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52D CONGRESS, 1st Session. } SENATE. { REPORT No. 770.

IN THE SENATE OF THE UNITED STATES.

JUNE 1, 1892.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 1578.]

The Committee on Claims, to whom was referred the bill (S. 1578) entitled "A bill for the relief of the First National Bank of Newton, Mass.," having had the same under consideration, beg to submit the following report:

The bill proposes to appropriate $249,039.95, being the alleged amount of interest at the rate of 4½ per cent per annum on a judgment rendered January 24, 1881, in favor of the First National Bank of Newton, Mass., against the United States, in the sum of $371,025, from March 1, 1867, to the date of payment. A similar bill has heretofore passed this committee three times, and has also passed the Senate as many different times, based on a report originally submitted to this committee by Senator Jackson, of Tennessee, and of which the following is a copy:

[Senate Report No. 326, Forty-eighth Congress, first session.]

Mr. JACKSON, from the Committee on Claims, submitted the following report, to accompany bill S. 1331:

The Committee on Claims, to whom was referred the bill (S. 1331) making appropriation for the relief of the First National Bank of Newton, Mass., have considered the same, and respectfully report:

That on and prior to February 28, 1867, Julius F. Hartwell was cashier of the United States sub-treasury in Boston, Mass. While acting as such cashier he embezzled a large amount of the Government's money by lending the same to the firm of Mellon, Ward & Co., who were extensively engaged in stock speculations. As the time for the examination of the funds in the sub-treasury approached, March 1, 1867, when Hartwell's accounts would have to be passed, some plan had to be devised by the guilty parties to prevent or delay exposure. The device resorted to and put in operation was to procure funds and assets of innocent third parties to be placed temporarily on deposit in the sub-treasury till the examination was had, and then to be immediately withdrawn again, and thus tide Hartwell and his associates in the embezzlement over the crisis. Edward Carter, the active financial member of said firm of Mellon, Ward & Co., who concocted this scheme with Hartwell, was a director in the First National Bank of Newton, and seems to have possessed not only the confidence of, but unlimited influence over, E. Porter Dyer, the cashier of said bank. By means of this confidence and influence, and in execution of his and Hartwell's fraudulent conspiracy, Carter procured from Dyer the money, bonds, securities, and checks of the First National Bank of Newton, to the amount of $371,025, which were deposited in the sub-treasury on February 28, 1867, Hartwell giving a receipt therefor, as cashier, that the deposit was "*to be returned on demand* in Governments, or bills, or its equivalent." This receipt being in the name of Mellon, Ward & Co., was immediately indorsed by Carter as follows: "Pay only to the order of E. Porter Dyer, jr., cashier," and signed Mellon, Ward & Co.

This deposit of its funds and assets was made without the knowledge and consent of the president and directors of the First National Bank of Newton. Hartwell's default was discovered on the night of February 28, and on March 1, 1867, when Dyer presented the above receipt and demanded its redemption, payment was refused, and the bank's funds and securities were held and applied by the Government to make

good Hartwell's default. The capital stock of the bank was $150,000. It was doing and for years had done a prosperous and profitable business, but this fraudulent misapplication and appropriation of its assets ruined the institution, and on March 11, 1867, it was placed in the hands of a receiver, and to make good its losses and provide the means to discharge its debts the stockholders were compelled to pay in a second time the amount of their respective holdings of its capital stock. On February 24, 1873, the First National Bank of Newton filed its petition in the Court of Claims against the United States to recover the amount of its funds and assets so deposited in the sub-treasury, and appropriated by the Government. The case was heard in December, 1880, and judgment was rendered in favor of the bank January 24, 1881, for the full amount of principal claimed, viz, $371,025. The full details of the conspiracy and transaction by which the Government, through the fraud of its agent, wrongfully got possession of the bank's assets are clearly set forth in 10 Court of Claims Reports, p. 519; 96 United States Supreme Court Reports, 30; and 16 Court of Claims Reports, p. 54, to which reference is here made for a more complete statement of the facts than herein above stated. In delivering the opinion of the Court of Claims in the bank's suit, Chief Justice Drake characterized the taking of its assets as a "*villainous scheme*," and the transaction as "simply a case of a bank being robbed, and of its stolen assets being put into the hands of the cashier of the sub-treasury for a purpose which by no possible view could in law be held to effect a transfer of the bank's right of property in them either to him or to the United States." That the United States could not derive a benefit from the fraudulent act of their cashier or lawfully withhold the funds thus obtained admitted of no question either in law or morals. After referring to many of the authorities on the question, the Supreme Court (96 U. S. Reports, p. 36) say, in conclusion:

"But surely it ought to require neither argument nor authority to support the proposition that where the money or property of an innocent person has gone into the coffers of the nation by means of a fraud to which its agent was a party, such money or property can not be held by the United States against the claim of the wronged and injured party. The agent was agent for no such purpose. His doings were vitiated by the underlying dishonesty and could confer no rights upon his principal."

On the 28th April, 1881, a duly certified copy of the bank's judgment against the United States was presented to the Secretary of the Treasury, as provided by law. Before its payment the now Attorney-General of the United States, in March, 1881, entered an appeal to the Supreme Court. This appeal seems to have been taken for the purpose of enabling him to examine the case. After making such examination and finding the case undistinguishable from that reported in 96 United States Reports above cited, the appeal, which had been in the meantime entered in the Supreme Court, was, on his motion, dismissed in that court October 25, 1881.

Thereafter, on October 29, 1881, the sum of $260,000 was paid, on account of this judgment, by the Treasurer of the United States, that being the only amount available under the appropriation then existing. The balance of $111,025 was paid August 30, 1882.

Such is a brief history of the case. The bill under consideration proposes to pay the bank *interest* on the amount of its funds so taken and appropriated by the United States, from date of conversion to time of payment. The Court of Claims was not authorized to award such interest, its jurisdiction in the matter of "interest" being confined to cases of contract expressly stipulating for the payment of interest. It will hardly be insisted that this restriction upon one of its tribunals settles either the question of the Government's liability or the measure of its duty in a case like the present, where the contract relation is not *voluntarily* assumed by the party making the claim. The Government may with propriety refuse to recognize any obligation to pay interest to those who *voluntarily* deal with it, without expressly stipulating for the payment of interest. But the question of its *obligation* to make indemnity by the allowance of *interest*, where the creditor relation is forced upon the individual by the wrongful act of the Government or its agents, stands upon a different footing, and should be determined by the general principles of the public law and the rules of natural justice and equity applicable to the facts and circumstances of the particular case. Ordinarily, the Government can not and should not be made responsible, to the extent of individuals, for the wrongful acts of its officers or agents. But this rule can not be justly invoked to shield or protect the Government from the measure of responsibility applied to private persons, where it has adopted such wrongful acts and derived an advantage and benefit therefrom. Where the Government has profited by the fraud of it agent, why should it deny to the injured party the full redress that courts of equity would afford as between individuals and private corporations? In the jurisprudence of all civilized countries the general doctrine is well settled that any one—except a "bona fide" purchaser for value and without notice—who obtains possession of property which has been procured from the owner by *fraudulent* means or practices is converted by the courts into a *trustee*, and ordered to account as such; or, as stated by Perry on Trusts, § 166, the principle "denotes

that the parties defrauded, or beneficially entitled, have the same right and remedies against him as they would be entitled to against an express trustee who had fraudulently committed a breach of trust." Whenever the principal adopts the fraudulent act of his agent, or attempts to reap an advantage therefrom, his liability is properly measured by this rule. Indeed (says Perry on Trusts, 172), the doctrine has been thus broadly stated:

"That when once a fraud has been committed, not only is the person who committed the fraud precluded from deriving any benefit from it, but every innocent person is so likewise, unless he has innocently acquired a subsequent interest; for a third person by seeking to derive any benefit under such a transaction, or to retain any benefit resulting therefrom, becomes 'particeps criminis,' however innocent of the fraud in the beginning."

