34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 259.

INVALID PENSIONS.

[To accompany bill H. R. No. 862.]

MARCH 3, 1857.

Mr. SIMMONS, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred the resolution of the House of Representatives, directing an inquiry whether the laws granting pensions to invalids of the army and navy of the United States for wounds received, or disabilities incurred, while in the line of their duty in the military and naval service of the United States, have been and are executed according to their true intent and meaning; and if further legislation be necessary, authorizing your committee to report, by bill or otherwise, and to whom a resolution of the legislature of the State of New York on this subject was also referred, (a copy of which is annexed,) respectfully report:

That, from the earliest organization of our government, it has been the policy to provide for the support and maintenance of wounded and disabled soldiers and seamen in the army and navy of the United States. The continental Congress promised pensions during life, or the continuance of the disability, to the officers and soldiers of the army disabled in the service, by resolution of the 26th of August, 1776, in these words:

"*Resolved*, That every commissioned officer, non-commissioned officer, and private soldier, who shall lose a limb in any engagement, or be disabled in the service of the United States of America, as to render him incapable afterwards of getting a livelihood, shall receive *during his life, or the continuance of such disability*, the one-half of his monthly pay from and after the time that his pay as an officer or soldier ceases."

This was the spirit of all the laws during the revolution—providing pensions to invalids—the contract between the government and the officers and soldiers when they entered the public service, by fixing the comencement of their *pensions* at the time of the cessation of their *pay* in the service, or, in other words, at the time of the accrual of their disability. There is good sense and good reason in this principle, and such as ought to be carried out into every law providing for invalid pensions. After the revolution, this principle was carried into effect as to both the army and navy, with but few variations as to

the *time* of the commencement of invalid pensions, until after the war of 1812; for it is evident that the act of January 11, 1812, section 14, *intends* the same thing, by promising pensions to disabled officers and soldiers, and providing that the compensation to be allowed for wounds or disabilities shall not exceed the half pay of an officer, or five dollars per month to a soldier at the time of his being disabled or wounded—that being the average half pay of a private, or even more than such average. In fact, all the laws providing for pensions to invalids during the war of 1812, and particularly the acts of February 6, 1812, and of January 29, 1813, contain the same provisions promising pensions from the time of the accrual of the disability in language too clear to be misunderstood. In fact, all our laws made for raising troops or military forces appear to hold out inducements for men to enter the service, upon an expectation that pensions to invalids are to commence at the time their pay as officers or soldiers ceases by reason of disability—in other words from the accrual of disability.

It is only after the wars are over, and laws have to be made for *paying* the promised pensions to them, that we find any hesitation about the *time* at which the pensions are to commence, whether at the accrual of their disability or the completion of their proofs. Nations, like individuals, are more ready to promise than perform; and hence we find as far back as February, 1795, an act passed to limit the payment of certain invalid pensions to the time of completing their proofs instead of the accrual of their disability; and other acts of limitation were passed at other times cutting off the claims to pensions by lapse of time. But these artifices of politicians did not long prevail. The strong moral sense of the nation returned to itself before 1812; and the acts growing out of that war, and having for their chief object the enlistment of men, as well as subsequent acts, too numerous to be mentioned, all intimate a *promise* to officers and soldiers in the land as well as naval forces to confer pensions to invalids from the accrual of their disabilities; but when the time comes to carry them out after the war by performing these promises, we find legislation as to the time of commencing their pensions begins to falter, and the regulations of the departments cease to be uniform in the construction of the laws; some of them, and particulary those relating to naval invalids, are construed one way, and those to the military invalids another. The latter for a long time, and some of them still drawing pensions from the time of disability, and the former only from the completion of their proofs. At last Congress passedacts recognizing in some cases this rule of paying pensions only from the completion of the proofs.

