

PARMENUS T. TURNLEY VS. THE UNITED STATES.

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*Letter from the Assistant Clerk of the Court of Claims transmitting a copy of the findings of fact and opinion of the court in the case of Parmenus T. Turnley against the United States.*

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DECEMBER 9, 1890.—Referred to the Committee on Military Affairs.

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COURT OF CLAIMS, CLERK'S OFFICE,  
Washington, December 8, 1890.

SIR: Pursuant to the order of the court I transmit, herewith a certified copy of the findings of fact and opinion of the court in the aforesaid cause, which case was referred to this court by the Committee on Military Affairs, House of Representatives, under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,  
Assistant Clerk Court of Claims.

HON. THOS. B. REED,  
Speaker of the House of Representatives.

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[In the Court of Claims. No. 300. Congressional case. P. T. Turnley vs. The United States.]

PETITION.—FILED MARCH 24, 1886.—J R.

To the honorable the Court of Claims:

I. Your petitioner, Parmenas T. Turnley, respectfully represents that he is a citizen of the United States; that he entered the military service of the United States as a cadet of the Military Academy of West Point on or about the 1st day of July, 1842, and was graduated therefrom on or about the 1st of July, 1846, and was assigned as a brevet second lieutenant to the second regiment of United States Infantry, and joined said regiment in New Orleans and proceeded with the same to active duty in Mexico, and in October, 1846, was promoted to a full second lieutenant to the first regiment of infantry, then in active service of the war with Mexico, and he so continued till the final close of the said war; that petitioner continued in the active military service of the United States on the western frontiers till about the 17th of September, 1863, at which time your petitioner held the rank of captain and assistant quartermaster in the U. S. Army.

II. Petitioner says: That on said 17th day of September, 1863, having been found by the Army returning board to be physically disqualified for the performance of the active duties of his office, and this finding of said returning board having been approved by the President of the United States, he, said petitioner, was placed upon the retired list of the Army of the class of which disability results from "long and faithful service," or "from some injury incident thereto," by Special Orders No. 417, dated War Department, Adjutant-General's office, Washington, D. C., September 17, 1863.

III. Petitioner says: That about February 1, 1865, he visited Washington for the purpose of expediting the settlement of his accounts, and that while there he was sent for by General Charles Thomas, at that time acting quartermaster-general of the U. S. Army.

Petitioner went to see General Thomas as requested, and General Thomas explained the object of the interview. He (General Thomas) expressed himself dissatisfied with the management of the affairs of the quartermaster's department in Colorado and throughout the district of the plains; he knew of no officer then available who had such knowledge of the western frontier as would enable him to straighten out matters in that department and correct abuses then prevailing.

Petitioner's long and capable service on the western frontier, General Thomas said, had suggested him (petitioner), as a proper person to control and reform the quartermaster's department in the District of the Plains. But the Department had no power to order a retired officer to duty. He, General Thomas, therefore sent for petitioner to ask him if he felt physically able to perform the duties above set forth in this interview, and if he did, to ask him, said petitioner, if he would apply for service as due form of law provided. Petitioner felt that he understood entirely the affairs pertaining to the quartermaster's department in the District of the Plains; that few men, if any, understood the people, resources, climate, and the general needs of the Department in that section as well as he; his health had somewhat improved by rest and travel, and therefore petitioner expressed to General Thomas his appreciation of the confidence reposed in him, as to integrity as well as ability, and represented that he, petitioner, while not feeling able for the regular duties of active service again, he did feel able to perform the duties set forth and explained in this interview as given above, and consented to ask for service, as the technicality of the law required, to the end that he might be sent by General Thomas to the District of the Plains; it being specifically stated by General Thomas that said service should be restricted to the District of the Plains, with his office at Denver City, Colo.; and that petitioner did so tender service, and that the said tender of service was officially accepted by General Charles Thomas, Acting Quartermaster-General, on the 24th day of March, 1865, and petitioner was assigned to duty in Colorado in an official communication, dated War Department, Quartermaster-General's office, Washington, March 24, 1865.

