

PENSIONS TO PERSONS WHO SERVED IN THE MEXICAN
AND OTHER WARS.

JANUARY 17, 1878.—Committed to the Committee of the Whole House on the state
of the Union and ordered to be printed.

Mr. GOLDSMITH W. HEWITT, from the Committee on Invalid Pensions,
submitted the following

R E P O R T :

[To accompany bill H. R. 257.]

The Committee on Invalid Pensions, to whom was referred House bill 257, "granting pensions to certain soldiers and sailors of the Mexican and other wars therein named," have had the same under consideration and report it back with certain amendments thereto, and recommend the adoption of said amendments and the passage of said bill.

The first amendment recommended is, to strike out all next after the word "on," where it occurs in the ninth line of the first section, to "and," where it occurs in the eleventh line of said section, and insert in lieu thereof the following, viz: who served for thirty days in the Creek war, or disturbances of 1835-'36, or in the Florida war with the Seminoles, from 1835 to 1842, or the Black Hawk war of 1832. This amendment the committee thought would express more clearly the object of the bill, and relieve this section of a seeming ambiguity.

The second and only other amendment recommended by the committee is, to strike out all next after the word "repealed," where it occurs in the second line of the fifth section. The reason why the committee thought proper to recommend this amendment will be given hereafter.

The bill recommended by the committee is in substance the one which passed this House unanimously on 4th of January last, with the exception of the fifth section. The first section requires the Secretary of the Interior to place on the pension-roll the names of all the surviving officers and enlisted men, including militia and volunteers, of the military and naval services of the United States who served sixty days in the war with Mexico, or for thirty days in the Creek, Florida, or Black Hawk war, and were honorably discharged, and such other officers and soldiers as may have been personally named in any resolution of Congress for any special service in either of said wars, and to the surviving widows of such officers and enlisted men as were married prior to the discharge of their husbands from the service, and who have not since remarried. This section is drawn in conformity to the act granting pensions to the surviving soldiers of the war of 1812.

The requisition of sixty days' service in the Mexican war to entitle the soldier to a pension was from the fact that there were several thousand troops enlisted in said service who never went on to the seat of war, and performed no service whatever.

The committee were of the opinion that such should not be pensioned. The National Association of Veterans of Mexican War only ask pensions for the soldiers who served sixty days. The bill, it will be seen, grants a pension to the soldiers serving thirty days in the Indian wars named in the bill, thus making a distinction in favor of the latter as against the former. This was done in order that every soldier performing actual service in said wars might receive a pension. It was believed by the committee that sixty days would cover all the soldiers who performed actual service in the Mexican war; but that, if sixty days' service were required of the soldiers of said Indian wars it would exclude from the provisions of the bill many who performed arduous service for the country in said Indian wars.

The bill excludes all widows who were married after the termination of the war. This was done in conformity to the act pensioning widows of the soldiers of the war of 1812. The committee saw no good reason why the widows of the soldiers of the wars mentioned in this bill should stand in higher favor with the government than those of the second war of our independence.

The second section of the bill provides against the drawing of two pensions by any one soldier, and fixes the pension at the rate of \$8 per month from the passage of the act.

The third section prescribes the proceedings by which pensioners are to be placed upon the pension-roll. It gives the Secretary of the Interior power to make all necessary rules and regulations for the efficient administration of the act, and authorizes him to strike from the roll the name of any one whenever it is made to appear that such person has been placed upon the roll through false and fraudulent representations. It also enacts that any one who falsely and corruptly takes any oath authorized by this act shall be deemed guilty of perjury, and liable to be punished therefor as in other cases of perjury.

The fourth section re-enacts certain sections of the Revised Statutes of the United States hereinafter named, making them a part of the act so far as the same are applicable thereto.

