

## WARD B. BURNETT.

FEBRUARY 5, 1884.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. ROBINSON, of New York, from the Committee on Pensions, submitted the following

### REPORT:

[To accompany bill H. R. 4682.]

*The Committee on Pensions, to whom was referred the petition of General Ward B. Burnett, for restoration of payment upon his pension of \$50 per month, granted by a special act of Congress, approved March 3, 1879, and for reimbursement of the expenses incurred by him in defending his title thereto in the Supreme Court of the United States and for other relief, having considered his petition and accompanying papers, have the honor to submit the following report:*

#### 1. FACTS OF HIS MILITARY AND CIVIL HISTORY.

This distinguished veteran of five wars was appointed a cadet at West Point in the year 1828, by President Jackson, and he was graduated in 1832. He fought in the Black Hawk war in that year, on the ground where Chicago now stands, before a single house was built in that great city. In 1833 he reported to Winfield Scott during the nullification difficulty at Charleston, S. C. In 1835 he went through the Florida war. In 1842-'43 he organized a brigade, and offered his services to the President when war was anticipated with England over the Oregon boundary line. The brigade was kept together largely at his expense. In 1846 two regiments of his brigade having been accepted by Governor Wright, he was ordered to report with his regiment, the Eighteenth New York Volunteers, to Winfield Scott for duty in the Mexican war. He was engaged in the siege of Vera Cruz, and, besides, several lesser engagements, in the battles of Cerro Gordo, Contreras, and Churubusco, in which last-named battle he was severely wounded, and also injured by the fall of his horse; and he was carried thence on a litter to the City of Mexico, two days after its surrender, where, from his wounds, his jaws were closed by tetanus or lock-jaw for a period of about forty-five days. He was promoted to be brigadier-general to date from the surrender, September 14, 1847. On the following 30th of November he was tendered for his services in the war with Mexico a resolution of thanks by the legislature of New York.

In 1861 he offered his services to President Lincoln, and in 1863 he opened a recruiting office in the Assembly Rooms in New York City, at his own expense, to aid in the organization and consolidation of regiments, under orders from the governor of New York, indorsed by President Lincoln. He rendered valuable services to the Government

during the New York riots, when he had command of the city for a brief period, and he organized several commands in New Jersey, Delaware, Maryland, and Pennsylvania for service in the field during the late rebellion. From exposure consequent upon these labors he became a martyr to inflammatory rheumatism.

General Burnett has also rendered valuable services to the country as a civil engineer. In 1833, while upon duty at West Point, he made surveys, plans, and estimates for the Croton water-works in New York City. In 1835 he made surveys in Vermont, New Hampshire, and Maine for a railway line from Canada to the Atlantic seaboard. Thence he was ordered to Lake Michigan to construct harbors. For more than three years he was resident engineer of the Illinois and Michigan Canal. In 1849 President Polk offered to make him the commissioner to run the boundary line between the United States and Mexico, but being upon crutches he was instead made chief civil engineer for the construction of a dry-dock at the Philadelphia navy-yard, which he completed in 1852. Thence until 1855 he was in charge of the New York dry-dock and of the construction of the work shops in the New York navy-yard. He made the plans of the Brooklyn water-works, which were adopted in that year. In 1857 he was made chief engineer of the Norfolk navy-yard and the Portsmouth water-works, which involved his survey of Lake Drummond. In 1858 he was made surveyor-general of Kansas and Nebraska, because from ill health he was unable to accept the appointment offered him, by President Buchanan, of consul-general to Turkey.

## 2. FACTS RELATING TO HIS PENSIONS.

For wounds received in the battle of Churubusco, on August 24, 1847, and for chronic neuralgia, resulting therefrom, General Burnett was granted, from August 1, 1848, a pension of \$30 per month. (Sec. 7, act of 13th May, 1846; sec. 2, act of 21st July, 1848; sec. 4730 U. S. Revised Statutes.)