It would not admit of a moment's doubt that in the present case interest would have been awarded the bank as against the agent committing the fraud. It is also clear that as against any private principal occupying the position of the Government the bank could and would have received interest. Why should not the Government, standing as it does under this transaction in the attitude of a trustee if not a "particeps criminis," be held to the same measure of responsibility and redress? Nothing short of this will meet the justice of the case or afford the equitable relief to which the bank is justly entitled. A great Government like ours, with unlimited resources and revenues at its command, should above all things deal justly with its citizens. It should not stand upon technicalities in withholding property or funds which may have wrongfully come into its possession. It should never make for itself a profit or secure and retain an advantage through the fraud of its agents or by any breach of trust which has worked a wrong and injury. It should in such cases make such reparation as its courts would enforce as between individuals.

The American counsel at Geneva successfully claimed interest upon the amounts awarded to the United States against Great Britain. The counsel for Great Britain, while objecting to the application of the principle allowing interest, distinguished between cases where, in their view, it should and should not be allowed, in language strikingly applicable here; and attention is called to it as being a concession, on the part of a party objecting to the allowance of interest, which covers the present case, as follows:

"Interest, in the proper sense of that word, can only be allowed where there is a principal debt of liquidated and ascertained amount detained and withheld by the debtor from the creditor after the time when it was absolutely due and ought to have been paid, the fault of the delay in payment resting with the debtor; or where the debtor has wrongfully taken possession of and exercised dominion over the property of the creditor. In the former case, from the time when the debt ought to have been paid, the debtor has had the use of the creditor's money, and may justly be presumed to have employed it for his own profit and advantage. He has thus made a gain corresponding with the loss which the creditor has sustained by being deprived, during the same period of time, of the use of his money; and it is evidently just that he should account to the creditor for the interest which the law takes as the measure of this reciprocal gain and loss. In the latter case, the principle is exactly the same. It is ordinarily to be presumed that the person who has wrongfully taken possession of the property of another has enjoyed the fruits of it; and if, instead of this, he has destroyed it or kept it unproductive, it is still just to hold him responsible for interest on its value, because his own acts, after the time when he assumed control over it, are the causes why it has remained unfruitful. In all these cases, *it is the actual or virtual possession of the money or property belonging to another* which is the foundation of the liability of interest. The person liable is either *lucratus* by the detention of what is not his own, or is justly accountable as if he were so."

In the case under consideration, the funds of the bank—an amount fixed and liquidated—have been wrongfully withheld for many years, during which the Government has retained and used them, and to that extent has made or saved interest, of which the bank throughout the same period lost such interest. In allowing interest at a low rate the bank will receive only (or less than) what it was unjustly deprived of, while the United States will only yield up what it has received or saved that rightfully belonged to the bank, for it can not be questioned that the use of the principal sum has put the Government in receipt of additional funds to the amount of the value of such use. The claim is thus brought within the general principle so clearly and forcibly stated in the above-quoted extract from the counsel of Great Britain.

In this statement of the proposition which should govern the present case it is hardly necessary to say that the committee do not wish to be understood as even suggesting that the same rule could or should be applied to that large class of cases known as war claims. They stand entirely upon a different footing. Every man, woman, and child residing, during the war, in the insurrectionary territory, became thereby an enemy of the United States. The Government could have asserted against each and all of them the extremest measures conceded by the public law to belliger-

ents. That it did not adopt this policy, but modified the harsher rules of war, by which it waived some of its belligerent rights, could not be made in any case the basis of a claim for interest, nor lay the ground for the payment of interest. Take, for illustration, the captured and abandoned property cases. This property and its proceeds, under the modern rules of war, could have been appropriated to the absolute use of the Government. Instead of pursuing this course, the Government, in a spirit of liberality, adopted the generous policy of making itself a depository of these funds, to be held for the benefit of the real owners. The proposition to allow interest on such claims should not and would not be entertained for a moment.

It can not be properly urged as an objection to this claim for interest that the bank should be held responsible to some extent for the unfaithfulness of the cashier whom it had selected and intrusted with certain well-defined duties in respect to its funds and assets. No want of care is shown in making the selection. There was nothing in his previous conduct to excite suspicion or put the bank upon inquiry or notice so as to charge it with any degree of negligence in retaining him in its employ. The doctrine of contributory negligence is sometimes looked to and considered in the determination of the better equity as between two innocent parties who have been defrauded by a *third party who has been trusted by both*. If there had been no previous default on the part of Hartwell, and he had on the night of February 28, 1867, embezzled the funds and assets of the bank that day deposited with him by Carter and Dyer, the Government and the bank might then have occupied the position of two innocent parties, whose equities would have to be determined and settled to some extent by the question of negligence in the employment of unfaithful agents. But that is not the present case. The Government had already lost its money by the previous embezzlement of its cashier of the sub-treasury, and then, through the corrupt influence of that same agent and his confederate, the bank's agent is tempted, by a "villainous scheme," into a breach of his trust, by means of which the Government obtains possession of the bank's entire assets, and wrongfully appropriates them in making good its previous losses. It would be shocking to every sense of right and justice for the Government now to urge that the unfaithfulness of the bank's trusted agent was a bar or valid defense to its liability and duty to refund either the principal or interest of the funds so procured and converted to its own use. Your committee have too much regard for the honor and good name of the Government to allow it to occupy a position so questionable. It should be observed, too, that the decision of its own courts declaring that the Government could not rightfully hold the assets so fraudulently obtained, has really disposed of this question of negligence, which applied with equal force to the recovery of the principal as to the interest

To the objection that the allowance of this claim for interest will establish a bad precedent, the reply of Mr. Sumner to a similar objection is a complete answer:

"If the claim is just, the precedent of paying it is one which our Government should wish to establish. Honesty and justice are not precedents of which either Government or individuals should be afraid." (Senate Report No. 4, Forty-first Congress, first session, p. 10.)

But it is respectfully submitted that there are abundant precedents, both in the judicial and in the legislative branches of the Government, to support the present application for the allowance of interest. The prevalent idea that "the Government never pays interest" has grown up from the *practice* of the *Departments* which do not allow *interest* except where it is specially provided for in cases of contracts or expressly authorized by law. But this usage and custom of the Executive Departments can not be properly regarded as the settled rule and policy of the Government, for its action upon the subject of interest has not from the earliest time conformed to such usage. On the contrary, it will be found, upon an examination of the precedents where Congress has passed acts for the relief of private citizens, that in almost every case, except those growing out of the late war, Congress has directed the payment of interest where the United States had withheld a sum of money which had been decided by competent authority to be due, or where the amount due was ascertained, fixed, and certain. The highest court of the country has also affirmed this to be not only the practice of the Government but the measure of its duty. Thus, in 15 Wallace, p. 77, where the suit was against a United States collector for the recovery of taxes illegally collected, the Supreme Court used the following language upon the subject of interest allowed on the claim, viz:

"The 3d exception is to the instruction that if the jury found for plaintiff they might add interest. This was not contested upon the argument, and we think it clearly correct. The *ground for the refusal to allow interest is the presumption that* the *Government* is *always ready and willing to pay its ordinary debts*. Where an *illegal* tax has been collected, the citizen who has paid it and has been obliged to bring suit against the collector is *entitled* to *interest* in the event of recovery from the time of the alleged exaction."

