that they have fully made out and established their case, the claimants have the honor to subscribe themselves,

Humbly and respectfully,
W. G. & G. W. EWING.

By their Counsel,
RICHARD S. ELLIOTT.

[Copy A.]

NATIONAL OBLIGATION.—COUNCIL BLUFFS POTTOWATAMIES.

COUNCIL BLUFFS,
June 5th, 1846.

WE, the undersigned, chiefs and braves of the Pottowatamie nation, for value received, agree to pay to W. G. & G. W. Ewing, or order, the sum of forty thousand two hundred and seventy-seven dollars, in seven installments; the first installment to be thirteen thousand dollars, the remaining twenty-seven thousand two-hundred and seventy-seven dollars to be paid in six equal installments, to be paid after the ratification of the treaty concluded this date, and at the first payment of annuities to the Pottowatamies the first installment, the second at the payment in 1847, the third 1848, the fourth, 1849, the fifth 1850, the sixth, 1851, and the seventh, 1852.

NAMES.	MARKS.	NAMES.	MARKS.
Me, au, messe,	his x mark.	Ke, gaw,	his x mark.
Ob, to, kee, shuck,	his x mark.	Wab, kee, shuck,	his x mark.
Me, gis,	his x mark.	E, two, kee, shick,	his x mark.
Puck, wuk,	his x mark.	M. B. Bourbier, Clerk for Nation.	
Shou, nim, da,	his x mark.	Jos. Lapombois, Inter-	
Wab, me, me,	his x mark.	preter,	his x mark.
Kim, me, kay, bee,	his x mark.	Pierre Le Clero,	his x mark.
Sans, buck skuck,	his x mark.	Wat, say,	his x mark.
Sin, aw, ge, wu,	his x mark.	Me, she, ke, te, no,	his x mark.
Cat, nob, me,	his x mark.		

Witnesses—R. B. MITCHELL, Indian Sub-agent.

GITE T. TATE.

T. V. TYON.

O. G. FLEMING.

THOS. D. S. McDONELL.

\$12,250.

Received, Point au Poul, October 1st, 1847, from the nation, the sum of twelve thousand two hundred and fifty dollars, being in part payment of the within national obligation.

(Signed) W. G. & G. W. EWING.

Witness—R. B. MITCHELL, Indian Sub-agent.

[Copy B.]

NATIONAL OBLIGATION.—OSAGE RIVER POTTOWATAMIES.

We, the chiefs, headmen, warriors, and young men of the Pottowatamie nation of Indians, solemnly bind and pledge ourselves to pay to W. G. & G. W. Ewing, or order, six thousand four hundred and ten dollars and seventy cents, without defalcation, for value received in merchandise and provisions, due by us to said W. G. & G. W. Ewing up to this date. The funds to pay the amount above stated, (\$6,410 70,) to be taken from the first moneys accruing from the treaty made at Council Bluffs, 5th June, 1846, and Osage River Sub-agency, 17th June, 1846, payable in two annual installments.

Given under our hands this 17th June, 1846.

Toben abee,	his x mark.	Lonson,	his x mark.
Werrisse,	his x mark.	Poke to,	his x mark.
M wai ko to,	his x mark.	W es wah gee,	his x mark.
I yo wai,	his x mark.	Chin a konames,	his x mark.
Mai gohg woh,	his x mark.	Mah seeh,	his x mark.
Shan wee,	his x mark.		

Interpreter—J. N. BOURASSA.

Witness to signature—THOS. H. HARVEY, Superintendent Indian Affairs.

EXPLANATION.

The united Pottowatomies, now all on the Kansas River, receive yearly in specie	\$106,000 00
Also a yearly education fund of about	\$5,000
Also an improvement fund	\$10,000
	15,000 00
Total of their yearly annuity	\$121,000 00
They received this year (1848) in money, under the new treaty, as a subsistence fund	40,000 00
Total for 1848	\$161,000 00

Their entire number is less than 4,000 souls—say in all about 3,500 persons, large and small.

Their national indebtedness, due their licensed traders prior to the treaty of 5th of June, 1846, and which the Indians desire and have agreed to pay, are as follows, viz. :—

To Messrs. P. Chouteau, Jr., & Co., say	\$3,000 00
“ W. G. & G. W. Ewing, (see note)	28,000 00
“ Pearson & Cooper	4,000 00
To Captain Whitehead	2,000 00
To Major Stephen Cooper	1,800 00
To B. Holt	1,000 00
	\$39,800 00

The Lower Band owe, viz. :—

To Messrs. P. Chouteau, Jr. & Co., say	\$7,000
“ J. & T. Polk	3,500
To Robert Polk, deceased, (his widow)	2,000
To Messrs. Ewings & Clymer,	4,700
To Messrs. Moses H. Scott,	3,000
“ “ W. W. Cleghorn,	3,500
“ “ W. G. & G. W. Ewing,	6,410
	\$30,110 00
	\$69,910 00

All acknowledged and national obligations executed in presence of the treaty making commissioner, on 17th June, 1846.

It is confidently believed that these are all the debts which these people owe, or recognize, and have agreed to pay.

These debts have been seven years accruing.

The most if not all these claims have been recognized and assumed by the nation, and in part paid. Had the remainder of the \$50,000, namely, \$26,000 (there was only \$24,000, paid on debts,) been applied on these claims, as it should have been, and as the treaty provided, it would only have left unpaid and due from said Indians, now, \$49,910.

This they could pay in two or three yearly installments, without the least inconvenience to them.

If the sum of \$16,000 was applied yearly, it would pay off the whole amount now due, in four installments, or say in three years, and it would leave still to be divided to heads of families yearly, \$90,000, which would give every family over \$100, say about \$25 per head, annually. The expense of investigating the debts at St. Louis, or in the Indian country, would be paid by the claimants in equal pro rata, if the President does not feel willing to order it done, in order to carry out the requirements of the treaty, and the pledges made by the general instructions on this subject, of 30th August, 1847.

The licensed traders consider it a hardship that the payments of just and ascertained debts made under the old laws and regulations, prior to the 3d March, 1847, should be interdicted and positively prevented and forbid by government officers acting under the new law, passed after their debts had been made.

In making this change, they think their rights, existing before, should not be interfered with and destroyed by the act of government officers, and they do not believe that such was the intention of the late act or its framers.

All they desire is, that their debts may not be interfered with or denounced without a fair investigation. And that if just and fair, they may be permitted to collect and receive them in the way and manner as was agreed upon between the claimants and the Indians, prior to the passage of the act of 3d March, 1847.

To refuse this is to destroy their rights entirely. To have the means to pay their debts was almost the sole motive which induced the Pottowatomies to sell their country, and accede to the terms offered by the government. They had been advised by their Cherokee brethren, when in this city in November, 1846, to refuse to sell for less than two millions of dollars, and that if they would hold out, they would get it.

WAR DEPARTMENT,
Office Indian Affairs, May 4th, 1848.

SIR: I have the honor to submit the following report, in compliance with the directions of the President, endorsed on the accompanying memorial of Messrs. W. G. & G. W. Ewing.

It is alleged by those gentlemen that the Pottowatomie Indians owed them and others large amounts for goods and supplies furnished them in the course of trade; that in the 5th article of the treaty with that tribe, of June, 1846, fifty thousand dollars was set apart, out of the consideration money for their lands, for the specific purpose of paying "their just debts before leaving their present homes;" and that it was promised by the commissioner who negotiated the treaty, that they might so apply the whole of this sum; yet, in violation of the treaty and of that promise, \$20,000 of the amount was not thus applied, by reason of an order improperly given by the Superintendent of Indian Affairs at St. Louis, to the sub-agent of the lower band of Pottowatomies, whereby the memorialists and others were greatly injured. They therefore pray

“that said \$20,000, and also \$6,000 of the \$30,000 paid over to” the half-breeds and Indians at Council Bluffs may be replaced, out of the annuities of the present year, and applied on their just debts, as was meant and intended in the treaty and the aforesaid proceedings in connection therewith.

The stipulation in the 5th article of the treaty referred to is, that there shall be paid by the said Indians, out of the consideration money for their lands, fifty thousand dollars, to enable them “to manage their affairs, and pay their just debts, before leaving their present homes, to pay for their improvements, to purchase wagons, horses, and other means of transportation, and to pay individuals for the loss of property necessarily sacrificed in removing to their new homes; said sum to be paid in open council by the proper agents of the United States, in such just proportions to each band as the President of the United States may direct.”

Thus it will be perceived that the Messrs. Ewing have entirely misrepresented the provisions of the 5th article of the treaty; that instead of the whole \$50,000 being intended for debts alone, it was made specifically applicable to other obligations, and objects equally if not more sacred and important. In removing, the Indians would have to abandon improvements they had made at their old homes, and suffer loss and sacrifice of other property, for which they were to be indemnified out of the fifty thousand dollars; yet the memorialists would have had the whole amount paid over to traders—principally to themselves—and the Indians left entirely destitute.

The commissioners who negotiated the treaty, Colonel Andrews of the army, and Major Harvey, the Superintendent at St. Louis, as well as the Indians, no doubt considered that the \$50,000 would be amply sufficient for the objects specified, including such debts as they justly owed. The journal of the commissioners does not show that, as alleged by the memorialists, there was any promise or understanding whatever that the whole amount was to be applied to the payment of debts, and it is obvious there could have been none such, directly in the face of the stipulations of the treaty. The money belonged to the Indians, and was to be paid to them in open council, after which the government agents could exercise no control over it. It was paid over accordingly, no order being given by the Superintendent, as alleged by memorialists, in any way contrary to the stipulations of the treaty, so far as has come to the knowledge of the department. One-half of the whole amount, \$25,000, was paid in liquidation of debts, of which the Messrs. Ewing received a very large share, viz., \$12,250; \$20,600 was paid for improvements, according to a fair and equitable appraisalment by persons appointed by the authorities of the tribe, \$1,000 was paid to the Mee-am-meese and his band; and the remainder, \$3,400, was paid to four individuals, whether Indians or half-breeds is not known, but believed to be the latter, and if so, paid for debts, or for obligations of a similar character.

It will be thus seen, that considering the other objects for which the \$50,000 was intended, the Indians made a very liberal payment on account of debts.

In regard to that part of the memorial which relates to the appoint-

ment of a commissioner, or commissioners, to investigate and decide upon the claims against various tribes for alleged debts, I deem it only necessary to remark that this office is now assiduously engaged in preparing a general statement in regard to the accounts and claims sent in under the instructions of 30th August last, on the subject of paying annuities. The object of this statement is to enable the President to determine the proper course to be pursued in relation to such demands, in order to do justice to the Indians, and to the fair, just, and bona fide rights of the claimants.

The statement in the memorial that the recovering of debts from the Indians, as has been customary, has been made the cause of revoking licenses, is not true. No license has been revoked but that of memorialists to trade with one tribe, the Sacs and Foxes, and that revocation was upon far other and legitimate and proper grounds, as will fully appear from my recent report to the Secretary of War on that subject. It is the Indians, and not the memorialists, that have been the "wronged and oppressed," as I am prepared to show.

With regard to the allegation "that the Commissioner of Indian Affairs is *hostile* and *prejudiced* against your (the) memorialists, and will not treat their rights *justly*," I desire nothing more than an opportunity of fairly submitting to the President, if he so desire, all the facts and circumstances out of which this charge arises, to let him judge for himself how far it is well-founded. It is a fact well known to all connected with this department, that it is only necessary for any officer to act uprightly and conscientiously for the simple purpose of seeing justice done to the Indians in any matter in which the Messrs. Ewings are concerned, to have such charges made against them, with the addition of abundant vituperation and abuse.

The argument submitted with the memorial in support of the validity of certain obligations in writing, obtained from the Pottowatamies for the payment of a large amount alleged to be due them, is retained, to be considered and submitted with the statement now preparing in relation to claims filed against various tribes under the instructions of August 30th last.

Very respectfully,
your obedient servant,

(Signed)

WM. MEDILL.

HON. WM. L. MARCY,
Secretary of War.

W. G. & G. W. EWING
vs.
THE POTTOWATAMIES of the Osage River
Agency.

} Demand, \$6,410 70.

This is suspended claim No. 2 in the last annual report of the Commissioner of Indian Affairs. See p. 37.

On the 5th June, 1846, the Pottowatamies of the Council Bluffs

Agency made a treaty with the United States, the 5th article of which set apart \$50,000 "to arrange their affairs and pay their just debts," "to pay for their improvements," &c.

On the 17th June the Pottowatomies of the Osage River Agency accepted, ratified, and confirmed this treaty "in all particulars."

On the 17th June, and contemporaneously with the making and ratification of the treaty by the Indians of the Osage Agency, they executed, in open council, their *national obligation* to W. G. & G. W. Ewing for the sum of \$6,410 70, which "was to be taken from the *first money accruing from the treaty made at Council Bluffs, 5th June, 1846, and Osage River Sub-agency, 17th June, 1846.*" That is from the \$50,000 provided for by the 5th section.

It is proved by the deposition of Samuel Lewis, (whose veracity is certified to,) that this obligation was executed *immediately* after the treaty was signed, and *before the council had adjourned*, with the concurrence of the government commissioner.

The same facts are proven by Joseph Clymer and R. B. Mitchell, late sub-agent. Clymer says that the Indians refused to sign the treaty unless provision was made for payment of their debts.

The obligation was written by T. H. Harvey, Superintendent at St. Louis, and one of the Commissioners who made the treaty. Lewis says that he "directed" him to insert in it the words, "payable in two annual installments," which he did. Clymer says that Harvey read it over, and through the interpreter read it to the Indians, and asked them how it was to be paid, who answered, in two annual payments—whereupon he ordered it to be so expressed. I request particular attention to all the testimony on this point, as it goes to show clearly that the whole thing was well understood by all the parties, Indians, commissioners, and creditors, and that what Clymer says is true—that the "paying for improvements, purchasing wagons, &c.," was merely put into the 5th section of the treaty to facilitate the ratification of it by the Senate, as the Senate had adopted a resolution against providing for debts in a treaty.

I insist and maintain with the fullest confidence, that this obligation, executed under the circumstances, is a *national obligation*, and that having been made at the same time with the treaty, and by the Indians in council, it is equally binding with the treaty upon both the Indians and the United States, so far as the United States is bound to execute it.

Although the relation existing between the United States and the Indian tribes is that of guardian and ward for *some* purposes, yet the Indians still possess all the attributes of sovereign government, and are to be treated as separate and independent nations.

They can only make a treaty as *sovereigns*, and such has the United States always recognized them; this has been decided in several cases by the Supreme Court of the United States, but especially in the case of *the Cherokee Nation vs. the State of Georgia*, 5 Peters, 1. Cited in Vol. 7, U. S. Statutes at Large, p. 9.

It is very clear that the guardianship of the United States extends only so far as to give them general protection by confining them in their trading to citizens of the United States—preventing them from being imposed upon by unlicensed traders—elevating their condition, &c. But it has never been supposed, by any tribunal of respectable authority, to go so

far as to control them in the doing all those things which they may or can do as a *nation*. Thus, for instance, nobody has ever supposed that the United States could prevent them from providing for the payment of their debts.

If they cannot be prevented from providing for the payment of their debts, then the acknowledgment of a debt by them, in council, is an act of the sovereign power of their nation, with which the United States has nothing to do. If the United States undertake to pay their debts thus acknowledged, they have nothing to do but to pay them. They have no right to go behind the fact of acknowledgment.

But I put this matter upon even higher ground. In this case the national obligation is a part of the treaty. A word or two will show it to be so.

By the law regulating the interpretation of contracts, and also by international law, it is competent to show acts or declarations of the parties contemporaneous with a contract or treaty to show the intent—and when it is so shown, it is a part of the treaty or contract. Such, by everybody, was admitted to be the law, applicable to the recent protocol attached to our treaty with Mexico.

In this case the 5th section provided for the payment of debts. What debts? of course, those for which they executed their obligations *at the time of making the treaty*. The payment, therefore, of those particular debts was equally as obligatory upon the United States as any other part of the treaty. The debts were understood at the time—recognized as existing by the Indians—and the adjustment of them recommended by the agents of the government, in whose presence the obligation was executed, and one of whom witnessed it. What more can be required or expected? If this does not make these debts *national*, then the treaty of 1846 was not *national*. The same power made both.

Notwithstanding I apprehend there is no man who will contradict these general principles, yet the Commissioner of Indian Affairs, in his last annual report, says of this claim—"There is a written obligation for the amount, given by the same eleven Indians," who had executed that in No. 1 of his report, which, like that in No. 1, "is *void* as it respects any other fund belonging to them," [the Indians.] Because the Indians, from *some cause unknown to the Department*, "failed to pay any portion of the amount out of that fund," that is, out of the first money arising out of the treaty of 5th and 17th June, 1846.

Now, at the very time that the Commissioner wrote this report, he had before him the proceedings of a council, held 29th September, 1847, between the creditors and these Indians, at the time of the payment provided for by this treaty, which proceedings were certified by A. J. Vaughan, the agent who made the payment; and if he had examined he could have seen *why* this payment did not take place. Did not the Commissioner know that this paper was on file? Certainly he did know it, as his report purports to be predicated upon an examination of the claim.

Yet Mr. Vaughan certifies that "*he was instructed to recognize no national debts unless first sanctioned by the Department.*" That was the reason it was not paid. Who instructed him? The Superintendent Harvey, at St. Louis, as the testimony will show. Who instructed Harvey? That is not known.

But the proceedings of this Council serve to show another important

matter, that is, that the Indians, again in council, and when Vaughan was the only white man present, acknowledged the debt in the strongest and most emphatic terms, and promised to pay it out of the first money they should receive. See this statement. Could more conclusive evidence be offered of the *national* character of an obligation?

I insist that the government of the United States is bound to recognize this obligation, and to pay it, as the Indians have already desired. The books upon which all the items constituting the amount are charged, have long been on file before the Commissioner, and sufficiently proved. They are now here—and these claimants have been willing to submit to any sort of examination, that they might, at some time, reach the *end* of their demand. But, although they have been willing to this, and will not now interpose any objection, if the Secretary desire it, yet they cannot consent to yield the point that the United States has no *legal* right to go behind the acknowledgment of the Indians, twice solemnly made in council.

But I have the authority of the Commissioner himself for insisting that this is a national debt. At the time the treaty of June, 1846, was made, the usual mode of paying the annuities to the Indians was, to pay the whole sum due them to the chiefs and head men. On the 3d March, 1847, Congress passed a law providing that the President might, if he thought proper, order them to be paid *per capita*. Under this law the Commissioner issued his circular of 30th August, 1848, to Harvey, Superintendent at St. Louis, [see his annual report for 1847-48, p. 28,] wherein he gives general instructions in regard to *per capita* payment, and says,—“Nor are these directions intended to apply to the \$50,000 payable to the Pottowatomies, under the 5th article of the treaty of June, 1846, which is set apart for *certain specific purposes*.”

It is represented that, at the making of the treaty, there was an understanding as to the manner in which this sum should be paid, and you are authorized to cause it to be paid accordingly.”

Why did not these directions apply to this \$50,000? Unquestionably it was for the reason that the Commissioner recognized these debts as national, and excepted them from the general regulation of his circular. But would he have authorized this money to be paid according to the provisions of this treaty if there had been any apology for embracing these claims under his general regulation?

It is perfectly apparent that he would not.

I repeat the question then, Why was this money not paid? And I add to it another, Why was Mr. Harvey permitted to remain in office *after* he was known to have instructed Vaughan not to recognize these debts as national, when the Commissioner had specially excepted them in his instructions? There is something *very strange* about this thing—some mystery which may yet be fathomed. It is not necessary in this case to pursue it further.

It is shown by the testimony that at the payment in 1847, \$30,000 of the \$50,000 was paid out on *debts* at the Council Bluff Agency. Mitchell, who paid it, swears to this. He also swears that \$20,000 was sent down to the Osage River Agency, to be paid there.

It is also proved that it was not paid—*not a dollar of it*—but that it was divided, *per capita*, amongst the Indians, under the general instructions. Vaughan states that he had a *private* letter from Harvey, who directed

him not to pay it. It has been since pretended by the Commissioner, who has abandoned the ground taken by him in his circular of 30th August, 1847, that this \$20,000 was paid out for improvements, &c. To this there is a full answer in the fact that it was all paid out at the lower or Osage River Sub-agency. Were not *some* of the *improvements* chargeable to the Indians at Council Bluffs? Yet \$30,000 was paid on their debts; and, according to the Commissioner, the whole \$20,000 paid on improvements down at the lower agency. Again, if the \$20,000 was to be paid for improvements, why the necessity of sending it away from Council Bluffs? Could it not be paid there? Mitchell says it was sent down to be paid out? How paid out? Of course as he had paid it above—that is, on the debts.

Lewis proves that nothing was paid in September, 1847; nor has anything been paid since. Clymer swears to the same thing. So does Vaughan, for he says he would not have suffered it.

These claimants, thus baffled, filed their claims, books, &c., in the office of the Commissioner of Indian Affairs, under the instructions of the 30th August, 1847, that they might be examined, and their character determined. The Commissioner of Indian Affairs refused to recognize them as national. They appealed to the President of the United States, and he ordered the Commissioner to report upon them through the Secretary of War. The Commissioner made a report on the 4th May, 1848, *in which he does not decide against the justness of the claim*, but insists that the \$50,000 was not altogether for debts, but for expenses of removal, &c.; and says that the \$50,000 were paid as follows: \$25,000 for debts, \$20,600 for improvements; \$1,000 to Me-am-ees, who is a principal chief, and \$3,400 to four half-breeds at the upper or Council Bluff Agency. I have already noticed this last assumption of the Commissioner, but the question may be well repeated—why, if \$25,000 were paid *on debts* at the Council Bluffs, *something* was not paid *on debts* at the Osage Agency? These claimants had a right to complain of the hardship to which they have been subjected by the non-payment of these debts, which has [been] brought about by the conduct of the officers of the government. They have a right to their money out of the funds arising under the treaty. They have furnished the Indians with the necessaries of life, without which they could not have lived, and which was done under the authority of the government. The Indians, knowing this, made the payment of their debts a condition precedent to the execution of the treaty. They made the debt a *national* one, as a part of the consideration of the treaty, as they had the power to do, and has been always their usage. By making it national, the individual Indians are discharged, so that if the money now due these Indians be paid *per capita*, they can never receive a dollar of their debt.

The *nation* is now their debtor, not the *individuals*. The only way in which they can ever get their money is by having it paid in bulk, as agreed upon by the nation, out of the funds arising under the treaty. Considered in reference to the amount of the annual income of these Indians, it may well be spared for that purpose.

It is respectfully asked, therefore, that it may be paid, in such installments as the Secretary may direct.

1. Because their commerce with the Indians has been carried on under the sanction of the constitution, treaties, laws, and regulations of the United States.

2. Because their commerce has been carried on under the legal authority of license to trade with the Indians.

3. Because their claims have arisen, as the necessary consequence of the condition of the Indians, and the system of trade among them.

4. Because their claims have been made according to the customs and in obedience to the wants of the Indians.

5. Because their commerce has been beneficial and satisfactory to the Indians.

6. Because their prices have been low (as their books show), and their claims are just.

7. Because the individual Indians who purchased and consumed their goods, had a right and power to do so. This is the only mode of purchase. Will the government defeat a claim, contracted under its license, in the only manner in which it can be? For the *nation* as a nation, men buy. The payment per capita did not exist when the debt was contracted, and therefore cannot affect their right.

8. Because the individual debtors desired and intended their debts to be assumed by the nation, at the making of the treaty, as part of the consideration.

9. Because the authorities of the tribe, with the sanction and in the presence of their people, did assume the debts as national.

10. Because said authorities, by the laws of the United States, and their own laws and usages, had the right and power to do so, and were competent to bind the nation.

11. Because their arrangement was made in the presence of, and with the acquiescence of, the *officers of the United States*.

12. Because their claims were to be paid out of the funds arising from and under the late treaty; the provision for their payment, and the expectation of that result, having been part of the consideration for the cession of lands made by the treaty.

13. Because the obligation on which their claim is based was executed in open council, in presence of government officers, in the same solemn manner in which the treaty was executed. [And here the Messrs. Ewings desire to remark that they were not present at this treaty, and did not know that it was intended to make it, at the time it was made. This fact is known to the Commissioner of Indian Affairs, who also knows *why* they were not present.]

14. Because their obligation, entered into and executed on the same day with the treaty, is *identical with it*.

15. Because the treaty recognizes their claim.

16. Because the Senate, by ratifying the treaty, recognized the debts of the Indians so far as the \$50,000 would go.

17. Because Congress made the same recognition, by appropriating money to carry it out.

18. Because the Indian Department recognized and confirmed the debts to the extent of the \$50,000, by directing that sum to be paid, according to the "understanding" at the time the treaty was made.

19. Because part of the claims, arising in the Council Bluff Sub-agency under the direction of the Superintendent, Major Harvey, have been paid out of the funds arising under the treaty.

20. Because, in making that payment, the Indians again recognized the national character, justness, and validity of the claims.

21. Because they have now no recourse on the individual Indians.

22. Because at the council held in the presence of Vaughan, the Indians again in council admitted the debts and desired their payment.

The foregoing reasons, it seems to my mind, imperatively require the Secretary to issue an order directing that this debt be paid. All of which is respectfully submitted.

R. W. THOMPSON.

April 10th, 1849.

OSAGE RIVER SUB-AGENCY,
29th September, 1847.

The following is the result of a council this day held at my Sub-agency, between the Pottawatamie Indians of said Agency, in full council assembled, and the following named gentlemen, being licensed traders—namely, John B. Sarpy, of the firm of P. Chouteau, Jr. & Co.; George W. Ewing, of the firm of W. G. & G. W. Ewing; M. Girard; Samuel Lewis; Joseph Clymer, Jr., of the firm of Ewing and Clymer; John W. Polk, of the firm of Thomas W. Polk & Co.; Wm. W. Cleghorn, and Moses H. Scott. These gentlemen were creditors and claimants; the said Indians having executed to them national obligations for the respective amounts due them up to the 17th day of June, 1846, the date on which the said Pottawatamie Indians signed the late treaty.

The said claimants requested the Indians to set apart and pay them now, out of their present moneys (being in all near \$74,000), the sum of \$17,500 to pay the first installments due them on the notes executed by said Indians to them severally on the 17th June, 1846, before referred to. They explained fully to the Indians the reasons that induced them now to demand this installment: they thought they were by the agreement entitled to it now, out of the present annuity, and that they should not be required to wait until the Indians should be on the Kansas River; as it was then, the said claimants understanding that they were to be paid the first installments out of the indemnity moneys of the year 1847, and that the Indians were to have moved there, (to the Kansas River) last spring, or in the fall of 1846; that it would be hard for them, the claimants, to be kept any longer out of their demands, as this \$74,000, now about to be paid to them, was in part the identical money which the Indians had promised to pay them when they assumed these debts and executed their notes; that although the claimants were willing to waive their claim to the \$20,000 derived by the 5th article of the late treaty, and consent that the Indians might apply that to the payment of their improvements, yet they believed they were justly entitled to the first installment on the national obligations before referred to, out of the remaining moneys in my hands.

The council was conducted with all proper decorum and good feeling. The claimants, after having stated their case, and at the request of the Indians, retired. No white man remained in the council but myself. The Indians being, as before stated, in full council, considered the proposition of their traders. They did not for a moment deny the claims, but admitted them—said they knew they owed the claimants as stated; and they authorized me to say for them to the claimants, that said obli-

gations or contracts should be fulfilled and paid. That according to their understanding they were not to pay them until they moved to the Kansas River, and that there they would pay them promptly and honorably. The Indians said not a word against the payment of the said claims; on the contrary, they seemed fully determined then and there to pay them. They cited to a large walnut tree close by us, and said that it was there where they had in full council assumed these debts and agreed to pay them out of the first annuities which they should receive on the Kansas River, derived from this new treaty, and they now renewed their pledge to do so; but candor forces me to admit that, had they have acceded to the proposition made them to pay one-half of their indebtedness, say \$17,500, I should have most solemnly protested against it, from the instructions which I had, and which had been explained by me to them, requiring me to recognize no debt of a national character unless first sanctioned by the department. I make this statement in justice to the parties, and I repeat that the Indians expressed their entire willingness and determination to pay said obligations on the Kansas River. The interpreter used on the occasion was Joseph N. Bourassa, an educated half-breed of the Pottowatamie nation, in the presence of Joel W. Barrow, United States interpreter, and many other intelligent half breeds. This is a full and minute statement of what transpired at the council above alluded to.

ALFRED J. VAUGHAN,
Indian Sub-Agent.

The foregoing is a correct and full statement of the proceedings of the council referred to.

J. N. BOURASSA, *Interpreter.*

We, the undersigned, educated Pottowatamies and half-breeds, were present at said council, and concur in the above statements. They are full and correct.

JOSEPH BERTRAM, *Interpreter*
SIMUEL L. BERTRAM.

INDIAN TERRITORY,
Pottowatamie Sub-agency.

On this third day of March, in the year eighteen hundred and forty-eight, personally appeared before me, the undersigned, Indian Sub-agent for the Pottowatamie Indians, John D'Lasley, of lawful age, to wit: the age of forty-three years, who, being by me first duly sworn, on his oath deposes and says, that he is the principal clerk in charge of the outfit or trading house and establishment of W. G. & G. W. Ewing among the Caldwell or Council Bluff Pottowatamies, who recently removed to their new country here on the Kansas River, and that he has been in charge of said outfit in whole or in part ever since it was first established, in the fall of 1840. That Oliver G. Fleming was book-keeper and assistant clerk at said post ever since the spring of 1841; that the books and accounts were invariably kept by this affiant and said Fleming, mostly by

the latter. That said books and accounts are correct and in good faith, and that the amount found due on the 3rd day of June, 1846, was all just and satisfactory to the Indians at the time, and was, on the 5th of said month, assumed by the nation, and a national obligation given for the same, to wit: for the sum of forty thousand two hundred and seventy-seven dollars, (\$40,277) as will be seen by reference to said obligation. That it was fully stated by the Indians, and so understood by them, before and at the time of their signing the treaty, on the 5th June, 1846, that their just and admitted debts were (being then against individuals) to be made *national*, and so paid; that this was one of the reasons given by the Indians for favoring the making the treaty: that many of them were in debt, and desired to pay their debts. That the said national obligation was executed in open council on the same day the treaty was made, and was as fully understood and desired by the Indians as the signing of the treaty was; that it was executed in the presence of the sub-agent (Major Mitchell), and witnessed by him. That it was fully agreed, and was so understood by the individual Indians, that their debts were settled in that way, and were to be paid by the nation. That, at the payment of annuities to said Indians in October following (1846), not a cent was either demanded or paid on said debts, so made national. That, at the payment of their annuities on 1st October last (1847), the said tribe or nation paid on said national obligation (in open council, in the presence of, and with the sanction and approbation of, the Superintendent, Major Harvey, who was present, and of their sub-agent, Major Robert B. Mitchell, who made the payment,) the sum of twelve thousand two hundred and fifty dollars (\$12,250), and would have paid the full amount of the first installment, viz., \$13,000, had not Major Harvey urged and persuaded them to pay seven hundred and fifty dollars (\$750) to some other persons. That the unpaid balances and installments yet due said W. G. & G. W. Ewing on said obligations are all justly due for goods and provisions, and other necessary supplies, sold to said people to supply their wants, and relieve them from suffering and privation; that these advances and credits were made often with reluctance, but at the urgent request of the Indians, and frequently the chiefs and principal men would come forward and insist upon this affiant letting them and their destitute people have supplies. That notwithstanding the advances which this affiant did make, the head-men once went to their sub-agent, Major Mitchell, and complained that the house did not keep sufficient supplies of provision on hand to sell them on credit, and wished him to see that this should be done. That the employers of this affiant kept generally a large supply of goods at that post, the leading articles of which were clothes, blankets, calicoes, sheetings, shirting, drilling, bed ticking, shawls, handkerchiefs, satinets, rifles, shot-guns, powder, lead, flints, shot, kettles, axes, half-axes, knives, saddles, bridles, tin-ware, tobacco, tea, coffee, sugar, soap, &c., &c., flour, pork, lard, and bacon. That these supplies were sold at fair and reasonable prices, and never credited except when their necessities seemed to require it. That this affiant never desired to make Indian credits in the country; that he was opposed to it; but found it very hard and difficult to refuse, being there with the supplies on hand, and an eye-witness to the destitute condition of the Indians, and to their absolute want for themselves and families; that at the times of the annual payments to the

Indians, the competition was very great among the several traders, and not unfrequently the entire cash sales of the said house were made at about the cost and charges ; and in this way, affiant thinks, nearly half their yearly sales were made. That those Indians during the past seven years have taken but very few skins or furs ; the yearly collections of the said house in those articles have been very small, varying in value from five hundred (\$500) to twenty-five hundred dollars (\$2,500) worth ; and the Indians depended mainly upon their annuities. That this affiant, for said house, generally employed one or more half-breeds by the year, who assisted in the trade ; among these may be named Francis Bourbonnois, Nicholas Vieaux, and George Mayou, who all speak the Pottowatamie tongue, and belong to the nation, and also speak French and English. That at the time of the payments, this affiant usually employed several of the half-breeds and others to assist in the trade. That the books of the said house were kept with great care, and every pains taken to have them correct. That no person ever made entries on the books except this affiant, and his book-keeper, O. G. Fleming ; and this affiant is persuaded that if errors and omissions ever occurred (as they most probably did), they were against the proprietors ; for he cannot doubt that both himself and Mr. Fleming often did omit to charge articles which they gave out, in consequence of the confusion at times unavoidable in the trade. The Indians live very much in common, and almost always came in bands or parties to trade, and do their business ; so that when one began to trade or take credit, perhaps twenty (more or less as the band was large or small,) would insist upon being served at the same time, and as they generally all came and all departed at the same time, there was no putting them off. All who have resided among Indians, and have observed their customs in this regard, will know that this is the case. This affiant has not unfrequently had Indians to name (in enumerating over what articles they had got on credit,) articles which he had failed to charge them with, owing, no doubt, to confusion at the time the articles were gotten ; so that it is not for this reason, unreasonable to suppose that in this way much has been omitted to be charged. That this affiant has been the principal clerk in charge of this (late the Council Bluffs) outfit, and has superintended all the trade and business. The Messrs. Ewings supplied the post, and some years one of them would come and pay him a short visit ; other years they did not come. After the annuity payment, if neither of them came to receive the yearly return, this affiant took it to St. Louis, and paid it over agreeably to their order. That the whole of this trade has been fair, and highly beneficial to the Indians, as they derived much of their yearly supplies from the said house. That so far as this affiant knows or can judge, the Indians are satisfied with it, and always have been ; that he has always heard them so express themselves. That this affiant is intimate with these Indians, and speaks and understands their language ; that he was with the delegation of them at Washington in 1845, and there they repeatedly stated that if they sold their land to the government, it would be because they owed their traders just debts, and were not able to pay them, but wanted to sell their lands to do so ; that these statements they repeatedly made to the commissioners appointed by the government to hold councils, and treat with them. That this affiant was present on the 5th June, 1846, when they made the treaty ; that the same request was made by them at and before signing

the treaty ; and the commissioners assured them that their Great Father would be gratified to know that they had acted like honest men and paid their just debts, as the treaty would give them ample means to do, and that it was right to pay their friends who had supplied them when they were poor and in want ; and this affiant thinks that if it had not been for their debts, and the advice, and influence, and co-operation of the traders, the treaty would not have been made. That the claims of said Ewings having been thus assumed and made national by a public act of the *nation*, they no longer exist as individual claims, and it would be impossible ever to collect any part of them hereafter from individuals, as they considered them assumed by the nation, and themselves released from them, when they assented to the treaty and the sale of their country.

JOHN D. LASLEY.

Sworn, and subscribed before me the day and year first above written.

ALFRED J. VAUGHAN,
Indian Sub-Agent

KANSAS RIVER, *Nov. 12th*, 1848.

Messrs. W. G. & G. W. EWING.

GENT.: In reply to your request that I would express my opinion relative to the standing and character of Mr. John D. Lasley, I have to say that I became acquainted with him at Council Bluffs, in the State of Iowa, whilst I was the sub-agent of the Pottowatamies, and he (Mr. Lasley) was clerk in charge of your trading establishment, and consider him to be a man of integrity and veracity ; that he was much respected both by the whites and Indians, and consider him an honest and correct business man. His testimony or statements upon oath would, in my opinion, be entitled to full faith and credit.

Very respectfully, yours, &c.,
R. B. MITCHELL,
Late Indian Sub-agent.

WEST-PORT, MISSOURI,
Nov. 14th, 1848.

Messrs. W. G. & G. W. EWING,

GENT.: In reply to your inquiry, I have to state that I have known John D. Lasley, your former clerk, in charge of your Pottowatamie trading house, at Council Bluffs, for many years, and believe him to be a man of truth and veracity.

Very respectfully,
your obedient servant,
RICHARD W. CUMMINS.

JACKSON COUNTY, }
 State of Missouri, } ss.

Personally appeared before me, D. Spencer, the undersigned, an acting justice of the peace, in and for said county, Samuel Lewis, of lawful age, and known to be a citizen of integrity and veracity; who, being duly sworn, deposeth and saith,—That on the 17th of June, 1846, he was clerk in charge of the trading house of Messrs. W. G. & G. W. Ewing, amongst the Pottowatamie Indians of the Osage River Sub-agency, and had been in charge thereof from 1st January, 1845, and was present when the chiefs and headmen of said Indians signed the treaty of the 5th and 17th June, 1846; (it was signed at the Council Bluffs, as deponent was informed by the chiefs and headmen of the Upper Bands, on the 5th June, 1846;) and on said 17th day of June, 1846, deponent was present; and on the same day, and before the signing of said treaty by the chiefs and headmen of said Osage River Sub-agency, heard Major T. H. Harvey, one of the commissioners there negotiating said treaty, publicly declare to the traders present, that he and the other commissioners had no objections to any arrangements that the traders might makewith said Indians, for the payment of their just debts; and immediately after signing said treaty, and whilst yet in open council, and before it had adjourned, this deponent presented two notes, or national obligations, one for balances due W. G. & G. W. Ewing, for \$6,410 70, and one other for like balances due the late firm of Ewings and Clymer, of \$4,773 copies whereof are hereunto annexed, marked A & B,) which said obligations, after being signed by the chief and head men, and witnessed by the interpreter, J. N. Bourassa, said Harvey took into his possession, and carefully read them, and then directed the deponent to insert the following words therein, (to wit:) “payable in two annual installments,” and thereupon said Harvey witnessed the signing of said notes, in words following, (to wit:) “Thos. H. Harvey, Superintendent Indian Affairs”—assisting, counseling, and advising therein officially. Deponent further saith, that he was well acquainted with said tribe of Indians of the Osage River Sub-agency, and knows that the chiefs and head men who signed said obligation, were then principal chiefs and headmen, most of whom had signed said treaty, and on the same days as aforesaid, and in connection with said treaty transactions, executed said obligations with the full concurrence of the commissioners of the United States, advised and witnessed by one of them, as aforesaid, and, had it been deemed necessary, all the other chiefs and head men, deponent believes, would have signed said obligations; as many having signed as agents usually take to their pay rolls and other national vouchers and obligations. The evening after said treaty was signed, Major Andrews (one of said commissioners) expressed himself highly pleased that the traders had made so liberal an arrangement with the Indians, that no doubt but that the obligations given would be paid as stipulated therein, (viz.,) in two annual installments—adding that it was a better arrangement than the Council Bluff traders had made for their claims, as theirs were, as he believed, payable in three (3) yearly installments; Major Andrews likewise expressed himself as much gratified for the assistance the traders had rendered them (the commissioners) in procuring said chiefs and head men to sign, and unite in said treaty. At the same time, like

national obligations were made and delivered to these other traders, (*viz.*) to Messrs. P. Chouteau, Jr., & Co., Messrs. Polks, M. H. Scott, W. W. Cleghorn, J. B. Jointrois, and Messrs. A. Jackson, for sundry balances claimed to be due them in their trade;—and deponent heard said Harvey request Dr. P. Sykins to take his place, and in his stead to witness said last named traders' obligations, as he desired to do some other business; both of said commissioners, Messrs. Harvey and Andrews, expressed themselves as pleased and satisfied with said arrangements which had been made as regards said debts, before and after the signing of the treaty at the Osage River Sub-agency. Deponent further saith, that he was present at the payment of the following year, of Oct. 1847, at said Osage River Sub-agency of the Pottowatamie Indians, and that the \$20,000 sent to their Sub-agent, Col. Vaughan, was not paid on debts as provided for in the 5th article of said treaty, (being said lower band's part of the \$50,000 set apart in said 5th article of said treaty), and that deponent knows (as he was clerk for and assisted said Vaughan) that no part of said funds was paid on debts owing by said Indians, to said traders, prior to the making of said treaty, notwithstanding most of said traders were present and demanded and urged the payment of the first installment, due them on their several obligations; nor was there any payment made thereon at the semi-annual payment of May, 1848, when said Indians received about \$67,000, they urging for excuses, as deponent was informed, that they were informed by their agent that said claims had not yet been investigated by the Indian Department at Washington City. Deponent further saith, that he was present at the payment in November inst., 1848, of the united Pottowatamie tribe of Indians, on the Kansas River, acting as clerk for the agent, Major R. W. Cummings, and knows that no payment was made on said obligations, although the payment thereof was demanded. Deponent speaks and understands the Pottowatamie language, and had conversation with some of the chiefs and head men, and believes they are willing to pay said debts in yearly installments, if the government would permit them to appropriate a part of their annuity therefor, as has been their custom to do, in treaties, to make all the debts of their people then due national and to be paid out of the proceeds of the treaty sales of their country. Deponent further saith, that in accordance with the instructions from the Commissioner of Indian Affairs, contained in his circular of the 30th of August, 1847, and under the directions of W. G. & G. W. Ewing, he, said deponent, made out and sent through the sub-agent, Col. Vaughan, to the office of said Commissioner of Indian Affairs, in January or February last, 1848, complete items of accounts and exhibits, showing the articles for which the said notes to said W. G. & G. W. Ewing and to said Ewings & Clymer were given, and that no part of which has ever to his knowledge been paid; which balances specified in said obligations, this deponent believes to be just, and due to said firms respectively.

Deponent having been book-keeper and clerk, and assistant trader for said firms, in said trade, from the year 1840 to May, 1848, and reference is now made to the books of said firms, now on file, as deponent believes, in the office of the Commissioners of Indian Affairs, at Washington City; most of entries in said books are in the handwriting of, and were correctly kept by, this deponent. Deponent believes that a large portion of said debts, say two-thirds or more, would have been paid by the Indians

at the subsequent payment made in September, 1846, had they not thus been assumed nationally with the approbation of the government officers, and released the individual Indians from liability.

And further the deponent saith not.

SAML. LEWIS.

Sworn to and subscribed before me this 24th day of November, A. D. 1848.

DWIGHT SPENCER,
Justice of the Peace.

STATE OF MISSOURI, }
County of Jackson, } ss.

I, Samuel D. Lucas, clerk of the circuit court, in and for said county, within the 6th judicial circuit of same State, certify that Dwight Spencer, Esq., is and was at the date of the making of the foregoing affidavit by Samuel Lewis, an acting justice of the peace in and for said county, duly commissioned, and qualified, and duly authorized to administer oaths, and that full faith and credit is due to all his official acts as such, and that his signature thereto subscribed is genuine.

In testimony whereof, I set my hand and affix the seal of same court, at office in Independence, this 23d day of December, A. D., 1848.

[SEAL.]

SAML. D. LUCAS, *Clk.*

WEST PORT, MISSOURI,
Nov. 24th, 1848.

MESSRS. W. G. & G. W. EWING.

GENTS: In reply to your request, I have to state that I have known your late clerk, Samuel Lewis, at Sugar Creek, in the Pottawatamie country, for many years, and since he left your service last June, he has been in my employ, and assists me in making up my quarterly returns.

I believe Mr. Lewis to be a man of truth and integrity, and a most excellent and correct book-keeper.

Very respectfully,
your obedient servant,
RICHD. W. CUMMINS.

PLATTE COUNTY,
State of Missouri.

Before me, William H. Spratt, an acting justice of the peace in and for said county, personally came R. B. Mitchell, of lawful age, and known to me to be a citizen of integrity and veracity, who being duly sworn, deposeth and saith—

That he was the sub-agent of the Upper or Council Bluffs Pottowatomies, on the 5th day of June 1846, when Messrs. Andrews, Harvey and Matlock arrived to complete a treaty with the Pottowatomie tribe of Indians for their country north of the State of Missouri, and upon the Osage River west of said States.

That the deponent assembled the chiefs and head-men of said tribe of Indians, and councils were held by said commissioners, and deponent often heard said commissioners state in open council that the fifty thousand dollars appropriated in the 5th article of said treaty, was specially appropriated for and to be applied in payment of the first debts due from said Indians to their licensed traders; and said commissioners assured said Indians that, if their nation consummated said treaty, that the means would be furnished them therein to pay all their just debts due their traders, which said Indians declared they were anxious to do, and which they persisted in making one of the prominent conditions to the execution of said treaty.

That deponent heard said commissioners solicit the licensed traders to assist them, and to use their influence and that of their interpreter, to induce said Indians to consummate said treaty provisions; that if they done so, and the treaty was made, that all their just debts would be provided for, and that the \$50,000 appropriated in the 5th article of said treaty, would be thus applied on the then existing debts of all the members or individuals of the nation, which would be assumed by the nation, as was the custom of said nation of Indians when making treaties, and adjusted and paid out of the proceeds or sums allowed by the government in the sale of their national domain.

That deponent believes that the principal traders and their clerks and interpreters did assist and render valuable service to the government, influencing said Indians to make said treaty; and, but for their influence, deponent believes it would not have been made. That deponent was surprised afterward, to be informed that \$20,000 of said money was not applied upon said debts, and that a large portion of the debts, of both the lower and upper bands, remains unpaid and unadjusted.

Deponent was present on said 5th day of June, 1846, when said treaty was signed by the chiefs and head-men of said upper tribe of said Indians, and witnessed the same. And that upon the same day, and immediately after the signing of said treaty, and before said Indians had dispersed from their councils, that several of their principal traders presented their demands for balances due them in trade from the people of said tribe; and they then executed, in open council and in his presence, notes.

One to Messrs. W. G. & G. W. Ewing, a copy whereof is hereunto annexed, marked C, and which was witnessed by this deponent as their sub-agent. Another like note deponent recollects was made to P. Chouteau, Jr. & Co., and which he thinks he in like manner witnessed; to both of which said firms deponent believes said Indians were largely indebted, and then meant and intended to pay in said national treaty transaction. And that said debts should be thus paid, in accordance with the custom of said Indians when making treaties; and that they were almost unanimous in their desire that all debts then owed by all the individuals of said nation or tribe should thus be nationally assumed and paid.

Deponent further saith that he made the payment of the said Council Bluffs Band in Oct., 1847, when \$30,000 of said \$50,000 in the 5th article of said treaty was paid out in open council by said tribes of Indians in the presence of the Superintendent, T. H. Harvey, and this deponent, and by the direction of this deponent and said Harvey the amount received by W. G. & G. W. Ewing, viz., \$12,250, was endorsed on their national obligation and witnessed by this deponent, as sub-agent, and deponent believes the \$11,250 received by P. Chouteau Jr. & Co. was in like manner endorsed on their obligation, at the same time, by the direction of said Harvey and this deponent. Said \$30,000 was paid out as follows (viz.):—

To Messrs. P. Chouteau, Jr. & Co.	\$11,250
“ “ W. G. & G. W. Ewing,	12,250
“ “ Bourbonney, Laframboise and other half-breed Indians on debts due from the Indians.	4,000
“ Me-am-ese, the chief, took and distributed for Im- provements, etc.	1,000
“ Messrs Pierson & Cooper on debts.	1,000
“ Mr. J. H. Whitehead.	500
	<hr/>
	\$30,000

That the remaining \$20,000, being part of the before named \$50,000, was sent, as this deponent was informed, to the lower or Osage River Band of Pottowatomies for the purpose of enabling them in like manner to arrange their affairs, and to pay their just debts before leaving their houses.

This deponent so understood the treaty, see 5th article thereof and also that part of the instructions from the Hon. Commissioner Indian Affairs, of 30th August, 1847, which related to the said \$50,000, that it was a *specific* appropriation, and was to be paid out accordingly.

And further this deponent saith not.

R. B. MITCHELL.

Sworn to and subscribed before me, this 13th day of Dec., A. D. 1848.

WM. H. SPRATT,
Justice of the Peace.

STATE OF MISSOURI, }
County of Platte. } ss.

I, Daniel P. Lewis, clerk of the county court, in and for the county of Platte, and State aforesaid, hereby certify that Wm. H. Spratt, whose name is subscribed to the above certificate of affidavit, as justice of the peace of said county of Platte, was acting as justice of the peace in said county of Platte at the time he signed his name to the same,

legally elected, commissioned; and qualified, as the law directs, and that all his official acts as such, are entitled to full faith and credit in all courts of law or elsewhere, and that the signature purporting to be his is genuine.

In testimony whereof, I hereunto subscribe my name, and affix the seal of said court, at office in Platte City, on this 13th day of [SEAL.] Dec., A. D. 1848.

DANL. P. LEWIS, *Clk.*

STATE OF MISSOURI, }
Jackson County, } ss.

Personally appeared before me, Dwight Spencer, an acting justice of the peace in and for said county, Joseph Clymer, of lawful age, and known to me to be a citizen of truth and integrity, who being duly sworn, deposeth and saith, that he was present at the Osage River Sub-agency on the 16th and 17th days of June, 1846, when Messrs. Harvey, Andrews, and Matlack, acting as commissioners on the part of the United States, negotiated a treaty with the Pottowatamie Indians.

