

WILLIAM H. RUSSELL.

[To accompany Bill H. R. C. C. No. 83.]

DECEMBER 15, 1857.

MAY 28, 1858.—Ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

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

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

WILLIAM H. RUSSELL *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Opinion of the Court on the preliminary question of the liability of the government.
3. Depositions offered by claimant, and transmitted to the House of Representatives.
4. Documents received from the Treasury Department, transmitted to the House of Representatives.
5. Brief of the United States Solicitor.
6. Opinion of the Court.
7. Bill for the relief of the claimant.
8. Documents received from the House of Representatives, on application of the Clerk of the Court of Claims, and returned in a separate envelope.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this seventh day of December, A. D. 1857.

[SEAL.]

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

IN THE UNITED STATES COURT OF CLAIMS.

WILLIAM H. RUSSELL }
vs. }
THE UNITED STATES. }

To the honorable the Judges of the Court of Claims:

The petition of William H. Russell, of Cass county, in the State of Missouri, respectfully represents:

That he was appointed to the office of collector of customs for the district of Monterey, in California, on the 13th day of March, A. D. 1851, while in the city of Washington; that he thereupon accepted said appointment, executed a sufficient bond for the faithful performance of the duties of his office, and, in obedience to the requirements of the Secretary of the Treasury, proceeded at once to the discharge of the duties assigned him. That the Secretary of the Treasury advanced to him in his official character as collector the sum of three thousand dollars, and caused the same to be charged to him in his said official character on the books of the treasury. That whilst he remained in the city of Washington he was constantly employed in making arrangements and receiving instructions necessary to the proper and efficient discharge of his official duties.

Your petitioner would further state, that before leaving the city of Washington, and when first appointed, he proposed to receive the oath required by law, but that the Comptroller of the Treasury construed the law as requiring that the oath of office should be taken within the district where the duties were performed. That as soon as the necessary arrangements were completed as aforesaid, he proceeded immediately to California, and on the day of his arrival there entered fully upon the discharge of the duties of his office.

That he has made no charge, nor has he received any remuneration whatever, for his travelling expenses to or from California, although such expenses have been allowed in similar cases. Your petitioner therefore claims that he is entitled to receive his salary as collector as aforesaid from the date of his appointment and acceptance of the office, and the filing of the bonds required by law, on the said 13th March, 1851, until the 23d day of June following, from which time only he has received his said salary—which said claim amounts to the sum of eight hundred and forty-six dollars and fifty-seven cents.

Your petitioner would further show, that in the adjustment of his accounts as collector as aforesaid at the treasury, various charges made by him in the necessary and unavoidable discharge of the duties of his trust have been disallowed. Your petitioner claims that the same are legal and valid charges against the United States, and should be allowed to him. That said charges are principally for the purchase of a revenue boat and the wages of the men employed on board the same; that from the peculiar character of the harbor of Monterey, it was entirely indispensable that the collector should be furnished with a boat and the persons necessary to manage the same in fulfilling the duties of his office, both in the collection of the revenue and the pre-

vention of smuggling. That the usual and almost uniform practice of the government is to furnish a revenue boat in all ports upon the ocean, and that it was peculiarly necessary at the said port of Monterey; and as indicating the views and wishes of the department, the flag used in the revenue service and designed for revenue boats was forwarded by the Treasury Department to your petitioner.

Your petitioner further shows, that in the month of October, A. D. 1846, he was appointed by Lieut. Col. Frémont a major of ordnance in the California battalion, and so continued until the same was disbanded, on or about the 17th day of April, A. D. 1847. That on the 20th day of March, A. D. 1847, in obedience to the direction of Col. Frémont, he left Los Angeles, in California, for the city of Washington, as bearer of despatches to the government of the United States from said Frémont. That at the time when he entered the service of the United States in California, and was appointed major of ordnance as aforesaid, his home and residence was at Fulton, in the State of Missouri, from which he was only temporarily absent in California; that when discharged from the public service he was by law entitled to his pay and rations, or an equivalent in money, for such term of time as would be sufficient for him to travel from his place of discharge to his home in the said town of Fulton, in said State of Missouri.

That your petitioner has claimed of the accounting officers of the Treasury Department the allowance as aforesaid provided by law, but the same has been refused by the Second Auditor, and confirmed by the Second Comptroller of the Treasury, on the ground that the word "*home*" and "*residence*," as used in the several acts and resolutions of Congress, is to be understood and construed to mean the place of appointment or entering the service.

Your petitioner would state, that at the time when said battalion was disbanded, and he thereby discharged from the service, he had left California as aforesaid in pursuance of the orders of his superior officer, for the said city of Washington, and was at said city of Washington when he first learned that the said battalion was actually disbanded, and himself consequently discharged from the service.

Your petitioner has supposed that by law he was to be considered as discharged in California, and that he was entitled to his allowance for travel from Los Angeles, in California, to his home at Fulton, in Missouri; but if he has erred in the construction of the law, and the views of the Second Auditor and Comptroller are correct, your petitioner is entitled to and claims the usual allowance for travel from the city of Washington to the place of entering the service in California; and respectfully submits to your honors to decide upon which principle the allowance as aforesaid is to be computed.

Your petitioner further shows, that he is also entitled to his pay from the 24th day of March, 1847, to which date he was last paid, to the 24th day of August, A. D. 1847, when (the period of five weeks being allowed for learning of the disbanding of said battalion) he would have learned of the disbanding of said battalion.

Your petitioner presents in detail a statement of his said claims in a schedule hereto annexed, marked (A.)

Your petitioner would further show, that he has not assigned or

transferred said claims, or either of them, or any part of the same, but that he is the sole owner of the same.

Your petitioner prays your honors to inquire into the matters aforesaid, and to grant such relief as to law and justice may appertain.

(A.)

Schedule of claims due William H. Russell, referred to in the foregoing and annexed petition, viz:

No. 1. Salary as collector for the district of Monterey, in California, from the 13th day of March to the 23d day of June, 1851, at \$3,000 per annum, amounting to.....	\$846 57
No. 2. Items of charge disallowed in the settlement of his accounts as collector at Monterey by the accounting officers of the treasury, viz:	
Amount paid Wm. H. Cranskee for a revenue barge.....	\$140 00
Amount paid in 3d quarter, 1851, for hire of boatmen, viz., to John Fox and R. Graham.....	600 00
Amount paid in 4th quarter, 1851, to same and C. Benson.....	308 00
Amount paid in 1st quarter, 1852, to Davidson & Titus	318 00
Amount paid from 1st April to 8th June, 1852, to R. Graham	136 00
Amount paid in 3d quarter, 1852, to Baronowske & Barry.....	414 00
Amount paid in 4th quarter, 1852, to J. and P. Browning.....	368 00
Amount paid for repairing revenue boat in 1st quarter, 1852, to J. Boston & Co.....	8 32
Amount paid for repairing revenue boat in 2d quarter, 1852, to J. McMahon	27 92
Amount paid for repairing revenue boat in 1st quarter, 1853, to D. McCarthy	16 00
Amount charged for travelling expenses of collector.....	150 00
Amount paid in 1st quarter, 1852, to R. Graham, as servant and porter	180 00
Amount paid Curtis and Little for three boxes candles, \$30, \$30, and \$20.....	80 00
Amount paid steamer Ohio for freight on revenue barge from San Francisco	44 00
	<hr/> 2,790 24

No. 3. His pay and emoluments as major in the California battalion from the 24th March, 1847, to 24th August, 1847, amounting to.....	\$748 60
For travelling allowance from the city of Washington (the place of his discharge) to Los Angeles, in California, (the place at which he received and accepted his appointment,) being 4,500 miles, a day's pay, &c., computed at, each, 20 miles, making 225 days, or 7 months and 15 days.....	1,117 50
	<hr/> \$1,866 10
	<hr/> 5,502 91
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WILLIAM H. RUSSELL *vs.* THE UNITED STATES.

Opinion of the Court delivered by Judge Scarburgh.

The petitioner was appointed collector of the customs for the district of Monterey, in California, on the 13th day of March, A. D. 1851, while in the city of Washington. He thereupon accepted the appointment, executed his official bond, "and, in obedience to the requirements of the Secretary of the Treasury, proceeded at once to the discharge of the duties assigned him." The Secretary of the Treasury advanced to him, in his official character, the sum of three thousand dollars, and caused the same to be charged to him, in that character, on the books of the treasury. Whilst he remained in the city of Washington, he was constantly employed in making arrangements and receiving instructions necessary to the proper and efficient discharge of his official duties. He did not take the oath of office till the 23d day of June, A. D. 1851, after his arrival in California. His salary was paid him from the date last mentioned.

He now claims that he is entitled to receive his salary as collector from the date of his appointment and acceptance of the office, instead of from the 23d day of June, A. D. 1851. The amount claimed by him as still remaining unpaid is eight hundred and forty-six dollars and fifty-seven cents.

A collector of the customs is appointed for the term of four years, but is removable from office at pleasure.—(3 Stat. at Large, p. 582.) The collector of the district of Monterey is allowed by law a salary of three thousand dollars *per annum*, with additional *minimum* compensation of two thousand dollars *per annum*, should his official emoluments and fees provided by existing laws amount to that sum.—(9 Stat. at Large, p. 509.) Every collector of the customs is required by law, before he enters upon the duties of his office, to take and subscribe an oath or affirmation diligently and faithfully to execute the duties of his office. The form of the oath or affirmation is prescribed by statute. It may be taken before any magistrate authorized to ad-

minister oaths within the district to which he belongs; "and being certified under the hand and seal of the person by whom the same shall have been administered, shall, within three months thereafter, be transmitted to the Comptroller of the Treasury; in default of taking of which oath, or transmitting a certificate thereof, the party failing shall forfeit and pay two hundred dollars, to be recovered, with cost of suit, in any court of competent jurisdiction, to the use of the United States."—(1 Stat. at Large, p. 642)

Every collector is also required, within three months after he enters upon the execution of his office, to give bond, with one or more sufficient sureties, to be approved of by the Comptroller of the Treasury of the United States, and payable to the United States, with condition for the true and faithful discharge of the duties of his office according to law.—(1 Stat. at Large, p. 705.)

The question now presented for consideration is, when was the office, to which the petitioner was appointed, filled—at the date of his appointment, or at the date of his taking the oath of office?

Under the Constitution of the United States, the President "shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law." Also, "the President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session."—(Const. of U. S., Art. II, section 2.) And he "shall commission all the officers of the United States."—(Ibid., Art. II, section 3.)

The act of May 15, A. D. 1820, requires "that the commissions of all officers employed in levying or collecting the public revenue shall be made out and recorded in the Treasury Department, and the seal of the said department affixed thereto;" but that "the seal shall not be affixed to any such commission before the same shall have been signed by the President of the United States."

In a case where the appointment to office is made by and with the advice and consent of the Senate, the Constitution of the United States plainly regards the appointment, and the commissioning of the party appointed, as two separate and distinct acts, for the power to perform them is given in two separate and distinct sections of the Constitution.—(*Marbury vs. Madison*, 1 Cranch R, 156.) "This is an appointment," said Mr. Chief Justice Marshall, in that case, "made by the President, by and with the advice and consent of the Senate, and is evidenced by no act but the commission itself. In such a case, therefore, the commission and the appointment seem inseparable; it being almost impossible to show an appointment otherwise than by proving the existence of a commission; still the commission is not necessarily the appointment, though conclusive evidence of it."

"But," he added, "at what stage does it amount to this conclusive evidence?"

"The answer to this question seems an obvious one. The appointment, being the sole act of the President, must be completely

evidenced, when it is shown that he has done everything to be performed by him.

"Should the commission, instead of being evidence of an appointment, even be considered as constituting the appointment itself, still it would be made when the last act to be done by the President was performed, or, at furthest, when the commission was complete.

"The last act to be done by the President is the signature of the commission. He has then acted on the advice and consent of the Senate to his own nomination. The time for deliberation has then passed. He has decided. His judgment, on the advice and consent of the Senate concurring with his nomination, has been made, and the officer is appointed. This appointment is evidenced by an open, unequivocal act; and being the last act required from the person making it, necessarily excludes the idea of its being, so far as respects the appointment, an inchoate and incomplete transaction."—(1 Cranch R., 157.)

He further said: "If it should be supposed that the solemnity of affixing the seal is necessary, not only to the validity of the commission, but even to the completion of an appointment, still, when the seal is affixed, the appointment is made, and the commission is valid. No other solemnity is required by law; no other act is to be performed on the part of government. All that the Executive can do, to invest the person with his office, is done; and unless the appointment be then made, the Executive cannot make one without the co-operation of others."—(1 Cranch R., 158, 159.)

In the same case the learned chief justice, in discussing the question whether the transmission or acceptance of a commission be necessary to constitute an appointment, said: "The transmission of the commission is a practice directed by convenience, but not by law. It cannot, therefore, be necessary to constitute the appointment, which must precede it, and which is the mere act of the President. * * * * If the transmission of a commission be not considered as necessary to give validity to an appointment, still less is its acceptance. The appointment is the sole act of the President; the acceptance is the sole act of the officer, and is, in plain common sense, posterior to the appointment. As he may resign, so may he refuse to accept; but neither the one nor the other is capable of rendering the appointment a nonentity.