On June 8, 1872, Congress referred the claim of the heirs of Francis Vigo to the Court of Claims, in the following language:

"The claim of the heirs and legal representatives of Col. Francis Vigo, deceased,

late of Terre Haute, Ind., for money and supplies furnished the troops under command of General George Rogers Clarke, in the year 1778, during the Revolutionary war, be and the same hereby is referred, along with all the papers and official documents belonging thereto, to the Court of Claims, with full jurisdiction to adjust and settle the same; and in making such adjustment and settlement, the said court *shall be governed* by the *rules* and *regulations* heretofore adopted by the United States in the settlement of like cases, giving proper consideration to official acts, if any have heretofore been had in connection with this claim, and without regard to the statutes of limitation."

The Court of Claims allowed the claim with interest thereon from the time it accrued, and, among other facts, found that—

"No rules and regulations have heretofore been adopted by the United States in the settlement of like cases except such as may be inferred from the policy of Congress when passing private acts for the relief of various persons. When passing such private acts, Congress has allowed interest upon the claim up to the time that the relief was granted."

The Attorney-General appealed from this judgment awarding interest, but the decision of the court below was affirmed by the Supreme Court at the October term, 1875. (See 91 U. S. Rep., p. 443 *et seq.*) In delivering the opinion of the Supreme Court, Mr. Justice Miller says:

"It has been the general rule of the officers of Government, in adjusting and allowing *unliquidated* and *disputed* claims against the United States, to refuse to give interest. That this rule is sometimes at variance with that which governs the acts of private citizens in a court of justice would not authorize us to depart from it in this case. The rule, however, is not uniform; and especially is it not so in regard to claims allowed by special acts of Congress, or referred by such acts to some Department or officer for settlement."

This was said in reference to unliquidated and unadjusted claims. Where the Government, by and through the fraud of its agents, gets possession and withholds from the rightful owner an ascertained, fixed, and certain amount, the claim for interest certainly stands upon higher equitable grounds than in the cases cited. The finding of the Court of Claims that the policy of the Government, as shown by the general rule pursued by Congress in passing acts for the relief of private claims, was to allow interest, is supported by the precedents.

Your committee, upon this proposition, beg leave to refer to and adopt this portion of House Report 391, Forty-third Congress, first session, which discusses the subject of *interest* as follows:

THE OBLIGATION TO PAY INTEREST ON THE AMOUNT AWARDED THE CHOCTAW NATION.

Your committee have given this question a most careful examination, and are obliged to admit and declare that the United States can not, in equity and justice, nor without national dishonor, refuse to pay interest upon the moneys so long withheld from the Choctaw Nation. Some of the reasons which force us to this conclusion are as follows:

1. The United States acquired the lands of the Choctaw Nation on account of which the said award was made on the 27th day of September, 1830, and it has held them for the benefit of its citizens ever since.

2. The United States had in its Treasury, many years prior to the first day of January, 1859, the proceeds resulting from the sale of the said lands, and have enjoyed the use of such moneys from that time until now.

3. The award in favor of the Choctaw Nation was an award under a treaty, and made by a tribunal whose adjudication was final and conclusive. (Comegys *vs.* Vasse, 1 Peters, 193.)

4. The obligations of the United States, under its treaties with Indian nations, have been declared to be equally sacred with those made by treaties with foreign nations. (Worcester *vs.* The State of Georgia, 6 Peters, 582.) And such treaties, Mr. Justice Miller declares, are to be construed liberally. (The Kansas Indians, 5 Wall., 737–760.)

5. The engagements and obligations of a treaty are to be interpreted in accordance with the principles of the public law, and not in accordance with any municipal code or executive regulation. No statement of this proposition can equal the clearness or force with which Mr. Webster declares it in his opinion on the Florida claims, attached to the report in the case of Letitia Humphreys (Senate report No. 93, first session Thirty-sixth Congress, page 16). Speaking of the obligation of a treaty, he said:

"A treaty is the supreme law of the land. It can neither be limited nor restrained, nor modified, nor altered. *It stands on the ground of national contract, and is declared by the Constitution to be the supreme law of the land,* and this gives it a character higher than any act of ordinary legislation. It enjoys an immunity from the operation and effect of all such legislation.

"A second general proposition, equally certain and well established, is that the terms and the language used in a treaty are *always* to be interpreted according to the law of nations, and not according to any municipal code. This rule is of universal application. When two nations speak to each other they use the language of nations. Their intercourse is regulated, *and their mutual agreements and obligations* are to be interpreted by that code only which we usually denominate the public law of the world. This public law is not one thing at Rome, another at London, and a third at Washington. It is the same in all civilized States; everywhere speaking with the same voice and the same authority."

Again, in the same opinion, Mr. Webster used the following language:

"We are construing a treaty, a solemn compact between nations. This compact between nations, this treaty, is to be construed and interpreted throughout its whole length and breadth, in its general provisions, and in all its details, in every phrase, sentence, word, and syllable in it, by the settled rules of the law of nations. No municipal code can touch it, no local municipal law affect it, no practice of an administrative department come near it. Over all its terms, over all its doubts, over all its ambiguities, if it have any, the law of nations 'sits arbitress.'"

6. By the principles of the public law, interest is always allowed as indemnity for the delay of payment of an ascertained and fixed demand. There is no conflict of authority upon this question among the writers on public law.

This rule is laid down by Rutherford in these terms:

"In estimating the damages which any one has sustained, when such things as he has a perfect right to are unjustly taken from him, or WITHHOLDEN, or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of the thing is likewise the owner of the fruits or profits. So that it is as properly a damage to be deprived of them as it is to be deprived of the thing itself." (Rutherford's Institutes, Book I, chap. 17, sec. 5.)

In laying down the rule for the satisfaction of injuries in the case of reprisals, in making which the strictest caution is enjoined not to transcend the clearest rules of justice, Mr. Wheaton, in his work on the law of nations, says:

"If a nation has taken possession of that which belongs to another, IF IT REFUSES TO PAY A DEBT to repair an injury or to give adequate satisfaction for it, the latter may seize something of the former and apply it to his its advantage, till it obtains payment of what is due, together with INTEREST and damages." (Wheaton on International Law, p. 341.)

A great writer, Domat, thus states the law of reason and justice on this point:

"It is a natural consequence of the general engagement to do wrong to no one that they who cause any damages by failing in the performance of that engagement are obliged to repair the damage which they have done. Of what nature soever the damage may be, and from what cause soever it may proceed, he who is answerable for it ought to repair it by an *amende* proportionable either to his fault or to his offense or other cause on his part, and to the loss which has happened thereby." (Domat, Part I, Book III, Tit. V, 1900, 1903.)

"Interest" is, in reality, in justice, in reason, and in law, too, a part of the debt due. It includes, in Pothier's words, the loss which one has suffered, and the gain which he has failed to make. The Roman law defines it as "quantum mea interfuit; id est, quantum mihi abest, quantumque lucrari potui." The two elements of it were termed "lucrum cessans et damnum emergens." The payment of both is necessary to a complete indemnity.

