34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 1.

SAMUEL P. TODD.

[To accompany bill H. R. C. C. No. 1.]

MARCH 6, 1856.—Reported from the Court of Claims.
MAY 16, 1856.—Ordered to be printed.

SAMUEL P. TODD vs. THE UNITED STATES.

To the House of Representatives of the United States:

The undersigned, by direction of the Court of Claims, in pursuance of law, herewith respectfully transmits the following papers in the case above mentioned:

1. Petition of Samuel P. Todd.
2. Opinion of the court.

[L. S.]

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

SAMUEL P. TODD *vs.* THE UNITED STATES.

The following opinion was delivered by Chief Justice Gilchrist on Tuesday, in the case of Samuel P. Todd *vs.* The United States:

To the Court of Claims:

The petition of Samuel P. Todd, a purser in the navy of the United States, respectfully represents: That during the time he was on duty as such, he received, between the years 1812 and 1815, from Washington, a certain amount of money in treasury notes, to be used in making payments on account of the officers and others of the navy of the United States for pay accruing to them as such, and for which he has duly accounted to the government; that a portion of the same notes so received was by him negotiated and sold, by direction and under the authority of the commanding officers, at a discount, for the purpose of paying off seamen and others who had served out the time for which they had enlisted in the United States Delaware flotilla, a force employed for the defence of the river Delaware during the late war with Great Britain; that the said discount paid thereon amounts to five hundred and seventy-four dollars and fifty cents, ($574 50,) which has been regularly charged in his accounts with the government, and vouchers rendered for the same, which are now on file in the office of the Fourth Auditor of the Treasury; that he has never

been credited with the amount aforesaid, the accounting officers alleging as a reason for not putting it to his credit, as follows:

"It is true that the act of January 25, 1828, which forbids the payment of public money to any person for his compensation, who is in arrears to the United States, contains a proviso that it shall not be extended to balances arising wholly from the depreciation of treasury notes received by such person to be expended in the public service; but no authority has ever been given to the accounting officers, except by special acts in particular instances, to credit any disbursing officer with his loss upon such notes." Your petitioner would further represent that he has paid into the treasury of the United States the sum above stated, viz: five hundred and seventy-four dollars and fifty cents, ($574 50,) and respectfully asks to be relieved by such act as may authorize and direct the Fourth Auditor of the Treasury to admit the same to his credit, that it may be refunded and paid to your petitioner.

SAMUEL P. TODD
vs.
THE UNITED STATES. } *Amended petition.*

By leave of the court first had and obtained, the said Samuel P. Todd, in amendment of his petition, states that the court should award him interest on the amount which may be found due him, and which has been so long and so unjustly detained from him.

He further states that he is the sole owner of this claim, never having assigned any portion thereof.

In consideration of the premises, he prays, as in his original petition, &c.

BIRCHETT & DOWNING,
Counsel for Claimant.

OPINION.

The claimant's allegations are, that, being a purser in the navy, and serving in the United States Delaware flotilla, he received, in his official capacity, from the government, between the years 1812 and 1815, certain sums of money, to be used in paying persons employed in the naval service, in treasury notes. A part of these notes was sold by him at a discount, under the authority of his commanding officers, for the purpose of paying off seamen and others. The discount amounted to the sum of $574 50, which he has charged in his accounts, and furnished vouchers therefor, which are on file in the office of the Fourth Auditor. The reason given by the accounting officers for declining to put this sum to his credit is, that no authority has ever been given them, except by special acts in particular instances, to credit any disbursing officer with his loss upon such notes.