IV. Petitioner says: That on the acceptance of the tender of service as aforesaid, it was intended by the Department, and petitioner was definitely instructed to that effect, that he was to be the chief quartermaster at Denver, where (General Thomas expressed the hope), "petitioner's experience, judgment, and integrity would enable him to reduce the affairs of the department to regularity and order," but that on reaching his post of duty he soon found that other and more onerous duties were intended for him by certain commanding officers in the District of the Plains, duties for which his depleted physical condition wholly incapacitated him, that he was both physically and mentally unable to perform said duties; that from overwork and the high electric state of the atmosphere at Denver, Colo., he grew ill and was admonished by his physician, Dr. Hamilton, since deceased, that he must leave Colorado and seek rest and relaxation by the seashore, that being the only means by which said physician could offer any hope of recovery. That he at various times between the 21st day of May, 1865, and the 26th day of September, 1865, represented the sad condition of his health to the proper authorities, and asked to be relieved from duty in Colorado, to all of which appeals no attention was paid, and that on the 26th day of September, 1865, when from his torturous physical suffering his judgment was so impaired as to render him incapable of weighing his language or appreciating the full meaning and application of which his words might be susceptible, and was in fact of unsound mind. He caused to be written and did sign and send to the Adjutant-General of the U. S. Army a communication in words and figures as follows:

CHIEF QUARTERMASTER'S OFFICE,  
DISTRICT OF THE PLAINS,  
DENVER, C. T., Sept. 26th, 1865.

General L. THOMAS,  
Adjutant-General, U. S. A., Washington, D. C.:

I have the honor to tender hereby and by these presents my resignation from the Army of the United States, to take effect "immediate" and "unconditional."

P. T. TURNLEY,  
Capt. and Asst. Quartermaster, U. S. A.

Petitioner says: That the wording of said letter of resignation was made with especial reference to an Army custom, and he believed and does still believe a regulation which he believed to be then in force and observance, that local commanders could not give *immediate* relief without instructions from Washington, except when the application for relief was accompanied by *resignation to take effect "immediate and unconditional."* And as petitioner believed his life depended upon a speedy change of atmosphere and rest from worrying and perplexing cases, he designed to so word his application for relief as to come within the custom, and regulation as he thought (though he had no books or time for reference) then in force and observance for *immediate relief*, and that he understood and intended said resignation to work his im-

mediate relief from active service of the Army only, and that he did not intend nor expect it to in anywise affect his status on the retired list. That having once been found disqualified for active service, and placed on the retired list as aforesaid under the law, no involuntary service could be exacted of him, and that the service authorized by law for him as such retired officer could not be exacted if he had reasonable ground for thinking himself unable to perform it, by reason of the causes for which he had been originally retired, as in this case he did believe and know.

Petitioner says: That when rest and a change of atmosphere had (after months of acute suffering, many times his life being despaired of) measurably restored his health, he applied at Washington for his retired pay, which he supposed to be there awaiting his order, and found to his very great surprise that his name had been stricken from the retired list of the U. S. Army, under an alleged voluntary surrender on the part of petitioner of all his rights and privileges as an officer of the U. S. Army on the retired list; that his resignation from active duty in the special service which he, at the urgent request of General Thomas, voluntarily assumed, and which he had faithfully performed to the best of his ability, and which he only considered leaving when so prostrated by disease that he could not perform the duties thereof, had been construed by the War Department as applying to his retired status as well, and his name had been dropped from the retired list.

Petitioner files as part hereof his memorial filed in Congress, with all the exhibits printed with the same, and prays the court to find all the facts material to this case, and to report said facts, and the law arising upon the same and relating thereto, to the Congress of the United States of America, in order that such legislation may be had as will restore petitioner to his said place on the retired list of the Army, and set aside his alleged resignation, and he will ever pray.

W. J. MOBERLEY,  
P. B. THOMPSON,  
R. A. BURTON,  
*Attorneys for Petitioner.*

Parmenas T. Turnley, being duly sworn, deposes and says, that he has read the foregoing petition and knows the contents thereof; that the statements therein made from his own personal knowledge are true, and that the facts therein stated upon information and belief, believes to be true.