Deponent further deposeth and saith, that at the last council, held on the 16th day of June, aforesaid, the chiefs and headmen comprising said council, (having heard the proposition from the commissioners, asking them to unite and concur in the treaty as signed by the upper band on the 5th of that month, positively refused to do so, but at the request of the commissioners promised and did meet them in council again on the next day; that said Indians again refused to sign, and asked that the 5th article should first be so changed as to allow them to provide for the payment of "all their just debts," as had been their practice to do in all their former treaties. They demanded that a special provision might be made for the payment of all their just debts; that the amount stipulated in said 5th article, viz., \$50,000, would not be sufficient to pay all the just debts owing by the upper and lower bands, and therefore they wanted it stricken out and changed as above stated. In reply to this, the commissioners informed said Indians that they were pleased to see them want to make a provision for the payment of their just debts, but that they could not alter that article and comply with their request, as it had already been signed by the upper band; that they would wait on them and give them time to make any arrangement with their traders that was satisfactory, and that they would sanction, approve, and recommend the same; that it was right to pay their just debts, and that their great father, the President, always paid his debts promptly, and that it was his advice to his red children to pay theirs. Said commissioners counseled and advised said Indians to make arrangements to pay their just debts, and accordingly it was done. National obligations for the amounts due to the firm of W. G. & G. W. Ewing and to the firm of Ewings & Clymer were then drawn up, and after having been fully explained in open council at the same time and place of signing the treaty, the Indians signed and acknow-

ledged the same. That Thomas H. Harvey, acting thus officially, took said obligations and read them over carefully; then (using Joseph A. Boniface, an educated half-breed, being the same person who had been employed by the commissioners just before, to interpret the treaty,) asked the said Indians, in full council, if they owed the said claimants, W. G. & G. W. Ewing, the sum of \$6,400, and if they were also indebted to Ewings & Clymer \$4,773, pointing out the claimants; was answered by them that they did owe them said sums; said Harvey then asked them how they were to pay; to which the Indians replied, "in two annual installments, out of the first moneys they received under the new treaty." Said Harvey then caused said two national obligations to be interlined accordingly, and the following words, before signing, were added: "payable in two yearly installments;" whereupon the Indians came forward and signed said obligations in open council, with the full approbation of all the nation, and of the said commissioners, with the full understanding at the time, and as previously expressed by the Indians, that the sum named, viz., \$50,000, would be insufficient to pay all their debts, but that the government would have no objection to their paying the remainder out of their annuities, as had been their custom always before; and without this understanding, the treaty, deponent thinks, could not have been signed. The Indians demanded this of their chiefs and head-men, that if they sold their country, all their debts were to be paid and cancelled nationally, out of the proceeds of the treaty.

That it was understood by said Indians, when they signed and consented to said treaty, that all their debts were provided for and settled, and that they, individually, were not again to be called upon for them, which was the strong inducement on their part to consenting to the treaty. And said interpreter and the said Thomas H. Harvey signed and witnessed the same as by reference to said obligation will be seen. Deponent further saith that before the treaty was signed and preparatory thereto, the said commissioners counseled and advised the Indians and their traders to go and hold a council amongst themselves and arrange all their affairs and settle about their debts before signing the treaty. Which they did do, after which said Indians returned again into council and then and there signed the treaty; and said national obligations identical with the treaty, as before stated, under the advice of said commissioners and with their full concurrence, and with their promise to said Indians that they would recommend their payment, which satisfied the Indians and reconciled them to signing the treaty; their wish being to have their debts paid *nationally* out of the treaty money, as had always been their custom, and which was the reason why they wished the sum in the fifth article made larger.

Before the treaty was signed, the commissioners informed said Indians, that their brothers of the upper band had made an arrangement with their traders to pay all they owed them, and they hoped they, the lower band, would do the same, so their debts might not be an obstacle in the way of their signing the treaty; that they wanted to see them do this, and would not advise them (the Indians) to cheat their traders out of their just debts, but to act honestly and pay them, as they would want credit

again; and that no people's credit was good who refused to pay what they justly owed. Deponent further deposeseth and saith, that Major Andrews, before the treaty was signed, assured this deponent that the commissioners were not opposed to the Indians paying their debts in any way that they and the traders might agree upon; that the whole of the \$50,000 named in the said 5th article was to be applied specifically on their debts, and that "paying for improvements, purchasing wagons, &c.," was merely put in to facilitate the ratification of the treaty by the Senate. Deponent says he was present at the payment of the annuities to said Indians by Colonel Vaughan, their sub-agent, in October, 1847, and that no part of the \$20,000 sent there, being part of the said \$50,000 named in said 5th article of said treaty, was paid out on said debts, and before the making of said treaty; although asked for and demanded by the claimants, not one dollar of it was so paid out, and in this way deponent thinks said treaty was violated. Deponent further states that he was present in Colonel Vaughan's office when Geo. W. Ewing, and John B. Sarpy were demanding and insisting on his paying out said \$20,000 on the just debts, according to the stipulations of the treaty, and the instructions from the Commissioner of Indian Affairs in relation to said \$50,000, all of which said Vaughan refused to do, stating that he was instructed by Major Harvey, (the Superintendent of Indian affairs,) not to pay anything upon national debts, and that he had Harvey's *private* letter as his authority, which private letter he then exhibited. This was but a day or two before he made the payment. This deponent saw and read said private letter from Major Harvey to Colonel Vaughan, in which the former agreed to bear the said Vaughan harmless in refusing to pay any part of said moneys that year, on said national debts, and authorizing him to use his (said Harvey's) name, if necessary, in doing so; which said Vaughan did do, and positively refused to pay any part of said \$20,000 to the said claimants, whereby this deponent thinks the treaty was violated, and great injustice done to the claimants by said Harvey and said Vaughan. And further this deponent saith not.

JOSEPH CLYMER.

Sworn to and subscribed before me, this 4th day of December, A. D. 1848.

DWIGHT SPENCER,
Justice of the Peace.

STATE OF MISSOURI, }
County of Jackson. } ss.

I, Samuel D. Lucas, clerk of the circuit court in and for said county, within the 6th judicial circuit of said State, certify that Dwight Spencer, Esq., is and was, at the date of the making of the foregoing affidavit by Joseph Clymer, an acting justice of the peace in and for said county, duly commissioned and qualified, and duly authorized to administer oaths, and that full faith and credit is due to all his official acts, and that his signature thereto subscribed is genuine.

In testimony whereof, I hereunto set my hand and fix our seal of said court, at Independence, Missouri, 23rd day of December, A.D., 1849.

[SEAL.]

SAMUEL D. LUCAS, *Clerk.*

INDIAN TERRITORY,
Pottowatamie Sub-agency. } ss.

On this third day of March, in the year eighteen hundred and forty-eight, personally appeared before me the undersigned, Indian Sub-agent for the Pottowatamie Indians, Nicholas Vieaux, a half-breed Pottowatamie, of lawful age, to wit: the age of twenty-seven years, who, being by me first duly sworn, on his oath, says, that he is an educated half-breed Pottowatamie, speaks the English and French languages, and also the Pottowatamie, which is his mother tongue. That he has lived with and been known as one of the Council Bluff Indians for many years. That he is now in the employ of W. G. & G. W. Ewing, at their trading house, as an interpreter and assistant in their business, and that he was in their said employ before they received their outfit from Point au Poules, at Council Bluffs, to this the Kansas River country. That he has been intimate with said house, with John D. Lasley, the principal clerk, and O. G. Fleming, the book-keeper of said house, for many years.

That the trade of said house with the Council has been large and extensive, mostly for the annuities, as they collected but few skins in that country. That he (this affiant) was present at and before the signing of the treaty of 5th June, 1846; knows that the Indians, before and at the time of signing, stated that all their debts were to be paid *nationally*, and that in this way all their individual debts were to be paid. That they executed a national obligation to said Ewings, and signed it in open council on the same day they signed the treaty, viz., on the 5th June, 1846, for forty thousand two hundred and seventy-seven dollars (\$40,277,) and which the said Ewings took in full payment and discharge of all the accounts due them by individuals of said Council Bluff Pottowatamies. That this was so understood by the Indians, both before and at the signing of the treaty, and the making of said national obligation. That the Indians so understood it now, and that *the nation* had assumed and agreed to pay all their individual debts due up to the time of making that treaty. That this induced many to favor the treaty, who would, but for this arrangement, have opposed it. That this affiant thinks that it would be impossible now to induce any of the said Indians to pay those debts *individually*, as they were assured that they would all be paid by the nation. That this affiant was present at most or all of the councils held at and before the signing of the treaty, and knows that this thing was well understood by and among the Indians; that their *individual* debts were all to be paid nationally out of the money arising under the new treaty. That he was present and saw the nation pay Messrs. Ewings on account of their said national obligation the

sum of twelve thousand two hundred and fifty dollars, (\$12,250,) on the 1st October, 1847, which was done in open council by the whole nation and in presence of the Superintendent of Indian Affairs, Maj. Harvey, and of the resident sub-agent, Maj. Mitchell; that the nation feels bound to pay the remaining installments as they fall due, out of the common funds of the nation. That it is a *national indebtedness* and can only now be paid in that way; that the individual Indians consider themselves, and are, released, and *the nation* put in their place. That this affiant thinks and believes that the trading house of said W. G. & G. W. Ewing has been of great benefit to said Indians; has sold them good goods and other necessary supplies at times when they were suffering and had not the means of purchasing. That said house was the first permanent opposition to the house of P. Chouteau Jr. & Co., and caused goods to be sold much cheaper than they were before this house was established. That so far as this affiant knows, the Messrs. Ewings have sold their goods and supplies at reasonable and fair prices; and at the payments, it is known to all that this house and other houses have almost invariably sold very cheap; not much over cost and charges, as this affiant thinks. That this affiant has never heard the Indians express any dissatisfaction, but on the contrary, always speak well of this house, and they intended and wished to pay as they had agreed to do. That it is now understood as a *national debt* to said Ewings, and that all *individual indebtedness* prior to 5th June, 1846, to said house, is considered merged in the national obligation, and to be paid in that way, and in no other way. That in consequence of this arrangement, the said Ewings did not, at the payment of 1846, collect anything from *individual* Indians on their claims, nor at the payment of 1847, as what they received at the last payment was paid by *the nation*, and nothing paid by individuals, who will never pay, as individuals, any part of said indebtedness, because it has been assumed by the nation.

NICHOLAS VIEAUX.

Sworn and subscribed before me, the day and year above written.

ALFRED J. VAUGHAN,
Indian Sub-agent.

STATE OF OHIO, }
Wood County, } ss.

Personally appeared before the undersigned, a justice of the peace in and for said county, Dresden W. H. Howard, of lawful age, personally known to me as a respectable citizen of said county, who, being by me duly sworn, upon his oath deposeth and saith: That in the years 1840 and 1841, he, deponent, was in the employ of Messrs. W. G. & G. W. Ewing as a clerk, and as such, was with one John D. Lasley in charge of, and had the management of, said Ewings' Council Bluff outfit, engaged in trade with the Pottawatamie tribe of Indians.

Deponent further states, that some time in the fall of 1840, or during the winter of 1840 and '41, he (deponent) and said Lasley, as clerks for said Ewings, purchased for them from one C. Beauchamp, then a trader amongst the Pottowatamie Indians, two promissory notes, drawn by Joseph Laframboise (by his clerk, Thomas Watkins) as principal, and signed by B. Caldwell, a chief of said Indians, as security, in favor of said Beauchamp, which said notes are in words and figures, to the best of his recollection, at this late day, as follows, to wit:—" \$400. At the payment of annuities of 1840, I promise to pay Charles Beauchamp, or order, four hundred dollars, for value received this August 1st, 1840.

JOSEPH LAFRAMBOISE.

By THOS. WATKINS.

B. CALDWELL."

" \$434 75.

At the payment of annuities of 1841, I promise to pay Chas. Beauchamp, or order, four hundred and thirty four dollars and seventy-five cents, for value received, this 1st August, 1840.

JOSEPH LAFRAMBOISE.

By THOS. WATKINS.

B. CALDWELL."

That said note for \$400, at the date of the purchase aforesaid, was endorsed on the back thereof, in words and figures, as follows, to wit:—" Received on the within note, one hundred and thirty-four dollars seventy-five cents. Nov. 24th, 1840. C. Beauchamp." Deponent further states that, in buying said notes of Beauchamp, they (the said clerks) allowed and paid the said Beauchamp the full face thereof, less the endorsement aforesaid. That Joseph Laframboise, the maker of said notes, was there at the time of the transaction, and approved of said clerks purchasing them, then and there stating that they were justly due from him to said C. Beauchamp, and that he would pay them so soon as he could; also stating that he gave said notes to said Beauchamp for a valid consideration, to wit: for goods and supplies had by him of said Beauchamp.

Deponent further states, that said Laframboise was a chief and headman amongst said Pottowatamie Indians, was an intelligent half-breed, spoke and understood the English language quite well, and that Billy Caldwell, who signed said notes as security, was at that time the head and principal chief of said tribe of Indians at Council Bluffs.

Deponent further states that no part of said notes was ever paid to said Ewings to his knowledge; that he (deponent) left said Ewings' employ in the year 1841; that when at said outfit he took charge of the books and papers thereof, and done the principal part of the writing.

The foregoing is a correct statement of facts, to the best of his recollection at this time. And further this deponent saith not.

D. W. H. HOWARD.

Sworn to and subscribed this 21st day of February, A. D. 1848.

THOMAS DAVIS, J. P.

I, the undersigned, Joseph Laframboise, a half-breed Pottowatamie Indian, of lawful age, viz., the age of fifty years, hereby state, acknowledge, and certify, that on the first of August, 1840, I signed (as principal) two promissory notes, viz., signed them by my son-in-law and clerk, Thos. Watkins, (the validity of which signature I verify and acknowledge,) and signed also by B. Caldwell, our principal chief, as security, in favor of Chas. Beauchamp, a licensed trader among the Pottowatamies, for a full and just consideration in goods, wares, and merchandise, received by me of said Chas. Beauchamp. That one note is for the amount of four hundred dollars, (\$400,) payable at the annuity payment of 1840; the other for four hundred and thirty-four dollars and seventy-five cents, (\$434 75,) payable at the annuity payment of 1841. That on the 24th Nov., 1840, I paid on the note of \$400 the sum of \$134 75, as will appear by the endorsement on the back of the same; and that the \$134 75 is the only amount I ever paid on said notes.

I further certify, that some time during the year 1841, the above notes were purchased by W. G. & G. W. Ewing, by their clerks D. W. H. Howard, and John D. Lasley, of said Charles Beauchamp; that said purchase was made known to me, and that I was perfectly content and satisfied with the transfer; and that I have been always anxious to pay said notes, but have been unable to do so; nor have I paid any further sum on the notes than the \$134 75 mentioned above. I further certify, that the amounts of the two notes above mentioned, after deducting the \$134 75, as per endorsement, are still due, and that they were embraced and included in the national obligation dated the 5th June, 1846, and given by the Pottowatamie Indians to W. G. & G. W. Ewing aforesaid, and that the said W. G. & G. W. Ewing are justly entitled to the full amount still due on said notes. Given under my hand at the Pottowatamie Sub-agency, Kansas River, the 3rd of March, 1848.

JOSEPH LAFRAMBOISE, his + mark.

Witnessed by
SAMUEL LEWIS.

I certify, on honor, that Joseph Laframboise, whose name is subscribed above, came before me and verified to the correctness of the foregoing statement, and I further certify that said Laframboise is a respectable half-breed Pottowatamie Indian, and has been, and for the time being, the government interpreter, a man of truth and character, and one whose testimony may be relied upon.

ALFRED J. VAUGHAN,
Indian Sub-Agent.

POTTOWATAMIE SUB-AGENCY,
Kansas River, 3rd March, 1848.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *June 20th, 1850.*

SIR: I have the honor to acknowledge the receipt of your letter.

of the 14th instant, accompanying a resolution of the committee of that date, which requires me to furnish copies of all letters dismissing clerks from the General Land Office since the 4th of March, 1849.

I have considered this carefully, and compared it with the resolution of the House which creates the committee and defines and limits its powers, and it is clear to my mind that the committee is not authorized to inquire into the matter embraced in the resolution, or to send for persons and papers respecting it.

I pointed out a like objection to a former resolution, and waived it, hoping thereby to draw the attention of the committee to the limitation of their powers; but this is a second and still more wide and obvious departure, and I do not deem further acquiescence on my part consistent with right and duty.

It must be obvious that to a department which owes duties to the public and desires promptly to perform them, serious inconveniences must arise from an investigation at large, directed to no point and governed by no law; and there are various consequences, of no slight moment, attending this investigation even when confined within its proper and legitimate limits.

In some branches of it the rights of individuals are affected, or rather their remedies suspended by it, and in all, my rights as an executive officer are to some extent affected, and the regular and daily discharge of my duties more or less obstructed and retarded. I do not object to this so far as the committee acts under the authority of the house, but think it improper for me voluntarily to admit it where it is unauthorized and illegal. And if the limits fixed by the house be disregarded by the committee, and if I acquiesce in their assumption of indefinite powers, the investigation is then without bounds as to its extent, without direction as to its object, and, what is still more important to me, without limit as to its *duration*.

In my letter of the 6th ultimo, I had the honor to inform the committee that I claimed and exercised the power of removal as to all clerks in the General Land Office, except those who hold their offices by the appointment of the President and Senate, and that I did so by virtue of the provisions of the 6th section of the act of March 3d, 1845, (chap. 71,) which expressly recognizes the power of such removal in the head of the Treasury Department, and by virtue also of the power of supervision over that office transferred from the Treasury and vested in this department, by the 3d section of the act of March 3d, 1849, (chap. 108.) This is sufficient to enable the committee to raise a question as to my power of removal, if under the resolution of the House they feel authorized to do so.

The resolution of the House authorizes the committee to inquire into the fact, whether I have made appointment of clerks in the General Land Office? and if so, by what authority I have made such appointments? None having been made by me, the accusation as to the principal fact fails of course, and the committee now propose to extend their investigation to removals, because the power to remove, where no legal provision interposes to prevent it, is incident to the power to appoint. The committee, having no principal matter of investigation before them,

claim to pursue what would be an incident to a supposed principal, if that principal existed. Admitting this to be correct, which would be conceding much, still the resolution of the committee cannot be justified. The fact distinctly stated, that I claim and exercise the power of removal, sufficiently raises the question of power, if the tribunal be authorized to consider it.

The *form* of the letters of removal, the *number* of those letters, the reasons, if any, given in them, which is all that could be obtained from the copies called for, are mere incidents to the power of removal and its exercise. If, then, the right to examine into the fact, and the power of appointment, confer the right to inquire into the fact and power of removal as its incident, and the exercise of this incidental power confer the right to inquire into the manner and cause of removal as incidental to that also, the committee may go from incident to incident, till every conceivable matter of executive administration is brought under their revision. To this I cannot consent; and, therefore, and for all the reasons above stated, I decline to send the copies required.

I have the honor to be,

very respectfully,

your obedient servant,

T. EWING, *Secretary.*

HON. WM. A. RICHARDSON,

*Chairman of the Select Committee,
House of Representatives.*

INDIAN TERRITORY; }
Pottowatamie Sub-agency. }

On this *third* day of *March*, in the year eighteen hundred and forty-eight, personally appeared before me, the undersigned, Indian sub-agent, &c., John D. Lasley, of lawful age, viz., 43 years; who, being by me first duly sworn, doth depose and say, that in the year 1840 and 1841, he was, and has ever since been, a clerk for the firm of W. G. & G. W. Ewing, in the Council Bluffs Sub-agency, and now on the Kansas river; that during the years aforesaid, 1840 and 1841, one D. W. H. Howard was also clerk for said Ewings, that some time during the year 1841 said Howard and this affiant, clerks in charge for said Ewings, purchased for said Ewings, from one C. Beauchamp, then a licensed trader among the Pottowatamie Indians, two promissory notes, drawn by Joseph Laframboise, by his clerk, Thomas Watkins, as principal; signed by B. Caldwell, a chief of said Indians, as security, in favor of said Beauchamp, which said notes are in words and figures as follows, to wit:—

“\$400.

At the payment of annuities of 1840, I promise to pay Charles Beauchamp, or order four hundred dollars for value received this August 1st, 1840.

JOSEPH LAFRAMBOISE,

By THOMAS WATKINS,
B. CALDWELL.

“\$434 75.

At the payment of annuities of 1841 I promise to pay Charles Beauchamp, or order, four hundred and thirty-four dollars seventy-five cents, for value received this 1st August, 1840.

JOSEPH LAFRAMBOISE,

By THOMAS WATKINS.
B. CALDWELL.”

That the foregoing are true copies of the original of said notes, now in the ownership and possession of said Ewings; that one of said notes, the one for four hundred dollars, payable in 1840, is endorsed on the back thereof in words and figures as follows, to wit :

Received on the within note one hundred and thirty-four dollars and seventy-five cents, “Nov. 24th, 1840.”

“C. BEAUCHAMP.”

And that the foregoing is a true copy of said endorsement. That the consideration given by said Ewings for said notes was to the full amount of the face of them, (deducting the amount paid on the first, to wit., one hundred and thirty-four dollars and seventy-five cents,) in goods, wares, and merchandise from the store of said firm of W. G. & G. W. Ewing; and that said notes have never been paid, but yet remain due and unpaid, as this affiant has means of knowing, and does know, being clerk as aforesaid. That, by inadvertence of the clerks aforesaid, particularly of said Howard, they did not procure a formal endorsement and assignment of said notes to the said Ewings, and that this is the only reason why said endorsement and assignment do not appear on said notes; that it was well understood by all the said parties to the transaction, at the time, that said B. Caldwell, who was then principal chief of the tribe, signed said notes as security, and as such only. That Joseph Laframboise, the principal promissor in said notes, is a half-breed Pottowatamie Indian, an intelligent man, who speaks the English language, and, for some years, has been interpreter for the United States for said Indians. That Thomas Watkins, who signed said notes for said Laframboise, was, at the time of signing said notes, the son-in-law and clerk of said Laframboise, and was, to the knowledge of this affiant, entrusted with the transaction and management of his business. That said Laframboise has always recognized said notes as having been given to said Beauchamp for a valuable consideration, to wit.: goods, wares, and merchandise received by him, said Laframboise, from said Beauchamp; that he has always acknowledged and admitted said notes to be due and binding upon him, the said Laframboise, and has always promised to pay them as soon as he should be able to do so. That he, the said Laframboise, knew of, and sanctioned, the purchase of said notes from the said Beauchamp, for the said Ewings, by their said clerks, this affiant, and said Howard; and that the said notes, with the knowledge and consent of said Laframboise, were embraced in the claims of the said Ewings, for which the national obligation was given on the day of the signing of the treaty of June 5th, 1846. All of which facts this

affiant has had the means of knowing, and does know. And further saith not.

JOHN D. LASLEY.

Sworn and subscribed before me, the day and year first aforesaid:

ALFRED J. VAUGHAN,
Indian Sub-agent.

\$400.

At the payment of annuities of 1840, I promise to pay Charles Beauchamp, or order, four hundred dollars, for value received, this August 1st, 1840.

(Signed,)

JOSEPH LAFRAMBOISE.

By THOMAS WATKINS,
B. CALDWELL.

\$434 75.

At the payment of annuities of 1841, I promise to pay Charles Beauchamp, or order, four hundred and thirty-four dollars and seventy-five cents, for value received, this 1st of August, 1840.

(Signed,)

JOSEPH LAFRAMBOISE.

By THOMAS WATKINS.
B. CALDWELL.

I certify that the above is a true copy of the two notes held by W. G. & G. W. Ewing, now at their Council Bluffs Outfit.

O. G. FLEMING.

POINT AUX POUL,
October 7th, 1847.

Received on the within note, one hundred and thirty-four dollars and seventy-five cents.

(Signed,)

C. BEAUCHAMP.

November 24th, 1840.

DEPARTMENT OF THE INTERIOR.

April 14th, 1849.

SIR: I have determined in the case of the claims of the undermentioned individuals, to regard the obligations given by the Pottowatamie Indians, on the 6th and 17th June, 1846, as settling the question as to the liability of the nation to liquidate them. They may therefore be paid, and as follows, except as hereinafter stated, in three equal installments—the first out of the annuities to be remitted this spring; the

second out of the sum to be remitted for the full payment of this year, and the third and last, out of the amount payable in the spring of 1850. The last two installments to be paid when the annuities for the respective periods named are forwarded.

To W. G. & G. W. Ewing, for the obligation executed at the Osage River, on 17th June, 1845, \$6 410 70

To W. G. & G. W. Ewing, on the obligation executed at Council Bluffs, on 5th June, 1846, for \$40 277, as follows :

Balance on first payment of \$13,000, \$750 00

Installments of 1847, 1848, and 1849, 13,638 50

14,388 50

To Ewings and Clymer for obligation executed on 17th June, 1846,

4,773 00

T. W., J. W., and F. Polk,

5,515 00

P. Chouteau, Jun., and Co.,

7,130 00

W. W. Cleghorn,

3,500 00

J. B. Jontrois,

1,673 00

\$43,390 20

The balance of \$13,638 50 on the obligation of G. W. & W. G. Ewing, dated at Council Bluffs, 4th June, 1846, to be paid out of the annuities payable in the spring of 1850, of 1851, and of 1852, in equal proportion.

Herewith enclosed are the original obligations of W. G. & G. W. Ewing, and Ewings & Clymer. The amounts now payable on which, to be paid in this city. For the postponed payments you will issue certificates to them, payable as hereinbefore directed.

The amounts now payable on the remaining claims herein named, you will cause to be transmitted to the Superintendent of Indian Affairs at St. Louis, to be paid by him to the parties upon the surrender of the original obligations, and direct him to issue certificates in like manner as above, for the deferred payments.

Very, &c.

T. EWING, *Secretary.*

COMMISSIONER OF INDIAN AFFAIRS.

COUNCIL BLUFFS,
June 5, 1846.

We, the undersigned, chiefs and braves of the Pottowatamie nation, for value received, agree to pay to Wm. G. & Geo. W. Ewing's order, the sum of forty thousand two hundred and seventy-seven dollars, in seven installments. The first installment to be thirteen thousand dollars—the remaining twenty-seven thousand two hundred and seventy-seven dollars to be paid in six equal installments—to be paid after the

ratification of the treaty, concluded this date; and at the first payment of annuities to the Pottowatomies, the first installment; the second at the payment in 1847; the third, 1848; the fourth, 1849; the fifth in 1850; the sixth in 1851; and the seventh in 1852.

NAMES.	MARKS.	NAMES.	MARKS.
The aux mare,	his x mark.	Ke au,	his x mark.
Ob to ka shuck,	his x mark.	Wab kee shuck,	his x mark.
Me gis,	his x mark.	E two kee shuck,	his x mark.
Puck wun,	his x mark.	M. B. Beaubien, clerk	
Shon nim da,	his x mark.	Indian nation.	
Wab me me,	his x mark.	Jos. Laframboise, Inter-	
Kim me kay be,	his x mark.	preter,	his x mark.
Sans buck'skuck,	his x mark.	Pierre Leclair,	his x mark.
Sin au che wun,	his x mark.	Wab say,	his x mark.
Cat narb me,	his x mark.	Me she ke te no,	his x mark.

Witness—R. B. MITCHELL, Indian Sub-agent.

LETE Y. TATE.

F. V. TAYON.

O. G. FLEMING.

THOS. D. S. MACDONNELL.

\$12,250.

Received, Point aux Poul, October 1st, 1847, from the nation, the sum of twelve thousand two hundred and fifty dollars, being in part payment of the within national obligation.

W. G. & G. W. EWING.

Witness—R. B. MITCHELL, Indian Sub-agent.

TREASURY DEPARTMENT,
Second Auditor's Office, May 18, 1850.

The foregoing is a true copy of the original on file at this office.

P. CLAYTON, Second Auditor.

We, the chiefs, headmen, warriors, and young men of the Pottowatomie nation of Indians, solemnly bind and pledge ourselves to pay to W. G. & G. W. Ewing, or order, six thousand four hundred and ten dollars and seventy cents, without defalcation, for value received in merchandise and provisions, due by us to said W. G. & G. W. Ewing, up to this date. The funds to pay said amount above stated, (\$6,410 70) to be taken from the first moneys accruing from the treaty made at Council Bluffs, 5th June, 1846, and Osage River Sub-agency, 17th June, 1846.

Given under our hands, this 17th June, 1846.

Payable in two annual annual installments.

Tobnabee,	his x mark.	Louison,	his x mark.
Nawitte,	his x mark.	Poketo,	his x mark.
Newacto,	his x mark.	Neswabgee.	his x mark.
Syowai,	his x mark.	Mah-suk,	his x mark.
Maigah gwuck,	his x mark.	Chinakinanes,	his x mark.
Shah-wee,	his x mark.		

Interpreter, J. N. BOURASSA.

Witness to signatures, THOS. H. HARVEY,
Superintendent Indian Affairs.

TREASURY DEPARTMENT,
Second Auditor's Office, May 18th, 1850.

The foregoing is a true copy of an original paper on file in this office.

P. CLAYTON,
Second Auditor.

We, the chiefs, headmen, warriors, and young men of the Pottowata-mie nation of Indians, solemnly bind and pledge ourselves to pay to Ewings & Clymer, or order, the full and just sum of four thousand seven hundred and seventy-three dollars, without defalcation, for value received in merchandise and provisions, due by us to said Ewings & Clymer, up to this date. The funds to pay said amount above, to be taken from the first moneys accruing from the treaty made at Council Bluffs, 5th June, 1846, and Osage Sub-agency, 17th June, 1846.

Given under our hands, this 17th June, 1846.

Payable in two annual installments.

Tobuabee,	his x mark.	Louison,	his x mark.
Weweste,	his x mark.	Poketo,	his x mark.
Newacto,	his x mark.	Neswabgee,	his x mark.
Jyowai,	his x mark.	Mah-suk,	his x mark.
Maigah gwuck,	his x mark.	Chinokemanes,	his x mark.
Shah-wee,	his x mark.		

Interpreter, J. N. BOURASSA.

Witness to signatures, THOS. H. HARVEY,
Superintendent Indian Affairs.

TREASURY DEPARTMENT,
Second Auditor's Office, May 18th, 1850.

The foregoing is a true copy of the original on file in this office.

P. CLAYTON,
Second Auditor.

Form of Certificate issued to Holders of National Obligations.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, 1850.

\$

I hereby certify that by the letter of instructions of the Secretary of the Interior, of the 14th instant, addressed to the Commissioner of Indian Affairs, and now on file in this office, there is directed to be paid from the annuities of the Pottowatamie Indians, payable in the spring of 18 , the sum of

in part satisfaction of two obligations given certain chiefs and head-men of that tribe, to the said , one bearing date at Council Bluffs, June , and the other Osage River, June

Commissioner.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, July, 14th, 1849.

SIR : I have the honor to submit for your consideration a copy of a letter from the Hon. R. W. Thompson, requesting that the installment, directed by your letter of instructions to this office of the 14th April last, to be paid out of the annuities due the Pottowatamie Indians next spring to the Messrs. Ewings and others, be paid on the surrender of the certificates issued by this office therefor, without waiting for the time for the annuity payment to arrive, as the arrangement, as it stands, is one directed by you. I do not feel at liberty to interfere to cause an earlier payment without your orders to that effect. The money is on hand, and an earlier payment can make no difference to either the Indians or the government.

Very respectfully,
 your obt. servt.

ORLANDO BROWN.

HON. T. EWING,
Secretary of the Interior.

WASHINGTON, 10th July, 1849.

HON. O. BROWN,
Com. Indian Affairs.

SIR: On the 14th April, 1849, the Secretary of the Interior ordered certain sums to be paid out of the Pottowatamie fund, to Messrs. W. G. & G. W. Ewing and others, as you will see by reference to his letter of that date addressed to your office.

A part of the sums awarded in that order were paid at the time, and the remainder postponed for the reason that it was not deemed advisable to anticipate the appropriations of the present fiscal year. As the Indian fund is large and the appropriation made by the last Congress covers the annuity of the spring of 1850, I respectfully request that provision be made for the payment of the installment which is due out of that fund, at this City, whenever the certificates shall be surrendered. Such an arrangement can make no sort of difference either to the government or the Indians, and is of great importance to the creditors; as those whom I represent are paying large sums in interest.

Most respectfully,

your obt. servt.

R. W. THOMPSON.

DEPARTMENT OF THE INTERIOR,
July, 18th 1849.

SIR: In reply to your communication of the 14th instant, enclosing a copy of a letter to you of the 10th, from the Hon. R. W. Thompson, of Indiana, I have to state that it is not deemed expedient to make any change in the orders issued on the 14th April last, in the matter to which Mr. Thompson refers.

Very, &c.

T. EWING.

Secretary.

COMMISSIONER OF INDIAN AFFAIRS.

WASHINGTON, 18th July, 1849.

HON. T. EWING,
Sec. &c.

I have just learned that the request made in my letter of the 10th inst., to the Commissioner of Indian Affairs, has been refused. This has not only surprised me, but has caused me to subject other persons to inconvenience. I was so satisfied from what was said at the Indian Office, that the payment would be made, and that the advancing of the money now could "make no difference," that I advised the holders of the certificates to bring them here; and they are now here, at a good deal of expense both to them and me.

The letter of the Commissioner of the 14th inst. says, "*The money is on hand, and an earlier payment can make no difference to either the Indians or the government:*" certainly this must have been overlooked by you.

I am prepared to prove, if required, that the Messrs. Ewings are paying 7 per cent. interest in New York, on a debt contracted for goods to supply the Indians. I have a deposition to this effect. I did not suppose it necessary to show it, as there seemed to be no objection at the Indian Office to the payment; and as it was apparent that it could make "*no difference to either the Indians or the government.*"

In view of this fact, then, may I ask that the Secretary will review his decision, and permit the money to be paid? I am aware that this is a matter of discretion, and would not press the request, were I not so well assured that it could "*make no difference to either the Indians or the government,*" while it subjects the Messrs. Ewing to the loss of the interest.

Respectfully,
R. W. THOMPSON.

DEPARTMENT OF THE INTERIOR,
July 19th, 1849.

SIR: I have your letter of yesterday, asking that the decision of this Department, on the matter named in your letter of the 10th inst., to the Commissioner of Indian Affairs, be reconsidered. The decision had reference to a general rule adopted by my predecessor, for (as I have no doubt) good reasons. So long as that remains in force, I think it better to adhere to it in all cases; indeed a departure from it, at the discretion of the Secretary, would be a virtual revision, for if I were to relax it in this case, I could not enforce it in any other, without giving just cause of complaint.

Therefore, though I regret that your clients suffer inconvenience from the decision, I decline to review it.

Very, &c.,

T. EWING, *Secretary.*

HON. R. W. THOMPSON,
Present.

[COPY.]

OFFICE OF THE DEPARTMENT OF THE INTERIOR,
December 29th, 1849.

The undersigned, the Secretary of the Interior, the Attorney General, and the Commissioner of Indian Affairs, having met for the purpose, by previous arrangement, and on notice, Joseph Bryan, Esq., together with

Ped-a-go-shuk, Qua-qua-tash and Wab-sai, with their interpreter Judé W. Bourassa, and Joel W. Barrow, who profess to be delegates from the Pottowatamie tribe of Indians of the Fort Leavenworth agency, whom he represents as their attorney, came and stated for them, and in their behalf, that certain notes which had been given by the Pottowatamie Nation to W. G. & G. W. Ewing for six thousand four hundred and ten dollars and seventy cents, (\$6,410 70), to Ewings and Clymer for four thousand seven hundred and seventy-three dollars, (\$4,773), to T. W., J. W., and E. Polk for five thousand five hundred and fifteen dollars, (\$5,515), to P. Chouteau Jr. & Co. seven thousand one hundred and thirty dollars, (\$7,130), to W. W. Cleghorn for three thousand five hundred dollars, (3,500), to J. B. Jontrois for one thousand six hundred and seventy-three dollars, (\$1,673), to W. G. & G. W. Ewing for forty thousand two hundred and seventy-seven dollars, (\$40,277), to E. H. Hubbard & Co. for two hundred and thirty-six dollars, (\$236), to Andrew Jackson for one thousand and fifty dollars, (\$1,050), at the time of the negotiation of the treaty of the 5th and 17th of June, 1846, and which had been allowed and in part paid out of their annuities, and a note to P. Chouteau Jr. & Co. for twelve thousand dollars (\$12,000), on which \$11,250 were paid by sub-agent Mitchell in October, 1847, and also a note to Moses H. Scott for three thousand dollars, (\$3,000), which has not yet been allowed, but which has been presented for allowance, were each and all of them given for larger sums than the debts actually due and owing by the said nation; that it was so stated and understood at the time of their execution; that they can prove it by the testimony of Thomas H. Harvey, the Superintendent of Indian Affairs, who was present at the time. He also stated that considerable sums have been paid on those debts by the Indians since the execution of the notes, which also they are prepared to prove if time be allowed. He also declared in behalf of said Indians that there was something due by the nation to said traders, and that they were willing to submit the matter to the Department to judge of the true amount, on the production of their evidence, and that whatever sum should be found due should be fully paid, with their assent and directions. out of their annuities.

At the same time appeared G. W. & W. G. Ewing, by their counsel R. W. Thompson, Esq., and resisted the application, alleging that the pretended delegation did not represent the Pottowatamie nation, and were not authorized to act in their behalf, and also averring that said notes were given and declared at the time they were delivered to have been given for the sum actually due, and no more; and that no payments had been made except as endorsed thereon. Whereupon, the parties having been fully heard by their counsel, and we having considered thereof, and having looked into the original claim as allowed, and the proof on which it was allowed, do determine—

1st. That the papers produced by the persons representing themselves as delegates of the Pottowatamie tribe, though not conclusive as to their representative character, are such as reasonably satisfied us that they are delegated by said tribe, and ought to be heard in their behalf. It is also clearly shown that they are chiefs and warriors of the Pottowatamie tribe, and are in their individual capacity interested in these funds.

2d. It appears that these claims were allowed upon the faith of the certificate of Thomas H. Harvey, the Superintendent of Indian Affairs, and

of sub-agent Mitchell, attached to these notes, while acting in their official capacity, supported by the testimony under oath of witnesses present at the time the notes were given by the chiefs of the nation, and certified to by said superintendent or sub-agent; and inasmuch as the said delegates allege that the said notes were given not for their true amount, but to cover an unliquidated sum, and that this fact was and is within the knowledge of the said superintendent, and that they can prove it by his testimony, and that of the other witnesses present at the time, we deem it right and proper that a reasonable time be allowed to procure such testimony, and that the payment of further installments on the said notes be in the mean time suspended.

(Signed)

T. EWING, *Sec.*

REVERDY JOHNSON, *Atty. Gen.*

ORLANDO BROWN, *Com. Ind. Aff.*

Forwarded by R. W. CUMMINGS to Indian Office.

The Chiefs, Head Men, and Warriors of the United Nation of Pottowatomies, to Major R. W. CUMMINGS.

SIR: Whereas we have learned that a large portion of our annuities due under the treaty of June 5th and 17th, 1847, for this year, has been held back by the government, and paid to various traders, contrary to the spirit and intent of our treaty, and contrary to our wishes, and without authority from us, and contrary to all law and justice; we hereby, for ourselves and in behalf of our nation above named, do most solemnly protest against this unjust and arbitrary measure of withholding from us these large sums of money, without the payment of which to us, in good faith, we cannot consider the said treaty binding on us, being unfulfilled on the part of the United States. And we not only solemnly protest against the payment of our annuities, or any portion of them, to traders, against our consent, but we file this, our protest, with you, to be sent to the President, and to him, through you, we declare that we will prosecute the government of the United States in the Supreme Court of the same until we shall have received redress, or learn that there is no redress for your red children.

We mention only one fact, that is, while the treaty in question provided only \$50,000 for the payment of claims, pay improvements, with other objects, *one single trader* has been allowed, under this pretext, more than the whole sum \$50,000, the injustice of which seems to us enormous, and such as it seems to us our great father will not suffer to be practised on his red children.

We respectfully request of you to forward without delay this paper to our great father, the President of the United States, in the usual way.

We offer to you and the President our friendly regards.

August 20th, 1849, Kansas River.

Your Red Children,

Me-ah Mis	his x mark.		
Wab-me-mee	x		
Shaw-que	x	To pen e-be	his x mark.
Caw-Ke-Kay-Mack	x	We we Say	x
Poy Co-Cha-Shick	x	Mah go quck	x
Half-Dayton-abstagh. Kis		Saw me	x
hick	x	Mash Kum me	x
Me-gis	x	Crane or che check Kos	x
Kem-Me-Kas	x	Esk bug ge	x
Naw-guaph-Ke-Shick	x	Shob Kuck	x
Pall-Ko-Shick	x	To peck Co Wah mee	x
Sin-aw-ge-Win	x	Cow we sott	x
Naw-Mew-o-Na-Wot	x	Mah so boh not	x
Wab-ge-Shick	x	Was nah quick	x
Puck-quan	x	Wah wop Suck	x
Shaub-poituck	x	Nas wah gee	x
Wab-Sai	x	Wab-au-Ko nah Shuck	x
Shaum-num-teh	x	Was Sah Co nah	x
Nah-a Sah	x	Wab e Sos	x
Ne-ah-we quot	x	Ke-Wah-mo-ah	x
Co Shas Was	x	Chip Cop Ke Sah	x
Patt que	x	Nas wah pah we sett	x
Me She Reah	x	Wab a no Lay	x
Co Mee	x	Sin-be-num	x
Am quan	x	Mah See	x
Ke tea Cock Ko	x	Shaw Shaw que	x
Chea Co tan	x	Wah me go	x
Cah tah o num	x	Shick Ko nah back	x
Je Shaw	x	Taw Was	x
Cat tah be nah	x	Wab a nah na do	x
Ne be nah go nob	x	Che-gos	x
Man do	x	Sack See	x
Ca Mash	x	Pam tah we chick	x
Mash Kah Shick	x	Wah we oh tuah Shick	x
Maw Maw Ke toh o na Ket	x	Cow Squah	x
Sack tow	x	Chaw Ke Mah	x
Naw Nouse Caw	x	Ack co nah co See	x
Wash-Sash Kuch	x	Che quas	x
Ke-ton ne ge	x	Pack Skaw	x
Sah Ken na ne be	x	Chick Cow we	x
Ke Wah co to	x	Me-Che-Quis	x
Meek-Sa-Mack	x	Ke-o num	x
Che Chack Kos	x	Ack aw maw	x
Ehe cow no	x	Pow ni Se	x
Mach-Ke-tah we see	x	An Wish Maw	x
Shaw nah see	x	Me Show pow	x
Naw quah	x	Naw ne me noh ke Shuck	x
Ms-an-Co	x	Nim Kee	x
Pay Maw me Kelick	x	Tep puck-Kee	x
Sin We-go wem	x	Che-She ah gon	x
Wab-a no Sah	x	Sick a mock	x
Ah Shah be ah	[x	Naw Maw Co Shick	x

Bond.

Naw She nis	his x mark.	Me Shah tea	his x mark.
Pack a Shick	x	An a now be ah	x
Wan a Mack	x	Ketch e win no	x
Ship She Won no	x	Mas Co	x
Pah Maw Sick	x	Sken Wah	x
Pocke Ke to	x	Quah Ken	x
Whild Cat	x	Oke Mos	x
Pos Cow we	x	Quah quah tow or nee Se	
Nab Nāsh Kuck	x	Kew	x
Man e mee nee	x	Match Cow	x

FOR WITNESSES.

M. B. Beaubien.

Charles H. Beaubien.

Joseph Laframboise, *U. S. Interp.* Pascal Muller.

Jude W. Bourassa.

 KANSAS RIVER, *August 20th*, 1849.

DEAR SIR: We, the chiefs, braves, and young men of the Pottowatamie nation, as we are very anxious to ascertain the true cause why this money is kept back from us, we take this course to lay before you the true feeling of your red children. We send you a copy of the same.

We have sent a copy of this instrument, bearing the same date, and with all our names attached to it, through our agent, Major Cummins. We have done so because one may get lost on the way. And you will also please send us a true copy of any instrument of writing or power of attorney you may have received, purporting to have come from us; and also the witnesses. We are not aware of any such paper being sent by all our chiefs.

We remain, most respectfully,

your Red Children.

ME AH MIS,	his X mark.
KE WAH CO TE,	" X "
AM QUAN	" X "
PATT A CO SHICK	" X "
SAW NAH KEE	" X "
M. B. BEAUBIEN	" X "

[Referred to Commissioner of Indian Affairs for answer. Department of the Interior, Sept 17, 1849.]

 INDEPENDENCE, MO., *26th, Nov.*, 1849.

HON. ORLANDO BROWN,

*Commissioner of Indian Affairs,**Washington City.*

DEAR SIR: A delegation from the Pottowatamie tribe of Indians, with

the bearer of this, Mr. John McCoy, as their conductor, visit Washington City on a matter of business with the Indian Bureau, of some importance to them. I have some knowledge of the grievances of which they complain, and am satisfied a careful hearing would be an act of justice to them, and would lead to a salutary change in the Indian policy. Mr. McCoy is a gentleman of high standing, and his representations can be relied on implicitly.

Not having the honor of a personal acquaintance with, though I have known you by reputation from my childhood, I refer you to Hon. C. S. Morehead, Hon. G. A. Caldwell, and others of the Kentucky delegation in Congress, if it should be desired to know who I am.

Begging to be excused for troubling you with this, I am, sir,

Your obedient servant,

S. H. WOODSON.

OFFICE SUPERINTENDENT INDIAN AFFAIRS.

St. Louis, Dec. 1, 1849.

SIR: A delegation of Pottowatomies, consisting of Jude Bourassa and four others, arrived here to-day, on their way to Washington City, for the purpose of laying before the department a representation in relation to certain claims against their nation, and for making some arrangements about certain tracts of land belonging to some reserves. Mr. Bourassa is an intelligent man, and will be able fully to explain his, and the views of the delegation. I accordingly beg leave to commend them to your kind attention.

I have the honor to be, sir,
your most obedient servant,

D. D. MITCHELL,
Superintendent Indian Affairs.

HON. ORLANDO BROWN,
Commissioner Indian Affairs.

FORT LEAVENWORTH AGENCY,
23d Nov. 1849.

SIR: The bearers, Ped-a-go-Shuk, Qua-qua-tash, and Web-sai, Pottowatomie Indians of this agency, together with their interpreters, Jude W. Bourassa and Joel W. Barrow, are desirous to present some matters to the department which, they think, are of vital importance to their people. They have a paper with them, signed by most of the head-men of their people; not executed in my presence, but which, in a manner, constituted these men as delegates.

As they are determined to speak, face to face, to their great father, I speak for them your kind consideration.

I have the honor to be, sir,
your obedient servant,

LUKE LEA,
Indian Agent.

ORLANDO BROWN, Esq.
*Commissioner Indian Affairs,
Washington City, D. C.*

KANSAS RIVER, Nov. 21, 1849.

We, the undersigned, chiefs, young men, and warriors of the United Pottawatamie nation of Indians of Kansas River, do hereby, for ourselves, and for and in behalf of the whole nation, fully authorize the following named chiefs to visit our great father at Washington City, and to transact such business for the nation as they may deem best; and we hereby bind and obligate ourselves to abide by their doings, to wit:

To pin a bee, Principal Chief; Pategoshik, War Chief; Qua-qua-ta and Wapsca, Civil Chiefs; and we authorize the said chiefs to take with them two good interpreters from among our people; and we further authorize the above delegation to draw at Washington, from our annuity, a sum sufficient to meet the expenses of their journey to and from Washington; and we respectfully request our great father, the President, to kindly receive our chiefs, and to furnish them the means of accomplishing their business. And whereas we feel ourselves to be injured and ruined by withholding from us our annuity, we beg our great father to hear us.

NAMES.	MARKS.	NAMES.	MARKS.
To pin a bee	x	Wab a no sah	x
Sen ba num	x	Me gio	x
Ke to na go	x	Shau-mah me tah	x
Quan quan see	x	Kaw ke kah mack	x
Wab me mee	x	Nau quah ke shick	x
Wash sash keck	x	Mo nis	x
Nagh yah tea wah shick	x	Pay naw	x
Ock ko nah mee	x	O taw wah	x
Kah na pea squah	x	Auh tea wan	x
Co mee	x	Now nee	x
Kat e kaw kay	x	Pat ko shick	x
Shap we	x	Ket tah o num	x
Osh sah peah	x	An wish mau	x
Wab be skum	x	Wab mo wak	x
Shau win no	x	Nas see knw	x
Kap e skes wit	x	Mack ko yon	x
Wab ke shick	x	Ket toh me woh	x
Wah che ko mah	x	Mo kow o koh moh	x
Am e quan	x	Mack kee	x

NAMES.	MARKS.	NAMES.	MARKS.
Co mou	x	Keh che she ke poh	x
Me eh mis	x	Wab kah keck	x
Ne wat to mis	x	Ketch che com mee	x
Pish she tea win	x	Me she ko nah ack	x
Show na see	x	Ne woh poh ke see	x
On wah we tum	x	Pack ke shaw	x
Ack kaw eh	x	Mash kah shick	x
Wab be num	x	Nah we sah	x
Che kow no	x	Che mah ke see	x
Ne be nah go nah	x	Sack ke taw	x
O koyo	x	Wah o ken	x
Wah shaw we shick	x	Me che quis	x
Wah me tea gosh	x	Saw woh quat	x
Joseph Satender	x	Pack peck	x
Mack ke toh wee	x	Kaw kah	x
Naw o kee	x	She pon go	x
Kah me kos	x	We pea quah	x
Noh o ke mow	x	Puck co chah pea	x
Col Mash	x	Naw woh wish	x
Was sah co nah	x	Pay tah tick	x
Peck quan	x	Me nos	x
May saush	x	Shan woh quah	x
Now ke sah	x	Che to taw	x
Was saw co ack	x	Kay wah tope	x
Pes she po oh	x	Mo lep	x
Kah kock	x	Mah woh yoh she	x
Naw now quoh be	x	Shaw noh quek	x
Was co nah bee	x	Pam chaw	x
Wish tea ah	x	Pam chos	x
Pish quat	x	Kow kosh	x
Ket wot noh mee	x	Wen see	x
Paw maw ke tick	x	Noh o que	x
Me an co	x	Ne gon ko ack	x
Ack quah o tah	x	Tick cos	x
Shah ke nah yoh	x	Mah show min	x
Os Smith	x	Tap se ko ack	x
Mack ko soh	x	Meak ke tah she ko keck	x
Wab skin nee	x	Me soh co nack	x
Ketch che co mee	x	Wob skop ock	x
Wob no wah	x	Chow cow pea	x
Me che tos	x	Wob me wot	x
Wah sow we	x	Pash koh choh	x
Quogh she naw	x	Ack coke mah	x
Pat e co tow	x	M. B. Baubien	
Shaw noh ne quot	x	Quash she mah	x
Woh to toh woh	x	Ack co ke ma	x
Shem now ne kot	x	Ke da gah ko	x
Me oh ne shick	x	Mick sa mage	x
Ket toh o mum	x	Pade que	x
Was soh keck	x	Sin ah ge wun	x

NAMES.	MARKS.	NAMES.	MARKS.
Pish she kis	x	Shau we mec ko uck	x
Ke tow noh boy	x	Sog ke ne be	x
Mack ke tah shick	x	Win ko	x
Mis kaw tea noh moh	x	M'ka da pin na	x
Moh skow pea kun	x	Pe ya nish	x
Nah gon oh she	x	Pe nosh	x
Mo saw tea	x	J. Shaw	x
On kot	x	Pok da we	x
Caw ke kos	x	Sin ah go wun, jun.	x
Me gis	x	Na go dwa	x
Mo ne ah	x	Joseph Loughton	
Mah yauh	x	William Loughton	
At tea chaw	x	Man do ka	x
Yau quach	x	Me suck quah ga	x
Pah me pah ack	x	Nah nah we ze kah	x
Sin ah che win	x	Che gah no	x
Auah tea kay	x	Shqua ke zhuck	x
Sack ke tow	x	O kum mah ke do	x
Pay maw se kay	x	Wah he gah bah	x
Mah we ah shick	x	Mue sno o kum mah	x
Pam woh woh keck	x	Ke wom a wah	x
Shaw noh quack	x	Pah che	x
Woh che chock	x	Ma mah ke da we ne ka	x
O. gan o te go, sen.	x	Wab no sa	x
O. gan o te go, jun.	x	Zah gah se go	x
Na quah dah	x	Man do ka, jun.	x
Zhah o ne se	x	Pame o sah	x

Nah nah o ze kah his x mark.