On January 31, 1879, General Burnett petitioned Congress to *increase* his pension to \$100 per month, for wounds, neuralgia, and rheumatism. March 3, 1879, Congress by special act increased it to \$50 per month. (U. S. Stat., vol. 20, p. 665.)

April 12, 1879, he renewed his application for \$100 per month, and for his relief Mr. Senator Voorhees introduced a bill to grant him that amount. (S. Miss. Doc. No. 26, S. bill 477, Forty-sixth Congress, first session.)

March 10, 1880, the House Committee on Invalid Pensions reported favorably upon the bill introduced by Mr. Martin to increase his pension to \$100 per month for total disability. The Congress died before the bill was reached on the calendar. (House Report No. 485 upon bill H. R. 285, Forty-sixth Congress, second session.)

Congress, by general pension laws, has made exceptional provision for the care and maintenance of the *totally disabled* soldiers of the Republic, as follows: June 4, 1872, \$31.25 per month; June 4, 1874, \$50 per month; June 16, 1880, \$72 per month.

In 1880, General Burnett, then a totally disabled soldier, applied for the benefits of these general pension laws to the Commissioner of Pensions.

Mr. Commissioner Bentley rejected his application upon the ground that General Burnett was then receiving \$50 per month under a special act of Congress and was thereby concluded in his rights, which action was approved by Mr. Secretary Schurz. President Hayes referred his case

to Attorney-General Devens, but nothing was done. President Garfield next referred the application to Attorney-General McVeigh, and at his request Mr. Solicitor-General Phillips, on June 15, 1881, rendered an opinion in General Burnett's favor. But this opinion was not executed by the Commissioner.

President Arthur next referred the application to Mr. Attorney-General Brewster, who, on April 10, 1882, rendered a strong and favorable opinion upon the case of General Burnett, and on its reference to Hon. Henry M. Teller, Secretary of the Interior, he instructed the Commissioner of Pensions to carry out the opinion. On May 20, 1882, he executed a certificate to General Burnett for \$72 per month from March 3, 1879. This certificate was declined, whereupon the Secretary of the Interior, on May 31, 1882, directed the Commissioner to issue a certificate for \$72 from July 17, 1878. This was done on June 3, 1882, and under it General Burnett was paid all that the Commissioner adjudged to be due to him. As the pensioner claimed that more money was due to him the Secretary, on June 24, asked advice from the Attorney-General as to what rates of pension should be paid from June 4, 1872, down to that date; and on June 29 the rates were stated by the Attorney-General.

On July 3, 1882, the Secretary asked the Attorney-General if the pensioner, in view of section 4715 of the Revised Statutes, was entitled to \$72 per month, in addition to the \$50 per month, granted by the special act of March 3d, 1879. The Attorney-General replied affirmatively, whereupon, on July 11, 1882, Mr. Secretary Teller sent the several opinions from the Department of Justice to Mr. Commissioner Dudley, with an order to execute them.

On that same day Mr. Senator Van Wyck introduced a resolution into the Senate, directing the Secretary of the Interior to cease action upon General Burnett's case until Congress could pass a law forbidding him to pay the pensioner his accrued pension. This legislation was ingrafted upon a private bill passed July 17, 1882, granting a pension to Albert O. Miller; but it was subsequently tacked on to the pension appropriation bill of that year, as follows:

SEC. 5. That no person who is now receiving or shall hereafter receive a pension under a special act shall be entitled to receive in addition thereto a pension under the general law, unless the special act expressly states that the pension granted thereby is in addition to the pension which said person is entitled to receive under the general law.

But approval of this law by the President was not made until July 25, 1882. On the 17th of July a certificate for \$72 per month under the general pension laws, and another certificate for \$50 per month under the special act, were executed to General Burnett, and under them he was paid, on July 20, the sum adjudged to be due to him under the decisions of the Attorney-General.