Interest, Domat says, is the reparation or satisfaction which he who owes a sum of money is bound to make to his creditor for the damage which he does him by not paying him the money he owes him.

It is because of the universal recognition of the justice of paying, for the retention of moneys indisputably due and payable immediately, a rate of interest considered to be a fair equivalent for the loss of its use, that judgments for money everywhere bear interest. The creditor is deprived of this profit, and the debtor has it. What greater wrong could the law permit than that the debtor should be at liberty indefinitely to delay payment, and, during the delay, have the use of the creditor's moneys for nothing? They are none the less the creditor's moneys because the debtor wrongfully withholds them. *He holds them, in reality and essentially, in trust; and a trustee is always bound to pay interest upon money so held.*

In closing these citations from the public law, the language of Chancellor Kent seems eminently appropriate. He says: "In cases where the principal jurists agree, the presumption will be very great in favor of the solidity of their maxims, *and no civilized nation that does not arrogantly set all ordinary law and justice at defiance will venture to disregard the uniform sense of established writers on international law.*"

7. The *practice* of the United States in discharging obligations resulting from treaty stipulations has always been in accord with these well-established principles. It has exacted the payment of *interest* from other nations in all cases where the obligation

to make payment resulted from treaty stipulations, and it has acknowledged that obligation in all cases where a like liability was imposed upon it.

The most important and leading cases which have occurred are those which arose between this country and Great Britain; the first under the treaty of 1794, and the other under the first article of the treaty of Ghent. In the latter case the United States, under the first article of the treaty, claimed compensation for slaves and other property taken away from the country by the British forces at the close of the war in 1815. A difference arose between the two Governments, which was submitted to the arbitrament of the Emperor of Russia, who decided that "the United States of America are entitled to a just indemnification from Great Britain for all private property carried away by the British forces." A joint commission was appointed for the purpose of hearing the claims of individuals under this decision. At an early stage of the proceedings the question arose as to whether *interest* was a part of that "*just indemnification*" which the decision of the Emperor of Russia contemplated. The British commissioner denied the obligation to pay interest. The American commissioner, Langdon Cheves, insisted upon its allowance, and in the course of his argument upon this question said:

"Indemnification means a re-imbursement of a loss sustained. If the property taken away on the 17th of February, 1815, were returned now uninjured it would not re-imburse the loss sustained by the taking away and consequent detention; it would not be an indemnification. The claimant would still be unindemnified for the loss of the use of his property for ten years, which, considered as money, is nearly equivalent to the original value of the principal thing."

Again he says:

"If interest be an incident usually attendant on the delay of payment of debts, damages are equally an incident attendant on the withholding an article of property."

In consequence of this disagreement the commission was broken up, but the claims were subsequently compromised by the payment of $1,204,960, instead of $1,250,000, as claimed by Mr. Cheves; and of the sum paid by Great Britain, $418,000 was expressly for interest.

An earlier case, in which this principle of interest was involved, arose under the treaty of 1794, between the United States and Great Britain, in which there was a stipulation on the part of the British Government in relation to certain losses and damages sustained by American merchants and other citizens, by reason of the illegal or irregular capture of their vessels, or other property, by British cruisers; and the seventh article provided in substance that "full and complete compensation for the same will be made by the British Government to the said claimants."

A joint commission was instituted under this treaty, which sat in London, and by which these claims were adjudicated. Mr. Pinkney and Mr. Gore were commissioners on the part of the United States, and Dr. Nicholl and Dr. Swabey on the part of Great Britain; and it is believed that in all instances this commission allowed interest as a part of the damage. In the case of "The Betsey," one of the cases which came before the board, Dr. Nicholl stated the rule of compensation as follows:

"To re-imburse the claimants the original cost of their property, and all the expenses they have actually incurred, together with interest on the whole amount, would, I think, be a just and adequate compensation. This, I believe, is the measure of compensation usually made by all belligerent nations, and accepted by all neutral nations, for losses, costs, and damages occasioned by illegal captures." (Vide Wheaton's Life of Pinkney, page 198; also 265, note, and page 371.)

By a reference to the American State Papers, Foreign Relations, vol. 2, pages 119, 120, it will be seen by a report of the Secretary of State of the 16th February, 1798, laid before the House of Representatives, that interest was awarded and paid on such of theses claims as had been submitted to the award of Sir William Scott and Sir John Nicholl, as it was in all cases by the board of commissioners. In consequence of some difference of opinion between the members of this commission, their proceedings were suspended until 1802, when a convention was concluded between the two Governments, and the commission reassembled, and then a question arose as to the allowance of interest on the claims during the suspension. This the American commissioners claimed, and though it was at first resisted by the British commissioners, yet it was finally yielded, and interest was allowed and paid. (See Mr. King's three letters to the Secretaty of State, of 25th of March, 1803, 23d April, 1803, and 30th April, 1803, American State Papers, Foreign Relations, vol. 2, pages 387 and 388.)

Another case in which this principle was involved arose under the treaty of the 27th October, 1795, with Spain; by the twenty-first article of which, "in order to terminate all differences on account of the losses sustained by citizens of the United States in consequence of their vessels and cargoes having been taken by the subjects of His Catholic Majesty during the late war between Spain and France, it is agreed that all such cases shall be referred to the final decision of commissioners, to be appointed in

the following manner," &c. The commissioners were to be chosen, one by the United States, one by Spain, and the two were to choose a third, and the award of the commissioners, or any two of them, was to be final, and the Spanish Government to pay the amount in specie.

This commission awarded interest as part of the damages. (See American State Papers, vol. 2, Foreign Relations, page 283.) So in the case of claims of American citizens against Brazil, settled by Mr. Tudor, United States minister, interest was claimed and allowed. (See Ex. Doc., first session Twenty-fifth Congress, House Reps., Doc. 32, page 249.)

Again, in the convention with Mexico of the 11th of April, 1839, by which provision was made by Mexico for the payment of claims of American citizens for injuries to persons and property by the Mexican authorities, a mixed commission was provided for, and this commission allowed interest in all cases. (House Ex. Doc. 291, 27th Congress, 2d session.)

So also under the treaty with Mexico of February 2, 1848, the board of commissioners for the adjustment of claims under that treaty allowed interest in all cases from the origin of the claim until the day when the commission expired.

So also under the convention with Colombia, concluded February 10, 1864, the commission for the adjudication of claims under that treaty allowed interest in all cases as a part of the indemnity.

So under the recent convention with Venezuela, the United States exacted interest upon the awards of the commission, from the date of the adjournment of the commission until the payment of the awards.

The Mixed American and Mexican Commission, now in session here, allows interest in all cases from the origin of the claim, and the awards are payable with interest.

Other cases might be shown in which the United States or their authorized diplomatic agents have claimed interest in such cases or where it has been paid in whole or in part. (See Mr. Russell's letter to the Count de Engstein of October 5, 1818, American State Papers, vol. 4, p. 639, and proceedings under the convention with the Two Sicilies of October, 1832, Elliot's Dip. Code, p. 625.)

It can hardly be necessary to pursue these precedents further. They sufficiently and clearly show the practice of this Government with foreign nations, or with claimant under treaties.

8. The practice of the United States in its dealings with the various Indian tribes or nations has been in harmony with these principles.