PARMENAS T. TURNLEY.

Subscribed and sworn to before me at Chicago, Ill., by the above-named Parmenas T. Turnley, this 13th day of March, 1886.

[SEAL.]

PHILIP A. HOYNE,  
*U. S. Commissioner for Northern District Illinois,  
and Commissioner U. S. Court of Claims.*

[Court of Claims. Congressional Case, No. 300. Parmenas T. Turnley v. the United States.]

#### FINDINGS OF FACT.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. The claimant entered the military service of the United States as a cadet July 1, 1842, and continued in said service on the active list of the Army until he was retired as hereinafter stated.

April 29, 1862, he applied for six months' leave of absence on account of ill health.

June 20, 1862, having received no reply to this application, he tendered his resignation from United States Army on account of ill health. Subsequently leave was granted as follows:

WAR DEPARTMENT,  
ADJUTANT-GENERAL'S OFFICE,  
*Washington, September 25th, 1862.*

6. Leave of absence is hereby granted to Capt. P. T. Turnley, assistant quartermaster, U. S. Army, with permission to go beyond the seas, pending the settlement of his accounts and final action upon his resignation.

By order of the Secretary of War.

E. D. TOWNSEND.  
*Assistant Adjutant-General.*

It does not appear that any action was taken upon his said resignation; but on July 22, 1863, he was ordered before a retiring board and thereafter was placed upon the retired list, as appears by the following order:

WAR DEPARTMENT,  
ADJUTANT-GENERAL'S OFFICE,  
*Washington, September 17th, 1863.*

Captain P. T. Turnley, assistant quartermaster, U. S. Army, having been found by a board of examination to be physically incompetent to discharge the duties of his office, and the President having approved the finding thereof, he will be placed on the retired list of officers of the class of which the disability results from long and faithful service or from some injury incident thereto.

By order of the Secretary of War.

E. D. TOWNSEND,  
*Assistant Adjutant-General.*

II. February 6, 1865, the claimant made the following report to the Department:

CHICAGO, ILLINOIS, *Feb. 6th, 1865.*

General M. C. MEIGS,  
*Quartermaster-General U. S., Washington, D. C.:*

GENERAL: Inclosed herewith is a copy of Special Orders, No. 417 dated War Department, Sept. 17th, 1863, placing me on the retired list of officers "of the class of which the disability results from long and faithful service or from some injury incidental thereto."

My complaint was what doctors called "gastritis," causing extreme debility, and was superinduced by fourteen years of constant service on the extreme frontiers, where I had intense mental care and exercise, being at the same time deprived of the proper variety of physical exercise and nourishing food.

By two years' proper application of these remedies, I have the honor to report my health and strength entirely restored, and that I am now fully competent and ready to resume my active duties if the public service requires it.

Your reply is awaited at this place.

I am, general, respectfully,

P. T. TURNLEY,  
*A. Q. M., U. S. A.*

In reply to this report the claimant received the following order:

WAR DEPARTMENT,  
ADJUTANT-GENERAL'S OFFICE,  
*Washington, March 22d, 1865.*

Captain P. T. Turnley, assistant quartermaster, U. S. Army, will proceed immediately to Denver City, Colorado Territory, and relieve Captain C. L. Gorton, assistant quartermaster of volunteers, in his duties at that post.

By order of the Secretary of War.

E. D. TOWNSEND,  
*Assistant Adjutant-General.*

In compliance with this order the claimant proceeded to Denver, whence he reported as follows:

DENVER CITY, *May 25, 1865.*

To Maj. Gen. M. C. MEIGS,  
*Qr. Mr. General, U. S., Washington City, D. C.:*

I am here per Special Order No. 139, dated War Department, March 22, 1865, and letter from your office dated March 24th. I find Capt. Westbrook, A. Q. M., from Utah, here by order of Gen'l Connor, to relieve Capt. Gorton, A. Q. M., and Gen'l Connor designs Capt. Turnley, A. Q. M., for Julesburg, or Indian campaign. This is not according to my orders, nor what I expected, nor what I desired. Your further instructions are asked for in answer by telegraph.