In answer to a call upon the Treasury Department for information relating to this claim, we have been furnished with a copy of a letter addressed to the Secretary of the Treasury, dated on the 27th day of

January, 1855, and written in answer to a letter of the Hon. R. M. T. Hunter, of the Senate, addressed to the department. The letter to which we refer was written by Mr. Dayton, the Fourth Auditor, and in it he states as follows: "Mr. Todd, during the last war with Great Britain, was purser of the Philadelphia station, and had charge of the accounts of the officers and men of the Delaware flotilla of gun-boats. In the year 1817 he rendered an account, in which he charged the sum of $574 for loss sustained by him on the sale of treasury notes, which were then at a discount in the market, and which he was compelled to exchange for smaller money to enable him to pay the men. This claim was disallowed; but upon what grounds, I have not the means of positively ascertaining. It has since been frequently renewed, however, and it would appear, from the correspondence of the office, that it was rejected from time to time, owing to the want of proper proof of the loss, and want of legal authority to make such an allowance. In the year 1839 the deficiency in the evidence was supplied as to a part of the claim, amounting to $313, by the production of the approval of the commandant of the flotilla. The receipts of brokers were produced for a portion of the remainder, showing that, in December, 1814, they had sold treasury notes for Purser Todd to the amount of $4,000, on which there was a discount of $240; but these vouchers were not approved by Commodore Rodgers, the commandant of the station. On one of the rolls, however, approved by the commodore, the following note is endorsed by the purser: 'The men whose names are herein mentioned were all paid off in Philadelphia bank notes, treasury notes having been negotiated for that purpose by direction of Commodore Rodgers.' The amount paid to the men alluded to was $2,630 31; and as the approval of Commodore Rodgers is directly under the note, and as the roll is dated on the 31st of December, 1814, during which month the notes were sold, I presume that the approval may be considered of the same force, to the extent of $2,630 31, as if it had been attached to the brokers' bills. The average discount on treasury notes during that month appears to have been 6 per cent. Purser Todd, in one of his letters to this office, complained that he was not informed of the necessity of Commodore Rodgers' approval of the vouchers until some years after the first account was rendered, and that owing to the commodore's loss of memory, it could not then be obtained. It was the duty of the memorialist, however, being a purser in the navy, to be acquainted with the rules of the department, and to present his evidence, in the first instance, in the requisite form. Upon the statement of his account in 1849, a balance of several thousand dollars was found to be due from him to the United States, including the sum of $574, now in question, the whole of which balance he paid into the treasury, by order of the Secretary of the Navy.

"I think he has proved his loss on the negotiation of treasury notes, under the circumstances mentioned in his petition, to the amount of $470, or thereabouts."

From another letter, dated on the 4th of December, 1855, written by Mr. Dayton to the Secretary of the Treasury, it appears that the sum of $574 was paid into the treasury on the 11th of November, 1839.

By this statement of the Fourth Auditor it appears that, in the first place, the claimant satisfactorily proved a loss by the depreciation of treasury notes, amounting to the sum of $313. He then showed by the bills of the brokers a depreciation of 6 per cent. upon the sum of $2,630 31, amounting to the sum of $157 82, making in the whole the sum of $470 82, which agrees with the loss as estimated at the treasury. This sum of $2,630 31 is a part of the sum of $4,000 which was sold in the month of December, 1814. The claimant alleges that he is entitled to be allowed 6 per cent. on this sum, but he is allowed 6 per cent. on the sum only of $2,630 31. The difference between the sum claimed and the sum allowed is $82 18, and in the present stage of the case it is upon this sum only that any question arises; for upon the vouchers showing a loss to this extent the approval of the commodore was not produced.

The objection is, not that the notes, amounting to $4,000, were improperly sold, but that the proof adduced does not comply with the rules of the department so far as regards the sum of $82 18.