"That this is the understanding of the government," he further said, "is apparent from the whole tenor of its conduct.

"A commission bears date, and the salary of the officer commences, from his appointment, not from the transmission or acceptance of his commission. When a person appointed to any office refuses to accept that office, the successor is nominated in the place of the person who has declined to accept, and not in the place of the person who had been previously in office, and had created the original vacancy.

"It is, therefore," he said, "decidedly the opinion of the Court that, when a commission has been signed by the President, the appointment is made; and that the commission is complete when the seal of the United States has been affixed to it by the Secretary of State."

The petitioner, without in terms mentioning a commission, avers that his appointment was made on the 13th day of March, A. D. 1851. But we must intend that this averment includes everything necessary to a complete appointment, and, therefore, that if a commission be essential to such an appointment, it includes an averment of the regular granting of the commission. We may, too, judicially take notice that this appointment was made by the President to fill up a vacancy which had occurred during the recess of the Senate. This was done in the exercise of the power granted by the Constitution to the President "to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session." Such a vacancy, then, is filled up by the granting of a commission. As soon, therefore, as the commission is granted the office is full, and, consequently, the party must be considered as holding it from the time such grant becomes effectual. If, then, the office be held for a term of years, with an annual salary, it is manifest that the term and the salary must commence from the day the grant of the commission is completed. It is only, therefore, necessary to inquire, when is such a grant completed? It is the sole act of the President, and is completed when he has put his signature to the commission, or, at most, as soon as the seal of the proper department is affixed thereto.—(*Marbury vs. Madison*.)

The act of Congress which requires the taking of the oath of office seems to have been framed with reference to these views. Its language is: "That all officers and persons to be appointed pursuant to this act, before they enter upon the duties of their respective offices, shall severally take and subscribe an oath or affirmation diligently and faithfully to execute the duties of their said offices, respectively, which oath or affirmation shall be of the form and tenor following, to wit:

"I, (A. B.,) having been appointed (collector or other officer, as the case may be), of," &c.—(1 Stat. at Large, 641, 642.) This act assumes that the party is already in office when he is required to take this oath, because, in the nature of things, the possession of the office precedes the entering upon its duties. The statute does not declare that before the collector can become invested with his office he shall take the oath, but that before he enters upon the duties of his office he shall take the oath. It is not the entering upon the duties thereof that invests a party with an office, for he must first be in office before he can be in a condition to perform its duties. The office, therefore, must be conferred by some other means. Hence the language of the oath is: "I, (A. B.,) having been *appointed*," &c. Thus the oath itself seems to be a recognition of the doctrine of the case of *Marbury vs. Madison*, that it is the appointment which confers the office. And, moreover, the failure to take the oath of office does not invalidate the acts of the officer. The only consequence denounced by the statute is, that "the party failing shall forfeit and pay two hundred dollars." And, besides, this failure is put by the statute on precisely the same footing with the failure to transmit the certificate of the taking of the oath to the Comptroller of the Treasury; but no one will pretend that the transmission of the certificate is necessary to complete an appointment to office.

A collector, as we have seen, is required, within three months after he enters upon the execution of his office, to give an official bond. The condition of the bond, like the oath of office, recites the appointment: "Whereas the President of the United States hath, pursuant to law, appointed the said ——— to," &c. The statute, which requires the bond, like the one prescribing the oath of office, assumes that it is the appointment which confers the office. It requires, too, that the bond shall be executed, not within three months after the date of the appointment, but within three months after the collector enters upon the execution of his office. It thus recognizes the principle already adverted to, that he must be invested with his office before he can enter upon its duties.

It may not be improper here to add, that a practical illustration of the views of the Treasury Department as to the necessity of a collector's taking the official oath in order to invest him with his office, is shown by this very case; for before the petitioner took the oath, his official bonds were accepted, and the Secretary entrusted to him in his official character a large sum of money.

Our opinion is, that the salary of the petitioner ought to commence from the date of his appointment.

There are two other claims presented in the petition; but we do not deem it necessary to make any decision in regard to them, before the testimony shall be brought in.

Let an order be made directing the taking of testimony in this case.

IN THE COURT OF CLAIMS.

WILLIAM H. RUSSELL *vs.* THE UNITED STATES.

Interrogatories to a witness on the part of the United States.

1st interrogatory. What is your name?

Answer. John S. Edwards.

2d interrogatory. What is your occupation?

Answer. Attorney-at-law.

3d interrogatory. What is your age?

Answer. Forty-four.

4th interrogatory. What has been your place of residence during the past year?

Answer. The city of Washington.

5th interrogatory. Have you any interest, direct or indirect, in the claim which is the subject of the present inquiry?

Answer. I have none whatever.

6th interrogatory. Are you in any degree related to the claimant; if yea, in what degree?

Answer. None whatever.

7th interrogatory. Were you connected with the custom-house at Monterey during the time Wm. H. Russell held the office of collector?

Answer. I was during a part of the time.

8th interrogatory. If so, please state when you were appointed, and

how long you continued attached to the said office ; in what capacity you served, and what were your duties ?

Answer. I think I was appointed in May or June, 1851, and remained there till September or October, 1851 ; was there not more than four months altogether, in my opinion. I was acting in the capacity of deputy collector, and performed the duties of collector in his absence.

9th interrogatory. Were there any arrivals from foreign ports during said time ?

Answer. I do not remember but one arrival while I was there. I do not now remember the name of the vessel.

10th interrogatory. Were there vessels frequently resorting to the port which it was necessary for the officers of the customs to visit and inspect ?

Answer. Coasting vessels occasionally came in there which it was necessary for the officers of the customs to visit and inspect.

11th interrogatory. Did you deem it necessary, for the proper discharge of the duties of the office and the protection of the revenue, that the collector should furnish a barge or boat, and keep in constant service men to take charge of her ; and was there, or not, a boat which had been used by his predecessor, and boatmen who had been employed by him, which said Russell could have procured when needed ?

Answer. A boat was necessary to enable the collector to discharge his duties, and for the protection of the revenue. When I went there there was a boat in a boat-house attached to the custom-house, which I was informed had been used by the previous collectors of the port for the purposes of aiding in the collection of the revenue, which the person who owned it permitted to be used for that purpose in consideration of its being preserved in that boat-house ; and the person who owned it, together with some other person he might employ, boarded vessels that came into the port, and was paid by the previous collectors for the service rendered. It was not necessary to keep men in constant service, in my opinion, for such a purpose, because vessels at that time very rarely came into port at all. That boat was used the greater part of the time that I was there in boarding vessels coming into port, and manned by the men above referred to.

12th interrogatory. Did you or did you not remonstrate with said Russell against incurring the expense created by the purchase of this barge and the permanent employment of boatmen, as a charge not only unauthorized by the Secretary of the Treasury, but wholly unnecessary ?

Answer. I did.

13th interrogatory. Were the persons alleged to have been employed by Mr. Russell as boatmen slaves or servants, carried out with him, and employed in his family ?

Answer. One of them was his slave, and the other was an Irishman, named, I think, John Fox. Both were taken out by him to California, and employed about his house in domestic purposes.

14th interrogatory. Please state what service, if any, they rendered in connexion with the boat ?

Answer. I do not remember their having rendered any service as boatmen while I was there.

15th interrogatory. Was the business of the office ever such as required that it should be kept open in the evening, and was any charge for lights and fuel in the custom-house necessary or proper?

Answer. I am not aware of any business necessary to be transacted in the custom-house after night. There was no necessity for fuel or lights.

16th interrogatory. Did sail Russell occupy the custom-house building as a residence for his family; if so, how long?

[To that question claimant objects as irrelevant.]

Answer. He occupied it as his residence all the time I was there.

17th interrogatory. How many of his family were employed by Mr. Russell in the custom-house, and at what rate of compensation? What duties did they perform?

[This question also objected to by claimant as irrelevant.]

Answer. As well as I can now remember, one of his sons was employed as inspector, and performed its duties a part if not all the time that I was there. I think his compensation was six dollars a day.

18th interrogatory. Please to state any other facts within your knowledge in reference to the management of the custom-house at Monterey by Mr. Russell which you deem important for the information of the Court?

Answer. I do not recollect any other.

Cross-interrogatories propounded to the witness on the part of the claimant.

1st cross-interrogatory. What was your compensation? Did you resign, or were you dismissed by Mr. Russell; if so, for what alleged cause? Had you and Russell not a quarrel, which led to a personal conflict? Are you now upon good terms?

Answer. My compensation was eight dollars per day. I resigned voluntarily. I resigned because it was a very difficult matter to get along with him peaceably. The advice that I gave him as a friend against purchasing the boat in question, and in other office matters, he construed to proceed from inimical feelings, and therefore I thought it best to dissolve the connexion. I had no personal conflict with him whatever; and when I parted with him he expressed for me his best wishes. I had no quarrel with him.

2d interrogatory. Who was the immediate predecessor of Mr. Russell? Was he appointed by the Secretary of the Treasury, or under the military occupation of the country? Do you know whether he boarded any vessels at all, or considered it his duty to do so? If yea, was the boat he used a public or private boat? If the former, do you know whether he turned it over to Russell or not? If the latter, had Russell any authority to use it? Were there boats and hands there that could have been hired if wanted upon any emergency?

Answer. Mr. Randall and Captain Barney were the predecessors of Mr. Russell; which was the immediate predecessor I am not certain,

but I think it was Captain Barney. My impression is, that Barney was reappointed by the Secretary of the Treasury. My reason for that is, that Collier was at that time collector of San Francisco. I do not know personally whether the immediate predecessor of Russell boarded vessels or not, but I do know, from the book, that revenue was collected there at that time. It was the general impression there that the boat that I found there, and have above alluded to, was used by said predecessor for that purpose. This I gathered from the citizens generally. I do not know whether the said vessel was turned over to Russell or not by his predecessor, but I do know that he had authority to use it from the man who owned it, and this I was told by him. There were boats and hands there which, in my opinion, could have been hired on any emergency.

3d interrogatory. By what authority or under whose instructions did you undertake to remonstrate with Russell, then your superior in office, against incurring the expense of purchasing a boat and hiring hands to work it?

Answer. Under no authority or instructions from any one. I did not say anything to him on the subject until he consulted me.

4th interrogatory. Do you not know that there were no slaves in California, and that the boatmen hired by Russell were free? What were the daily or monthly wages usually paid at that time to laborers at Monterey?

Answer. I know that many persons took their slaves from slave States to California; and Mr. Russell told me that the black man in his service was an old family servant, and that he took him to California from Missouri, and that is what I mean by calling him Colonel Russell's slave. I think his name was Rezin. I know that the constitution of California forbids slavery in that State. I think that the general wages in Monterey was one hundred dollars per month.

5th interrogatory. State what part of the custom-house building was occupied by Russell and his family?

Answer. I believe the whole house was so occupied, except the room occupied for custom-house purposes.

6th interrogatory. Was any of Russell's family employed by him in the custom-house at Monterey? If not, where were they employed, and under whose authority?

Answer. As I have said before, one of his sons was employed as inspector at Monterey for a part if not all the time that I was there. If he had any of his family elsewhere, I do not know it. The son employed at Monterey was, I presume, employed by the Secretary of the Treasury.

Seventh interrogatory. Did you write letters to the Secretary of the Treasury, the Assistant Secretary, the Commissioner of Customs, or any other person in office during the time you held office under the said Russell, or since, or make oral statements touching Russell's management of his office, or other matters in relation thereto? if so, please furnish the dates of said letters or copies; and was such information voluntarily furnished, or were you called upon to furnish it; if you were called upon to furnish it, by whom were you so called upon, and when?

Answer. I never did write a letter in relation to Colonel Russell to the department, or to any other person in office or out of office, to the best of my recollection, in my life. What I have here stated, I have substantially stated to the present Commissioner of Customs, upon an interview sought by himself. When I settled with Russell, there was a balance of about \$500 due me, which he could not pay. I called upon Thomas Corwin, then Secretary of the Treasury, for payment, and it was settled by or through him; and in the adjustment of the account, questions were asked me by Mr. Corwin, or by Mr. Rockwell, then Commissioner of Customs, relative to the management of the custom-house at Monterey, when I substantially said to him what I said to the present Commissioner of the Customs.

Interrogatory by the Commissioner. Do you know any other matter relative to the claim in question?

Answer. I do not.

JOHN S. EDWARDS.

UNITED STATES OF AMERICA, }
District of Columbia, } *scd.*

On this third day of April, A. D. 1856, personally came John S. Edwards, the witness within named, and having been sworn to tell the truth, the whole truth, and nothing but the truth, the questions here written down were proposed to him by the commissioner, to which he gave the answers here written down in his presence, and subscribed the deposition in the presence of the commissioner.

The deposition of John S. Edwards, taken at the request of M. Blair, esq., solicitor of the Court of Claims, to be used in the investigation of a claim against the United States, now pending in the Court of Claims. The attorney of the adverse party was notified; did attend, and did not object, and consented to waive all errors of form to this deposition and return.