We also, Wis we sah Band, give the authority as above.

NAMES.	MARKS.	NAMES.	MARKS.
Wis we sah	x	Skan woh	x
Pok ke na nah	x	Mo za ben nette	x
Mah jai dy	x	War shurk	x
Kow sot	x	Pem nicke nie	x
Pok shurk	x	Pis qua jic	x
Lewis Bertrand	x	Qua gun	x
Big Snake	x	Ke pim me	x
Kis si jak	x	Nun nim ne skurk	x
Ni gon co ic	x	Col. John Tipton	x
Wah shaw bo	x	Thos. Evans	x
Oc com ma	x	Was se nag que	x
Sug ge nuk	x	Me jaw gin	x
O tow wos	x	Nas ka washcuk	x

Capt. Samuel Bertrand his x mark.

OFFICE SUPERINTENDENT INDIAN AFFAIRS,
St. Louis, Dec. 8th, 1849.

SIR: I have the honor herewith to enclose a letter just received from Agent Lea, in which, among other things, he states that a delegation of Pottowatomies accompanied by Jude W. Bourassa, as interpreter, which left here a few days ago for Washington city, has not been authorized by the majority of their nation to act as such.

From other sources I have received the same information, coupled with the assertion that they obtained the money for their outfit from private individuals for some sinister purpose; I have therefore deemed it necessary to lay this information before you, in order that their statements may be received with caution.

Very respectfully, I am, sir,
your most obedient servant,
D. D. MITCHELL,
Superintendent Indian Affairs.

HON. ORLANDO BROWN,
Commissioner Indian Affairs.

FORT LEAVENWORTH AGENCY,
November 23d, 1849.

SIR: I have the honor to inform you, that on yesterday the chiefs and head men of the Shawnee tribe of Indians met in full council and appointed Captain Joseph Parks, George Francis and Joseph Barnett, delegates to proceed to Washington city, for the purpose of transacting some business with the government, which they say is of much importance to their nation.

Of this fact I took the liberty of notifying the Commissioner of Indian Affairs at Washington, supposing it likely that they, the delegation, might not see you at St. Louis on their way.

Three of the Pottowatomie tribe called on me to-day, namely, Pedagogshuk, Quaquatash, and Wabsai, together with their interpreters, to wit, Jude W. Bourassa and Joel W. Barrow, who say that they have been appointed by their nation delegates to go on to Washington for the purpose of settling some affairs relating to their people with the government. But as the nation had not given me any notice of a meeting of their chiefs for the appointment of delegates; I told them that I did not consider their appointment as legal, according to the custom of the nation, and therefore I could not verify it, but that I would inform the Commissioner of Indian Affairs of the facts, which I have done for the same reason that influenced me in the first case.

I am pretty well satisfied that these men obtained their appointment without a full meeting of their people; as I am informed but very few, if any, of the chiefs have signed the evidence of their appointment.

I have the honor to be, sir,
your obedient servant,
LUKE LEA,
Indian Agent Fort Leavenworth Agency.

Col. D. D. MITCHELL,
Superintendent Indian Affairs, St. Louis, Mo.

WASHINGTON, 14th Dec., 1849.

HON. THOMAS EWING,
Secretary of the Interior.

SIR: By a letter from the frontier, (an extract from which I enclose,) I learned that several Indians, *who are not chiefs*, intended visiting Washington with the view of protesting against the payment of certain *national* debts of the Pottowatomies, which have been heretofore recognized by the nation, and ordered to be paid by your Department. I learn that these Indians are now here, accompanied by a half-breed, whose name is Jude Bourassa, who has not, heretofore, been very favorably known to the Indian Bureau.

I understand that no permission from the government has been obtained for this visit, nor is it authorized by any of the government officers; which fact is enough to show, of itself, that these men are usurping the privilege which belongs only to the nation, and which, by the custom of all Indian tribes, is exercised only by chiefs.

As the practice of listening to the statements of Indians, coming under these circumstances, to Washington, and of paying their expenses out of the national fund, is in violation of a positive rule, and would lead to great annoyance and mischief, I do not suppose their protest against the payment of these debts can influence the action of the Department.

If, however, the Department should determine seriously to consider of any statement which they may make, I request that no definite action may be had thereon, until I can examine the grounds of their protest, and be heard in regard to it.

The claims here referred to are covered by a *national* obligation of the Pottowatomies, *identical* with the treaty of 1846, executed with the same solemnity as that treaty, witnessed and approved of by the Commissioners of the United States, and subsequently recognized and *paid in part* by the nation, in the presence of, and with the approval of, the government agent.

Copies of these national obligations may be seen by reference to the pamphlet which I hand you, at pages 17 and 18. This pamphlet is an argument, setting forth the legal rights of the holders of these obligations.

When the question of the allowance of these claims came before this Department, they were fully investigated, and the legal principle settled in their allowance was, that the government of the United States would not go behind and inquire into the original consideration of any national obligation executed, especially when it was made at the time of a treaty, and by the same chiefs who signed the treaty. The Department, by this decision, recognized and acted upon the principle established by the Hon. J. R. Poinsett, in 1838, when Secretary of War—which was, that he would regard such obligations as equally binding upon the government as the treaty itself—holding them to be "*identical with the treaty.*"

This question involved the only matter of difference between Col. Medill, late Commissioner of Indian Affairs, and those who held these claims. He insisted that the government should go behind the national obligations and examine into the original consideration, with the view of compelling the creditors of the Indians to look to *individuals* of the tribe for the payment of their debts, after *per capita* distribution had been

made. The creditors having considered this rule as in violation of their legal rights, as unjust and oppressive, resisted it; and the question was pending before the Commissioner of Indian Affairs when the Department of the Interior was created. An appeal was taken to you, and after a full examination into said claims, they were affirmed and ordered to be paid on the 14th of April last.

One third was paid then, and certificates for the remaining two-thirds were issued by the Department. The Messrs. Ewings (one of the largest claimants) transferred their certificates to Messrs. Suydam, Sage & Co., of New York, to whom they were indebted for goods sold these Indians, and to whom one half of said assigned certificates have been since paid.

The holders of these national obligations have never sought anything of the Indians which was not fairly and legitimately due them. Under their licenses from the government, they furnished the Pottowatomies with goods and clothing, necessary to their subsistence—and have at all times been ready and willing that these claims should undergo the strictest legal scrutiny. Thus they proposed through me, to this department, last spring, that a commission should be instituted at St. Louis, to make such thorough investigation as might be satisfactory. A different mode of examination was adopted by your order, and they passed the ordeal of a rigid scrutiny here, under the principles settled by you, and practised by the Indian Bureau at all times previous, until Col. Medill sought to violate the rights of the traders by carrying out his order for *per capita* payments. Under such circumstances, if the department should now think fit to listen to every clamor which might proceed from individuals of the tribe, prompted by dishonest half breeds, it may expect to be hereafter constantly annoyed by similar complaints.

The result of this state of things will be that no man, worthy to be trusted, will venture as a trader into the Indian country—and all the tribes will be left to be preyed upon by irresponsible and dishonest white men, who brutalize them with whiskey, and cheat them out of every thing they have.

I have the honor to be,
most respectfully,
your obedient servant,
R.W. THOMPSON.

[Copy.]

UNION TOWN, POTTOWATAMIE COUNTRY.
Nov. 20, 1849.

[Extract.]

“DEAR SIR: Jude Bourassa and Beaulieu, with three or four broken down chiefs of twenty years back, not known as chiefs at the present time, are going on to Washington to see about the claims allowed, to try and break them down. This is a party made up, (since the payment, after the principal chiefs had left for their hunting grounds,) by one or two half-breeds that can't make a living by working, and they think they

can make it off the Indians by going to Washington, telling them that they can get all this money back for them,"

Yours,

(Signed,)

JOHN D. LASLEY.

Col. GEO. W. EWING, *St. Louis.*

Statement read by Joseph Bryan, Esq., before the Secretary of the Interior, Attorney-General, and Commissioner of Indian Affairs, on the — December, 1849:—

The treaty between the United States and the Pottowatamie tribe of Indians was concluded on the 5th day of June, 1846, and was ratified on the 22nd day of July, 1846.

By the 3rd article of the treaty the United States agree to pay to said Indians the sum of \$850,000; of this sum the United States were to retain the sum of \$87,000 to pay for 576,000 acres of land granted to the Indians. This appears from the 4th article, and by the 5th article the United States agree to pay the Indians out of said first mentioned sum, the sum of \$50,000, to enable said Indians to arrange their affairs, and pay their just debts before leaving their present homes, &c. By the 6th article the United States agreed to pay the further sum of \$70,000 for removal and subsistence, which sum was also to be deducted from the aggregate sum granted by the 3rd article.

It is to be inferred from the phraseology of the 5th article, that the commissioners and Indians, who negotiated the treaty, estimated their debts as far less than has since been claimed against them. After the conclusion of the treaty, a negotiation was set on foot by the traders to secure the payment or liquidation of their debts, for the delegation now here desire it to be expressly understood that, at the date of the treaty, the Indians were indebted to some extent to the traders. At the request of the traders, notes were given, payable out of the annuities, when received by them after their arrival in the Kansas country. But this delegation expressly charge that when the notes were given it was the express understanding, as they can prove by Major Harvey and Dr. Lykins, and, perhaps, by others who were present, that the notes were given not for the actual amount due by the Indians, but that they were merely given for the purpose of liquidation, and that before any payment was made an examination of the accounts should be had by competent persons, the amounts fairly established, and only so much as was thus established would be required of them by the traders. This delegation say that they were further induced to enter into this arrangement, because they supposed they would need the whole of the \$50,000 provided in the 5th article in procuring an outfit for their emigration; and the traders agreed that no portion of this would be exacted of them, but that they would wait for their money, which was to be paid on the Kansas by way of annuity

When, however, the \$50,000 was paid, there was paid to the traders the sum of \$35,000 by the upper or Council Bluff Pottowatamies, and they have heard that a further sum of \$5,000 was paid others and the

half-breeds. Whether this amount has been, credited on the notes, this delegation does not know, and desires to be informed.

When the first annuity was paid on the Kansas, the traders were present with their notes, and demanded payment, which was refused, on the ground that no examination of the accounts or proof of the amount due had been made; and this examination the traders wholly refused to go into. The traders, thereupon, began to collect from individuals of the tribe. What amount was thus collected this delegation do not know, though one of them paid \$20 and another \$30. Whether the amount thus collected has been credited on the notes, this delegation do not know, and I desire to be informed. In Dutroie's account one item, viz. :—

this delegation knows was paid by the agent; and they are of the opinion that a large proportion of the amounts justly due by those Indians to the traders, if not the whole sum, has been already collected by them of individuals at the different annuity payments. Of Cleghorn's account this delegation does not think that there is one cent due to him, as he has always been collecting from individuals, and many of the items in his account are unjust.

Clymer's account they say is entirely and wholly unjust. The Indians wish every debt justly owed by their people paid, but they wish the amounts to be fairly and justly ascertained.

Under the circumstances and facts above stated, this delegation, on behalf of their people, ask that a full and fair examination of the claims against them may be had, and they again express a perfect willingness to pay all their just debts. Should this not be awarded, they ask to be heard through their counsel, on the legality of the stoppage by the government of any portion of their annuity, to pay debts without their consent, obtained as pointed out in the acts of Congress.

DEPARTMENT OF THE INTERIOR,
January 4th, 1850.

SIR: I enclose, for your information, a copy of the determination of myself, the Attorney General and Commissioner of Indian Affairs, in the matter of the complaint of the Pottowatamie Indians, now in this city, heard through you as their counsel, on the 29th ult., and desire that you will inform this department, when and where you propose to take the testimony of the witnesses referred to by you.

Very, &c.,

T. EWING, *Secretary.*

JOSEPH BRYAN, ESQ.,

Attorney for Pottowatamie Indians now in Washington City..

DEPARTMENT OF THE INTERIOR,
January 16th, 1850.

SIR: Referring to the recent determination to allow the Pottowatamie Indians a reasonable time to take the testimony of witnesses, in regard to

the allegations as to the intent of the obligations given to certain traders, I have the honor now to enclose certain papers emanating from the attorneys of the respective parties, and indicating a disagreement between them as to the time of taking said testimony: and to request that you will have the kindness to fix such time, as in your judgment, under the circumstances, will be fair and reasonable to all the parties interested.

Very, &c.,

T. EWING, *Secretary.*

HON. R. JOHNSON,
Attorney General.

DEPARTMENT OF THE INTERIOR.

January, 25th, 1850.

SIR: In conformity with an opinion of the Attorney General, to whom the subject was referred, the department, in the matter of the Pottowattamie Indians and their creditors, will give time from the 3d Monday of February to the 9th day of March next, inclusive, for taking the depositions of witnesses. The respective parties to give notice to each other of the time and place where and when they propose to take the depositions within the period allowed them, but not to commence the taking of the depositions at either of the places designated for the purpose until the day last named in said notice, unless both parties are present, either in person or by an attorney or agent.

Agent Lea, will be directed to attend on behalf of the Indians, at the time of taking the depositions.

Very respectfully,

your obedient servant,

T. EWING, *Secretary.*

JOS. BRYAN, Esq.,
Washington.

DEPARTMENT OF THE INTERIOR,

January 25th, 1850.

SIR: In conformity with an opinion of the Attorney General, to whom the subject was referred, the department, in the matter of the Pottowattamie Indians and their creditors, will give time from the third Monday of February to the 9th day of March next inclusive, for taking the depositions of witnesses. The respective parties to give notice to each other of the time and place where and when they propose to take the depositions within the period allowed them, but not to commence the taking of the depositions at either of the places designated for the purpose until the day last named in said notice, unless both parties are present, either in person or by an attorney or agent.

Agent Lea will be directed to attend on behalf of the Indians, at the time of taking the depositions.

Very respectfully,

your obedient servant,

T. EWING, *Secretary.*

HON. R. W. THOMPSON,
Washington.

DEPARTMENT OF THE INTERIOR,
January 31, 1850.

SIR: Referring you to my letter of the 25th instant, I have now to inform you that the time therein specified as allowed to take depositions, has been extended to the sixteenth day of March next inclusive.

Very respectfully,
your obedient servant,
T. EWING, *Secretary.*

JOSEPH BRYAN, *Esq.,*
Washington.

DEPARTMENT OF THE INTERIOR,
January 31, 1850.

SIR: Referring to my letter of the 25th instant, I have now to inform you that the time therein specified as allowed to take depositions, has been extended to the sixteenth day of March next inclusive.

Very respectfully,
your obedient servant,
T. EWING, *Secretary.*

Hon. R. W. THOMPSON,
Washington.

DEPARTMENT OF THE INTERIOR,
January 31, 1850.

SIR: In the matter of the Pottowatamie Indians and their traders, the subject of the accompanying papers, time has been allowed from the third Monday of February to the 16th day of March next inclusive, for taking such depositions as either party may desire.

Joseph Bryan, Esq., who appeared here as counsel for the delegation recently in this city, having desired it, I request that you attend, when the depositions are taken, on behalf of the Indians.

In detailing you for that purpose, I deem it proper to state that the department feels no interest in the matter, other than that justice is done to the respective parties.

Very respectfully,
your obedient servant,
T. EWING, *Secretary.*

LUKE LEA, *Esq., Agent, &c.*
Westport, Missouri.

DEPARTMENT OF THE INTERIOR,
February 6th, 1850.

SIR: I transmit herewith, in compliance with your verbal request, a

copy of my letter of the 31st ultimo, to Agent Lea, requesting him to be present when depositions are taken in the matter of the Pottowatamie Indians and their traders.

Very respectfully,
your obedient servant,
T. EWING, *Secretary.*

JOSEPH BRYAN, Esq.,
Washington, D. C.

WESTPORT, *March 12, 1850.*

SIR: Enclosed you will please find depositions of John D. Lasley and Judge Samuel Lewis, in behalf of the claimants, (in regard to the Pottowatamie business).

Very respectfully,
your obedient servant,
MABILLON W. MCGEE.

TO HON. THOMAS EWING,
Secretary of the Interior,
Washington City, D. C.

STATE OF MISSOURI,
County of Jackson.

TO SAMUEL LEWIS, JOHN LASLEY, WM. W. MCCLEGHORN:

You be and appear before me, James B. Davenport, at the house of John Haris, in the town of Westport, at two of the clock in the afternoon of this day, to give evidence in a suit now pending, wherein the Pottowatamie nation are claimants, and W. G. & G. W. Ewing are defendants; on the part of the defendants. Fail not at your peril. Given under my hand, this 9th day of March, 1850.

JAMES P. DAVENPORT, J. P.

STATE OF MISSOURI, }
Jackson County, } ss.

Personally appeared before me, the undersigned, an acting justice of the peace in and for said county, John D. Lasley, of lawful age, personally known to me as a citizen of truth and integrity, who being duly sworn, deposed and saith:—That, as set forth in this deposition, in the case of the claims of W. G. & G. W. Ewing against the Pottowatamie Indians, he was the clerk in charge of the Council Bluff large outfit from the year A. D. 1840, until after the payment of 1847, when deponent moved with said Indians down to the Kansas River, and continued act-

ing for them until after the spring payment of 1848. That from the spring of 1841 to the payment of October, 1847, Mr. ——— was the book-keeper of said trading house, and that during this time he kept the books carefully and correctly, being a good book-keeper and an honest man.

Deponent has read the following charges made by a pretended delegation of said Pottowatamie Indians at Washington City, to the Hon. Thomas Ewing, Secretary of the Interior, Hon. Reverdy Johnson, Attorney General, and Hon. Orlando Brown, Commissioner of Indian Affairs, setting as a court to hear the same, on the 29th December, 1849, in words following, viz: "But this delegation expressly charges that when the notes were given it was the express understanding, as they can prove by Major Harvey, Dr. Lykins, and perhaps by others who were present, that the notes were given, not for the actual amounts due by the Indians, but that they were merely given for the purpose of liquidation, and that before any payment was made, an examination of the accounts should be had by competent persons, the amount fairly established, and only so much as was fairly established would be required of them by the traders." Deponent is acquainted with the said Jude W. Bourassa and Joel W. Barrow, the half-breeds, and the three Indians accompanying them, whose names are mentioned in the report of said proceedings before the said honorable court, and knows that neither of them were at the Council Bluff at the time of making said treaty, or at the payment of October, 1847, and that they all belong to the Osage River and lower party. That these charges have no reference to transactions with the upper or Council Bluff band. But if said charge is designed or intended to apply to the national obligation given to W. G. & G. W. Ewing at the day of signing said treaty for \$40,277, or to another to P. A. Sarpey, agent of P. Chouteau, Jr., & Co., for \$12,000, then deponent avers that it is untrue. Said national obligations were given for the actual amount then due from the individuals of said tribe to their respective firms, as shown upon their books. Those of said Ewing having been kept by said Fleming, the books of the other house by Thomas D. S. McDonald, a competent book-keeper and an honest man. And said clerk had made abstracts from said books of the balances appearing due, and for the correct footing up of these said notes, were executed and given. Deponent assisted said Fleming to abstract from the books of their house, and believes it was correctly done. The amount severally due set opposite each individual's name, and for these balances actually then due said notes or obligations were taken, and not for a greater amount, as falsely charged by said pretended delegation, nor was their payment subject to any condition other than that expressed on the face of the obligation; and as to the payment in October, 1847, although insidious attempts deponent believes were made by said Major Harvey to baffle or defeat the payment thereof, nevertheless the chiefs who had executed said obligations declared, in open council, and in the presence of large numbers of their tribe, and the agents and military officers of the government, Captain Craig, and others, that they knew their people justly owed said houses largely, and for which, at the time of making their treaty, they had given national obligations, and that they were men and not children, and would not violate their obligations, but would pay them

applied the \$30,000 sent them for

that purpose, under the 5th article of said treaty on said obligations and other indebtedness to half-breeds \$12,250 then paid said Ewing was credited on these obligations, and the \$11,250 paid to P. Chouteau, Jr. & Co., deponent believes was credited on their note. Deponent was a clerk, and had no other interest in this business than to do his duty faithfully to said Ewings, his employers, and to act justly to said Indians, with whom he is connected, and amongst whom he has long resided in the capacity of a trader.

And deponent read the second allegation, in words following—viz., “And they (said delegation) are of opinion that a large portion of the amount justly due by those Indians to the traders, if not the whole sum, has been already collected by them of individuals at the different annuity payments.” This charge, if meant and intended to apply to said obligations to said Ewings, deponent knows to be false, except as to the payment of \$12,250 endorsed thereon; and as to that of P. Chouteau, Jr. & Co., deponent believes false, except as to the payment of \$11,250 endorsed thereon. At the payment of October, 1847, deponent had said Fleming to draw off an abstract of the debts due since the treaty, and with these he attended when the money was paid and collected of them by the agent, and did not ask or receive one cent for any indebtedness prior to the treaty of June 5th, 1846, nor has any been asked for or collected at any of the payments since, it being well understood by all the individuals of the tribe, that *all* those debts were satisfied by the national obligation of the chiefs, and that they were not individually to pay them. Deponent believes that none of said debts have been paid or collected, in any manner whatsoever, at the annuity payments, as charged. And if said Bourassa or Barrow intended to apply this charge to deponent, that they have been guilty of a wilful falsehood.

At all the payments deponent was very careful in collecting debts, to credit the accounts every cent he received, having a strong opposition; had this been neglected deponent would soon have lost the confidence of the Indians. The accounts were generally explained to the Indians before the payment. Deponent had them all in a small book, alphabetically with columns, showing their several indebtedness, and opposite this he placed at the time whatever amount was paid. Deponent did the collecting. After the payment, he was careful to see that the book-keeper credited these several amounts to the different accounts; and deponent verily believes that the balance for which note of \$40,277 was given, was the actual and true balance justly due from said *Indians* to said *Ewings*, and was to be paid without any conditions, qualification, or delay, other than as expressed upon the face of it, and the same as to the note of P. Chouteau, Jr., & Co.; and at the payment of October, 1847, deponent heard of no other conditions. And further this deponent saith not.

JOHN D. LASLEY

I, James B. Davenport, acting justice of the peace, do certify that the foregoing deponent has duly sworn to the facts within written, on the 9th day of March, A. D., 1850.

JAMES B. DAVENPORT,
Justice of the Peace.

STATE OF MISSOURI, }
Jackson County. } ss.

I hereby certify that James B. Davenport, Esq., before whom the foregoing affidavit was made, and who has thereunto subscribed his name, was at the time of so doing a justice of the peace, in and for said county, duly commissioned and sworn, and that his signature thereto is genuine.

In testimony whereof, I have hereunto set my hand, and affixed
 [SEAL.] my seal of office as clerk of the circuit court of said county,
 at Independence, this 11th day of March, 1850.

SAMUEL D. LUCAS, *Clerk.*

STATE OF MISSOURI, }
Jackson County. } ss.

Before me, the undersigned, an acting justice of the peace, in and for said county, personally came Samuel Lewis, of lawful age, and known to me to be a citizen of respectability, and of truth and integrity, who being duly sworn upon his oath, deposeth and says; that in addition to the facts stated in his deposition, taken on the 24th day of November, 1848, before Dwight Spencer, then an acting Justice of the Peace in and for said county of Jackson aforesaid, and which said deposition is now here referred to, he now makes the following statement, to wit:—That the two national obligations referred to in his former deposition, namely, one for \$6,410 70, in favor of W. G. & G. W. Ewing, and another one for \$4,773, in favor of Ewings & Clymer, were for existing ascertained and admitted indebtedness of the tribe of Pottowatamie Indians at that time, and which the nation then and there assumed and promised, and agreed to pay, without any other conditions than those named on the face of the obligations. This deponent was there during the whole time of holding the treaty and the settlement and assumption of the debts; was present at and heard most of the councils; speaks and understands the Pottowatamie language; and believes that the nation then meant and intended to pay said notes; and he was present (at the same place) in the fall of 1847, when the nation admitted these same obligations, as will be seen by reference to the certificate of Colonel Vaughan, the sub-agent, in relation to what was said at an open and full council between the said Indians and their creditors, namely, the holders of the said national obligations.

This deponent heard nothing said against the claims nor the accounts for which the notes were given; and this deponent has frequently had talks with To pin a bee, Wee wis Sah, Abram Burnet, and other principal chiefs and head-men, in regard to said obligations, and they always said they wanted to have them paid. This deponent thinks this is their wish at this time. This deponent further states that there may have been some conversation held by others in regard to an inspection or investigation of the books and accounts of the traders, but that, at the time of executing the two obligations hereinbefore referred to, nothing of the kind was agreed to or required; but this deponent considered it

as a final settlement then made, and that the notes were not given conditionally, or for fictitious amounts "for mere liquidation," but to cover and pay the *actual* sums then claimed and due.

That the books had been kept by this deponent, and were then and there in the Indian country, and for nearly two years after, and were at all times open for reference or examination by any person or persons who desired it.

This deponent is informed that it has been alleged by certain persons who claim to be a delegation from the Pottowatamie nation, that the said national obligations, given on the said 17th day of June, 1846, were "each and all of them given for larger sums than the debts actually due and owing by the said nation; that it was so stated and understood at the time of their execution, &c." This deponent now deposes and says, that such was not the fact, so far as relates to the two obligations given to Messrs. Ewings and Messrs. Ewings & Clymer; and believes that that allegation, when applied to any and all the obligations given on that occasion, is equally false and unfounded.

It is also alleged that at the time of the first payment of annuities to said Indians "on the Kansas, the traders were present with their notes, and demanded payment, which was refused, on the ground that no examination of the accounts or proof of the amounts due had been made, and this examination the traders wholly refused to go into." This deponent was present, and now states that this allegation is equally untrue.

The claimants did ask for a payment agreeably to the promises made by the lower (Osage River) band the fall previous. The chiefs inquired of the agent what they (the nation) could then do as to paying their traders. The agent informed them that "the traders had sent all their books and papers to Washington, but that their great father having so much other business to attend to, had not yet had time to examine them," and here the matter dropped. No payments were made on the claims. No demand was made by the nation then, nor at any other time, (as this deponent knows of,) to have the books and accounts examined before the nation; and therefore it is not true that "the traders wholly refused" to produce their books and go into it, the Indians having just been informed that all the books and papers had been sent for examination to Washington. "The traders, therefore, began to collect from individuals of the tribe." "What amount was thus collected this delegation does not know, though one of them paid \$20, and another \$30." If these statements are intended to apply to the claims of W. G. & G. W. Ewing, or Ewings & Clymer, due and owing prior to the 17th day of June, 1846, they are false, and their authors are guilty of wilful misrepresentation and falsehood. The books and all of the papers were, as before stated, kept by this deponent, and not one dollar was ever received on account of the nation, or any individuals thereof, until the payments which were made at Washington. And this deponent believes that they are equally false and slanderous as to the other claimants.

After the treaty was made, on the said 17th of June, 1846, it is known that individual debts were contracted by the Indians with their traders, and these debts the traders no doubt made efforts to collect at the subsequent payments.

And further than this deponent saith not.

SAM'L. LEWIS.

I, James B. Davenport, acting justice of the peace, do certify that the foregoing deponent has duly sworn to the facts within written, on the 9th of March, A. D. 1850.

JAMES B. DAVENPORT, *Justice.*

STATE OF MISSOURI, }
Jackson County. } *ss.*

I hereby certify that James B. Davenport, Esq., before whom the foregoing affidavit was made, and who has thereunto subscribed his name, was at the time of doing so a justice of the peace in and for said county, duly commissioned and sworn, and that his signature thereto is genuine.

In testimony whereof, I hereunto set my hand and affix the seal of my office, as clerk of the circuit court of said county, at Independence, this 11th day of March, A. D. 1850.

[SEAL.]

SAM'L. D. LUCAS, *Clerk.*

Depositions of witnesses taken at the court-house in Platte City, Platte county, Missouri, on the 15th day of March, 1850, between the rising and setting of the sun on that day, in the matter of the Pottowatamie Indians and their creditors, pending before the Department of the Interior at Washington City, on the part of the creditors.

Robert B. Mitchell of lawful age being produced, sworn and examined, deposeth and saith—

When the treaty with the Pottowatamie Indians was about being agreed to, and the terms of it settled by the delegates sent on by the government, a portion of the Indians were willing to go into it, but a larger portion were unwilling to do so without a clause in it providing for the payment of their debts to the traders; previous to that time, the Indians had expressed the same desire to this affiant, who was then agent, and he informed them it could not be done, that the government would not receive and ratify such a treaty. After consultation among themselves, they came to affiant and requested him to write to the government that they would make the treaty as proposed; affiant did so. When the delegates came on, there seemed to be a holding back on the part of the Indians, and affiant thought a secret agency was operating to prevent the treaty, which he then attributed to the traders; but in the end, the traders came forward and openly advocated the treaty, giving their aid to the delegates, and it was consummated. After the treaty was concluded, the Indians sent for affiant and said they wished to make a note to the traders, and desired him to witness one for them; they said that they knew they had traded a long time with the traders, and found them honest, and believed the debt just, and were fully determined to make the note; it was by their voluntary request made and witnessed by affiant.

P. S. I was acquainted with Lasley, the principal clerk for the establishment of Ewing & Company, and also with McDaniel, the clerk for

Chouteau & Company. I found them correct in business, during the time I was with them, so far as I was able to ascertain, and no complaint was made by the Indians to me. At the first payment after the ratification of this treaty, the Indians then acknowledged the justice of the debt to the said Ewing & Company and Chouteau & Company. They paid a large amount upon each note; the amount affiant cannot state precisely, but thinks some ten or twelve thousand dollars to each, which amount was endorsed as a credit upon each note. And further this affiant saith not.

(Signed)

R. B. MITCHELL.

STATE OF MISSOURI, }
 County of Platte. }

I, James Kuykendall, judge of the probate court in and for Platte county, aforesaid, do hereby certify that Robert B. Mitchell, the aforesaid deponent, was by me sworn, and his examination reduced to writing, and by him subscribed in my presence, on the day, at the place, and within the hours, in this behalf first aforesaid, as in the caption is contained.

In testimony whereof, I have hereunto signed my name and affixed the seal of said court, at office, this 15th day of March, A. D. 1850.

[L. S.]

(Signed,)

JAMES KUYKENDALL,

Judge P. C.

NEW YORK, *April 3, 1850.*

HON. THOMAS EWING,
Secretary of the Interior,
Washington.

SIR: As holder of certain certificates issued by the Department of the Interior, to Messrs. W. G. & G. W. Ewing, and Ewings & Clymer, on account claims against the Pottowatamie Indians, amounting to \$22,162 58, I, last October, addressed a letter to your Department, inquiring when the same would be paid, and was officially informed they would "be paid at the time expressed on the face of each."

Of these, \$13,070 21 are due in the spring of 1850. Now, however, I am informed, on application to the Commissioner of Indian Affairs, that their payment is to be delayed until an investigation is made into certain "representations made by the Indians interested."

Last August, while at Washington, I made inquiries in the various departments as to the nature of these certificates, and was informed they were negotiable instruments, payable to the holders thereof, without regard to the parties originally interested. If this information was correct, and having passed from the original claimants into other hands, bearing upon their face the faith of the government of the United States, how can any representations of the Indians in the least affect them, and consequently my interest in them?

I have obtained a loan upon these certificates, which loan has been called for, owing to the tightness of the money market here, and if payment due is further delayed, I shall be put to great inconvenience.

Earnestly entreating you to look into this matter, and, if consistent, order payment of these certificates, which I have taken and negotiated solely upon the plighted faith of the government,

I remain, with due respect,
your obedient servant,

ROBERT F. SAGE.

Please direct reply

Care of SUYDAM, SAGE & Co.,
New York.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
March 14, 1850.

SIR: Your letter of the 11th inst., desiring to know whether the certificates issued by this office in favor of Messrs. Ewing & Clymer, and W. G. & G. W. Ewing, payable in the spring of 1850, will now be paid, has been received, and in answer, I have to inform you that, by a recent decision of the Hon. Secretary of the Interior, on representations made by the Indians interested, no payments will be made on the certificates in question for the present, or until the proofs to support those representations have been received from the tribe and examined.

Very respectfully,
your obedient servant,

ORLANDO BROWN.

Commissioner.

ROBERT F. SAGE, Esq.,
Care of SUYDAM, SAGE & Co.,
New York.

NEW YORK, April 3rd, 1850.

To the HON. THOMAS EWING,
Secretary of the Interior.

DEAR SIR: We respectfully call your attention to the annexed letter from Robert F. Sage, Esq., to whom we passed the certificates received from Messrs. Ewings, and to whom we have guarantied their payment.

We sincerely trust the amount now due may be paid, otherwise we may be put to serious inconvenience, at a time when our money market is extremely tight, owing to the amount absorbed in the sub-treasury.

We are, besides these claims, very heavily in cash advance for goods

imported for our friends, Messrs. Ewings, which have gone for supplies of other tribes of the western Indians, and for which they have not yet been able to refund us.

Very respectfully,
your obedient servant,
SUYDAM, SAGE, & CO.

To GEO. W. EWING,
Washington City, D.C.

WASHINGTON, *April 4th, 1850.*

HON. THOMAS EWING,
Secretary of the Interior.

SIR: Herewith please find extracts from a letter just received from our clerk, McGee, at Westport, Mo., going to show that those scamps who came in here last fall with lies on their tongues, failed entirely to procure one word of the testimony they said they could get; and it seems also that they were ashamed, though accompanied by their attorney, to be present and hear or cross-question any of our witnesses who did testify.

I trust the Honorable Secretary of the Interior will at once grant our request, and dismiss the case, dissolve the temporary injunction granted upon the false allegations of these trifling men, and permit the suspended certificates to be paid. We ask to be protected from this unjust and oppressive annoyance.

With great respect,
W. G. & G. W. EWING.

[Extract.]

WESTPORT, *March 10th, 1850.*

DEAR SIR: The time for taking depositions on behalf of the Pottawatamie nation has passed, and nothing * * *

Harvey did not appear at Marshall Saline. The lawyer that I sent down there (Hovey) said he saw Harvey, and his excuse was, for not giving his deposition, that none of the Pottowatamie delegation was there.

They also failed here at Westport to take any depositions. Lykins and Summerwell did not appear.

Bourassa, Barron, and McCoy, with their lawyer (Woodson), of Independence, were here, on the 8th, and, after counselling some six hours, finally concluded to give it up for a failure. McCoy was very much mortified, for he had made his brags what he was going to do.

I think they will try and have another time set for taking their depositions, having for their *excuse* that the time that they got their notices was so short that they could not get to the different places where the depositions were to be taken.

They had as much time to notify their people as I had, the notices having gone up at the same time.

According to instructions, the depositions of Lasley, Lewis, and Cleg-

horn, &c., are taken, on the 9th March, at Harris Hotel, and will be mailed to-morrow to the Hon. Thomas Ewing, Secretary of the Interior.

Your obedient servant,

(Signed,)

M. McGEE.

WASHINGTON, April 4, 1850.

HON. THOMAS EWING,
Secretary of the Interior.

SIR: In obedience with your decision of the 29th day of December last, wherein you enjoined (for the time) the payment of certain outstanding certificates against the annuities of the Pottowatamies, and directed that testimony should be taken as then prayed for by the Pottowatamie Indians, who are here present, I beg leave most respectfully to state, that we did proceed (according to notice and times agreed upon) to take the following affidavits, namely, that of John D. Lasley, Samuel Lewis, William W. Cleghorn, Joseph Clymer, and Thomas McDonald, all of which are respectfully submitted.

I am credibly informed, also, (see affidavit of J. Brown Hovey) that neither T. H. Harvey, J. Lykins, R. Summerwell, nor Moses H. Scott, came forward and testified, notwithstanding they had ample time and notice to do so if they had desired.

I trust, therefore, that no further proof of the correctness of what we averred before you in December last, namely, that the allegations made by that *pretended* delegation were wholly untrue, and without any justification—that they were false and malicious.

As, therefore, they have wholly failed to take any testimony, and have not proven any of the false charges they made against the claimants, I respectfully ask that the honorable Secretary of the Interior, in view of the very great hardship which these malicious and false allegations have imposed upon us and others holding just claims against the Pottowatamie nation of Indians, may be pleased now, and without further delay, to dissolve said injunction, and direct that the said outstanding certificates now due may be paid.

I would further submit to the honorable Secretary of the Interior, that in view of the great injury done us by means of these false and malicious charges, preferred by said nation, it will be proper and just to order and direct that said nation to refund us all proper and necessary expenses incurred in defending against said false charges. And also that they pay the interest lost to us by means of the non-payment of said outstanding certificates since 29th December last.

Herewith please find a statement of the expenses and damages to W. G. & G. W. Ewing, one of the claimants against whom these proceedings were instituted; and the undersigned cannot refrain from the expression that it is a just claim against said nation, and one which I respectfully submit the government should direct to be paid. The amount is \$995 00.

With great respect,

your most obedient servant,

GEORGE W. EWING.

STATE OF MISSOURI, }
 County of Jackson. } ss.

Before me, the undersigned, James B. Davenport, an acting justice of the peace in and for said county, personally came Samuel Lewis, of lawful age, and known to me to be a citizen of truth and veracity, who being duly sworn, upon his oath deposeth and saith, that, in addition to the facts sworn to by him, in his affidavit taken before Dwight Spencer, on the 24th day of November, A. D. 1848, who was then an acting justice of the peace in and for the county of Jackson and State of Missouri aforesaid, and to which said affidavit reference is now here made, this deponent now further testifies and says, that as regards the two national obligations therein named, viz., one to W. G. & G. W. Ewing for \$6,410 70, and another to Ewings & Clymer for \$47 73, no conditions or understandings except those expressed in said obligations, were made between him and the said Indians, or by them and Joseph Clymer, jr., as he knows of. The nation then and there assumed the respective amounts due on the books to said firms, and gave their national obligations therefor, and promised to pay them. Neither of the Messrs. Ewings were present, nor at that time in that country; they were, as this deponent was informed, and believes, in the State of Indiana, a distance of seven or eight hundred miles from the place where these contracts were made. This deponent was at that time their clerk, and in charge of their (Messrs. W. G. & G. W. Ewings') business at that (the Pottowatamie, on Sugar Creek, within the Osage River Sub-agency,) outfit. No other person was authorized to act for them as this deponent knows of.

Mr. Jos. Clymer, jr., was there, viz., at the treaty-ground on Pottowatamie Creek in June, 1846, where and when the said national obligations were given, and acted for the firm of Ewings & Clymer.

At the time of the payment of the annuities to said Pottowatamie Indians, by Alfred J. Vaughan, then Sub-agent, in the fall of 1847, more than a year after the making of the treaty, and the execution of said national obligations, the said Indians, in full council, again acknowledged the justness of said obligations, and agreed to pay them, when they (the Indians) moved on to Kansas River. They made no objections to them whatever, as this deponent knows of. He was present at, and heard the result of the council; the proceedings of which were certified to by Col. Alfred J. Vaughan, the Sub-agent.

The original books of entry and regularly itemized accounts were forwarded by me to the Indian Department at Washington, as stated in my former affidavit, in accordance with the instructions of the Commissioner of Indian Affairs of 30th August, 1847, and under directions from Messrs. W. G. & G. W. Ewing. And this deponent has been informed and believes that said books and exhibits were on file in the office of the Commissioner of Indian Affairs at Washington City for a year or more before said national obligations were ordered to be paid.

This deponent further deposeth and says, that he is not now in the employment of the said Messrs. Ewings, nor Ewings & Clymer, and that he has no interest whatever, either directly or indirectly, in any of their said claims against the Pottowatamie, or any other nation of Indians.

This deponent has seen To pin a bee, and Wee-wis Sah, the princi-

pal chiefs; and Abram Burnet, the Speaker of the lower or Osage river band, and understands from them that they never authorized Jude B. Bourassa, John C. McCoy, and those four Pottowatamies who accompanied them to Washington; and that they will not recognize anything that they may do upon the authority of the nation, or agree that the nation's money should be taken to defray any expenses they may make on their trip, as it is wholly without the proper sanction or authority of the nation, and will be repudiated by the nation. Half-day or Op-suk ushuk, the Speaker of the Upper or Council Bluff band, also says the same thing, and so do also Po quito, Chap, Shon, Nesh kee Wesak, Metsh, Kee, and other principal men and councillors.

And further this deponent saith not.

SAM'L. LEWIS.

Sworn to, and subscribed before me, this 9th day of March, A.D., 1850.

JAMES B. DAVENPORT,
Justice.

STATE OF MISSOURI, }
Jackson County. } ss.

I hereby certify that James B. Davenport, Esq., before whom the foregoing affidavit was made, and who has thereunto subscribed his name, was at the time of so doing a justice of the peace in and for said county, duly commissioned and sworn, and that his signature thereto is genuine.

In testimony whereof, I hereunto set my hand and affix my seal of office, as clerk of the circuit court within and for said county, at Independence, this 11th day of March, A.D. 1850.

[SEAL.]

SAM'L D. LUCAS.
Clerk.

STATE OF MISSOURI, }
Jackson County. } s.

Before me, the undersigned, an acting Justice of the Peace in and for said county, personally came W. W. Cleghorn, of lawful age, and known to be a citizen of respectability and of truth and integrity, who being sworn, upon his oath deposeth and saith he now makes the following statement, to wit:

That he, the deponent, says that he was present at the treaty of the lower Pottowatamie Indians, on Pottowatamie Creek, on the 17th day of June, 1846, and he heard all the talk during the said treaty, and he, the deponent, speaks the Pottowatamie language, and that the Indians in presence of the commissioners agreed to pay the notes given by the said Indians, and that the notes were sanctioned by the commissioners, and witnessed by Thos. H. Harvey during the treaty; the commissioners advised the traders to close all their accounts that were due them from said

Indians by national obligations, to be paid in two installments, annually, after the Indians moved to their new homes in the Kansas country. This deponent further avers, that he was there during the whole time of the treaty and signing of the notes; that he knows of no understanding or promise whatever on the part of the claimants in regard to the national obligations signed by said Indians, only those expressed on the face of the obligations.

This deponent further avers, that he was at the council on Pottowattamie Creek in October, 1847, more than one year after signing the national obligations, when the above notes were presented for payment, but were rejected on account that they were not to be paid on Pottowattamie Creek, but to be paid when they arrived at their new home in the Kansas country; the said Indians then pointed to a large walnut tree, saying, that there was the place that they had solemnly pledged themselves to pay their traders, or obligations, out of the first annuity they received in the Kansas country.

That they would now pledge themselves anew at the same place, under the same tree, to pay off their obligations out of their first annuity they received on the Kansas river. Further deponent saith not.

W. W. CLEGHORN.

I, James B. Davenport, acting justice of the peace, do certify, that the foregoing deponent has duly sworn to the facts within written on the 9th day of March, A. D., 1850.

JAMES B. DAVENPORT,
Justice.

STATE OF MISSOURI, }
Jackson County. } ss.

I hereby certify, that James B. Davenport, Esq., before whom the following affidavit was made, and who has thereunto subscribed his name, was, at the time of so doing, a justice of the peace in and for said county, duly commissioned and sworn, and that his signature thereto is genuine.

In testimony whereof, I hereunto set my hand and affix my seal of office, as clerk of the circuit court of said county, at Independence, this 11th day of March, 1850.

SAMUEL D. LUCAS.
Clerk.

[SEAL.]

STATE OF MISSOURI, }
Jackson County. } ss.

Before me, the undersigned, James B. Davenport, an acting justice of the peace in and for said county, personally came Joseph Clymer, of lawful age, and known to me to be a man of truth and veracity, who, being by me duly sworn upon his oath, deposeth and says, that, in addi-

tion to what he testified to in his two affidavits of the 4th day of December, 1848, taken before Dwight Spencer, then an acting justice of the peace in and for the county of Jackson aforesaid, and now referred to, that no conditions, or promises, or understandings, were made between himself and the Pottowatamie nation of Indians in relation to the national obligation given to the firm of Ewings & Clymer, except such as are expressed in said obligation. That said obligation was given for the *actual* amount then stated, and known to be due on the books of said firm, which the nation then assumed, and agreed, and promised to pay, when and as stipulated in the note.

That deponent was there on the ground, and attended to the negotiation of this debt, and he now avers that he was party to no other conditions than those stated in the obligation. This deponent was also present in September, 1847, more than a year after the execution of said national obligation, when the said Indians, in full council, again acknowledged to owe said debt; stating that they had given their notes to their creditors; that they knew the debts were just, and intended to pay them as soon as they got on to Kansas River; all of which will seen by reference to the certificate of Col. A. J. Vaughan, then Sub-agent of said Indians.

That in pursuance with the circular issued by the Commissioner of Indian Affairs on 30th August, 1847, this deponent caused a full itemized account, and all the original books, and proof of the accuracy and integrity of the same, to be forwarded and filed with the Commissioner of Indian Affairs, in his office at Washington City, all of which this deponent has been informed and believes were there on file more than a year before the said national obligation was allowed and paid.

And this deponent knows that the said Indians were advised and informed of the fact that the books, and accounts, and obligations, had been sent on for the action of the department. That said firm of Ewings & Clymer were regularly licensed traders at the time said debts were contracted by said Indians, to wit, prior to the first day of January, 1845. That at the time said national obligation was given, neither of the Messrs. Ewings (partners of this deponent) were present or in that country. Deponent thinks they were both, at that time, in the State of Indiana.

And further this deponent saith not.

JOSEPH CLYMER.

Sworn to and subscribed to before me, this nineteenth day of February, A. D. 1850.

JAMES B. DAVENPORT,
*Justice of the Peace for Kansas Township,
County of Jackson, State of Missouri.*

STATE OF MISSOURI, }
Jackson County. } ss.

I hereby certify that James B. Davenport, Esq., before whom the

foregoing affidavit was made, and who has thereunto subscribed his name, was, at the time of so doing, a justice of the peace in and for said county, duly commissioned and sworn, and that his signature thereto is genuine.

In testimony whereof, I hereto subscribe my name and affix my seal of office as clerk of the circuit court of said county, at Independence, this 20th day of February, A. D. 1850.

[SEAL.]

SAM'L. D. LUCAS, *Clerk.*

JOSEPH CLYMER'S Deposition.

 [Copy.]

STATE OF MISSOURI, }
 County of Jackson. } ss.

This affiant, J. Brown Hovey, makes oath and saith, that he was employed by Ewing and others, Indian traders, to go to Marshall in Saline county, to cross-examine any witnesses that might be sworn on behalf of the Pottowatamie Indians, between the 1st and 4th March, 1850. That he accordingly went to said place, and remained there until the 5th day of March, 1850, and that no depositions were taken by said Indians during the time limited by their notice, or otherwise. That he saw Major T. H. Harvey, and was by him informed on Monday evening as late as 4 o'clock, P. M., of the 4th day March, 1850, that his deposition had not been taken, and that no person had appeared on behalf of the said Indians, to attend to the taking of the same.

(Signed,)

J. BROWN HOVEY.

I, Jesse Henry, a Justice of the Peace within and for the said county aforesaid, do hereby certify that on this 11th day of March, 1850, J. Brown Hovey, who is a person entitled to full credit on oath or otherwise, came before me and made oath that the facts contained in the foregoing affidavit are true.

(Signed,)

JESSE HENRY, *J. P.*

 The POTTOWATAMIE NATION OF INDIANS,

To W. G. & G. W. EWING, Dr.

1849.

Dec. 29. For compensation to attorney for resisting the protest of your accredited delegation in the city of Washington, against the payment of certain debts then due,

\$500 00

1850.

January.	For expenses in sending West to take the affidavits of John D. Lasley, Thos. M'Donald, Sam. Lewis, W. W. Cleghorn, R. B. Mitchell, and Joseph Clymer, in all	200 00
Mar. 11.	For fee to and expenses of J. Brown Hovey, attorney, for attending at Saline county, see affidavit,	100 00
	For interest lost on suspended certificates due, amount \$13,000, interest from 29th December, 1849, to date, is	195 00
		\$995 00

The fee charged for our attorney, viz., \$500, is the same which said Indians paid Judge Bryan for prosecuting their protest.

As we have no remedy at law for these just damages, and as the government assumes to act as the guardian of these people, we ask that the above just and reasonable demand may be ordered to be paid out of their annuities.

STATE OF MISSOURI, }
 Jackson County. } ss.