The sections of the Revised Statutes which are re-enacted as a part of this bill are 4745, 4746, 4747, 4748, 4766, and 4786. Section 4745 prohibits the pledge, mortgage, sale, assignment or transfer of any right or interest in the pension which may be granted, and declares any such sale or transfer utterly void. It also requires the attorney or agent of the pensioner to make affidavit that he has no interest whatever by sale or transfer in the money before the same can be paid to him. Section 4746 declares that any person who knowingly or willfully in any wise procures the making or presentation of any false or fraudulent affidavit concerning any claim for pension or payment thereof, or who knowingly or willfully presents or causes to be presented at any pension agency any power of attorney or other paper required as a voucher in drawing a pension bearing a date subsequent to that on which it was actually executed, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding three years. Section 4747 secures the benefit of the pension absolutely to the pensioner free from levy by attachment or seizure under any legal process whatever, whether the pension remains in the Pension Office or in the possession of any officer or agent thereof, or in course of transmission to the pensioner entitled thereto. Section 4748 requires the Commissioner of Pensions to furnish free of expense upon application of any claimant of a pension such printed instructions and forms as may be necessary in establishing his claim, and to notify the applicant when the certificate is issued of the

amount allowed and date thereof. Section 4766 restrains the payment of a pension to any one except the pensioner entitled thereto, or to the guardian of such persons as are under disabilities. Sections 4785 and 4786 protect the pensioner from exorbitant fees of attorneys and claim-agents.

The fifth and last section of the bill repeals that section of the Revised Statutes which prohibits the payment of a pension to any one who "participated in any manner in aid of the late rebellion against the authority of the United States." The reason why the committee thought proper to recommend this section will be given in the latter part of this report. Such are the provisions of the bill. It has been carefully drawn, and its provisions are plain, simple, and clear of all ambiguity. There will be no intricate questions arising in its construction; in fact, the objects of the bill are so clearly expressed, that nothing is left for construction. If this House is ready and willing to grant a pension at the rate of eight dollars per month to the surviving soldiers of the wars mentioned in the bill, then it should support this measure. The question arises, why the bill should be passed. What claims have those old soldiers upon the bounty and gratitude of their country? These questions the committee propose to briefly answer. To an intelligent understanding of the questions a knowledge of the legislation of our country upon pensions is essential.

The history of our pension system shows that our government from its inception to the present day recognizes two forms of pensions, invalid and gratuitous. Invalid pensions are such as have been and are granted to soldiers who were disabled or contracted disease in the line of duty while in the military service of the country. These pensions assume the form of a contract whereby the government agrees with the soldier at the date of his enlistment, in consideration of his enlistment and service, to pay him a pension upon the condition of his being disabled in the line of duty. The other form, gratuitous pensions, are defined to be a reward for military services rendered, and is an evidence of a nation's gratitude to its defenders. There is no policy more firmly rooted in the minds and hearts of the American people than that of granting pensions to the brave citizen soldiery, who in the hour of their country's peril gave up their peaceful avocations, tore themselves from home, wife, and children, with all their charms and endearments, and endured without a murmur or complaint the trials of the march, the privations of the camp, the horrors of the hospital, and bravely bore themselves amid the dangers of the battle-field, not for money, but for the love they bear their country and their country's flag.

This policy dates back to May, 1778, only two years after the declaration of Independence, and while the revolutionary war was still in progress. This act promised to all the military officers commissioned by Congress who were or thereafter might be in the service of the United States and continue therein during the war, after the conclusion of the war, annually for seven years one half pay. Two years after this act was passed, another was enacted promising half pay for life to such officers as remained in the Army during the war. These acts confine the bounty of the government to the officers, to the exclusion of the private soldiers. But in 1818 Congress enacted a measure which wiped out this unwarrantable distinction which had been made up to this time in the bestowal of a national bounty. This act granted a pension for life to the officers and enlisted men alike who served in the war of the Revolution to the close thereof, or for a term of nine months or longer at any time during said war, and who were citizens of the United

States, and who were then, or might thereafter, by reason of reduced circumstances in life, be in need of assistance from their country for support.