There was a discussion of this case in the Senate, reported as follows, in the Congressional Record: Tuesday, July 11, 1882, bound Record, page 5876; Friday, July 14, 1882, bound Record, page 6026; Saturday, July 15, 1882, bound Record, page 6077; Thursday, July 20, 1882, bound Record, page 6245; Saturday, July 22, 1882; bound Record, page 6343; Wednesday, August 2, 1882, bound Record, page 6759.

The following papers also pertain to this case: Senate resolution 94, July 11, 1882; Senate bill, 2138, July 11, 1882; House bill 1543, December 16, 1881; report thereon, No. 1021; House bill 1543, amended, April 12, 1882; private act 169, approved July 24, 1882; S. Mis. Doc. 120, July 20, 1882; S. Mis. Doc. 121, July 20, 1882; pension appropria-

tion law, section 5 (Public No. 176) approved July 25, 1882; S. Ex. Doc. 193, August 2, 1882.

As soon as payment was made to the pensioner, or on July 20, 1882, resolutions of inquiry were offered in the Senate requiring both the Secretary of the Interior and the Attorney-General to explain why they disobeyed the Senate, inasmuch as it had directed by a resolution of July 11, a suspension of proceedings in General Burnett's case, pending the action of Congress upon the subject.

The petitioner at that time was of advanced years and in feeble health. He knew that the special act certificate would die with him, and that no rights thereunder could survive to his good and faithful wife, whereas under the general pension laws she might hereafter claim his pension of the higher grade. The relator had had a hard struggle through nearly three long years to obtain his certificate, issued July 17, 1882. His case has been before three Presidents and three Attorneys-General, and it had been sent for opinions *seven times* to the Department of Justice. The anxiety consequent upon this struggle further and greatly impaired his health, which throughout a period of more than thirty-five years has been shattered by the effects of wounds and disease received in the military service of the United States. This struggle further broke the health of his devoted wife, which long since gave way in her sixteen years of ministering care upon this battle-scarred hero. The proceedings had in the last Congress worked great excitement and mental suffering upon the petitioner and upon his family. Their excitement added to his own. It was in this frame of mind, apprehensive that Congress would deprive him of his greater pension, unable to consult his counsel, who was absent in the State of Maine during this entire hostile legislation, anxious to provide for his suffering family, and to secure their comfort as best he could in event of his death, then daily expected, that he offered to give up his special-act certificate, until Congress in its bounty should restore it to him.

General Burnett made this conditional relinquishment July 21, 1882. On July 24 the President approved the Albert O. Miller special act, and on July 25 he approved the pension appropriation law. On July 31 the Secretary of the Interior made a reply to the Senate resolution of inquiry. (S. Ex. Doc. 193, Forty-seventh Congress, first session.)

Your committee is pleased to include in its report a portion of officer's reply:

The Secretary of the Interior is asked to furnish the Senate with his reasons for the issuing of such certificates for such double pension pending the action of Congress on the subject. The question as to what amount of pension General Burnett was entitled to receive had been submitted by the President of the United States to the proper officer of the Government, and such officer had determined that he was entitled to the pensions of \$50 per month and \$75 per month, making a total of \$122 per month. That there might be no mistake the Secretary of the Interior called for a review of that question. He found on file three carefully prepared opinions of the Attorney-General in favor of paying the pension to General Burnett.

It cannot be supposed that the President of the United States submitted the question in dispute between officers of the Interior Department and General Burnett to the Attorney-General for his opinion with the intention of ignoring such opinion if it was adverse to the ruling of the Department. And when doubts arose in the mind of the present Secretary of the Interior as to the proper administration of the law under the opinion of the Attorney-General, and he submitted the question to the Attorney-General, he did not intend to disregard his opinion if it should not be in accordance with his own. The Secretary of the Interior is of the opinion that the ordinary rules of propriety would have been grossly violated if he had refused to receive as the law of the case the law as enunciated by the Attorney-General. The question had passed beyond the control of the Interior Department by the action of the President in the first place, and secondly by the action of the Department.