The deposition of T. D. S. M'Donald, he being of lawful age, and duly sworn, deposeth and saith, that he was a clerk and book-keeper for Mr. Peter A. Sarpey, who kept a trading establishment among the Pottowatamie Indians at Point aux Poul, prior to and after the 5th June, 1846. That he was present when the nation executed to said Sarpey the national obligation for \$12,000, after having told the Indians in council the amount of his claim against them, and believes in presence of R. B. Mitchell, their Sub-agent at that time; and to the best of his belief, the said Pottowatamie Indians agreed to pay the whole of said note, amounting to twelve thousand dollars, (\$12,000,) out of the sum of thirty thousand dollars provided in treaty, made June, 1846, for whatsoever use they may choose to apply it. And at the time it being understood by both parties, that the thirty thousand dollars was for the purpose of paying debts and so forth, and that they knew the amount that said note was executed for, and agreed to pay it in full out of the mentioned sum. To the best of his belief he does not recollect of any condition or provision being named at the signing of said national obligation, or the one of the same tenor or date, to Messrs. W. G. & G. W. Ewing, to the best of his belief, except such as are expressed on their face. And the books of said Peter Sarpey were kept by said deponent, and to the best of his belief will amount to twelve thousand dollars, the sum mentioned on the face of said note; and that deponent was a clerk for a salary, and had no interest whatever in said claim, and that there have been no moneys received by said deponent, after the note was made on account of debts constituting said note. And this deponent further saith not..

T. D. S. MACDONALD.

I, James B. Davenport, do certify that the above deposition was signed and sworn to before me the 12th day of March, 1850.

JAMES B. DAVENPORT,
Justice.

STATE OF MISSOURI, }
Jackson County. } ss.

I hereby certify that James B. Davenport, Esq., before whom the foregoing affidavit was made, and who has thereto subscribed his name, at time of so doing was a justice of the peace in and for said county, duly commissioned and sworn, and that his signature thereto is genuine.

In testimony whereof, I hereunto set my hand and affix the seal of my office, as clerk of the circuit court of said county, at Independence, this 13th day of March, A. D. 1850.

[SEAL.]

SAMUEL D. LUCAS, *Clerk.*

[Copy.]

PLATTE CITY, *February 19th, 1850.*

MAJOR G. W. EWING.

SIR: I received yours of the 29th of January, 1850, containing \$5, requesting me to take the deposition of Major R. B. Mitchell.

I saw Major Mitchell this day, and he informs me that it is out of his power to attend on that day, as he is now on his way to Jefferson City, held in a bond of \$500 for his attendance under an attachment from the supreme court of this State, but says that it would afford him great pleasure to attend to the matter at any other time.

In case you should wish the matter attended to, you can write to me in the care of Mr. Amos Rees, who will attend to it in my absence.

Yours most truly,

W. H. SPRATT.

G. W. EWING, Esq.

TERRE HAUTE, *9th April, 1850.*

HON. THOMAS EWING,
Sec. of the Interior.

SIR: I have information from the Indian country that the depositions of Harvey and others, who were to prove the *fraud* charged against the creditors of the Pottowatamies, have not been taken. The witnesses were not in attendance at the times fixed for taking the depositions, and the whole thing has *blown over*. As I predicted at the time the

charges were made, they were only intended to be used as the means of cheating either the tribe or the government out of money. This object has been accomplished, and \$2,000 of the Indian money has been divided amongst those who conducted it, while the creditors have been subjected to the expense of employing agents and attorneys to attend the taking of depositions, which were threatened with *terrible parade*, but which were never designed to be taken.

As there is now no further impediment in the way of the payment of these deferred certificates, I most respectfully and earnestly request that the order of suspension may be set aside, and that they may be immediately paid. There is no further reason for longer suspension, and as they are payable out of the annuity for the spring of 1850, there is no impropriety in paying them at once, upon the surrender of the certificates.

Most respectfully,
your obedient servant,
R. W. THOMPSON,
Attorney for the Creditors.

(Signed)

[Copy.]

WASHINGTON CITY,
April 19th, 1850.

Hon. T. EWING,
Secretary of the Interior.

SIR: I have the honor to enclose herewith a letter just received from Indian Agent Lea, in relation to the matter between the Pottowatamie Indians and their creditors. From this letter it will be seen that the Indians have been unable to complete the taking of the testimony in support of the allegations made by them, and on which the investigation was permitted by you, and they therefore request Mr. Lea to ask me in their behalf to have the time for taking depositions extended. This application on their behalf I have now the honor to make, and in making it, I beg to assure you that I have no doubt of the truth of the statements made by the Pottowatamie delegation, when before you in this city; and as evidence that they will be enabled to establish the truth of the charges made by them, I herewith submit a letter addressed to me by General T. P. Andrews, who was one of the commissioners who negotiated the treaty, and two letters from Major Thomas H. Harvey, late Superintendent of Indian Affairs at St. Louis.

But, as another reason why this request of the Indians is reasonable and ought to be granted, I beg leave to state that up to the 20th of March, the Agent Lea had never been into the Pottowatamie country at all, although more than one council had been called, and a delegation sent to notify him and urge him to attend. Under these circumstances, and as the letters enclosed must satisfy you that the Indians can substantiate the charges made by them, I cannot but believe that you will

extend the time for taking depositions, so as to insure a fair examination of the matter.

With great respect,
your obedient servant,
JOSEPH BRYAN.

(Signed)

FORT LEAVENWORTH,
March 8th, 1850.

SIR: Your letter of the 5th ult., addressed to the late delegation at Washington City, from the Pottowatamie tribe of Indians within this agency, notifying them of the change of time for taking depositions at Westport, Mo., and other places, to be read as evidence in the case pending before the Commissioner of Indian Affairs, between the nation and certain of their creditors, was received by me, and on the next day thereafter forwarded to them, together with a copy of a letter from the Secretary of the Interior, requesting me to attend to the examination of the witnesses. But the Indians say that they did not receive the notice in time to notify all their witnesses, or at least one of them, namely, Robert Simerwell, and that Dr. Lykins could not attend on account of an accident which had happened to one of his family; so that Moses H. Scott is the only one present whose deposition is to be taken at this time. And they, (the Indians,) with the advice of their counsel, Samuel H. Woodson, Esq., concluded that it would be best not to take his deposition alone. Consequently they will have no evidence to lay before the Commissioner, unless the time for taking depositions is extended to them, which they request me in their behalf to ask you to have done if possible. They say that they *can* make the necessary proof, if they had sufficient time allowed them to show that the traders had defrauded them.

Owing to my having other business of an official character to perform, and the short notice I had, it was out of my power to attend, and at so great a distance, the taking of the deposition of Major Harvey, at Marshall, Saline county, Mo. But my non-attendance caused no disappointment, as I am informed Major Harvey did not attend, although at home. His reasons for not appearing I know not. Nor will it be necessary for me to attend at Platte City, for I have it from the most reliable authority that Major R. B. Mitchell, whose evidence is to be taken, will not be there.

The creditors will take the depositions of several persons at this place, (Westport,) from the 9th to the 12th instant. But the Indians and their counsel think it best not to cross-examine. Nor do I think it would result in any way beneficial to them. The Indians propose having a general council on the first day of next month, to ratify what the late delegation done at Washington. I have my doubts as to whether they will do it or not.

I am, sir, very respectfully,
your obedient servant,
LUKE LEA, *Indian Agent*.

(Signed)
JOSEPH BRYAN, Esq.,
Attorney at Law, Washington City.

BALTIMORE, MD.,

February 15th, 1850.

JUDGE JOSEPH BRYAN :

DEAR SIR : In relation to the matters referred to in your letter of the 14th inst., the action of the traders (or rather their agents) at Council Bluffs, in having obtained from the Indians, on the day the treaty was executed, (in part at that place,) acknowledgments of debts to the amount of 130,000 dollars, I would state that that action of the *agents* of the traders, (for the principal traders were not at the place at that time nor for some time thereafter,) must have been clandestinely and *secretly* done, for they knew well that the Indians, if *sober*, could not have been induced to give any such fraudulent acknowledgments. I say fraudulent, for two reasons : 1st. Because the individual chiefs, whose signatures I presume are shown, had no authority to give any such acknowledgments, *to bind the nation, or tribe*; not even that part of the nation, or tribe, at or near Council Bluffs, much less the other portion located on the Osage River, hundreds of miles from Council Bluffs. And 2ndly. Because the agents of the traders who were present knew well that they had admitted, *substantially*, to me and Major Harvey, that their debts did not, *at that location*, amount to more than between a *seventh* or *eighth* of that amount.

When we commenced negotiations *at Council Bluffs*, the agent of the Ewings said they claimed some 60,000 dollars. But when he found that we could, and would, obtain a fair and just treaty, despite his intrigues and nightly councils with some of the corrupt inebriate chiefs, he offered to take first \$12,000, and then \$8,000, *in full payment of the Ewing claims, provided we would secure the payment in the treaty.*

In like manner the agent (and, perhaps, partner) of the Chouteaus, claimed some 25,000 dollars, but offered to take \$5,000 in full, if so secured.

The agent of the Ewings, at Council Bluffs, told me, in private, that the Chouteaus had no honest claim to any amount; and the agent, or partner, of the Chouteaus assured me, repeatedly, that the Ewings could not have any honest claim exceeding 5,000 dollars.

The 30,000 dollars paid by the Indians to the traders, after the treaty, I feel assured was at least a full payment of all just demands of the traders, not only at Council Bluffs, but at the Osage location also. We supposed they would pay off all *just demands* to traders, as soon as they got the 50,000 dollars, (we advised them to do so,) and we estimated that it would take about 25,000 or 30,000 dollars. We based that estimate on conversations with the Indians, and the half-breeds, some of whom read and wrote, and were well acquainted with their honest dealings, as well as the admissions, or offers, of the principal traders themselves.

Before I left Washington to go to Council Bluffs, and during the preliminary negotiations at Washington, I had many personal interviews with Colonel G. W. Ewing, from whom I also received many letters or notes, in regard to these debts or claims. (I have some of those letters

and notes still in my possession, and you could read them if you would come over to this place, but I cannot send them to you.) In all these conversations and notes he never exceeded, in his estimate, the sum of "from \$80,000 to \$100,000," as due by *all the Pottovatamies to all traders*, both at Council Bluffs and the Osage location; in some of them he *specified* about \$75,000 due at Council Bluffs, (where the notes for \$130,000 were taken,) and \$25,000 at the Osage River. I had reason for believing that such estimates were unreasonable and unjust, and time proved by the admissions and offers of their own agents, *on the ground*, that they were so.

If you could come over for a day, soon, (I shall be absent in ten days,) I could give you much information in detail in regard to these matters. Major Harvey, the late Superintendent, and an honest one, who was co-commissioner, could give you still more, as his memory is a stronger one, and he had had previous and longer knowledge of all these matters. If justice is really to be done to the Indians and the traders, the proper mode would be, I should say, to summon Major Harvey and myself to Washington, and have us examined, *on oath*, and confronted with the parties, especially if these affairs come before the legal officers of the government or a committee of Congress.

I find no copy of any report, or statement, in regard to the debts of the Indians, as made by me to Colonel Medill, among my papers. Indeed I have no recollection of making any. The debts were matters of which we had no *official* cognizance. But I feel assured we conversed freely and frequently about the frauds committed by taking the notes you refer to for 130,000 dollars: I hope I may be mistaken, and that I did make such report to him, soon after my return from the treaty ground, for if I did it was made when all the facts and circumstances were fresh on my memory, and not dimmed by time and exciting scenes and business which have more recently occupied my time and attention. Indeed it has been a painful subject to dwell on, the injustice of the white man toward the Indian, and I have not tried to treasure up a knowledge of the iniquities that have come under my observation on several occasions.

I am, dear Judge,
your friend and obedient servant,

(Signed)

T. P. ANDREWS.

Washington.

[Private.]

St. Louis, April 26th, 1849.

DEAR SIR: Enclosed you will find a letter to yourself, with one from G. W. Ewing. It may be of some service in enlightening the commissioners in relation to the nefarious operations of these *distinguished American citizens with the Indians* (the Ewings.)

I however have to request that you will not use it unless in your opinion it may be likely to have the effect suggested above.

Yours with high regard,

(Signed)

T. H. HARVEY.

HON. WM. MEDILL,

Com. Indian Affairs.

Washington City, D. C.

NOTE.—This letter was submitted to and received at the Department of the Interior on the 19th April, 1850.

ST. LOUIS, *April, 26th 1849.*

SIR : In looking over some papers, I find a letter from G. W. Ewing addressed to me, as Superintendent of Indian Affairs ; (it is not marked private ;) I presume the reason it was not filed was the gross abuse it contained in relation to different individuals. From Mr. Ewing's statements it may be of some use in the examination of his accounts against the Pottowatomies of the Osage or Sugar Creek. The letter is dated Oct. 13th, 1845, in which he states that the Indians were indebted to him, or Ewings & Clymer, \$2,600. Whether he refers to the period at which he was writing, or December previous I am unable to say, but suppose he had reference to December. If I have not been misinformed, in June, 1846, the Indians gave their notes for about \$15,000, thus increasing their indebtedness in 18 months \$12,400 against \$2,600 in five years; a large cash payment being made within the time, and at which I believe the collections were good. I was present at the payment. I have frequently heard it said in the Indian country, that the claim for depredations to which the letter alludes, was included in Clymer's or Ewing's note, made by the Indians in June, 1846; the character of that claim can be seen by reference to the reports of my predecessor and myself on this claim. I am confident from personal observation, that the Indians had no knowledge of the particulars of the accounts for which they gave their notes, and would, no doubt, as readily have given them for \$25,000 as \$15,000.

The denunciations of Mr. Ewing against the Catholic clergymen among the Pottowatomies I consider entirely gratuitous. I have known those gentlemen for five years, and have not seen nor known of the slightest interference with the business of the Indians.

I have the honor to be,

sir, most respectfully,

your obedient servant,

(Signed)

T. H. HARVEY.

HON. WM. MEDILL,

Commissioner of Indian Affairs,

Washington City, D. C.

NOTE.—The above letter was filed in the Department of the Interior on the 19th of April, 1850.

WASHINGTON, *May, 6th, 1850.*

HON. THOMAS EWING,
Secretary of Interior.

SIR: I desire most respectfully again to call your attention to the subject of the outstanding Pottowatamie certificates. The payment of these was suspended in December last upon the *false plea* of certain Pottowatamie half-breeds, through Joseph Bryan, their attorney.

They said they could prove their allegations, if time was given them; you gave them their own, and a very *liberal time*, they have *failed* to take the testimony of any *one witness*, in accordance with the time and place, as agreed upon, though *ample time* and opportunity were afforded, whilst at the same time *all* of our witnesses attended and testified; all this testimony is on file. On behalf of the creditors, then, I now respectfully ask, that your temporary injunction may be dissolved, and those certificates (now due) paid.

We again *denounce* those allegations as wholly *unfounded, false, and mischievous*, and the *false* claimor now set up by their council is not only an annoyance, but it is *contemptible* and wholly untrue. In the absence of the first word of proof, which he pledged himself to procure in accordance with the notice as agreed upon, the council for those *dishonest* debtors now comes in and asks "further time." This procrastination may suit the views of that individual, in view of getting another *fat fee*, but I desire earnestly to protest against any further delay, and ask that the certificates may be honored and paid *without* any further delay.

I also most respectfully, but earnestly, *protest* against the reception (by the Hon. Secretary of the Interior) of any *ex parte* testimony, taken without notice, or of any *slandorous* or *malignant* letters, *manufactured* for the purpose, which are in any way or manner intended to impair the rights of the creditors, or those who hold those certificates.

I have seen some letters which were written by Thomas H. Harvey a few days *after* his removal from office, which I think require very few if any comments. If there was any truth in what that demagogue asserts, was it not his duty (if he had been honest) to have given the *information three years before*? Why wait until he was *removed* from office? If it were necessary, much might be said as to this man and his *unworthy* conduct.

As to the rampant letter of T. P. Andrews, just sent in by Judge Bryan, I have only to say, we *protest* against the reception of any such manufactured stuff; it is no testimony, nor was it taken pursuant to notice.

If it is to be placed upon the files or read in the matter now pending, then I request that my reply to it, dated the 29th ult., (see copy herewith) may also be placed there, to be read at the same time.

We desire to *protest* against the reception of any and all such *malicious slang*, and we *protest* against Mr. Bryan's unreasonable request for further procrastination, as oppressive and unjust to the creditors of said Indians, already wronged out of several years' interest on their claims by the *improper and unlawful* interdiction of the late *unworthy* and *dishonest* Commissioner of Indian Affairs.

It is now going on five months since the Department consented to give "*a reasonable time*" to Judge Bryan and his dishonest clients to produce their testimony. *Two* months would have been *ample* time.

They have had over four months, and now ask for more time; against all of which *false* and unjustifiable clamor we most earnestly *protest*, and hope the Hon. Secretary of the Interior may not grant, a second time, this unreasonable request. We earnestly ask that you may be pleased to order the certificates to be now paid.

I remain, with great respect,
your most obedient servant,
GEO. W. EWING.

The attorney for the claimants (R. W. Thompson, Esq.) is absent, and therefore the duty falls on me to make this request of the Hon. Secretary of the Interior.

WASHINGTON, 29th April, 1850.

SIR: I have just seen and received, with some surprise, your letter of the 15th February last, to Jos. Bryan, Esq., of this city, and I regret to observe that you have been excited by misrepresentations of the subject.

Your remarks evince much excitement, if not unkindness, towards us, which I am not aware we ever gave you any good cause for. If you knew, or had seen, *all* the facts in support of our claims, you certainly would not speak or write about them as you have. I disregard the *gratuitous* denunciations of any man, when I can sustain the very *reverse* of his assertions by *accredited proof*. It is *not* true that obligations to the amount of \$130,000 were taken at Council Bluffs, and your informant stated an *untruth* if he told you there was. The whole amount assumed by the nation up there, and for which they executed their national obligations, was about \$52,277, so far as I am informed and believe.

These national obligations (so far at least as the claims of W. G. & G. W. Ewing go) are fully supported by a regular and honestly kept set of books, giving items, names, day and date, from 1840 to 1846, and are sustained by the proof of respectable and *accredited witnesses*. Besides, more than a year afterwards, the nation paid on one of said national obligations, (previously witnessed by government officers,) in open council, in presence of their Sub-agent and their then Superintendent Harvey, the sum of \$12,250, which was endorsed on one said *national* obligation and witnessed by said officers;—proof of all this is on file in the department here. The validity and integrity of our said obligations is verified to *under oath* by several respectable witnesses, amongst whom is Major Mitchell, the local Sub-agent, and it is further sustained and corroborated by all our original books, which are here on file in the department. What then, may I ask, becomes of the unkind charge that our obligations were clandestinely "*procured*?"

It falls to the ground as an *idle*, common *slander*, and merits the contempt of every honorable man. I regret that you should have shown so

much feeling on this subject, or that you should have written such a hasty and ungenerous letter to be placed on public file; and I am of opinion that *gross* and *mischievous* misrepresentations have been made to you. You certainly can have no *just* cause for any unkind or unfriendly feelings towards me. But this is a free country. I will not *beg* any man for his friendship. My acquaintance with you was of a reciprocal and friendly nature. I have done nothing to forfeit that position towards you.

The total amount of national obligations given at Council Bluffs was, as before stated, about \$52,000. The amount given below (at Osage River) was, in all, \$35,000. There were also some other claims, which, perhaps, were not classed by national obligations, making the aggregate amount of debts, in all, as shown and proven by the file of the Indian Department, about \$94,500, due to various claimants, ourselves amongst the rest, and by far the largest creditor.

Upon a part of these national obligations, thus *executed*, witnessed, and acknowledged, in June, 1846, the nation paid, in October, 1847, more than a year afterwards, the sum of thirty thousand dollars, and but for the deliberate *knavery* of the hypocritical scoundrel Harvey, the repudiated and dismissed Superintendent of Indian Affairs at St. Louis, the nation would have paid \$20,000 more on said debts.

As it stood, the balance claimed and filed in the Indian office, pursuant to the circular and order of the Commissioner of Indian Affairs of 30th August, 1847, amounts, as shown by the officer in his subsequent report, to some \$64,500, most or all of which claims have been *examined*, adjudicated, and found upon proper and *satisfactory proof* to be just and due. The proof is all on file in the department. Wherein, then, do honorable men find *justification in slandering* and abusing men's rights thus fairly established?

From political hacks, party demagogues and other foul-mouthed rogues, nothing better is expected; but from an honorable man, whom I have never abused or wronged, I regret to receive unprovoked abuse.

It is unfortunate that gentlemen will so far yield to their prejudice in matters which involve the rights of other men, as worthy and deserving as themselves.

In my opinion, no clerk or agent of ours ever stated to any person that the Pottowatomies of Council Bluffs, in June, 1846, owed us but \$12,000, and if they had so stated, it would have been untrue. They have all sworn to the contrary. Their testimony is on file in the department, and can be seen.

Their credibility is certified up by officers of the government, and if I were to give my opinion of them, would add, that they are as *truthful* and as worthy of belief as any other men, *government officers* not excepted. I think, therefore, you are mistaken in your remarks on this subject.

You suggest in your letter, that you should be sworn; to this we had no objection whatever, but we claimed the right and privilege of cross-examination. I think it would be quite difficult, however, to reconcile the fact that you could possibly be an impartial and unprejudiced witness, after the perusal of your abusive letter now before me. A few half-

breeds and some interested white men came on here in last December, and (through Judge Bryan,) made certain false charges and allegations against the integrity of the national claims, and (he) they asserted that if an opportunity were offered, they could prove up these false charges by Thomas H. Harvey, J. Lykins, Robert Summerwell, Moses H. Scott, and yourself. For your information I will send you a printed copy herewith of their false allegations.

The Hon. Secretary of the Interior, after a patient hearing, granted them the requisite time; and times, place, and days, were fixed upon to take their testimony, except as to you. We defended, and gave notice that we wished to take the testimony of several persons; all this was likewise agreed upon. What was the result? Why, not *one* of their witnesses came forward to testify, and all ours did.

We were ready on the spot, and expected to cross-examine their witnesses, but they failed or refused to come forward and testify; all of our witnesses did testify, and they declined to cross-question them, though they were present with their attorney.

We never heard a word of any time, day, or place for taking your testimony, and never heard that you had been *consulted*, until we find on file your *extraordinary* letter now before me, and which I respectfully object to. Having failed to produce any witness to testify, they thereby clearly *admit the falsity* of their dishonest charges, and besides they are fully *disproven* by competent testimony, taken pursuant to notice.

If *malignant* and slanderous letters could be made to pass current for *testimony*, then indeed I am not prepared to say what might *not* be established.

You make allusion to my letters or notes written to you at different times. Sir, I have no objection to your sending them up, though they were not, I presume, intended, for publication. What I then stated to you was true. I thought, and stated that it would take 80 to \$100,000 to pay the just debts of the Pottowatomies. Subsequent facts show that I was not mistaken. I have learned since, that Col. Medill was willing that \$80,000 might be set apart in the treaty to pay the debts, and he so promised me. If I recollect right, you also told me that you were very desirous that I should be present at the signing of the treaty, and that, as one of the commissioners, you would not go up there unless I also went, *because* you did not want to fail if you went. I think I can prove this, in substance. I told you I would *certainly* go if notified, and was assured by you and Col. Medill that I would be notified. In this, I think I am not mistaken.

But I was not notified by either of you, but on the contrary, Medill resorted to *subterfuge* and *falsehood* to keep me unadvised.

Of this I have good proof. Why, or wherefore this *bad* faith towards the man who had made your treaty preliminaries, I know not. It was very unkind treatment to say the least of it.

As before remarked, then, the slang and abuse about "fraudulent" claims, oppression, and "cupidity," "by Indian traders against Indians," emanating, as it does and has, from government officers, and other recipients and favorites, comes with an ill grace, and is triumph-

antly *refuted* and disproven by the records of the proper departments.

In your letter now before me, you remark, "Indeed it has been a painful subject to dwell upon, the injustice of the white man towards the Indian."

Permit me to ask, were these "painful" reflections on your mind when, in Nov. 1845, acting as a commissioner, you exerted yourself to close a treaty with these same Pottowatomies, for the *paltry* consideration of \$350,000 for *seven millions* of acres of land! and for which the government was subsequently induced by *me* and others, (Indian traders, if you please to so call us,) to pay them \$850,000.

Or when the \$6,000 was taken from these Indians out of their annuity, to defray the expense of the chiefs' coming on here to make that treaty, and which they were promised by Medill, (and this I will swear to,) that if a treaty was finally made, "the government would say nothing about the \$6,000"—where was your and other government officers' *great sympathy* for "the poor red man," "the poor Indian," then? I presume it was most graciously *reserved* until some frontier man should present a just and valid claim, and then it could be poured out (without cost to the *sympathizing* government *philanthropist*) in slang, and *malignant* abuse of an humble citizen's hard-earned rights.

As a government officer then, you say, "I have not tried to treasure up a knowledge of the *iniquities* that have come under my observation on several occasions."

This, I apprehend, is a matter between you and your own conscience, and perhaps it is as well that you should not!!

In conclusion, I regret that I have felt it my duty to say thus much in reply to the unkind and wanton attack contained in your letter, and which (through Judge Bryan) you have placed on the files in the Department of the Interior.

If you will send this, or a copy, to the Judge, to be filed there *with your letter*, you will relieve me from doing that which otherwise I shall consider it a duty I owe to myself and partner to do.

Very respectfully,

your obedient servant,

GEORGE W. EWING.

COL. T. P. ANDREWS,

Baltimore, Maryland.

If Judge Bryan's proclamation to you, (and to which your letter of 10th February last was the reply,) be not *purely private*, I will be much obliged to you if you will favor me with a copy of it at your earliest convenience.—*Ibid.*

N. B. In the councils held in this city with the Pottowatomie chiefs, preliminary to making the treaty (in Nov. 1845), Colonel Andrews acting as one of the Commissioners; it will be seen by reference to the notes of said councils that the nation spoke of their debts, and wanted them paid. The President, through said Andrews, responded to and commended that.

The said chiefs also at that time petitioned the Senate of the United States, on the subject of paying their debts. The debts were made a prominent desideratum leading to the making of the treaty, and was the principal influence which moved the Indians to treat, and part with their *last* valuable country.

GEORGE W. EWING.

Endorsed, [COPY.] GEORGE W. EWING, to
COL. T. P. ANDREWS,
April 29, 1850.

WASHINGTON CITY, *May 11th, 1850.*

HON. T. EWING,
Secretary of the Interior.

SIR: I had the honor, some time since, to make an application in behalf of the Pottowatamie nation of Indians, for an extension of the time within which they might take the testimony of witnesses to support the charges made by their delegation on the subject of debts claimed to be due by the traders, and which had been allowed at the Department of the Interior. I have now to renew the application for an extension of time, and, in support of the application, I beg to submit the proceedings of a council held at Kansas River, on the 1st day of April last, ratifying and approving what was done by their delegation when in this city, together with a letter from S. H. Woodson, Esq., in which he assigns the reasons why the testimony was not taken within the time limited by the department. In my opinion, justice to those Indians requires that a farther opportunity be given to them to make good the charges made by their delegation; so as to entitle them to an investigation of the claims as presented against them.

With great respect,

your obedient servant,

JOSEPH BRYAN.

INDEPENDENCE, Mo., *15th April, 1850.*

JUDGE J. BRYAN.

DEAR SIR: Enclosed find a paper executed in general council of the Pottowatamie tribe of Indians, ratifying the acts of their delegation to Washington last winter.

I was employed by the Indians as attorney, to assist in the taking of their depositions, and the management of their case here; and as such, attended their council, and saw that the paper was properly executed. Col. Lea has not certified, as I supposed he would do, but I presume it will answer as it is.

The Indians are violently opposed to the payment of these claims before investigation, and there is no division among them. They rely confidently upon being allowed further time to obtain their testimony,

which Col. Lea assured them he had applied for and insisted upon from the department. It was utterly impossible for Col. Lea or myself to have the depositions taken under the last order, as a notice of it did not reach us until a day or two prior to the time of taking. I cannot believe the department will hesitate a moment to grant a request which, in a court of justice, would be done as a matter of course; more particularly as in this case the peculiar condition of the Indians, and their relation to the department, would entitle them to especial favor.

Having undertaken to attend to the business here for the Indians, I would be pleased to obey any instructions you may see proper to give in relation to that part of their case to be attended to here.

Respectfully, your obedient servant,

S. H. WOODSON.

At a council of the Pottowatamie tribe of Indians, held at Kansas River, on the first day of April, A. D., 1850, Pate go Shick, Wabsie, and Qua qua tah, together with Jude W. Bourassa and Joel W. Barrow, who had recently returned from Washington City, where they had been on business of the nation, and it appearing from the report of the delegation, as well as from the papers brought back by them, that although they were received as a delegation, yet doubts were expressed as to the validity of the authority under which they acted, it is hereby determined, in full council assembled, that Pate go Shick, Wabsie, and Qua qua tah were duly appointed delegates from the Pottowatamie tribe of Indians, and that the papers presented by them were signed by the persons whose names were thereunto attached; and that this council are satisfied with the acts of said delegates, and hereby ratify and confirm what they did in the capacity of delegates while in Washington City. This council considered the authority which they carried to Washington as ample to draw such an amount from their annuities as they deemed proper, and hereby ratify the amount drawn by them, and would have done so had the amount been much larger—it being two thousand dollars.

Done in council.

CHIEFS.		THE DELEGATION.	
	his x mark		his x mark
Wa we wis Say	x	Qua qua tah	
Laframboise	x	By Wewisseh Jude	
Charles Decant	x	W. Bourassa	x
Half Day	x	J. W. Barrow	x
Me gis	x	Wabsie	x
Mi am ese	x	Pate go Shick	x
Nas wan gie	x	BRAVES.	
Kon Sot	x	Nim Ke	x
Tepak nim ne	x	Ko chish Skin	x
Wah was sah	x	Waw sow quk	x
Mskuk ke ow	x	Pat quie	x
Moso ben net	x	Se ko	x
Ween Kook	x	Sun nach win	x

CHIEFS.		BRAVES.	
Ktuk kok ko	his x mark	M. B. Baubien	his x mark
Cap skein wit	x	Was sash kuk	x
Keton go	x	Wah wak sum	x
Mash kim me	x	Mamok tow mik kuk	x
Mish Shos	x	Wab no seh	x
Che kop kisseh	x	Che chak kose	x
Chaw kah pe	x	Mkit tau nim	x
Pok Shuk	x	Mko oke mian	x
Mik sum mak	x	Qua ke shick	x
Ke me kas	x	On kut toh	x
White Pigeon	x	Mkit tap na	x
Pate go Shick	x	YOUNG MEN.	
Sank nim ne be	x	Na toh qua tuck	x
Sin bin nim	x	WOMEN.	
Shaw quie	x	Negos	het x mark
		JUDE BOURASSA.	
		WM. TURNER.	

Signed in presence of

S. H. WOODSON.

JOSEPH LAFRAMBOISE, *U. S. Interpreter*, his x mark.

LUKE LEA, *Agent*.

WESTPORT, Mo., *May 2nd*, 1850.

HON. THOMAS EWING.

Secretary of the Interior.

SIR: On the 8th April last I addressed you, and preferred charges of malconduct against Dr. *J. Lykins*, one of the physicians employed for the Pottowatamie Indians, and sustained the same by the testimony of Mr. *Elias Brevoort*.

And I now beg leave to corroborate that by the deposition of Mr. *John D. Lasley* and *J. W. Polk*, men of known truth and veracity; and, being personally known to Colonel L. Lea, Indian agent of the Pottowatamies, I have requested his *certificate* as to their character in this region. I hope he may see proper to express his opinion as to the justice and propriety of excluding said Dr. *Lykins* from the Indian country.

Mr. *Lasley* expresses the opinion, that the Indian delegation *J. C. McCoy* took to Washington city last winter (headed by the half-breed and noted rascal *Jude Bourassa*), was instigated by *Lykins*, who controls *Bourassa*, for speculation, to be shared in by *McCoy*, *Lykins*, and *Bourassa*, and they are now prosecuting a claim of \$2,000 for this nefarious service. This claim was rejected at Washington City last winter by Hon. O. Brown, Commissioner of Indian Affairs. They claimed \$4,000; the Honorable Commissioner allowed \$2,000, but rejected the \$2,000 claimed by *McCoy* for intermeddling.

I hope that this villanous speculation will be interdicted, and that you may see proper to direct the Indian agent to resist its payment, and protect the tribe against this fraud, gotten up for speculation by knavish whites and half-breeds, for a pretext to reach Indian money. All the

business they desired to do (had they been a regular delegation,) could have been done with their agent at this place, without incurring an expense of \$2,000 traveling to Washington City.

For the character of *John C. McCoy* and *Dr. J. Lykins*, I beg leave to refer to the testimony of *Mr. J. W. Polk*, who charges them with villainous fraud, whilst *subsistence contractors* to these same *Pottowatomies*, in the year, A.D. 1839, or '40.

This game of *peculation* and *fraud* has been the principal employment of these *locofoco hangers on*, *McCoy* and *Lykins*, for the last 25 or 30 years.

And I most respectfully and humbly *pray* that they may be interdicted in all further intercourse with these Indians, excluded from residing in the Indian country, and the further prosecution of their once rejected fraudulent claim of \$2,000, opposed by the authority of the government.

With great respect, your

most obedient and humble servant,

W. G. EWING.

P. S.—In conversation with a gentleman in this country, I understand that *Lykins* has been for several years instigating half-breeds to get up a delegation to go to Washington City.

STATE OF MISSOURI, }
Jackson County. } ss.

Personally appeared before me, *James B. Davenport*, an acting justice of the peace in and for said county, *John D. Lasley*, of lawful age and a creditable citizen, who, being duly sworn, deposed and saith. That he resides at *Union-Town*, on the *Kansas River*, and has long been engaged in trade with the *Pottowatomie Indians*; that in the months of *June*, *July*, and *August* last, the *cholera* broke out and prevailed with severity and much mortality at said *Union-Town*, and amongst said *Indians*. Deponent's principal interpreter and his wife, *Nicholas* and *Eliza Vieaux*, both died in his house with this terrible disease; after their death deponent was taken down with it likewise, and *Doctor Gallimore*, the only physician in the country.

The other physician, *J. Lykins*, employed by the government under a treaty stipulation for said *Indians*, had fled to some part of *Jackson county*, within the *State of Missouri*, and was absent during the prevalence of this disease amongst said *Indians*, and for some time thereafter, and was faithless and false in his duty as their physician. Deponent believes that he would have died, had it not been for the relief he received by the thirty thousand dollars' worth of medicines brought out by his partner, *Mr. Elias Brevoort*, and deponent believes that those medicines saved many other valuable lives. Deponent believes that if said *Lykins* had remained and done his duty faithfully, that the life of said *Dr. Gallimore*, and that of his most amiable wife, might have been saved. Deponent believes that said *Lykins* running away during the prevalence of the disease, greatly increased the ravages of the disease, and caused many valuable lives to be lost. Deponent believes that if a talented, energetic, and honorable physician had been associated with the lamented

Dr. Gallimore, that the life of that worthy and much regretted citizen, and the lives of many other good citizens, as well as Indians, would have been saved.

Deponent believes that if said disease, or any other malignant epidemic, should again break out amongst said Indians, that said Lykins would prove himself again as faithless, false, and unworthy of trust or confidence as before. Said Lykins has for the last thirty or forty years made his living by hanging about said Indians, and deponent considers him to be too lazy and indifferent, and too devoid of the proper energy or enterprise, and without sufficient abilities, to discharge the duties of one of the physicians to said Indians, and during the time he had been employed as such physician, he had not spent more than *one-fourth* of his time in the Indian country, and has been indifferent in attention, and careless in his attendance on the sick. Deponent considers that the place calls for a professional man of better acquirements and talents than said Lykins, who deponent understands to be a self-made frontier doctor—a business he undertook after following many others with but little success.

And that owing to their exposed condition along one of the principal routes of the emigrants to California, via the South pass, they are exposed to visitations of the cholera and other diseases, (and fears are entertained of its approach again this year.) Humanity, as well as public justice, in the opinion of deponent, calls loudly for the removal of said Lykins, and the appointment in his place of a talented and energetic physician. Deponent knows said Lykins to be of an intriguing and malicious disposition, and is much of his time engaged in stirring up feuds, strife, and controversies amongst said Pottowatamie Indians, instigating half-breeds to intermeddle in the government of Indian business, and deponent believes that said Lykins was the principal instigator of the late visit of the half-breed Indians, Bourassa and others, to Washington City,—and that this was gotten up with a view to enable said Lykins, Bourassa, and McCoy, to get hold of some of the money of said Indians, for pretended services of said McCoy in conducting them to Washington City; and deponent has been informed, and believes that a conspiracy now exists between said Lykins, McCoy, and Bourassa, to get from said Indians the sum of two thousand dollars, and to enable them to have some claim upon said Indians' annuities was the principal motive that induced them to persuade said Indians to go to Washington City, instead of transacting their business with their agent, and, therefore, deponent believes that said Lykins is not a fit person to reside in the Indian country.

JOHN D. LASLEY.

Sworn to, and subscribed before me, this 30th *April*, 1850.

JAMES B. DAVENPORT,
Justice of the Peace.

STATE OF MISSOURI, }
Jackson County. }

I hereby certify that James B. Davenport, Esq., before whom the foregoing affidavit was made, and who has thereunto subscribed his name,

was at the time of so doing a justice of the peace in and for said county, duly commissioned and sworn, and that his signature is genuine.

In testimony whereof, I hereunto set my hand and affix my seal of office, as clerk of the circuit court of said county, at office in Independence, this 1st day of May, A. D. 1850.

SAMUEL D. LUCAS, *Clerk.*

I have read the foregoing statement made by Mr. Jno. D. Lasley in reference to the conduct of Dr. J. Lykins, physician for the Pottowatomies during the last summer, and fully concur with him in reference to his (Dr. L.'s) deserting his post during the prevalence of the cholera last summer, and also in reference to the case of Dr. Gallimore. I visited the said Dr. G. several times, and fully believe that, with proper medical treatment, he would have recovered. He was a man of strong constitution, and lingered several days after his attack. I saw the said Dr. L. several times during the prevalence of the disease among the Pottowatomie Indians, and believe that he was fully able to have discharged his duties to said Indians, and that the greatest cause that influenced him to desert was fright. I also believe that he is not a suitable person to be in the Indian country as physician or otherwise; he has not the moral courage to stick by the Indians during the prevalence of an epidemic, and was the cholera to appear there again, I believe he would desert his post. He has always been inclined to meddle with the business of the Indians and create dissensions among them.

Also I can state that said Lykins has been absent a great deal from his post, and that during his absence several persons died of diseases which are usually arrested by prompt medical attention. I would furthermore state that either in the year 1839 or '40, the said Dr. Lykins was interested in a contract for subsisting the Pottowatomie Indians, (which contract was in the name of John C. McCoy,) and that during that period the said McCoy, in conversation with myself (about Mr. Stinson, United States' issuing agent,) remarked in substance, that he, Stinson, was a rascal, that he was then paying Stinson twenty-five dollars a month for looking to his interest in the measurement and weight of the provisions issued to said Indians.

JOHN W. POLK.

WESTPORT, MISSOURI,

April 30th, 1850.

STATE OF MISSOURI, }
Jackson County. } *ss.*

Personally appeared before me, an acting justice of the peace, in and for said county, John W. Polk, a respectable and creditable citizen, of lawful age, who being duly sworn, deposeth and saith, that the foregoing statement, subscribed by him, in relation to the conduct of Dr. J. Lykins, is true to the best of his knowledge and belief.

Said statement sworn to, and subscribed, before me this 30th day of April, A.D. 1850, at Westport, Jackson county.

LOTT COFFMAN,
Justice of the Peace.

STATE OF MISSOURI, }
 Jackson County. }

I hereby certify that Lott Coffman, Esq., before whom the foregoing affidavit was made, and who has thereunto subscribed his name, was at the time of so doing a justice of the peace, in and for said county, duly commissioned and sworn, and that his signature thereto is genuine.

In testimony whereof, I hereunto set my hand, and affix my seal
 [SEAL.] of office, as clerk of the circuit court of said county, at office,
 in Independence, this 1st day of May, A. D., 1850.

SAMUEL D. LUCAS, *Clerk.*

WESTPORT, MO., *May 2nd, 1850.*

SIR: In compliance with your request, I now state that I am personally acquainted with John D. Lasley and J. W. Polk, and have no hesitation in saying that, in my opinion, they are both gentlemen of truth and veracity, and that full confidence ought to be placed in any statement they or either of them would make upon any subject whatever coming within their own knowledge.

I am, sir, your obedient servant,

LUKE LEA.

Hon. W. G. EWING, *of Indiana.*

HON. THOS. EWING,
Sec. of the Interior.

WESTPORT, *May 4th, 1850.*

SIR: In addition to the depositions of Messrs. Brevoort, Lasley, and Polk, heretofore forwarded to you against Dr. J. Lykins, I now enclose you that of William W. Cleghorn, a man of veracity and strict integrity. He charges Lykins with getting up the delegation of Pottowatamie Indians, who went to Washington City last winter, and that he, J. C. McCoy, and the half-breed Bourassa held a council with the Indians, in the Indian country, and instigated them to get up this delegation, that they might get a *claim* upon them, and speculate upon their folly; said Lykins invited him to assist therein and share in the speculation.

He likewise charges the half-breed, Jude Bourassa, with being under the influence of Lykins, and that he is employed much of his time in stirring up feuds and controversies amongst the Indians, and expresses his opinion that he should not be permitted to reside in the Indian country. The records at Washington City show that Bourassa is dishonest—he was guilty of selling land twice.

I respectfully pray, that both said Lykins and said Bourassa may be ordered to leave the Indian country, and not be permitted to reside therein.

With great respect,

your most obedient and humble servant,

W. G. EWING.

STATE OF MISSOURI, }
 Jackson County, } ss.

Personally appeared before me, James B. Davenport, an acting justice of the peace in and for said county, William W. Cleghorn, of lawful age and a creditable citizen, who being duly sworn, deposes and saith, that he resides on Kansas River, in the Pottowatamie country, and was present at the Baptist Mission early last summer, when he saw the principal chief To pi na be, and his Indian councillors assembled in the room with Dr. Lykins, J. C. McCoy, and the half-breed Jude Bourassa, and deponent believes that the object of their meeting in council was to get up a delegation to go on to Washington City to oppose the payment of their debts; that while in said room, in the presence of said Indians, said Lykins addressed this deponent, and advised and urged him to join in the enterprise, saying that if he would get up a delegation, it would be a speculation to deponent, as he could in this manner make more money out of said Indians than the amount of his, deponent's, claim, and that besides getting this profit, if the claims were paid, or any part of them, he, deponent, would be more certain to get his, helping on the Indian side. Deponent refused to unite in this speculative conspiracy, and deponent believes that said Lykins, McCoy, and Bourassa instigated and stirred it up for the purpose of corrupt speculation, to get a large amount of money out of said Indians for their pretended valuable services in carrying out said delegation, hoping that their knavery would not be detected by the new administration. Deponent has long known said Lykins, McCoy, and Bourassa to be mercenary and mischievous men, disposed to stir up difficulties amongst said Indians, if money could be made by so doing. That said Lykins and Bourassa, who lived amongst said Indians, deponent knows to be mischief-making, and instigators of fraud and strife amongst said Indians. That said half-breed Bourassa is controlled by Lykins, and he is constantly intermeddling in the affairs of said Indians, and causes much trouble and strife amongst them, and neither are, in the opinion of this deponent, fit persons to reside in the Indian country. During the prevalence of the cholera last summer, in the month of June, July, and August, said Lykins cleared out of the Indian country and did not return until some time after it had subsided; rendered no service as a physician at that trying time, when his services were greatly needed, and many lives were lost, as deponent believes, in consequence of his desertion of his post of duty; said Lykins is lazy and inattentive to the sick, and those he pretended to doctor were not much benefited by his services. Deponent does not believe that he is very skillful as a physician, nor does he devote more than one-fourth of his time to his professional duties amongst the Indians; is absent in the white settlement much of his time. Deponent believes that justice and humanity required that a skillful and faithful physician should be employed to reside amongst said Indians, in the place of said Lykins, as they are much exposed to disease to be contracted from the California emigration, one of the principal routes leading through their country; said Lykins has been *faithless*, and deponent believes would be so again, and of which there are reasons to entertain fears; and deponent believes he would fly from any dangerous epidemic that might break out amongst said Indians. And further deponent saith not.

W. W. CLEGHORN.

Sworn to and subscribed before me, this fourth day of May, A. D. 1850.

JAMES B. DAVENPORT,
*Justice of the Peace for Kansas Township,
County of Jackson, State of Missouri.*

STATE OF MISSOURI, }
Jackson County. } ss.

I hereby certify that James B. Davenport, Esq., before whom the foregoing deposition was made, and who has thereunto subscribed his name, was, at the time of so doing, a justice of the peace in and for said county, duly commissioned and sworn, and that his signature thereto is genuine.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, as clerk of the circuit court of said county, at Independence, 6th day of May, A. D. 1850.

[SEAL.]

SAML. D. LUCAS, *Clerk.*

STATE OF MISSOURI, }
Jackson County. } ss.

We do certify that we are personally acquainted with W. W. Cleg-horn, and know him to be a man of truth and veracity.

JAMES B. DAVENPORT,
JOHN HARRIS,
ED. PRICE:

WESTPORT,
May 4th, 1850.

MINORITY REPORT.

THERE is, in the opinion of the undersigned, a serious and important objection to the resolutions under which the committee was organized; and also, and more especially, to all the proceedings of the committee, as well where they do as where they do not conform to the resolutions—namely, a defect of power on the part of the House to take jurisdiction of the subjects referred to, in the manner and for the purpose here attempted.

In order to present the point fairly and distinctly to the House, it is necessary to premise that the several inquiries are not referred to their appropriate standing committees, who examine the carrying out of the laws by the several officers, executive and judicial, with a view to future legislation; as was the case in the investigation of the General Post-Office, by the Committee on Post-Offices and Post-Roads of the Senate, which led to the re-organization of that department by the act of July 2nd, 1836; nor is this a case in which an officer is charged with high crimes and misdemeanors, and a committee directed to investigate the charges with a view to impeachment. It does not come within either of these well known classes of cases. But in this a select committee is raised, and by the three first resolutions, is directed to inquire and report whether the Secretary of the Interior re-opened and allowed these several claims after they had been adjudged by the proper accounting officers. The committee thereupon go into an examination of the several cases, and report their opinion of the law and fact concerning them, and express a hope that their report will reform the practice of the department in future, but conclude by no resolution recommending legislative action upon any one of the cases.

It will, in the opinion of the undersigned, be apparent to every one, upon a bare statement of the substance of the resolution, and of the report, that the whole proceeding is unauthorized, and a clear usurpation of power not conferred by the constitution. It is a case in which an executive officer has, in the discharge of duties imposed on him by law, examined and decided upon certain claims, and a committee of the House is appointed, who, by something like appeal or certiorari, brings the several cases before it for its own consideration, and examines and reverses the decisions of the executive officer.

Now we cannot admit that either house of Congress, or a committee of either house, has any such power. They have no right to examine into the decision of an executive or judicial officer, to the end, merely, of opposing their judgment to his—they have no right to direct his mode

of proceeding, or the principles on which his judgment shall be governed—the law-making power may do this *by law*, but no branch of that power is entitled, without law, to dictate or interfere with executive or judicial action. Such has been distinctly and solely the action of the majority of the committee in this case. They propose no legislative action—they charge no high crime or misdemeanor—they simply oppose their opinion on matters of law to that of the Attorney General, and of the Secretary of the Interior, and express a hope that the rule of action which they lay down for the government of those high executive officers may be followed by them in future.

We have said that the constitution confers no such power on the House of Representatives or its committee. The 1st section of the first article provides, “That all *legislative* powers herein granted shall be vested in a Congress of the U. S.” By the 2d article, “The executive power” is “vested in a President;” and by the 3d article, “The judicial power” is “vested in one Supreme Court,” &c. And in the case of *Martin vs. Hunter’s Lessee*, 1 Wheaton, 304, the court says: “The object of the constitution was to establish three great departments of government, the legislative, the executive, and the judicial departments. The first was to pass the laws;—the second was to approve and execute them;—the third to expound and enforce them.”

No one doubts the correctness of this exposition of this great conservative principle of our constitution;—the absolute separation and independence from each other of its three great departments; and the necessity, if we would preserve that constitution inviolate, of guarding with care against the encroachment of any one of those departments upon the powers and duties of the others. And there is no less violation of that instrument from legislative than from executive usurpations. The constitution of England was not less destroyed, or their government less of a despotism when the command of the army was assumed by the Parliament, than when the King, without the consent of Parliament, levied taxes in the form of ship-money.

And in the opinion of the undersigned, the assumption of this supervisory power over the executive departments is not only against the spirit of the constitution, but, if sustained, must tend to injure and impair the harmony of our system, and especially the proper administration of those departments. Members of the House of Representatives are not always selected with a view to their administrative or judicial talents; and the contests which are continually going on in the political arena here, tends little to prepare the minds of men for the calm consideration and appreciation of testimony or of legal principles, or for the fair and impartial presentation of either, where the character or conduct of a political adversary are involved. Indeed cases might arise in which members, actuated by resentments, either personal or political, would be forward in presenting charges for the very purpose of being placed on the committee to judge them. In our opinion, the character of our executive and judicial officers ought not to be subjected to the judgment or censure of such ill-constituted and irregular tribunals, nor ought the rights of our citizens to be prejudiced by their action.

Having presented this general view of the subject, the undersigned will now proceed in detail to the consideration of the various branches of the inquiry.

THE BARRON CASE.

BEFORE considering the legal questions involved in this branch of the inquiry, the undersigned deem it proper to express their dissent from a conclusion of fact professed to be derived by a majority of the committee from the evidence, namely, that the computation of interest upon interest, which occurred in the case of Commodore James Barron, and three other cases, was "a mode" which was "adopted by the Secretary of the Interior." The undersigned find nothing in the case to support the assumption, on the contrary, the contemporary evidence making the *res gesta* distinctly and absolutely disprove it. The mode of calculation was an error of the accounting officer, in a matter which, in the regular course of business, was not supervised by the Secretary, and it was corrected by him immediately upon the error being discovered. On this point the undersigned respectfully request the attention of the House to the evidence.

