

IN THE SENATE OF THE UNITED STATES.

[To accompany Bill S. 372.]

JUNE 27, 1856.—Received from the Court of Claims and referred to the Committee of Claims.

JULY 11, 1856.—Reported by Mr. BROADHEAD and ordered to be printed.

JOSEPH WHITE *vs.* THE UNITED STATES.

Chief Justice GILCHRIST delivered the opinion of the court.

This claim is referred to us by the House of Representatives.

The case is stated as follows:

From April, 1845, to June, 1849, the claimant was navy agent for the port of Baltimore and acting purser for the naval school at Annapolis, in both of which offices he received and disbursed the public money, which he received from the treasury as navy agent, and rendered separate accounts for the money received by him in each of the offices. He charged himself, as acting purser, with the sum of \$561 10, as received from himself as navy agent, but did not give himself a corresponding credit in his account as navy agent. He had quarterly accounts with the departments from that time until June, 1849, but was not informed of, and was not aware of, the error. In his accounts up to June, 1819, certain sums having been disallowed him, the Treasury Department caused a suit to be instituted against him, and upon the trial more than \$5,000, which had been disallowed, was allowed him under the instructions of the court. On the trial he was first made aware of the mistake in the sum of \$561 10, which he was not allowed as a set-off, because he had omitted to claim it at the Treasury Department, and at the suggestion of the court he withdrew this item, and it was not passed upon as being involved in the case.

Prior to the 22d of November, 1854, he applied to the Treasury Department for the payment of this sum, but was informed by the Fourth Auditor, Mr. Dayton, that the accounting officers were of opinion that, as a suit was brought against him in which all his accounts were judicially investigated, it would not be proper for them to reopen the accounts for the purpose of admitting a claim which was alleged to have been inadvertently omitted to be presented before the court and jury upon the trial.

He asks payment of this sum, with interest thereon from the 9th of January, 1852.

The case is submitted upon the evidence transmitted to us by the House of Representatives.

In Mr. Dayton's letter of February 15, 1855, he states as follows: "Upon the settlement, however, at this office of his account as acting purser, the credit which he had omitted to claim was allowed him as

navy agent, and was entered on the reconciling statement as one of the differences between his account as stated by himself and the same account as stated at this office. This item having remained on the reconciliation for three years, without being claimed by Mr. White, was omitted on the last settlement of his account, which took place after he had ceased to be in office. A suit having been instituted against him for the balance which was found to be due from him, he still neglected to present a claim to this sum of \$561 10, and judgment was given against him without any reference to it. In the month of November last, the claim was made for the first time at this office, and Mr. White was informed that as a suit had been instituted by the United States against him, in which all his accounts, both as navy agent and acting purser, had been judicially investigated and decided upon, it would not be proper, in the opinion of the accounting officers, to reopen those accounts for the purpose of admitting a claim which was alleged to have been inadvertently omitted to be presented before the court and jury upon the trial." The reason given by the letter for declining to allow this sum, appears to be that the account could not be reopened "for the purpose of admitting a claim alleged to have been inadvertently omitted to be presented before the court and jury upon the trial." But it does not appear to have been inadvertently omitted to be presented. It was discovered upon the trial by the claimant's counsel, although it was known to the department at the time it occurred, but the claimant was not informed of it. It was not pressed by his counsel, but at the instance of the court was reserved for future examination by the accounting officers. Such is the statement of W. P. Whyte, esq., one of the counsel. It is stated in the opinion of the circuit court in Maryland: "It is unnecessary to notice the remaining item of the defence, as it has been properly withdrawn by the defendant. And as the alleged error in omitting to credit himself in his navy agent's account with the sum of \$561 10, which he transferred to his debit in his purser's account, does not appear on the face of the account, and as this credit was not presented and rejected, it is not open to investigation here. If the error exists, it may be discovered by an examination of the accounts at Washington, and without doubt would be readily corrected by the accounting officers." It thus appears that the claim was presented, and was withdrawn for the reasons stated. The refusal to allow the sum was probably owing to the fact that the accounting officers were not precisely informed of what took place on the trial. There is nothing in the case to show why the item was dropped from the reconciliation, and why it was not admitted by the United States on the trial. If it was properly placed upon the reconciliation, it should have been allowed him without hesitation when his accounts were subjected to a judicial investigation.

The evidence establishes the facts that the claimant should have been credited with the sum of \$561 10, and that this item was not passed upon at the trial. The ordinary principles of law and morality which are applied to regulate the dealings of individuals are applicable in transactions between the United States and their citizens. Between private persons such a state of facts would induce a jury at

once to return a verdict for the plaintiff. We are of opinion that the claimant is entitled to recover this sum of \$561 10. But he is not entitled to interest by law, although he has the strongest equitable claim to it from the 9th day of January, 1852. He has proved that the United States owed him that sum, but, according to our decision in the case of Todd *vs.* The United States, interest is not a legal incident to a debt due from the United States, where it is merely proved that a debt is due. We shall adhere to that decision, until there is some action by Congress which would authorize or require us to depart from it.

We report a bill to carry the decision in this case into effect.

A BILL for the relief of Joseph White.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, directed, out of any money in the treasury not otherwise appropriated, to pay to Joseph White the sum of five hundred and sixty-one dollars and ten cents, being for the amount of money by mistake omitted to be credited to him as navy agent, in settling his accounts at the treasury.

