

DAVID NOBLE.

DECEMBER 15, 1857.—Committed to a Committee of the Whole House, made the order of the day for to-morrow, and ordered to be printed.

The COURT OF CLAIMS submitted the following

R E P O R T .

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

DAVID NOBLE *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Documents submitted by claimant as evidence, and transmitted to the House of Representatives.
3. Claimant's brief.
4. United States Solicitor's brief.
5. Opinion of the court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said Court, at Washington, this 7th day of December, A. D. 1857.

SAML. H. HUNTINGTON,
Chief Clerk Court of Claims.

To the Hon. Judges of the Court of Claims of the United States:

The petition of David Noble, of _____, in the county of _____, in the State of _____, begs leave respectfully to represent unto this honorable court that he is interested, as a grandchild of David Noble, deceased, in a claim which the said David Noble had against the United States for services in the revolutionary war. That his interest in said claim arises from the consideration that he is one of the grandchildren and heirs-at-law of the said David Noble, who died intestate on or about the _____ day of July, A. D. 1776, and in consideration

of certain resolves of Congress hereinafter named. And your petitioner further represents that the said David Noble was commissioned by Congress a captain A. D. 1774 or 1776, in the continental service, in the revolutionary war, and served as such officer until his death as aforesaid. That by a resolution of Congress of the 24th day of August, 1780, it was provided that the resolution of the 15th of May, 1778, granting half pay for seven years to the officers of the army who should continue in service to the end of the war, be extended to the widows of those officers who have died, or should thereafter die in the service, to commence from the time of such officers' death, and continue for the term of seven years; or if there should be no widow, or in case of her death or intermarriage, the said half-pay should be given to the orphan children of the officer so dying as aforesaid, if he should have left any, &c. And your petitioner avers that the said David Noble died when in the service, before the end of the war, and at the time above stated, leaving a wife and children him surviving, but who are now dead, leaving issue, grandchildren.

And your petitioner further shows to this court that the seven years' half pay provided for in the foregoing resolution has never been paid, but remains as a debt or claim due to the estate or representatives of the said officer from the United States.

That several applications to Congress have been made for the payment of said claim, with the interest; and there have been two reports thereon in favor of said claim; the last report accompanied with a bill, which was read in the Senate and passed to a second reading; which reports, with the evidence and all the proceedings, they ask to be filed in this court as a part of their case.

Your petitioner therefore prays that this honorable court will examine into the justice and equity of said claim, and report a bill to Congress for the payment thereof, with interest, unto the legal representatives of the said officer, or such other order or bill as shall seem fit and proper in the premises.

And your petitioner, as in duty bound, will ever pray.

C. K. AVERILL,
Attorney for Claimant.

Dated FEBRUARY 20, A. D. 1856.

STATE OF NEW YORK, } ss.
County of Clinton,

Calvin K. Averill, of Rouse's Point, in the county of Clinton, in the State of New York, being duly sworn, doth depose and say that the petition above, by him subscribed, contains the truth, according to the best of his knowledge, information and belief.

C. K. AVERILL.

Sworn and subscribed before me, this 20th day of February, A. D. 1856.

M. VAN DERVORT,
Justice of the Peace.

STATE OF PENNSYLVANIA, } ss.
Susquehanna county, }

I, James W. Chapman, register of wills and granting letters of administration in and for said county, do hereby certify that letters of administration were this day, in due form of law, granted to Daniel Noble, of Springville township, in said county, upon all and singular the goods and chattels, rights and credits, which were of David Noble, formerly of the State of Massachusetts, deceased; he the said David Noble having filed his bond in this office in the sum of fifteen hundred dollars, conditioned as the law of this State directs. Witness my [L. S.] hand and official seal, at Montrose, this 27th day of January, A. D. 1857.

JAMES W. CHAPMAN, *Register.*

STATE OF NEW YORK, } ss.
County of Seneca, }

I, Sterling G. Hadley, county judge and surrogate in and for said county, do hereby certify that at a surrogate's court holden before me, in my office, in Ovid, satisfactory proof was then and there exhibited to the said court that Captain David Noble died prior to 1836; that during the revolution he was a resident of Berkshire county, Massachusetts; that his widow died prior to 1836, leaving children; that her last surviving child was Enoch Noble, and that he is now deceased, leaving children; that the said Enoch Noble, the said son of the said Captain David Noble and of his widow, did, during his lifetime, appoint Arad Joy, of Ovid, his agent and attorney; and that since his death his son, Daniel Noble, and a grandson of the said Captain David Noble, had appointed the said Arad Joy his agent and attorney, and that he is the present agent and attorney for all of the heirs of the said Captain David Noble.