The case of John M. Galt, to which the deposition of Albion K. Parris refers, was founded on a judgment rendered in Virginia. The case was referred by the Secretary to the Attorney General, on the question, whether the claim came within the 3d section of the act of July 5th, 1832; the Attorney General gave it as his opinion that it did come within that act, and the Secretary sent the opinion to the Commissioner of Pensions as his rule of action in that and all similar cases. Nothing was said of the mode of calculating interest thus far, nor is there any reason to suppose that it was yet made a question; the office itself was reasonably supposed to have its own rules on that subject. The Commissioner of Pensions thereupon made out his certificate, which, according to usage, was sent with the other papers from that office to the Secretary of the Interior, and signed by him without examination—so he states in his letter to the committee, and such we understand to be the practice in all the departments where an ordinary paper comes to the Secretary with the signature of the appropriate bureau, unless his attention be specially called to it. Indeed, this must necessarily be the case—neither the Secretary of the Treasury, nor of the Interior, could possibly read in the whole day all the papers which are daily laid on his table for his signature. They sign upon the faith of the signature of the proper accounting or certifying officer, and there is no distinction either in theory or practice between certificates founded on a decision of the Attorney General and those founded on the decision of the certifying officer himself: all are alike laid on the table of the Secretary for his signature, and there is no conceivable reason why he should ever discriminate between them when

his signature is affixed. The committee have therefore, in the opinion of the undersigned, fallen into an error in supposing that when the Commissioner of Pensions has been overruled in the *principle* governing a claim, the head of the department ought not to have trusted him with the ordinary official duties of its adjustment, but should have performed those duties himself, or that he should have specially supervised their performance. We are satisfied, from what we know of the ordinary routine of business, that the Secretary, in signing his name to the word "approved" written below these certificates, did not and could not habitually inform himself of their contents, or of the cases to which they related, unless his attention were especially called to them by some one of his subordinate officers. His signature to the certificate, therefore, is no more proof that the Secretary examined and adopted the mode therein prescribed for calculating interest, than his signature to a requisition would be proof that he had footed up the figures, and approved of the addition and subtraction by which the result was attained.

The substance of the testimony of Albion K. Parris, touching this point, referred to by the majority of the committee, is contained in his answer to the last interrogatory, which is in these words:—Quest. 4th. "Was or was not Mr. Ewing's attention called to the fact in Galt's case, that the interest exceeded the payment which was to be credited, and did he or not order the payment to be made on a principle that allowed compound interest in that case?"

Answer. "The certificate from the Pension office prescribed the mode of adjusting the claim. Mr. Lyons called with me upon the Secretary of the Interior to ascertain whether the interest was to be computed according to what I have stated to be the usual practice of the treasury, or, as contended by Mr. Lyons, in conformity with the judgment of the court of Virginia. When I stated to the Secretary what had been the practice of the treasury, viz., where the interest exceeded the payment, the interest is not to be added to the principal, the payment deducted, and interest computed on the balance, as that would be allowing compound interest; he assented to its correctness, but, as I understood, considered that the judgment of the court was to be carried out in this case. I cannot say that it was particularly stated that, in the case of Galt, 'the interest exceeded the payment which was to be credited.'"

It appears by this extract that the claim of Galt was founded on a judgment. That the judgment specially prescribed the mode of calculating interest, and that the Secretary said the judgment must be followed—but he was not informed that it gave compound interest—and when the witness stated the mode in which interest was calculated in the department, the Secretary assented to its correctness. This is all, and instead of showing that the Secretary "adopted" a "mode" of calculation which gave interest upon interest, it merely shows that he *approved a mode* which did not give it: but there is other evidence more perfectly conclusive on this subject.

On the 23d of October, 1849, the claim of William Graves to commutation and interest was allowed by the chief clerk, in the absence of the Secretary. His instructions to the Commissioner of Pensions are in these words—"You are, therefore, requested to settle the claim, allowing commutation and interest, as a cornet and quartermaster, deducting the amounts heretofore received for commutation and half pay." The

Commissioner on the same day directed the settlement of the account, allowing interest upon interest, compounding twice. The attention of the Secretary seems then to have been called to the subject, and he wrote the following letter to the Commissioner of Pensions, *not adopting*, but expressly condemning that mode of calculating interest, and directing that it should be corrected.

“DEPARTMENT OF THE INTERIOR,
November 21st, 1849.

SIR: The Third Auditor of the Treasury has transmitted to this Department your letter of this date, in reference to the error in the amount allowed William Graves, in which you say, ‘that if there has been any error the Secretary of the Interior should direct a re-examination of the claim.’ As it is very obvious that the certificate of the Commissioner of Pensions is erroneous, in directing the manner in which interest should be calculated in the settlement of the account—if any authority from me is necessary in the premises, as you suppose, you are hereby directed to re-open the case to the extent required, in order to settle the account upon the proper basis.

Very respectfully, &c.,

(Signed)
COMMISSIONER OF PENSIONS,”

T. EWING, *Secretary.*

On the receipt of this letter the Commissioner corrected only the second compounding, not the first, and the error thus persevered in, not being suggested, again passed without detection—as in like manner did the certificate of Commodore James Barron’s case, which was made out by the Commissioner, after his mode of calculation had been attempted to be corrected by the above copied letter.

A like error was committed by the Commissioner of Pensions, in the case of Ann Hubbard, late Ann Barron, which came to the notice of the Secretary, who thereupon addressed him the following letter:—

“DEPARTMENT OF THE INTERIOR,
January 7, 1850.

SIR: The certificate signed by you in the case of Ann Hubbard, late Ann Barron, dated this day, and sent here for my written approval, is herewith returned without it. You have been heretofore advised that in the settlement of such claims, interest could not be allowed upon interest, and I have to request that those instructions may be adhered to by you in this and all similar cases.

Very respectfully, &c.,

To the COMMISSIONER PENSIONS.”

T. EWING, *Secretary.*

This allowance by the Commissioner, directly in conflict with his re-

cent instructions, seems to have led to an investigation of previous cases. The result is explained in a letter of the Secretary to the Commissioner, which is as follows:—

“January, 10th, 1850.

SIR: When my attention was called to your certificate in the case of William Graves, I perceived that you had cast interest upon interest, and immediately wrote to you, stating that your mode of calculating interest was erroneous, and that it should be corrected. I did not lay down a rule for the calculation, not deeming it necessary. Since that time several certificates sent up by you have been signed in the ordinary way, without examination on my part. And now I find on looking to them that they contain the same error with the one which I sent back to you, namely, an allowance of interest upon interest. They differ from the first-named case in this only, that there were two compoundings of interest in that case at first, one of which was omitted in the second certificate, and there is but one in the other cases.

The error is an unfortunate one, but is excusable on your part, as I perceive that both you and the Third Auditor were misled by the opinion of the court of appeals of Virginia, in the case of Galt's administrator against the commonwealth. You have adopted in terms the mode of calculation prescribed by that decree, which was very correct in the particular case where all of the interest and part of the principal had been paid at the time fixed upon to commence calculation of interest upon the balance: this did not involve interest upon interest, but merely interest upon the remaining principal; whereas, when applied to these cases, it involves interest upon interest, and in some of them to a large amount. This must be corrected in all the cases heretofore passed upon, and the money reclaimed, as paid by mistake; and in all future cases you will give simple interest merely.

Very respectfully, &c.

(Signed)

T. EWING, *Secretary.*

COMMISSIONER OF PENSIONS.”

It will be seen from this simple narrative drawn from the contemporary correspondence, that the Secretary of the Interior did *not* adopt a mode of computation involving interest upon interest—that that mode was the result of an error on the part of the certifying and accounting officers—that the Secretary condemned it and ordered its correction as soon as it came to his notice, and directed the money erroneously paid to be reclaimed as paid by mistake. It therefore did not and does not require the action of a committee of Congress, or Congress itself, to set right an error which was condemned and corrected by the Secretary of the Interior as soon as it was detected.

Prior to the case of Barron, two other cases, resting on principles involved in that case, were presented to the Secretary of the Interior, and

by him referred to the Attorney General for his opinion. The first, in point of time, was the case of John M. Galt, above considered, in which the Attorney General decided that when a judgment was rendered for commutation and interest against the State of Virginia subsequent to the act of July 5th, 1832, it must be paid by the United States under the provisions of that act. Now, so far as the Secretary of the Interior is concerned, this decision of the Attorney General thus made in reference, imposed upon him, in conformity to established usage in all the departments, the duty of carrying it into effect. This we believe has been a uniform rule, and without it the same law might be differently interpreted and executed by the several executive departments, which shows the necessity of a strict adherence to the rule in all cases. Pursuant then to usage, the Secretary of the Interior caused a copy of the opinion of the Attorney General to be filed in the office of the Commissioner of Pensions, for his guidance in that and all similar cases.

The next in order was the Ewell case, which was also referred to the Attorney General, on the question whether the commutation and *interest* could be allowed in cases where no judgment had been rendered against the State of Virginia. We call the attention of the House to the letter of the Secretary submitting this case, which is as follows:—

“ DEPARTMENT OF THE INTERIOR,
WASHINGTON, July 14th, 1849.

SIR: The case of Thomas Ewell's heirs is respectfully referred to you for an opinion on the single question whether the applicants are entitled to interest upon the commutation due their ancestor, and if so, for what time.

Sovereigns never pay interest unless it be due by special contract or by direct assumption. It is presumed that they are at all times able and willing to pay their debts and comply with their contracts, whenever demand is made, and proof adduced to establish the claim.

This claim rests upon the resolution of the 22nd March, 1783, which provides '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 bearing interest at six per cent.' The securities are to bear interest; but for what time? From the time they are issued? or from the time of the service?

Nothing is said of interest if the payment be in money; and by the act of Congress of July 5th, 1832, 3rd section, it can be made in money only. Can interest be allowed on this money by the accounting officers? I confess I entertain strong doubt on the subject, and if the thing were *res integra*, my opinion would be against it.

But the Virginia courts have in all cases given judgment for interest as well as principal, in some cases for interest alone when the principal had been fully paid; and this claimant could, I suppose, go before their courts and recover interest, and then come and present his claim, and under the act, the United States must pay it.

Yet is it not the safer course, under all the circumstances, to reject the claim for interest until the claimants shall so recover it? or until an

act of Congress, in direct terms, provides for its payment? The case of Galt, in which you gave an opinion, (March 27th,) was one in which a judgment had been received against Virginia, and which recovery the United States had expressly assumed to pay. In Ewell's case there is no judgment, and the decisions in Virginia not being in the direct case, are not absolutely binding upon us, though entitled to great respect as authority. A judgment of the courts of Virginia, when obtained, must, as I have already said, be paid, *interest* and all. It is, therefore, no advantage to the United States to withhold the payment of interest; but is the case actually made in which the accounting officers can pay it?

I throw out these hasty suggestions to call your attention to the difficulties which I find in the matter, and wish your early attention to it.

I am, sir, &c.,

(Signed) T. EWING, *Secretary.*

HON. REVERDY JOHNSON,
Attorney General."

The Attorney General decided that commutation and interest was payable under the law, and the Secretary of the Interior certified his opinion as in other like cases.

And lastly, the case of Commodore James Barron, which involved the question whether commutation was payable to the officers of the navy as well as the army, which was also referred to the Attorney General, who decided that the officers of the navy were on precisely the same footing with those of the army, and equally entitled to commutation and interest.

Thus it will be seen, that in the decision of this whole class of cases, the Secretary of the Interior merely carried out the opinion of the law officer of the government, and in so doing, performed an obvious and unquestioned duty. If the decision be right, it is no merit of his; if wrong, he is amenable to no censure. We will now proceed to examine the points decided by the Attorney General in this case, and give our views as to their correctness.

THE BARRON CASE.

THE majority of the committee, in their report, make three points of objection to the legality of the claim of Commodore Barron's administrator to *commutation* of five years full pay, with interest, in lieu of half pay for life, under the act of 5th July, 1832, to wit:

1st. That the third section of said act does not authorize the payment of commutation in any case, but only authorizes the payment of half pay for life.

2nd. That even if the 3rd section of said act does authorize the payment of commutation in some cases, it does not authorize such payment in the case of Commodore Barron, because he belonged to the *navy*, and not to the *army*, or *State line*, in the land service.

3rd. That the judgment for half pay recovered by Commodore Barron's administrator against the State of Virginia, in 1823, and the payment thereof by said State, constituted a *bar* to any claim against the general government by his estate, under the act of 5th July, 1832.

Not concurring with the majority of the committee upon any one of these points, we deem it our duty to state briefly the grounds upon which we dissent.

In order to a right understanding of the first point above mentioned, it becomes important to recur to the legislation of Virginia, and the judicial decisions of her courts, upon which the claims provided for by the act of 5th July, 1832, are founded.

During the war of the revolution, the State of Virginia raised and maintained several regiments of troops, as well as her State navy, which, although engaged in the common defence of the country, were never taken into the Continental service; and the various acts and resolutions of the old Congress, granting bounty lands, half pay, commutation, &c., to the officers and soldiers of the *Continental line* have never been construed to embrace them.

The legislature of Virginia, at its May session, 1779, passed an act—see 10th Henning's Statutes at Large, page 25), providing that, "All general officers of the army being citizens of the commonwealth, and all field officers, captains, and subalterns commanding, or who shall command in the battalions of this commonwealth on continental establishment, or serving in the battalions raised for the particular defence of this State, or for the defence of the United States, and all chaplains, physicians, surgeons, and surgeon's mates, appointed to said battalions, or any of them, being citi-

zens of this commonwealth, and not being in the service of Georgia, or of any other State, provided Congress do not make some tantamount provision for them, who shall serve from henceforward, or from the time of their being commissioned, until the end of the war; and all such officers who have or shall become supernumerary on the reduction of any of the said battalions, and shall again enter into the said service if required so to do, in the same or any higher rank, and continue therein until the end of the war, shall be entitled to half pay during life, to commence from the determination of their command or service." By sundry acts and resolutions of the Virginia Assembly, passed during and immediately after the war (and which will be more particularly referred to hereafter), this promise of half pay for life was extended to the officers of the State navy, as has been repeatedly decided by the supreme court of appeals of that State. It will be observed that the act of 1779 promised half pay for life both to her officers serving on continental establishment, and those commanding in her battalions raised for the particular defence of the State, &c. But Congress having, by the resolves of October 21st, 1780, and January 27th, 1781, made "tantamount provision" of half pay for life to those officers serving on continental establishment, which she afterwards, by the resolves of March 22nd, 1783, commuted to five years' full pay in lieu thereof, the State of Virginia became thereby relieved from the burden she had assumed, so far as the officers in the continental service were concerned. She was still left, however, to provide for the officers of her State line and navy. Accordingly, at the May session, 1783, her General Assembly enacted, "That the said auditors shall yearly issue to such of the officers of the *State line and navy*, as are by law entitled to half pay, their warrants for the same." (11th Henning, 245.) On the 22nd of December following, however, the General Assembly, by a joint resolution, directed "the auditors not to issue any more warrants for half pay to officers of the *State line*, until further ordered by the General Assembly." This last-mentioned resolution, in its terms, embraced officers of the State line only, yet under it all warrants for half pay were suspended, as well to officers of the navy as officers in the land service. And so the matter remained until the 16th of December, 1790, when the General Assembly passed an act, by which, after reciting in the preamble that doubts had arisen whether certain officers thereinafter described had a right to compensation of half pay, &c., it was enacted, "That the same compensation of half pay should be extended to those officers of the State line who continued in actual service to the end of the war, as was allowed to the officers of the continental line; and also to those who became supernumerary, and being afterwards received did again enter into actual service, and continued therein to the end of the war; any act or acts to the contrary in anywise notwithstanding."

Soon after the passage of this act, suits were brought against the State of Virginia, by a number of the officers of her State line, who had served to the end of the war; and her supreme court of appeals decided that inasmuch as the act of 1790 extended to those officers of the State line who continued in actual service to the end of the war *the same compensation of half pay as was allowed to the officers of the continental line*, and as

Congress had, by the resolutions of March 22nd, 1783, allowed to the officers of the continental line five years' full pay, bearing interest at six per cent., in commutation of their claims to half pay, the stipulation of the act of 1790, that *the same compensation of half pay* should be extended to officers of the State line who had served to the end of the war, must be construed to entitle all such officers to the like commutation of five years' full pay, with six per cent. interest. And said court of appeals, in accordance with this construction, as early as [the year 1791 or '92, rendered judgments against the State for five years' full pay, with interest from the close of the war, in favor of Churchill Gibbs, Isaac Holmes, and Lodwich Brodie, officers of the State line. About the same time judgments of like character for commutation with interest were rendered by her district courts in thirteen other similar cases, which were never carried up to the court of appeals, for the reason that the principle by which they were entitled to commutation with interest had already been settled by that court. These judgments were all rendered prior to the year 1796, and amount in the aggregate as follows: Principal, \$38,460—Interest \$38,113 16.—(See House Doc. No. 191, 1st Sess., 22nd Con., p. 61.)

Whether the construction given to the act of 1790 was, originally, the proper construction or not, we do not deem it material now to inquire; it is sufficient to know that it was given by the court of last resort, more than half a century ago, and has been steadily adhered to by the same high authority from that day to this. So far as it is possible for judicial interpretation to settle the law, it has been the settled law of Virginia ever since the year 1792, that those officers who served in her State line during the revolutionary war, and to the end thereof, are entitled to claim from the State five years' full pay, with interest from the close of the war until paid, in lieu of the half pay for life promised by the act of 1779—a claim, too, which such officer, or his representatives, can enforce against the State by judgment in her own courts.

Since the year 1796 a number of other judgments for commutation with interest, in lieu of half pay for life, have been recovered against the State of Virginia, by officers of the State line, or their representatives. In fact, her courts have never, at any time since 1792, refused to give such judgment where it was satisfactorily proved that the officer served to the close of the war.

In regard to another and much the largest class of "*half-pay claims*," however, the decisions of her courts have been by no means so uniform. Much the larger portion of the officers of the State line were discharged as supernumeraries before the close of the war, and were never called upon to re-enter the service. As early as the year 1792, Christopher Roane and nine other officers of the State line, who had become supernumerary in February, 1783, brought suit against the State of Virginia, and recovered judgments for commutation, in the district court of Henrico county. The commonwealth appealed to the supreme court of appeals, which court reversed the judgments of the district court, and decided that those officers who did not *actually serve till the end of the war* (which the court decided to be the 23d April, 1783,) were neither entitled to *half pay* nor *commutation*, under the act of 1779, or any

subsequent acts of the Virginia Assembly. There was an entry made by the court of appeals, however, that the judgment should not "bar or prejudice any future claim of the appellee, made on fuller proof."

The high court of chancery, about the same time, made a different decision; but the court of appeals being the supreme judicial tribunal, its decisions remained as a bar to the claims of all supernumerary officers for near forty years.

Some time about the year 1830, certain important revolutionary documents having been discovered at Richmond, supposed to have a strong bearing upon the claim of supernumerary officers to half pay, suits were again commenced against the State, and the question again brought before the supreme court of appeals for adjudication. After a very full and elaborate examination of the subject, that court finally decided, that supernumerary officers, who had left the service before the close of the war, in consequence of the reduction of the corps to which they belonged, and who were never called upon to re-enter the service, were entitled to *half pay* for life, under the act of 1779, but not being embraced within the act of 1790, were not entitled to commutation of five years' full pay with interest. (See cases of Markham and Lilly, 516 and 525.)

This decision, it will be perceived, threw open the door to a large class of claims from which the State of Virginia had long supposed herself exempt, and numerous suits were instituted against her for their recovery.

The large amount of money to the payment of which it became apparent the State of Virginia would be subjected by this decision of her court of appeals, induced her legislature, in April, 1831, to make a provision for applying to the general government for relief, by passing an act requiring the Governor to appoint a commissioner on behalf of the commonwealth, to present and prosecute her claims before Congress. The preamble to said act recites, that "in the opinion of the General Assembly, the State of Virginia has a valid and substantial claim against the United States, for various large sums of money *which have been paid*, and which this commonwealth *may be bound to pay*, on account of the services of the troops of our State line during the war of the revolution."

Pursuant to said act, the Governor appointed THOMAS W. GILMER, Esq., commissioner on behalf of the commonwealth, to preside over and prosecute said claims before Congress.

Said commissioner, accordingly, on behalf of the commonwealth of Virginia, presented to the 22d Congress, at its first session, a memorial, setting forth a brief history of the nature and origin of these claims. In this memorial it was argued that these claims were clearly embraced within the spirit of the act of Congress of 5th August, 1790, providing for the payment of the revolutionary debts of the several States, and would have been included in the settlement made in 1793, under said act, had the liability of Virginia to pay them been then settled. But that as these claims, (or the larger class of them,) were at that time resisted by the State, and had been successfully resisted in her courts, they could not be brought into said settlements. And said memorial concluded by

asking, "that all sums of money which the State of Virginia has paid since the passage of the act of Congress of August 5th, 1790, entitled 'An act to provide more effectually for the settlement of the accounts between the United States and the individual States,' to officers of her State line, or of the continental line, on account of her engagements during the revolution, may be refunded to the commonwealth;" and "that all sums for which the commonwealth may still be bound on the same account, may be assumed or adequately provided for by the United States, so as to exempt Virginia from a responsibility which does not properly belong to her."

This memorial was referred to a select committee of the House of Representatives, of which the Hon. J. S. BARBOUR was chairman, who reported in favor of indemnifying Virginia to the extent asked for in the said memorial; accompanying said report by a bill, which finally passed into and became the act of 5th July, 1832, "to provide for liquidating and paying certain claims against the State of Virginia."

That act provided:

1st. For the payment to the State of Virginia of the sum she had actually paid "to the officers commanding in the Virginia line in the war of the revolution, *on account of half pay for life* promised to the officers aforesaid by that commonwealth,—the sum of \$139,543 66."

2d. For the payment "to the State of Virginia the amount of the [unsatisfied] judgments which have been rendered against said State for and on account of the promise contained in an act passed by the General Assembly of the State of Virginia, in the month of May, A. D. 1779, and in favor of the officers or representatives of officers of the regiments and corps" therein recited, "not exceeding in the whole the sum of \$241,345."

3d. Requiring and directing the Secretary of the Treasury "to adjust and settle those claims for half pay, of the officers of the aforesaid regiments and corps, which have not been paid or prosecuted to judgment against the State of Virginia, *and for which said State would be bound on the principles of the half-pay cases already decided in the supreme court of appeals of that State;*" and to pay the same "out of any money in the treasury not otherwise appropriated by law."

It will be perceived, that at the time of the passage of this act there were two classes of "half-pay" claims for which the State of Virginia was bound, according to the principles of the "half-pay cases" which had been already decided by her supreme court of appeals. First, the claims of those officers who actually served to the end of the war, and thereby became entitled to commutation with interest, in lieu of half pay for life; and, secondly, the claims of supernumerary officers who were entitled to half pay for life, but not to commutation. It is very clear that in adopting the terms, "claims for half pay," and "half-pay cases," in the third section of the act of 5th July, 1832, the term "half pay" was used as a *general* term, embracing as well those half-pay cases in which the claimant was entitled to commutation in lieu of half pay, as those cases in which he was entitled to half-pay for life only. These claims for commutation in lieu of half pay had their origin and foundation in the promise of half pay for life, first made in the act of Assembly

of 1779 ; and in no case has a claimant ever been adjudged entitled to commutation, unless he showed, as the foundation of such claim, that he was entitled to half pay under said act. Hence, all claims arising under said acts, and the auxiliary and explanatory acts of a later date, have been usually styled "half-pay claims," whether they were strictly claims for half pay only, or belonged to that class in which the claimant was entitled to commutation in lieu of half pay. Even the act of 1790, which has been construed to give commutation in lieu of half pay, in the class of cases therein embraced, is entitled "an act giving the compensation of *half pay*," &c. That the term "half pay" is used in this sense in the *first section* of the act of 5th July, 1832, has always been admitted, and is incontestably proved by the subject matter embraced in said section, for by far the larger portion of the sum of \$139,543 66 by that section directed to be repaid to the State of Virginia, to reimburse to her the money she had actually paid "*on account of half pay for life*," had been paid by said State as *commutation*, either voluntarily by her Legislature, or upon judgments rendered against her. And nearly half of said amount had been paid by said State *in satisfaction of judgments rendered against her for commutation with interest*. If, therefore, the term "half pay," where it is used in the first section of the act, has a clear and unquestionable meaning, by one of the most obvious and well settled rules of interpretation, the same meaning should be attributed to it, when occurring in another part of the same statute, even if its signification in that connection would be otherwise doubtful. The word "commutation" nowhere occurs in the act of 5th July, 1832. If the words, "payments on account of half pay for life," as used in the first section of said act, are construed, (as they always have been, and necessarily must be,) to embrace payments made on account of commutation in lieu of half pay, upon what principle of sound construction can a more limited signification be attributed to the terms "claims for half pay," and "half-pay cases," when they occur in the third section of the same act ?

But even if the meaning of these terms, looking alone to the act in which they occur, were doubtful, it is believed a recurrence to the objects which Congress evidently had in view in passing such act, should be sufficient to remove all doubts upon the subject. It appears to us that no one acquainted with the circumstances which led to the enactment of said law, can entertain a reasonable doubt but that Congress intended to protect the State of Virginia against outstanding claims, in as full and ample a manner as she indemnified her for claims which she had already been compelled to pay. This is what Virginia asked for in her memorial to Congress. In the language of that document, she asked "that all sums of money which the State of Virginia has paid, since the passage of the act of Congress of August 5, 1790, to officers of her State line," &c., "on account of her engagements during the revolution, may be refunded to the commonwealth ;" and "*that all sums for which the commonwealth may still be bound on the same account, may still be assumed or adequately provided for by the United States, so as to exempt Virginia from a responsibility which does not properly belong to her.*" The committee to whom said memorial was

referred, recommended in their report an assumption of the outstanding claims against Virginia, in equally comprehensive terms, and "for the purpose of carrying out the views of the committee," reported the bill, which became the act of 5th July, 1832. And that act, as if to place the extent of the assumption on the part of the United States beyond all controversy, required the Secretary of the Treasury to adjust and settle all of said outstanding claims, "for which said State would be bound on the principles of the half-pay cases already decided in the supreme court of appeals of said State." But, according to the construction given to said act by the majority of the committee, there was one class of said claims for which Virginia was bound, "upon the principles of the half-pay cases already decided" by her court of appeals, against which the third section of said act afforded her no protection, although the first section fully indemnified her for large sums which she had already been compelled to pay on claims of the same class.

A statement made by Thomas M. Gilmer, Esq., the commissioner on behalf of Virginia, in his memorial to Congress, to the effect that "the State of Virginia has never commuted the half pay of her officers, as was done by Congress in regard to the half pay of the Continental officers," is referred to by the majority of the committee, and an inference drawn therefrom, that Congress did not design, by the 3d section of the act of 1832, to provide for the payment of commutation. It should be observed, however, that immediately preceding this remark, the memorialist had been speaking of the claims of *supernumerary* officers only. He had just been giving a history of the judicial decisions by which the claims of that large class of officers had been barred from an early day, until by a recent decision of her supreme court of appeals the State had been rendered liable to pay them; and upon the strength of the large demand to which the State had been thus suddenly and unexpectedly subjected, was founding his argument in favor of relief from Congress. As to this class of claims of which he had just been speaking, the remark was perfectly correct; for, according to all the decisions of her courts, Virginia never did commute the half-pay claims of her *supernumerary officers*. How the memorialist came to make this remark, that "Virginia never commuted the half-pay claims of her officers," in terms comprehensive enough to embrace all classes of her officers—whether it was the result of inadvertence on his part, or of a typographical error in the printing, we cannot undertake to decide. That it was an error, and an error manifest upon the face of the memorial, is perfectly clear, and must have been apparent to Congress; for the documents accompanying said memorial, and which must be taken as part of it, show conclusively, that of the sum of \$134,543 66, paid out by Virginia to her officers, and for which she was claiming to be reimbursed, much the larger portion had been paid as *commutation* in lieu of half pay. One of the documents accompanying said memorial is a list of judgments rendered against Virginia, which she had paid prior to the year 1796, amounting, in the aggregate, to \$58,573 66, (and which formed part of the gross sum of \$139,543 66, which she asked the United States to refund,) *every one of which judgments was for commutation with interest, as is distinctly shown upon the face of said list.* With what pro-

priety, then, can it be assumed that Congress acted in ignorance of the fact that Virginia was bound to a certain class of her officers, for commutation with interest?"

But even if the language of the act of 5th July, 1832, considered in connection with the circumstances which led to its enactment, still leave grounds to doubt whether commutation claims are embraced in the 3d section of that act, surely the repeated subsequent acts and declarations of Congress, clearly recognizing such claims as being embraced and provided for in said act, ought to remove all doubts which might otherwise exist as to its true construction.

The construction now adopted by the majority of the committee, as they have shown in their report, is the same that was given by the Executive department to whom the execution of said act was committed soon after its passage.

Shortly after the passage of said act, certain claims for commutation, in lieu of half pay, were presented at the treasury department for payment, which clearly belonged to that class for which Virginia would be bound according to the well-settled principles of her court of appeals. These claims were rejected by the Secretary of the Treasury, upon the ground that the third section of said act did not authorize him to pay commutation in lieu of half pay in any case. During the existence of the same Congress which had passed the act, this construction, given to it by the Secretary of the Treasury, attracted the attention of the House of Representatives; and on the 7th of February, 1833, *the same House of Representatives* which had passed the act of the 5th July, 1832, by a vote of 98 ayes to 56 nays, passed an explanatory resolution, in the preamble of which it is declared, that "the supreme court of appeals [of Virginia] have uniformly decided that the officers of the army entitled to half pay under the laws of said State, who continued in actual service to the end of the war, under the true construction of the act of the Virginia Legislature of 1790, are entitled to the commutation of five years' full pay, in lieu of half pay for life, with interest thereon at six per cent. per annum, from the 22d day of April, 1783, until paid." And the resolution then follows in these words: "That the principles of the decisions aforesaid, as above declared, should be applied by the Treasury Department to the claims of said officers, respectively, as well those which have been adjusted as those which may hereafter be presented for adjustment." This, being a joint resolution, required the concurrence of the Senate before it could become absolutely binding upon the Secretary of the Treasury as a directory act. It passed the House at so late a day in the session, however, that it appears never to have been reached upon the Senate calendar, and, consequently, was never acted upon in that branch. As a declaration, however, by the House, of what was intended by the 3d section of said act, it is surely entitled to great weight in settling a doubtful construction.

Again, in the act of Congress "to continue the office of the Commissioner of Pensions," passed March 3d, 1835, there is, as we conceive, an express recognition of the liability to pay commutation under the act of 5th July, 1832; for in the 4th section of said act, transferring certain duties from the Secretary of the Treasury to the Secretary of War,

among other duties so transferred, are those "in relation to Virginia claims for revolutionary services and *deficiency of commutation.*" The majority of the committee take the ground that by these words, "*deficiency of commutation,*" Congress intended only a class of cases in which, the officer having received commutation, which amounted to less than half pay for life would amount to, he was entitled to claim the balance of his half pay." It is sufficient to say that in such a case the deficiency would clearly be a *deficiency of half pay*, and not a *deficiency of commutation.* But, on the other hand, it is a well-known fact, that under the act of the 5th July, 1832, in cases of officers who had served to the end of the war, and whose representatives asserted their claims for commutation, half pay for life was allowed and received. When said act of 3d March, 1835, was passed, it is presumed that every officer who could prove service to the end of the war, (or his representatives) had received half pay for life. In all cases, however, where the half pay so received amounted to less than commutation would amount to, they persisted in claiming the *difference between half pay and commutation*; or, in the very concise words of the act of Congress, "*deficiency of commutation.*"

Notwithstanding, however, these acts on the part of Congress, which, in our opinion, should have been regarded in the light of legislative interpretation of the act of 1832, the executive departments of the government still adhere to the adverse decision at first made in regard to said claims. A number of said claimants, finding all efforts to obtain satisfaction from the general government fruitless, again resorted to the State of Virginia, the original debtor. They commenced suits against said State, in her own courts, and recovered judgment against her for commutation with interest, deducting therefrom the amount of half pay which had been received from the treasury of the United States. These judgments the State of Virginia was compelled to pay; and having paid a large sum of money in satisfaction of judgments so recovered against her, she appointed an agent to present her claim for reimbursement of said money to the executive departments of the government. The claim so presented having been rejected, the commissioner, on behalf of the State of Virginia, presented the claim of that State to be reimbursed the money she had so paid out, to Congress, in the spring of 1844. This claim was urged before Congress, upon the ground that said claims for commutations were clearly embraced and provided for in the 3d section of the act of 5th July, 1832, and had been improperly rejected by the executive officers of the general government. Able arguments in favor of this construction of the act of 1832, by JOHN M. PATTON, Esq., S. S. BAXTER, Attorney General of the State of Virginia, CHAPMAN JOHNSON, and JAMES LYONS, Esq., were laid before Congress by said commissioner on behalf of the State. (Vide House Doc., No. 475, 1st Sess., 28th Cong.)

The Committee of Ways and Means, in the House, reported a bill to refund to the State of Virginia the amount of money she had been compelled to pay out upon said judgments, but it appears never to have been acted upon by the House.

Congress appears never to have responded to this claim of the State

of Virginia, until the month of August, 1848, when, in the civil and diplomatic appropriation act for the year commencing June 30th, 1849, which was approved August 12th, 1848, a sum not exceeding \$81,273 17 was appropriated "for repayment to Virginia of money paid by that State, under judgments of her courts against her, to revolutionary officers and soldiers, or their representatives, for *half pay and commutation of half pay.*" The sum of \$81,273 17 so appropriated was the exact sum which Virginia had paid out since, on judgments rendered against her subsequent to the passage of the act of 5th July 1832. In said sum was embraced the payments made in the cases of George Walls, Lieut. Vawters, George R. Clarke, and James Merriwether, which are referred to by the majority of the committee as having been rejected by the executive officer of the government. So that Congress, by paying these very claims which the executive departments had rejected, had expressly overruled those decisions.

Congress could have made this provision for refunding to the State of Virginia the money she had been compelled to pay upon these judgments for commutation, upon no other ground than that they were embraced in the act of 5th July, 1832, and consequently were legal demands against the United States. Virginia urged her demand upon this ground only, and the compliance of Congress is evidence that she recognized the justice and legality of the demand. Surely, the payment by Virginia of claims which had no validity as against the United States would have given her no title to be reimbursed from the United States treasury; and it is not to be presumed that Congress would have responded favorably to her demand if she had considered it in that light.

The majority of the committee, however, take the ground, that the appropriation in the act of 1848 of \$81,273 17, to repay to the State of Virginia the amount of these claims, is evidence that Congress did not consider them already provided for in the act of 1832. They also take the ground that the limitation of said appropriation to "a sum not exceeding \$81,273 17," is "inconsistent with the idea that Congress intended to decide that commutation was payable under the 3d section of the act of 1832;" because, if commutation be payable under it, the treasury of the United States is liable for whatever amount Virginia can be required to pay, even if it amount to millions.

In our opinion, the majority of the committee have clearly misconceived, not only the object of said act of 12th August, 1848, but the ground upon which that act is relied on as authority for paying commutation under the 3d section of the act of 1832. The 3d section of said act required the Secretary of the Treasury to adjust and settle outstanding claims for which the State of Virginia would be bound, and to pay the amount which might be found due, to the claimants themselves, out of any money in the treasury not otherwise appropriated. The object evidently was, to protect Virginia completely against all demands of this character, by assuming direct and immediate responsibility to the claimants. The appropriation of any money in the treasury not otherwise appropriated was not, therefore, for the purpose of refunding to Virginia the sums she might thereafter pay out upon such claims; but

for the purpose of paying the claimants themselves. But as the executive officers of the United States had refused to pay these claims, the claimants had resorted to the State of Virginia, and knowing the power to *compel* her to pay, had availed themselves of it. This was a state of things not contemplated at the time of passing the act of 1832, and, consequently, no provision was made to meet it. It was not contemplated that Virginia would ever pay out of her own treasury any more claims of this character, and, consequently, no provision was made for indemnifying her if such should be the case. Hence the necessity of an appropriation before the money could be refunded to Virginia, although no such appropriation would have been necessary to have authorized the payment to the claimants themselves, in the first instance. If these claims, paid by the State of Virginia, were in fact valid claims against the United States, under the act of 1832, then Virginia, having paid them herself, stood, with reference to the United States, in the relation of a surety who had been compelled to pay money for his principal. She had a claim against the United States for the money she had actually paid, and no more. Upon this principle, unquestionably, Congress appropriated the precise sum necessary to indemnify her for what she had already paid, and no more. No one has ever claimed that said act of 1848 contained in itself any substantive provision for the payment of commutation claims. It is regarded, however, as a clear recognition of the obligation already existing on the part of the United States, by virtue of the act of 1832, to pay such claims; and in this light only is it regarded as authority. If the obligation to pay such claims already existed, then it is clear that an ample appropriation had already been made in the 3d section of the act of 1832 for that purpose, and no further appropriation was necessary.

After the passage of the act of 12th August, 1848, the question of paying commutation was again presented to the executive department of the government, under the new aspect in which that act placed it. The administrator of John M. Galt, who was a surgeon in the State line, and had served to the end of the war, having obtained a judgment against the State of Virginia for commutation, which judgment remained unsatisfied, the claim was presented to the Secretary of the Interior for his allowance, in March, 1849, and by him referred to the Attorney General for his legal opinion. The Attorney General, by his answer of the 27th March, 1849, gave it as his opinion that the acts of March 3d, 1835, and of August 12th, 1848, should be considered in the light of legislative interpretations of the act of 1832: and, as the last mentioned of said acts had been passed since any of his predecessors had decided adversely to a claim of that character, he did not consider himself bound by such prior decisions of his predecessors, made when the question was presented to them under a different aspect. He accordingly gave his opinion in favor of paying the claim, and it was paid.

It was subsequently decided, in another case submitted to the Attorney General for his opinion, that it was not necessary for the claimant to recover a judgment against the State of Virginia, in the first instance. That he might bring his proof of service to the end of the war directly

before the executive department, and the act of 5th July 1832, required the department to decide judicially upon it.

If we have succeeded in answering the objection, that the payment of commutation *in any case* is not authorized by the act of 5th July, 1832, the objection founded on the fact that Commodore Barron was an officer in the State *navy*, remains still to be noticed.

It is admitted that an officer of the navy is entitled to *half pay* under said act, equally with an officer of the State levies, or the land establishment. This could not well be disputed, as the act of 1832 expressly mentions and includes officers of the navy. But it is contended that the State of Virginia is not bound, upon the principles decided by her supreme court of appeals, to pay an officer of her navy who served till the close of the war, commutation in lieu of half pay, as she would be bound in case of an officer performing like services on the land establishment. If this be conceded, then we admit it would necessarily follow that an officer of the navy could have no legal claim to commutation, under the act of 4th July, 1832. But after having given the subject a careful examination, we cannot entertain a doubt that according to the *principles* to be deduced from the whole current of decisions made in half-pay cases by the supreme court of appeals of that State, Virginia is equally bound to pay commutation to an officer of her State navy who served to the close of war, as to an officer who served in like manner in her State line on the land establishment. The argument by which a distinction is endeavored to be made, in this respect, between a navy and a land officer, is based upon the fact that the act of Assembly of 16th December, 1790, which the courts of Virginia have construed to contain a grant of commutation in lieu of half pay, uses only the words "*officers of the State line*," and does not in express terms embrace officers of the *navy*. Our first answer to this argument is, that we do not understand the term "State line" to have been used in the act of 1790 in the strict and limited sense that the argument supposes. The legislature was then speaking of the *State* troops, or forces, in contradistinction to the *continental* troops. The State had originally promised half pay for life to both classes of officers; but as Congress had taken the burthen of the continental officers off her hands, by giving them commutation in lieu of half pay, the legislature was undertaking to put her *State* officers, that is to say, those officers who had not been provided for by Congress (*because they were State officers, and not continental*) upon the same footing. There were *two classes* of officers in the minds of the legislators, who stood upon a different footing. One class was the *continental* officers, who had been already provided for by Congress. The other class, not provided for by Congress, was the *State* officers both of the *land* and *naval* forces, and this class they were about to provide for. They accordingly used the words "*officers of the State line*," a term sufficiently descriptive of officers in the *State* service, to distinguish them from officers in the *continental* service, and sufficiently comprehensive, as we conceive, to embrace all officers in the *State* service to whom half pay had been promised. This construction of the words "State line" does not rest upon an opinion merely. It is sustained by the action of the executive department of the State of Virginia, from a time anterior

to the passage or the act of 1790; and it is expressly recognized by the court of appeals in Markham's case, (1st Leigh, 522). When the legislature of Virginia, in December, 1783, passed a resolution directing "the auditors not to issue any more warrants for half pay to the *officers of the State line*, until the further order of the General Assembly," all warrants to *officers of the navy*, as well as those in the land service, were suspended, and remained suspended, until the prohibition was removed by the act of 1790. And Judge GREEN, in delivering the *decision of the court* in Markham's case, says: "It seems to me that the case of the officers of the navy came within the reason of that resolution, and was consequently embraced in it," although they were not mentioned in the resolution, unless embraced within the terms "*officers of the State line*." He further says, "that resolution being revoked by the act of 1790, as to such *officers of the State line* as came within the description of that act, was also, upon an equitable construction, revoked as to *officers of the navy* of the same description," &c. Here, then, we have an express judicial decision, not only that navy officers *were embraced* within the general terms "*officers of the State line*" where they occur in a resolution upon the subject of half pay, but that they are embraced under these terms *in the very act in question of December 16th, 1790*. But that distinguished Judge, afterwards, in delivering a supplemental opinion in the same case, fell into the singular inconsistency of saying, that the *very same words* in the act of 1790, *for another purpose*, did not embrace navy officers. To show that the words "State line" have always been held by the executive officers of Virginia to embrace navy as well as land troops, as contradistinguished from continental, we append a statement made by JAMES E. HEATH, Esq., who was for many years First Auditor of that State, and to whom, as such, was chiefly committed the execution of the laws relative to half pay and commutation, and who had the custody of the books and records relating to revolutionary service in that State. By that statement it is shown that two distinct classes of troops have always been recognized by the executive departments of the State, to wit: one class; composed jointly of the State officers and soldiers of the *line service* and the *State navy*, constituting together the *State line* as contradistinguished from the "continental line"—their accounts being kept in the same books, and "mixed up promiscuously;" the other class composed of officers and soldiers of the "*continental line*," whose accounts are kept in separate books.

And this construction, which has been given to the words, "*officers of the State line*," in Virginia, is perfectly consistent with a construction given by Congress to similar words occurring in the resolution of Congress of August 24th, 1780. At the 2d session of the 21st Congress, ANN MORTIMER BARRON, daughter and only surviving heir of Lieutenant WILLIAM BARRON, who was an officer of the *continental navy*, and was killed in service in the revolutionary war, applied to Congress for the relief of seven years' half pay, granted by the resolution of the 24th of August, 1780, to the widows or children of *officers of the army*, who had died, or might thereafter die, in the service. Her claim was referred to the Committee on Revolutionary Claims, who reported in favor of its allowance. They say, that, although "no allusion in terms is

made to officers of *the navy*," yet "it may with reason be inferred that individuals engaged in the naval as well as the land service, at that period, were included by the government under one general military head," &c. "It could not have been the intention of Congress to make an unfair and invidious distinction between the widows and orphans of those brave men who fell in defence of their country's rights. (Vide House Reports of Committees, No. 307, 1st Sep., 22d Con.) This report was first made by the committee of the 2d session of the 21st Congress, who reported a bill for the relief of the claimant. The committee of the 1st session of the next Congress reviewed and approved it, and again reported a bill for the same purpose, which passed and became a law.

But, according to our view of the subject, it is perfectly immaterial whether the words *State line*, as they occur in the act of Assembly of 1790, are held to be properly descriptive of the naval forces, or not; for the State of Virginia, by repeated acts of her legislature, passed during the war, had solemnly bound herself, *by contract* with her naval officers, to extend to them the same "*advantages*," "*claims*," and "*emoluments*," as she provided for the officers and soldiers in the land service. In none of the acts of her legislature which have been construed by her courts to extend the grant of half pay for life to officers of the navy, is the term "*half pay*," or any equivalent term, used. It is only by virtue of the *contract* to place them on the same footing as officers in the land service, by the use of such general terms as "*the same advantages*," "*claims*," "*emoluments*," &c., that they are entitled to half pay at all. This is expressly decided by Judge GREEN, in Markham's case (1st Leigh, 823): "I have already noticed that there is no act which *in terms* allowed half pay in any case to any officers of the navy. They were allowed the same privileges, *emoluments*, and *advantages*, as officers of the army; and but for the contemporary construction given to those terms by the act of May, 1783, and the proceedings of the Executive before noticed, I should have thought it extremely doubtful whether those terms included the contingent half pay."

It will be perceived, therefore, that in her contract with her naval officers, Virginia never *specified, in terms*, what the compensation to those officers should be, *but made the compensation which should be given to her officers in the land service, the measure of the compensation to be extended to her naval officers*. Hence, whatever "*emoluments*" she conferred by law upon her officers in the land service, a right to the same, by virtue of a pre-existing contract with her naval officers, vested in them also, whether named in the law or not. To use a homely illustration, we will suppose the case of a man who has several masons employed in building a house. Several carpenters apply to him for work upon the same building, and he tells them to go to work, and they shall have the same compensation, "*the same pay and emoluments*," and the "*same advantages*," as he gives to his masons. Under this contract, would the employer when he came to settle with his hands, be permitted to make a distinction between the masons and the carpenters? And if the carpenters were compelled to sue him, would not the compensation which he had made or bound himself to make to the masons, be adjudged the measure of their damages?

The original act of the Virginia Assembly, (of May, 1779,) promising half-pay for life to her officers, did not embrace officers of the navy, as every one concedes; for it uses the terms "officers of the *army*" commanding "in the *battalions* of this commonwealth," &c., terms clearly descriptive of land forces only.

But in May, 1780, the legislature passed an act for reforming the navy and rendering it more efficient, and as an inducement to competent officers to serve therein, it was enacted "That the said captains, together with the subaltern and all other commissioned officers in the service of the navy, including the master, surgeon, and surgeon's mate, shall be entitled to the same pay and rations, the *same privileges and emoluments*, and rank in the same degree with officers of the like rank belonging to the regiments heretofore raised for the national defence of this State," (10th Hen. St. at large, 298.)

This act has uniformly been decided by the courts of Virginia, to extend the right of half-pay for life to naval officers, although the words half-pay do not occur in it. By certain resolutions which preceded it, however, and which the act was intended to carry out, it is, among other things expressly resolved, that officers in the navy should be entitled to half-pay for life.

Again, by an act of November session, 1781, it is provided "that the officers and seamen of the navy of this State, as they stand arranged by a late regulation, *shall be entitled to the same advantages* as the officers belonging to this State in the land service, agreeable to their respective ranks." (10th Henning, 467.)

Again, at May session, 1782, it was enacted "that the navy officers, sailors, and marines of this State, shall, in all respects, have the same *claims*," "as are allowed to officers and soldiers in the land service." (11th Hen. 85.)

And again, in an act of October session, 1782, it is enacted "That all officers, seamen, and marines, or their representatives, shall be entitled to the same bounty in lands, and *other emoluments*, as the officers and soldiers of the Virginia line, *on continental establishment*." (11th Hen. 162.)

The foregoing are the statutes of Virginia, by virtue of which, as her courts of appeal have repeatedly decided, officers of the navy are entitled to half pay. It will be seen, as we have already remarked, that the word "half pay" no where occurs in any of them, and it is only by virtue of general terms designed to put them upon the *same footing* as officers in the land service, that half pay can be extended to them at all. If then, by virtue of these general terms, a right to *half pay* has vested, because it was one of the *advantages* or *emoluments* extended to officers in the land service, why, upon the same principle has not the right to commutation vested also? Is it not equally with half pay, a *claim*, an *advantage*, and an *emolument*?

The act of May, 1783. (11th Hen. 265,) directing "That the auditors shall, yearly, issue to such of the officers of the state line and navy, as are by law entitled to half pay, their warrants for the same," cannot be classed among the acts *granting* half pay to officers of the navy. It re-

cognizes a previously existing grant, and simply provides for carrying it into execution.

But there is another view of the subject, which, according to the principles of construction adopted by the court of appeals, will show that navy officers were guaranteed the right of commutation by an act long anterior in date to that of December 16, 1790. The course of reasoning by which the court of appeals decided that the act of 1790 granted commutation to officers of the state line who actually served to the end of the war, may be briefly stated in the following syllogistic form: "The act of 1790 granted to officers of the State line who served to the end of the war, the *same compensation of half pay* as was allowed to officers of the continental line. Officers of the continental line were allowed *commutation* as their compensation of half pay. Therefore, the act of 1790 granted to officers of the state line *commutation* also." Now apply the same *principle* of construction to the act of October session, 1782, (11th Hen. 162.) That act provides that all navy officers or their representatives, "shall be entitled to the same bounty in lands and other *emoluments* as officers and soldiers of the Virginia line *on continental establishment.*" Does not the case present a syllogism equally as striking as the one just stated? "The act of 1782 guaranteed to officers of the navy the *same emoluments* as officers of the Virginia line on continental establishment should be entitled to. Officers of the Virginia line on continental establishment were allowed *commutation* as one of the *emoluments* resulting from their service. Therefore, *commutation* was guaranteed to officers of the navy by the act of 1782." Are not the words "same emoluments" as comprehensive as the words "same compensation?"