In all cases where money belonging to Indian nations has been retained by the United States it has been so invested as to produce *interest*, for the benefit of the nation to which it belongs; and such interest is *annually* paid to the nation who may be entitled to receive it.

9. The United States in adjusting the claim of the Cherokee Nation for a balance due as purchase-money upon lands ceded by that nation to the United States in 1838, allowed interest upon the balance due them, being $189,422.76, until the same was paid.

The question was submitted to the Senate of the United States, as to whether interest should be allowed them. The Senate Committee on Indian Affairs, in their report upon this subject, used the following language:

"By the treaty of August, 1846, it was referred to the Senate to decide, and that decision to be final, whether the Cherokees shall receive interest on the sums found due them from a misapplication of their funds to purposes with which they were not chargeable, and on account of which improper charges the money has been withheld from them. It has been the uniform practice of this Government to pay and demand interest in all transactions with foreign Governments, which the Indian tribes have always been said to be, both by the Supreme Court and all other branches of our Government, in all matters of treaty or contract. The Indians, relying upon the prompt payment of their dues, have, in many cases, contracted debts upon the faith of it, upon which they have paid, or are liable to pay, interest. If, therefore, they do not now receive interest on their money so long withheld from them they will in effect have received nothing." (Senate report No. 176, first session Thirty-first Congress, p. 78.)

10th. That upon an examination of the precedents where Congress has passed acts for the relief of private citizens, it will be found that, in almost every case, Congress has directed the payment of interest, where the United States had withheld a sum of money which had been decided by competent authority to be due, or where the amount due was ascertained, fixed, and certain.

The following precedents illustrate and enforce the correctness of this assertion, and sustain this proposition:

1. An act approved January 14, 1793, provided that lawful interest from the 16th of May, 1776, shall be allowed on the sum of $200 ordered to be paid to Return J. Meigs, and the legal representatives of Christopher Greene, deceased, by a resolve of the

United States, in Congress assembled, on the 28th of September, 1785. (6 Stats. at Large, p. 11.)

2. An act approved May 31, 1794, providing for a settlement with Arthur St. Clair, for expenses while going from New York to Fort Pitt and till his return, and for services in the business of Indian treaties, and "allowed interest on the balance found to be due him." (6 Stats. at Large, p. 16.)

3. An act approved February 27, 1795, authorized the officers of the Treasury to issue and deliver to Angus McLean, or his duly authorized attorney, certificates for the amount of $254.43, bearing interest at 6 per cent., from the first of July, 1783, being for his services in the Corps of Sappers and Miners during the late war. (6 Stats. at Large, p. 20.)

4. An act approved January 23, 1798, directing the Secretary of the Treasury to pay General Kosciusko an interest at the rate of six per cent. per annum on the sum of $12,280.54, the amount of a certificate due to him from the United States from the 1st of January, 1793, to the 31st of December, 1797. (6 Stats. at Large, p. 32.)

5. An act approved May 3, 1802, provided that there be paid Fulwar Skipwith the sum of $4,550, advanced by him for the use of the United States, with interest at the rate of 6 per cent. per annum from the 1st of November, 1795, at which time the advance was made. (6 Stats. at Large, p. 48.)

6. An act for the relief of John Coles, approved January 14, 1804, authorized the proper accounting officers of the Treasury to liquidate the claim of John Coles, owner of the ship Grand Turk, heretofore employed in the service of the United States, for the detention of said ship at Gibraltar from the 10th of May to the 4th of July, 1801, inclusive, and that he be allowed demurrage at the rate stipulated in the charter-party, together with the interest thereon. (6 Stat. at L., p. 50.)

7. An act approved March 3, 1807, provided for a settlement of the accounts of Oliver Pollock, formerly commercial agent for the United States at New Orleans, allowing him certain sums and commissions, with interest until paid. (6 Stat. at L., p. 65.)

8. An act for the relief of Stephen Sayre, approved March 3, 1807, provided that the accounting officers of the Treasury be authorized to settle the account of Stephen Sayre, as secretary of legation at the court of Berlin, in the year 1777, with interest on the whole sum until paid, (6 Stat. at L., p. 65.)

9. An act approved April 25, 1810, directed the accounting officers of the Treasury to settle the account of Moses Young, as secretary of legation to Holland in 1780, and providing that after the deduction of certain moneys paid him, the balance, with interest thereon, should be paid. (6 Stat. at L., p. 89.)

10. An act approved May 1, 1810, for the relief of P. C. L'Enfant, directed the Secretary of the Treasury to pay to him the sum of six hundred and sixty-six dollars, with legal interest thereon from March 1, 1792, as a compensation for his services in laying out the plan of the city of Washington. (6 Stat. at L., p. 92.)

11. An act approved January 10, 1812, provided that there be paid to John Burnham the sum of $126.72, and the interest on the same since the 30th of May, 1796, which, in addition to the sum allowed him by the act of that date, is to be considered a reimbursement of the money advanced by him for his ransom from captivity in Algiers. (6 Stat. at L , p. 101.)

12. An act approved July 1, 1812, for the relief of Anna Young, required the War Department to settle the account of Col. John Durkee, deceased, and to allow said Anna Young, his sole heiress and representative, said seven years' half pay, and interest thereon. (6 Stat. at L., p. 110.)

13. An act approved February 25, 1813, provided that there be paid to John Dixon the sum of $329.84, with 6 per cent. per annum interest thereon from the 1st of January, 1785, "being the amount of a final-settlement certificate No. 596, issued by Andrew Dunscomb, late commissioner of accounts for the State of Virginia, on the 22d of December, 1786, to Lucy Dixon, who transferred the same to John Dixon." (6 Stat. at L., p. 117.)

14. An act approved February 25, 1813, required the accounting officers of the Treasury to settle the account of John Murray, representative of Dr. Henry Murray, and that he be allowed the amount of three loan-certificates for $1,000 with interest from the 29th of March, 1782, issued in the name of said Murray, signed Francis Hopkinson, treasurer of loans. (6 Stat. at L., p. 117.)

15. An act approved March 3, 1813, directed the accounting officers of the Treasury to settle the accounts of Samuel Lapsley, deceased, and that they be allowed the amount of two final-settlement certificates, No. 78446, for one thousand dollars, and No. 78447, for one thousand three hundred dollars, and interest from the 22d day of March, 1783, issued in the name of Samuel Lapsley, by the Commissioner of Army Accounts for the United States on the 1st day of July, 1784. (6 Stat. at L., p. 119.)

16. An act approved April 13, 1814, directed the officers of the Treasury to settle the account of Joseph Brevard, and that he be allowed the amount of a final-settlement certificate for $183.23, dated February 1, 1785, and bearing interest from the 1st

of January, 1783, issued to said Brevard by John Pierce, commissioner for settling Army accounts. (6 Stat. at L., p. 134.)

17. An act approved April 18, 1814, directed the receiver of public moneys at Cincinnati to pay the full amount of moneys, with interest, paid by Dennis Clark, in discharge of the purchase-money for a certain fractional section of land purchased by said Clark. (6 Stat. at L., 141.)

18. An act for the relief of William Arnold, approved February 2, 1815, allowed interest on the sum of six hundred dollars due him from January 1, 1783. (6 Stat. at L., 146.)