JOHN S. TYSON, *Commissioner.*

Fees, \$5 02½.

IN THE COURT OF CLAIMS.

WILLIAM H. RUSSELL *vs.* THE UNITED STATES.

The testimony of William N. Barker, a witness produced on the part of the petitioner.

Interrogatory 1. What is your name?

Answer. William N. Barker.

Interrogatory 2. What is your occupation?

Answer. I am a clerk in the Treasury Department.

Interrogatory 3. What is your age?

Answer. Thirty-five.

Interrogatory 4. What has been your place of residence for the past year?

Answer. Washington city.

Interrogatory 5. Have you any interest, direct or indirect, in the claim which is the subject of the present inquiry?

Answer. I have none.

Interrogatory 6. Are you related to the claimant; if yea, in what degree?

Answer. I am not at all related to him.

Interrogatory 7. Were you, or not, in Monterey in the years 1851 and 1852?

Answer. I was in Monterey, in California, in the autumn of 1851.

Interrogatory 8. Did you know William H. Russell, collector of the port of Monterey, at that time?

Answer. I did.

Interrogatory 9. Do you know whether he kept for use in his district a revenue boat, and if so, whether he hired men to work that boat?

Answer. He kept a boat which he used for revenue purposes; the boat's crew were persons whom I understood to be hired by him.

Interrogatory 10. Do you consider a boat suitable for such purpose necessary and indispensable to the proper performance of his duty as collector in boarding vessels off that harbor?

Answer. Yes; positively indispensable.

Interrogatory 11. Please state, as near as you can, the distance at which vessels usually come to anchor off said town.

Answer. A schooner would anchor about half a mile, larger vessels more than a mile from said town.

Interrogatory 12. Was there a revenue flag of the United States attached to the said boarding boat?

Answer. There was one used by that boat when boarding vessels.

Interrogatory 13. Were there boats belonging to persons at Monterey, which could have been hired at any time by the collector, and which would have rendered unnecessary the purchase of a boat by him?

Answer. During my stay there I never saw a boat belonging to persons at Monterey which was at all suitable for the purpose of boarding.

Interrogatory 14. What was the usual rate of hire of persons at Monterey during the time you were there, and were such persons to be obtained at all times?

Answer. There was no usual rate of hire at that time; persons demanded and received wages at the rate of from three to eight dollars per day; such persons were not to be obtained at all times.

Interrogatory. Was it necessary or proper for the collector to keep a constant light in his office during the night time, either for the transaction of business or as a beacon for vessels entering or anchoring in said harbor?

Answer. I do not know that a light was necessary for the transaction of business, but a beacon was necessary, and the light in his office was the only beacon for vessels entering that harbor at that time.

Interrogatory 15. Please state whether you know of any other matter relative to this claim.

Answer. I think that a revenue boat was as necessary for the pre-

vention of smuggling as for the boarding of vessels ; I know no other matter.

WM. N. BARKER.

UNITED STATES OF AMERICA, }
District of Columbia, } *to wit.*

On this 22d day of March, A. D. 1856, personally came William N. Barker, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness ; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of William N. Barker, taken at the request of Richard Burgess, esq., agent and attorney of the claimant, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of William H. Russell. The adverse party was notified, did not attend, and did not object.

JOHN S. TYSON,
Commissioner.

Commissioner's fees and charges	-	-	-	-	-	\$2 00
Oath	-	-	-	-	-	12½
						<hr/>
[Paid, J. S. T.]						2 12½
						<hr/> <hr/>

IN THE UNITED STATES COURT OF CLAIMS.

WILLIAM W. RUSSELL *vs.* THE UNITED STATES.

The testimony of Peter A. Brinsmade, a witness on the part of the petitioner :

Interrogatory 1. What is your name?

Answer. Peter A. Brinsmade.

Interrogatory 2. What is your occupation?

Answer. Agent for claims against the United States.

Interrogatory 3. What is your age?

Answer. Fifty-one.

Interrogatory 4. What has been your place of residence for the past year?

Answer. Washington city.

Interrogatory 5. Have you any interest direct, or indirect, in the claim which is the subject of the present inquiry?

Answer. I have none.

Interrogatory 6. Are you related to the claimant ; if yea, in what degree?

Answer. I am not related to him in any degree.

Interrogatory 7. Do you know William H. Russell, formerly collector of the district of Monterey, in California, in 1851 and 1852?

Answer, I do.

Interrogatory 8. Do you know whether he kept in use for his collection district a revenue boat; and if so, whether he hired men to work that boat?

Answer. I know that on two occasions, during his administration of the customs, I was in Monterey, and he had a boat which he kept manned, known as the custom-house boat.

Interrogatory 9. Would you regard a boat of that description necessary and indispensable to enable the collector properly to discharge his duty in boarding vessels off that harbor?

Answer. I would consider it both necessary and indispensable.

Interrogatory 10. State, as nearly as you can, the distance from said town at which vessels generally came to anchor?

Answer. That depended upon the size of the vessel. It was from three-quarters of a mile to a mile and a half.

Interrogatory 11. Were there any suitable boats belonging to persons in Monterey that the collector could at any time have hired, and thus rendered unnecessary and improper the purchase of a boat by him?

Answer. I did not know of any such boats there; nor do I believe that there were any such there.

Interrogatory 12. Do you know the rate of hire usually paid to laborers in said place in the years 1851 and 1852; and could such labor be procured upon any emergency readily?

Answer. I do not know of any specific instances in which labor of that kind was employed, except in the cases of the boatmen employed by Colonel William H. Russell. The usual price of labor of that kind, on that coast, at that period, was from one hundred to one hundred and fifty dollars a month and upwards. My belief is, that it was very difficult at that time to procure laborers for such a service, and especially in case of emergency. Laborers of every description repaired at that time to the mines or to the new cities which were being built up, where the best compensation was paid for labor.

Interrogatory 13. Do you know of any reason in respect to the approach of vessels entering into and anchoring off said harbor that would have made it expedient or proper for the collector to keep a constant light in his office during the night as a beacon to vessels so arriving?

Answer. The harbor of Monterey is found at the head of a broad bay, in which there is usually a very considerable swell of the sea and often very strong counter currents and tides. A little outside of the usual anchorage in the harbor there is a rough rocky projection, which, in the night especially, renders the entrance to the harbor more or less hazardous. To enable vessels to avoid the dangers of that projection, a beacon light has been maintained on shore as a guide for vessels ever since my acquaintance with the port, which was in 1834. I presume that Colonel Russell felt it his duty to maintain a light in his office, which was in a conspicuous position, for the same purpose for which one had been maintained before, there being no other light established by the government.

Interrogatory. Please state any other fact or circumstance within your knowledge, material to a proper understanding of this case?

Answer. It may be material to a proper understanding of this case for me to state that there was no revenue vessel of the government stationed at that collection district; there were no naval or military forces of the United States stationed there that could have aided the collector in the discharge of his duties, and no other facilities afforded him by the government for enforcing the revenue laws but such as he provided himself, as an officer of the government. Knows nothing further.

P. A. BRINSMADE.

UNITED STATES OF AMERICA, }
District of Columbia, } *set.*

On this 22d day of March, A. D. 1856, personally came Peter A. Brisbane, the witness within named: and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The deposition of Peter A. Brisbane, taken at the request of Richard Burgess, agent and attorney of the claimant, to be used in the investigation of a claim against the United States now pending in the Court of Claims, in the name of William H. Russell.

The adverse party was notified, did not attend, and did not object.

JOHN S. TYSON, *Commissioner.*

Commissioner's fees, and charges, \$8 11; viz: fees, \$3 00; one day's attendance extra, at the capitol, \$5 00—paid.

UNITED STATES OF AMERICA.

TREASURY DEPARTMENT, *May 15, 1856.*

Pursuant to the act of Congress of 22d February, 1849, I hereby certify that the annexed is a true copy of a letter addressed to Wm. Henry Russell, esq., collector of the customs for the district of Monterey, dated March 14, 1851, from the records of this department.

In witness whereof, I have hereunto set my hand, and caused the [SEAL.] seal of the Treasury Department to be affixed, on the day and year first above written.

JAMES GUTHRIE,
Secretary of the Treasury.

TREASURY DEPARTMENT,
March 14, 1851.

SIR: Your official bond having been approved, and a commission issued to you as collector of the customs for the district of Monterey, California, it becomes proper to give you the following instructions for your government in the discharge of your official duties.

You will perceive on reference to the act of Congress entitled "An act to create additional collection districts in the State of California, and to change the existing districts therein, and to modify the existing collection districts in the United States," approved the 28th September last, that it is provided that the district of Monterey "shall include all the territory, bays, harbors, rivers, and shores embraced within the counties of Monterey, San Louis Obispo, Santa Cruz, and a collector shall be appointed for said district to reside at the town of Monterey, which shall be the sole port of entry for the district, within the limits of the district thus described." You will perform the duties of collector of the customs, and reside at Monterey, the port of entry.

Your official bond having been approved by the First Comptroller, you will take the oath of office before some proper magistrate within your collection district, and your compensation, as prescribed by the second section of the act referred to, will commence on the date of your oath so taken. Your compensation, as prescribed by that act, is three thousand dollars per annum, with additional maximum compensation of two thousand dollars per annum, should the official emoluments and fees provided by existing laws amount to that sum. The official fees and emoluments thus referred to will be found enumerated in the second section of the compensation act of 2d March, 1799, (Gordon's Compilation of Revenue Laws, p. 136,) and in the 34th section of the coasting act of the 21st February, 1793, (*ibid* p. 39,) and a commission of three per centum as authorized by the second section of the compensation act aforesaid, on all moneys received on account of duties accruing on all goods, wares, and merchandise imported into the collection district of Monterey, and duly accounted for by authorized disbursements or deposits to the credit of the treasurer of the United States.

Should you find it necessary on entering on the discharge of your duties as collector to employ subordinate officers of the customs, you may, in pursuance of the second section of the compensation act of 2d March, 1799, or modified by the act of 26th April, 1816, employ such occasional or temporary inspectors as may be found indispensably necessary for the due protection and security of the revenue. If you should deem the employment of *permanent* subordinate officers of the customs necessary, you will, in pursuance of the 21st section of the General Collection Act of 2d March, 1799, nominate for the approval of the department trustworthy and competent persons to perform the respective duties referred to in said section, or such of them as may be needed. On nominating to the department persons proposed to be employed as permanent officers of the customs, you will be careful to state the reason which, in your judgment, render the appointment

necessary and expedient, and the rate of compensation (within the limits hereafter prescribed) which you may propose to be allowed in each case. In view of the joint resolution of Congress of the 14th of February, 1850, suspending the restriction by law on the amount of salaries in California and Oregon, *temporary* inspectors may be paid while actually employed, a compensation not to exceed six dollars per diem, and permanent inspectors will receive a compensation not exceeding the same rate per diem. The last named class of officers, however, cannot be employed or paid, until you receive the approval of the department. But occasional or temporary inspectors may be employed when necessary, and paid without awaiting the approval of the department. Should you deem it necessary in order to enable you to discharge the duties of your office to appoint a deputy, you will, in pursuance of the 7th section of the act of 3d March, 1817, (Gordon's Compilation, p. 226,) nominate to this department for its approval a suitable person for that office. When the approval is given, he will qualify by duly taking the oath of office prescribed in that section, and his compensation will commence with the date of his oath; this compensation cannot exceed eight dollars per diem.

There is a substantial and commodious custom-house building belonging to the United States at Monterey, formerly used as a custom-house by the Mexican government, and it is believed that it will afford you not only sufficient accommodations for an office, but also for the storage of bonded merchandise, warehoused under the provisions of the act of 6th August, 1846. But should stores become necessary for the warehousing under bond of foreign imported goods, in accordance with the provisions of the act of the 6th August, 1846, you will be governed by the instructions and regulations prescribed by this department under said act, in circular of the 17th February, 1849. These instructions and regulations, together with other circulars issued by this department, and having relation to the several duties devolved on collections by law are herewith transmitted for your instruction and government. The Commissioner of the Customs will forward for you a copy of Gordon's Compilation of the Revenue Laws, the forms of the accounts and abstracts you are required by law to render, and the Statutes at Large. It is important that you should bear in mind that you can legally receive, in payment of duties, only the gold and silver coins of the United States, treasury notes, and such foreign coins as are recognized, and their values established by acts of Congress. You will be careful punctually to transmit to their proper destinations such accounts, statements, reports and returns, as you are required by law or instruction to render to this department, or any of its bureaus, keeping the department fully advised of the condition of things in your district affecting the business of your office and the interest of the public revenue. Trusting that you will exercise with the utmost care and consideration whatever discretionary power the laws and the instructions of the department have devolved on you,

Very respectfully,

W. L. HODGE,
Acting Secretary of the Treasury.

WM. HENRY RUSSELL, Esq.,
Collector of the Customs for the District of Monterey.

IN THE COURT OF CLAIMS.