But it is said that the principle that naval officers are not entitled to commutation, has been expressly decided by the court of appeals in Markham's case. In answer to this we have to say, that the *principles* which, in our view, clearly embrace naval officers within the provisions of the act of 1790, and place them upon precisely the same footing as officers in the land service, is not only clearly deducible from numerous decisions of the court of appeals, made both before and after the decision of Markham's case, but are distinctly recognized by the court in Markham's case itself. It is a *principle* distinctly announced by Judge GREEN in Markham's case, that the words "officers of the state line" as used in the resolution of December, 1783, suspending warrants for half-pay, are comprehensive enough to embrace officers of the navy also, and cause a suspension of their rights. (1st Leigh, page 522.) If this *principle* of construction is to be followed, then the act of 1790, giving commutation to "officers of the state line, must be held to embrace navy officers also. It will not do to say that the *same words*, when employed to take away rights, shall be held to *include* navy officers, but when employed to confer rights, shall be held to *exclude* them. It is further a principle of construction announced by Judge GREEN, on the same page, that even in the act of 1790, the words officers of the state line should be held to include navy officers, for the purpose of reviving their right to half-pay. Surely, if the words embrace navy officers *for one purpose*, the principle carried out requires that they should be held to embrace them for *all purposes* within the purview of the act;

surely it cannot be maintained that the *same identical words*, in the *same act*, can have a *shifting interpretation*, meaning one thing for one purpose, and another thing for another purpose. But again, it is a *principle* uniformly recognized by the court of appeals, and recognized also in Markham's case, that by virtue of repeated acts of assembly passed during the war, navy officers were promised all *advantages* and *emoluments* that should be extended to officers in the land service; and that by virtue of these general promises they became entitled to half-pay. Here, then, is a well established *principle*, which, if carried out, must give to an officer of the navy who served to the end of the war, the same advantages and emoluments as are allowed to an officer in the land service who served to the same extent. If commutation is one of those *advantages* and *emoluments* which belongs to the officer in the land service, it equally belongs to the naval officer, *by the very terms of the contract* made with him.

It is according to the *principles* decided by the court of appeals in half-pay cases, that the executive officers are required to adjust and settle outstanding claims under the act of 5th July, 1832. These *principles*, we apprehend, are to be deduced from the whole current of decisions in such cases, and not from the decision made in any one particular case. If, therefore, it is found that principles clearly deducible from the uniform course of decision in that court lead one way, and the judgment pronounced in a solitary case leads another, which is to be followed? Shall the *principles* uniformly recognized by the court be disregarded, and the *precedent* of a single case be blindly followed, although in that case it may be apparent that the court happened to make a misapplication of its own well settled principles. Upon this point, we quote from one of the Judges of that court, in a half-pay case subsequently decided.

"For my own part, though I heartily concur in the propriety of giving to our adjudications as much uniformity as possible, yet I cannot think a single decision ought to be regarded as a precedent binding upon a succeeding court, which is not satisfied with its reasons, but is convinced that its former decision is not law. For a single decision is rarely taken to express the law, upon any subject whatsoever, nor does it become law until it has received the corroboration of repeated decisions." (*Judge Tucker's opinion in Tatum's case, 9th Leigh, 76*).

If it were perfectly clear that the court had deliberately decided, in a case clearly involving that question, that a naval officer who had served to the end of the war was not entitled to commutation, we will not undertake to say how far the maxim *stare decisis* ought to apply to render that decision binding, although it might appear to conflict with well established principles. But we apprehend Markham's case does not stand before us in that light.

In first place it is worthy of remark, that it is doubtful, to say the least, whether the question as to his right to commutation, as a navy officer, ever properly arose in Markham's case. For nearly two years preceding the close of the war, he was not in "actual service," but a prisoner on parol. So far from being in actual service, he had expressly bound himself not to serve against the enemy while he remained in the

condition. Ought he to have been considered in actual service to the close of the war? If not, then the question as to his right to commutation as a navy officer, was not involved in the case, and the decision of the court upon that point was a mere *obiter dictum*. It is true the court seems to have considered him as remaining in actual service to the close of the war. But if this were an error, it ought not to be made the foundation for sustaining another error. It is certain that the question whether he was entitled to half-pay or commutation was not very material, as the one amounted to very nearly as much as the other. In the decision of the court, as at first announced by Judge GREEN, this question does not appear to have been raised at all. The decision that a navy officer could not be entitled to commutation first appears in a *supplemental opinion* delivered by Judge GREEN, which bears evidence upon its face of having been delivered at a subsequent time to the decision of the court as originally pronounced by the same Judge. The decision of *Lilly's case* must, at least, have intervened. For in *Lilly's case* Judges CARR and COALTER both refer to the decision made by the court in *Markham's case*, (1st Leigh 527 and 542.) And in the supplemental opinion given by Judge GREEN, in *Markham's case*, he refers to the decision made in *Lilly's case*. May it not be reasonably doubted, therefore, whether this supplemental opinion was ever pronounced by him in court, while the case was there pending? His allusion to a case decided subsequently to *Markham's*, would seem to indicate that it was not. At all events, it cannot be denied that this supplemental opinion clearly conflicts with the previous opinion pronounced by him in the same case, upon the point as to officers of the navy being embraced by words "officers of the state line" in the act of 1790.

But it is worthy of particular remark, that in *Lilly's case*, decided subsequently to *Markham's*, Judges CARR and COALTER both distinctly declared that officers of the navy stand upon the same ground, and are equally entitled with the officers of the state line; and Judge COALTER says that the court so decided in *Markham's case*. Judge CARR, in delivering the decision of the court in *Lilly's case*, (1st Leigh, 527,) in the second sentence says, "I shall take it for granted that he stands on the same ground with an officer of the state line." And Judge COALTER, (page 542) says, "It is true, the officers of the navy are not expressly mentioned in this act, [the act of 1779;] but many subsequent acts, either to be taken as explanatory of this act, or as *substantive provisions* extend the same benefit to the navy, as has been decided by us in *Markham's case*; so that officers of the navy are *equally entitled* with officers of the state line."

But there is another view of *Lilly's case*, which appears to us conclusive of the fact that the court of appeals in deciding it recognized the doctrine, that if he served to the close of the war he would be entitled to commutation. Captain Lilly, was an officer of the state navy, and it was admitted by all the judges that he had served till near the close of the war. It was a point, however, much discussed by judges who decided the case, whether in point of fact he had actually served to the end of the war, or became supernumerary before its close. Upon this question of fact the judges did not all agree, although a majority of them were of

the opinion that he became a supernumerary near the close of the war, and so did not actually serve to the end thereof. Now, as the court decided in that very case, that a supernumerary, so far as the claim to *half pay* merely was considered, was equally entitled with an officer who served to the close of the war, there could have been no conceivable reason for going into a discussion of the question whether Captain Lilly served to the end of the war or became supernumerary, unless service to the end of the war would entitle him to commutation. If, as a navy officer, he was not entitled to commutation, even if he had served to the end of the war, the question whether he did so serve, or became supernumerary was a perfectly *immaterial* question. The one state of fact would have equally with the other made good his title to *half pay* merely.

But it is still further worthy of remark that the attention of Congress was particularly called to the case of *Lilly*, as reported in 1st *Leigh* when the act of 5th July, 1832, was pending before that body. The opinion of Judge COALTER in that case was printed at length, and accompanied the memorial of the commissioner on behalf of Virginia, who was prosecuting her claim before Congress. In that opinion, as we have already shown, it is expressly stated that the court had decided in *Markham's* case, that an officer of the navy stood upon the same footing, and was equally entitled with an officer of the state line. But this is not all. *Lilly's* case, as reported in the 1st of *Leigh*, is an *express and positive authority* for allowing commutation to a navy officer. In the statement of the case, (page 526,) it is said:

“In 1826, John Chowning, his administrator, presented a claim against the commonwealth, for Capt. *Lilly's* half pay for life, or for the commutation of five years' full pay, to the auditor, who rejected it. The claimant appealed to the circuit court of *Henrico* county, which reversed the auditor's decision, and ordered him to issue a warrant on the treasury for the amount of five years' full pay, with interest from 22d April, 1783. From this judgment the Attorney General took an appeal, for the commonwealth, to this court.”

And then, after giving the arguments of counsel, and opinions of the judges, it is stated in the conclusion, that the *judgment was* “*affirmed.*” It is indeed now said that this was an error in the report—that the judgment in the court below, which was affirmed, was in fact a judgment for half pay only. But the error was never corrected, until the report of *Marston's* case, in 9th *Leigh*. In a note to that case, the error is noticed.

There still remains one other objection made by the majority of the committee to the allowance of commutation to Commodore Barron's administrator. It is, that the recovery of a judgment for half pay against the State of Virginia, and the satisfaction thereof, constitute a bar to any claim against the United States, under the act of 1832.

The court of appeals of Virginia, as well as the circuit courts, in numerous instances, have expressly decided, that the receipt of half pay, especially by an executor or administrator, is no bar to a suit for *commutation*. This point was expressly decided in the court of appeals in the cases of *George Walls* and *Thomas V. Dalton*, in both of which cases judgments were given for commutation with interest, after de-

ducting the amount of half pay which had been already received. Similar judgments have been rendered in a number of other cases, either by the court of appeals, or the circuit courts. If, then, the government, under the act of 1832, is liable to pay all claims for which the State of Virginia would be bound, it is very clear that she could not protect herself upon the ground that half pay had been received; as, according to the repeated decisions of her courts, Virginia could not avail herself of that defence.

But if it is claimed that the receipt of half pay is a bar because of the peculiar words of the act of 1832, which requires the Secretary of the Treasury to settle and adjust only such such outstanding claims as "have not been paid or prosecuted to judgment against the State of Virginia," we have only to say, in reply, that a different construction was given soon after the passage of the act of 1832, by the Secretary of the Treasury, which has been since followed by the various executive officers to whom the execution of the act of 1832 has been committed. Among the claims which had been "paid" by Virginia previous to the passage of the act of 1832, and for which she was reimbursed by the 1st section of third act, were the cases of a number of persons who had received commutation of five years' full pay, but without interest, by virtue of acts of the Virginia Legislature. In all such cases, if the claimant lived more than ten years after the close of the war, it will be perceived that half-pay for life would amount to more than the commutation so received. It is shown by the report of the majority of the committee, that even prior to the passage of the act of 3rd March, 1835, the Secretary of the Treasury had adjusted and settled claims of this character, and paid the *balance of the half-pay for life*, after deducting the commutation which had been received. Yet these claims came as clearly within the class which had been "paid by the State of Virginia," as did the case of Commodore Barron. If, therefore, the Secretary of the Interior erred in not rejecting the claim on this ground, the error consisted in following precedents which had been long established by his predecessors.

RICHMOND,
June 22nd, 1850

MY DEAR SIR: It gives me pleasure to answer the inquiry in yours of the 20th inst., which I am able to do very decidedly. According to the usage and understanding of the First Auditor's office, of which, when I was at its head, the terms "State line" embraced the navy as well as the land troops in contradistinction to the continental troops. There are in that office two books, or military rolls, one containing the names of all the officers and soldiers of the continental line who received depreciation, and another containing the names of the officers and soldiers of the land service and State navy, mixed up promiscuously, and constituting together the *State line* in contradistinction to the *continental* line. They also received depreciation. I do not remember

a single case of a naval officer or sailor appearing on the continental roll. That branch of the service belonged exclusively to the State and received pay, depreciation, and bounty as in the State service.

Yours very truly,
JAS. E. HEATH.

JOSEPH SEGAR, Esq.

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THE CHICKASAW CASE.

THE undersigned having come to a widely different conclusion of fact and law on this branch of the case from that reported by the majority of the committee, deem it proper to refer with some particularity to the evidence touching the contested facts, and to briefly consider the points of law in which they differ from the opinion of the majority, and concur with that expressed by the Attorney General.

And it is proper here to remark, that this case was not considered and decided by the Secretary of the Interior, as would be inferred from the report of the majority, but was referred by him to the Attorney General, in his letter of Nov. 1st, 1849, which is as follows:

“DEPARTMENT OF THE INTERIOR.

Washington, Nov. 1, 1849.

SIR: I have the honor to submit herewith papers in relation to the claims of the Chickasaw nation against the United States, and that of Messrs. Corcoran & Riggs, as assignees of Hon. Wm. M. Gwin *vs.* the Chickasaw nation, and to request your opinion upon the points indicated in the accompanying state of the case and argument.

I am, with much respect,

your obedient servant,

T. EWING, *Secretary.*

HON. R. JOHNSON,
Attorney General.”

All the papers in the case were referred with this letter, and on the 3d of January, 1850, the opinion of the Attorney General was communicated as follows—

“ATTORNEY GENERAL'S OFFICE.

Washington, 3d. Jan., 1850.

SIR: In the cases of the claim of the Chickasaw nation against the United States, and of Messrs. Corcoran & Riggs, as assignees of Wm. M. Gwin, submitted by you to this office, I have formed an opinion after careful consideration, which my other engagements prevent my doing more at this time than barely stating. Should it be your wish, I will avail myself of the very first leisure to assign my reasons.

1st. I am of opinion that the account of the nation is to be considered now as having been properly opened and re-stated, and that the balance found due by the accounting officers, of \$112,842, is properly

chargeable to the appropriation for the subsistence and removal of Indians.

2d. That the last contract with Wm. M. Gwin, assigned to Corcoran & Riggs, is valid, and that out of the fund payable to the Chickasaws under the first head, whatever balance is due under that contract should be paid to Corcoran & Riggs.

With regard,
your obedient servt.,
REVERDY JOHNSON.

HON. THOS. EWING."

Which opinion was sent to the proper accounting officers, by the following note:

"DEPARTMENT OF THE INTERIOR.
January 4th, 1850.

The account will be stated and the payment made in accordance with the Attorney General's opinion within.

T. EWING, *Secretary.*"

Subsequently to this, certain persons, counsel for the Chickasaws, objected to the decision of the Attorney General, and suggested that they had not been heard, or all their evidence presented. On this representation, the Secretary of the Interior a second time referred the matter to the Attorney General, and requested him to re-consider it, as will be seen by the following note:

"DEPARTMENT OF THE INTERIOR.
January 8th, 1850.

DEAR SIR: On a suggestion by Mr. Epperson, agent for the Chickasaws, that some important papers having relation to the claim of Gwin, were not before you at the time of your examination of the case, and he also expressing a desire to be heard on the subject, I have thought proper to request you to re-examine the case, and consider such additional evidence and arguments as he may present you.

I am, very truly, yours,
T. EWING.

HON. REVERDY JOHNSON,
Attorney General."

This re-consideration was had, and the first opinion of the Attorney General re-affirmed, as will appear by the following letter:

"ATTORNEY GENERAL'S OFFICE.
7th March, 1850.

SIR: In compliance with your request of the 8th Jany. last, I have re-examined the cases of the Chickasaw nation against the United States, and of Corcoran & Riggs, assignees of Wm. M. Gwin, upon which I gave

you an opinion on the 3d of that month, and have most carefully considered the additional evidence and the arguments of the counsel for the parties concerned, and see no reason to change the opinion referred to.

Indeed the effect of the recent evidence is to satisfy me more fully that that opinion was right, and I therefore again advise you accordingly.

The press of business upon me still continuing, I must wait until the final adjournment of the supreme court, before I can give in detail the reasons which have led me to the conclusion to which I have come; should you then desire it, they will be submitted with pleasure.

I have the honor to be,

with great regard,

your obedient servt.,

REVERDY JOHNSON.

HON. THOMAS EWING,
Secretary of the Interior."

This decision was, as a matter of course, again sent by the Secretary of the Interior to the accounting officers, and by them carried into effect.

We refer to this evidence to meet and repel the intimation on the part of the majority, that the Secretary of the Interior acted without care and on insufficient authority and consideration in allowing this claim. Such appears clearly not to have been the case—his every step in the matter is marked with considerate caution. We therefore do not hesitate to pronounce the committee in an error in their general view of the conduct and decision in the case. The facts involved in the case, as presented to the Attorney General and the law, arising out of those facts, as pronounced by him, require a more extended examination, and are, indeed, more fit for the decision of a law officer or a court of justice, than of a committee of the House of Representatives, or of the House itself.

The claim of the Chickasaws arose out of an alleged misapplication of their funds, and an enormous charge against them by the accounting officers of the Government in the year 1837. The subject was for some time under consideration, and the preliminary discussions are not important to be now noticed. The subject was brought before Mr. Walker, then Secretary of the Treasury, in the latter part of the summer of 1846, who, on the 4th of September, gave his views upon it in the following letter:—

“TREASURY DEPARTMENT,
September 4th, 1846.

SIR: I have, at your request, examined with great care the question submitted by you to me as to your right, and that of the Second Comptroller to correct the errors set forth in the paper transmitted by you to me, and now returned.

My views as to your right and duty in this case are embodied in the opinion of the Supreme court of the United States, as given in the case of the United States *vs.* The Bank of the Metropolis, 15 Peters, 401.

In these views of the court in that case, as to newly discovered evidence, after a conference with the Attorney General, (and a submission to him of the above mentioned paper,) he fully concurs.

On the subject of correcting errors like this in public accounts, the court say in that case, 'This right is an incident of reviewing a predecessor's decision, extends to mistakes in matters of fact arising from errors in calculation, and to cases of rejected claims in which material testimony is afterwards discovered and produced.'

You will then ascertain the date of the original entry in your books of the charge now alleged to be erroneous, and compare it with the date of the official statements of Messrs. Armstrong, Hitchcock and Upshaw.

If the facts contained in those statements were not before the accounting officers when this original entry was made, and constitute, in the language of the supreme court, 'material testimony afterwards discovered and produced,' it will be your duty to make such decision as should have been made if these facts has been before the officers at the date of the original entry. You were not in office at the date of this entry, and it is due to the Second Comptroller, whose ability and accuracy are so well known, to state that any error which may appear to have been made in the original entry in this case, will be found to have occurred under circumstances which can attach no blame to him whatever.

I herewith also transmit to you a report to me of the 2d instant, of the First Comptroller of the Treasury, made in answer to a call made by me upon him for his views on this subject.

Very respectfully,

your obedient servant,

R. J. WALKER,

Secretary of the Treasury.

JOHN M. McCALLA, Esq.,
Second Auditor."

On the 5th of the same month, the account was restated in the second auditor's office according to the principles prescribed by the secretary of the Treasury as above, on which there appeared a balance due the Chickasaws of \$112,042 99. And there were issued with it, and forwarded to the office of the Second Comptroller, the following paper:—

" APPROPRIATION.

"No. 3,798.—Removal and subsistence of Indians, . \$112,042 99"

" TREASURY DEPARTMENT,
Second Auditor's Office,
September 5th, 1846.

I certify that there is due from the United States to the Chickasaw nation the sum of one hundred and twelve thousand and forty-two dollars and ninety-nine cents, being the amount of their account for moneys erroneously paid by the United States out of the Chickasaw fund to sundry persons for provisions purchased at Cincinnati in 1837.

As it appears there is but \$58,124 24 to the credit of the above appropriation, the secretary of war will please issue a requisition for that

amount in favor of the 'Chickasaw nation,' to be carried by counter requisition to the credit of appropriation, 'carrying into effect treaties with the Chickasaws, per act 20th April 1836; and that hereafter, or soon as funds to the amount of \$53,918 85 shall come to the credit of 'removal and subsistence of Indians,' a similar transfer will be made by counter requisition, as appears from the statement of vouchers herewith transmitted for the decision of the Second Comptroller thereon.

JOHN M. McCALLA,
Second Auditor.

To the Second Comptroller of the Treasury."

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above this seventh day of September, 1846.

ALBION K. PARRIS,
Second Comptroller.

This paper, admitted and certified by the Second Comptroller as above, is accompanied with an explanatory letter addressed by the Chief Clerk to that officer, which, for a full understanding of the case, the undersigned set forth below.

"SECOND COMPTROLLER'S OFFICE.
September 7th, 1846.

Remarks on the account of the Chickasaw nation as presented by their agent, Dr. Gwin, and stated by the Second Auditor :

By the treaty of October 20th, 1832 (act 10), the Chickasaw nation agreed to give the President timely notice of their intention to leave the country then occupied by them, and it was stipulated that the President should provide the necessary funds and means for their transportation, and one year's provision after reaching their new homes, to be paid for out of the proceeds of sales of their ceded lands. They gave such notice, dated February 17, 1837, received at Washington; March 22nd, 1837, and requested, among other things, that a superintendent should be appointed to ascertain the number disposed to emigrate. The order of the Commissioner of Indian Affairs to Lieutenant J. D. Learight, to repair to Cincinnati, and make contracts for supplying rations to Chickasaw emigrants, was dated March 11th, 1837, apparently without any order from the President, and certainly without the preliminary notice from the Chickasaw's having been received at the department; nor does it appear that any measures were taken previously to making the contracts for ascertaining the number desiring to emigrate. These facts are adverted to by Colonel Hitchcock in his report, page 34.

On the provisions thus purchased, in obedience to the letter of the Commissioner of Indian Affairs, there was a final loss of \$112,042 99 after deducting the amount issued and sold. The main fact that these provisions were not purchased under and in conformity to a requisition,

transmitted by the Chickasaws to the President in pursuance of treaty stipulations, is established by the date of the Commissioner's letter (March 11th, 1837), ordering the contracts to be made, and that of the reception of the notice given to the President by the chiefs of the Chickasaw nation, viz., the 22nd March, 1837, and the facts that the Commissioner appears to have acted independently of the President, and without any regard to the suggestions of the chiefs as to the appointment of a superintendent, and an enumeration of those intending to emigrate. The amount of the expenditure, as well as the items in this account with which the Chickasaw band seems justly chargeable for issues and sales, and with which it has been debited, are taken from the report of Colonel Hitchcock, document 271, 3rd session, 27th Congress, and are founded on vouchers, as I understand, which have been acted on by the accounting officers, and are doubtless correct. After deducting these items, the balance which seems to have been improperly chargeable to the Chickasaws is, as before stated, \$112,042 99; but as there is no appropriate fund from which so large a sum can be drawn, a requisition for the whole amount can not issue at present. The general appropriation for removal and subsistence of Indians has to its credit only about \$58,000, according to a statement from the First Comptroller.

Respectfully submitted,

J. M. BRADHEAD,

Chief Clerk.

Honorable A. K. PARRIS,
Second Comptroller."

The above letters show very fully the opinion and decision of the accounting officers of the Treasury, as to the validity of the claim, and that it was to be paid out of the fund *for the removal and subsistence of Indians*. Indeed, it is difficult to apprehend how the propriety of paying it out of that fund could be questioned, when we once found that the claim was just, and see out of what it originated.

A sum of money paid to the Indian officer for provisions purchased for the removal and subsistence of Indians was improperly charged to the Chickasaws, and paid out of their funds. When the account was set right, it was charged back to its proper appropriation, and the Chickasaw fund was credited with it. It is clear, therefore, that the payment must be made out of the appropriation to which it should have been originally charged, namely, the fund for the "removal and subsistence of Indians," and to this fund the accounting officers in 1846 placed it. The Attorney General was of opinion that they were right, and we concur in that opinion, and consequently depart entirely from the opinion expressed on that point by a majority of the Committee.

On the 8th of September, 1846, the Second Auditor certified that William M. Guin was entitled to one-half of the above sum, on statement and vouchers therewith transmitted to the Second Comptroller, which certificate is as follows,—

" APPROPRIATION.

No. 400.—Carrying into effect treaties with the Chickasaws, per act 20th April, 1836. \$56,021 49.

TREASURY DEPARTMENT,
Second Auditor's Office, September 8, 1846.

I certify that there is due from the United States to Wm. M. Guin the sum of fifty six thousand and twenty-one dollars and forty nine cents, being the amount of his account for one-half of what has been found due to the Chickasaws, on account of provisions purchased of sundry persons at Cincinnati by Lieutenant Learight in 1837, the same having been erroneously paid by the United States out of the Chickasaw fund ; as per articles of agreement with said Guin and the chiefs and headmen of the Chickasaw nation, herewith—

Whole amount found due to the Chickasaws	\$112,042 99
One-half of which amounts to	56,021 49

To be paid Wm. M. Gwin, present, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

JOHN M. McCALLA,
Second Auditor.

To the Second Comptroller of the Treasury."

On the ninth of the same month the certificate was refused by the Second Comptroller to the Commissioner of Indian Affairs for his administrative examination thereof, from which time until the claim was presented to the Secretary of the Interior, in 1849, there appears nothing of record on the subject in any of the departments. The reference to the Commissioner of Indian Affairs seems to have been irregular, according to the opinion of the Secretary of War, expressed in his letter of the 18th October, 1845, from which the following is an extract:—

"General McCalla, the Second Auditor, has addressed a request to me to express my views on the subject. I think that this account so far as it has been acted upon, having passed the department, and there being no power here to do more than to give the vouchers and accounts an 'administrative examination'—not a settlement. I have no official authority in the premises ; but as an expression of my individual views, I can only say that if the accounting officers of the Treasury are satisfied that an error has been committed, it ought to be corrected, unless there is a legal prohibition against opening and re-considering the matter.

Whether such a prohibition is imposed by the 4th section of the law of March 3d, 1845, is a question which belongs exclusively to the accounting officers of the Treasury to decide. In regard to this question it is not my duty nor am I prepared to express an opinion.

W. L. MARCY."

There is no evidence among the records of the department to sustain the finding of the Committee that this claim was rejected by the proper officer, and re-opened and allowed by the Secretary of the Interior—indeed the finding is directly contrary to the recorded fact. We have already shown by copies from the records of the Treasury and War De-

partments that in 1846, when this case was considered, every accounting officer who acted upon it sustained it to the fullest extent, and that the Secretary of the Treasury and the Secretary of War sustained it so far as it was properly before them. From that time down to the summer of 1849 it appears also that no action whatever was had upon it. If the Secretary of War refused to pay it out of the appropriation for the removal &c. of Indians, no trace of such refusal appears, either in the War Department, or in the office of the Commissioner of Indian Affairs, and we know of no other evidence than the records or files themselves, to prove the act of an executive officer binding on himself or his successor. The Commissioner of Indian Affairs, it is true, says in his report to the Secretary of the Interior, that the Secretary of War did so refuse; but this is mere hearsay evidence, to prove what can alone be proved by the record. The Committee also err in their statement that the Commissioner of Indian Affairs ever decided this case. It remained in his office without any action whatever upon it, so far as the records show, until he was called upon for a report preparatory to a decision by the Secretary of the Interior, or a reference to the Attorney General, which report he made, but no decision. Indeed, the Secretary of War had determined, though contrary to the opinion of the Second Comptroller that the case could not properly come before the Commissioner of Indian Affairs for his administrative examination, but must rest upon the decision of the accounting officers of the Treasury.

While this case remained, during the long interval above named, without consideration or action, the original contract between the Chickasaws and Dr. Gwin was lost in the Indian Office, as appears by the evidence, and especially the following letter:—

“ TREASURY DEPARTMENT,
Second Comptroller's Office,
January 5th, 1850.

SIR: On the 9th of Sept., 1846, I transmitted to the Commissioner of Indian Affairs a letter of that date, a copy of which is herewith enclosed. I also transmitted to the Commissioner the paper referred to in that letter for his proper administrative examination.

Among the papers was one purporting to be an agreement between Wm. M. Gwin, and the Chickasaw nation.

To that communication I have not been favored with an answer, nor have the papers been returned to me from the Indian officer.

I have now respectfully to request that the administrative examination may be had on the claim mentioned in said letter, and especially that the accounting officers of the Treasury before whom the said claims is pending may be officially informed if the paper purporting to be a contract as above mentioned was executed by persons having authority to bind the Chickasaw nation in such a contract, and if the same paper has been sanctioned or is now sanctioned as a contract binding on said nation by the department having supervision of Indian affairs.

ORLANDO BROWN, ESQ.
Commissioner of Indian Affairs.

I am, very respectfully, yours,
ALBION K. PARRIS, *Comptroller.*

In this condition the claim stood when presented to the Secretary of the Interior.

1st. The claim of the Chickasaws to the \$112,042 99 had been allowed by the Auditor and Comptroller, with the concurrence of the Secretary of the Treasury and the Secretary of War.

2nd. They had also decided that the payment was to be made out of the appropriation for the "*removal and subsistence of Indians.*"

3rd. Dr. Gwin's claim to the one-half the sum had been allowed by the Second Auditor, and a certificate issued therefor.

4th. The case had been referred by the Second Comptroller to the Commissioner of Indian Affairs for "administrative examination," which the Secretary of War, as shown in the above letter, thought unnecessary and irregular, it being in his opinion a proper subject for the examination and final adjustment of the accounting officers of the treasury, by whom it was already settled and certified. In this confused condition the matter remained until the attention of the Secretary of the Interior was called to it in 1849.

There is abundant evidence among the papers proving the existence and contents of the contract between the Chickasaw nation and Dr. Gwin, referred to in the above letter—among the rest the certificate signed by the Second Auditor on the 8th of September, 1846, just before the papers were sent to the Indian Office, is conclusive as to both. The Auditor therein certifies "That there is due from the United States to Wm. M. Gwin the sum of fifty-six thousand and twenty-one dollars and forty-nine cents, being the amount of his account for one-half of what has been found due to the Chickasaws on account of provisions purchased of sundry persons at Cincinnati, by Lieutenant Searight, in 1837, the same having been erroneously paid by the United States out of the Chickasaw fund; as per articles of agreement with said Gwin and the Chiefs and head-men of the Chickasaw nation, herewith,

Whole amount found due to the Chickasaws	\$112,042 99
One-half of which amounts to	56,021 49

which, together with the production of the copy and affidavit and proof of the loss of the original, would have been sufficient evidence of the contents of the paper in a court of justice.

The execution of the original paper, the valuable consideration for which it was given, the long continued and meritorious services of Dr. Gwin, for which this was the compensation, are abundantly shown by papers in the possession of the committee, but time and the pressure of other duties will not allow the undersigned to collate and present them. They are, however, fully collated and set forth in a letter from Dr. Gwin to the chairman of the select committee, which the undersigned append to their report, and make it a part thereof.

SAM'L. F. VINTON.
DAVID OUTLAW.
JULIUS ROCKWELL.
WM. J ALSTON.

CHICKASAW CASE.

(COPY.)

GWIN'S LETTER.

Upon an examination of the papers filed during my absence in California, in the case of the Chickasaw claim for provisions purchased at Cincinnati, and improperly charged to their fund, I find that various assaults have been made upon me, not only false and unfounded, but wholly unsupported by evidence, exhibiting a spirit of reckless mendacity on the part of those who made them, which caused them frequently to contradict themselves. Thus, the main charge, that the contract and power of attorney, upon which this money was drawn, was not genuine, is followed in quick succession by another accusation contradictory of the first, namely—the submission of testimony proving the execution of the instrument, but attempting to show that it was signed several weeks subsequent to the period of its actual execution. Other charges are presented, not only refuted by the proof, but positively contradicted by the actual records of the department. Before reviewing all the charges and demonstrating their falsehood, it will best elucidate the transaction to refer first to the facts in the progress of the case. On the 29th of August, 1846, I presented an argument, marked A, to which your attention is specially directed, addressed to the Second Auditor of the Treasury, in which will be found a narration of my proceedings in this case up to that date, together with the action thereon of the various officers and departments of the government. This document also contained demonstrative proof of the justice of the claim of the Chickasaws, and the propriety of paying the same. It will be observed in reference to that paper, that up to that date, neither by the Secretary of War, nor by the Secretary of the Treasury, nor by the Attorney-General, nor by any of the accounting officers of the government, had any objection been made to the correction of the error in the accounts of the Chickasaws, and the consequent payment of this claim, except the prohibition of the correction of such error as alleged by the 4th section of the act of the 3rd of March, 1845. When it was first presented by me on the 7th of April, 1845, I was totally unconscious of the passage of that act. It was, however, known to Mr. Walker, then Secretary of the Treasury, who, as a Senator of the United States, had supported it a few weeks previously, and it appears by document A that this difficulty was first suggested by him to the accounting officers. Upon an examination of the law, I did not consider it applicable to this case, inasmuch as the account of the

Chickasaws was a continuing account, and not then closed on the books of the treasury. Under these circumstances I requested the Second Auditor to take the opinion of the Attorney General of the United States as to the true construction of that statute, so far as regards its application to this case. This was accordingly done, when the Attorney General decided, on the 26th of April, 1845, that this act was applicable to this case, and interdicted the correction of the error. It is plain, however, on reference to that opinion, and to document A, that the Attorney General did by irresistible inference admit that this error did exist, and but for this act might be corrected. It is manifest, by reference to document A, that on the 26th of April, 1845, the Secretary of the Treasury, the Secretary of War, the Attorney General, and the accounting officers of the treasury, did believe that this error might be corrected, but for the interdiction of the act 3rd March, 1845. I will only further say at present, that on reference to document A it will appear this identical question had been settled in favor of the right to correct this error by the usages of the government in like cases, by repeated decisions of Attorney Generals Wirt, Taney, and Butler, and finally by the solemn and unanimous adjudication of the Supreme Court of the United States, upon the very point in controversy (see 15th Peters, 400 and 401). In that case the court decided that "this right, in an incumbent, of reviewing a predecessor's decision, extends to mistakes in matters of fact, arising from errors in calculation, and to cases of rejected claims in which material testimony is afterwards discovered and produced."

After the decision of the Attorney General of the 26th of April, 1845, interposing the prohibition of the act of the 3rd March, 1845, I abandoned for the time being the prosecution of this claim before the department. So unjust was the operation of this act, that Congress at its very next session, to wit, on the 10th of August, 1846, repealed it. By this repealing act Congress removed the only prohibition against the opening of accounts and correction of errors in cases like this, restored and intended to restore the former practice of the government, as indicated in the opinions and decisions before quoted. The only interdiction being now removed, I applied to the Second Auditor for the payment of the claim as set forth in document A. In that document I quoted his letter of the 15th of April, 1845, admitting the error committed in this case, and also the letter of the Secretary of War of the 18th of April, 1845, declaring that, in the absence of the interdiction of the act before referred to, "if the accounting officers of the treasury are satisfied that an error had been committed, it ought to be corrected." The Second Auditor, instead of proceeding as I thought he should have done, under his letter of the 10th of April, 1845, to correct this error, asked the views of the Secretary of the Treasury, as the head of the department, and trustee by law of the Chickasaw fund; whereupon the Secretary made the following endorsement upon my argument (document A), of the 29th of August, 1846—"The Second Auditor has called for my views in this case. The First Comptroller is requested to report to me the practice of his office as to correcting errors in cases like this, and his opinion, how, if any way, under such usage, the correction is to be made.

(Signed)

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

August 31st, 1846.

Upon this reference, an opinion was given by the First Comptroller on the 2d September, 1846, as per document B. In that opinion, he reviewed the practice of the government, showing most conclusively, by an uninterrupted series of decisions, that if the facts were as stated in my letter of the 29th of August, the error ought to be corrected, and designating the mode in which that correction should be made, viz., by charging this item, not, as had erroneously been done, to the Chickasaws, but to the appropriation made by Congress for the removal "and subsistence of Indians." Upon the receipt of this letter, the Secretary, in his to the Second Auditor, under date of the 4th of September, 1846, communicated his views on the subject. That officer, as appears by that communication, marked C, declined deciding the facts of the case, leaving them to the adjudication of the Second Auditor and Second Comptroller, but as regards the law, he quotes and affirms the decision of the Supreme Court of the United States, as given in 15 Peters, page 401, leaving the accounting officers to decide how far the decision in that case would bear upon the correction of this error. In this decision of the Supreme Court of the United States, it appears by that communication that the Attorney General also fully concurred. The law thus being clearly ascertained, and in fact settled by the paramount authority of a solemn and unanimous adjudication of the Supreme Court of the United States, the Second Auditor took up the facts of the case, and decided in favor of the claim, on the 5th of September, 1846. This decision was transmitted to the Second Comptroller, for his examination, who affirmed and sanctioned the same, as follows:—

"SECOND COMPTROLLER'S OFFICE.

I admit and certify the above, this seventh day of September, 1846."
(Signed)

ALBION K. PARRIS,
Second Comptroller."

Before acting on the case, the Second Comptroller referred the decision of the Second Auditor to his chief clerk, who made an able report (see document C,) concurring in the decision of the Second Auditor. It is presumed that this report of his chief clerk was called for by the Second Comptroller, from the fact that this error had been committed in the absence of the testimony by that officer himself. Let us here recapitulate the facts. We find the Second Auditor, in his letter to the Secretary of War, of the 15th April, 1845, acknowledging the error committed in this case. Upon that letter and acknowledgment, we find the Secretary of War, on the 18th of April, 1845, declaring, that in the absence of the prohibition of the act of the 3rd March, 1845, "that if the accounting officers of the treasury are satisfied that an error has been committed, it ought to be corrected." We find the law of the case settled by a solemn adjudication of the Supreme Court of the United States, concurred in by the Secretary of the Treasury and Attorney General. We find the uniform and uninterrupted practice of the government in perfect accordance with that adjudication, set forth in the opinion of the late First Comptroller, Mr. McCulloch. We find then the final decision in favor of the claim by the late Second Auditor, Mr. McCalla. This is followed by the favorable report of Mr. Broadhead, chief clerk of the Second Comptroller, and the final favorable adjudication of Judge Parris, the Second Comptroller himself.

Thus, after mature deliberation and investigation, from April, 1845, to September, 1846, we find the final favorable adjudication of this case by the proper accounting officers of the treasury, to whom, according to law and the letter before quoted of the Secretary of War, of the 18th April, 1845, it exclusively belonged.

The following is a copy of the Second Auditor's decision of the 5th of September, 1846, confirmed by the Second Comptroller of the 7th of same month:

"310 Reg'r, 9 April, 1850.

"APPROPRIATION.

No. 3798. Removal and subsistence of Indians, \$112,042 99."

TREASURY DEPARTMENT,
Second Auditor's Office,
 Sept. 5, 1846.

I certify that there is due from the United States to the Chickasaw nation the sum of one hundred and twelve thousand and forty-two dollars and ninety-nine cents, being the amount of their account for moneys erroneously paid by the United States, out of the Chickasaw fund, to sundry persons for provisions purchased at Cincinnati in 1837.

As it appears there is but \$56,124 14 to the credit of the above appropriation, the Secretary of War will please issue a requisition for the amount in favor of the "Chickasaw nation," to be carried by counter requisition to the credit of appropriation, "carrying into effect treaties with the Chickasaws, per act 20th April, 1836," and that hereafter, as soon as funds to the amount of \$53,918 85 shall come to the credit of "removal and subsistence of Indians," a similar transfer will be made by counter requisition, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

JNO. M. M'CALLA,
Second Auditor.

To the SECOND COMPTROLLER OF THE TREASURY.

SECOND COMPTROLLER'S OFFICE,

I admit and certify the above, this seventh day of September, 1846.

ALBION K. PARRIS,
Second Comptroller.

This decision of the Second Auditor and Second Comptroller is in precise accordance with the elaborate opinion before referred to of the First Comptroller, of the 2d September, 1846, and with the decision of the Supreme Court of the United States, in 15th Peters, and with the practice of the government, and the decision of every Attorney General before whom such a question was brought; and its justice and propriety has been irrefutably demonstrated in my argument before referred to, (Exhibit A.) But I contend that the decision of the Second Auditor and

Second Comptroller, before quoted, is final and conclusive, and subject to correction and revision by no one but themselves, upon discovery by them of new testimony, or of error on the face of the account, as pointed out in the case before cited in 15th Peters.

This decision of the Second Auditor and Second Comptroller declared the amount due by the United States to the Chickasaws as set forth by them, and also the fund out of which, as has been done, it should be paid.

The decision of these officers was final and conclusive, and such was the opinion of Governor Marcy, from his letter of the 18th April, 1845, in which he expressly declares he has no official authority in the matter, and that the correction of the error belongs exclusively to the accounting officers of the treasury, with the further expression of his individual opinion, that unless prohibited by the act of 3d March, 1845, subsequently repealed, it is their duty, if it exists, to correct such error. This opinion of Governor Marcy, as to the exclusive power of the accounting officers to decide this question, is confirmed by the act of Congress of the 3d March, 1817, and opinions of Attorney Generals Wirt and Taney, based upon that act. Attorney General Wirt, on the 20th October, 1823, (page 473 Opinions of Attorney Generals,) commenting on the act of 3d March, 1817, declares, "Thus, in every instance, the decision of the Comptroller is declared to be *final*, and it is manifest that the law contemplates no farther examination by any officer after such decision." And he further adds (page 474) "My opinion is that the settlement made of the accounts of individuals by the accounting officers appointed by law, is final and conclusive, so far as the executive department is concerned."

Attorney General Taney, on the 5th of April, 1832, also commenting upon these laws, and particularly that of the 3d of March, 1817, says, (page 872,) "The general laws upon that subject all seem to regard the decision of the Comptroller as final, and requires the executive branch of the government to act upon it accordingly."

"The act of 3d March, 1817, which established the present mode of settling accounts, and under which the account in question has been adjusted, directs the Third Auditor to certify the balance and transmit the account with the vouchers to the Second Comptroller for his decision thereon. In the fifth section of this law, the Auditor is directed to receive from the Comptroller the accounts which have been *finally adjusted*, and to preserve them with the vouchers and certificates; and in the ninth section, the Comptroller is directed to certify the balances to the Secretary of the department in which the expedition has occurred."

Such was the opinion of the learned Attorney General, Mr. Taney, given a few years before he became Chief Justice of the Supreme Court of the United States.

The proper accounting officers, then, had performed their duty, and nothing remained but the requisition of the Secretary of War, which was purely a ministerial act. The account had been "*finally adjusted*" by the accounting officers appointed by law, and no other officer whatever had any power to disturb or set aside their adjustment, nor did any one ever attempt to set it aside, nor did any action whatever take place upon it until after the close of the last administration. Then, at that date, the account remained "*finally adjusted*" by the accounting officers prescribed by law, and the Secretary of the Interior of the new administration had

no power whatever to refuse the requisition upon that adjustment and decision, when demanded by the parties. On coming into power, the Secretary of the Interior found this account "*finally adjusted*," by the accounting officers under the preceding administration. That adjustment was binding and conclusive upon him. He had no power to set it aside, nor the Attorney General, nor any officer of the government. The language of the law was plain, so was the practice under it uniform and uninterrupted, confirmed by repeated decisions of Attorney Generals, and never disregarded. There must be some officer to make a final decision on such accounts. In this case it was the Second Auditor and Second Comptroller, and we will look in vain for any act of Congress authorizing any one to set aside or reverse their decision. The Secretary of War is not an accounting officer, nor has he any power to revise the decisions of an accounting officer; and Secretary Marcy has admitted this to be the law in this very case, in his letter of the 18th April, 1845. The Secretary of the Interior, then, in passing that account did no more than by the law he was compelled to do.

If the head of a department may revise the decision of accounts "*finally adjusted*" by the proper accounting officers of the treasury, as prescribed by law, in one case, he may in all others. He may then himself become an accounting officer, and carry out his own decisions upon accounts by requisitions issued by himself, overruling the adjustment of the officers appointed by law. This is not his duty, and he has no such power, and dangerous indeed would be such an authority in the head of any department.

I will now proceed to review the attacks that have been made upon my interest in this claim. After having been driven from every other position, my opponents finally rested on the charge, that the power of attorney upon which my interest in the claim was paid, was signed by the commissioners of the Chickasaw nation, after they resigned.

I will first examine the evidence that is produced to sustain this charge. There is, then, what purports to be a letter from Cyrus Harris, describing himself as one of the subscribing witnesses to this contract. Now this letter is altogether vague and unsatisfactory. He states his impression, after a lapse of nearly five years, that it was signed after the 18th of July, but the only reason he gives for this is, that it was after the election from the Chickasaws district, which, he says, "always takes place upon the second Wednesday of July, of every year." On reference to the almanac, it appears that the second Wednesday of July, 1845, came on the 9th day of the month; yet, Mr. Harris states, "I do not know what day of the month the second Wednesday of July, 1845, was, but from my recollection, I am well satisfied in my own mind, that it must have been after the 18th of July, 1845. Some time after that I witnessed the instrument before mentioned." This would seem to be conclusive as to the vague recollection of Mr. Cyrus Harris, who would bring the signing of the paper, according to his own impression, but a little later than the 2nd Wednesday of July, 1845, which we have seen was on the 9th of the month, and nine days before the date of the resignation. It will be observed that this letter is all in the hand-writing of the opposing council, and that Cyrus Harris was clerk of a council of Chickasaws that repudiated my claim in 1849, as appears by his signature thereto; yet it is strange, being clerk of the council which made that protest, and which

bears his signature, that he did not disclose to it what my opponents consider the important fact, that this power of attorney, which it was the purpose of that council to assail, was signed after the resignation of the commissioners. Indeed, from the date of that contract in June, 1845, down to the month of January, 1850, in the midst of all the opposition to it here and elsewhere, it is incredible such an objection would have remained without notice or comment for so long a period, if it had been founded on truth. Again, Mr. Cyrus Harris was in this city when that letter was written. The counsel defending my rights were on the spot, but not invited to cross-examine him, nor was he sufficiently certain of any fact, to put his statement into the form of an affidavit.

The only other testimony is what purports to be the affidavit of Charles Johnson, dated 29th January, 1850, stating that this power of attorney was signed some two weeks after the commissioners resigned. Now let us compare this with his letter of the 15th of January, preceding, in which he says, "I have been under the impression that they did not resign until September, 1845; however, you know." Now, it is proved by the documents and the parties themselves, that the resignation took place on the 18th of July, 1845; this demonstrates that no reliance whatever as regards these dates of signature or resignation can be placed on the loose impression of this witness, even admitting that he was intending to state the truth; fortunately, however, the proof is here conclusive of a fraudulent conspiracy. The first proof that this Mr. Johnson has been guilty of a fraud is this: the affidavit bears the following attestation:

"City of Philadelphia, sworn and subscribed before me this 29th of January, A. D. 1850.

(Signed),

C. BRAZER,

Alderman, and ex-officio justice of the peace."

Attached to this attestation is the certificate under seal of Anthony W. Olwine, prothonotary of the court of common pleas, certifying to the official character of this alderman, and date of this affidavit, dated the 26th day of January, 1850. Now this certificate bears date three days before the affidavit was made, and shows the fraud upon the face of the papers. Why this fraud was committed, I will now proceed to show. On the 26th January, 1850, Messrs. Corcoran & Riggs received the following telegraph dispatch:

"By telegraph, dated Philadelphia, 1849. Rec'd Washington 5 o'clock 10 minutes, P. M. To Corcoran & Riggs. Mr. Johnson, of Chickasaw nation, Arkansas, now in Philadelphia, has some papers of importance to you regarding Gwin claim against them, which I think can be procured.

(Signed)

WM. LITTLE,

Attorney at Law."

Upon the call for an explanation, Messrs. Corcoran & Riggs received the following paper:

"Philadelphia, Jan. 28, 1850.

Messrs. CORCORAN & RIGGS: Gentleman:—I received yours of yesterday, and examined the papers referred to, and believe the affidavit of Mr. Johnson, together with a letter of Mr. Armstrong, in his possession, would have a very *important bearing* upon the claim of Dr. Gwin. Mr. Johnson desires to maintain a strict neutrality in regard to the matter, but believes that his evidence would clearly substantiate the position of the Chickasaws, whilst Armstrong's letter, I am satisfied, would prove the validity of the power of attorney in your possession. Mr. Johnson is friendly to Dr. Gwin's claim. I have reason to suppose that offers have been made by the opposing party for these papers, and that their attorney has been repeatedly to procure them. If you desire my attendance in Washington, let me know per letter or telegraph at once.

(Signed)

WM. LITTLE.

Office, 24 South 5th st."