It will be seen that this last act was passed thirty-five years after the close of the revolutionary war. There were two other acts, May 15, 1828, and June 7, 1832, more liberal toward these old soldiers than the act of 1818. In 1871 an act was passed granting pensions to the surviving soldiers of the war of 1812 who had served for sixty days and had been honorably discharged.

Thus the committee has given a brief history of our legislation upon gratuitous pensions to the soldiers of our different wars. This legislation demonstrates that the pension system is a part of the general military policy of our government. "To pay our soldiers for having fought, rather than they should fight for pay," seems to have been the policy of our government from its origin until now, and it has commended itself to our statesmen as sound and wise.

When the soldiers of the Black Hawk, Creek and Florida wars volunteered to defend our citizens from the depredations and murders of the barbarous Indians, and when the men who at their country's call marched to Mexico to sustain the honor and glory of the stars and stripes in that far-off land, they doubtless expected that, as the soldiers of the revolutionary war were cared for in their old age, so, in like manner, they too would be remembered when old and in need of assistance. Many of these veterans are sadly in need of aid from their government. They come to the representatives of the American people and request that the same aid which was given to the soldiers of other wars be extended to them. This bill ought to pass as a recognition by the government of its obligation to the Mexican veterans for the incalculable material benefits secured to the country by their valor. They secured to the country California, Nevada, Utah, New Mexico, Arizona, Wyoming, and Colorado; and established the boundary of the great State of Texas, covering an area of over 937,875 square miles.

The value of this territory to the United States cannot be estimated in dollars and cents. There has been produced from the mines of California and other portions of this territory near two thousand millions in gold, which have diversified the industries of the whole country and given an impetus to the commerce of the world. Its acquisition extended our country from ocean to ocean, thereby opening a great overland highway to the Pacific. "Who can estimate," said Gen. A. S. Williams, a distinguished member of the present Congress, addressing the Michigan Association of Veterans in June last, "with accuracy the accelerated growth and increased riches and revenues of our country that your patriotic valor, and your privations and sufferings, comrades, helped to create? Surely, we have a right to ask, in the language of this toast, 'May their services ever be held in memory by the people of the United States.'"

This country depends almost exclusively upon citizen soldiery to maintain its honor and flag when involved in war. It should therefore aid liberally its old soldiers, so as to encourage its citizens to volunteer for its defense whenever their services may be needed.

What amount of money will this bill draw annually from the Treasury of the United States? This question the committee will endeavor to answer.

After mature reflection and a careful examination of the war records, the committee are of the opinion that one million and a half dollars per

annum will be more than sufficient to meet all the requirements of the bill.

There were enrolled in the volunteer army of the Mexican war 73,000 men. This was the number of enlistments, not the actual number of men engaged in the war.

There is no means of ascertaining the exact number of men whose names were duplicated in the above, and who would only be entitled to one pension under the bill. Yet the official reports show that there were 1,399 three-months men, 11,211 six-months men (held for three), and 27,063 twelve-months men. It is a well-known fact that large numbers of three-months and twelve-months men, soon after their regiments disbanded, re-enlisted—in some instances by whole companies. Notably was this the case in Texas and Louisiana with the three-months men, and in Tennessee, Kentucky, Missouri, Illinois, Indiana, and Ohio among the latter. It would not be unreasonable to assume that one-third of these disbanded volunteers re-enlisted, viz, 13,231, whose names will be found duplicated on the roll, and who of course can only draw one pension.

This quotation is made from Kenedy's report to the fourth annual reunion of the national association of Mexican veterans.

There were many enlisted in regiments which went on to Mexico who were discharged in a short time, not serving sixty days, and who of course would not be entitled to a pension. These would not fall below 1,000 men, and the committee are satisfied they would exceed that number.