Pending the proceedings in the Department of the Interior with reference to the

pension, a resolution was introduced into the Senate touching this matter. The Secretary of the Interior understood as a question of law that there could be no ground of controversy as to the right of General Burnett to all the pension money that had accrued, and that any proceedings of Congress in relation to the pension heretofore granted him could not affect his right to receive the money that had accrued to him. *These certificates had been withheld from General Burnett under what the law officer of the Government had declared was an improper ruling of the Department and by the withholding of the certificates he had been deprived of the money due him. It was alleged that by such refusal to pay he had been greatly embarrassed and put to great trouble and expense. To enable him to receive that money it was necessary that he should have his certificates, which the Attorney-General has declared it was his right to receive.*

The Secretary of the Interior was also of the opinion that the due administration of the law of his Department did not require him to await the action of Congress to see whether the law might or might not be repealed; he understood it was his duty to execute existing laws, and not such as might be passed. If the words in the joint resolution, "pending the action of Congress on that subject," are intended as a declaration of the Senate that it is the duty of an officer charged with the speedy execution of the law to await the action of Congress when such law shall be assailed in either branch of Congress, it must be regarded as the enunciation of a new principle, and one of which the Secretary of the Interior confesses entire ignorance.

To hold that an officer charged with the execution of a law must suspend action whenever that law is assailed in Congress would enable a single member to nullify the law during the session of Congress. The Department is charged with the distribution of large sums of money as pensions to those who have been declared by the competent authority created by law entitled to the same. It cannot be supposed that when the statutes providing for such pensions are assailed the Secretary of the Interior will cease to pay such pensions and await the action of Congress. The administration of law must proceed until such laws are repealed by competent authority. This was the course pursued by the Secretary of the Interior with reference to the pension of Gen. Ward B. Burnett, who has received only that adjudged to be his due.

October 4, 1882, General Burnett revoked his relinquishment of the special act increase pension of \$50 per month, and requested the Secretary of the Interior to return his certificate therefor, surrendered July 21, his offer to relinquish never having been accepted by the Secretary or by Congress. October 18, the Secretary refused to return the certificate, whereupon, October 20, 1882, the petitioner filed in the supreme court of the District of Columbia a petition for a mandamus in order to compel a restoration of the certificate. The petition was there dismissed; but it was immediately carried on a writ of error to the Supreme Court of the United States,\* where, on January 29, 1883, a final decision was made refusing the writ of mandamus,† and subsequently the court declined to review its decision.

In order that the facts of this case, as officially reported, may be fully understood, your committee refers to the full answers that were made to a Senate resolution of inquiry of July 22, 1882, by the Secretary of the Interior and the Attorney-General of the United States. (S. Ex. Doc. 193, Forty-seventh Congress, first session; S. Ex. Doc. 64, Forty-seventh Congress, second session.)

### 3. THE LAW BEARING UPON THIS CASE.

In deciding the case of General Burnett the United States Supreme Court, after its statement of the facts appearing of record, *held*—

The right of the relator \* \* \* has been effectually cut off by section 5 of the act of July 25, 1882—

AN ACT making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June 30, 1883, and for other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropri-

\* The United States *ex relatione* Ward B. Burnett, plaintiff in error *vs.* Henry M. Teller, Secretary of the Interior, defendant, No. 1185, October term, 1882.

† 17 Otto, p. 64.



ated out of any money in the Treasury not otherwise appropriated, for the payment of pensions for the fiscal year ending June 30, 1883, and for other purposes, namely:

\* \* \* \* \*

"SEC. 5. That no person who is now receiving, or shall hereafter receive, a pension under a special act shall be entitled to receive in addition thereto a pension under the general law, unless the special act expressly states that the pension granted thereby is in addition to the pension which said person is entitled to receive under the general law."

Approved July 25, 1882.