We start, however, with the fact, that in the month of December, 1814, the average depreciation on treasury notes was six per cent. The sum of $4,000, then received from the government in treasury notes, would pay the debts of the government only to the extent of $3,760. If, then, the purser had shown that he paid the officers and men the sum of $4,000, there would be competent evidence tending to prove that the United States were indebted to him in the sum of $240, over and above the money he had received; and, in the absence of evidence to the contrary, a jury would be authorized to come to that conclusion. But it is unnecessary to rely on this view of the case; for the statement of the department is, that the receipts of brokers were produced showing that, in December, 1814, they had sold treasury notes for Purser Todd to the amount of 4,000, on which there was a discount of $240. The question now is, not whether the amount of the depreciation should have been allowed at the treasury, but whether it should now be allowed by the United States. It is entirely proper that, for the methodical conduct of business at the treasury, rules should be established which the experience of its officers informs them are best adapted for that purpose. But such rules cannot, in a suit against the United States, supersede the ordinary principles and requirements of the law of evidence, nor can they add anything to what the law requires of a claimant in order to make out his case. The treasury notes have been sold by the brokers; their accounts of such sales, duly proved, are competent evidence, and the best evidence the nature of the case admits of to prove the extent of the depreciation. It was the duty of the purser to pay off the officers and men of the flotilla so far as the funds furnished him by the government would permit. But the notes were worth less than their nominal value by 6 per cent., and to the extent of 6 per cent. on the amount the purser may be considered as having paid his own money. Before his accounts were stated, on the 11th of November, 1839, the facts in this case would be sufficient to support an action for money paid; and after that date, and after he had paid the money into the treasury, the facts would support an action for money had and received. The approval

of the commodore upon the vouchers is to be regarded only as required by a rule of convenience at the treasury, but it cannot be considered in a court of law as a rule of evidence. Cases might undoubtedly occur where, under peculiar circumstances, a wanton disregard of the rules of the department might be indicative of fraud, or of such gross negligence in the claimant as might authorize the rejection of his claim; but nothing of the kind appears here. The fact that the purser was not informed of the necessity of the commodore's approval of the vouchers until some years after 1817, when the claim was made, can scarcely be considered gross negligence. If an officer's accounts be substantially correct, he can hardly be subjected to such a charge, because he is ignorant of merely formal proof not required by an act of Congress.

We shall therefore report a bill in favor of paying to the claimant the sum of $553, for which he has produced satisfactory evidence.

It is contended, on behalf of the claimant, that the United States should be charged with, and should pay, interest on the amount of the claim. If this be so, it is either because the court should report to Congress, that, in their judgment, the claimant is fairly and equitably entitled to interest, or because they should report that the United States are legally bound to pay interest on the amount ascertained to be due, upon the principal that, in the ordinary courts of law, enables a creditor to recover interest of his debtor.

In regard to the first of these reasons, it is proper to inquire into the principle that should govern the court in their adjudications upon the cases within their jurisdiction, either as belonging to one of the classes specified in the act, or as referred to the court by one of the houses of Congress. If a claim be alleged to be "founded upon any law of Congress," in the words of the act we must construe such law, and ascertain its meaning by applying it to those rules of construction which a wide and long-continued experience has determined to be the best adapted to that purpose; and the same course must be pursued where a claim is founded "upon any regulation of an executive department." If a contract with the government of the United States be the foundation of the claim, the nature and validity of such contract must be determined by the application of known and well settled principles of law. Without such principles to guide them, no tribunal, no body of men, judicial or deliberative, can administer any other than that hasty and impulsive justice, whose decisions, as they would be uncontrolled by any rule, could never aid the citizen in ascertaining the extent and nature of his rights.

If the application of principles of law, considering the law as our rule of conduct, be necessary in the cases belonging to the classes specified in the act, it is equally so in regard to the claims referred to the court by either house of Congress. It seems sometimes to have been supposed that the language of the act on this point was comprehensive enough to authorize the court to recommend Congress to do anything it may be in their power to do—in fact, to pass any law that would not be a violation of the constitution. But our duties are not advisory. The language of the act does not authorize us to regard this tribunal as possessing any other qualities than those which pro-

