

IN SENATE OF THE UNITED STATES.

MARCH 4, 1846.

Submitted, and ordered to be printed.

Mr. LEWIS made the following

REPORT:

[To accompany bill S. No. 82.]

The Committee on Finance, to whom was referred a bill from the Senate, authorizing the payment of interest upon advances made by the State of Alabama, for the use of the United States government, in the suppression of the Creek Indian hostilities of 1836-'37, in Alabama, report:

That the several advances made by the State of Alabama to the United States were made under calls of the Secretary of War upon the governor to furnish such a militia force as Generals Scott and Jesup should require, to be employed in suppressing the hostilities of the above-mentioned Indians. That upwards of four thousand men were, by order of the governor of Alabama, placed under the command of those officers. The amount of expense incurred on this account, and paid by the State, has been adjusted and discharged by the proper accounting officers of the treasury, except about the sum of \$13,000, which was suspended on account of the loss of the original vouchers. A bill is now, however, before Congress to authorize the payment of this residue of the claim. The only question, then, submitted to the committee, is, whether interest should be allowed on these advances of the State of Alabama. The whole of her funds, at the time she made these advances, were invested in her State banks, upon the capital of which she was then paying interest, and receiving it, in return, through bank discounts; and it was through the medium of her banks that she was able to meet these demands upon her treasury. The committee have examined many precedents, to ascertain whether this case comes within the principles established on the subject of interest, and find that special acts of Congress have heretofore allowed interest to several States on similar advances, where the money was borrowed from banks, or where the State paid interest on the sum advanced, or where a previous promise to pay interest was made by an officer of the general government.

The committee, adopting the language of the report made by the Military committee of the Senate on the 15th December, 1831, in relation to the claim of South Carolina for interest on similar advances, (substituting the name of Alabama for that of South Carolina,) "are clearly of opinion that the principle involved" in the cases cited "applies to the advances of Alabama; and they can conceive no substantial difference between the payment of interest

and the loss of interest, by a State, on moneys applied to the service of the United States. In every view of the subject, therefore, the committee are of opinion that the State of Alabama is entitled to the usual interest for these advances," and therefore recommend the passage of the bill referred to them, with an amendment authorizing the payment of interest at the rate of six instead of eight per cent. per annum.

By letters dated 21st January, March 19th, April 15th, May 4th, May 5th, May 9th, and May 19th, 1836, the United States, through the Secretary of War, Hon. Lewis Cass, required the governor of Alabama to furnish such a militia force as Generals Scott and Jesup, at the date of their respective commands, required, to operate against the Creek Indians, then at war with the inhabitants of the State.

In obedience to this call, Governor Clay supplied the number of men demanded for the service, amounting, during the continuance of the war in 1836, to a little upwards of four thousand men. These troops were provisioned, for the most part, by individuals of the State, *and upon the credit of the State*. And this arrangement was indispensably necessary; otherwise the requisition of the general government could not have been promptly complied with in time to meet the urgent necessities of the war; and, therefore, the accounts which accrued in obeying the requisitions of the general government were settled and paid by the State of Alabama. Without this, the troops thus called into service would necessarily have been disbanded for the want of supplies, and the object of the call defeated. In this crisis the State became virtually the disbursing agent of the government, and made the necessary advances to comply with the wishes of the government.

The amount thus advanced was about \$112,500; and the payments were made in consideration of service, subsistence, supplies, &c., during the war.

At an early period after the advances had been made, the governor of Alabama transmitted to the War Department a complete statement of the debt; but it was not at that time adjusted by the department. The disbursements had been made in advance by the State, for the benefit of the United States government, and in defraying the indispensable expenses of a border war.

It will not be denied that the United States government was bound to defray all such expenses thus incurred in prosecuting the war. A large part of the principal of this debt has been lately adjusted; but the interest upon it has been refused to be allowed by the accounting officers. Alabama has paid, and yet continues to pay, interest upon *her* debt to the United States. Equal justice, therefore, demands payment of interest upon the debt due from the United States to Alabama. Not to protect this mutual obligation is an infringement upon acknowledged right; and it would most strongly illustrate the moral of the fable of the lion's den, where all the tracks go one way.