P. T. TURNLEY,  
*A. Q. M.*

I stated in a communication of 22d that I was here waiting the return of Capt. Gorton, A. Q. M., to receive his property, &c. He has not yet arrived, tho' Capt. Westbrook, A. Q. M., from Utah, is here, and is going on to relieve Capt. Gorton. I shall await your further instructions, or those of the chief qr. mrs. of the department and division.

It was sixteen years' service, nearly the whole of it field duty on the plains, that destroyed my health, and not one week's leave of absence was extended to me in that whole time; finally, when in 1862 I sought medical advice in Europe, and was

absent one year for that purpose, I was retired from active service; then having recovered my health and reported for duty, tho' retired and *overslaughed and deprived of promotion*, yet I willingly proceeded to duty as ordered, to Denver City Depot. On my arrival here, however, to find myself booked for a slavish, hot, and disagreeable Indian campaign, with low rank and nothing higher to be hoped for, is not to my mind just or to be expected for a *retired officer*. I will await, therefore, with all confidence in your never-failing judgment in this as in other cases of official duty.

I am, general, very respectfully, your obt. servt.,

P. T. TURNLEY.  
A. Q. M., U. S. A.

III. The following correspondence relative to the claimant's rank and duties took place at their respective dates:

CHIEF QUARTERMASTER'S OFFICE,  
DISTRICT OF THE PLAINS,  
Denver City, C. T., July 24th, 1865.

To His Excellency ANDREW JOHNSON,  
*President of the United States:*

SIR: I have the honor respectfully to represent that I left my home in Dandridge, Jefferson County, East Tennessee, in June, 1842, and traveled on foot to the National Military Academy, at West Point, New York; that I graduated there and received my diploma in 1846; joined my regiment immediately and marched with it throughout the Mexican war. At the close of that war I went on duty on the Rio Grande; thence (in 1850) up that river to New Mexico and Arizona; thence (in 1854) on to the Upper Missouri in the Sioux Indian country; thence (in 1857) to Oregon; thence (in '57) to Utah, where I remained till 1861, the beginning of our national troubles. I was thus in Utah nearly three years, during which time I did not see my own wife and children, who remain all the while at their home in Chicago, and to visit them and recover my prostrate condition in health and strength, I received my first leave of absence since first *entering the Academy*, thus making *nineteen years' constant service*. Tho' extremely feeble, I crossed the mountains in midwinter, and reached my home in Chicago and accompanied Mr. Lincoln to Washington City; where, in April, my leave of absence was *revoked*, and I ordered to duty—first with Gen'l Butler, then with Fremont in Missouri, then with Grant, on the Mississippi, Ohio, and Cumberland Rivers, until September, 1862, when I was fast *sinking* with the excessive labors I was performing.

I again received a leave (see paper No. 1). Availing myself of this respite, I sought quiet and ease and proper food (my wife alone with me), but in less than ten months a board retired me from active service (see papers 2 and 3). Then, in February last, I was again ordered to duty (see papers 4, 5, and 6), which I am now performing; and, in connection with said duties, etc., I most respectfully represent that the ten months' leave was not a *fifth part* of what almost every Army officer has had within nineteen years; that my debility and prostration was not constitutional, but was solely the result of my constant mental efforts and physical labors on extreme distant frontiers with the rudest diet; that my recovery and return to duty is evidence of this; that by the action of retiring board I was *placed below* all those in my corps whom I ranked for years; that I am now *under* and *junior* to officers in my corps who graduated ten years after I did, and whose services are counted by months, instead of the years that I have served. I therefore most respectfully represent that I desire to be placed on the roster of my corps where I would have been had no retirement been made; or, if this can not be done, then I have the honor to request that your excellency will consider this communication a tender of my resignation, and that your excellency will accept the same unconditionally and immediately.

I have the honor to be, respectfully,

PARMENUS TAYLOR TURNLEY,  
*Captain, Assistant Q'rmaster U. S. Army, 19 Years' Service.*

EXECUTIVE OFFICE,  
August 16, 1865.