There were three regiments, one from Ohio, one from Missouri, and the other from Alabama, and one company from Iowa, aggregating 3,709 men who were not required to go on to the seat of war, and were mustered out of service before the expiration of sixty days from enlistment. There were then 4,709 men enlisted who did not serve sixty days, and who would not be entitled to a pension. The report of the Adjutant-General, December 3, 1849, shows that there were killed and died of wounds received in battle in Mexico, 1,349 men, and that 10,885 died of diseases while there; but the number actually killed and died of wounds and diseases will far exceed the number given in this report, the report being incomplete owing to a number of missing muster-rolls as shown by the report. There were a number of regiments which lost from one-fourth to one-third of their number in Mexico. The Palmetto regiment under Butler, of nine hundred men, lost over four hundred. Colonel Collins' Illinois regiment of one thousand men lost over three hundred; Col. W. B. Campbell, First Tennessee, numbering over one thousand, lost two hundred and seventeen. Lieut. Col. J. J. Seymour's Georgia Battalion of four hundred men lost one hundred and eighty-four.

When the further facts are taken in consideration that our troops were in a malarious climate, unacclimated, and exposed to all the hardships and toils incident to war, and the number of hard-fought battles in which they were engaged against overwhelming numbers, the loss could not have fallen short of fifteen thousand men. The above report of the Adjutant-General also shows that there were 6,725 desertions from the volunteer army.

There have been pensioned as invalids of the soldiers of the Mexican war, 11,000. All of the foregoing must be deducted from the 73,000 enlistments, in order to arrive at a correct estimate of the probable number who would receive pensions under this bill.

First, 4,709 men serving less than sixty days. Second, 13,221 re-enlistments. Third, 15,000 deaths in Mexico. Fourth, 6,725 desertions. Fifth, 11,000 pensioned as invalids. These aggregating 50,655, deducted from 73,000, leaves 22,345. This was the number thirty-one years ago, who would have been entitled to pensions under this bill at that time.

Now, ordinarily there could not have survived of this number up to this time more than twelve or thirteen thousand. But when the fact is taken into consideration that all these men were exposed to hardships incident to war, which must necessarily have impaired their health and constitutions, and the further fact that the country has passed through a terrible civil war, in which most of these survivors took an active part on one side or the other, the committee are satisfied there cannot now be surviving over six or seven thousand of these veterans.

In support of this estimate the committee quote from a letter written by General George W. Morgan, of Ohio, December 15, 1873:

After the maturest reflection it is my conviction, comrades, that of the men who served with us on the fields of Mexico less than six thousand are alive to-day.

The number of widows who would receive pensions under the bill will be small. The committee base a calculation upon the history of an Alabama company as to the probable number of widows who would receive pensions. This company had ninety-six men. Six of these men were married prior to their discharge from the service; five of the six are dead; three of the five widows are also dead, and one has remarried, leaving only one beneficiary under the bill. Taking this company as a basis for estimating the number of widows who would receive a pension under the bill, they would not exceed one thousand.

The survivors of the Black Hawk war the committee estimate not exceeding two hundred, including widows. This war was in 1832, forty-five years ago, and continued but a short time, and there were not actually engaged more than twenty-five hundred troops, including the militia from Illinois.

The Creek and Florida wars could be classed as one war, as they grew out of the same causes, and were under the direction of the same commanding general, and many of the same troops were engaged in both wars. The Creek war, located in Alabama and Georgia, near the Florida line, began 1835 and closed in 1836. The Florida war, located in Florida, began in 1835 and ended in 1842. There were enrolled in these two wars not exceeding 32,000 troops. Many of these are counted as often as four or five times. The Florida war continued seven years; the troops were mustered for three, six, and twelve months, and, as in the case of the Mexican war, so in this there were many re-enlistments, many continuing through the entire war. The committee estimate the survivors, including widows, at not exceeding 3,500. The committee have not included in the foregoing estimates the surviving soldiers of the Regular Army in the Mexican war. There were engaged in said war, of the regular troops, not exceeding 27,000. The loss in killed and wounded in battle, from diseases and desertion, were as great among the regular troops as the citizen soldiery. The committee, therefore, make the same calculation as to the survivors of the Regular Army as it has made with respect to the volunteer soldiers. The same calculation would show 2,700 survivors.

That the foregoing estimates approximate the numbers covered by the bill the committee have not the least doubt.