WILLIAM H. RUSSELL *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

The petitioner presents in his petition three claims: The first is for his "salary as collector for the district of Monterey, in California, from the 13th day of March to the 23d day of June, 1851, at \$3,000 per annum, amounting to \$846 57." When this case was submitted on the preliminary question, whether testimony should be ordered, we held that the petitioner was in office, and entitled to his salary from the date of his appointment. In regard to the other two claims, we said: "We do not deem it necessary to make any decision in regard to them before the testimony shall be brought in."

I. As to the first claim, the facts are, that the petitioner was appointed collector of the customs for the district of Monterey, on the 13th day of March, A. D. 1851; that he took the oath of office on the 23d day of June, A. D. 1851; and that his salary was paid him only from the latter date--(See the letter of Elisha Whittlesey, Comptroller, to the petitioner, dated March 3, A. D. 1851; the letter of W. L. Hodge, Acting Secretary of the Treasury, to same, dated March 14, A. D. 1851; the letter of the Commissioner of Customs, to the same, dated April 14, A. D. 1854; and the letter of the Commissioner of Customs to the Secretary of the Treasury, dated January 13, A. D. 1855.) We are of the opinion that the petitioner's salary ought to have commenced on the day of his appointment, and that there is now due him on his account the sum of eight hundred and thirty-nine dollars and sixty-six cents. Our reasons for this opinion are given in our former opinion.

There is on file amongst the papers in this case a number of letters, marked, "1," "2," "3," "4," "5," "6," "7," "8," "9," "A," "B," "C," "D," "E," "F," "G," which we do not consider admissible in evidence. We have, therefore, not considered them.

II. As to the second claim: Upon the question whether a revenue boat was necessary, there is some conflict in the evidence. The petitioner's predecessor was in office more than three and a half months, and the expenses incurred by him for boat and boatmen were only eight dollars; and his successor, in the first seven months of his official term, incurred for boat and boatmen an expense of only fifteen dollars.--(See the letter of the Commissioner of Customs to the Secretary of the Treasury, dated May 8, A. D. 1854.) In considering the question as to the necessity of a revenue boat at Monterey, these facts would be entitled to grave consideration. But no act of Congress, nor any regulation of the Treasury Department, authorizing the petitioner to procure and man such a boat, has been cited, and we are not aware that any such act or regulation exists. The Secretary of the Treasury may have the power to direct the purchase of such a boat, and the employment of persons to man it, but he alone has authority over these matters. Without his sanction, we think that the United States cannot be

made liable for any expense which may be incurred by a collector in regard to them.—(See opinion of the circuit court of Maryland in *The United States vs. White*, on file in this case.) It is proper for us to add that there is evidence before us that such a boat was in the possession of the petitioner and used by him for revenue purposes; but there is no evidence how it came into his possession, or what he paid for it, or what was its value, or what became of it after he went out of office, or what he paid to the persons by whom it was manned. There is some evidence as to the prices paid such men for such services at that time in California.

As to the charge for travelling expenses of collector, (\$150,) it is not stated in the petition where, or on what business, the petitioner travelled; nor is there any evidence before us on this point.

As to the charge for candles. There is no evidence before us that this expense was actually incurred, or that the candles were necessary to enable the petitioner to perform his official duties.

We do not think that the second claim has been sustained.

III. As to the third claim:

By the sixth section of the act of Congress, entitled "An act making appropriations for the support of the army, for the year ending the thirtieth of June, one thousand eight hundred and fifty-three," it is provided: "That for the pay and equipment as mounted riflemen, finding their own horses and forage, of the volunteers serving under the command of Captain J. C. Frémont, in California, during the year eighteen hundred and forty-six, as appears by the muster-rolls on file in the War Department, and for the subsistence and supplies consumed by said volunteers in said service, one hundred and sixty-eight thousand dollars is hereby appropriated, and the Secretary of War is authorized and empowered to appoint three competent and disinterested officers of the army to examine and report to Congress upon all such claims as may be presented for funds advanced and subsistence and supplies of all kinds furnished or taken for the use of said command whilst thus engaged in the public service; and for the expenses of said board of officers the sum of two thousand dollars is hereby appropriated."—(10 Stat. at L., p. 108.) This act is in its very terms confined to services rendered in the year eighteen hundred and forty-six. But the fourth section of a similar appropriation act, for the year eighteen hundred and fifty-five, is as follows: "That the Secretary of War be, and he is hereby, authorized and directed to receive and cause to be placed on the files of his department, such additional muster-rolls of the battalion of volunteers commanded by Lieutenant Colonel J. C. Frémont, in California, duly authenticated by the proper officers, as have not been heretofore received and filed, and to cause such correction of the muster-rolls to be made in regard to the periods of enlistment and terms of service, and the omission of names of the members of said battalion as, upon satisfactory proof, he may deem right and proper, and, as far as practicable, to correspond with the pay-rolls of Major P. B. Reading, paymaster of said battalion, with respect to the period of service, so that all who served in the military service of the United States in California, during the late war with Mexico, whether under the command of naval or military officers, may be entitled to all

the benefits of all the acts of Congress providing for the enrolment of volunteers in the Mexican war: *Provided*, That no payment shall be made in consequence of this section beyond the sum heretofore appropriated."—(Ibid., p. 582.)

There can be no doubt, we think, that the volunteers under Lieutenant Colonel Frémont were dependent entirely on the will of Congress as regards compensation for their services, and that their legal rights are to be measured by the acts of Congress which have been passed for their relief. To entitle a party to the benefit of those acts, he must bring himself within the terms prescribed by them. Under the first act above quoted, his name must appear on the muster-rolls on file in the War Department at the time of its passage; and under the second, his name must appear on such of the muster-rolls therein mentioned as the Secretary of War may cause to be placed on the files in his department; or, if his name has been omitted, he must seek to have the omission corrected by the Secretary of War, the officer entrusted with this duty, in the manner prescribed by that act. This being done, a further pre-requisite is, that the claim can properly be paid out of the appropriation made by the act first above mentioned.

The Second Auditor of the Treasury Department, in his letter to Richard Burgess of the 9th day of December, A. D. 1852, says: "On an examination of the vouchers, the only service I find of Captain William H. Russell, an ordnance officer, is from October 8, 1846, to January 21, 1847. The claim now presented is for services from 24th March to 24th August, 1847.

"Inasmuch, therefore, as the period of time embraced in the claim now presented for consideration does not accord with any muster or pay-rolls on file in the War Department, (now on file in this office,) nor with any vouchers, I have no other alternative but to reject the claim."

This, it seems to us, was a conclusive answer to the petitioner's claim; and it stands now in no better attitude before us. The same objection still continues, and whilst it exists we cannot say that the petitioner has a legal demand against the United States. It is true that the petitioner has in fact been paid for his military services up to and inclusive of March 23, A. D. 1847.—(See copy of voucher, certified by the Second Auditor.) But the only effect of this is, that it may be a just inference from it that the petitioner was in service at least till that time, and it might, therefore, be used as evidence before the Secretary of War to show that he is entitled to have his name placed on the muster-rolls up to that period. Even if we can consider that as done, which ought to be done, and are at liberty to regard the petitioner's name as actually on the muster-rolls up to and inclusive of the 23d day of March, A. D. 1847, still we have no means of determining the petitioner's title to continue his name on the muster-rolls after that time.

On the voucher above referred to, there is the following endorsement, made by the Adjutant General: "The records of the Adjutant General's office do not enable me to decide whether Major William H. Russell is, or is not, at this time in the service of the United States as a major of the California battalion, raised on the emergency, by Lieu-

tenant Colonel Frémont, in the autumn of 1846. It appears that Major Russell left California in March with despatches for the War Department, under orders from Lieutenant Colonel Frémont, which orders do not require him to return to California. They are addressed to him, not as a major of the battalion, but to 'W. H. Russell, esq., secretary of State of California.' Now, this Court is in the same condition. There is no evidence before us to show whether the petitioner continued a member of the battalion raised by Lieutenant Colonel Frémont after the 23d day of March, A. D. 1847, or not. When, or how, or where, he ceased to be a member of that battalion, the evidence now before us in this case does not enable us satisfactorily to determine.

For these reasons we cannot sustain the petitioner's third claim.

IN THE COURT OF CLAIMS.

ON THE PETITION OF WILLIAM H. RUSSELL.

Brief of the United States Solicitor.

This is a claim (1) for salary as collector at Monterey, not paid till he took the oath at Monterey. He claims the pay from the date of appointment.

2. Charges disallowed.
3. Expenses of travel to Fulton.

1. Date of commission, March 13, 1851. The Court has already decided that he is entitled to pay from date of the commission.

2. Charges, &c. The principal of these is for the purchase and maintaining of a small boat. The purchase was not authorized by the Treasury Department. This is indispensable to authorize the allowance.—(See Report of the Commissioner of Customs, and opinion of the Justice in case *United States vs. White*, referred to in case recently before this Court on petition of White.)

b. It was not necessary.—(See Edwards' deposition and Report of Commissioner.)

c. There is no proof that the boat was bought, or that men were hired and paid for manning the boat.

d. The expense connected with Russell's administration is referred to, to show the unscrupulousness of his charges. While it may be true that the expense being greater than the income is not a reason why this office of collector should be abolished, and the custom-house closed, the amount of the income, &c., is a fact, showing that fewer inspectors and smaller expenses were necessary.

3. The claim for travelling expenses, &c. Russell was neither in the military or civil service of the government at the date of his discharge. It appears from the papers that Kearny had ordered the discharge of all those in the battalion on 1st March, 1847.

The order to Russell was not in a military capacity.

The muster-rolls (see Clayton's letter) show that he was not borne

on the rolls as in the military service for the period for which he claims, and the answer of the Attorney Burgess, which may be again pressed, that Russell was on special service, does not explain the omission of his name from the rolls. Clayton says that the law authorizes payment only according to the rolls. This Court is as much controlled by this law as the Auditor; so that, if in fact Russell was in service, the law only authorized payment to such of the battalion as were borne on the rolls, and only *legalized* the claim to that extent.

As to the claim for travelling expenses.—(See the reason of the Auditor for disallowing them.) It is manifest that Russell was discharged in California. It was in California he was enlisted. The Auditor reports that the uniform construction of the law has been, that under the laws on the subject, mileage is paid on the discharge of officers and men to the places at which they were enlisted.

M. BLAIR,
U. S. Solicitor.

TREASURY DEPARTMENT,
Third Auditor's Office, December 8, 1855.

SIR: The enclosed papers, relative to the claim of W. H. Russell for pay and travelling allowance as major of California battalion in 1846 and 1847, &c., were received by me a few days since from the Secretary of War, and sent to the First Auditor for the report requested by the Secretary. To-day they have been returned to me upon the ground that yours is the proper office to furnish the information desired, and they are accordingly transmitted herewith to you.

Very respectfully, your obedient servant,

ROBT. J. ATKINSON,
Third Auditor.

F. BIGGER, Esq.,
Register of the Treasury.

TREASURY DEPARTMENT,
Third Auditor's Office, December 6, 1855.

SIR: The enclosed papers, received to-day from the Secretary of War for a report, are respectfully referred for the desired information to your office. They represent a case, docketed in the Court of Claims, of William H. Russell *vs.* The United States, for the recovery of salary and certain allowances alleged to be due him as collector of customs for the district of Monterey, California, in 1851, which have been disallowed on settlement of his accounts at the treasury; and for travelling allowances claimed to be due him as major of ordnance of Colonel Frémont's battalion of California volunteers in 1846 and 1847, which have also been disallowed by the Second Auditor and Second Comptroller, amounting altogether to the sum of \$1,866 10.

Upon the latter branch of the case a report has been made by the Second Auditor, and upon the first a report is requested from you.

I am, very respectfully, your obedient servant,

ROBT. J. ATKINSON,
Auditor.

T. L. SMITH, Esq.,
First Auditor.

WASHINGTON CITY,
Brown's Hotel, August 12, 1847.

SIR: I have just reached this city, in obedience to orders from Lieutenant Colonel J. C. Frémont, whom I left in Upper California on the 22d of March last, instructed by him to lay before the government of United States the actual condition of affairs in that distant land.

In presenting my pay accounts as an officer in the battalion or regiment that achieved the conquest of that country, I encountered the obstacle that the corps I had the honor of serving with had been raised without legal sanction, and its recognition here was a matter of doubt and uncertainty.

The subjoined is a true statement of the progress of our arms in California.

When the news of the declaration of war between the United States and Mexico reached California, we were without troops or munitions of war, and not in possession of the ordinary means of raising either; whereupon Commodore Stockton and Lieutenant Colonel Frémont, either in obedience to instructions received, or as an incident to their positions as United States officers, unable to communicate with their government, with a promptitude entitled, I think, to the highest commendation, set about raising a force adequate to the conquest of the country, and the corps to which I belong was the result of their labors.

By a commission of Commodore Stockton, Frémont was made military commandant of the Territory, and from him my commission (together with all others of the regiment or battalion) emanated.