In cases arising under the acts of 1812 and '13, it was for some time the practice of the Pension Office to commence such pensions *from the date of the disability*, no matter when the testimony was completed or produced; yet, as early as the 20th of May, 1820, when the time of payment came, Congress passed an act, the second section of which provides "that the right any person now has or may hereafter acquire to receive a pension in virtue of any law of the United States, shall be considered to commence from the time of the completion of the testimony in the case. This act to provide pensions after the war is over,

compared with those of 1812 and 1813, promising them, in order to raise troops before the war began, shows the good faith of the nation to disadvantage in a high degree, but just what we may expect when politicians mistake the honesty of the people, and carry out such mistaken views into law. Sooner or later, however, the error is corrected, and the law made right. In the case of Colonel R. M. Johnson, referred to in the opinion of Attorney General Wirt, dated July 2, 1822, while he is constrained to conclude that under the provisions of the act of May 20, 1820, the pension of Colonel Johnson must commence from the completion of the evidence, he adds, "my regret is, however, diminished by the consideration that there can be no moral doubt that Congress would, on application, carry back the pension to the time of the wounds;" and Attorney General Butler, a lawyer of distinguished ability, in his opinion in the case of General Ripley, (page 387 of Mayo's Pension laws,) declares that the above act of 20th May, 1820, relates exclusively to invalids of the revolution, and gives his reasons as follows:

In the case of General Ripley, presented by the Commissioner of Pensions to Attorney General Butler for his opinion, the following question is propounded: "Whether the 2d section of the act of the 15th of May, 1820, above mentioned, an act to revive and continue in force an act to provide for persons who were disabled by known wounds received in the revolutionary war, and for other purposes, has been properly interpreted by this department in extending it to other than revolutionary causes?"

In answer, Mr. Butler says:

"It appears, from the records of this office, that the construction adopted and acted on by your department was officially given by the Attorney General in his opinion on the case of Colonel Johnson, dated the 2d day of July, of 1822, and that it has been recognized and followed ever since that date, not only in your department, but by my predecessors in office.

"As a general rule, I adopt the decisions of the office on points officially presented, without attempting to review the grounds on which those decisions proceeded; this being the course usually pursued by courts of justice, and being, indeed, indispensable to the despatch of business, and still more so to uniformity of judgment. For the same reason, even when my attention is particularly called to a prior decision, and especially if it be one which was made by one of my predecessors, and which has been acquiesced in and followed for any length of time, I should yet feel myself bound, in ordinary cases, to adhere to it. In the present instance, I have felt it my duty, in compliance with the distinct inquiry of the Commissioner of Pensions, to look with some care into the decision referred to. As the result of this examination, I am constrained to say that I have strong doubts as to the accuracy of the construction heretofore given to the act of 1820. So strong, indeed, that if the question were an open one, I should think it the safer and more equitable course to confine the law exclusively to the revolutionary cases.

"Although I do not suppose you will think it expedient, on the

doubts now expressed, to reverse the practice which has hitherto prevailed in your department, yet I think it due to General Ripley, whose claims may perhaps be urged in another place, to state some of the prominent reasons which induce me to distrust the accuracy and justice of the rule in question."

The second section of the act of May 15, 1820, is in the following words:

"*And be it further enacted*, That the right any person now has, or hereafter may acquire, to receive a pension in virtue of any law of the United States, shall be construed to commence from the time of completing his testimony pursuant to the act hereby revived and continued in force."

The first clause certainly favors the construction which has been given. "In virtue of any law of the United States" is a phrase of very extensive import; and if the section had ended with the word "*testimony*," there would have been nothing to restrain the generality of that phrase, and no doubt could have existed as to its construction. But the section does not end with *that* word. It uses certain additional words, which form a very material part of the law, and to which it is our duty to give full effect in construing the provision. We have no right to reject them, nor to give them such a construction as to render them absurd and inoperative. They carry us directly to the act of 1806, named in the title and revived by the first section. The testimony is to be completed "*pursuant*" to the act of 1806, named in the title and revived in the body of the law. By referring to that act it will be seen that it relates exclusively to persons who received known wounds in the revolutionary war; and the second section prescribes very minutely the rules and regulations to be observed in substantiating claims intended to be proposed under it. The rules and regulations are in their character two-fold—they determine the fact to be proved, as well as the *mode* or means of proof. The former is "decisive inability," the effect of a known wound or wounds, received while in actual service during the revolutionary war. The mode of proof is to be by affidavits of the commanding officers and surgeons, or others, and the examination on oath of the claimant.