[L. S.] In testimony whereof, I have hereunto set my hand and affixed my official seal, at Ovid, this 25th day of June, 1856.

STERLING G. HADLEY,
County Judge and Surrogate of Seneca county, New York.

STATE OF PENNSYLVANIA, } ss.
County of Susquehanna, }

Daniel Noble, after first being sworn according to law, deposes and says that he is a grandchild of Captain David Noble, who, during the revolution, was a resident of Berkshire county, Massachusetts; that the widow of the said Captain David Noble died prior to 1836, leaving children, and that her last surviving child was Enoch Noble, this deponent's father, and that he is deceased, leaving children, of which this deponent is one; that this deponent's father, the said Enoch Noble, a son of the said Captain David Noble, had employed Arad Joy as his attorney to prosecute their claim; that he died, and this depo-

uent had long since employed the said Arad Joy, of Ovid, his attorney to prosecute the claim, and that he is this deponent's attorney and the attorney for all of the heirs, and that this appointment is irrevocable.

Albert Beardsly and Ira Scott, being duly sworn, depose and say that they are acquainted with the statements in the above affidavit, and that they verily believe them to be the truth, from their personal knowledge.

DANIEL NOBLE.

ALBERT BEARDSLY, } Witnesses.
IRA SCOTT,

Sworn and subscribed before me, this 16th day of June, 1856.

AMOS WILLIAMS, *J. P.*

IN COURT OF CLAIMS.

DAVID NOBLE AND OTHERS *against* THE UNITED STATES.

Claimants' points and brief.

1. This claim has all the legal affinities of an express contract.

It is founded on a resolution of Congress of the 24th August, 1780, extending the resolution of the 15th May, 1778, of half pay for seven years to the widows of officers who have died in the service, to commence from their death, and in case of no widow, or in case of her death or intermarriage, the half pay to be given to the orphan children of said officer, if he shall have left any.

Captain Noble died in the service in July, 1776; and when the resolution of August 24, 1780, passed, the right vested immediately in the ancestors of the claimants.

2. This case is distinguishable from a mere gratuity, without consideration like a present, inasmuch as the resolution seeks to *recompense* for past services and loss of life. The amount is certain; it is liquidated, and is to be paid in money; and, as a debt or claim due, carries with it all the legal consequences arising between debtor and creditor for withholding payment after due, which raises the question of interest.

3. The validity of this claim has been twice passed on in Congress, and always reported on favorably. The House Report No. 49, 2d session, 26th Congress, passed it without interest. The Senate Report No. 223, 1st session, 30th Congress, accompanied by Bill No. 335; Senator Bright, in the conclusion of the report, says:

“ Which seven years' half pay aforesaid, commencing at the death, is certainly due, with interest from that time, as by numerous decisions of Congress is seen, and the facts of the case show it just and legal.”—(See Journal of Congress, 3 pages, 512—'13.)

“ By the laws or resolutions of the old Congress *interest* was allowed on all claims and to all creditors of the United States from the time payment became due.”—(See Compend., &c., on Revolutionary Claims, Document No. 42, for 1837—'38.)

The amount due on the 30th July, 1776, was \$1,680, which is the half pay of a captain for seven years, at the rate of \$480 per annum. The simple interest on this sum, in addition, is claimed as justly and legally due, as the damages for withholding payment, as well as to compensate for the time and expense of prosecuting their claim.—(See case of Colonel John Durkee's representatives, seven years' half pay, *with interest*, act July 1, 1812, 1st session of 12th Congress. Also Lieutenant Wilson's case, act February 27, 1833, seven years' half pay, *with interest*, under resolution of August 24, 1780. See Mayo and Moulton's Pension and Bounty Laws, page 175.)

CALVIN K. AVERILL,

Attorney for Claimants.