It was competent for Congress to pass this act. *No pensioner has a vested legal right to his pension. Pensions are the bounties of the Government, which Congress has the right to give, withhold, distribute, or recall, at its discretion.\** Therefore the contention of the relator, that having received the pension of \$72 under the general law, he is also entitled to the pension of \$50 granted him by the special act, is without ground to rest on.

His pension certificate, issued under the special act, can be of no service to him unless he wishes to relinquish the pension of \$72 under the general law, and fall back upon the pension of \$50 granted him by the special act. But he expresses no such purpose. \* \* \* He voluntarily surrendered his pension under the special act in order to receive the larger pension to which he became entitled on the passage of the general act of June 16, 1880. As he is not entitled to any pension money upon the certificate under the special act, which he voluntarily surrendered, unless he waives his right to receive the larger pension given him by the general law, which he does not do, a judgment that the certificate be returned to him would be futile. \* \* \* The supreme court of the District was, therefore, right in refusing the writ of mandamus, and its judgment must be affirmed.

Inasmuch as the Supreme Court has formally declared that no pensioner has a vested legal right to a pension, resting that declaration upon the case of *Walton vs. Cotton*, in the 19th of Howard, your committee deem it proper to quote more at length from the opinion of a *divided court* to show what was decided in that case:

The question in the case turns upon the construction of these statutes. Does a right construction of them give the pension due to the grandchildren of the deceased pensioner; and, if so, does the bounty extend to the representatives of his children, who died before his decease; or do the acts restrict the bounty to his children living at the time of his death? This last construction has been adopted and acted upon by the Government.

This view is mainly founded on the considerations that on the death of the pensioner the bounty is given to the widow, and if he leave no widow, to his children; that it was a bounty of the Government, arising from personal considerations of gratitude for services rendered, is not liable to the claims of creditors, and should not be extended, by construction, to persons not named in the act.

The pension is undoubtedly a bounty of the Government, and in the hands of an administrator of a deceased pensioner it would not be liable to the claims of creditors, had the acts of Congress omitted such a provision.

\* \* \* \* \*

Congress from high motives of policy, by granting pensions, alleviate as far as they may, a class of men who suffered in the military service by the hardships they endured and the dangers they encountered. But to withhold any arrearage of this bounty from his grandchildren, who had the misfortune to be left orphans, and give it to his living children on his decease, would not seem to be a fit discrimination of national gratitude.

\* \* \* \* \*

There can be no doubt that Congress had a right to distribute this bounty at their pleasure, and to declare it should not be liable to the debts of the beneficiaries. But they will be presumed to have acted under the ordinary influences which lead to an equitable and not a capricious result. And where the language used may be so construed as to carry out a benign policy within the reasonable intent of Congress, it should be done.

The pension conferred by the act of June 4, 1832, and subsequent acts, brought for review before the Supreme Court in the case just cited, was purely a *gift pension*, for it was granted to officers of the Revolutionary war and to their children long after the services of the soldier had been rendered. It was given to *all* without reference to any

\* *Walton vs. Cotton*, 19 Howard, 355.

disability whatever. It was as readily given to the hearty and hale survivor as to the one who had left his limb upon the battle-field. It was a bounty or reward given for services already rendered instead of services to be rendered.

Your committee reiterate here the views which it expressed in a former report.\*

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.

The very first section of the pension laws revised and consolidated by the act entitled "An act to revise and consolidate the statutes of the United States in force on the first day of December, anno Domini one thousand eight hundred and seventy-three," approved June 22, 1874, and acts relating to pensions passed prior to and since that date, provides :

SEC. 1639. If any person, whether officer or soldier, belonging to the militia of any State, and called out into the service of the United States, be wounded or disabled while in actual service, *he shall be taken care of and provided for at the public expense.*

With all respect for the highest judicial tribunal of this Government your committee submits that, if "*no pensioner has a vested legal right to his pension,*" Congress should tear from the statute-books the guarantee of the Government of the United States, which is expressed in section 1639.