To recapitulate:

Surviving citizen soldiers of the Mexican war.....	6,000
Widows	1,000
Surviving soldiers, Regular Army	2,700
Surviving soldiers and widows of Black Hawk war.....	200
Surviving soldiers and widows of the Creek and Florida wars.....	3,500
Making a total of.....	13,400

that will receive a pension at the rate of \$8 per month, or \$96 per annum, aggregating \$1,286,400 per annum, which sum will be constantly decreasing. The surviving soldiers of these wars will average sixty years of age, with the expectancy of about fourteen years to live. The whole cost to the government will not exceed seventeen or eighteen millions of dollars, covering a period of twenty-five or thirty years in the disbursement of the same. After a careful examination of the subject, with the official records before them, the committee are satisfied that the foregoing estimates will cover the entire amount of money required by the bill.

The surviving soldiers of the wars named have strong claims upon the bounty and gratitude of their country. The committee have not thought proper to enter on any encomium upon these brave defenders of their country. They need no eulogy from the committee. There is the imperishable history of their privations, suffering, and achievements in Illinois, Alabama, Georgia, Florida, and Mexico. That speaks far more eloquently for their cause than any language the committee can command.

The committee have shown that in the light of past legislation this bill ought to pass. They have shown that the soldiers embraced in the bill had the right to expect, when they volunteered to defend the country, that when old the government would grant them the pension asked in this bill. They have shown that as a matter of sound national policy the bill ought to pass. They have shown that the government acquired by the sufferings and valor of the Mexican veterans 937,875 square miles of territory of incalculable wealth, which opened a highway to the Pacific Ocean, and which holds in its arms the gateway to the Eastern Continent. They have shown that as a matter of justice, as well as national gratitude to the men who maintained so gloriously the flag of the country, this bill ought to pass.

Such an act, pensioning the brave men of the North and South who fought shoulder to shoulder under Taylor and Scott, would strengthen the government far more than costly and formidable fortifications, grand and magnificent navies, or large and imposing armies. The States of Missouri, Indiana, Illinois, California, Louisiana, Alabama, and others have instructed their Representatives to support this bill. It is a measure the whole people of the country will most heartily approve and indorse. There are eight or ten thousand old soldiers, far advanced beyond the meridian of life, now in penury and want, whose sad hearts would be cheered and made to leap with joy at the news of the passage of this bill. Let their hearts be gladdened and their declining years lightened by granting this pittance.

Remember, they

Bore their country's honors high,
Resolved to conquer or to die;

And that their gallant deeds "have reflected a blaze of imperishable glory on the American name."

The fifth section of the bill repeals section 4716 of the Revised Statutes, which prohibits the payment of a pension "to any one who in any manner aided the rebellion against the authority of the United States." That this section should be repealed there can now scarcely be a doubt. There has been a number of the old soldiers of the war of 1812 and invalid pensioners residing in the South deprived of their pensions, justly due them, by reason of this section, although their right to such pension has not been adjudged forfeited by a court of competent jurisdiction in a proceeding therein, and notwithstanding the general

pardon and amnesty of December, 1868. The pensions of soldiers disabled in the line of duty are in no sense a gratuity, but are supported by contract made by the government with them at the date of their enlistment, that if disabled they should have a pension. The consideration is the service and blood of the soldier. The parties were competent to contract. The subject-matter of the contract was neither in contravention of law nor of public policy, but was expressly authorized by law and promotive of the public good. It has every ingredient of a contract, as defined by all the law-books. The pension was predicated on the sole condition of the soldier's disability in the line of duty, and upon the happening of which condition the engagement of the government became a perfect vested right, and was the property of the soldier as much as any bond which he may have held on the government or other choses in action which he may have owned. This view of the nature of an invalid pension is supported by the opinion of that great and learned lawyer William Wirt. When Attorney-General, in 1825, in speaking of an invalid pension, he said :

It is bottomed only on the single condition that the husband and father shall die in the service of his country, on the happening of which condition the public engagement becomes a debt which is as much property of the widow and children as any bond which the deceased may have left them by his will.