Respectfully referred to the honorable Secretary of War, with the request that the application of Capt. Turnley to be placed upon the roster of his corps be granted, if not inconsistent with the interests of the service.

ANDREW JOHNSON,  
*President U. S.*

Respectfully referred to the Quartermaster-General U. S. Army for remark.

S. B. CHAPLIN,  
*Ast. Adj. Gen'l.*



QUARTERMASTER-GENERAL'S OFFICE,  
Washington, D. C., August 24, 1865.

Brig. Gen'l L. THOMAS,  
Adjutant-General U. S. A.:

GENERAL: I have the honor to return herewith communication of Capt. P. T. Turnley, of July 24th, 1865, relative to his position on the roster of the regular Army, referred by the Adj't. General to this office for remark on the 17th inst.

Captain Turnley served in the early part of the war until he reported that his health had failed him. He tendered his resignation and was granted leave of absence.

In the ordinary routine he appeared before a retiring board and was retired, remaining out of active service from July, 1862, to March 22, 1865—that is, during the greater part of the active movements and operations of the great war just successfully concluded.

Officers of the Q'r'm'r's Dept. who have taken active part in the war have been promoted to higher rank in the line of the Army, and the vacancies made by their promotion have been filled by regular promotion, according to the rules of the service.

Having been restored to health, Captain Turnley asked to be placed on duty instead of remaining on the retired list and rendering no service to the Government.

In this he showed a proper sense of his duty as a soldier and a citizen, and he has been placed on duty in an important position at Denver City, in which I have been obliged to request the interference of the War Dept. to retain him, as the commanding general of the district or dept. in which he served was by him reported to desire to take him to another post, where, in the opinion of this Dep't, he would be less useful.

His promotion should be governed by the rules of the service, and doubtless the Adjutant-General has followed these rules in placing his name on the roster.

I do not think it would be just to reduce any of those who, having had health and opportunity to continue in active service through the war, have fairly won the promotion which they have received.

Whether Captain Turnley will be entitled by seniority to promotion on occurrence of the next vacancy or not depends upon the laws and regulations regulating promotion in the regular Army.

His services are now important, and he should not be allowed to resign.

Very respectfully, your ob't servant,

M. C. MEIGS,  
Qr. Mr. General, Brevet M. G.

ADJUTANT-GENERAL'S OFFICE,  
Washington, Oct. 3, 1865.

Capt. P. T. TURNLEY,  
U. S. Army, Denver City, C. T.:

SIR: In reply to your communication of the 24th July, '65, requesting that your name may be placed on the roster of your corps as if you had not been retired, I am directed by the Secretary of War to inform you that your request has not been favorably considered. Your resignation, tendered in the same communication, can not be accepted at present.

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

S. F. CHALFIN,  
Asst. Adj't Gen'l.

IV. Before the claimant received the reply to his letter of July 24, 1865, addressed to the President, as set out in Finding III, he tendered his resignation in the Army. The resignation, recommendations, and acceptance are as follows:

CHIEF QUARTERMASTER'S OFFICE,  
DISTRICT OF THE PLAINS,  
Denver, C. T., Sept. 26th, 1865.

General L. THOMAS,  
Adj't. Gen'l U. S. Army, Washington City, D. C.:

I have the honor to tender hereby, and by these presents, my resignation from the Army of the United States, to take effect "immediate and unconditional."

Respectfully,

P. T. TURNLEY,  
Captain, and Asst. Qr. Master, U. S. Army, Graduate of 1856.

DENVER, C. T., Oct'r. 1st, 1865.

B'vt. Major-General E. UPTON,  
Comd'g District of Colorado:

GENERAL: Having tendered my resignation from the U. S. Army "unconditional and immediate," I have the honor to apply for a leave of absence until my accounts can be closed and settled by the U. S. Treasury Department.

P. T. TURNLEY,  
A. Q. M., U. S. A.

HD. QRS., DIS. COL., Oct. 1st, 1865.

Captain Turnley informs me that he intended to resign when in Utah in 1860, but the war soon after breaking out, he was induced to delay till such time as he could retire without prejudice to the service. For important private reasons which Capt. Turnley has made known to me, I respectfully recommend that his resignation be accepted, and that leave of absence be granted him till his accounts are settled.