It is now a matter of history that Frémont achieved the subjugation of California, (the most lovely spot under Heaven,) and prepared the minds of the inhabitants earnestly to desire immediate annexation with our government. It is also a matter of history that Frémont's command suffered more (having to provide themselves with every thing that is usually supplied by the quartermaster, commissary, and ordnance officer) than any other troops engaged in the present war against Mexico, and I venture to say the results achieved by them will compare with that gained by any other commander during this war.

Why, then, should *we* be permitted to languish for the want of subsistence, whilst all others are promptly well paid. I learn, also, that General Scott, in an order to General Kearney, now in California, directed him to settle and pay off the volunteers in California as all

others had been paid off; I presume under a general law embracing our case.

I entertain a confident hope that your honor will give us the recognition that we consider ourselves entitled to, or if doubt still clings to your mind to allow me a personal interview, when my explanations will be necessarily more explicit.

I am, with considerations of very high respect, your excellency's obedient servant,

WM. H. RUSSELL,
Major California regiment U. S. forces.

Hon. WM. L. MARCY,
Secretary of War.

[Endorsement.]

AUGUST 14.

I concur in the views entertained by the Paymaster General, and, under the circumstances of the case, and the facts stated, I am of the opinion that Major Russell should receive the pay of a major of *infantry** from the date of his commission to the time he left the battalion and California.

Respectfully submitted,

R. JONES, *Adjutant General.*

The SECRETARY OF WAR.

Major Van Ness will pay this claim according to the opinion of the Adjutant General.

N. TOWSON, *Paymaster General.*

AUGUST 19, 1847.

Major Russell claims to be still in service. The Adjutant General is requested to say whether he is so considered by the department.

N. TOWSON, *Paymaster General.*

AUGUST 19, 1847.

The records of the Adjutant General's office do not enable me to decide whether Major William H. Russell is or is not, at this time, in the service of the United States as a major of the California battalion raised on the emergency by Lieutenant Colonel Frémont, in the autumn of 1846. It appears that Major Russell left California in March, with despatches for the War Department, under orders from Lieutenant Colonel Frémont, which orders do not require him to return to California. They are addressed to him, not as a major of the battalion, but to "W. H. Russell, esq., secretary of State for California."

Having reviewed the opinion (and it is but an opinion) endorsed on

AUGUST 16, 1847.

* Learning from Major Russell that the battalion in which he served was mounted, I substitute *dragoons* for "infantry" in my endorsement of the 14th instant.

R. JONES, *Adjutant General.*

the 14th and 16th instants, I can see no sufficient ground to change the same. But as Major Russell's claim for pay up to this time as an officer in the California volunteer battalion in the service of the United States may rest upon grounds not entirely of a military character, the case is respectfully submitted to the Secretary of War for his consideration and decision.

R. JONES, *Adjutant General*.

AUGUST 20.

Respectfully returned to the Paymaster General. See the remarks, in pencil, endorsed on the envelope in the War Office.

R. JONES, *Adjutant General*.

TREASURY DEPARTMENT,
Second Auditor's Office, April 12, 1856.

I hereby certify that the foregoing letter, and the endorsements thereon, are true and exact copies of the original on file in this office.

P. CLAYTON, *Second Auditor*.

On what account.	Commencement and expiration.		Term of service charged.				Pay per month.	Amount.
	From—	To—	Months.		Days.			
Pay—								
For myself	January 23, 1847.	March 23, 1847.	Two				\$60 00	\$120 00
Assistant commissary of subsistence	do	do	do					
For commanding company								
For two private servants, (not soldiers)	January 23, 1847.	March 23, 1847.	Two				16 00	32 00
Forage—								
For four horses	do	do	do				32 00	64 00
Clothing—								
For two private servants, (not soldiers)	do	do	do				5 00	10 00
			No. of days.	No. of rations per day.	Total No. of rations.	Post or place where due.	Price of rations.	
Subsistence—							Cents.	
For myself, (— years' service)	do	do	59	4	236			
Double rations comd'g						California		
For two private servants, (not soldiers)	January 23, 1847.	March 23, 1847.	59	2	118			
					354		20	70 80
								296 80

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE, *April 12, 1856.*

I hereby certify that the foregoing account for \$296 80 is a true copy of the original on file in this office, which was paid by Paymaster Eugene Van Ness on the 16th of August, 1847.

P. CLAYTON, *Second Auditor.*

DR. *The United States to Major W. H. Russell*—Continued.

DESCRIPTION OF SERVANT.					Pay -----
Name.	Complexion.	Height.		Eyes and hair.	Subsistence -
		Feet.	Inches.		Forage -----
					Clothing -----
Joaquin -----	Copper -----	5	8	Black -----	Amount ---\$
William -----	Negro -----	5	7	Black -----	

I hereby certify that the foregoing account is accurate and just; that I have not received pay, nor drawn rations, forage, or clothing, in kind, or received money in lieu of any part thereof, for any part of the time therein charged; that I actually owned and kept in service the horses, and employed the private servants for which I charge, for the whole of the time charged; and that I did not, during the term so charged or any part thereof, keep or employ as a waiter or servant a soldier from the line of the army; that the annexed is an accurate description of my servant; that, for the whole period charged for my staff appointment, I actually and legally held the appointment, and did duty in the department; that I was the actual and only commanding officer at the double ration post charged for; and that no officer, within my knowledge, has a right to claim, or does claim, for said services, for any part of the period charged; that for the whole time brevet pay is claimed, I was on duty, and had a command according to my brevet rank, agreeably to law and regulations; that I was actually in the command of a company for the whole time additional pay is charged; that I have not been in the performance of any staff duty for which I claim, or have received, extra compensation during the time an additional ration is charged for; that I have been in the United States army as a commissioned officer for the number of years stated in the charge for extra rations; that I am not in arrears with the United States on any account whatsoever; and that the last payment I received was from Paymaster Reading, (California regiment,) and to include the 22d day of January, 1847.

I, at the same time, acknowledge that I have received of Paymaster Eugene Van Ness, this 16th day of August, 1847, the sum of two hundred and ninety-six dollars and eighty cents, being the amount and in full of said account.

W. H. RUSSELL,
Major California regiment, U. S. forces.

DR. *The United States to Maj. Wm. H. Russell, of the California battalion, under the command of Lt. Col. J. C. Frémont.*

30

On what account.	Commencement and expiration.		Term of service charged.		Pay per month.	Amount.	Remarks.
	From—	To—	Months.	Days.			
Pay for myself for travelling allowance from Los Angeles, Cal., to Fulton, Mo., my place of residence, 2,550 miles, at 20 miles per day, making 127½ days, or 4 months 7½ days -----					\$60 00	\$255 00	Last paid by P. M. Van Ness at Washington city in 1848.
Pay for two private servants, (not soldiers) -----					Each 8 00	67 98	
Forage for four horses -----					Each 8 00	136 00	
Clothing for two private servants, (not soldiers) -----					Each 2 50	21 24	
			No. of days.	No. of rations per day.	Total No. of rations.	Post or place where due.	Price of rations.
Subsistence for myself -----			4		510		Cents. 20
Subsistence for two private servants, (not soldiers) -----			2		255		20
							633 22

Distance from Cuidad de Los Angeles to Santa Fé ----- 1,300 mls.
 Santa Fé to Fort Leavenworth ----- 1,000
 From thence to Fulton, Mo ----- 250

2,550

I certify that the distances charged for, from Cuidad de Los Angeles to Fort Leavenworth, are, as far as I could ascertain, the shortest by which I could possibly have travelled. The routes which I actually did travel exceeded the above distance by several hundred miles.

WM. H. RUSSELL,
Major California regiment U. S. forces.

WM. H. RUSSELL.

DR. *The United States to Major W. H. Russell*—Continued.

DESCRIPTION OF SERVANT.

Name.	Complexion.	Height.		Eyes.	Hair.
		Feet.	Inches.		
Joakin, (an Indian)-----	Olive -----	5	8	Black -----	Black -----
Baptiste-----do-----	Olive -----	5	6	Black -----	Black -----

Be it remembered, that on this eighteenth day of March, anno Domini one thousand eight hundred and fifty-one, personally appeared before me, the subscriber, William H. Russell, and made oath on the Holy Evangelists of Almighty God, in due form, that the foregoing account, amounting to six hundred and thirty-three dollars and thirty-three cents, is accurate and just; that he has not received pay, drawn rations or forage, or clothing in kind, or received money in lieu thereof, for or during any part of the time therein charged; that he actually owned and kept in service the horses, and employed the servants charged for the whole of the time charged; and that he did not, during the term so charged, or any part thereof, keep or employ as waiters or servants soldiers from the line of the army; that his place of residence was Fulton, Missouri, and that he is not indebted or accountable to the United States on account of bounties or premiums, pay, contingencies, arms or accoutrements, ammunition, stores, clothing, camp equipage, medicine, or medical instruments, or on any other account whatsoever; and that he has no unsettled accounts with the United States other than the above.

WM. H. RUSSELL,
Late Major of California Battalion.

Sworn to the day and year above written, before

B. K. MORSELL, J. P.

On what account.	Commencement and expiration.		Term of service charged.				Pay per month.	Amount.
	From—	To—	Months.		Days.			
Pay—								
For myself -----	March 24, 1847.	Aug. 24, 1847.	Five -----				\$60 00	\$300 00
Assistant commissary of subsistence -----								
For commanding company -----								
For two private servants, (not soldiers) -----	March 24, 1847.	Aug. 24, 1847.	Five -----				16 00	80 00
Forage—								
For four horses -----	do	do	do				32 00	160 00
Clothing—								
For two private servants, (not soldiers) -----	do	do	do				5 00	25 00
			No. of days.	No. of rations per day.	Total No. of rations.	Post or place where due.	Price of rations.	
Subsistence—							<i>Cents.</i>	
For myself -----	do	do	153	4	612		20	122 40
For two private servants, (not soldiers) -----	do	do	153	2	306		20	61 20
								748 60

REMARKS.—This amount includes pay, &c, from the date of last payment, by Paymaster Van Ness, up to the period of his arrival in Washington, under the orders of Lieut. Col. J. C. Frémont, allowing five weeks for notice of the disbandment of the battalion, which took place on the 19th April, 1847, to arrive in Washington, when his service ceased.

An act in addition to the act entitled "An act to raise an additional military force, and for other purposes," approved 29th January, 1813 :

"SECT. 15. *And be it further enacted*, That whenever any officer or soldier shall be discharged from the service, except by way of punishment for an offence, he shall be allowed his pay and rations, or an equivalent in money, for such term of time as shall be sufficient for him to travel from the place of his discharge to the place of his residence, computing at the rate of twenty miles to a day."

See claim of Lieut. Wm. B. Brown, paid, No. 7,472, dated May 9, 1849.

Refer to decisions in the case of Dr. Alexander Perry, of Stephenson's Regiment, (*Sept.* 1850,) for travelling allowance from San Francisco, California, to New York. The principles decided in that case apply to those of Russell and Loker.

See joint resolution, No. 8, approved 16th June, 1848.

Act approved 19th March, 1836, chap. xiii, sect. 3.

DR.

The United States to William H. Russell, major California battalion, under Colonel Frémont.

On what account.	Commencement and expiration.		Term of service charged.		Pay per month.	Amount.
	From—	To—	Months.	Days.		
Pay—						
For myself	March 23, 1847	July, 1847	-----	-----	\$60 00	-----
Assistant commissary of subsistence			-----	-----		-----
For commanding company			-----	-----		-----
For two private servants, (not soldiers)	March 23, 1847	-----	-----	-----	16 00	-----
Forage—						
For three horses	do	-----	-----	-----	24 00	-----
Clothing—						
For two private servants, (not soldiers)	do	-----	-----	-----	5 00	-----
			No. of days.	No. of rations per day.	Total No. of rations.	Post or place where due.
						Price of rations.
Subsistence—						Cents.
For myself, (— years' service)	do	-----		4	-----	-----
Double rations comd'g					-----	-----
For two private servants, (not soldiers)	March 23, 1847	-----		2	-----	-----

WM. H. RUSSELL.

DR. *The United States to Major W. H. Russell—Continued.*

DESCRIPTION OF SERVANTS.

Name.	Complexion.	Height.		Eyes.	Hair.
		Feet.	Inches		
José Joakin.....	Copper color.....			-----	-----
Salvador Baptisto.....	do.....	5	-----	-----	-----

I certify that the foregoing account is accurate and just; that I have not received pay, nor drawn rations, forage, or clothing in kind, or received money in lieu of any part thereof, for any part of the time herein charged; that I actually owned and kept in service the horses, and employed the private servants for the whole of the time charged; that I did not, during the term so charged, or any part thereof, keep or employ as waiter or servant a soldier from the line of the army; that the annexed is a description of my servants; that for the whole period charged for my staff appointment, I actually and legally held the appointment; that I actually performed the duty of assistant commissary of subsistence during the whole time for which pay as such is charged; that I commanded a company during the whole time for which extra pay for such command is charged; that (*if a subaltern, charging four rations*) I have held no staff appointment for which I claim or have received extra pay during the time of such charge; that I was the actual and only commanding officer at the double ration post charged for, which was garrisoned by at least one company of troops; that I was on duty, and have had a command according to my brevet rank, agreeably to law and regulation, during the whole time brevet pay is charged; that no officer, within my knowledge, has a right to claim, or does claim, for said services, for any part of the period charged; that I am not in arrears with the United States on any account whatsoever; and that I was last paid by Paymaster , and to include the last day of , 18 .