The above opinion of the Attorney-General was subsequently approved by his successor, Mr. B. F. Butler, in the case of Mrs. White.

The distinguished gentleman from Massachusetts, Mr. Butler, while addressing the House in behalf of his amendment to a certain pension bill in relation to the surviving soldiers of 1812, by which he was seeking to have the Southern soldiers of that war restored to the pension-roll, said :

Those who had not served for sixty days or for any specific time are put on the pension-roll. These men had, according to the judgment of Congress, rendered such service as to entitle them to a pension. It was their right, which had been granted to them. The pension was their property.

Thus it will be seen that this distinguished lawyer and statesman holds that what is termed a gratuitous pension is given because the service of the soldier in the judgment of Congress entitled him to it, and that it is his right which is granted, and that this right is his property, and that a refusal to grant this right to the soldiers of the South of the war of 1812 was a virtual confiscation of their property. Whatever may be said of this latter proposition, the former is certainly well sustained by both reason and authority. If the invalid soldier's right of pension be property, has this property been forfeited and confiscated by reason of his having engaged in the rebellion against the authority of the United States? No such view is supported by the law. The law forbids the payment of the pension without proof of loyalty, but does not declare the right of pension forfeited. The abandoned and captured property act forbids the payment of the proceeds of the sale of such property without proof of loyalty. The government became the trustee of the claimant of such proceeds, and upon proof of loyalty restored the same to him. So, in the case of the pension, it is not declared forfeited, but is held by the government in trust, to be restored on proof of loyalty.

There was but one description of property during the late war which was forfeited without a proper proceeding and judgment of a court of competent jurisdiction, and that was the property of the Confederate States, or property employed in actual hostility on land. Chief Justice Chase, in *Klien's case* (13 Wall., 136), says :

The property of the insurgent States may be distributed into four classes: 1st. That which belonged to the hostile organization or was employed in actual hostility on land.

2d. That which at sea became lawful subject of capture and prize.

3d. That which became the subject of confiscation.

4th. A peculiar description, known only in the recent war, called captured and abandoned property. * * *

Almost all property of the people in the insurgent States was included in the third description. But it will be observed that tribunals and proceedings have been provided by which alone such property could be condemned, and without which it remained unaffected. It is thus seen that, except property used in actual hostility, no titles were divested in the insurgent States unless in pursuance of a judgment rendered after due legal proceedings.

The right of invalid soldiers to pensions has been shown to be a perfect vested right, and could only have been forfeited by the judgment of a court of competent jurisdiction in a proper proceeding therein. But, in addition to this, they are covered by the general pardon and amnesty of 1868.

What was the effect of this pardon so far as it related to them? It released them not only from all penalties incurred by reason of their "participation in the rebellion against the authority of the United States," but it absolutely and forever "blotted out," "obliterated," and effaced the offense itself, and made them, in contemplation of law, wholly "innocent" and loyal citizens. It supplies the proof of loyalty in all proceedings where such proof is required. It forever closes the eyes of all tribunals to the perception of the fact that they had "participated in the rebellion against the authority of the United States" as an element in the judgment in any proceeding for or against them. It renders section 4716 inoperative so far as it affects them. The effect of the general pardon of 1868 is no longer an open question. It has been settled in a number of cases by the Supreme Court of the United States. In the case of *Ex parte Garland*, 4th Wall., 381, the court said:

A pardon reaches both the punishment prescribed for the offense and the guilt of the offender, and when the pardon is full it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense.

The committee refer to the case of *Padelford* against the United States, 9th Wall., 531.

The appellant was at the commencement of the late war a citizen of the State of Georgia, and with most of the citizens of the South aided in its struggle for a separate existence. He subsequently availed himself of the pardon of December, 1863, by taking the oath, and afterward observing the same. After the close of the war he brought suit in the Court of Claims to recover the proceeds of the sale of certain cotton captured by the federal forces during the war. This suit was brought under the captured and abandoned property act. This act required the claimant to prove affirmatively that he did not give aid and comfort to the Confederate cause. The court held that the pardon "purged him of whatever offense he had committed against the United States," and no offense connected with the rebellion "could be imputed to him," and that it "relieved him of whatever penalty he had incurred by reason of his having participated in the rebellion," and that the "law made the proof of pardon a complete substitute for proof that he had given no aid or comfort to the rebellion."