perly belong to a court. A committee may recommend, but a court can only adjudge, and that whether its jurisdiction be final or not. It cannot adjudge without founding its judgments upon the law; and where it can find no law, it can render no judgment. It may, perhaps, be said that as our judgments are not final, and as we must report to Congress, our decisions can be regarded only as recommendatory in their nature. But the seventh section of the act provides that the court "shall report to Congress the cases upon which they shall have finally acted, stating in each the material facts which they find established by the evidence, with their opinion in the case, and the reasons upon which such opinion is founded." Under this provision an "opinion in the case" can mean only an opinion as to the rights of the parties upon the facts proved or admitted in the case. We do not think that Congress, by establishing this court, intended to constitute a council to advise them what course it would be honest and right, or expedient, for them to pursue in any given case. They meant, as the title of the act denotes, "to establish a court for the investigation of claims," to ascertain the facts in each case, and the legal rights and liabilities arising from those facts. It is only by acting upon some settled plan, and according to some fixed principles, that the duties of the court can be performed with any prospect of administering substantial justice. The obvious duty of the court is to expound the law as they find it established, and apply it to the cases before them, and not to create it; *jus dicere*, and not *jus dare*.

Considerations of this general character are pertinent to the subject before us, because it raises the question at once, how far we should recommend to Congress to do what we might think right and proper to be done, and how far we are bound to confine ourselves to the application of principles of law. It is always within the power of Congress to make a law for each case, within the limits of the constitution; but, in our opinion, we have no power to make a law for any case. Congress did not intend that we should legislate. In that case, we must make the law before we could pronounce a judgment when the claim did not come within any principle. If Congress think that the law, as it exists, does not render justice to a party, the remedy is in their own hands, by legislating in such a way as the demands of justice may require. It is more consistent with the constitution, which requires that the departments of the government should be kept distinct from each other, and far better and safer that the power of legislation should be exercised by Congress, than that it should be vested in any judicial tribunal. It is the peculiar duty of Congress to understand the wants of the country, and what is equitably due to the citizen, and, within constitutional limits, to legislate accordingly. But if we were to recommend any action to supply any supposed deficiency in the laws, we should not only assume a responsibility which does not belong to us, but we should interfere with the prerogative of the legislature. We shall, therefore, confine ourselves to determining how far the United States are bound by law to pay interest upon a sum ascertained to be due.

It has been supposed that, as, when a petition is presented to this court, the United States occupy the position of an ordinary defendant

in a suit at law, the claiment, when a sum is adjudged to be due to him, is entitled to recover interest from the United States, as any plaintiff would be who had established his right to recover a certain sum of a defendant. It will illustrate the question to inquire how far this right extends between private persons. Laying aside the right to recover interest founded on the obligation of a contract, a party in a suit at law is entitled to it only upon one of three grounds. The right to recover interest must depend—

1st. Upon statutory provisions.

2d. Upon the authority of adjudged cases; or,

3d. Upon some usage known to and recognised by the parties.

It is difficult to conceive of any other foundation for this right.

The first ground is sufficiently intelligible without any further comment.

As to the second ground, the authority of adjudged cases, it is somewhat remarkable that upon a subject of such frequent recurrence, and so necessary to be early settled and understood, the decisions of the courts, both American and English, should be so numerous and so discordant. An analysis of the authorities will show that it is difficult, if not impossible, to elicit from them any general rule regulating the rights and liabilities of parties upon this subject. An elaborate and able investigation of the cases is to be found in the opinions of Savage, C. J., and Sutherland, J., in the case of Reid *vs.* Rensellaer Glass Factory, 2 Cowen, 387, in the supreme court of New York, and in the opinion of Mr Senator Spencer, in the same case, in the court of errors, reported 5 Cow., 587. But it is unnecessary at present to attempt an investigation of them. In the case of Calton *vs.* Bragg, 15 East., 226, Lord Ellenborough said: "Lord Mansfield sat here for upwards of thirty years, Lord Kenyon for above thirteen years, and I have now sat here for more than nine years, (a period of fifty-two years,) and during this long course of time no case has occurred where, upon a mere simple contract of lending without an agreement for the payment of the principal at a certain time, or for interest to run immediately, or under special circumstances from whence a contract for interest was to be inferred, has interest ever been given." This statement appears to be conclusive as to the law of England at that time, and also to show that the allowance of interest by the court, as an incident to the debt, is always founded upon the agreement of the parties. Lord Chief Justice Abbott says, in Higgins *vs.* Sargent, 2 B. & C., 345, that "as a general principle, it is now established that interest is allowed by law only upon mercantile securities, or in those cases where there has been an express promise to pay interest, or where such promise is to be implied from the usage of trade, or other circumstances." Mr. Senator Spencer, in the 5 Cowen, 608, also says, that "its allowance by the courts as an incident to the debt, and invariably following it, is founded solely upon the agreement of the parties."