It may be contended, that the advance did not become a *debt* due by the United States until the account for it had been allowed by the department at Washington. This might be true if the demand were in the nature of a claim only. Instead of being a claim, it was a debt complete, *and due from the instant when the money was advanced by Alabama*. If the advance

had been made without authority, then this objection might seem to have weight; but it was demanded by the requisition of the government itself; and if it had not been made by the State, the additional expense to the government would have been beyond estimate.

The advance was legally and distinctly a debt due by the United States from the moment when it was made; and the legal and distinct character which attached to it at the instant of its creation could not be subsequently destroyed by the fastidiousness of the accounting officers, who might think that the mere form of the account was not agreeable to their notions of technical phraseology.

A debt is money due. It is not a claim, which may become a debt by being recognised, audited, and allowed by the proper authority. There are numerous instances in which Congress have allowed interest upon claims. A meritorious debt being of higher dignity than any claim, has, then, an irresistible right to interest; the payment of which cannot be avoided without, at the same time, declaring that an unascertained disputable *claim* upon the government is entitled to more consideration *than a debt created by the order* and for the use of that government.

The following references will show some of the cases in which Congress have paid interest on claims, &c., to wit: Story's Laws of the United States, page 342; Acts of Congress of 1840, page 45; act of 1840, approved 10th April, 1840, page 57; Acts approved 23d August, 1842, page 126. But it is unnecessary to multiply precedents; for, ever since the organization of the government, but few sessions have passed in which Congress have not made appropriations for payment of interest upon debts, and frequently upon claims only.

The State of Alabama herself paid interest upon the money which she advanced for the use of the government; and it would now be not only unjust, but also a most impolitic measure, to refuse the State full reimbursement for all the expenditures made by her, as authorized by the government of the United States; for the day may come when the government will again require similar advances from a State; and there would be danger that the requisition would not be cheerfully and promptly honored if it now appear that the government will not liquidate a debt contracted by its own act.

It has been said that it is a bad precedent for Congress to pay interest. This may be correct in regard to most claims; but it cannot apply to the debt of Alabama. The State has vested rights that cannot be controlled by policy. The government demands interest upon its outstanding debts; why not pay it? No casuistry can equitably free the government from the obligation to pay interest, as well as to receive it. To deny this, would be an attempt to destroy the foundation of mutual justice, equally binding upon governments and States, as well as upon individuals. It is confidently believed that a simple statement of the facts, which I am prepared to verify, will be the best appeal to the justice of Congress, and I therefore forbear to add other reasons and arguments; and I desire that the bill be referred to the Committee on the Judiciary for its action.

R. T. SCOTT,
Agent for Alabama.

WASHINGTON CITY, *February 27, 1846.*

SIR: The bill for the payment of interest for the advances of Alabama to the federal government in 1836-'37, has been referred to the Committee on Finance, of which you are chairman. Before the committee act, I wish to state that the sum advanced for the government by the State was money upon which Alabama now pays semi-annual interest.

From 1834 to 1842, inclusive, the State had the control of no funds, except borrowed capital, upon which it banked; and it was through the medium of the banks that Alabama advanced for the government, in the suppression of the Creek Indian hostilities; and the sum advanced is yet upon interest.

The precedents where Congress have paid interest upon debts of this character are numerous. In the 8th and 9th volumes of the Laws of the United States alone, there are more than forty precedents. But I only deem it necessary to call the attention of the committee to the act of Congress for the benefit of the State of South Carolina.—(See Laws of the United States, page 528, vol. 8.) Also, for the benefit of the corporation of Baltimore, page 281, vol. 8; and the Bank of Chillicothe, page 292, vol. 8.

These authorities are in point, and I most respectfully call the attention of the committee to them.

With great respect, your obedient, humble servant,

R. T. SCOTT,
Agent for Alabama.

Hon. D. H. LEWIS.