I at the same time acknowledge that I have received of Paymaster , this day of , 18 , the sum of 100 dollars, being the amount in full of said account.

WM. H. RUSSELL,

*Late Major California Battalion.**(Duplicate.)*

Sworn and subscribed to before me, this 18th day of December, A. D. 1852.

SOLOMON A. SHARP,

Notary Public, County of San Francisco.

DR.

The United States to William H. Russell, major California battalion, under Colonel Frémont.

On what account.	Commencement and expiration.		Term of service charged.		Pay per month.	Amount.
	From—	To—	Months.	Days.		
Pay—						
For myself -----	March 23, 1847	July, 1847	-----	-----	\$60 00	-----
Assistant commissary of subsistence-----						
For commanding company-----						
For two private servants, (not soldiers)	March 23, 1847				16 00	
Forage—						
For three horses-----	do				24 00	
Clothing—						
For private servant, (not soldier) -----	do				5 00	
			No. of days.	No. of rations per day.	Total No. of rations.	Post or place where due.
						Price of rations.
						Cents.
Subsistence—						
For myself, (— years' service) -----	do			4		
Double rations comd'g -----						
For two private servants, (not soldiers)				2		

WM. H. RUSSELL.

DR. *The United States to Major W. H. Russell—Continued.*

DESCRIPTION OF SERVANTS.

Name.	Complexion.	Height.		Eyes.	Hair.
		Feet.	Inches.		
José Joakin	Copper color	5	7	Dark	Dark
Salvador Baptistodo.....	5	7	do.....	do.....

I certify that the foregoing account is accurate and just; that I have not received pay, nor drawn rations, forage, or clothing in kind, or received money in lieu of any part thereof, for any part of the time herein charged; that I actually owned and kept in service the horses, and employed the private servants for the whole of the time charged; that I did not, during the term so charged, or any part thereof, keep or employ as waiter or servant a soldier from the line of the army; that the annexed is a description of my servants; that for the whole period charged for my staff appointment, I actually and legally held the appointment; that I actually performed the duty of assistant commissary of subsistence during the whole time for which pay as such is charged; that I commanded a company during the whole time for which extra pay for such command is charged; that (*if a subaltern, charging four rations*) I have held no staff appointment for which I claim or have received extra pay during the time of such charge; that I was the actual and only commanding officer at the double ration post charged for, which was garrisoned by at least one company of troops; that I was on duty, and have had a command according to my brevet rank, agreeably to law and regulation, during the whole time brevet pay is charged; that no officer, within my knowledge, has a right to claim, or does claim, for said services, for any part of the period charged; that I am not in arrears with the United States on any account whatsoever; and that I was last paid by Paymaster , and to include the last day of , 18 .

I at the same time acknowledge that I have received of Paymaster , this day of , 18 , the sum of
 100 dollars, being the amount in full of said account.

WM. H. RUSSELL,
Late Major California Battalion.

(Duplicate.)

Sworn and subscribed to before me, this 15th day of December,
A. D. 1852.

SOLOMON A. SHARP,
Notary Public, County of San Francisco.

A.

*Statement of differences to accompany the accounts of William H. Russell,
late collector, Monterey, California.*

[Neither the last account of the collector, ending May 28, 1853, nor the within statement, exhibits any balance.]

The following payments, however, charged in the collector's accounts are disallowed, as unauthorized, unnecessary, and exorbitant expenditures, viz:

On account of revenue boats—

Amount paid W. H. Cranskee for a "revenue barge," disallowed for want of authority and as unnecessary	\$140 00
---	----------

Amounts paid boatmen, viz:

In 3d quarter, 1851, payments to John Fox and Rezin Graham, as boatmen and servants, disallowed, the same being deemed an entirely unnecessary expenditure, the payments for like purposes by the late Collector Barney having been but \$8 for a longer period, and when nearly ten times the amount of duties, &c., were collected. Moreover, the signatures to the receipts on both vouchers are apparently in the same handwriting, and one of the men the slave of the collector.

To John Fox	\$300 00	
To Rezin Graham	300 00	
		600 00

In 4th qr. 1851, payment to Christian Benson, as boatman, disallowed as an unnecessary expense.. 50 00

In 4th quarter, 1851, payment to John Fox and Rezin Graham, as boatmen, disallowed as unnecessary, and for want of receipts	258 00	
		308 00

In 1st qr. 1852, the following payments disallowed as unauthorized, viz:

To Francis Davidson	159 00	
To Alonzo Titus	159 00	
		318 00

In 2d quarter 1852, payment to Rezin Graham

In 3d quarter 1852, payment to Adolph Baronowski	184 00	
Do.....Charles Barry.....	230 00	
		414 00

In 4th quarter 1852, payment to James Browning.. 184 00

Do..... Philemon Browning	184 00	
		368 00

Amounts paid for repairing revenue boat, disallowed as unauthorized, viz:

In 1st qr. 1852, to Joseph Boston & Co	8 32	
In 2d qr. 1852, to Jeremiah McMahon	27 92	
In 1st qr. 1853, to Dennis McCarthy	16 00	
		52 24

\$2,336 24

Amount charged for travelling expenses of collector, disallowed as an improper charge on the revenue

150 00

Amount paid in 1st quarter 1852 to Rezin Graham, as servant and porter, disallowed as unauthorized and unnecessary

180 00

A—Continued.

Part of bill of Curtis & Little, dated June 26 to September 15, 1851, disallowed, viz:		
3 boxes candles, at \$30, \$30, and \$20 -----	\$80 00	
Freight paid steamer Ohio on long boat ("revenue barge") from San Francisco -----	40 00	
Error in entering amount of said bill in account current.----	4 00	
		\$124 00
		2,790 24
Deduct amount short charged by collector for salary, viz:		
1st quarter 1852 -----	\$10 20	
1st April to 28th May, 1853 -----	1 26	
	11 46	
Less overcharged from 23d June to 30th September, 1851 -----	72	
	10 74	
Deduct amount short charged in payment to S. Barney -----	52	
	11 26	
Deduct amount improperly credited by draft dated June 17, 1853, "at thirty days after sight, on the honorable the Secretary of the Treasury, in favor of Messrs. Page, Bacon, & Co., or order" -----	2,546 90	
Deduct amount paid T. A. Russell, inspector at Santa Cruz, California, per receipt dated April 15, 1854, not charged by him -----	231 99	
		2,790 24

B.

Statement showing the receipts and expenditures of Wm. H. Russell, late collector at Monterey, California, commencing on the 23d of June, 1851, and ending on the 28th of May, 1853.

RECEIPTS.

Period.	Amount received from predecessor.	Drafts on collectors.	Duties on merchandise and tonnage.	Official fees.	Total.
June 23 to September 30, 1851.....	\$2,847 06	\$3,000 00	\$667 50		\$6,514 56
Fourth quarter 1851.....					
First quarter 1852.....					
Second quarter 1852.....		3,500 00		\$148 95	3,648 95
Third and fourth quarters 1852, and first quarter 1853.....		5,010 00			7,262 80
		2,200 00	10 80	42 00	
April 1 to May 28, 1853.....					
Balance account.....					
	2,847 06	13,710 00	678 30	190 95	17,426 31

B—Continued.

EXPENDITURES.

Period.	Paym'ts to deputy collector and inspector.	Contingent expenses.	Salary.	Commissions.	Official fees.	Revenue boats.	Light money refunded.	Total.
June 23 to September 30, 1851.....	\$1,738 00	\$120 00	\$815 94	\$20 02	-----	-----	-----	\$2,693 96
Fourth quarter 1851.....	304 38	5 00	750 00	-----	-----	-----	\$122 00	1,181 38
First quarter 1852.....	774 00	-----	750 00	-----	-----	\$7 00	-----	1,531 00
Second quarter 1852.....	1,458 00	48 00	750 00	-----	\$148 95	-----	-----	2,404 95
Third and fourth quarters 1852, and first quarter 1853.....	1,152 00	-----	2,250 00	-----	42 00	-----	*197 52	3,641 52
April 1 to May 28, 1853.....	-----	-----	478 02	-----	-----	-----	-----	478 02
Balance account.....	3,422 00 231 99	1,841 49	-----	-----	-----	-----	-----	5,495 48
	9,080 37	2,014 49	5,793 96	20 02	190 95	7 00	319 52	17,426 31

* Payment to said Barney, formerly acting collector.

Total expenditures, from June 23, 1851, to May 28, 1853..... \$17,426 31

Since the adjustment of Mr. Russell's accounts, the following payments have been made to his two sons, as inspectors, viz:

To T. A. Russell.....	1,442 01
To F. W. Russell.....	2,028 00
	<u>20,996 32</u>

D.

TREASURY DEPARTMENT, *May 16, 1854.*

SIR: I have to acknowledge the receipt of your report of the 8th instant, setting forth your reasons for the disallowance of certain items in the accounts of W. H. Russell, esq., late collector of the customs at Monterey, California, for a revenue barge, payments to boatmen and servants, travelling expenses, candles for the use of his office, and of freights, repairs, and other small charges relating to the boat, and, in reply, to state that, having fully considered the same, I concur with you in the propriety of said disallowances.

You will please communicate this decision to Mr. Russell.

Very respectfully, your obedient servant,

JAMES GUTHRIE,
Secretary of the Treasury.

HUGH J. ANDERSON, Esq.,
Commissioner of Customs

STATE OF CALIFORNIA, }
County of San Francisco. }

Wm. H. Russell, being duly sworn, deposes and says, that he was duly appointed and enrolled as major of ordnance in the California battalion, commanded by Col. John C. Frémont, in California, about the month of October, 1846; that he continued to serve in that capacity until March 23, 1847, up to which time he received pay as major as aforesaid. He further states that, about that time, he was ordered on duty to the city of Washington by the said Col. John C. Frémont, then being his commanding officer; that he accordingly proceeded there, and arrived, by the way of New Mexico and Santa Fé, in July, 1847; that, during such time, he was in the service of the United States; that he kept in his actual service and employ three horses; that he employed two servants, not soldiers, to wit, Hosea Joakin and Salvador Batpisto; that he is entitled to and claims for himself the pay of his rank, also pay and rations and clothing for his servants, and forage for his horses; that he went out of service at Washington, on account of the discharge of the battalion aforesaid.

That he actually employed and kept the servants and horses charged for herein, the said servants not being soldiers; that I have not received any pay, commutation, rations, forage or other compensation for the said service, or for my said horses or servants as aforesaid; that he is not indebted to the United States on any account whatever; that he resided at Fulton, Missouri, but received his commission in Los Angeles, California, and returned to California from Washington. He also claims transportation during the said journey and return.

WM. H. RUSSELL,
Late Major California Battalion.

Sworn and subscribed to before me, this 16th day of December, A. D. 1852.

SOLOMON A. SHARP,
Notary Public.

STATE OF CALIFORNIA, }
 County of San Francisco, } *scd.*

On this 15th day of December, A. D. 1852, personally appeared before me, a notary public in and for said county, William H. Russell, well known to me to be the identical William H. Russell described in the foregoing application for pay for the services therein specified, and the said Russell being duly sworn, deposed to the truth of the matter and statements in said application.

[SEAL.] Witness my hand and official seal, the day and date afore-
 said.

SOLOMON A. SHARP,
Notary Public, County of San Francisco.

TREASURY DEPARTMENT,
Office of Commissioner of Customs, December 10, 1855.

SIR: I enclose herewith a copy of my report to the Secretary of the Treasury, dated May 8, 1854, on the accounts of W. H. Russell, late collector of Monterey, California; and also the reports of the Second and Third Auditors on the claims of Mr. Russell, which have been referred to me by the Register of the Treasury.

Very respectfully, your obedient servant,

H. J. ANDERSON,
Commissioner of Customs.

Hon. JEFFERSON DAVIS,
Secretary of War.

TREASURY DEPARTMENT,
Second Auditor's Office, December 4, 1855.

SIR: In reply to the inquiries of the Solicitor of the Court of Claims, submitted by you on the 27th ult., for a report as to the reasons for the rejection of William H. Russell's claim for pay from the 24th March to the 24th August, 1847, and travelling allowance, as major of ordnance in the California battalion of mounted volunteers, I have the honor to enclose herewith copies of four letters addressed to Richard Burgess, esq., his attorney, which show the grounds upon which payment was refused.

The letter marked No. 1 relates to his claim for travelling allowance; that marked "2" informs Mr. Burgess that the Comptroller concurred in my decision rejecting the claim for travelling pay, &c., and No. 3 relates to his claim for pay from 24th March to 24th August, 1847, and informs him of the concurrence of the Secretary of War in my decision rejecting it; and that marked No. 4 is the one rejecting the claim, with which the Secretary concurred, as above stated. The petition of Major Russell, endorsed by the solicitor, is herewith respectfully returned.