In England interest has been refused where property has been unjustly detained, or payment improperly refused, even in cases of fraud—Lord Ellenborough saying in the case of Crockford *vs.* Winter, 1 Camp., 129, that the fraud did not take the case out of the rule he

had previously laid down in De Haviland *vs.* Bowerbank, 1 Camp., 50; that there must be an agreement expressed or implied; and this principle was afterwards adhered to in the case of Bernales *vs.* Fuller, 2 Camp., 426. By the act of 3 and 4 W., ch. 32, 48, it was provided, that upon sums certain, payable at a certain time, or otherwise, the jury *may, if they* shall think fit, allow interest to the creditor. This act, however, leaves the matter in great uncertainty, as the jury are to exercise their discretion in each case.

Still, there are decisions the effect of which would seem to be that interest in some cases is a legal claim, irrespective of any agreement. Although it has been often stated that interest is not recoverable for money owing for goods sold and delivered, as in Blaney *vs.* Hendrick, 3 Wils., 205, and in Eddowes *vs.* Hopkins, Dougl., 376, still it is said by Lord Thurlow, in Boddam *vs.* Riley, 2 Bro. C. C., 3, that "all contracts to pay undoubtedly give a right to interest from the time when the principal ought to be paid." One reason for the discrepancy in the decisions is to be found in the neglect to discriminate between the cases where interest has been held to be an incident to the debt, and those cases where it has been held that the jury might allow it by way of damages for the detention of the debt. In Eddowes *vs.* Hopkins, Dougl., 376, Lord Mansfield held, that though, by the common-law, book debts do not of course carry interest, yet, in cases of long delay, under vexatious and oppressive circumstances, it may be allowed, if a jury, in their discretion, shall see fit to allow it. In Entwistle *vs.* Shepherd, 2 T. R., 28, which was debt upon a judgment, Buller, J., said, it was a question for the jury whether they would give interest by way of damages. In Bunn *vs.* Dabzell, 2 C. and P., 376, it was held by Lord Tenterden, that whether interest should be recovered upon an Irish judgment was a question for the jury; and if they thought the plaintiff had been diligent, and had taken proper steps to find his debtor, they might allow it. In Craven *vs.* Tickell, 1 Ves., jr., 60, the Lord Chancellor said, "from conversation I have had with the judges, interest is given either by the contract or in damages upon every debt detained." But in Gilpin *vs.* Consequa, Pet. C. C. R., 85, Washington, J., said: "It is not agreeable to legal principles to allow interest on unliquidated or contested claims in damages; and in the subsequent case of Willing *vs.* Consequa, *ibid.* 172, the same judge said: "Interest is a question generally in the discretion of a jury."