Limitations.—To children of officers who died in service, relaxed.—(See Amer. State Papers, "Claims," pages 20, 22, 25.)

IN THE COURT OF CLAIMS.—No. 509.

HEIRS OF DAVID NOBLE *vs.* THE UNITED STATES.

Brief of United States Solicitor.

The petition in this case alleges that David Noble entered the continental service in 1775, and that he remained in said service till the summer of 1776, when he died. It is claimed that the widow and children were entitled to seven years' half pay under the resolutions of Congress of May 15, 1778, and August 24, 1780.

1. Those resolutions, among other provisions, promised half pay for seven years to the widows and children of officers, commissioned by Congress, who had died in service; to the widow, if living, and while unmarried, and to the officer's children on her death or marriage. The petitioner does not set forth or show in what right he claims; merely as grandchild of the officer, he is not entitled to recover. He should show whether, under the conditions of the resolution, the half pay went to the widow or to the children, and then derive his right from the person or persons entitled.

2. This claim is barred by limitation under the resolutions of the continental Congress of November 2, 1785, (4 Journals, 603,) and July 23, 1787, (Id. 762,) as construed by act of March 23, 1792, sec. 1, (1 Stat., 243,) and by the act of February 12, 1793, (1 Stat., 301.)

3. The certificate of the secretary of state of Massachusetts proves that Captain Noble was in continental service as late as the 6th of October, 1775. The depositions of James Noble and Solomon Martin, the original muster and pay roll attached to the deposition of the latter, and the original letter from Captain Noble to his wife, dated July 1, 1776, strongly indicate that he remained in service up to the time of his death. In regard to the last two documents, it is

necessary to say that is not shown where the pay-roll came from, nor is the handwriting of Captain Noble, in the letter produced as his, proven. But however clear the case may seem, the fact that Congress, as early as in 1787, found it necessary to interpose statutes of limitation to bar these claims, warns us of the difficulty of attempting to pronounce upon their merits after a further lapse of seventy years.

Moreover, the claims for seven years' half pay to widows were, by the terms of the resolution to be settled, and were in many cases settled, by the States themselves; Massachusetts settled many such claims; (Am. St. Papers, Claims, pp. 70, 72;) and if the widow and children of Noble were omitted in that settlement, the presumption is very strong that they were not entitled.

JNO. D. McPHERSON,
Deputy Solicitor Court of Claims.

IN THE COURT OF CLAIMS.

DAVID NOBLE *vs.* THE UNITED STATES.

SCABBURGH, J. delivered the opinion of the court.

The petitioner alleges that he is a grandchild and one of the heirs-at-law of David Noble, deceased; that David Noble was commissioned by Congress, in the year 1774 or 1775, a captain in the continental service, in the revolutionary war, and served as such till his death, which occurred in July, A. D. 1776; that he died intestate, leaving a wife and children surviving him, "but who are now dead, leaving issue, grandchildren;" and that the seven years' half pay provided by the resolution of Congress, of the 24th day of August, A. D. 1780, has never been paid but is still due. He asks that a bill for the payment thereof, with interest, to the legal representatives of David Noble, or such other bill as may be proper, shall be reported to Congress.

The resolution of August 24, A. D. 1780, is as follows: "That the resolution of the 15th May, 1778, granting half pay for seven years to the officers of the army who should continue in service to the end of the war, be extended to the widows of those officers who have died or shall hereafter die in the service, to commence from the time of such officer's death, and continue for the term of seven years; or if there be no widow, or in case of her death or intermarriage, the said half pay to be given to the orphan children of the officer dying as aforesaid, if he shall have left any; and that it be recommended to the legislatures of the respective States to which such officers belong to make provision for paying the same on account of the United States."

The resolution of May 15, A. D. 1778, is as follows: "That all military officers commissioned by Congress, who now are or hereafter may be in the service of the United States, and shall continue therein during the war, and not hold any office of profit under these States, or any of them, shall, after the conclusion of the war, be entitled to

receive annually, for the term of seven years, if they live so long, one-half of the present pay of such officer: provided, that no general officer of the cavalry, artillery, or infantry, shall be entitled to receive more than the one-half part of the pay of a colonel of such corps respectively; and provided that this resolution shall not extend to any officer in the service of the United States, unless he shall have taken an oath of allegiance to, and shall actually reside within, some one of the United States."