We now see clearly why the certificate to the affidavit bears date the 26th January, 1850, whilst the affidavit itself to which it is wafered is dated the 29th January, 1850. This certificate of the 26th January, 1850, shows conclusively that there had been an affidavit of that date attached to it. Where is that affidavit? Why was it suppressed, and why was another affidavit of the 29th substituted in its place? Reference to Little's telegraphic despatch of the 26th, and his letter of the 28th January, will unravel the scheme. The telegraphic dispatch shows that Johnson did have papers important to Corcoran & Riggs in the case, and which probably could be procured. The letter of the 28th shows that Johnson's affidavit had been made, for Mr. Little says he examined the papers (*viz.*,) this affidavit and the letter of Mr. Armstrong. It shows, secondly, in the language of Mr. Little, that "Armstrong's letter I am satisfied would prove the validity of the power of attorney, in your possession." This being so, that Armstrong's letter would establish the validity of the power of attorney, how is it possible that any truthful affidavit could destroy it? Here is the proof. He says, "That offers have been made by the opposing parties for these papers, and that their attorneys have been here repeatedly to procure them." Here follows the proposition to Messrs. Corcoran & Riggs, in these words: "If you desire my attendance in Washington, let me know per telegraph or letter at once." For what purpose was Mr. Little to come to Washington? His letter clearly discloses the purpose; but if there could remain any doubt, it is made perfectly clear by his preceding telegraphic dispatch, which is in these words: "Mr. Johnson, of Chickasaw nation, Arkansas, now in Philadelphia, has some papers of importance to you, regarding Gwin's claim against them, which I think *can be procured*." Why had Johnson shown these papers to Little? Why had Little sent this telegraphic dispatch and letter to Corcoran & Riggs? Why the offer to come to Washington? Why the information the papers could be procured? Why the statement that the opposite party had made "offers" for them, and were endeavoring to obtain them? Why the proposal to procure the papers? Why the proposed friendship of Johnson? and why the threatened adverse affidavit? There can be but one answer to all these questions, and I will not insult the understanding of the

committee, by supposing that such an affidavit, given under such circumstances, could be regarded by them as worthy of any consideration whatever. There is one point in the Johnson affidavit and Little correspondence, of great importance, to which I beg leave to call attention. It is this: Little's dispatch shows that "on the 26th January, 1850, Johnson then had some important papers in this case." In his letter of the 28th, he states, "I received yours of yesterday, and believe that the affidavit of Mr. Johnson, together with the letter of Mr. Armstrong, in his possession, would have a very *important* bearing upon the claim of Dr. Gwin." Mr. Little adds, "Armstrong's letter, I am sure, would prove the validity of the power of attorney in your possession." It will be observed that this letter of Armstrong was then in Johnson's possession. Now where is that letter? It is not the letter of the 2nd June, 1845, for two reasons. First, because that letter was dated before the power of attorney was signed; but for another conclusive reason, that on the 15th day of January, 1850, Johnson had communicated to Bryan a copy of it, which copy, on the 16th January, Bryan communicated to the Attorney General. I assert, then, as a fact clearly proved by Little's letters of the 28th January, 1850, Johnson then had in his possession a letter from Armstrong, proving the validity of the power of attorney, and yet that letter is suppressed, and the adverse affidavit filed. It will be observed, if his affidavit is true, that this would convict Johnson of an infamous fraud, and a breach of trust reposed in him by Armstrong, as shown in his letter of 2nd June 1845; namely, by surrendering the older power of November, 1844, without obtaining a new and valid one in its place. I now proceed to show, that if Johnson's affidavit is true as to the date of the signature of this contract and power of attorney, the commissioners were all still legally in office; because their resignation could not go into effect until it had actually reached the Secretary at War, and been by him accepted. According to the protest of a part of the Chickasaws, of the 19th June, 1845, the General Council of the nation convened near Fort Washita on the 14th July, 1845, and adjourned on the 19th of the same month. The date of the conditional letter of resignation, as shown by Upshaw's letter of the 21st of July, 1845, was on Friday, the 18th July, 1845. Johnson, in his affidavit, says: "On the day the Council met, the commissioners in a body resigned." This is contradicted by the resignation itself, which took place on the 18th. But taking his own statement to be true, he proceeds to say: "Some two weeks after the commissioners resigned, they came to Fort Washita, and there signed the new power of attorney." This statement makes the date of that power of attorney about the 28th of July, 1845; or, according to the date of the resignation, about the 2nd August, 1845. Where, then, was that resignation? It was on its way to the War Department, where, as appears by the endorsement of the Commissioner of Indian Affairs, it was received on the 19th August, 1845, who thereupon made the following endorsement, addressed to the Secretary of War: "I see no possible objection to the reception of the within resignation"—proceeding to remark, that as to the understanding that no other commissioners be appointed, the business of the nation *could only be transacted by commissioners*, but that they might, if necessary, be appointed by general vote of the nation. Whereupon the Secretary of War, on the 8th of September, 1845, made the following endorsement, "I approve the suggestion of the Commissioner. No new commissioners to

be appointed at present at least." Now, the resignation was not accepted till the 8th September, 1845, and it had not even reached the Indian office until the 19th of August, 1845. According to Johnson's affidavit, the new power was signed not later than 2d August, 1845, more than two weeks before the resignation reached the Indian office, and more than a month before the acceptance of the same by the Secretary of War. There is no rule of usage better settled than that an office does not become vacant by transmitting a resignation, but only by the actual acceptance of that resignation, and that all acts done until that acceptance are official and valid. I presume it will not be denied that if the Secretary of War had refused to accept this resignation, the commissioners would still have remained in office under their old appointment; and if so, it is equally certain that, until its acceptance, they did remain in office. This is in general the rule, but it is still stronger in this case, for the resignation was conditional. The condition was that the War Department should agree that there should be no new commissioners; until that condition was assented to by the Secretary of War, it was not even in his power to accept the resignation, and consequently what is called a resignation is but a conditional tender of a resignation, which will have no effect upon the tenure of the office until the acceptance of the resignation by the Secretary of War, accompanied by his assent to the condition. The case, however, is stronger still, for the treaty absolutely requires that there should be commissioners to transact the business of the nation. That treaty was the supreme law of the land, and it was not in the power of any officer of this government to abolish that office by accepting a resignation of the commissioners, upon condition that no others should be appointed. Such a resignation of any officer created by law, or treaty, would be void upon its face, and could not be rendered valid by any assent whatever. Let me give a single example. Suppose the Commissioner of the General Land Office should tender his resignation to the President upon condition that no other commissioner should be appointed—it is clear that such a resignation would be a mere nullity, and could not be rendered valid by a consent or acceptance of the President. If then, although such is not the fact, the new power of attorney was signed after the date of resignation, it would only prove that the commissioners themselves understood that the conditional resignation was not to take effect until it was accepted by the Secretary of War, and the condition they had prescribed assented to by him. But on reference to the records of the Indian office, I find that these very commissioners have been acting long since their resignation was accepted by the Secretary of War; that it was found impossible to fulfil the treaty without such action; that the election of commissioners as pointed out by the Commissioner of Indian Affairs was not in accordance with the treaty, and the only way to get over the difficulty *was to annul the resignation, and restore the old board of commissioners, upon whose acts claims have been confirmed and money paid*—thus scattering to the winds the charges of the invalidity of this power because it was signed after the commissioners had resigned and ceased to have a legal existence.

Having shown that there is in truth nothing in the testimony, namely, the ex parte letter of Harris, and the ex parte affidavit of Johnson, to induce the conviction that this power of attesting was signed after the resignation of the commissioners, I will now proceed to demonstrate that there is no

grounds whatever for any such charge for the following reasons : 1st, The contract upon its face shows that it was made and signed, not with mere private individuals, but with the then existing commissioners of the Chickasaw nation. It begins in the words, "Memorandum of an agreement made and entered into between William M. Gwin, of the State of Mississippi, of the one part, and the chiefs, commissioners, and head-men of the Chickasaws, acting in behalf of nation, of the other part, witnesseth, &c." The paper is signed by six of the seven commissioners, any four of whom being a majority, had full power to act for the whole, as well under the treaty as the uniform usage of the government in executing the same. These six commissioners were Isaac Albertson, Chief Bing-Lovi-Llon-Lovi, James Gamble, James Wolfe and Joseph Colbert. Four of these are educated persons ; could not only read, write, and subscribe their own names, but had transacted the business of the Chickasaw nation for many years to the amount of millions of dollars, and were well acquainted with their duties, and all the affairs of the nation. To suppose that these men would sign a paper to bind the nation, and describing themselves at that date as commissioners after they had resigned, is most absurd and preposterous. It would have been an atrocious fraud, subjecting them and all concerned to disgrace and infamy. With them were united and present, as the paper shows, and signing as they have subscribed all other papers by their mark, their two colleagues, Isaac Albertson and Joseph Colbert. Then came, (besides the four chiefs and head-men who were present and subscribed the contract with them,) attesting all these signatures, as well as that of the six commissioners, as the four chiefs and head men, William Barnett, supreme judge of the Chickasaw district. Now this gentleman was the highest judicial functionary of the nation, necessarily well versed in its laws and usages, and well knowing who were the commissioners. Did this high judicial functionary of the nation unite in perpetrating this fraud by attesting the signature of these persons who were not commissioners ? This is alike absurd and incredible. The document, then, as well from its intrinsic recitals as from its attestation, showed that it must have been signed by persons who were, as they describe themselves, (at the date of its execution by them,) *the commissioners* of the nation. That they should have dared to sign a paper, describing themselves as commissioners, and acting for the nation, when they were mere private persons, and this, too, in presence of the chiefs and head-men who united with them, and with the attesting signature of their own supreme judge, is to imagine that they would all unite in a daring outrage and an infamous fraud, which could not but subject them all to inevitable disgrace and ruin. The six commissioners and four head-men, and the attesting supreme judge of the nation, all unite in declaring upon the face of the instrument that they were commissioners when it was subscribed, and nothing but testimony the most conclusive should be admitted to convict the whole eleven of the fraud and falsehood with which they are now charged. 2nd. It appears by the letter of Mr. Upshaw, the Chickasaw agent, of the 21st of July, 1845, that the commissioners resigned on the 18th July, and it declares that he "did, in the council, accept of their resignation." It then was open and notoriously known to the agent, known to the whole nation, and openly accepted in its general

council. This circumstance would seem to render it impossible that after a resignation so well known and notorious, they would dare, in the presence of their own chiefs and head-men, and supreme judge, to act and subscribe a paper as commissioners, these chiefs and head-men, and the supreme judge, knowing of the resignation, and their want of power to act. 3rd. The letter of the 3rd of June, 1845, from Major Armstrong, the superintendent, to Pitman Colbert, the principal opponent of the commissioners and their party, written at Doaksville, in the Indian territory, shows that he had sent a few days previously both the old and new power to the commissioners, with a letter from him to them, recommending them, for obvious reasons, to cancel the old power and subscribe the new one. In that letter he says: "In answer to your request, wishing to see the power of attorney given by the Chickasaw commissioners to W. M. Gwin, in November last, and also my letter to the commissioners with a new power of attorney, which the commissioners may substitute, if they choose to do so, for the one signed in November last, I beg leave to say that both powers were sent to the commissioners a day or two ago with my letter."

It is clear, then, that in June, 1845, both these powers were before the commissioners, with recommendations from Major Armstrong to cancel the first, and subscribe the new one. Now the objections that had been made to the action of the commissioners, referred exclusively to the old power, and not to the new. The old power, as the papers show, authorized me to draw one-half of the interest on State stocks, for which I had obtained an appropriation at the preceding session of Congress, embracing a principal of several hundred thousand dollars, as well as a general agency for the Chickasaws. This appears upon the face of the new power of attorney, being recited thereon, which also recites that this right, then fixed and certain, was to be relinquished upon the execution of the new contract, which made my rights contingent and uncertain, except the sum I had received in the Agricultural Bank case. This contingent and uncertain claim was for half the land fund, and one-half the provision fund, the first of which was not allowed by Congress until August, 1846, and the second not obtained until after five years hard struggle, in March, 1850, accompanied by a sacrifice of a large portion of my rights. The whole that I was to obtain under the new power was contingent and uncertain, and even if obtained, my share could not amount to what I was already entitled to, and had already secured under the old power, for I was to receive not only one-half of the accrued but the accruing interest, so long as Congress continued to pay it. Under these circumstances, and with both powers before them, in June, 1845, and with the recommendatory letter of Major Armstrong, who can doubt that the commissioners hastened at once to cancel the old power, and execute the new; for the papers show that the old power could only be canceled by the execution of the new. It was the interest of the Chickasaw nation and of the commissioners to make the exchange of powers. They were both before them in June, 1845, and with the letter of their superintendent, Major Armstrong, recommending the cancelment of the old, and the execution of the new power; and who can doubt that it was then done, when they were commissioners, and

alone could do the act. If further proof were wanting on this subject, it is contained in the letter from Major Armstrong, extracts from which are here given.

Extract from a letter addressed by William Armstrong to William M. Gwin, received in April, 1845 :—

“ Send me to Nashville the power of attorney you wish presented to the Chickasaws, and also the one you now hold. The exchange you propose is magnanimous, and will receive my hearty co-operation. It is so palpably for the interest of the commissioners, that I have no doubt they will at once see the subject in the right way, and readily meet the change. I confess I feel gratified that you, of your own accord, have given up one-half of the appropriation of interest which your contract clearly entitles you to, for a different interest, which is got in part already ; and if anything else is received it will be through your exertions. The interest entered into the general fund of the nation, in such a way, that if you were to receive what you clearly earned, and is yours by the power of attorney, it might lead to bad feelings with the Chickasaws towards the chiefs. Not so with what you propose to substitute. The money from the Agricultural Bank, and the provisions improperly purchased by the government, is already lost sight of by the Chickasaws. You may, by great trouble and labor, get some remuneration from the provision account. If you fail, you lose your labor. My object is, however, briefly to say, that I will use my best exertions to effect the change. If I do not succeed, (which I have no fears of,) I will, of course, hold on to your power of attorney. Write fully what you wish done, and hold this as your voucher for the power of attorney.

Very truly,
your friend,

(Signed) WM. ARMSTRONG.

Doctor WM. M. GWIN.”

The second; which is also addressed to me, and now filed, is dated in the Indian territory, 22d May, 1845.

“ I set out on Tuesday next for Towson—have written Col. Upshaw, Benj. Love, &c., to meet me there. I will attend to your business. I find that some one has been very busy with Pitman—have put many stories afloat, all of which are false, and will be explained.”

Let us now comment upon these two letters. The first shows how anxious he was that the exchange would be agreed to, and that he never would have assented to the giving up of the old power except for the execution of a new one by the commissioners. He says: “ I will use my best exertions to effect the exchange. If I do not succeed, (which I have no fear of,) I will, of course, hold on to your power of attorney.” And further: “ The exchange you propose is magnanimous, and will receive my hearty co-operation. It is so palpably for the interest of the commissioners that I have no doubt they will at once see the subject in the right way, and readily make the change.” The letter of the 22d of

May, '45, shows that he had already written to Col. Upshaw, Ben. Love, &c., (meaning the other commissioner,) to meet him at Fort Towson, to attend to this business, to answer the false stories that were circulated about the transaction, and explain the whole, which, in his letter 3d June, before referred to, shows he did so. Under these circumstances, then, it is clear that the commissioners would at once gladly sign the new contract, and receive back the old one. 4th. In Major Armstrong's letter, of April, 1845, before quoted, he says: "I will use my best exertions to effect the change. If I do not succeed, (of which I have no fear,) I will, of course, hold on to your power of attorney. Write fully what you wish done, and hold this as a voucher for the power of attorney." It is, then, certain that he was bound, as well in law as by his solemn promise, not to surrender the old power except upon the execution of the new one; and the delivery of the new power by him to me, formally executed by the commissioners, and attested, furnishes the most conclusive evidence that it was properly subscribed by them as commissioners, and not by private persons. Indeed, to suppose otherwise, is to charge Major Armstrong with an infamous and disgraceful fraud, subjecting him to heavy pecuniary damages, and utter ruin of reputation. It will be perceived that I was absent many hundred miles from the scene of operations at the date of the execution of this second power—that I had confided the whole matter to him, (the Superintendent in the territory,) and him alone, having neither employed nor written to any other person. I trusted to him, as a man of honor, to transact the business which he had voluntarily and willingly undertaken. I had very heavy pecuniary interests at stake, and it is clear he never would have surrendered the old contract, unless the new one, which he obtained and delivered to me, had been properly and legally executed; and it was not till long after his death that any pretence was made, in the midst of so many other objections, that this instrument which he procured was false upon its face and a fraud upon me.

5th. This identical power of attorney has the records of the War Department, the Indian bureau, and the Treasury, to show that, after full examination, it was adjudicated to be valid, and the sum of \$5,160 15 actually paid upon it to Messrs. Corcoran & Riggs, as my attorneys, on the 11th August, 1846. The power of attorney contained the following clause:—The said Gwin "shall receive one-half of what has been, or may be, declared to be due the Chickasaw nation, on account of provisions purchased by Lieutenant Searight, at Cincinnati, in the spring of 1837, and charged to the Chickasaw fund; which charge, or a portion of the same, has, or may be, declared to be erroneous, and the amount to be refunded the Chickasaws by the United States, or any amount that may be due to them on account of said purchase; also one-half of such sums as may be declared to be due to the Chickasaw nation, on account of lands sold at Chocchuma or Columbus; and the proceeds of the sales, amounting to ten or eleven thousand dollars, were placed in the Treasury of the United States, although the lands thus sold are located in the Chickasaw cession."

Now it will be perceived that my right to receive one-half of this land

fund was embraced in the same power of attorney now contested, and presented the same identical question so far as regards its validity.

On the day of August, 1846, Congress passed a law authorizing the payment of this land fund to the Chickasaws. The question was, who was to receive it? when this same identical power, with the same substitution of Corcoran and Riggs, was presented to the Second Auditor and Second Comptroller, who decided on the 8th and 11th days of August, 1846, that it was valid, and that under it I was entitled to one-half of this land fund, and they accordingly issued a certificate to that effect, of which the annexed is a copy :

APPROPRIATION.

No. 290—Carrying into effect treaties with the Chickasaws, per act
20th April, 1836, \$5,160 15.

TREASURY DEPARTMENT,
Second Auditor's Office.
August 8th, 1846.

I certify that there is due from the United States to William M. Gwin, assignee, the sum of five thousand one hundred and sixty dollars and fifteen cents, being the one-half of the account of the Chickasaw nation, for lands erroneously sold at Chocchuma and Columbus, Miss., the whole amount of which (\$10,320 30,) was brought into the treasury by an act indemnifying the Chickasaws for the sale of the above lands, approved July 15, 1846, and placed to the credit of the Chickasaw nation.

Amount of sales at Chocchuma,	\$8,650 25
“ “ “ Columbus,	1,670 05
	\$10,320 30

To one-half of which said Gwin is entitled, as per agreement with the Chickasaws herewith.	\$5,160 15
	\$5,160 15

To be paid to Corcoran and Riggs, attorneys present, as per power of attorney herewith, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

JNO. M. McCALLA,
Second Auditor.

To the Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above, this 11th day of August, 1846.

ALBION K. PARRIS,
Second Comptroller.

Upon receiving this certificate and report, the Secretary of War issued the following requisition upon the Secretary of the Treasury for the payment of this money to said Corcoran and Riggs, as my agents.

WAR DEPARTMENT.

\$5,160 15.

No. 454.

To the Secretary of the Treasury.

SIR: Please to cause a warrant for five thousand one hundred and sixty dollars and fifteen cents to be issued in favor of Corcoran and Riggs, present attorneys, due William M. Gwin, on settlement per account Second Comptroller, No. 290, to be charged to the undermentioned appropriations.

Given under my hand this 11th day of August, 1846.

(Signed,)

W. L. MARCY.

Secretary of War.

(Countersigned,)

ALBION K. PARRIS.

Second Comptroller.

Received and registered, August 11.

(Signed,)

JNO. M. McCALLA,

Second Auditor.

Such being the decision of the Second Auditor and Second Comptroller, their certificate went to Mr. W. Medill, the Commissioner of Indian Affairs, who thereupon made the following report to the Secretary of War.

(COPY—No. 2,733.)

\$5,160 15

No. 454.

WAR DEPARTMENT,

*Office of Indian Affairs.**August 11th, 1846.*

To the Secretary of War.

SIR: Please to cause the sum of five thousand one hundred and sixty dollars and fifteen cents to be remitted to Messrs. Corcoran and Riggs, attorneys present, per order, being the one-half of the account of the Chicksaw nation, for lands erroneously sold, &c., due to W. M. Gwin, assignee, &c.

per account, Second Comptroller, No. 290, herewith payable by draught on to be charged as follows, viz.:

To the the appropriation for carrying into effect treaty with the Chickasaws, act 20th April, 1836,

\$5,160 15

On receiving this requisition, the Secretary of the Treasury issued the following warrant for the payment of the money, and Corcoran & Riggs received the same.

WARRANT.—TREASURY DEPARTMENT.

To WILLIAM SELDEN, *Treasurer of the United States, Greeting.*

Pay to Corcoran and Riggs, present attorneys, or order, out of the WAR DEP'T. } No. 380. } Appropriation. }	appropriation named in the margin, five thousand one hundred and sixty dollars and fifteen cents, due Wm. M. Gwin, on settlement.
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Appropriation.

Pursuant to requisition No. 454, of the Secretary of War, dated 11th August, 1846, countersigned by the Second Comptroller of the Treasury, and registered by the Second Auditor. For so doing this shall be your warrant.

Given under my hand and the seal of the treasury, this 11th day of August, in the year one thousand eight hundred and forty-six, and of the Independence the seventy-first.

(L. S.)

R. J. WALKER,
Secretary of the Treasury.

Carrying into effect treaty with Chickasaws,
act 20th April, 1836,

\$5,160 15

Recorded.

(Countersigned,)

J. W. M'CULLOCH.
Comptroller.

Received for the above warrant the following draft
No. 3,356, on Mechanics' Bank, New York,

\$5,160 15

CORCORAN & RIGGS,
Per J. M. CHUBB.

Here was a solemn adjudication of the validity of this identical power of attorney and the payment of money under it. This adjudication and reception of the power was made by the following officers in succession, viz :

1. GEN. McCALLA, Second Auditor.
2. JUDGE PARRIS, Second Comptroller.
3. WM. MEDILL, Commissioner of Indian Affairs.
4. GOV. MARCY, Secretary of War.
4. MR. McCULLOCH, First Comptroller.
5. MR. WALKER, Secretary of the Treasury.

Nor can it be pretended that it was made without objection or examination. On the contrary, the protest of Ish-ta-ho-to-pa, commissioner, against my action in the matter, as agent of the Chickasaws, and denying his signature to the just power of attorney, had been received by the Commissioner of Indian Affairs on the 26th of April, 1845, and I replied to it on the succeeding day, which reply, with the protest, was referred by the Commissioner to the Secretary of War, as appears by his endorsement upon it. With that reply I filed the letter of W. P. Stuart, dated Washington, February 5th, 1845, the agent of Ish-ta-ho-to-pa, and the party opposed to the commissioners, (and recognized as such in the first line of this very protest), showing the entire approval of Stuart of all my acts and of all my contracts with the Chickasaws, and confirming the same for Ish-ha-ho-to-pa and the portion of the Chickasaw nation he represented. My reply to the protest was perfectly satisfactory to the Commissioner of Indian Affairs and Secretary of War. It may be proper here to observe, that in addition to the confirmation of this power of attorney, after full examination by Stuart, sent on by Ish-ta-ho-to-pa, to this city, and recognized only him as his agent in his own protest, that the name of Ish-ta-ho-to-pa was signed to that power by direction of Isaac Albertson, the Chief of the nation, in precisely the same manner that powers to other persons bearing Ish-ta-ho-to-pa's name had been subscribed and uniformly recognized by the department; and in fact, nearly the whole business of the nation had been transacted on similar powers. But Ish-ta-ho-to-pa's name was not at all necessary to my power, because there are but seven commissioners under the treaty, which authorized a majority of them to transact business, and six out of the seven had signed for themselves, and Ish-ta-ho-to-pa's name, which was not necessary, was placed there by Isaac Albertson, the Chief of the nation, as was the usage on former occasions; and, as I was informed by Upshaw, the agent, he was authorized to do so by Ish-ta-ho-to-pa, in consequence of his residing out of the nation, eighty miles distant, and ceasing to attend to its affairs: at all events, the confirmation of his own agent, Mr. Stuart, whom he had sent here to investigate the matter, who approved my power of attorney and all my acts, must be deemed conclusive. It may be here remarked that I never used the power of attorney, or filed it, or drew one dollar of money upon it, and that I had transmitted it to the commissioners, through Major Armstrong, before the receipt of the protest of Ish-ta-ho-to-pa, which was the first intimation I had that there was any objection or want of power on the part of Isaac Albertson, the Chief of the nation, to subscribe his name.

As regards the orphan and incompetent funds, in relation to which Ish-ta-ho-to-pa makes so many charges against Mr. Upshaw, the agent, and others, I know nothing whatever, never having had any connection with those funds or any agency concerning them: but the recklessness exhibited in the attack made upon me in this case, makes it my duty to show who was charged with these funds. I therefore call attention to Documents No. 160 of Senate Documents, 28th Congress, vol. 9, page 1 to 77, being the report of the Secretary of War, under date of March 1st, 1845, to the Senate, in reply to their resolution requesting

information in relation to the transfer of "the Chickasaw and Choctaw Orphan Fund." This document, as well as the protest of Ish-ta-ho-to-pa of the 3d of April, 1845, and numerous others in the Indian office, show that the great frauds of which the Chickasaws complained were in regard to these funds, with which funds I never had any agency or connection whatever.

This, and other documents on file, show that most, if not all of their claims, were paid upon powers of attorney signed and accounts passed by Ish-ta-ho-to-pa and three other commissioners. In Ish-ta-ho-to-pa's protest of the 3d of April, 1845, he says:

"I have never signed nor approved of any paper recommending a sale of the Chickasaw [Orphan] and Incompetent Fund, nor approved of the sales." Yet in the document above referred to, page 47, and numerous others on file in the department, there are numerous papers signed by him, approving of these sales, with only three other commissioners. The signatures are in this form: Ish-ta-ho-to-pa, Isaac Albertson, James Wolfe, Sloan Love. No doubt these documents were signed by Isaac Albertson, for Ish-ta-ho-to-pa, as he has charged, and as was usual, and so represented by the agent and commissioners to me when Albertson authorized his name to be placed to my contracts in Nov., 1844. This was done, and Albertson placed the mark for Ish-ta-ho-to-pa, openly, and in the presence of the five other commissioners from chiefs and head-men, and of Upshaw, the agent, who was also a subscribing witness, as is admitted in his protest of the 19th of March, 1845, and Armstrong's letter of the 12th of October, both of which will be commented on hereafter. There is this difference, however, in my case, that, there being in all but seven commissioners, and the signature of a majority of them being all that was required, the other six did subscribe the contract, which was therefore valid without the signature of Ish-ta-ho-to-pa. But if the usage by which Albertson was accustomed to sign Ish-ta-ho-to-pa's name be considered insufficient, three other documents to which I have referred, showing the transfer of the Chickasaw Orphan and Incompetent Fund, to the amount of about \$600,000, would prove that the whole of those transfers, sales, and payments were void, being signed by four commissioners only, as appears by the documents; whereas four names are required by express treaty provision, and Ish-ta-ho-to-pa being one of them, if the usage by which Albertson signed his name be insufficient, the whole of those transactions are invalid throughout the administrations of Van Buren and Tyler.

To illustrate more fully the power and duties of the commissioners, I will refer to the treaty and the construction placed upon it, and the practice of the government of the United States under it. In 4th, 5th, 6th, and 8th articles of the treaty of 1834, important special duties are assigned to them: "At least two" should declare what Indians were competent to attend to their business (Art. 4th); "the agent and three" of them, what lands were "unfit for cultivation" (Art. 5th); a list of persons not heads of families is to be made out by the "seven persons hereinbefore mentioned," to be certified to the register and receiver (Art. 6th); "a majority of the seven persons before named" shall have power to recommend, for the approval of the President, the sale of the Orphan

Lands, and, upon a certificate of a "majority of the seven persons with the agent," the proceeds of these sales may be paid over. In the fourth article we find the following: "And as the king, Levi Colbert, and the delegation, who have signed this agreement, and to whom certain important and interesting duties pertaining to the nation are assigned, may die, resign, or remove, so that their people may be without the benefit of their services, it is stipulated that, as often as any vacancy happens by death, resignation, or otherwise, the chiefs shall select some discreet person of their nation to fill the occurring vacancy, who, upon a certificate of qualification, discretion, and capability, by the agent, shall be appointed by the Secretary of War: whereupon he shall possess all the authority granted to those who are here named, and the nation will make to the person so appointed such reasonable compensation as they, with the assent of the agent and the Secretary of War, may think right, proper, and reasonable to be allowed."

Here the national character of the commissioners is clearly pointed out, and they are to be paid for their services to the "people" by the "nation;" and they did receive pay to the date of their resignation, from the national fund. In this light they were viewed in all business transactions by the government of the United States, except when there was an express treaty stipulation requiring the government to act without consulting the commissioners. These officers performed all the vast business of the nation from the date of the treaty to the date of their resignation. Major Armstrong, in his report of the 30th September, 1841, recognizes them as the "Chickasaw Chiefs," who have the sole control of the national fund; and in his official report of the 5th January, 1841, he says: "I would remark that the Chickasaw commissioners were intelligent men, and understood fully the nature of the accounts on which they acted." Mr. Crawford, in his letter to me of the 17th of January, 1845, styles them "the authorized agents to transact the business of the nation, and recognized as the organs of the nation in the transaction of its business with the general government."

Such was the construction of the treaty by the officers of the United States and the practice under it. The construction of the Chickasaws was the same, for through these commissioners they did all their business. There was a dissatisfied party opposed to these commissioners from the first to the last, from the time the "delegation" made the treaty to the resignation of the commissioners. This party opposed the treaty and all the acts of the commissioners. Volumes might be filled from the files of the Indian office of the complaints and charges against these five delegates, all of whom, with Levi Colbert and the king, were appointed by the treaty to carry out its provisions and take charge of the interests of the "people" and the affairs of the nation. The public records will show that sometimes all acted, but in most of the business but four acted, being a majority and all that was considered necessary to certify to make their acts valid. And who were these commissioners that transacted the business of the nation and interpreted the treaty? The very men who made that treaty, and who were the persons who made this contract with me, and the only surviving delegates who made the treaties, and who had participated in the transaction of all the

business of the nation under it. By reference to the treaty of 1832, it will appear that Col. Benjamin Love (who acted as commissioner and interpreter when my contracts were executed) was "United States interpreter;" (7th vol. Stat. at Large, page 387,) and when the final treaty of 1834 was made, he signed the same as "delegate and interpreter." "The undersigned, appointed by the Chickasaw nation of Indians in the two-fold [character of delegate and] interpreter, hereby declares that all that is set forth in the above articles of convention and agreement have been by him fully and accurately interpreted and explained, and that the same has been approved by the entire delegation. May 24th, 1834. Signed Benjamin Love, delegate and interpreter."

This gentleman was acknowledged to be the ablest and most intelligent man in the nation, and is spoken of in the highest terms in Hitchcock's, Armstrong's, Upshaw's and numerous other reports. His brother, Sloan Love, is also spoken of in the highest terms in various reports. James Gamble, James Wolfe, and Isaac Albertson are three of the commissioners spoken so highly of by Major Armstrong, in his report of the 5th of January, 1841, before quoted. Isaac Albertson and Benjamin Love were the only surviving delegates who made the treaty of 1834. Now how was it possible for these intelligent persons, the delegates, interpreters, and commissioners of the nation, familiar with its business, and who had transacted it for many years, and made its treaties with the government, to be deceived as to their power in making this contract with me, the more especially as they knew that the officers of the United States had made it their duty to transact all the business of the nation, and every department of the government before whom my contracts had come has placed the same construction as the commissioners did of their power under the treaty to make this contract. ?

To return from this digression. It also appears from the endorsement thereon, that the protest of Ish-ta-ho-to-pa and some other chiefs, of the 19th of July, 1845, on which so much reliance has been placed in contesting these claims, was filed in the Indian Bureau on the 19th of August, 1845. It states the fact that the commissioners had resigned on the 18th of July, 1845. This protest of the 19th July was never known to me until within a few days past, nor was I ever notified of it, for the reason I have no doubt that it was satisfactorily refuted, so far as I was concerned, in my letter of the 27th of April, 1845, before referred to, and by the documents then on file in the department. I have alluded here to these protests and papers, mainly to show that they were all on file in the Indian Bureau when the Commissioner of Indian Affairs and Secretary of War, on the 11th of August, 1846, notwithstanding all these objections, then affirmed the validity of the power then in controversy, by issuing the requisitions for the payment of the money before shown upon it; nor at the date of that adjudication could they have been ignorant of the fact that the claim now contested would come up under the same power, for, as appears by the papers, it was then on file and had only been suspended by the prohibition contained in the act of 3d of March, 1845, which was repealed before the land fund was paid to my agents, Corcoran and Riggs.

6th. The party of the Chickasaws opposed to this power of attorney sent another delegation, appointed, as they say, "by a general council of the chiefs, head-men, and warriors, of the Chickasaw nation, in October, 1848," to examine into the affairs of the Chickasaws. This delegation, consisting of Davis James, Captain Jackson Frazier, Maxwell Frazier, and Gabriel L. Lover, attended at Washington City to this business, throughout a large portion of the succeeding session of Congress. They called in the counsel and advice of the Hon. Jacob Thompson to aid them in this examination, and especially in regard to this claim. Mr. Thompson made this examination, as appears by his receipt, filed among the papers, of which the following is a copy:—

" WASHINGTON, *February 15th*, 1849.

" Received of W. W. Corcoran, to be returned to-morrow, the following papers, viz.:—Copy power of attorney, Chickasaw chiefs to Wm. M. Gwin; copy Wm. M. Gwin vs. United States; Report Chief Clerk Comptroller's Office; Requisition War Department, \$112,042 99; blank warrant for \$58,124 14; Second Auditor's Report for W. M. Gwin, for \$56,021 49; copy of W. Armstrong's letter.

(Signed)

J. THOMPSON."

As the result of this examination, this delegation addressed a letter on the 20th February, 1849, to Secretaries Walker and Marcy, in which they say this claim for provisions is fair and just, and its allowance is evidence that the United States intend to deal justly and fairly with the Chickasaws, and that they have entire confidence that the Secretaries would continue to be, as they had proved themselves, the friends of the Chickasaw nation. That paper requested a further suspension of the payment of my portion of this claim, and stated various objections to this power of attorney, a copy of which, it appears, was before them. And here I would note the important fact that it was not pretended by that delegation that this power of attorney was not executed by the commissioners, or that it was signed by them after their resignation, which, if true, must have been known at that date. And it was well known to them and their attorney, Mr. Thompson, who had mainly contributed to pass the bill through Congress, that one-half of the land fund had been paid to me by Secretaries Walker and Marcy (in whom they express such entire confidence) on this very power of attorney, which, if there had been a suspicion on their minds that it had been executed after their resignation, they would surely have commented on it in connection with the power, by the payment of this money under it. Their objections to it were stated thus:—

" There is among our people a deep and strong prejudice against this arrangement. They say the agreement was made privately, without the knowledge of our people—that it was not understood, as we believe, by the commissioners themselves when it was made. That it cannot be binding upon the nation without receiving the sanction of a council of the chiefs, head-men, and warriors; and as a delegation of the nation,

entrusted with full powers on this subject, we will not assume to revoke the power to violate a supposed contract. But we appeal to you, and, by virtue of the power in us invested, we protest against the allowance of the sum of \$56,021 49 to W. M. Gwin, or his attorney, till the nation can have an opportunity to make known their will on this subject, after a full and fair investigation of the whole matter."

I will examine these objections. They allege, 1st, that it is said "the agreement was made privately, without the knowledge of our people—that it was not understood, we believe, by the commissioners themselves when it was made." Here is a distinct admission that it was made by the commissioners, and, of course, before they resigned; for after that event they would not have been commissioners. The papers previously quoted show that I was several hundred miles distant from the Chickasaw territory when it was made and signed, and had not been there for some time previous; that it was sent by me through Major Armstrong, the Superintendent of the Indian territory; that it was highly approved by him; that he made it known to Mr. Upshaw, the agent, and that it was signed by the commissioners on full explanations and written recommendation of Major Armstrong; that it was signed by the six commissioners, not privately, but in conjunction with four chiefs and head-men, and attested by the Supreme Judge of the Chickasaw nation. That the commissioners must well have understood it is also obvious from the letters of Major Armstrong, to whom I entrusted the whole affair. Being absent myself, and having sent the papers through him, there can be, of course, no pretence that the execution of this power was in any way improperly procured by me. It was, as his letters show, entirely approved by him, and the procuring of its execution entirely entrusted to him. That what he did in the matter was perfectly fair and right, must be inferred from what Epheson & Bryan, who signed the several papers as counsel against me, say of him. "No one will question his standing and integrity. In every particular he was above reproach and suspicion."

It may be quite true, as stated in the protest of the 19th July, 1845, that neither of these powers of attorney were submitted to that council, but, independent of the want of power in the council on the matter, there is another obvious reason why neither could have then been submitted, namely, the cancelment of the first before that date, and its destruction, as alleged, and the transmission thereupon to me of the second. Besides, the commissioners never admitted the right of this or any other council to supervise or direct their acts, nor is any such power given in the treaty, but distinctly otherwise; and this brings me to the only remaining reason urged by this delegation, which is in these words: "That it (the power,) cannot be binding upon the nation without receiving the sanction of the chiefs, head-men, and warriors. And the same ground, and no other, is assumed against this power by the alleged proceedings of a general council of the Chickasaws, of the 13th July, 1849, but no pretence that it was signed after the resignation of the commissioners. Now, this is completely refuted heretofore in this paper as well as by the letter of the Commissioner of Indian Affairs to me of the 17th July, 1845, who, in answer to my inquiry, says that these commission-

ers are the authorized agents to transact the business of the nation in the transaction of its business with the general government. And it was the uniform uninterrupted action of the government to recognize them as such from the date of the treaty until the resignation of the commissioners was accepted by the Secretary of War. This power of attorney was obtained by me in June, 1845. It was signed by the commissioners who had transacted all the business of the nation for the last ten years. It was subscribed by six out of seven of the commissioners, by four chiefs and head-men, and attested by the supreme judge of the Chickasaw nation. It was procured in my absence by Major Armstrong, whom my opponents own to be above suspicion and reproach, and upon his recommendation and explanation to the commissioners. In August, 1846, as I have shown, it was passed upon as legal and valid by the Second Auditor and confirmed by the Second Comptroller, followed by the requisition of the Commissioner of Indian Affairs upon the Secretary of War, and by his upon the Secretary of the Treasury, upon whose warrant, countersigned by the First Comptroller and Register of the Treasury, the sum of \$5,160 15 was paid me under it. When the second case went up, which is the one now in controversy, it involved the same question, to wit, the validity of the same power of attorney, and was decided in the same manner by the Second Auditor. The Second Comptroller sent it to the Commissioner of Indian Affairs for his administrative examination, where it remained without any opinion whatever expressed until after the present administration came into power.

On the 27th June, 1849, Mr. Medill, the Commissioner of Indian Affairs, made the only report that ever was made by any officer of the government against this claim, which I will now proceed to examine. It begins by admitting the conclusive character of the decision of the Second Auditor and Second Comptroller, in Sept., 1846, in favor of the claims of the Chickasaws. He says: "The preliminary question of the power to re-open the account embracing the transaction, and of the abstract right of the Chickasaws to the correction of the alleged error, if it had been committed, having been fully decided by those higher in authority than the head of this office; and the Secretary of War, in his decision of April 18th, 1845, which is among the papers, having, as I understand it, determined that no administrative examination of the matter by the department was necessary, I do not feel at liberty to give any opinion upon this branch of the subject." Secretary Marcy then having decided that the adjudication of the Second Auditor and Second Comptroller was final, it must have been so regarded by the Secretary of the Interior, unless he had reversed the decision of his predecessors. Now, then, let us see *what was* the decision of the Second Auditor and Second Comptroller, which Secretary Marcy decided he had no power to reverse and set aside. It was in these words:

No. 3798.—APPROPRIATION.

Removal and subsistence of Indians,

\$112,042 99.

"TREASURY DEPARTMENT,
Second Auditor's Office,
Sept. 5th, 1846.

I certify that there is due from the United States to the Chickasaw nation the sum of one hundred and twelve thousand and forty-two dollars and ninety-nine cents, being the amount of their account for moneys erroneously paid by the United States out of the Chickasaw fund to sundry persons, for provisions purchased in Cincinnati in 1837.

As it appears there is but \$58,124 14 to the credit of the above appropriation, the Secretary of War will please issue a requisition to the credit of appropriation carrying into effect treaties with the Chickasaws, per act 20th April, 1836."

Now it seems to have been entirely overlooked by the commissioner that that decision, which the law makes final and conclusive, and which Secretary Marcy thought he had no power to revise or set aside, covered the whole question now in controversy as to the Chickasaw claim, and the fund out of which it was to be paid. Let us analyze that decision. The first branch of it is in these words:—"I certify that there is due from the United States to the Chickasaw nation the sum of \$112,042 99, being the amount of their account for moneys erroneously paid by the United States out of the Chickasaw fund to sundry persons, for provisions purchased at Cincinnati, in 1837." Now this was a decision, not only that this sum was due the Chickasaws, but that it was due them for moneys "erroneously paid by the United States out of the Chickasaw fund." It was final, therefore, on that point. It settled the question beyond all power of revision by any other authority, that this money was "erroneously paid" out of that fund. This being so, the correction of the error became a matter of course, and how this was to be done was also embodied in the same decision, viz., as then decided by "a requisition for that amount in favor of the Chickasaw nation, to be carried by counter-requisition to the credit of appropriation carrying into effect treaty with Chickasaws, per act 20th April, 1836."

Such was the adjudication of the proper accounting officers of the treasury, whose decision was final on that point also. It is conceded that the decision was final, so far as it declared the moneys to be erroneously paid by the United States out of the Chickasaw Fund. Who, then, was to correct the error?—the same accounting officers who made it; and in what way? Why, by doing then what they should have done in the first instance, charging the account to the United States, and paying the same due to the Chickasaws, as should have been done originally, in the mode decided in 1846, by the proper accounting officer of the treasury. It was the whole adjudication, as appears upon its face, that, in the language of the Second Auditor, (which is the printed form prescribed by law,) "was transmitted for the decision of the Second Comptroller thereon," who thereupon did affirm the whole decision, which, in all its parts, was final and conclusive. It would be a strange doctrine, indeed, that the decision of the proper accounting officers adjudicating upon a claim should be final and conclusive as to the payment of the claim, but not as to the fund out of which it was payable by law. If this were so, the decision of those officers would never be final in any

case, because in all they are required to decide, and do decide, not only the justice of the claim, but under what act of Congress, and out of what fund, the claim is to be paid. Their decision is upon the act of Congress in all cases, and its applicability to the payment of the claim, and is necessarily equally conclusive on both points. It is not the naked justice or equity of the claim upon which they decide, but under what law it is payable, and that decision is final and conclusive.

I come now to the general ground on which the Commissioner undertakes to overrule what was a final decision of the accounting officers of the treasury, viz., the fund out of which this case was payable. Now, that this fund was standing on the books of the treasury when this decision was made by the accounting officers, is certain; but the Commissioner suggests, that two years afterwards, a portion of this fund, the Treasury Department was informed, "would not soon be required, and which might be carried to the surplus fund." Now, on reference to the records, I find, that whatever the opinion of the Commissioner might have been in 1848, no part of this sum was ever officially reported by the Secretary of War to the Secretary of the Treasury, to be carried to the surplus fund, as he was required to do, if he desired such a transfer of that fund, under the act of Congress of 1820. Under this act, the Secretary of the Treasury had no power to transfer to the surplus fund appropriations for and payable through the War Department, unless upon the official report and request of the head of that department, which was never made in this case. So the Commissioner is mistaken as to his facts; and there was an obvious reason why it was not so made. The proper accounting officer of the treasury, in September, 1846, had decided that this identical appropriation was applicable to the payment of the Chickasaw claim, and that that claim should be paid out of it, which decision remained on record, unreversed and irreversible by any other authority. That Secretary Marcy could not reverse it directly, seems not to be denied. How, then, could he do it indirectly, by transferring the balance of that appropriation to the surplus fund? But let us suppose that Secretary Marcy had attempted to make a decision so entirely unauthorized by law. It can only be done by an official request to the Secretary of the Treasury to make the transfer. Now, that official request, as before stated, never was made, and if it had been, it would have been impossible for the Secretary of the Treasury, as I shall briefly show, to have carried it into execution whilst the previous approving adjudication of the proper accounting officers of the treasury, of September, 1846, remained in full force. This transfer to the surplus fund is effected by warrant, signed by the Secretary and First Comptroller of the Treasury, which would have brought up all the payments and decisions of the proper accounting officers of the treasury as to that appropriation, and necessarily this identical decision of the Second Auditor and Second Comptroller directing the Chickasaw claim to be paid out of it. That decision, we have seen, the Secretary of War had no power to overrule, nor did he ever undertake to do so, nor did the Secretary of the Treasury have any pretence for the exercise of such a power. The truth is, if the Secretary of the Treasury had attempted this transfer to the surplus fund, it would have brought immediately before him

this identical decision of the Second Auditor and Second Comptroller, either to be overruled or confirmed by him and the First Comptroller. It is evident, therefore, that whatever the desire of the Commissioner might have been as regards this transfer to the surplus fund, or however he may have designated a part of it which in his judgment might properly be so transferred, the Secretary of War never did request such a transfer, nor could he legally do so whilst the before-mentioned adjudication of the Second Auditor and Second Comptroller remains in force. Nor could the Secretary of the Treasury have made the transfer, for he had no power to overrule that adjudication. So much as regards the supposition of the Commissioner that the balance of this appropriation was transferred to the surplus fund, which, it will be perceived, was founded on an error of fact. His only remaining objection to the payment out of this fund is this: "The existing appropriation certainly had no reference to the Chickasaws, for it was made subsequent to their removal," and after the expense "thereof and of their subsistence had been incurred." Now, it is sufficient to remark, that this original appropriation was made long before the removal of the Chickasaws, and would have been clearly applicable to the purchase of the provisions with which the Chickasaws were erroneously charged; and the subsequent law to which the Commissioner refers, shows upon its face that it is a re-appropriation of an amount which had been carried from this appropriation to the surplus fund.

This appropriation for removal and subsistence of Indians was made in 1831 or 1832, was increased in 1836, and went to the surplus fund and was re-appropriated in 1839, and was used constantly during the ten years succeeding this re-appropriation by the War Department, showing as well by the act itself, as by the uniform action under it, that it contemplated a longer period than two years from its date for its execution; and a portion of it Mr. Medill says in his report he still purposed to retain for future expenditures, showing conclusively that even under his interpretation of the law it would not go to the surplus fund, merely by the lapse of time after the expiration of two years from the date of the appropriation. In such a case it appears by the act of May 1st, 1820, as well as by the interpretation given that law by Attorney General Grundy, on the 14th February, 1839 (page 1240, Attorney General's Opinions), no portion of this appropriation could go to the surplus fund, except by a direct official requisition of the Secretary of War upon the Secretary of the Treasury, which was never made, and in fact, as we have seen, could not be made in this case, with the decision of the Second Auditor and Second Comptroller on file, correcting this error by a decision that was final and conclusive, and appropriating this fund to pay the Chickasaws.

If any doubt could remain as to the error of charging these provisions to the Chickasaw fund, and the right to make the payment out of the appropriation for the removal and subsistence of Indians, and the practice under that act, it will be made perfectly clear on reference to my arguments of the 7th of April, 1845, and the 29th of August, 1846, and of the opinions and to the letter of the First Comptroller, of the Second Auditor, and Second Comptroller. But even supposing for the sake of the argument, it could not legally be made out of the appropriation for

removal and subsistence of Indians, or that that appropriation had gone to the surplus fund, still it would not in the slightest degree affect the right of the Chickasaws to receive this money under the third article of the treaty with them of 1832, and the appropriation made by Congress of the 20th of April, 1836. To make this matter perfectly clear, I cite that third article of the treaty—

“As a full compensation to the Chickasaw nation for the country thus ceded, the United States agree to pay over to the Chickasaw nation all the money arising from the sale of the land, which may be received from time to time, after deducting therefrom the whole cost and expenses of surveying and selling the land, including every expense attending the same.”

Thereupon followed the law of the 20th of April, 1836, which is as follows :

An act to carry into effect the treaties concluded by the Chickasaw tribe of Indians, on the 20th of October, 1832, and the 24th of May, 1834.

Section 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all moneys received from the sale of lands under the stipulations of the treaties with the Chickasaw Indians of the 20th of October, 1832, and the 24th of May, 1834, shall be paid into the treasury of the United States, in the same manner that money received from the sales of public lands are paid into the treasury.

Section 2. And be it further enacted, That all payments required to be made, and all moneys required to be vested by the said treaty, are hereby appropriated in conformity to it, and shall be drawn from the treasury as other public moneys are drawn therefrom, under such instructions as may from time to time be given by the President.

Section 3. And be it further enacted, That all the investments of stocks required by the said treaty, shall be made under the direction of the President, and a special account of the funds under the said treaty shall be kept at the treasury, and a statement thereof shall be annually laid before Congress, and the sum of one hundred and fifty thousand dollars heretofore appropriated, agreeably to the said treaty, and to aid in its fulfillment, shall be refunded to the treasury as soon as funds sufficient therefor are received from the sale of the said lands.

Under the 3rd section of this law the following full, and final regulations were made by President Jackson, upon the recommendation of General Cass, then Secretary of War, and by him transmitted to Judge Woodbury, then Secretary of the Treasury.

(Copy.)

WAR DEPARTMENT,
May 7th, 1836.

HON. LEVI WOODBURY,
Secretary of the Treasury.

SIR: I have the honor to enclose for your information a copy of

“additional regulations for carrying into effect the treaties of 1832 and '34, with the Chickasaw Indians” approved the 7th instant.

Very respectfully,
your obedient servt.,
LEWIS CASS.

Additional regulations for carrying into effect the treaties of 1832 and 1834 with the Chickasaw Indians.

The accounts of Receiver of Public Moneys, under the Chickasaw treaties, shall be audited and adjusted in the office of the Commissioner of the General Land office, and be reported to and revised by the First Comptroller of the Treasury in the same manner that the accounts of the receivers are revised and settled.

The accounts of the Surveyor General of Chickasaw Lands shall be audited and adjusted in the office of the Commissioner of General Land Office, and reported to and revised by the Second Comptroller of the Treasury, in the same manner and subject to the same rules, regulations, and restrictions as the accounts of other Surveyors General are settled and revised.

All other accounts arising under said treaties shall be audited and adjusted by the Second Auditor of the Treasury, and be reported to and revised by the Second Comptroller, in the same manner that other Indian accounts are settled and revised.

A clerk in the Second Auditor's office will be selected, who for the present shall attend to the accounts hereby assigned to that office, and shall receive for his services a compensation at the rate of \$250 per annum.

These regulations to take effect from the 9th May inclusive.

Respectfully submitted for the approval of the President. War Department, May 6th 1836.

Approved May 7th 1836.