In *Klien's* case the court said:

That pardon includes amnesty. It blots out the offense pardoned, and removes all its penal consequences. (13 Wall., 137.)

Again, in the case of Carlisle:

It is true the pardon and amnesty do not and cannot alter the actual fact that aid and comfort were given, but they forever close the eyes of the court to the perception of that fact as an element in its judgment. There has been some difference of opinion among the members of the court as to the cases covered by the pardon of the President, but there has been none as to the effect and operation of a pardon in cases where it applies. All have agreed that the pardon not merely releases the offender from punishment for the offense, but that it obliterates in legal contemplation the offense itself. (16 Wall., 151.)

The court in all these cases held that pardon not only releases the offender from punishment, but wipes out of existence the offense itself; that no offense growing out of the rebellion can be imputed to any one covered by the general pardon and amnesty of December, 1868; that a full and unconditional pardon restores to the offender his property and rights to the same extent as if he had never offended. The only limitation to the effect of a pardon as thus stated is, "it does not restore offices forfeited and property or interest vested in third persons in consequence of the conviction and judgment," and this "benign prerogative of mercy" being conferred upon the President by the Constitution, is not subject to the legislative will, nor can it be "fettered by any legislative restrictions." In Klien's case, heretofore cited, the court said:

The President's power of pardon is not subject to legislation. Congress can neither limit the effect of his pardon nor exclude from its exercise any class of offenders.

If section 4716 be enforced against invalid pensioners, then their property is confiscated, and they are punished for their participation in the rebellion, notwithstanding their pardon. How can this be done if the law, as expounded by the Supreme Court, is to be respected and obeyed by the Executive and his subordinates?

The Supreme Court, as it has been shown, has decided that their pardon releases them from all punishment, and that no crime growing out of the rebellion can be imputed to them. Then this section necessarily comes in conflict with the effect of their pardon, and being a restriction of the pardoning power is null and void so far as it affects their rights. The law says that every soldier, without a single exception, disabled by wounds or otherwise in the line of his duty shall have a pension.

Why are not all, therefore, wounded or disabled in the line of duty entitled to a pension? The only answer is that many who would be otherwise entitled to a pension engaged in the late rebellion, and section 4716 forbids the payment of any pension to them; they are therefore excluded solely on account of an offense of which they have never been adjudged guilty by any court of competent jurisdiction, and which has been pardoned in full, blotted out of existence, and wholly obliterated. These soldiers thus excluded are as justly entitled to their pensions under the law as the soldier who lost a limb or an eye in the defense of the Federal Union. While the committee does not censure the Commissioner of Pensions for enforcing the provisions of section 4716, yet they feel constrained to say that he has mistaken the law, and that he could have found high authority for disregarding said section and following the law as expounded by the Supreme Court. Whenever an act of Congress is decided to be inoperative by the Supreme Court it is not only the right but the imperative duty of every executive officer to disregard it. The Commissioner of Pensions should have followed the decisions of the court, holding that the pardon forever closed his eyes to the per-

ception of the offense pardoned as an element in his judgment, and substituted the pardon for proof of loyalty.

If the government has restored the property captured by the federal forces to the persons from whom it was taken, by virtue of their pardon, then it should restore the pensions, the property of its old soldiers who were disabled in battle gallantly maintaining its honor and upholding its flag. The government has not confiscated the property of any other citizens of the South; why should it continue to confiscate the property of its old defenders? While a bill was pending in this House during the Forty-third Congress, amending the act to pension the surviving soldiers of the war of 1812, Mr. Butler, of Massachusetts, offered the following amendment thereto:

Provided, That the restoration and pension contemplated by this act shall take effect from the passage of this act.