Strictly speaking, the testimony cannot be completed pursuant to the act of 1806, unless it conform to that act in respect to the fact required to be proved, as well as in respect to the *mode* of proof. In revolutionary cases this would certainly be deemed the effect of the word "*pursuant*." In this sense it would be impossible for a person disabled during the war of 1812 to complete his testimony pursuant to the act referred to; and if this be the proper construction of the word "*pursuant*," then it will necessarily restrain the generality of the phrase "*any law*," used in the former clause, and compel us to limit the whole section to cases which arose in the revolutionary war. In the brief opinion of my predecessors, these latter words are not made the subject of comment, nor do they appear to have attracted his attention. This is evident from the opinion itself, which is in the following words:

"On the subject of Colonel Johnson's pension, I cannot see how it can be withdrawn from the sweeping provisions of the second section of the act of 15th May, 1820, which directed that all pensions in virtue of any law of the United States shall be considered to commence at the time of completing the testimony. The provision is so direct and universal that the ground on which your doubts are founded are not discovered; and I should be glad to confer with you on the subject before you act on this opinion."

Upon the construction which was thus given to the law the word "*pursuant*," when applied to cases arising in the war of 1812, must be deemed to apply to the *mode* of proof, and not to the *fact* to be proved—thus giving to one and the same word, in the same law, two different interpretations. This is sometimes done by the courts, when the necessity or justice of the case calls for such an accommodation of the law giver. In the present instance, it seems to me that there is no adequate necessity for this unusual straining of the language; because, by construing the words "*any law*" to mean any law relative to revolutionary cases, the whole section is rendered consistent with itself. This construction is not only strained, but, in my judgment, it makes the law palpably unjust.

The act of January 11, 1812, declares that if any officer, &c., *shall be disabled* by wounds or otherwise, while in the line of his duty, in the public service, he *shall* be placed on the list of invalids of the United States, at such rate of pension, and under such regulations as are or may be directed by law, &c. This act does not provide at what time the pension shall commence, except so far as such provision is included in the words, "*at such rate of pension*," and "*under such regulations as are or may be directed by law*," which words refer us (according to the opinion of the Attorney General in the case of General McNiel, dated May 31, 1832) to the act of the 16th of March, 1802, that being the only general law then in force applicable to the subject. The 14th section of the act of 1812 directs that the party disabled shall be placed on the list of invalids, "*at such a rate of pay and under such regulations as may be directed by the President of the United States for the time being.*" The President, therefore, had the power to prescribe by regulation the time when pensions for disabilities under the act should commence. I cannot learn that any formal regulation on this point was ever made by the President until the 18th of April, 1829, when the President directed an order to be published, declaring that in future no person, while in the receipt of pay or emoluments as an officer of the army, should be placed on the pension list. The practice of the pension office had, however, from an early day been governed by the same rule; which was expressly prescribed by the old Congress in the resolution of the 26th of August, 1776, and in other resolutions of a later date. This usage being kept up by the War Department, with the sanction of the President, before and at the commencement of the act of 1812, was within the meaning of the law a *regulation* directed by the President, and was in effect incorporated in it. All persons entering the army under that act were therefore bound to know that if disabled they could not receive