I have the honor to be, very respectfully, your obedient servant,
 P. CLAYTON, *Second Auditor.*

Hon. JEFFERSON DAVIS,
Secretary of War.

No. 1.

TREASURY DEPARTMENT,
Second Auditor's Office, April 15, 1851.

SIR: The claim of William H. Russell, late major of the California battalion of volunteers, under the command of Lieutenant Colonel J. C. Frémont, for travelling allowances from Los Angeles, California, to Fulton, Missouri, amounting to \$633 22, presented by you on his behalf, has been examined and disallowed for the following reasons:

I have not been able to find any evidence showing that Major William H. Russell was regularly discharged from the battalion of volunteers in which he served. The time and place of his discharge are unknown to this office. I find he left California in the month of March, 1847, with despatches for the War Department, under orders from Lieutenant Colonel J. C. Frémont, addressed to him, not as major of the battalion, but as "secretary of state for California." Whether he was still considered as attached to the battalion or not, I have had no means of judging. By the 15th section of the act 29th January, 1813, an officer or soldier, when honorably discharged from the service, shall be allowed his pay and rations, or an equivalent in money, for such term of time as shall be sufficient for him to travel from the *place of discharge* to the place of his residence, computing at the rate of twenty miles to a day. The law requires an officer, as well as a soldier, to be honorably discharged from the service before he can avail himself of the benefits of the act.

Major Russell does not show, nor do the records show, that he was discharged; and in the absence of such proof, and taking into consideration that he was acting as major of the California battalion, not by any authority of the United States, but under the orders of Lieutenant Colonel J. C. Frémont, who gave him his commission as major, and from whom he accepted said commission, I am inclined to the opinion that Major Russell cannot claim the benefit of the act of January, 1813. Again: the California battalion of volunteers were not only raised, but discharged in California; Major Russell was in California at the time the battalion was raised; how long before that period he was in that section of California, I have no means of knowing. He accepts his commission as major in California, and in his account, rendered to this office for adjudication, he claims travelling allowances from Los Angeles, California, to Fulton, Missouri, his place of residence. The inference, therefore, is, that Los Angeles was his place of discharge, although he does not so state; that California was his residence at the time he accepted his commission from Lieutenant Colonel J. C. Frémont, as major of the California battalion, and his home at Fulton, Missouri, appears to be clear from the facts of the case.

Misapprehension arises in supposing that a man's home and residence are synonymous; it is compatible with reason to say that a person's home and residence may be at different sections of the country, at the same period of time: Major Russell's home may be, it is true, at Fulton, Missouri, but I conceive his residence was in California; for, from the order to him by Lieutenant Colonel J. C. Frémont, he is

designated as "secretary of state of California." I do not believe that the act of January, 1813, ever contemplated travelling allowances to officers beyond their place of residence, nor can I see by what mode of reasoning the government is under obligations to transport officers to their homes, when their residences, where they accepted their commissions, were at different places.

The practice of the accounting officers has been to allow travelling pay only from the place of discharge to the place of residence, in the words of the law. Major Russell claiming, as a discharged officer in California, travelling allowance from Los Angeles, California, to Fulton, Missouri, I am of opinion, is not entitled thereto, for the reasons I have fully stated in this letter.

P. CLAYTON,
Second Auditor.

RICHARD BURGESS, Esq.,
City of Washington.

No. 2.

TREASURY DEPARTMENT,
Second Auditor's Office, May 26, 1851.

SIR: I beg to leave inform you that the Second Comptroller of the Treasury has this day concurred in my decision rejecting the claim of Major William H. Russell, late of the California battalion of mounted volunteers, for travelling allowance from Los Angeles, California, to Fulton, Missouri.

P. CLAYTON,
Second Auditor.

RICHARD BURGESS, Esq.
City of Washington, D. C.

No. 3.

TREASURY DEPARTMENT,
Second Auditor's Office, December 31, 1852.

SIR: The Secretary of War has returned to this office all the papers connected with the claim of William H. Russell, late an officer in the California battalion, with the following remarks: "It appears from this report" [a report made by the Second Auditor to the Secretary of War] "that W. H. Russell has received payment for the entire period during which he is borne on the muster-roll of the California battalion. I concur with the Auditor that nothing more can be allowed under the act of August 31, 1852." Signed "C. M. Conrad, Secretary of War; War Department, December 29, 1852."

P. CLAYTON,
Second Auditor.

RICHARD BURGESS, Esq., *Present.*

No. 4.

TREASURY DEPARTMENT,
Second Auditor's Office, December 9, 1852.

SIR: The Secretary of War has referred your letter, calling attention to the claim of William H. Russell for pay and emoluments from 24th March to 24th August, 1847, filed 5th September, 1851, to this office for an answer. The Secretary of War, at that time, declined to act on the claim, because "the subject of a provision for the settlement of the claims of, and on account of, the California battalion," was before Congress, "and until the general subject shall have been disposed of by Congress" the Secretary refused to entertain individual cases.

The claim is now renewed, because the 6th section of the act making appropriations for the support of the army for the year ending 30th June, 1853, approved 31st August, 1852, provides, under certain circumstances, payment to the mounted riflemen under the command of Captain John C. Frémont, in California, during the year 1846.

Under the section above mentioned, the muster-rolls on file in the War Department (now on file in this office) must determine the admission or rejection of all claims for pay for services rendered in the California battalion, under Captain J. C. Frémont.

On an examination of the vouchers, the only service I find of Capt. Wm. H. Russell, as an ordnance officer, is from October 8, 1846, to January 21, 1847. The claim now presented is for services from the 24th March to 24th August, 1847. Inasmuch; therefore, as the period of time embraced in the claim now presented for consideration does not accord with any muster or pay rolls on file in the War Department, (now on file in this office,) nor with any vouchers, I have no other alternative but to reject the claim. I have no discretion in the matter, whatever might be the merits of the claims presented for adjustment, the law being binding on me as an accounting officer.

P. CLAYTON, *Second Auditor.*

RICHARD BURGESS, Esq.,
Present.

TREASURY DEPARTMENT, *January 15, 1855.*

SIR: I have received from you the memorial of W. H. Russell, late collector of the customs for the district of Monterey, in respect to the subject-matter of which you desire information for the use of the Committee of Claims; and having referred the same for examination to the Commissioner of Customs, I beg leave, herewith, to submit his report, together with the statements to which it refers.

It appears from this report that Mr. Russell was in office from 23d June, 1851, to 28th May, 1853—not quite two years; that the whole amount of revenue and fees collected by him during this period amounted to but \$869 25, whilst the expenses, including his own compensation and that of his two sons, T. A. Russell and F. W. Russell, amounted to \$20,996 32.

The petitioner's own compensation was fixed at \$3,000, and he has received the same for the full time for which the law authorizes it, viz: from the time he took the oath of office, and entered upon the duties thereof. He now claims, in addition, from the time he received his commission in Washington and executed his bond, namely, from March 13, 1851, to June 23, 1851. That Mr. Russell has no legal claim to this allowance is manifest; and what colorable or equitable ground there is to sustain it the department is at a loss to perceive.

The office was a mere sinecure. Besides a liberal salary to himself, he placed in office his two sons as inspectors, at \$6 per day, and without nominating them to the department, for both of whom he has been allowed credit. He has thus derived unusual advantages from the office, with little, if any, advantage to the government, and has no claim, by this further allowance, to be made an exception to the law as applied to others.

Whilst holding this office, in which, with the exception of the first quarter, there were no entries of merchandise and no duties collected, Mr. Russell charged the government with the cost of a boat, for which there could be no possible use, and for boat hands, who were employed about his private business. He also charged a large quantity of sperm candles. These charges, as well as his present claim, I consider attempts to obtain money from the treasury to which he is not entitled.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

Hon. CHARLES READY,
*Of the Committee of Claims,
House of Representatives.*

TREASURY DEPARTMENT,
Office of Commissioner of Customs, January 18, 1855.

SIR: In reply to your letter of the 16th instant, I have the honor to state that, in addition to the statement of Mr. William H. Russell, in reference to the items disallowed in his accounts, the following letters, copies of which are hereunto annexed, marked from A to G, inclusive, were addressed to the Secretary of the Treasury, and by him referred to this office, viz:

From Hon. W. M. Gwin, Hon. M. S. Latham, Hon. J. B. Weller, Hon. J. W. McDougal, Jno. A. Monroe, esq., J. Y. Bryant, esq., and T. J. Hudey, esq.

I beg leave also to state that I find among the papers a letter from Mr. Russel, under date of June 17, 1853, upon which is written the following endorsement, in the handwriting of the clerk, (since deceased,) who examined his accounts:

“TREASURY DEPARTMENT,
“*Office of Commissioner of Customs, August 11, 1853.*

“Mr. Collector Russell was duly informed of the disallowances and suspensions in his accounts at every quarterly adjustment, of which

he took but little or no notice, but continued to make disbursements for the same items disallowed, and insisted in keeping persons in office, without authority from the department, after the payments he claimed to have made to them had been disallowed."

All the facts in possession of this office are believed to be contained in my report to the Secretary of the 13th instant, and the letters, copies of which are now transmitted, are supposed to embrace all the additional evidence on file in the case. There are numerous letters from Mr. Russell on file among the papers, copies of which will be furnished to the committee, if deemed necessary in the further examination of the case.

All the papers endorsed in your letter are herewith returned.

Very respectfully, your obedient servant,

H. J. ANDERSON,
Commissioner of Customs.

Hon. H. P. EDGERTON,
Chairman Committee of Claims, House of Representatives.

JANUARY 13, 1855.

SIR: In reply to your communication of the 8th instant, transmitting the memorial of Mr. William H. Russell, late collector of the customs, Monterey, California, and requesting a report in reference to the settlement of his accounts in this office, I respectfully submit the following report:

Mr. Russell entered upon the discharge of the duties of his office on the 23d of June, 1851, and retired on the 28th of May, 1853, and his accounts were finally adjusted on the 20th April, 1854. Upon the adjustment of his accounts, the sum of \$2,790 24 was disallowed, the sums and items so disallowed being particularly enumerated in the schedule hereunto annexed, marked A. These disallowances commenced with the first accounts rendered by Mr. Russell, and were continued through his whole term; upon the settlement of his first and every subsequent account, he was advised of the action of the accounting officers by letters addressed to him at Monterey.

The expense incurred for the purchase of a revenue boat was without authority from the department, and regarded as unnecessary. His predecessor neither incurred such expense for the purchase of boat nor made any charge for the services of boatmen, though the business of the office was much larger than at any period during Mr. Russell's time.

The payments alleged to have been made to John Fox and Graham, as boatmen, servants, and messengers, were disallowed for the same reason, there being no authority for their employment, and apparently no necessity for their services; these charges are continued through Mr. Russell's entire term of office, and, even if they were not liable to the objection stated, should have been discontinued at the reception of his letter from this office, or an application made to the Secretary of the Treasury for his authority to continue them. In his letter of explanation, dated May 15, 1852, he says: "The boatmen

and servants in question I brought with me from home; one a trusty family slave that I wished to be free, the other an Irishman highly recommended to me." If, as would appear probable from this statement, they were his personal or family servants, their services should not be charged to the government. The payment to Christian Benson, as boatman, was disallowed, for the reasons above stated, as were all the charges for similar services subsequently made. The charges for travelling expenses were disallowed, as unauthorized by law or by the authority of the department; the same course being pursued in all cases, except where, for special reasons, they are authorized by the Secretary.

In the second quater of 1851, Collector Russell charges for three boxes of candles, amounting to \$50. This sum was disallowed, on the ground that any charge for lights was unnecessary for public use, and for the further reason that, if any expenditure for this purpose was made, the amount charged was wholly disproportionate to any necessity that could have existed in that office.

I have prepared a statement of the receipts and expenditures at the office at Monterey, while under Mr. Russell's charge, which is hereto annexed, marked B. By a reference to this statement, it will appear that, in his first quarter, the sum of \$667 50 was collected for duties on merchandise, and that subsequent to that time, with the exception of \$10 80 collected in the first quarter of 1853, there was no collection either of duties on merchandise, tonage duties, or marine hospital money, during his entire term. From these returns, and from the fact that the amount received as fees was also exceedingly small, it is apparent the business of the office was entirely insufficient to justify the very large expenditure incurred during his term of office. These expenditures, for a period of less than two years, amounted to the sum of \$17,426 31, to which should be added the sum since paid to his sons, N. H. Russell and F. B. Russel, for services as inspectors, and for whose appointment the sanction of the department had never been obtained, amounting to \$3,420 01; making an aggregate of expense during those two years of \$20,996 32. This enormous expenditure in an office where there was obviously so little to do, might well have called for greater strictness in the settlement of his accounts, and is believed to be a sufficient answer to any claims for further allowance.

His compensation was made up from the date of his official oath, taken in the district, at the rate of \$3,000 per annum, there being no provision in the law for the allowance of compensation prior to that date. A copy of the statement of differences furnished to Mr. Russell on the settlement of his accounts, marked C, your letter of the 16th May, approving the decision of this office, marked D, and the papers transmitted with your letter, are herewith returned.