By the resolution of August 24, A. D. 1780, the restricting clause of the resolution of May 15, A. D. 1778, "and not hold any office of profit under these States, or any of them," was repealed.

The petitioner, *as the grandson* of David Noble, can have no claim against the United States under these resolutions. If it be true that David Noble was a captain, duly commissioned by Congress, in the military service of the United States in the revolutionary war, and that he died in the service in the year 1776, his widow, if she were living and unmarried on the 24th day of August, A. D. 1780, was entitled to the benefit of the resolution of that date; or, if she were then dead or married, it devolved upon his *orphan* children, if he left any; or, if she were then living and unmarried, but died or intermarried before the expiration of seven years from the death of her husband, "the said half pay" then passed to such orphan children. There is no allegation in the petition and no proof on file in relation to these points. If the widow became entitled to the half pay, then her personal representative, if she be dead, is the proper person to assert the claim. If she did not become entitled to it, and there were orphan children, they or their personal representatives are the proper parties to assert the claim. The petitioner may be the grandson of David Noble, and yet in no way interested in it.

But if the parties were now before us, and it were shown by the evidence that the claim was originally well founded, still we could not allow it.

On the 2d day of November, A. D. 1785, Congress passed the following resolution: "That all persons having claims for services performed in the military department, be directed to exhibit the same for liquidation to the commissioners of army accounts on or before the 1st day of August, ensuing the date hereof, and that all claims under the description above mentioned, which may be exhibited after that period, shall forever thereafter be precluded from adjustment or allowance, and that the commissioner of army accounts give public notice of this resolve in all the States for the term of six months."—(4 Journals of Congress, 603.)

On the 23d day of July, A. D. 1787, Congress passed the following resolution: "That all persons having unliquidated claims against the United States, pertaining to the late commissary's, quartermaster's, hospital, clothier's, or marine department, shall exhibit particular abstracts of such claim to the proper commissioner appointed to settle the accounts of those departments within eight months from the date hereof; and all persons having other unliquidated claims against the United States shall exhibit a particular abstract thereof to the Comptroller of the Treasury of the United States within one year from the

date hereof; and all accounts not exhibited as aforesaid shall be precluded from settlement or allowance."—(Ibid., 762-'3.)

The first section of the act approved March 23, A. D. 1792, chap. 11, is as follows: "That the operation of the resolutions of the late Congress of the United States, passed on the second day of November, one thousand seven hundred and eighty-five, and the twenty-third day of July, one thousand seven hundred and eighty-seven, so far as they have barred or may be construed to bar the claims of any widows or orphans of any officer of the late army to the seven years' half pay of such officer, shall, from and after the passing this act, be suspended for and during the term of two years."—(1 Stat. at Large, p. 243-'4.)

By the act of Congress approved February 12, A. D. 1793, chap. 6, it was provided as follows: § 1. "That all claims upon the United States for services or supplies, or for other cause, matter, or thing furnished or done previous to the fourth day of March, one thousand seven hundred and eighty-nine, whether founded upon certificates, or other written documents from public officers, or otherwise, which have not already been barred by any act of limitation, and which shall not be presented at the treasury before the first day of May, one thousand seven hundred and ninety-four, shall forever after be barred and excluded from settlement or allowance: *Provided*, That nothing herein contained shall be construed to affect land office certificates, certificates of final settlement, indents of interest, balances entered in the books of the Register of the Treasury, certificates issued by the Register of the Treasury, commonly called registered certificates, loans of money obtained in foreign countries, or certificates issued pursuant to the act entitled 'An act making provision for the debt of the United States:' *And provided further*, That nothing herein contained shall be construed to prohibit the proper officers of the treasury from demanding an account or accounts to be rendered for any moneys heretofore advanced and not accounted for, or from admitting, under the usual forms and restrictions, credits for expenditures equal to the sums which have been so advanced."—(1 Stat. at Large, p. 301.)

It is apparent that unless there be circumstances connected with this claim to take it out of the operation of these resolutions and enactments, it is barred by them.

For these reasons, we are of the opinion that the petitioner is not entitled to relief.