E. UPTON,  
Bt. Maj. Gen., Comd'g.

HEADQUARTERS U. S. FORCES, KANSAS AND TERRITORIES,  
Denver, Oct. 2d.

For reasons stated to me, in person, by Capt. Turnley, I approve his resignation, to take effect on settlement of his accounts, and recommend that a leave of absence be given him to enable him to make such settlement.

G. M. DODGE, M. G.

HEADQUARTERS DEPT. OF THE MO.,  
St. Louis, Mo., Nov. 4th, 1865.

Respectfully forwarded to the Adj't-General of the Army.

JNO. POPE,  
Major-Gen'l, Comd'g.

Respectfully referred to the Quartermaster-General, in connection with other papers in this case inclosed.

S. F. CHAPLIN,  
Asst. Adjt. General.

CHIEF QUARTERMASTER'S OFFICE,  
DISTRICT OF THE PLAINS,  
Denver, C. T., October 24th, 1865.

Major-General JOHN POPE,  
Comd'g Dep't of the Missouri, Saint Louis, Mo.:

GENERAL: I have the honor to forward to you herewith my resignation from the Army of the United States, to take effect "immediate and unconditional" with the favorable endorsements of Br'vt Major-General Upton, comd'g this district, and of Major-Gen'l Dodge, comd'g forces in Kansas and Territories, and I have to ask your favorable endorsement, and then the same be forwarded to the Adj't Gen'l of the U. S. Army.

I have, also, to apply for a leave of absence, until my accounts may be settled, and my resignation accepted; and I have my family with me, and the winter being near at hand, I beg you will let me know your action as soon as possible, by telegraph, as children and women can not well travel if delayed late in winter.

I am, general, very truly, your obd't serv't,

P. T. TURNLEY,  
A. Q. M., U. S. A.

Respectfully returned to the Adjutant-General U. S. Army.

Captain Turnley has written to me in regard to the condition of his father's estate in East Tennessee, where his father was lately threatened with death; an aged man, and I presume that he is now so desirous of leaving the service that it would be better to let him go. His knowledge of affairs on the plains was useful to the Department and his integrity inspired its confidence.

I recommend that his resignation be accepted, to date from the 31st of December next, and that he have a leave of absence until that time to enable him to settle his accounts.

M. C. MEIGS,  
Bvt. Major-General, Quartermaster-General U. S. A.

Nov. 17, '65.

SPECIAL ORDERS, }  
No. 609. }

WAR DEPARTMENT,  
ADJUTANT-GENERAL'S OFFICE,  
Washington, November 21st, 1865.

1. Leave of absence is hereby granted to the following officers:  
Captain P. J. Turnley, U. S. Army, until December 31st, 1865.
2. The resignation of Captain P. T. Turnley, U. S. Army, has been accepted by the President, to take effect December 31st, 1865, on condition that he receive no final payments until he shall have satisfied the Pay Department that he is not indebted to the United States.

By order of the Secretary of War:

E. D. TOWNSEND,  
Assistant Adjutant-General.

V. At the time the claimant tendered his resignation as set forth in Finding IV, he was suffering from a prostrating dysentery and carbuncles, whereby he had become much debilitated in body and mentally depressed. He was extremely nervous and irritable, and anxious to be relieved from a service from which he was consciously unfit. For this relief he had made several urgent requests to his official superiors in the Department of Missouri, but had received no reply.

VI. Under said acceptance of claimant's resignation, as captain and assistant quartermaster, U. S. Army, claimant has been held by the military authorities and the accounting officers to have had his relations to the Army, both active and retired, wholly served, and claimant has been denied all rights, pay, and salary incident to his rank as a "captain U. S. Army retired."

To the claimant's applications for restoration, made in 1878 and 1880, the following answers were returned:

WAR DEPARTMENT,  
Washington City, November 5th, 1878.