pensions as invalids, so long as they retained their places in the army, and received the pay and emoluments thereof. But I am distinctly informed by the Commissioners of Pensions that this was the only limitation imposed by the usage of the office, prior to the act of 15th of May, 1820, on the payment of pensions for disabilities under the act of 1812; and that where the party left the army at the time he was disabled the pension was considered as accruing from the date of the disability, no matter when the testimony was completed or produced. This being the case, all persons who entered the army under that law had good reason to expect that if they should become disabled they would be allowed pensions according to the nature of their disabilities, to commence from the time when they should cease to receive the pay and emoluments of the service. The contract between them and the government was not precisely to that effect, because it was subject to the contingency that the President might prescribe other regulations which might limit still further the commencement of the pension—but as this power has not been exercised, the case may be considered as standing precisely on the same ground as though it had not existed. Under these circumstances it appears to me that from the time when General Ripley was disabled by a wound received in the line of his duty, he had a just claim on the good faith of the nation to be placed on the pension list, from the time when his pay and emoluments as an officer should cease; and according to the usage of the office, and to the only regulation which has been made by the President, touching the time from which the pension is to commence, if he had made his application at any time before the enactment of the act of the 15th of May, 1820, he would have been allowed his pension from the time when his pay ceased, which I understood was in 1821. His right to such a pension was not indeed an absolute one; but it was founded on the pledge contained in the act of 1812, and fortified by considerations of the most interesting and impressive character. The effect of the construction given by my predecessor to the law of 1820 was to take away this right; and though it may be admitted that Congress had the right to do this, yet I think there can be little difference of opinion as to the harshness and injustice of such an exercise of legislative authority. In regard to such revolutionary cases as might be presented under the act of 1820, there was no injustice in applying the rule given in the 2d section of that law, because all claims of that sort had been barred by lapse of time even before the passage of the act of 1806, which act, as well as the act reviving it, had expired, and because that act also contained an express provision that every pension under it should "*commence on the day when the claimant shall have completed his testimony.*" This being the rule by which the pension gratuitously proffered by the act of 1806 were to be governed, there could be no objection to repeating the same rule in reference to such cases (though it was probably unnecessary to have done so) in the act of 1820. ☞ But such a rule when applied to cases arising under the act of 1812, which contained nothing to warn parties of the necessity to make immediate applications, and under which a different usage had obtained up to the 15th of May, 1820, was, in my opinion, positively unjust; because it defeated the expec-

tations which persons entering the service, under the law of 1812, had a right to cherish; made no discrimination between cases of supine neglect and those of forced delay; allowed nothing for difficulties occasioned by sickness, loss of papers, or other unavoidable accidents; and above all, operated retroactively on the rights of parties.

It is a first principle in the interpretation of statutes, that where the words are doubtful, such a construction is to be preferred as will be most consistent with the reason and justice of the case. This principle, I think, would have justified my predecessor in construing the 2d section of the act of 15th May, 1820, as not extending to cases arising under the act of 1812. And were I not restrained by the respect due to superior ability and learning, I would say that such a construction was demanded by that principle. The action of Congress, subsequently to the law of 1820, is also calculated to strengthen the doubts above expressed. That act revived the act of 1806 for one year only; but by the act of the 4th of February, 1822, the act of 1806 was again revived for six years, and until the next session of Congress; and by the act of the 24th of May, 1828, it was once more revived and rendered permanent. Each of these last named reviving acts repeats, *in hac verba*, the 2d section of the act of the 15th of May, 1820. The repeated re-enactment of this provision is altogether inconsistent with the idea of its being a general or permanent provision, and shows that in the judgment of the legislature it had expired with the expiration of the acts in which it was contained. Upon the whole, I entertain, for the reasons above assigned, such strong doubts as to the accuracy of the interpretation heretofore given to the law in question, and so decided an opinion as to the injustice of the law itself, if the construction given to it is the correct one, that I cannot but hope that Congress may even now interfere in these cases, and carry back the pensions to the time when the disabled party ceased to receive the pay and emoluments of the service."