It has not been our purpose, in referring to some of the more prominent decisions on this subject, to ascertain whether any general rule can be deduced from them that shall regulate the allowance of interest in suits at law, as that is not the question before us. Our object has been simply to show that the authorities are conflicting, and that an approximation to a rule is to be found in those decisions which hold that, in the absence of a contract to pay interest, it may in some cases be allowed by the jury, upon a view of all the circumstances in the case. But even supposing that juries are vested with a discretion to allow interest or not, we do not occupy the position of a jury, although, to a certain extent, we necessarily exercise some of the functions belonging to that body. Like a jury, we are called

upon to determine questions of fact; but of that wide discretion which, according to some of the cases, juries may often exercise, we possess no portion. On this subject they derive their power, so far as it may exist, from practice sanctioned by judicial decisions. In regard to the question before us, there have been no judicial decisions and no practice. Our duty is confined to determining whether certain facts are proved by the evidence, and only in this respect are our duties like those of a jury. If we were to take Lord Mansfield's rule, that a jury, in their discretion, might allow interest "in cases of long delay, under vexatious and oppressive circumstances," and apply it to claims against the United States, the question would then be whether, in the given case, the United States have been dilatory, and had postponed the payment of the debt for an unreasonable period. This would render it necessary to inquire, to some extent, into the condition of the United States when the debt accrued and since, the situation of their foreign and domestic relations, the position of their financial affairs, the existence of financial crises, and everything that would throw any light upon the question, whether it was or was not, on the whole, unreasonable that payment of a debt should have been delayed. Such a vague and unlimited discretion we should hesitate to exercise without an authority vested in us in clear and positive terms.

In regard to the third source of the right to recover interest in suits at law, the existence of a usage known to and recognised by the parties, it is sufficient for our present purpose to say, that the usage of trade in this as well as in other cases may properly, and often does, regulate the contracts of parties. (Meech *vs.* Smith, 7 Wend., 315.) A usage may operate upon and modify the rights and duties of individuals whose dealings are comprehended within it, whether it be local merely, or the usage of a particular trade. As they are presumed to contract with reference to the usage, it thus becomes a part of their contracts.

If we attempt to apply to cases in this court, where claims are preferred against the United States, the rules which regulate the liability of parties in ordinary suits, we shall find that the liability of the United States to pay interest upon a debt cannot be traced to any of the sources from which the liability of individuals can be deduced. There are, in the first place, no acts of Congress which impose this liability upon the United States. Statutes may be found exceptionable in their character, and based upon peculiar circumstances, which induced Congress, in the exercise of their discretion, and in view of what seemed to them proper, to provide that interest in certain cases should be paid. But there is no general law enacting that interest shall be paid on debts due from the United States, nor has any general appropriation of money ever been made for the purpose of paying claims for interest.

Secondly. There are no adjudged cases which might serve to us as precedents for deciding that the United States are legally bound to pay interest. Indeed, until the institution of this court, there was no mode by which the liability of the United States, upon this point, could be made the subject of judicial investigation. But we are not

aware that there are any cases in which the question has been even incidentally discussed. There is no law enacting that interest shall not be paid, as there is no law protecting the United States from being sued; but we presume that it was never supposed such a suit would lie until the passage of the act constituting this court. We could not, then, justify ourselves for holding that the United States are liable to pay interest by appealing to the decisions of tribunals where this question has arisen and has been decided.

There is a remark made by Mr. Justice Baldwin, in pronouncing the judgment of the court in the case of the United States *vs.* Arredondo, (6 Pet., 711,) which might at first be supposed to have some bearing upon this question. He says: "The only question depending is, whether the claimant or the United States are the owners of the land in question. By consenting to be sued, and submitting the decision to judicial action, they have considered it as purely a judicial question, which we are now bound to decide as between man and man on the same subject-matter, and by the rules which Congress themselves have prescribed." We do not understand this remark as meaning anything more than that when the United States have permitted themselves to be sued they become subject to such rules and principles of law as may be applicable to them, or may have been prescribed by Congress. The case referred to was decided more than twenty years before the United States were made suable, and when it was necessary to state a rule for the decision of that particular case alone, the court not being called upon to state any general principle regulating their liabilities in all cases. We have no reason to suppose that Congress, by constituting this court, intended to provide that all the acts of Congress, and all the judicial decisions, and all the principles which regulate the dealings between man and man, were to be applied at once and without discrimination to the United States; that they might, for instance, plead the statute of limitations without any express authority, or be subject to other laws enacted before they could be made parties to suits, and whose application to them could not have been anticipated. By the institution of this court a new party defendant has been called into existence, and made to appear before it, with duties to the claimants not at present distinctly defined, and requiring the light of research and reflection to display their outlines. If Mr. Justice Baldwin could have supposed that he was stating a rule of conduct for the United States in all cases where, by subsequent legislation, they might be made defendants, the subject would undoubtedly have been examined with a degree of care commensurate with its importance.