SIR: Referring to your letter dated the 4th ultimo, enclosing the petition of Parmenus T. Turnley, late captain and assistant quartermaster, United States Army, retired, for his restoration to the retired list, I have the honor to inform you that, after careful examination of the case, it is not believed that the Executive can afford the relief asked without a special act of Congress. I return herewith the papers enclosed in your letter.

Very respectfully, your obedient servant,

GEO. W. MCCRARY,  
Secretary of War.

W. M. JONES, Esq.,  
Attorney at Law, Des Moines, Iowa.

WAR DEPARTMENT,  
Washington City, May 11, 1880.

SIR: I am in receipt, by your reference under date of the 30th ultimo, of letter of the 10th ultimo from the honorable Thomas Drummond, judge of the circuit court of the United States for the northern district of Illinois, urging the restoration to the Army of Colonel P. T. Turnley, late captain United States Army, retired, and, in reply, have the honor to state that the Executive is powerless to comply with your wishes in this matter.

The power to restore Colonel Turnley to the Army is possessed by Congress only.

Very respectfully, your obedient servant,

ALEX. RAMSEY,  
Secretary of War.

Hon. DAVID DAVIS,  
U. S. Senate.

#### VII.—Stipulation of counsel.

It is hereby stipulated and agreed that in the above cause the following facts may be admitted as evidence for plaintiff, to wit: That the proper official designation of a captain in the Quartermaster Department, U. S. Army, in all communications between his military superiors and himself, is "captain and assistant quartermaster, U. S. Army," and that the same of a captain on the retired list of the Army is "captain, U. S. Army, retired." It is further admitted that the pay per annum of a mounted captain, U. S. Army, retired, after twenty years' service, is \$2,100.

H. J. MAY,  
Assistant Attorney.  
W. J. MOBERLY,  
Attorney for Plaintiff.



CONCLUSION OF LAW.

Upon the foregoing findings of facts the court decides as conclusion of law that the claimant is not entitled to recover.

OPINION.

Scotfield, J., delivered the opinion of the court:

This case was originally referred to the court by the Committee on Military Affairs of the House of Representatives, under the provisions of the act of March 3, 1883 (22 Stat., 485), known as the Bowman act. But the claimant subsequently filed a petition under the general jurisdiction of the court to recover pay as a retired officer of the Army, at the rate of \$2,100 a year, from December 31, 1865, to the time of filing his petition, or so much thereof as the court, under the statute of limitations, might be authorized to consider.

The claimant was an officer of the regular Army of the United States, on the active list, from July 1, 1842, to September 17, 1863, at which time, having the rank of captain and assistant quartermaster, he was placed upon the retired list.

February 6, 1865, he reported to the Quartermaster-General that "his health and strength were entirely restored, and that he was ready to resume his active duties if the public service required it." On the 22d of March following he was ordered to proceed to Denver, Colo., and relieve Captain Gorton, and on May 25, 1865, he reported his arrival at that place.

September 26, 1865, he tendered his resignation in the Army, which, November 20, 1865, was accepted by the President, to take effect December 31, 1865. Thereupon his name was dropped from the Army Register, and he received no pay after that date.

He now contends that his resignation related only to active service and not to his position on the retired list, and that its acceptance left him still a "captain in the U. S. Army, retired," entitled to retired pay. As this contention is based upon the form of resignation and acceptance, they are here inserted entire:

CHIEF QUARTERMASTER'S OFFICE,  
DISTRICT OF THE PLAIN.  
Denver, C. T., September 26th, 1865.

General L. THOMAS,  
Adj. Gen. U. S. Army, Washington City, D. C.:

I have the honor to tender, hereby and by these presents, my resignation from the Army of the United States, to take effect "immediate and unconditional."

Respectfully,

P. T. TURNLEY,  
Captain and Asst. Qr. Master, U. S. Army, Graduate of 1846.

ADJUTANT-GENERAL'S OFFICE,  
Washington, Nov. 20, 1865.

Captain P. T. TURNLEY,  
U. S. Army, Denver City, Colorado Territory:

SIR: Your resignation has been accepted by the President of the United States, to take effect the thirty-first day of December, 1865, on condition that you receive no final payments until you shall have satisfied the Pay Department that you are not indebted to the United States.