The regulation made by the President on the 11th of April, 1829, referred to by Mr. Butler, seems to have been disregarded by the 32d Congress in the case of Gen. McNiel; and his pension was allowed from the date of his wounds to the time he left the service, and the amount made payable to his widow by act of January 20, 1853.—(Statutes at Large, vol. 10, page 743.)

The act of 1812, so ably reviewed by Mr. Butler, relates to invalids of the army, and gives the President the power to prescribe by a regulation the time when their pensions shall commence; but as no regulations have ever been made, except the one above referred to, the subject should be considered as if none exist.

From the examination which the committee have given the subject, they have come to the conclusion that the laws relating to invalid pensions have not been executed, in all cases, according to their true intent and meaning in regard to the *time* when invalid pensions shall commence, and have reason to believe that the practice of the Pension Office in this respect has not always been uniform. In cases growing out of the war of 1812, which constitute the greater number, the committee are informed that all who applied previous to 1820 have received their pensions from the date of their disability, and instances have occurred since where the pension has been carried back

to the date of the wounds, though most of the army cases have been made to commence from the completion of the evidence, in violation, as your committee think, of the just expectations and rights of the parties when they entered the service. Most of the navy invalids are supposed to have been pensioned from the date of their wounds. The whole number of army invalid pensioners now on the rolls, according to the report of the Commissioner of Pensions for 1856, is 4,920, being a reduction of 86 during the year. The number of navy invalids on the roll is 360. Aggregate of army and navy invalids of all the wars, 5,280. It is estimated that about one-third of this number have been pensioned from or very near the date of their disability, (see Executive Document No. 74, 1st session 31st Congress,) leaving to be provided for about 3,520. Estimating the average amount due to these men at $500 each, and it will require to pay them $1,760,000. This amount will doubtless be increased should arrears be allowed, as we think they ought, to the widows of those invalids who have died since they were admitted to the roll.

Of the 54,838 soldiers of the revolution who were pensioned under the acts of 1818, 1828, and 1832, only 726 remain, and they are rapidly passing away. Pensions were allowed these men, not only on account of their services and sacrifices, but because the country will "eternally keep the tablet of gratitude bright" towards those who achieved our independence as a nation Pensions to invalids of the war of 1812, and subsequent wars, proceed upon a different principle. They grow out of a promise made by Congress before and at the time the soldier entered the service, and may well be said to have formed a contract between the government and the soldier, where both were free to make it, founded upon considerations of the most interesting and impressive character. On presentation of the recruit for enlistment in the army he was required to undergo the careful examination of a surgeon, and produce his certificate that he (the recruit) was a sound able-bodied man, and promised on his oath to support the Constitution of the United States, and during the period of his enlistment faithfully discharge his duties as a soldier against the common enemy, &c. The government, on its part, promised to furnish him with arms, clothing, and subsistence, pay him monthly wages, and in case he should be wounded or disabled while in the line of his duty, allow him a pension, according to the nature and degree of his disability, for life or during disability. If nothing was said as to the precise *time* when his pension should commence, in case he should lose a limb, or become otherwise disabled, the committee think he had a right to conclude, from the language of the acts of Congress read to him on the occasion, or published to induce an enlistment, that if he should become disabled while in the line of his duty in the public service, he would receive a pension according to the degree of his disability, and to commence when his disability should commence, without regard to the *time* when his testimony should be presented or completed. This seems to your committee to be the fair and common sense interpretation of the contract, and any legislation having for its object a limitation of the vested rights of the soldier under it is calculated to produce the most manifest injustice.

National dignity, justice, policy, and the dictates of humanity re-

quire that all persons wounded or disabled in the public service shall receive the benefit of the promises made to them when they entered the army, and a departure from this plain principle is not only unjust to the individual but a stain upon our national character.