19. An act approved April 26, 1816, directed the accounting officers of the Treasury to pay to Joseph Wheaton the sum of eight hundred and thirty-six dollars and forty-two cents, on account of interest due him from the United States upon sixteen hundred dollars and eighty-four cents, from April 1, 1807, to December 21, 1815, pursuant to the award of George Youngs and Elias B. Caldwell, in a controversy between the United States and the said Joseph Wheaton. (6 Stat. at L., 166.)

20. An act approved April 26, 1816, authorized the liquidation and settlement of the claim of the heirs of Alexander Roxburgh, arising on a final-settlement certificate issued on the 18th of August, 1784, for $480 87, by John Pierce, commissioner for settling Army accounts, bearing interest from the 1st of January, 1782. (6 Stat. at L., 167.)

21. An act approved April 14, 1818, authorized the accounting officers of the Treasury Department "to review the settlement of the account of John Thompson," made under the authority of an act approved the 11th of May, 1812, and "to allow the said John Thompson interest at six per cent. per annum from the 4th of March, 1787, to to the 20th of May, 1812, on the sum which was found due to him, and paid under the act aforesaid." (6 Stat. at L., 208.)

22. An act approved May 11, 1820, directed the proper officers of the Treasury to pay to Samuel B. Beall the amount of two final-settlement certificates issued to him on the 1st of February, 1785, for his services as a lieutenant in the Army of the United States during the Revolutionary war, together with interest on the said certificates, at the rate of 6 per cent. per annum, from the time they bore interest, respectively, which said certificates were lost by the said Beall, and remain yet outstanding and unpaid. (6 Laws of U. S., 510; 6 Stat. at L., 249.)

23. An act approved May 15, 1820, required that there be paid to Thomas Leiper, the specie-value of four loan-office certificates, issued to him by the commissioner of loans for the State of Pennsylvania, on the 27th of February, 1779, for one thousand dollars each; and also the specie-value of two loan certificates, issued to him by the said commissioner on the 2d day of March, 1779, for one thousand dollars each, with interest at six per cent. annually. (6 Stat. at L., 252.)

24. An act approved May 7, 1822, provided that there be paid to the legal representatives of John Guthry, deceased, the sum of $127.30, being the amount of a final-settlement certificate, with interest at the rate of six per cent. per annum, from the 1st day of January, 1788. (6 Stat. at L., 269.)

25. An act for the relief of the legal representatives of James McClung, approved March 3, 1823, allowed interest on the amount due at the rate of six per cent. per annum from January 1, 1788. (6 Stat. at L., 284.)

26. An act approved March 3, 1823, for the relief of Daniel Seward, allowed interest to him for money paid to the United States for land to which the title failed at the rate of six per cent. per annum from January 29, 1814. (6 Stat. at L., 286.)

27. An act approved May 5, 1824, directed the Secretary of the Treasury to pay to Amasa Stetson the sum of $6,215, "being for interest on moneys advanced by him for the use of the United States, and on warrants issued in his favor, in the years 1814 and 1815, for his services in the Ordnance and Quartermaster's Department, for superintending the making of Army clothing and for issuing the public supplies." (6 Stat. at L., 298.)

28. An act approved March 3, 1824, directed the proper accounting officers of the Treasury to settle and adjust the claim of Stephen Arnold, David and George Jenks, for the manufacture of three thousand nine hundred and twenty-five muskets, with interest thereon from the 26th day of October, 1813. (6 Stat. at L., 331.)

29. An act approved May 20, 1826, directed the proper accounting officers of the Treasury to settle and adjust the claim of John Stemman and others for the manufacture of four thousand one hundred stand of arms, and to allow interest on the amount due from October 26, 1813. (6 Stat. at L., 345.)

30. An act approved May 20, 1826, for the relief of Ann D. Taylor, directed the payment to her of the sum of three hundred and fifty-four dollars and fifteen cents, with interest thereon at the rate of six per cent. per annum from December 30, 1786, until paid. (6 Stat. at L., 351.)

31. An act approved March 3, 1827, provided that the proper accounting officers of the Treasury were authorized to pay to B. J. V. Valkenburg the sum of $597.24,

"being the amount of fourteen indents of interest, with interest thereon from the 1st of January, 1791, to the 31st of December, 1826." (6 Stat. at L., 365.)

In this case the United States paid interest on interest.

32. An act approved May 19, 1828, provided that there be paid to the legal representatives of Patience Gordon the specie value of a certificate issued in the name of Patience Gordon by the commissioner of loans for the State of Pennsylvania, on the 7th of April, 1778, with interest at the rate of six per cent. per annum from the 1st day of January, 1788. (7 Stat. at L., p. 378.)

33. An act approved May 29, 1830, required the Treasury Department "to settle the accounts of Benjamin Wells, as deputy commissary of issues at the magazine at Monster Mills, in Pennsylvania, under John Irvin, deputy commissary-general of the Army of the United States, in said State, in the Revolutionary war;" and that "they credit him with the sum of $574.04, as payable February 9, 1779, and $326.67, payable July 20, 1780, in the same manner, and with such interest, as if these sums, with their interest from the times respectively as aforesaid, had been subscribed to the loan of the United States." (6 Stats. at Large, 447.)

34. An act approved May 19, 1832, for the relief of Richard G. Morris, provided for the payment to him of two certificates issued to him by Timothy Pickering, quartermaster-general, with interest thereon from the 1st of September, 1781. (6 Stats. at Large, 486.)

35. An act approved July 4, 1832, for the relief of Aaron Snow, a Revolutionary soldier, provided for the payment to him of two certificates issued by John Pierce, late commissioner of Army accounts, and dated in 1784, with interest thereon. (6 Stats. at Large, 503.)

36. An act approved July 4, 1832, provided for the payment to W. P. Gibbs of a final-settlement certificate dated January 30, 1784, with interest at six per cent. from the 1st of January, 1783, up to the passage of the act. This act went behind the final certificate and provided for the payment of interest anterior to its date. (6 Stats. at Large, 504.)

37. An act approved July 14, 1832, directed the payment to the heirs of Ebenezer L. Warren of certain sums of money illegally demanded and received from the United States from the said Warren as one of the sureties of Daniel Evans, formerly collector of direct taxes, with interest thereon at the rate of six per cent. per annum from September 9, 1820. (6 Stats. at Large, 373.)

38. An act for the relief of Hartwell Vick, approved July 14, 1832, directed the accounting officers of the Treasury to refund to the said Vick the money paid by him to the United States for a certain tract of land which was found not to be property of the United States, with interest thereon at the rate of six per centum per annum, from the 23d day of May, 1818. (6 Stats. at Large, 523.)

39. An act approved June 18, 1834, for the relief of Martha Bailey and others, directed the Secretary of the Treasury to pay to the parties therein named the sum of four thousand eight hundred and thirty-seven dollars and sixty-one cents, being the amount of interest upon the sum of two hundred thousand dollars, part of a balance due from the United States to Elbert Anderson on the 25th day of October, 1814; also the further sum of nine thousand five hundred and ninety-five dollars and thirty-six cents, being the amount of interest accruing from the deferred payment of warrants issued for balances due from the United States to said Anderson from the date of such warrants until the payment thereof; also the further sum of two thousand and eighteen dollars and fifty cents admitted to be due from the United States to the said Anderson by a decision of the Second Comptroller, with interest on the sum last mentioned from the period of such decision until paid. (6 Stats. at Large, 562.)