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.

Let this Congress decide if a pension to a wounded soldier can be repealed or withheld any more than the interest-bearing bonds of the

\* Forty-fifth Congress, second session, House Report No. 64 upon bill H. R. 257 to pension persons who served in the Mexican and other wars.

Government, put out upon the market in order to raise money to carry on the war. Is the contract between the Government and the bondholder any more definite or completely executed than the contract between the Government (under section 1639, U. S. Revised Statutes) and the wounded soldier, whose performance on his side *in specific terms* has been legally and formally acknowledged by the Government by granting him a pension? As long as the purse and the sword must both contribute to preserve the Government, why should any benefit accrue to the purse when you deny it to the sword, which contributes its part in the face of death?

General Burnett has had two pension certificates issued to him, one under a special act of Congress and another under a general law. The Department, as it has done in other cases, might have merged both these certificates into one certificate for \$122 per month, but it chose to issue two certificates. He drew both pensions for three years.

It is true that the U. S. Revised Statutes provide that—

#### TWO PENSIONS ARE NOT ALLOWABLE.

SEC. 4715. Nothing in this Title shall be so construed as to allow more than one pension at the same time to the same person or to persons entitled jointly.

The acts of one Congress cannot bind a subsequent Congress; no law is binding upon it but the organic law of the land. Now, who will say that the Congress in 1879, notwithstanding section 4715, could not make an exception in the petitioner's case, and give him two pensions, or even three pensions, all at the same time?

It has been the custom, and, almost without exception, it has been the policy of the Government to pay a person but a single pension at one time.

But there was a notable exception in the case of the widow of Commodore Perry, who, upon advice of the Attorney-General, was granted two pensions at the same time. (6 U. S. Statutes at Large, 260, March 2, 1821. 3 Opinions, 158, November 3, 1836.)

There were good reasons why the widow of Commodore Decatur was refused a double pension. A general pension law, and also a special act of Congress for her benefit, were enacted March 3, 1837, which was the adjournment day of Congress; but the special act first became a law, as it was feared that the general law, needing amendment, could not be passed before the adjournment.

Under the special act Mrs. Decatur never had a favorable adjudication upon her claim. (3 Opinions, 200, April 11, 1837.)

The lady then went into court on a mandamus, but she failed; she carried her case to this court, but she failed here. (*Decatur v. Paulding*, 14 Peters (1840), 497.)

But petitioner has a different case. A final and favorable adjudication was had upon his rights, and the money to pay him, such amount as the Executive should find due to him, has already been appropriated by Congress. The Executive, by issuing his two certificates, built a sure foundation for his title. (*Marbury v. Madison*, 1 Cranch (1803), 137. *McBride v. Schurz*, 12 Otto (1880), 378.)

The act of June 16, 1880, passed only for the totally-disabled soldiers, provides that the pension of \$72 per month shall be *in lieu of all other pensions paid them by the Government of the United States*.

But that law is applicable only to those soldiers who have drawn pension under one or more general laws. If these words, "All laws or parts of laws inconsistent herewith are hereby repealed," had concluded



the text of the law of 1880, even then it did not touch petitioner's special act of March 3, 1879. The only way to repeal a special law which confers benefits on a citizen for his services rendered to the Government, and under which rights have vested, if it can be done at all, is to repeal it by another special law—certainly not by implication. But Congress evidently meant, by enacting the following section, that a *special pension law* cannot be repealed, except for fraud :

#### PENSIONS UNDER SPECIAL ACTS.

SEC. 4720. When the rate, commencement, and duration of a pension allowed by special act are fixed by such act they shall not be subject to be varied by the provisions and limitations of the general pension laws.

The Congress knew that the law of 1880 did not repeal the special act of 1879; otherwise, why did it pass the Albert O. Miller bill?

[PRIVATE—No. 169.]