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

S. F. CHALFIN,  
Asst. Adj. Genl.

It is admitted that the proper designation of this officer while on the active list or while performing active duties was "captain and assistant quartermaster U. S. Army," and when on the retired list and not on active duty was "captain U. S. Army, retired." It will be seen that the claimant signs his resignation as "captain and assistant quartermaster, U. S. Army, graduate of 1846," and the notice of the President's acceptance is addressed to him as "captain, U. S. Army."

We do not think that the title which the claimant appended to his name in signing his resignation operated as a limitation upon the clear and unambiguous words of the resignation itself. "Resignation from the Army of the United States, immediate and unconditional," could mean nothing less than an entire severance of his army connection. The claimant himself seems to have so understood it at the time, for in

a few days after he wrote General Upton, his superior officer, that he had tendered his "resignation from U. S. Army," and requested leave of absence. October 24, 1865, in a communication to General Pope, inclosing his resignation, he calls it "my resignation from the Army of the United States," and asks for leave of absence. His request for leave and his resignation passed through the same channels on their way to Washington and the leave was finally granted and the resignation accepted on the same day. In sending forward this resignation and request for leave General Upton makes this indorsement:

"Captain Turnley informs me that he intended to resign when in Utah in 1860, but the war soon after breaking out, he was induced to delay till such time as he could retire without prejudice to the service. For important private reasons, which Capt. Turnley has made known to me, I respectfully recommend that his resignation be accepted and that leave of absence be granted him till his accounts are settled."

General Dodge, through whose hands the resignation and request for leave passed, indorsed on the recommendation: "For reasons stated to me in person by Captain Turnley, I approve his resignation." General Meigs forwarded his resignation and request for leave with the following recommendation:

"Captain Turnley has written to me in regard to the condition of his father's estate in east Tennessee, where his father was lately threatened with death; an aged man, and I presume that he is now so desirous of leaving the service that it would be better to let him go. His knowledge of affairs on the plains was useful to the Department and his integrity inspired its confidence.

"I recommend that his resignation be accepted, to date from the 31st of December next, and that he have a leave of absence until that time to enable him to settle his accounts."

In all this correspondence there is no intimation that the claimant understood that he was simply resigning from active service. Leave of absence was sufficient for that purpose. It is hardly possible that an officer of his education and experience in the Army could have understood that the language of his resignation, so many times repeated, meant anything less than a total severance from the Army. Certainly, he must have so understood the President's acceptance, for pay ceased at that date; it does not appear, however, that he then expressed surprise or made any protest. The first notice of discontent appearing in the record is his application for restoration made about thirteen years afterward.

It is further said that the claimant, at the date of his resignation, was not in his right mind, and that the paper is therefore void. It is true that he was much out of health, debilitated and depressed in mind and body, but it appears that he was attending to his official duties. He had his family with him, and was surrounded by military friends both above and below him in rank.

The idea of severing his connection with the Army was not new. He had it in contemplation just before the rebellion. He actually did resign in 1862, but his resignation was not then accepted. He was granted leave of absence instead and subsequently placed on the retired list. In his communication to the President, July 24, 1865, a little over two months before the final resignation, he complained of his comparatively low rank in his corps, and requested promotion to the rank he would have held if he had not been retired, and adds: "If this can not be done, then I have the honor to request that your excellency will consider this communication a tender of my resignation, and that your excellency will accept the same unconditionally and immediately." At that time he was in good health, but wished to resign unless he could be promoted. He was then only forty-three years of age and, although on the retired list, he was liable, whenever his health would permit, to be ordered to active service. He might well have considered that at his time of life, if entirely severed from the Army, he might find occupation more remunerative than Army pay, in which he would be reasonably sure of good health.

While in the service the claimant appears to have been an excellent officer; but in passing upon his legal status the court can not consider his personal merits.

The petition will be dismissed.

BY THE COURT.

Filed April 1, 1889.

A true copy. Test, this 8th day of December, A. D. 1890.

[SEAL.]

JOHN RANDOLPH,  
Assistant Clerk.