40. An act approved June 10, 1834, directed the Secretary of the Treasury to pay balance of damages recovered against William C. H. Waddell, United States marshal for the southern district of New York, for the illegal seizure of a certain importation of brandy, on behalf of the United States, with legal interest on the amount of said judgment from the time the same was paid by the said Waddell. (6 Stats. at Large, 594.)

41. An act approved February 17, 1836, directed the payment of the sum therein named to Marinus W. Gilbert, being the interest on money advanced by him to pay off troops in the service of the United States, and not repaid when demanded. (6 Stats. at Large, 622.)

42. An act approved February 17, 1836, for the relief of the executor of Charles Wilkins, directed the Secretary of the Treasury to settle the claim of the said executor, for interest on a liquidated demand in favor of Jonathan Taylor, James Morrison, and Charles Wilkins, who were lessees of the United States of the salt works in the State of Illinois. (6 Stats. at Large, 626.)

43. An act approved July 2, 1836, for the relief of the legal representatives of David Caldwell, directed the proper accounting officers of the Treasury to settle the claim of the said David Caldwell for fees and allowances, certified by the circuit court of the

United States for the eastern district of Pennsylvania, for official services to the United States, and to pay on that account the sum of four hundred and ninety-six dollars and thirty-eight cents, with interest thereon at the rate of six per centum from the 25th day of November, 1830, till paid. (6 Stats. at Large, 664.)

44. An act approved July 2, 1836, provided that there be paid Don Carlos Delossus interest at the rate of six per centum per annum on three hundred and thirty-three dollars, being the amount allowed him under the act of July 14, 1832, for his relief, on account of moneys taken from him at the capture of Baton Rouge, La., on the 23d day of September, 1810, being the interest to be allowed from the said 23d day of September, 1810, to the 14th day of July, 1832. (6 Stats. at Large, 672.)

In this case the interest was directed to be paid four years after the principal had been satisfied and discharged.

45. An act approved July 7, 1838, provided that the proper officers of the Treasury be directed to settle the accounts of Richard Harrison, formerly consular agent of the United States at Cadiz, in Spain, and to allow him, among other items, the interest on the money advanced, under agreement with the minister of the United States, in Spain, for the relief of destitute and distressed seamen, and for their passages to the United States from the time the advances, respectively, were made to the time at which the said advances were re-imbursed. (6 Stats. at Large, 734.)

46. An act approved August 11, 1842, directed the Secretary of the Treasury to pay to John Johnson the sum of seven hundred and fifty-six dollars and eighty-two cents, being the amount received from the said Johnson upon a judgment against him in favor of the United States, together with the interest thereon from the time of such payment. (6 Stats. at Large, 856.)

47. An act approved August 3, 1846, authorized the Secretary of the Treasury to pay to Abraham Horbach the sum of five thousand dollars, with lawful interest from the 1st of January, 1836, being the amount of a draft drawn by James Reeside on the Post-Office Department, dated April 18, 1835, payable on the 1st of January, 1836, and accepted by the treasurer of the Post-Office Department, which said draft was indorsed by said Abraham Horbach, at the instance of the said Reeside, and the amount drawn from the Bank of Philadelphia, and, at maturity, said draft was protested for non-payment, and said Horbach became liable to pay, and in consequence of his indorsement, did pay the full amount of said draft. (9 Stats. at Large, 677.)

48. An act approved February 5, 1859, authorized the Secretary of War to pay to Thomas Laurent, as surviving partner, the sum of $15,000, with interest at the rate of six per cent. yearly, from the 11th of November, 1847, it being the amount paid by the firm on that day to Major-General Winfield Scott, in the city of Mexico, for the purchase of a house in said city, out of the possession of which they were since ousted by the Mexican authorities. (11 Stats. at Large, 558.)

49. An act approved March 2, 1847, directed the Secretary of the Treasury to pay the balance due to the Bank of Metropolis for moneys due upon the settlement of the account of the bank with the United States, with interest thereon from the 6th day of March, 1838. (9 Stats. at Large, 689.)

50. An act approved July 20, 1852, directed the payment to the legal representatives of James C. Watson, late of the State of Georgia, the sum of fourteen thousand six hundred dollars, with interest at the rate of six per cent. per annum, from the 8th day of May, 1838, till paid, being the amount paid by him, under the sanction of the Indian agent, to certain Creek warriors, for slaves captured by said warriors while they were in the service of the United States against the Seminole Indians in Florida. (10 Stats. at Large, 734.)

51. An act approved July 29, 1854, directed the Secretary of the Treasury to pay to John C. Fremont one hundred and eighty-three thousand eight hundred and twenty-five dollars, with interest thereon from the 1st day of June, 1851, at the rate of ten per cent. per annum, in full for his account for beef delivered to Commissioner Barbour, for the use of the Indians in California, in 1851 and 1852. (10 Stats. at Large, 804.)

52. An act approved July 8, 1870, directed the Secretary of the Treasury to make proper payments to carry into effect the decree of the district court of the United States for the district of Louisiana, bearing date the *fourth* of June, 1867, in the case of the British brig "Volant," and her cargo; and also another decree of the same court, bearing date the *eleventh* of June, in the same year, in the case of the British bark "Science," and cargo, vessels illegally seized by a cruiser of the United States, such payments to be made as follows, viz: To the several persons named in such decrees, or their legal representatives, the several sums awarded to them respectively, *with interest to each person from the date of the decree under which he receives payment.* (16 Stats. at Large, 650.)

53. An act approved July 8, 1870, directed the Secretary to make the proper payments to carry into effect the decree of the district court of the United States for the district of Louisiana, bearing date July 13, 1867, in the case of the British brig "Dashing Wave," and her cargo, illegally seized by a cruiser of the United States,

which decree was made in pursuance of the decision of the Supreme Court, *such payments to be made with interest from the date of the decree.* (16 Stats. at Large, 651.)

An examination of these cases will show that, subsequent to the seizure of these several vessels, they were each sold by the United States marshal for the district of Louisiana as prize, and the proceeds of such sales deposited by him in the First National Bank of New Orleans. The bank, while the proceeds of these sales were on deposit there, became insolvent. The seizures were held illegal, and the vessels not subject to capture as prize. But the proceeds of the sales of these vessels and their cargoes could not be restored to the owners in accordance of the decrees of the district court, because the funds had been lost by the insolvency of the bank. In these cases, therefore, Congress provided indemnity for losses resulting from the acts of its agents, and made the indemnity complete by providing for the payment of interest.

Your committee have directed attention to these numerous precedents for the purpose of exposing the utter want of foundation of the often-repeated assumption that "the Government never pays interest." It will readily be admitted that there is no statute law to sustain this position. The idea has grown up from the custom and usage of the accounting officers and Departments refusing to allow interest generally in their accounts with disbursing officers and in the settlement of unliquidated domestic claims arising out of dealings with the Government. It will hardly be pretended, however, that this custom or usage is so "reasonable," well-known, and "certain," as to give it the force and effect of law, and to override and trample under foot the law of nations, and also the well-settled practice of the Government itself in its intercourse with other nations.

11th. Interest was allowed and paid to the State of Massachusetts, because the United States delayed the payment of the principal for twenty-two years after the amount due had been ascertained and determined. The amount appropriated to pay this interest was $678,362.41 more than the original principal. (16 Stats. at Large, 198.)

Mr. Sumner, in his report upon the memorial introduced for that purpose, discussing this question of interest, said:

"It is urged that the payment of this interest would establish a bad precedent. If the claim is just, the precedent of paying it is one which our Government should wish to establish. Honesty and justice are not precedents of which either Government or individuals should be afraid." (Senate Report 4, 41st Cong., 1st sess., p. 10.)