AN ACT granting a pension to Albert O. Miller, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Albert O. Miller, late a seaman on board the United States steamship Bienville; and that no person who is now receiving or shall hereafter receive a pension under a special act shall be entitled to receive in addition thereto a pension under the general law, unless the special act expressly states that the pension granted thereby is in addition to the pension which said person is entitled to receive under the general law.*

Approved July 24, 1882.

Even this law did not, in the judgment of Congress, repeal petitioner's special act, for on the following day it passed a law which was intended to be still more of a general character, as follows :

[PUBLIC—No. 176.]

AN ACT making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June thirtieth, eighteen hundred and eighty-three, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated out of any money in the Treasury not otherwise appropriated, for the payment of pensions for the fiscal year ending June thirtieth, eighteen hundred and eighty-three, and for other purposes, namely :*

SEC. 5. That no person who is now receiving or shall hereafter receive a pension under a special act shall be entitled to receive in addition thereto a pension under the general law, unless the special act expressly states that the pension granted thereby is in addition to the pension which said person is entitled to receive under the general law.

Approved July 25, 1882.

The Supreme Court has left the special act of March 3, 1879, in full force, though suspended in its operation for any period that General Burnett shall draw a pension upon his \$72 certificate. The court distinctly stated that he became entitled to this larger pension on the passage of the general act of June 16, 1880.

Here comes to Congress for relief a bearer of the flag of the United States of America in foreign lands, whose regimental flag was the first one planted at the headquarters of Santa Anna at Cerro Gordo after the United States troops had captured the position held by the whole Mexican line, and which was the first flag planted on the elevated causeway opposite Portalis in the battle of Churubusco; who returned

to his State the first American flag that was planted upon the castle Chapultepec, even before the Mexican standard was hauled down from the plaza of the castle, and at the same moment when one of the Mexican generals surrendered his troops and the key to the enemy's position to the men of the First Regiment of New York Volunteers; by whose side is shown in the great painting of him now hanging in the City Hall in New York, the national flag presented by General Winfield Scott to his regiment at the National Palace in the city of Mexico, in January, 1848, in honor of its gallant conduct through the war. Here comes the soldier who thus presented the flags of his country to his command at the island of Lobos, Mexico, in February, 1847, upon their knees repeating this oath from his lips: "No enemy shall capture these colors while our lives are spared to defend them." Here comes a companion of Daniel Webster, of Andrew Jackson, of Henry Clay, against whom was closed the doors of the Supreme Court of the United States.

Here comes the man who is the oldest living graduate of West Point, who became a general in the Mexican war. Of the fruits of his valor was a territory conquered by these United States, in 1848, almost one quarter in extent of its then existing area, which is now peopled by 1,500,000 souls, and which, from its mines alone, could pay our national debt.

Here comes the man who was honored as the bravest officer in the Mexican war, for by a vote of his comrades in arms, he was awarded the gold box of President Jackson, which bears the following inscription:

[Front side.]

FEBRUARY 23, 1819.

Presented by the mayor, aldermen, and commonalty of the city of New York, to Major-General Andrew Jackson, with the freedom of the city, as a testimonial of respect for his high military service.

[Reverse side.]

THE HERMITAGE, TENNESSEE, *August 17, 1859.*

*Bequeathed*

by Major-General Andrew Jackson "to that patriot of New York City who (should our happy country not be blessed with peace) should be adjudged by his countrymen to have been the most distinguished in defense of his country and our country's rights." And

*Awarded*

under that bequest by the <sup>high</sup> general voice of his brothers in arms to Brevet Brigadier-General Ward B. Burnett, colonel of the 1st Regiment of New York Volunteers in the late war with Mexico.

ANDREW JACKSON, JR., *Trustee.*

Here comes, in his 75th year, a man who has become totally blind from the effects of wounds received in battle for his country, upon a battle-field in a foreign land.

Your committee, believing that the present pension of \$72 per month is inadequate to meet the wants of General Burnett, do hereby recommend and offer for passage the accompanying bill.