And upon said amendment he submitted the following remarks:

The section to which this amendment is appended proposes to remove from the pensioners the disability imposed by the act of 1864. [The act alluded to was incorporated in the Revised Statutes as section 4716.] Now it seems to me manifestly unjust that we should confiscate the pension during the intervening time. While the war was going on, while the Union was still unrestored, it was a very proper thing to cut off the pension of those who were disloyal, but I cannot see why the pensions of these men should be confiscated by the government while no other property is confiscated. * * * The pension was their property, inalienable except on account of their disloyalty while that disloyalty existed and while the safety of the country required such a policy. But the time of danger is now passed, and I do not see why these old men should be deprived of their pensions while all other persons in the South are left to enjoy their property.

This patriotic speech made an impression upon the House, for Mr. Butler's amendment was carried by "a large majority." To refuse to restore these old soldiers to the pension-roll and to pay their pensions, on account of their "participation in the rebellion against the authority of the United States," would be a total and wanton disregard of that gracious prerogative of mercy reposed by the Constitution in the President, and a flagrant and unwarrantable violation of the Constitution itself, and a foul repudiation of the public engagement more dishonorable, if possible, than a refusal to pay the interest or principal on the bonded debt of the Republic. What would the country think if this committee should bring in a bill to repudiate the sacred obligation of the government to the widows and orphans of the brave men who fell in the late war fighting for the perpetuity of the Federal Union? There is scarcely a man here or elsewhere in any section of our common country who would not denounce the measure as monstrous, and the members of the committee as unfaithful servants of the American people.

The obligation of the government to pay the invalid soldiers of the South their pensions for their disabilities incurred in its defense is as sacred and obligatory as its engagement to the widows and orphans of the soldiers who fell in the Union Army. Both have the plighted faith of the government; if the one can be refused without dishonor, so may the other. But the committee say *with emphasis* that neither can be refused without a violation of a most sacred obligation, and without national perfidy. Wisdom and statesmanship alike dictate a repeal of all laws which make a difference in the bestowal of national benefits between fellow-citizens of one common country. How can it be expected that the Southern people will love and respect this government as they should, so long as an old soldier shows to the young men his scars and wounds received in many a hard-fought battle in defense

of his country's flag, which now disowns him; and with tears in his eyes and a sad heart, tells them, "These were all received in upholding my country's flag; my comrades in arms at the North, battle-scarred and wounded as I am, are all tenderly cared for by the government, while I am left to starve or beg for sustenance because of my sympathy for my people and section in the late war." Is it right?

There can never be that unity of sentiment between the North and South in one common co-operation for the achievement of a common purpose so essential to the prosperity and glory of the country so long as the disabled soldiers of the North are pensioned while their comrades in arms of the South who shared with them the same toils, hardships and dangers, wounded and disabled as they were, are refused this national bounty. Mr. Sumner well understood this when he introduced his famous resolution into the Senate of the United States to strike from the flags and Army Register the names of battles between fellow-citizens.

Mr. Sumner said :

The national unity and good will among fellow-citizens can be assured only through an oblivion of past differences, and it is contrary to the usage of civilized nations to perpetuate the memory of civil war.

General Grant, too, well understood when, in December, 1873, he recommended to Congress a full and unconditional pardon and amnesty for all offenses growing out of the "rebellion," that a thorough and genuine national reconciliation could only come through an "oblivion of past differences." The administration of President Hayes has done much to restore confidence and to rekindle the patriotic fires which once glowed with such warmth and fervor in every Southern heart. Let Congress join in this good work and "stimulate, not stifle, the uprising of good feeling and affection" of the Southern people for our common country. Let every trace of the civil war which is calculated to irritate our fellow-citizens in any part of the republic, or which tends to perpetuate bitter memories of the fraternal strife, be erased and expunged from the public records of the national government, "and the result will be peace, real and permanent peace, and a unity between the once alienated sections of the republic"—a result which every patriot most ardently desires.