12th. Interest has always been allowed to the several States for advances made to the United States for military purposes.

The claims of the several States for advances during the Revolutionary war were adjusted and settled under the provision of the acts of Congress of August 5, 1790, and of May 31, 1794. By these acts interest was allowed to the States, whether they had advanced money on hand in their treasuries or obtained by loans.

In respect to the advances of States during the war of 1812–'15, a more restricted rule was adopted, viz: That States should be allowed interest only so far as they had themselves paid it by borrowing or had lost it by the sale of interest-bearing funds.

Interest, according to this rule, has been paid to all the States which made advances during the war of 1812–'15, with the exception of Massachusetts. Here are the cases:

Virginia, U. S. Stats. at Large, vol. 4, p. 161.
Delaware, U. S. Stats. at Large, vol. 4, p. 175.
New York, U. S. Stats. at Large, vol. 4, p. 192.
Pennsylvania, U. S. Stats. at Large, vol. 4, p. 241.
South Carolina, U. S. Stats. at Large, vol. 4, p. 499.

In Indian and other wars the same rule has been observed, as in the following cases:

Alabama, U. S. Stats. at Large, vol. 9, p. 344.
Georgia, U. S. Stats. at Large, vol. 9, p. 626.
Washington Territory, U. S. Stats. at Large, vol. 11, p. 429.
New Hampshire, U. S. Stats. at Large, vol. 10, p. 1.

13th. The Senate Committee on Indian Affairs, in the report to which reference has heretofore been made, speaking of this award and of the obligation of the United States to pay interest upon the balance remaining due and unpaid thereon, used the following language:

"Your committee are of opinion that this sum should be paid them with accrued interest from the date of said award, deducting therefrom $250,000, paid to them in money, as directed by the act of March 2, 1861; and, therefore, find no sufficient reason for further delay in carrying into effect that provision of the aforenamed act and the act of March 3, 1871, by the delivery of the bonds therein described, with accrued interest from the date of the act of March 8, 1861.

"Your committee have discussed this question with an anxious desire to come to such a conclusion in regard to it as would do no injustice to that Indian nation whose rights are involved here, nor establish such a precedent as would be inconsistent with the practice or duty of the United States in such cases. Therefore your committee

have considered it not only by the light of those principles of the public law—always in harmony with the highest demands of the most perfect justice—but also in the light of those numerous precedents which this Government in its action in litigation has furnished for our guidance. Your committee can not believe that the payment of interest on the moneys awarded by the Senate to the Choctaw Nation would either violate any principle of law or establish any precedent which the United States would not wish to follow in any similar case, and your committee can not believe that the United States are prepared to repudiate these principles, or to admit that because their obligation is held by a weak and powerless Indian nation it is any the less sacred or binding than if held by a nation able to enforce its payment and secure complete indemnity under it. Could the United States escape the payment of *interest* to Great Britain, if it should refuse or neglect, after the same became due, to pay the amount awarded in favor of British subjects by the recent Joint Commission which sat here? Could we delay payment of the amount awarded by that Commission for fifteen years, and then escape by merely paying the principal? The Choctaw Nation asks the same measure of justice which we *must* accord to Great Britain; and your committee can not deny that demand unless they shall ignore and set aside those principles of the public law which it is of the utmost importance to the United States to always maintain inviolate.

"Your committee are not unmindful that the amount due the Choctaw Nation under the award of the Senate is large. They are not unmindful, either, that the discredit of refusing payment is increased in proportion to the amount withheld and the time during which such refusal has been continued."

Few, if any, of the foregoing cases presented as strong and meritorious grounds for the allowance of interest as the claim now under consideration. Following these precedents, and for the reasons above set forth, the committee deem the present a proper case for the payment of interest on the sum converted ($371,025) from date of conversion to date of payment. This interest they fix at the rate of four and a half (4½) per centum per annum, that being about the average rate paid by the Government between 1867 and 1881, and which it may be fairly assumed was saved or made by it for the use of the funds during the period of detention. On this basis the interest allowed will amount to the sum of $249,039.95.

This report states correctly, so far as it goes, the facts connected with this case. It does not, however, state one very material fact, which, in the judgment of your committee, it is important should be known, in order to determine as to the propriety of the passage of this bill or any bill upon the subject; and that is as to what portion of the $371,025 turned over by Dyer, the cashier of the Newton Bank, to Carter, of the firm of Hartwell, Carter & Co., consisted of interest-bearing bonds or notes. A further and careful investigation of the case develops the fact that of this amount $25,000, face value, was of United States coupon bonds, and $20,000, face value, compound interest-bearing notes, each bearing 5 per cent.

Your committee are unwilling to report in favor of the bill as introduced, which covers interest on the whole amount of $371,025 from date of deposit until date of payment of judgment, but believe claimant entitled to the interest received or saved by the Government on that portion of such amount as was made up of interest-bearing bonds and notes from the time they were deposited—February 28, 1867—until the date of judgment rendered—January 24, 1881—and also interest on the amount of the judgment as provided by law from the date of the rendition of the judgment until paid. On this theory the account would stand thus:

Judgment rendered January 24, 1881	$371,025.00
Paid thereon from the Treasury October 29, 1881	260,000.00
Paid thereon from the Treasury August 30, 1882 (being balance)	111,025.00
Interest at 5 per cent on the amount of the judgment ($371,025) from January 28, 1881, to October 29, 1881, the date of first payment, would be	13,912.43
Interest at 5 per cent on the amount deferred ($111,025) from October 29, 1881, to August 30, 1882, when the same was paid	4,626.07
Making a total of	18,538.50

Being interest on judgment from date of rendition until paid.

The amount of interest on interest-bearing bonds and notes is stated in certain papers filed to be $17,946.

In view of all the circumstances, your committee propose to amend the bill (S. 1578) by striking out all after the enacting clause and inserting in lieu thereof the following:

That the Secretary of the Treasury be, and he hereby is, authorized and directed to pay to the First National Bank of Newton, Massachusetts, interest at the rate of five per centum per annum on the judgment rendered January twenty-fourth, eighteen hundred and eighty-one, in favor of said bank against the United States, in the sum of three hundred and seventy-one thousand and twenty-five dollars, from April twenty-eighth, eighteen hundred and eighty-one, the date on which the claimant served a copy of the judgment aforesaid upon the Secretary of the Treasury, as prescribed by section one thousand and ninety of the Revised Statutes of the United States, to the date of payment. He is also authorized and directed to pay to said First National Bank of Newton, Massachusetts, such further sum, not exceeding the amount of seventeen thousand nine hundred and forty-nine dollars, as may be equivalent to interest at five per centum per annum on such interest-bearing bonds and notes as formed a part of the three hundred and seventy-one thousand and twenty-five dollars, deposits on which the judgment hereinbefore referred to was rendered, from the twenty-eighth day of February, eighteen hundred and sixty-seven, to January twenty-fourth, eighteen hundred and eighty-one.

SEC. 2. That the sum of thirty-six thousand four hundred and eighty-seven dollars and fifty cents, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the Treasury not otherwise appropriated, for the purposes set forth in section one hereof. This to be in full settlement of all claims of said bank against the United States.

Your committee, therefore, in view of the foregoing facts, report back the bill (S. 1578) as amended, and recommend its passage.

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