(Signed,)

ANDREW JACKSON

This account then of the Chickasaws and the payment to me under it was by an act of Congress submitted to the final settlement of the Second Auditor and Second Comptroller, under the direction of General Jackson; and no revision of this act by any other officer was authorized. The decision of these officers as to this account and the payment under it was placed upon the same basis of that of the adjustment of any other account committed to them by law, which we have seen by the act of 1817, and the opinions of Attorney Generals Wirt and Taney thereon, was final. But if there could be any doubt under that act, there can be none under this of the 20th April, 1835. As authorized by that law which extended both to the settling and payment of these accounts, General Jackson committed it to the final adjustment of the Second Auditor and Second Comptroller of the Treasury, declaring that these accounts “shall be audited and adjusted by the Second Auditor of the

Treasury, and be reported to and revised by the Second Comptroller, in the same manner that other Indian accounts are settled and revised;" and the duty of attending to these accounts was also, by the same order of President Jackson, assigned to a clerk in the Second Auditor's office, and no provision for any examination or revision was made. Now that very clerk in the Second Auditor's office did report in favor of this very account. The Second Auditor approved the account, which was finally approved by the Second Comptroller, and then, under the act of 1817, as well as under the act of 1836, the whole accounts were finally adjudicated, and were subject to no revision by any other officer. Under this decision of the Second Auditor and Second Comptroller, the payment might have been made at once by the Secretary of the Treasury, without any reference to any appropriation for removal or subsistence, under the general appropriation made by the act of the 20th April, 1836. The charge for these provisions should never have been made to the Chickasaws. If it had not been made, it is admitted that these moneys ought to have been paid to them under the act of 20th April, 1836; and when the officers who committed the error corrected it, by striking out this erroneous charge, all that remained to be done was to pay this sum to the Chickasaws, under the act of 1836. In truth, the appropriation for removal and subsistence, has then, as a necessary requisite, nothing to do with the payment of this money to the Chickasaws; and even if Governor Marcy had been ever so correct, is the only objection he ever made to this payment, namely, the transfer of that appropriation (for he always admitted the justice of the claim itself) yet it would only change the form and not the substance of the question, and still leave it an incumbent duty to pay this claim out of the appropriation made under act of 20th April, 1836. It is time I did urge this transfer of the removal and subsistence fund, because I believed then, as I do now, it was legal—in which opinion I was sustained by the opinions before referred to of the First Comptroller and the final adjudication of the Second Auditor and Second Comptroller. I was fearful also that unless some appropriation could be shown out of which the Second Auditor and Second Comptroller might have disbursed this sum for provisions on account of the government in 1837, that these officers might not be willing to correct the error then made; but, however that may be, and whether that disbursement could or could not have been made under that appropriation, the moment the error was corrected by which this charge for provision was improperly debited to the Chickasaw fund, and that charge stricken out, as it was by the decision of the Second Auditor and Second Comptroller, it left this sum clearly payable to the Chickasaws, to be drawn from the treasury of the United States, under the act of 20th April, 1836. The Commissioner of Indian Affairs next takes up my contract and power of attorney, and says the amount to be paid me is extravagant. This opinion was entirely extra-official and gratuitous. The only question upon which he had a right to express an opinion was this: Is the contract legal? Is it in accordance with the treaty made with the Chickasaws, and the uniform practice of the government under that treaty? The law did not empower the Commissioner of Indian Affairs to make or impair contracts entered into

by the Chickasaw nation through their commissioners. They were the official functionaries to whom this power exclusively appertained, and the Commissioner of Indian Affairs had no authority to supervise or annul their acts. The official letter of his predecessor of the 17th Jan., 1845, pointed out the persons who had authority to transact the business of the nation with the general government, and these were the persons who made the contract in this case, and they alone were to judge of the propriety of its provisions. Those commissioners employed me to contest a claim with the United States, and was any subordinate officer of that government, whose error, or that of his predecessor, had made the employment of counsel necessary, to judge of the amount of compensation to be paid by the party who had been wronged, to the counsel who should succeed in correcting the error? Surely, the commissioner had no such authority, and his remarks on that point are alike unwarranted and gratuitous. But if there could be an inquiry into this question, why was the charge extravagant? It certainly was not unusual, for the records of his own office showed, as well in relation to the Cherokee as to other Indians, a contingent fee of one-half the amount obtained had been repeatedly allowed counsel. Why then was this contract to be made an exception, and all my time, all my heavy expenditures, and all my trouble were to go for nothing unless I succeeded in correcting the errors of government officers, which, as is shown in this case, was a most difficult and laborious task, and quite uncertain, however clear the justice of the claim. So far from being extravagant, under the circumstances of this case, it was as fair, equal, and just an agreement as ever was made between man and man, and has resulted in great benefits to the Chickasaws, which, in the absence of my contracts, they would not have realized. You will observe it was not merely my services in this case, which constituted the consideration of this contract, although they alone would have been sufficient, but there were other and ampler considerations upon which it would fairly rest. I will enumerate some of them.

1st. The error was discovered exclusively by me, but for which the Chickasaws would never have realized anything from this claim.

2nd. I had already succeeded, during the preceding session of Congress, after much toil and labor, in procuring the passage of a law by which the Government of the United States assumed the payment of the interest on all the stocks of the delinquent States, involving the payment of the principal, as well as the interest, amounting to several hundred thousand dollars, which appropriation Congress had refused for years to make, although urged to do so by the Commissioner of Indian Affairs. I was entitled by my contract of Nov., 1844, to one-half of this amount. The appropriation had been obtained, and the money due me, when in June, 1845, by the present contract I relinquished my undoubted right to all that sum (which far exceeds the present amount) for the contingent and uncertain prospect of one-half the present claim, if it could be obtained, through years of toil and labor. Let it be remembered here also, that when in April, 1845, I agreed to surrender my ascertained right under the contract of Nov., 1844, to one-half of this interest account, the question of correcting the error in this account was about

being brought before the proper officers of the government. The Second Auditor had acknowledged the error, and the Secretary of War declared it ought to be corrected, and there was some prospect of my realizing my half of the same, to which I would have been entitled anyhow, under the contract of Nov., 1844. Subsequent, however, to wit, on the 26th April, 1845, my hopes seemed to be all blasted by the decision of the Attorney General of the United States, before referred to, declaring that in consequence of the inhibition of the act of 3rd of March, 1845, this error could not be corrected. Yet, notwithstanding all this, I held on in good faith to my proposition to the commissioners to surrender my ascertained rights, under the contract of 1844, to half of the interest fund, and to cancel that contract upon the execution of the present agreement, the prospects of success under which were then so dark and gloomy. With such facts before him, then, it would have been impossible for the Commissioner to suppose that this contract was extravagant.

But again, the opposing counsel have relied much on the opinion of Major Armstrong, yet I have shown by his letters that he considered the present contract perfectly fair and just, and my conduct "magnanimous;" that the contract was explained by him to the commissioners, and signed by them on his recommendation. Now was not the opinion of this officer, so intimately acquainted with the Chickasaws and with all the facts of this case, much more likely to be correct than the views of the commissioners given during my absence in California, and in the absence also of the facts. I have stated [facts] which are indispensable to a true understanding of the case. But I will now show that the Commissioner himself, by his own act, did affirm the validity of this very contract, by issuing a requisition for the payment of money under its provisions, to wit, one-half of the land fund to which I was entitled under the same. The provision as regards both these funds was embraced in the same clause of this contract and stood upon the the same basis precisely of law and justice, the proportional amount being the same, and the principle involved the same. That the Commissioner decided in favor of my rights to one-half this land fund, under this contract, as shown by his requisition of the 11th of August, 1846, before given, and was estopped by that act and that adjudication of his own, from constituting its validity, is clear and unquestionable.

The Commissioner quotes the 3d section of the act of the 3d of March, 1847, namely, that—"all executory contracts made and entered into by any Indian for the payment of money or goods, shall be deemed and held to be null and void, and of no binding effect whatsoever." It would be enough to say that this law was entered into and that it could have and was not intended to have any retrospective operation to invalidate an existing contract. But it has no application prospectively to a case like this, when a solemn treaty, which is the supreme law of the land, pointed out the commissioners and functionaries who should bind a nation and conduct its affairs—no law could set aside, or was intended to set aside such a treaty. But the law was exclusively applicable not to official functionaries, designated by treaty, but to individual Indians, dealing in their private capacity. Nor was this law an affirmation of

any previous practice in relation to such functionaries; on the contrary, the practice had been directly otherwise, as appears in repeated cases decided by the Commissioner of Indian Affairs; including the decision to which I have before referred of this very Commissioner, under date of the 11th of August, 1846, affirming my contract with the Chickasaw commissioners, which is now contested. If, then, the Commissioner of Indian Affairs is of the opinion that such contracts only with the Chickasaw commissioners shall be deemed valid as that functionary shall consider just and equitable, he himself, by his own official act, has affirmed the justice and validity of this very contract.

I will now as briefly as possible review the arguments and charges of the opposing counsel. Fortunately, in this case their charges, so far as I am concerned, are shown to be false by the records of the country. The first charge is, that on the contract of November, 1844, (subsequently canceled,) I obtained under the administration of President Tyler the sum of \$7,972 20, and then withdrew that contract from the files of the Treasury. Now this statement, as the records show, is false in every particular. This was a claim for interest due by the Agricultural Bank of Mississippi to the Chickasaws, and paid by that bank on settlement, through the government of the United States. It was first presented by me, in 1844, to J. C. Spencer, then Secretary of the Treasury, and as such, under the treaty, the trustee of the fund. He gave a written opinion in favor of the claim, and upon that opinion it was carried by me in January, 1845, before the Second Auditor and Second Comptroller, who, concurring in opinion with Secretary Spencer, decided in favor of the claim and of its payment to me under a distinct and independent power of attorney, executed by the Chickasaw commissioners, at the same time of the general power (subsequently canceled), upon that decision of the Second Auditor and Third Comptroller. Judge Wilkins, then Secretary of War, issued his requisition in my favor for the amount, which was paid to me in January, 1845, on the warrant of Judge Bibb, then Secretary of the Treasury.

That distinct and independent power from the Commissioner to draw that sum, remains now and ever has remained on file among the papers with the Second Auditor. This sum was not drawn upon this general contract of 1844, which was never on the files of any department of the government, never presented to any officer thereof, and no money ever drawn or attempted to be drawn thereon. Here then are two falsehoods of which these men are convicted by the records. 1st, that this money was drawn on this general power of attorney and contract of November 1844; and 2nd, that that contract was withdrawn from the files of the government. This alone should stamp the reckless and profligate character of these charges, but there are other falsehoods which are still more atrocious. The next charge is, that the claim for \$5,130 15 was "presented at the Treasury, allowed and paid, without the administrative examination required by law, and even without the knowledge of the Commissioner of Indian Affairs that any such claim was really in existence, much less that it was presented for payment." The whole of this is shown to be utterly false and the reverse of the truth, by the records of the country, heretofore referred to by me, and embodied in this

statement. The claim, it has been shown, with this identical power and contract now in controversy attached to it, went before the Second Auditor, as required by the act of 20th April, 1836, by whom it was allowed, and the contract declared to be valid, in August, 1846. In the same month it went to the Second Comptroller, by whom the action of the Auditor was confirmed and the contract sustained. It then went up to the Commissioner of Indian Affairs, by whom the action of the Second Auditor and Second Comptroller was affirmed, and this contract declared valid by his report to the Secretary of War, of the 11th August, 1846, for the payment of this money. Whereupon, Secretary Marcy affirmed the claim and contract, by issuing his requisition before quoted, upon the Secretary of the Treasury, for its payment to my assignee under this contract, when it was accordingly paid. So much for the atrocious falsehood that this sum was paid without the knowledge of the Commissioner of Indian Affairs. The next charge is, referring to the present contract, that "the original paper can be very satisfactorily traced out of the possession of the War Department into the possession of Dr. Gwin." Now this statement is absolutely false, which would seem to intimate collusion between the officers of the War Department and myself. It is true, as the records show, that this paper is traced last to the office of the Commissioner of Indian Affairs, but it is an infamous falsehood that it was last traced out of that or any other office into my possession. It was my interest and that of my assignee, that the original paper should remain on file in the office. It was the interest of those who opposed the payments that it should disappear, in order to raise objections that were substantially made by them. Now in point of fact, it was not until January, 1850, that the original seems to have disappeared, for on the fifth (5th) of that month, the affidavit of Mr. Corcoran was made upon the copy and filed. Now that copy is not only proved by the affidavit of Mr. Corcoran, but it is certified to be a "literal and exact copy of the original," by Samuel F. Butterworth, the witness to my signature. Mr. Butterworth was district attorney for many years for the northern district of Mississippi, under the administration of Mr. Van Buren. His signature is well known to many members of Congress, and could have been identified by a number of his official documents, as district attorney, now on file. To remove all cavil, I herewith insert Mr. Butterworth's affidavit, which is conclusive on the subject.

"On or about the 6th of March, 1846, at the request of Wm. M. Gwin, I carefully compared the contract of said Gwin with the chiefs, commissioners, and head-men of the Chickasaw nation, with a copy of said contract, prepared by said Gwin, and found said copy to be correct, and signed the following certificate of the correctness of the same upon said copy:—'I do hereby certify that the above is a literal and exact copy of the instrument to which William M. Gwin has signed his name, as witnessed by me.

(Signed,)

SAM. F. BUTTERWORTH.'"

“The City and County of New York.—Before me, Neil Gray, a Commissioner of Deeds, this day personally appeared the above S. F. Butterworth, who, being sworn, says that the foregoing statement and certificate are true.

(Signed,)

NEIL GRAY,
Commissioner of Deeds.”

Fortunately, however, for the cause of truth and justice, in May, 1846, in addition to the copy attested by Mr. Butterworth, as an additional precaution I took another copy of the original contract, which copy was certified as follows, by A. D. Woodbridge, Esq., Deputy Postmaster at New Orleans, where the original was mailed at that office to Mr. Corcoran.

NEW ORLEANS P. O., *March 6, 1846.*

I hereby certify that the within document is an exact copy of an original, this day mailed in this office, by Dr. W. M. Gwin, late of the State of Mississippi, now of the city of New Orleans, and directed to W. W. Corcoran, Esq., of the house of Corcoran & Riggs, bankers, Washington City, District of Columbia.

(Signed)

A. D. WOODBRIDGE,
Assistant Postmaster.

The signature of Mr. Woodbridge, who is now Chief Engineer of Louisiana, is well known, and can be identified by the delegation in Congress from that State. What becomes, then, of the foul insinuation that the copy sworn to by Mr. Corcoran may not be a true copy of the original? To show, however, the reckless audacity of these charges, an attempt is subsequently made by these very parties to show that this identical contract was executed in fact, but not until after the resignation of the commissioners. I now come to another charge, which I will show to be equally false and reckless. It is, that I was forced to abandon the contract of 1844, in consequence of the protest of Mr. Upshaw, the Chickasaw agent, of the 19th March, 1845. Now, this protest was never known or heard of, except to Bryan and his associates, until long after the original contract had been surrendered, and the second one, now in controversy, obtained. The first intimation of the existence of this protest, furnished by the papers, is in the paper of the 16th January, 1850, filed by Epperson & Bryan against this claim, in the handwriting of Bryan, in which they say that Upshaw, on the 19th March, 1845, “drew up a protest against the payment of any further sum of money to Dr. Gwin under the contract aforesaid.” This paper, let it be observed, as before stated, is in Bryan’s handwriting, that it is written originally “filed a protest,” &c. But not daring to persist in this flagrant falsehood, which could be so readily contradicted by the records, he changed, so as to make it read, “drew up a protest, &c.” In truth, it never was filed until the 11th February, 1850, as appears by

Bryan's own statement filed on that day. After quoting from this protest, he says: "We would invite attention to the protest of Upshaw, dated Washington, March 19th, 1845, herewith submitted." Mark the words used by Bryan in that paper, "herewith submitted." Up to that date no such paper had been on file; and up to that very date the requisition of Upshaw, and the absence of any protest by him, had been urged in favor of this claim by the counsel of Corcoran & Riggs. Here; then, at the last extremity, and for the first time, this protest, which shows upon its face that it is every word, except the signature, in the handwriting of Bryan, is produced and filed, having been detained during the whole preceding time in his possession. Before, however, proceeding to that point, and showing for what purpose this official protest was written by Bryan, and withheld from the files of the office during a period of nearly five years, I call attention to another falsehood apparent upon the face of the papers. In Bryan's letter, before referred to, of the 16th January, 1850, he says, that Upshaw "*drew up*" this protest. Now, upon a comparison of the protest with the other papers of Bryan, it appears that Upshaw did not draw it up, but that it was drawn up by Bryan himself, every word of it except the signature being in his own handwriting. But why, then, on the 19th of March, 1845, did Bryan draw up this protest, which is an official paper, signed by Upshaw as Chickasaw agent, addressed to T. H. Crawford, Commissioner of Indian Affairs; and why also did he, for a period of nearly five years, withhold the official papers from the files of the office? I will show his motives hereafter. On the 19th March, 1845, as he seems to have been ever since, Bryan was purely a volunteer in this case, not having been employed in it in any way by the Chickasaws; but he was, as the record shows, a professional prosecutor of claims before the department, and especially of Indian claims, and he could have no possible motive in obtaining and suppressing this paper, except to extort money from me, and upon a failure to do so, then to use it to defeat my claim, and secure a compensation from the Chickasaws for so doing; hence its suppression until the 11th February, 1850. We have seen the fraudulent suppression of this protest by Bryan, and it can be clearly shown from the paper itself that it must have been fraudulently obtained from Upshaw—no doubt, by sending one paper to him, and fraudulently substituting another for his signature.

That some imposition was practised, must be seen upon reference to the paper, for it contains statements which are false, and which Upshaw must have known could have been shown by the public records to be false. Now, the first falsehood contained in this protest is the following statement, referring to the canceled power of attorney of 1844: "This power of attorney was drawn up by Dr. Gwin, and was general in its character, and has since been deposited with the accounting officers at Washington, and a large sum of money, due by the government to the Chickasaws, paid over to Dr. Gwin as their attorney, under the power of attorney before referred to." Now, Mr. Upshaw never could have knowingly made such a statement, because the public records proved it to be false, as before shown, and he knew it to be so, and that such an assertion would be contradicted by the records. The only sum then

drawn by me, as the records show, was the sum allowed on account of interest due the Chickasaws from the Agricultural Bank, to prosecute and recover which I had a special power of attorney, under which it was paid in January, 1845, which power of attorney was signed by Upshaw himself, as a subscribing witness, and is on file with the papers. Here Mr. Upshaw is made by this protest to contradict himself, and to assert what the records at the time showed to be false.

The protest continues: "It is known to me, having been present at the various interviews between Dr. Gwin and the Chickasaw commissioners, that it was no part of the agreement or understanding of the commissioners that Dr. Gwin was to demand or receive any money that was at the time standing on the books of the treasury to the credit of the Chickasaw nation, and much less such money as would in the regular way be transmitted by the Indian Office to their agent, to be paid over to the Chickasaw people. The undersigned is of opinion, that, in receiving the amount which has been paid over to him, Dr. Gwin has transcended the spirit of the authority given to him by the Chickasaw commissioners," &c., &c. Now the records show that I never set up any claim to any money that was standing at the time on the books of the treasury to the credit of the Chickasaw nation, and that "would in the regular way be transmitted by the Indian Office to their agent, to be paid over to the Chickasaw people." So far from this standing to their credit on the books of the treasury, the claim was wholly unknown to them, had never been urged in their behalf by any one but myself, and its allowance obtained by me in January, 1845. Nor, but for my exertions, would it ever have been known, the existence of the claim having come accidentally to my knowledge in examining papers appertaining to the Agricultural Bank; and the public records show that it was allowed and passed to the credit of the Chickasaws entirely through my instrumentality. Yet Mr. Upshaw is made by Bryan falsely to assert the very reverse of what is shown to be true by the public records. And here it is proper to allude to what I shall more fully discuss and prove hereafter, that the intimation that I had attempted to obtain payment of any claim, which claim was regularly allowed to the Chickasaws on the books of the treasury, or that any power of attorney I ever obtained from the Chickasaws authorized me to receive such moneys, is shown by the public records to be utterly false and unfounded. These records show that in every instance the claims prosecuted by me, or for which I received or desired to receive payment, on account of the Chickasaws, were disputed, never recognized by the government except through my aid and instrumentality, and, in the very case now in controversy, was only to be paid by correcting an error against the Chickasaws, made in 1837. These facts, then, show conclusively, that neither Mr. Upshaw nor the Indians, nor any one else, was ever overreached by me in any one particular, but that all was fair, open, well understood, and equitable, as I shall more fully demonstrate hereafter. And here I will dismiss this protest, by calling attention to the fact, as disclosed by the papers, that this important official document has been suppressed for nearly five years, which is in itself a high offence. I come to another outrage committed in this case. It is the use of what purports to be

a letter dated 12th October, 1846, from Major Armstrong, who is now dead, and for whose honor it might be hoped that such a letter had never been written. It does not purport to be signed by him, but only professes to bear his initials; and if he were living, I would summon him here to explain it, or if ever he could have placed his initials to such a production. If these initials, however, indicate this to be his statement, it shows upon its face that it must have been obtained by false allegations in the letter to which it purports to be an answer. Let us contrast some of its statements with his previous letters to me. In this letter of the 12th October, Major Armstrong is made to say: "I had no idea that anything could be obtained for the provisions. The Chickasaws, I was aware, had asked to have the provisions bought, and never contended for pay. I thought that if anything was obtained, it would be through Congress, and certainly never there." Now, in his letter to me, in April, 1845, he says, "The money from the Agricultural Bank and the provisions *improperly purchased* by the government, is already lost sight of by the Chickasaws. You may by great trouble and labor get some remuneration from the provision account. If you fail, you lose your labor." Here, over his own signature, he asserts that the provisions were "*improperly purchased by the government,*" and in his letter before quoted he is made directly to contradict this statement, and to assert that the Chickasaws "*had asked to have the provisions bought,* and never contended for pay." Now, independent of this letter to me, his own previous official letters, and the report of Hitchcock, before referred to in my communications of the 7th April, 1845, and 29th August, 1846, demonstrate that these provisions were not purchased in the mode prescribed by the treaty, or as requested by the Chickasaws, but that they were ordered to be purchased before any request from the Chickasaws reached the government, and in a manner totally different from that request, and from the requirements of the treaty, in consequence of which the purchase was nearly a "total loss," as stated by Major Armstrong himself, before quoted. Now the Chickasaws could only be charged with provisions purchased in pursuance of the provisions of the treaty, and their request. But now let me ask, if Major Armstrong really did for a moment suppose that it was unjust to the government to correct this error, why did he obtain for me, from the Chickasaws, the identical contract and power of attorney now in controversy, and by which alone I was enabled to correct this error, and which contract, as appears by his letter of the 2d of June, 1845, was signed by the Commissioner on his recommendation. Also, if it was unjust to pay this money to the Chickasaws, and so known to Major Armstrong, why, as an officer of the government, did he not so inform the President? and why did he write to me the friendly and favorable letters of April and May, 1845, both approving my course in this matter. Why was the professional prosecutor of Indian claims entrusted with this information in a confidential letter signed with his initials? and why was such a person, a violent partisan whig, selected to defend from injury the democratic administration of J. K. Polk, against one whose best exertions had been given to bring that administration into power, and to maintain its ascendancy? That letter con-

tains the following statement ; " I have not received from the Indian office the Creek Land money, or the Choctaw,—say Ritters and James King, Alcoy Roebuck, Trahem, &c. ; will you please see about it without saying who gave you the cue, &c. ; look into the Haskins case, and McCoy's, and urge the settlement of them, also Betsey Beans ; write me fully." Here Major Armstrong, a government officer, entrusted with the disbursement of vast sums of public money to the Indians, is presented in the light of one making confidential suggestions to a whig partisan and professional prosecutor of Indian claims, in relation to such claims and the action of the government upon them, with the extraordinary injunction of secrecy, that he is not to inform the government who gave him " the cue."

What can be more unwarrantable than to place among the public archives, without explanation, such a letter, to cast a shade upon the official character of a public officer, who, being dead, could not explain for himself. I will not pursue the examination of this letter and its statements. I could, if I chose, riddle both, so far as I am concerned, but will not. I have reviewed it sufficiently to destroy any injurious effect any statement in it might have upon me, and self-defence—all I aim at—requires no more. I will refer to the papers filed against me no farther. They are full of falsehood not yet noticed, but the imputations upon my acts and character are now fully refuted, and I dismiss them without further comment. I will produce but one more argument in favor of the validity of my claim, which every lawyer will at once appreciate.

By reference to Upshaw's protest of the 19th March, to Armstrong's letters to me of April and May, and to Johnson, 2nd June, 1845, and the recitals of the new power, it is abundantly evident, and not disputed, that the old power of attorney and contract of Nov., 1844, was a general power, irrevocable, being coupled with an interest, and authorizing me to receive one-half of what might be recovered of this provision fund, with which old power in my possession, I had commenced the prosecution of the claim of the 7th April, 1845.

Now it is equally clear by these letters of Armstrong, that this old power and contract was delivered to him as an escrow, with his written obligations to return it to me if the new one was not executed by the commissioners. If, as now contended, no such new power was executed by the commissioners, but only private persons, the old power and contract, it is clear, remains in full force ; and the validity of that power, signed by the six commissioners, by the four chiefs and head-men, and also by Upshaw himself, as it is admitted in his letter of the 19th March, 1845, is beyond dispute. It was approved also, as I have shown, by Stuart, the agent of Ish-ta-ho-to-pa, and the party hitherto opposed to it. This power and contract, then, were delivered to Armstrong as an escrow. The condition alone upon which he was permitted to surrender it, was to obtain a valid new contract from the commissioners ; and the law is clear, if this condition was not fulfilled, the old contract is in full force. That contract could not be rescinded but by my consent, for it requires the consent of both parties to rescind as well as make a contract. Now, it is admitted that I only consented to surrender the old

contract upon the express condition that a new valid one should be substituted in its place, and if this has not been done, as is now alleged, my assent has never been given to the rescinding of the old contract, and consequently it remains in full force, and clearly authorizes me to receive this money. When the present administration came into power, it found on record a decision of the Second Auditor and Second Comptroller of the Treasury, in favor of this claim, and a further adjudication by these same officers that the payment should be made out of the very fund from which payment has been made. That decision we have seen by the words of the law, and by the opinions of Attorney Generals Wirt and Taney, was final and conclusive. We have seen, also, that by a decision of these same officers, sustained by Commissioner Medill, on the 11th August, 1846, and ratified by Secretary Marcy on the same day, and carried into effect by Secretary Walker, this identical contract and power of attorney was adjudged to be legal and valid, and the money paid upon it. The Secretary of the Interior did nothing more, in the payment of this claim, than carrying out the decisions already made during the preceding administration; decisions which we have seen were final and conclusive. Instead, however, of paying the money, as in law he was bound to do, he took the opinion of the Attorney General, upon a reference to him of all the legal questions involved, and before whom the most elaborate written arguments were made to defeat this claim. The Attorney General, as under the law he was bound to do, decided in favor of the payment, and the manner indicated in the decision of the proper accounting officers of the preceding administration; and upon all these solemn adjudications the Secretary of the Interior paid the money. This act, though just, legal, and proper, was, in truth, purely ministerial, for he was only carrying out adjudications made under the preceding administration, which were not only just in themselves, but final and conclusive.

I now propose to examine, briefly, the apparent unanimity with which this claim and my agency has been opposed by the Chickasaws. This originates principally from the frauds that exist amongst themselves. There has been, for years, a violent opposition to the commissioners, which was headed by Pitman Colbert. The conduct of the Commissioner in disposing of the Chickasaw Orphan and Incompetent Fund was generally unpopular with the nation; added to this was the report industriously circulated that immense claims existed against the United States, and that I had been employed to prosecute them. The existence of such claims pre-supposed neglect of duty on the part of the agents of the government as well as the commissioners, and the opposition eagerly seized hold of it to strengthen their cause. The traders in the nation were also opposed to any one but themselves having anything to do with the Indian business. Before I was aware of this opposition, I had made considerable progress in the discharge of the duties I had undertaken. I was induced by the representations of Mr. Stuart to suppose that this opposition would cease on his return to the nation. I was afterwards informed by Major Armstrong that the only point upon which there might a doubt arise as to my agency, was the interest secured to me in the interest in the suspended State stocks, which the nation looked

upon as their national fund, and might censure the commissioners for disposing of, even for the important services which he acknowledges I had rendered the nation. I at once proposed to surrender the whole of my interest in it, and look altogether for compensation to such claims as were considered lost to the nation, and from which they had expected nothing until their attention had been drawn to them by my agency. I proposed further to give him a carte blanche, to make any arrangements he thought best in the premises. He agreed to receive the power which had been given to me, and pointed out himself the claims which he said he knew the Indians would willingly surrender to me to make out of them what I could, for what I had done for the national fund in getting the State stocks assumed by the government. I drew up the second power in exact accordance with his instructions, but before I could get fair copies made out, he was called off to Nashville, and addressed me the letter that has been incorporated in these papers. I forwarded the old and proposed new power to him, as directed, and in my letter gave him full power to alter the latter in any way he pleased. He did alter it, giving me half their claims instead of the whole, as he had at first suggested. After he left Washington, Ish-ta-ho-to-pa's protest of the 3rd of April, 1845, reached the department, and disclosed to me continued opposition to my agency. I replied to it at once, as has been seen, and supposed the surrender of the power complained of would remove all objection. Before the receipt of the new power, the decision of the Attorney General rendered it doubtful whether anything could be recovered for the provisions purchased at Cincinnati, and I paid no attention to this claim for a year thereafter, when the repeal of the law of the 3rd of March, 1845, again opened the case. In the meantime I was not apprised of the continued opposition to my prosecuting the claim. Major Armstrong had written to me, on the 22d of May, 1845, that many stories were afloat, all of which were false, and he would correct them. Knowing his great power with the nation, I did not doubt but he had done so. Ish-ta-ho-to-pa's protest had acknowledged that I was pursuing the right course to have justice done the nation, but objected to the amount of compensation it was supposed I was to receive. My giving up so large a portion of what I was to receive, with the assurance of Major Armstrong that he would correct all the stories afloat to my prejudice, and refute the falsehoods that had been circulated, induced me to believe that my services in this claim would be appreciated and sustained by the whole nation, for the most prejudiced must acknowledge that but for my exertions it was lost to the Chickasaws. The secret opposition that the papers filed during my absence in California disclose to have existed in this city to my agency for years, was unknown to me. I thought all opposition had ceased with the surrender of the old power. I diligently exerted myself to have a transfer of such funds as would refund the whole amount, \$112,042 99, to the Chickasaws, and would have succeeded but for the opposition to my agency in this city, entirely unauthorized by the Chickasaw nation, but which they were stimulated to prosecute, the profits to be shared with them by the parties here, if they succeeded in defeating my interest in the claim.

Of the motives that influenced those who got up this opposition, I leave others to judge. It is certain they would have had nothing to fight over but for my services in getting this claim allowed. And now I desire to

discuss a branch of the subject which is far more important to me than the legal question involved—namely, the perfect fairness of this whole transaction on my part. To understand the case, the following brief narrative is necessary. Upon an examination of the accounts of the Chickasaw nation, and several congressional reports relating thereto, I came to the conclusion that large sums of money had been withheld from them, to which, in my opinion, they were justly entitled, and which, by great labor, expense, and perseverance, would probably be awarded them. I contemplated then strict scrutiny of these accounts by Congress and the judicial tribunals of the country, as will be shown by the public records. These errors having been committed chiefly in the Executive department of the government, and especially in the War department, and by injudicious investments in the stocks of States that failed to pay interest, I had but little hope of success, except through the courts of the country, and through Congress. Being a private citizen, and having retired from all public employment, I repaired, in November, 1844, to the Chickasaw nation, an entire stranger to the agent and nearly every individual in the nation. Having no influence to bring to bear except the justice of these claims, so long neglected, I went directly to the residence of Mr. Upshaw, the agent, and laid before him a full statement of all the facts of the case, and requested him to call the authorized agents of the nation together, that these facts might be submitted to them. My conversations with Upshaw were public, and in presence of General Harney, and other officers of the United States army at Fort Wachita. By these gentlemen I was honored by a public entertainment, the object of my business being well known and notorious. The commissioners, chiefs, and head-men were met by me in the council house of the nation; and in full council, open for every one, and in the presence of their agent, Mr. Upshaw, these claims against the government and individuals, which had been so long neglected, were fully explained. Benjamin Love, the most intelligent man in the nation, and who had acted as interpreter in all their treaties, being one of the commissioners, acted also as interpreter on this occasion; the only two surviving commissioners who signed the treaty of 1834, Isaac Albertson, the chief of the nation, and Benjamin Love, and all the commissioners, save one, who had long resided out of the nation, together with a number of the chiefs, head-men, and Mr. Uphaw, the agent, all being present, and participating in the proceedings of that council. The contract and powers of attorney were fully explained, and fully examined, and met with the unanimous consent of all present. These powers themselves, and the memorial to Congress, signed in the same way and at the same time, show that the whole matter was fully explained and fully understood. The claims which I undertook to prosecute, although complicated and long neglected, were just and honest, and have all been finally allowed by Congress or the departments. It will be perceived, by reference to the memorial to Congress, and the proceedings of Congress upon it, that I contemplated at that time obtaining the favorable action of Congress to a thorough scrutiny of all these accounts and claims in the judicial tribunals of the country, first, the United States District Court, and finally in the Supreme Court of the United States. I knew these claims were just, and therefore desired to subject them to the fullest scrutiny, both of Congress and the judicial tribunals. It will be observed that

the agency assumed by me contemplated great toil, labor, and perseverance, and large expenditures of money to be paid, not by the Chickasaws, but by myself, in costs in court, and to the counsel whom I should have been compelled to employ in the Circuit and Supreme Courts of the United States. In all this, then, what was there that was not perfectly fair, open, just, and honorable?

An act to enable the Chickasaw nation to try the validity of their claims in the Courts of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Chickasaw nation, through their commissioners, under the treaties of one thousand eight hundred and thirty-two and one thousand eight hundred and thirty-four, be, and they are hereby authorized, to file a petition in the nature of a bill in chancery, in the Circuit Court of the United States for the District of Columbia, setting forth their claims under said treaties, or either of them, against the United States, the citation to answer which bill shall be served on the attorney of the United States for said District, whose duty it shall be to file an answer to said bill; and the same proceedings shall be had in the case, as in ordinary proceedings in chancery, and the court shall enter a decree for such sum, if any, as may be found due by the United States to said Chickasaw nation, reserving to either party the right to appeal to the Supreme Court of the United States. And if said decree shall be against the United States, an appeal shall be taken to the Supreme Court of the United States; and if, upon the appeal of either party, said decree shall be affirmed, in whole or in part, by said court, then, and in that case, such sum, if any, as may be finally adjudged by said Supreme Court to be due by the United States to the Chickasaw nation, shall be accounted for by the United States, and held and disposed of by them, subject to the trusts specified in said treaties; and said decree, whether for or against the United States, shall be final and conclusive; and the appeal authorized by this act shall be taken within a period not exceeding one year from the date of said decree.

Passed the Senate, February 28th, 1845.

The Chickasaw commissioners were at perfect liberty in 1844 to make the contract with me, as it was done, or decline it, and they voluntarily chose the former, after the fullest discussion of the whole subject. The alleged errors having been committed by executive officers of the government, in relation to a fund of which that government was a trustee, and in regard to which they had entered into said treaty obligation, it was due to the Chickasaws that they should be investigated, not by the same officers who had committed the errors, but by the judicial tribunals of the Union. Numerous instances could be cited where these tribunals had been vested with similar power, both as regards land and money under treaty stipulations. I will cite the case of Florida, where millions were paid upon the award of a single territorial judge. On the 28th day of February, 1845, the Senate passed a bill, which was rejected by the House, authorizing suits to be brought against the United States by the Chickasaw nation. I annex a copy of that bill, to show that, in taking this agency, I desired to receive nothing from the United States

but what was subject to the severest judicial scrutiny, and that so far from providing for drawing any portion of the sums adjudged to be due to the Chickasaws, the bill expressly provided that they shall be "held and disposed of" by the United States, subject to the trusts specified in said treaties.

It shows further that I was willing to risk the judgment of the courts, as to the power of the commissioners to make this contract with me, and look to the nation and its authorized agents to carry it out.

I have entered into this elaborate examination of this case for reasons that must be obvious to every one. It was due to myself, as well as to the people of California, who have elected me to represent them in the Senate of the United States, that any imputation upon my acts and character should be, as it now is, fully answered, and, I hope I may be permitted to say, successfully refuted.

(Signed)

WILLIAM M. GWIN.

Hon. WM. RICHARDSON,
House of Representatives.

MINORITY REPORT.

THE undersigned, members of the committee appointed by the House to make investigation into certain official accounts of the Hon. Thomas Ewing, late Secretary of the Interior, by resolutions adopted the 22d of April, 1850, beg leave to report upon the first resolution.

The first resolution instructs the committee to inquire and report whether Thomas Ewing, Secretary of the Interior, re-opened and paid to G. W. & W. G. Ewing a claim against the United States of seventy-seven thousand dollars, after the same had been adjudicated and rejected by the proper officers of the government, before said Ewing was inducted into said office of the Interior? Who were agents and attorneys for said claim? What clerk in the office of said department of the Interior had interest in said claim? and how said interest, if any, was acquired?

The committee, upon investigation, did not find that said Secretary of the Interior had paid, or ordered to be paid, to said G. W. & W. G. Ewing a claim against the United States of seventy-seven thousand dollars, but they did find that several claims of said Ewings, in which they were interested with others as partners or otherwise, amounting in the aggregate to \$61,057 02, against various Indian tribes, have been ordered to be paid, some by the Secretary, and the others by the Commissioner of Indian Affairs, under the direction and approval of the Secretary, out of moneys payable by the United States to those Indian tribes, most of which, say \$ have been paid according to such order, and for the remainder certificates have been issued under his directions, and are still outstanding and unpaid.

As these are the only claims of Messrs. Ewing, that have come to the knowledge of the committee, which have been settled and paid or ordered to be paid by the Secretary of the Interior, your committee believe, that notwithstanding the aggregate of these claims is not equal to the sum named in the resolution, and notwithstanding others are interested with said Ewings in some of these claims, which go to make up the aggregate, that this is the matter referred to in the resolution, and they have accordingly proceeded to make in reference to it the inquiries directed therein; these claims are one of G. W. & W. G. Ewing, and one Joseph Clymer, against the Osage band of Pottowatamie Indians, for \$4,773 00; one of Messrs. Ewings against the said band for \$6,410 70; one of Messrs. Ewings against the Council Bluffs band of the same tribe for \$28,027 00; one of same against the Sac and Fox Indians, \$9,471 72; one of the same against the Miamies for \$5,241 00; one in the name of James H. Krutner against the same for \$834 60; and one in the name of Tabor & Hamilton against the same for \$6,300 00. The two latter were under the control of the said Ewings, who held powers of attorney from

the original claimants to collect the same, and they were paid to them accordingly. These claims had all been filed in the bureau of Indian Affairs, some time before the Hon. Thomas Ewing was inducted into the office of Secretary of the Interior, as will be seen by the report of the Hon. William Medill, Commissioner of Indian Affairs, made Nov. the 30th, A. D. 1848. See Ex. Doc. 2d Ses. 30th Cong., vol. 1, pp. 418-19-22-25. To this report the undersigned beg leave to refer the House for the nature and character of the claims, from which it will be seen that they were of long standing against the Indians, and, with the exception of the one against the Sacs and Foxes, they were chiefly made up of what purported to be old balances of accounts and of accounts for goods sold to individual Indians. They were of that character which, in the opinion of the undersigned, required a close and rigid scrutiny before being arbitrarily paid by the government out of moneys which it held merely in trust for these Indian tribes. It is true, the claimants had procured from the tribes what purported to be their respective national obligations for these claims; but this, in the opinion of the undersigned, did not preclude the necessity or propriety of such scrutiny. To these obligations, and the character and effect thereof, the undersigned will hereinafter advert.

One item, which went to make up the claim of Ewings & Clymer against the Osage Pottowatomies, was \$2,410 58 "for depredations and seizure of property belonging to them on Sugar Creek, in the month of January, 1842, by the Pottowatomies of the Wabash." Of this item, the Commissioner of Indian Affairs, in the report hereinbefore referred to, page 418-19, says, "In regard to the depredations and seizure of property, they cannot be charged up as claims arising in the course of trade. Specific provision is made in regard to such claims in the 17th section of the intercourse, act of 1834, which requires a certain course to be pursued in regard to them. That course was adopted in this case, and the claim was examined by my predecessor in 1845, and disallowed, after a full consideration of all the facts and evidence, and so far as this office is concerned, that decision must be regarded as final." The items which make this claim have not been furnished to the committee by the Secretary of the Interior, but the undersigned see nothing in the papers and proofs that have been submitted to the committee which conflicts or is not in accordance with the statement of the Commissioner. It therefore appears to the undersigned, that this account had been solemnly adjudicated according to law by the Commissioner of Indian Affairs, he having jurisdiction thereof, and disallowed, before said Ewing was inducted into the office of Secretary of the Interior. After this disallowance, what is claimed to be the national obligation of said band was obtained by the claimants for their demand, including this item. This instrument was executed on the 17th of June, 1846, and it is insisted that it was such an acknowledgment by the band of their obligation to pay it, as obviated the effects of the adverse decision thereupon by the Commissioner of Indian Affairs. But even if this were so, the item, after the execution of said instrument, came before said Medill, as part of the consideration thereof, and, as appears by said report, was by him disallowed, he regarding the previous decision of his predecessor as binding upon him and final. After both of these decisions, the undersigned find that the Secretary of the Interior did re-examine and pay the claim to the Messrs. Ewings and Clymer. As to the balance of

this claim, and the other claims before mentioned, although they had not been finally acted upon by the proper officer of the government, yet that officer, before said Ewing was inducted into the office of Secretary of the Interior, had decided in reference to them, and correctly in the opinion of the undersigned, that in adjudicating said claims the government had a right to go back of the obligations of said tribes and bands of Indians, and examine into the justness of the original claims upon which they were alleged to be predicated, and that it was under no obligation to allow and pay any more thereof than were strictly just and were strictly national claims against such tribes and bands, and not merely claims against individuals thereof, and that no other would be paid. Yet both of these decisions so just and salutary in their character, have been disregarded by said Secretary of the Interior, in the payment by him of these claims.

Although this government, in its intercourse with the various Indian tribes within its jurisdiction, has treated with them as independent sovereign nations, it also has ever exercised a guardian care over them, has ever endeavored to shield them from frauds and oppression, either from its own citizens or others.

For this purpose laws have been passed, regulating all intercourse with them, and agents have been provided to reside among them, to protect them in their rights, and other means have been used to advance their interests and secure their welfare; and surely if there ever was an instance where it was the sacred duty of one people to extend their guardian care and protection, their liberality and kindness, to another, it is the duty of the people of this government to the Indian tribes within our borders. In the opinion of the undersigned, this government was under no obligation to pay these claims out of the funds due from it to these Indian tribes, except that general obligation resting upon all governments to use all proper and just means within their power to secure to the citizens thereof their just rights; but when the citizen invokes the aid of his government to procure the payment of his claim, certainly his government has a right, it is its duty, before rendering that aid, to inquire into the nature of the claim, and to see that it is in all things strictly just and equitable, and especially when such aid is desired against an ignorant and helpless people under its own guardianship and protection. It was, therefore, in their opinion, not only right and proper, but the imperious duty of said Commissioner, in assuming to settle and pay said claims out of funds belonging and due to said Indians, to go back of these obligations, and examine into the justness of the consideration upon which they were predicated, and that the Secretary of the Interior should have maintained and followed the decision of the Commissioner so to do. Of this the claimants could not complain. The aid furnished by the government was entirely voluntary, and in rendering such voluntary aid the government had a perfect right to prescribe the terms upon which it would do so. If their claims were just, it was their duty to show that fact. If they were not scrupulously so, they had no right to expect or ask the government to assist in enforcing them.

All who know anything of the character of the Indians, know how easy it is, when certain influences are brought to bear upon them, to procure them to sign almost any writing or obligation whatever; and consequently how little reliance can or ought to be placed upon the correctness or justness of any which they may have signed. And if the officers

of this government are to regard such as valid and binding upon the Indians, and shall pay them out of moneys which the government holds in trust for or owes to them, they will place it in the power of designing and unscrupulous whites to rob them of all the means provided by the government for their sustenance and improvement.

For years it was the practice of Indian traders to sell, upon credit, large quantities of merchandise to individuals of tribes to whom the government paid annuities, or with whom it was apparent it must soon make treaties for the purchase of their lands, and then procure the chiefs of such tribes to assume, as the debts of their tribes, such individual indebtedness. Then, when the government sought to make such treaties, these traders would exert their influence with the Indians to prevent it, unless the treaties recognized their debts and provided for their payment. When such annuities were paid under the laws formerly in force, they were paid to the tribes through their chiefs and head-men, and the traders, at the time of payment, presented the obligations by which these individual debts had been assumed and made national, and they were paid off out of such annuities.

It will readily be perceived that this practice worked the grossest inequality and injustice in the distribution, among the individuals of the tribe, of the moneys paid to it by the government. The influential individuals would derive the greatest benefit from it, to the exclusion of the more obscure. The reckless and improvident, who cared nothing for the general prosperity and welfare, would constantly run the tribe in debt. It is also apparent, that owing to the ignorance of the Indians, their inability to read or write, to keep or cast up accounts, it afforded the greatest opportunity to traders to practise upon them the grossest frauds—an opportunity of which the unscrupulous, the undersigned have reason to believe, but too often availed themselves. For the practical effect of this practice, your committee again refer to said Report, page 401, where the Commissioner says: "There have accordingly been submitted thirty-three claims against different tribes, amounting in the aggregate to \$162,908 01, nearly the whole of which—viz., \$157,694 22—is against the Pottowatomies, the Miamies, and the Sacs and Foxes; tribes receiving annuities more than sufficient for their actual wants, and who for years, on receiving them, have paid large amounts for debts, over and above the enormous sum of \$721,066 34, which, during the [then] last six years, has been specially set apart and appropriated, with the consent of the government, for liabilities of that character, urged against those three tribes. It certainly seems incredible how, in any just and proper system of trade, such large balances could have accumulated against them, beyond the immense sums that have been paid by the government for them."

It resulted in such gross abuses as at last to attract the attention of the government, and it was determined no longer to tolerate it. And on the 3d of March, A. D. 1843, the Senate, as a co-ordinate branch of the treaty-making power, passed the following resolutions:

Resolved, As the opinion of the Senate (two-thirds of the Senators concurring therein), that in the future negotiations of Indian treaties, no reservation of land should be made in favor of any person, nor the payment of any debt provided for.

Resolved, That a copy of this resolution be communicated to the President.

Since which time, provision for the payment of debts has been scrupulously avoided in all treaties with Indian tribes, except by paying money to them, which enabled them to pay their debts in their own way. And on the 3d of March, 1847, Congress, at the earnest solicitation of the Executive Department, passed an act giving to that department the power to direct that thereafter all annuities to Indian tribes should be distributed per capita, and not paid to the chiefs and head-men. The department availed itself of that power as soon as possible thereafter, by giving instructions to the Indian agent and sub-agents to so distribute and pay said annuities. The said Ewings, and other Indian traders, represented to the Commissioner of Indian Affairs (Mr. Medill), that they held just debts against tribes, which were really of a national character, and that this course would operate very unjustly upon them, as it would deprive the chiefs and head-men of the means of paying such debts out the money of their respective tribes. To avoid injustice, the Commissioner directed that such claims should be filed in the department, that they might be examined by the President, and ascertained what should be justly considered of a national character. Under this direction were these claims of said Ewings filed. They had been particularly examined in the proper department before Mr. Thos. Ewing was inducted into office, and were expressly suspended by the Commissioner of Indian Affairs, by and with the approval of the then President of the United States, for the claimants to make proof (as necessary to the allowance thereof) of the nature and justness of the original claims upon which said obligations were predicated, and that they were of a national character. He had expressly decided that, without such proof, they would necessarily be rejected by the department. Yet they were allowed by said Secretary of the Interior, after he came into office, in all cases but one, that against the Sacs and Foxes, without such proof, and without any notice whatever to the Indians, so that they could have an opportunity to remonstrate against such allowance, and to show the unjustness and invalidity of said claims. So soon as the Pottowatomies learned that these claims against them had been allowed, and a portion of their annuities kept back to liquidate them, they entered their solemn protest against it. They insist that it was in violation of their treaty with the government, which required the money to be paid over to themselves.

They allege, and insist, that said notes or obligations were procured from their chiefs and head-men for much larger sums than were due, under assurances from the traders that before payment of them should be exacted, their account should be examined by competent persons, and that no more would be demanded upon such obligations than should be fairly established to be due by such examination, and that they could prove these facts by competent witnesses if an opportunity were afforded them.

The undersigned will here remark that the treaty above referred to was made with said Indians in June, A.D. 1846. It was signed by the Council Bluffs band on the 5th, and by the Osage band on the 17th of that month. By the 5th article of that treaty, the sum of \$50,000 only was set apart, "to enable them to arrange their affairs, and pay their just debts,

before leaving their present homes, to pay for their improvements, to purchase wagons, horses, and other means of transportation, and to pay individuals for the loss of property necessarily sacrificed in moving to their new homes."

As the treaty undertook to provide a fund which should enable the tribe to pay their just debts, and as this was the only sum provided for that purpose, it is fairly to be inferred that both the commissioners who negotiated the treaty and the Indians themselves deemed it sufficient for that purpose, and for the other purposes named in said article. This inference is sustained by a letter of Col. T. P. Andrew's, one of the commissioners, and one of Major T. H. Harvey, Superintendent of Indian Affairs, now on file in the Department of the Interior, and copies of which were furnished by the Secretary, and are herewith submitted. Major Andrews, in his letter, says, "We (the commissioners) supposed they (the Indians) would pay off all just demands to the traders as soon as they got the \$50,000. We advised them to do so, and we estimated that it would take about \$25,000 or \$30,000."

And yet these and other obligations of a like character purport to have been executed on the same days for an amount in the aggregate nearly three times as large as the whole sum provided in said article. In reference to these obligations, and the manner in which they were procured from the Indians, Major Andrews, in the same letter, says:—

"I would state that that action of the agent of the traders (for the principal traders were not at that place at that time, and for some time thereafter) must have been clandestinely and secretly done, for they knew well that the Indians, if so paid, could not have been induced to give any such fraudulent acknowledgment. I say fraudulent, for two reasons:

1st. Because the individual chiefs, whose signatures, I presume, are shown, had no authority to give any such acknowledgments to bind their nation, or tribe, at or near Council Bluffs, much less the other portion located on the Osage River, hundreds of miles from Council Bluffs.

2ndly. Because the agents of the traders who were present knew well that they had admitted substantially to me, and Major Harvey, that their debts did not, at that location, amount to more than between a seventh or eighth of that amount."

Upon the filing of this protest, the Secretary of the Interior suspended the payment of the outstanding certificates, for the Indians to submit proofs in support of this protest, and which should show that they ought not to be paid, and they are yet suspended for that purpose. The Secretary, however, decided that said obligations shall be regarded as national, and as such entitled to be paid out of the national funds of the tribe; that they are prima facie evidence of a just indebtedness against the Indians to the amount thereof; and requires the Indians to show that the claims are unjust, instead of requiring the claimants to establish their justness before paying them.

The undersigned find that Richard W. Thompson was the attorney of the Messrs. Ewings in the prosecution of these claims. They do not find that any clerk in the office of the Secretary of the Interior was interested

in them, as attorney or otherwise. And the undersigned respectfully recommend the adoption of the following resolution :

W. A. RICHARDSON.
C. L. DUNHAM.
A. G. BROWN.

Resolved, That the claims of W. G. & G. W. Ewing against the Pottowatamie Indians was improperly ordered to be paid by the Secretary of the Interior.

I concur with the minority of the committee in the foregoing resolution, but I do not agree with them in all the views expressed in their report.

THOS. ROSS.