Thirdly. The liability of the United States to pay interest cannot be founded on such a usage as enters into and forms a part of the contracts of individuals. The usage is directly and expressly the reverse. The government has not only omitted to pay interest, but for the greater part of a century it has expressly refused to pay it. The practice of the government on this subject is fully stated in a recent opinion by the present Attorney General, Mr. Cushing, under the date of September 20, 1855. It there appears that, as long ago as the year 1819, Mr. Wirt spoke of a refusal to allow interest as

"the usual practice of the Treasury Department;" and this practice has existed to the present time, unless when it has been dispensed with by some special law.

Nor can it be said that the United States are bound to pay interest on the ground that their liability is to be classed with the duties of imperfect obligation mentioned by writers on ethical jurisprudence, and that to receive interest is a right for which no remedy has been provided. It would be going very far to say that interest is due as an abstract right, founded on moral principle. It is well known to be discountenanced and forbidden in some parts of the world, and by some religions. (Lowe *vs.* Waller, Dougl., 736, 740.) It is wholly conventional in its origin, arising out of an artificial state of society, in which new rules of action grow up in proportion as social relations become more intricate, and require a nicer discrimination. As it depends upon law and usage, where they are not found it cannot be said to exist.

In the discussion of this subject we have endeavored to confine ourselves to the question, whether there is any law or any usage that would authorize us to decide that the United States are bound to pay interest in any case where a debt is ascertained to be due to a claimant? For the present purpose it is unnecessary to consider the question, how far the United States may be bound to pay interest under the name of "damages," or "injuries," or "indemnity," or "satisfaction," or "redress," or corresponding words in treaty stipulations. It is the question in the present case that we intend to determine, and nothing more. Upon other matters, not now before us, it would be premature to express an opinion.

Nor, as has before been intimated, do we feel ourselves called upon to say how far it would be just and equitable for the United States to pay interest by analogy to the laws and usages which regulate pecuniary dealings between individuals. If Congress, to whom the enactment of laws belong, think it proper to provide that the United States shall pay interest on sums due from them, and to appropriate money for that purpose, it is an easy matter for them to carry that opinion into effect, and to pass such laws as they may deem expedient. But we have a sufficiently responsible duty to perform in applying to the cases before us such principles of law and equity as we find established, without assuming upon ourselves the further duty of recommending to Congress the passage of laws to supply any such deficiencies as may be supposed to exist.

We are aware that in the numerous and extensive pecuniary dealings between the citizens of the United States and their government, cases must arise where, according to the usual understanding among individuals, a refusal by the United States to pay interest would be regarded as wholly unjustifiable. But such legislation, as a regard to the national faith may require, is the peculiar duty of Congress. If we were to report to Congress that a claimant should receive interest, in the absence of an agreement to that effect, it must be either because he is legally entitled to it, or because we have that general discretion possessed, according to some of the cases, by a jury. We

do not think that, as regards the United States, either of these propositions is correct. We shall, therefore, report only a bill in favor of paying to the claimant the sum due him, without interest, to which interest may be added if Congress should see fit to allow it; or Congress can pass a general law on the subject, with such modifications and limitations as they may deem expedient.