France, in her hospital of invalids, and England, at Greenwich, have made the most ample provision for their invalids; and the latter nation furnish, at the public expense, to those soldiers who have lost their arms and legs in the recent war with Russia, artificial limbs of the most approved workmanship, an example which all civilized nations might well imitate. The following table will show the effective military force engaged in the different wars, obtained from the adjutant general's office, and may be relied upon:

	Comm'ed officers.	Men.	Aggregate.
Late war with Great Britain, 1812.....	31,210	440,412	471,622
Seminole war, 1817–'18.....	413	5,498	5,911
Black Hawk war, 1832.....	491	4,540	5,031
Florida war, 1836 to 1842.....	1,624	28,332	29,953
Creek disturbances, 1836–'7.....	794	11,689	12,483
Southwestern frontier disturbances, 1836	161	2,642	2,803
Cherokee country, 1836 and 1837.....	236	3,690	3,926
N. York frontier disturbances, 1838–'39	115	1,019	1,128
Aggregate.....	35,041	497,816	532,857
Mexican war, 1846 to 1848.....	3,131	70,129	73,266
Grand aggregate.....	38,172	567,945	606,117

R. JONES, *Adjutant General.*

ADJUTANT GENERAL'S OFFICE, *March* 4, 1850.

From the above table it is apparent that our invalid list is small compared to the number of men engaged in the service; so small, indeed, as to induce the belief that many meritorious soldiers have failed to receive pensions, owing to the difficulty of obtaining the strict proof required at the Pension Office; and cases are often presented to Congress where the parties are unable to bring themselves within existing laws. The money which we have annually expended for revolutionary pensions will more than pay the sums due to the invalids of 1812, and when paid they will leave no further claim upon the treasury, except for their yearly stipends. We have abundant means in the treasury to pay these men, and are bound to pay them upon every principle of honor and justice.

1. Because the policy of paying invalids of the revolution from the date of their wounds was adopted by the continental Congress.

2. Because the greater portion of the navy invalids have been pensioned from the date of their disability, thus making an unjust and unequal discrimination in their favor as against invalids of the army.

3. Because justice and humanity require full pensions, and not half

pensions, to our soldiers and seamen who have been or shall be totally disabled in the public service.

4. Because true policy requires us to provide fully for invalid soldiers and seamen, if we mean to induce enlistments on necessary occasions, and have the nation realize the costs of war; and,

5. Because the adoption of a general law will place all invalid pensioners on an equal footing, and put an end to special legislation, which allows increased pay to favorites in derogation of the character of Congress.

The committee, therefore, report a bill declaring that the pensions of invalids of the army and navy, under existing laws, shall commence at the date of the disability; and, in case of the death of the party entitled, the amount which may be due him shall be paid to his widow and children, and if none, to the next of kin of the deceased pensioner.

Concurrent resolutions of the legislature of New York.

On motion of Mr. HOYLE,

Resolved, That our senators from this State be instructed, and our members in Congress be requested, to advocate and vote for a law declaring that all pensions for wounds received or disabilities incurred in the line of duty in the military and naval service of the United States during any of the wars in which our country has been engaged, instead of commencing from the completion of the proof, as is now practiced at the department, shall commence at and from the date of the disability, and continue during life, or during disability; and in case of the death of such invalid, the arrears of pension due him shall be paid to his widow if alive, and if no widow, to his child or children, and if none, to his legal representatives for the benefit of the next of kin of such deceased invalid. The laws under which these men entered the service may well be said to have formed a contract between the government and the soldier, that if he should be injured or disabled while in the line of his duty in the public service, he should be pensioned according to the degree of his disability, and to commence when his disability commenced; and we respectfully ask the adoption of this principle by Congress, as due upon every consideration of good faith, honor, and justice to those brave men who fought our battles, and shed their blood in defence of our country's rights and independence.

A true copy from the journal:

RICHARD U. SHERMAN, *Clerk.*

IN SENATE, *February* 28, 1856.

Resolved, That the Senate concur in the passage of the foregoing resolutions.

By order:

SAMUEL P. ALLEN, *Clerk.*