I am, very respectfully, &c.,

H. J. ANDERSON,
Commissioner of Customs.

H^c JAMES GUTHRIE,
Secretary of the Treasury.

TREASURY DEPARTMENT,
Office of Commissioner of Customs, January 13, 1855.

SIR: In reply to your communication of the 8th instant, transmitting the memorial of Mr. Wm. H. Russell, late collector of the customs at Monterey, California, and requesting a report in reference to the settlement of his accounts in this office, I respectfully submit the following report:

Mr. Russell entered upon the discharge of the duties of his office on the 23d of June, 1851, and retired on the 28th of May, 1853, and his accounts were finally adjusted on the 20th April, 1854.

Upon the adjustment of his accounts, the sum of \$2,790 24 was disallowed; the several items so disallowed being particularly enumerated in the schedule hereunto annexed, marked A. These disallowances commenced with the first account rendered by Mr. Russell, and were continued through his whole term; upon the settlement of his first and every subsequent account, he was advised of the action of the accounting officers by letters addressed to him at Monterey.

The expense incurred for the purchase of a revenue boat was without authority from the department, and regarded as unnecessary. His predecessor neither incurred such expense for the purchase of a boat nor made any charge for the services of boatmen, though the business of the office was much larger than at any period during Mr. Russell's term.

The payments alleged to have been made to John Fox and Rezin Graham, as boatmen, servants, and messengers, were disallowed for the same reasons, there being no authority for their employment, and apparently no necessity for their services. These charges are continued through Mr. Russell's entire term of office, and, even if they were not liable to the objections stated, should have been discontinued on the reception of his letters from this office, or an application made to the Secretary of the Treasury for his authority to continue them. In his letter of explanation, dated May 15, 1852, he says: "The boatmen and servants in question I brought with me from home; one a trusty family slave that I wished to be free, the other an Irishman highly recommended to me."

If, as would appear probable from this statement, they were his personal or family servants, their services should not be charged to the government.

The payment to Christian Benson, as boatman, was disallowed for the reasons above stated, as were all the charges for similar services subsequently made.

The charges for travelling expenses were disallowed, as unauthorized by law or the authority of the department; the same course being pursued in all cases, except where, for special reasons, they are authorized by the Secretary. In the second quarter of 1851, Collector Russell charges for three boxes of candles, amounting to \$80.

This sum was disallowed, on the ground that so large a charge for lights was unnecessary for public use, and the further reason that, if any expenditure for this purpose was needed, the amount charged was

wholly disproportioned to any necessity that could have existed in that office.

I have prepared a statement of the receipts and expenditures at the office at Monterey while under Mr. Russell's charge, which is hereto annexed, marked B.

By a reference to this statement, it will appear that, in his first quarter, the sum of \$667 50 was collected for duties on merchandise, and that subsequent to that time, with the exception of \$10 80 collected in the first quarter of 1853, there were no collections either of duties on merchandise, tonnage duty, or marine hospital money, during his entire term. From these returns, and from the fact that the amount received as fees was also exceedingly small, it is apparent that the business of the office was entirely insufficient to justify the very large expenditures incurred during his term of office. These expenditures for a period of less than two years amounted to the sum of \$17,426 31, to which should be added the sums since paid to his sons, T. A. Russell and F. W. Russell, for services as inspectors, and for whose appointment the sanction of the department had never been obtained, amounting to \$3,470 01; making an aggregate of expense during these two years of \$20,996 32. This enormous expenditure in an office where there was obviously so little to do, might well have called for greater strictness in the settlement of his accounts, and is believed to be a sufficient answer to any claims for further allowance.

His compensation was made up from the date of his official oath, taken in the district, at the rate of \$3,000 per annum, there being no provision in the law for the allowance of compensation prior to that date.

A copy of the statement of differences furnished to Mr. Russell on the settlement of his accounts, marked A, your letter of the 16th of May, approving the decision of this office, marked D, and the papers transmitted with your letter, are herewith returned.

Very respectfully your obedient servant,

H. J. ANDERSON,
Commissioner of Customs.

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

WASHINGTON CITY, *January 8, 1855.*

GENTLEMEN: I have taken occasion, for the purpose of informing the "Committee of Claims, House of Representatives," as to the prominent points in regard to my claim, now before the committee, to state, briefly, the facts upon which I confidently rely for a favorable report, viz:

I was appointed "collector of the customs" for the port and district of Monterey, California, in March, 1851, as may be seen from the date of my commission; at once executed my official bond, and thereupon entered upon the preliminary duties of my office, while yet in Washington, at the same time receiving an advance of \$3,000, with such instructions in the performance of my official duties as were deemed necessary. During this period, I made selection of my

subordinates, with the sanction of the Treasury Department, one of whom was a son of Philip R. Fendall, esq., late district attorney, District of Columbia, who accompanied me to California. Previous to leaving this city, I applied to the Comptroller of the Treasury for an order to have the oath of office administered to me; but, upon referring to an ancient law on the subject, he construed it as requiring that act to be done within the "collection district" in which my duties were to be performed. This law, it may be observed, was enacted during the last century, when the appointment of a civil officer to such a far distant post could not have been contemplated by the then law makers. To this decision I reluctantly yielded at the time, although subjected to an enormous expense in reaching my point of destination, and was not allowed to take the *oath* until I had arrived at Monterey, on 23d June, 1851, from which *latter period*, it is contended by the department, my salary should be computed. From this decision I appeal to Congress, contending that, in justice and right, the salary should commence from the date of my commission, at which time I actually entered upon the discharge of my official duties, and that mine was not a case fairly within the purview of the law of 17 , which could not have been intended to apply to the anomalous condition of the country after the acquisition of California. My official acts while in this city were fully recognized by the department, as much so as at any subsequent period; and in support of the position assumed by me in regard to this item in my account, I refer to the decision of Chief Justice Marshall, in the mandamus case of ———— vs. President Madison.

The *equity* of the allowance will hardly be questioned, when the committee is informed that I was under very heavy expense from the day of my appointment until my arrival in California, having to defray the enormous charges for travelling, while these expenses of the first collector of San Francisco were paid by the treasury as right and proper. Then, why should my case be regarded as different from his, and what was unhesitatingly granted him be denied to me?

In regard to the second item in my account, viz: an allowance claimed for one revenue boat and the manning of it, during my continuance in office, I refer to the testimonials on file, of not only the entire delegation in Congress from California, but of other gentlemen, whose statements are entitled to equal consideration. The facts disclosed by the respective statements of these gentlemen will show that my district embraced a *seaboard of three hundred miles*, inhabited for the most part by a Mexican population, by whom smuggling and other infractions of the revenue laws were the daily pursuits of the most respectable among them. There were also, beside the port of entry, (Monterey,) three other ports of delivery, viz: Santa Cruz, San Simeon, and San Luis Obispo, at each of which I was compelled to keep an "inspector." I, however, kept but one single boat in my entire district, (at Monterey,) where no vessel could anchor nearer the shore than half or three-quarters of a mile. It was perfectly understood by the department, as evidenced by my instructions, that my duties, from the great and absorbing commercial importance of San Francisco, were to be confined almost exclusively to preventive

service, like that assigned to revenue cutters, or, in other words, to force the business or "entries" into San Francisco, where the "duties" or "customs" were to be secured. How could I, therefore, render any efficient service whatever without a single revenue boat? If the employment of one such aid was not an incident to my power, I would inquire for what purpose I was employed, or what preventive duty I could perform without one. The necessity was well understood at the custom-house in San Francisco, from the fact that the deputy surveyor of that port was deputed to select the kind of boat best adapted to the service. The fact of the purchase of the boat, and the actual employment of oarsmen to propel it, I do not understand to be denied by the department, but, on the contrary, to be admitted.

Touching the reasonableness of the disbursements made by me on account of said boat, and expenses for "hands" to work it, I invite a comparison between those charges made by the collector at San Francisco, where a number of such were employed, and the amounts paid on account of my single boat. If I am not greatly in error, it will be found that the payments made by me were two dollars a day per man, while at San Francisco from four to five dollars was paid, and the account "admitted." The department recognized the necessity of this boat service, and sent me a "revenue flag," as the insignia of my authority to board vessels entering the harbor. For what other purpose was this flag sent to me, unless to be used, as it is admitted to have been done? In conclusion, I ask, what collector on the Atlantic seaboard, or in the world, was ever denied a single revenue boat, where the law imperatively demands him to "board" every vessel unknown to him that arrives in his port?

W. H. RUSSELL.

PETITION.

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

Your petitioner, William H. Russell, late collector of customs for the district of Monterey, California, would respectfully represent, that he was appointed to said office of collector on the 13th March, 1851, while on a visit to the city of Washington; that he thereupon accepted said appointment, executed a sufficient accepted bond for the faithful performance of the duties thereof, and, in obedience to the requirements of the Secretary of the Treasury, proceeded at once to the discharge of the duties assigned him, which were acknowledged by an advance to him of the sum of three thousand dollars by the said Secretary of the Treasury, for which he was held accountable on his bond; that whilst he remained in Washington city he was steadily engaged in making arrangements, and receiving instructions, deemed essential to the proper and efficient discharge of his official duties. That as soon as these arrangements were completed he left for California, and

on the day of his arrival there, entered fully upon the discharge of the duties of his office. The reason given for not receiving his official oath while at Washington city, when and where he executed his bond, was, that the Comptroller of the Treasury construed the law, applicable in such cases, as requiring the "oath of office" to be administered "within the district where the duties were to be performed." He further states that he has made no charges nor has he received any remuneration whatever for his travelling expenses to and from California, such as has been allowed to the first collector appointed for the district of San Francisco. He therefore respectfully asks that he may be paid his compensation from the date of his bond to the period of taking his official oath, as before stated. In this connexion, I herewith submit a letter from the Commissioner of Customs, of the 14th April last.

Your petitioner further respectfully represents, that, in the adjustment of his accounts, as collector aforesaid, at the treasury, various items of charge made by him, in the necessary and unavoidable execution of his trust, and deemed by him essential to the public interests in his charge, have been disallowed.

Upon application to the Secretary of the Treasury for a copy of the statement of the items so disallowed, and his reasons for rejecting them, he was informed, by letter of 22d May, 1854, also herewith, that when a committee of Congress should call for them they would be furnished.

Your petitioner, in view of the foregoing facts, respectfully requests your honorable committee to require the Secretary to lay before them the papers and proofs on the files or of record in his office, or the Treasury Department, with his decision thereon, having a bearing on this subject. And your petitioner prays for such relief in the premises as your honorable body shall deem just and right.

WILLIAM H. RUSSELL,

Late Collector of Customs, District of Monterey, Cal.

WASHINGTON CITY, *December 27, 1854.*

WASHINGTON, D. C., *December 9, 1852.*

SIR: The enclosed letter I have just received from the Second Auditor, informing me of the rejection of the claim for pay, &c., of Major William H. Russell, for the reasons stated. It is true Major Russell's name does not appear on the muster-rolls for the period stated by the Second Auditor, the reason for which is, that he was absent on detached duty when the battalion was discharged from service in April, 1847, under the orders of his superior officer, and in August, 1847, he was paid, by the authority of the Secretary of War, by the paymaster at Washington, from the day he is last found on the muster-roll to the 23d March, 1847, the day he was sent off on detached duty. The claim now presented is for a continuation of his pay to the time when he was notified of the disbandment of his battalion, as is usual in such cases. From this decision of the Second Auditor an appeal to

the Secretary of War is respectfully made, and I have the honor to request that the Auditor be required to lay before you all the papers and facts of the case for your decision.

Respectfully, your obedient servant,

R. BURGESS.

Hon. C. M. CONRAD,
Secretary of War.

TREASURY DEPARTMENT,
Office of Commissioner of Customs, May 8, 1854.

SIR: I have received the letter of Mr. W. H. Russell, late collector, &c., at Monterey, addressed to you under date of April 23, with accompanying papers, handed to me on Saturday, and have respectfully to state, that I have examined the statements of his accounts to which these papers refer, and now submit the following report:

The accounts of Mr. Russell were settled quite recently in this office, and the disallowances referred to by him were made upon a full and careful examination of the whole case. They consist of charges for a revenue barge, of alleged payments to boatmen and servants, travelling expenses, candles for the use of his office, and of freight, repairs, and other small charges relating to the boat.

In regard to all these items of expenditure, the disallowance was necessarily made primarily for the reason that as they were incurred and continued without the authority or sanction of the department there was no authority in this office to allow them; and, secondly, for the reason that an examination into the merits of the several charges, and the alleged necessity that existed for incurring them, furnished, in my judgment, no ground for recommending their allowance by you.

The predecessor of Mr. Russell was in office from March 7 to June 23, 1851; he received and accounted for receipts for duties, tonnage, and light money, \$6,132; and during this period expended for the use of a revenue boat and for boatmen only \$8, and the other disbursements are also small. The successor of Mr. Russell has been in office since the 29th of May last, and his accounts have been settled up to January of the present year. During this period he has credited the government for duties on merchandise, tonnage, and light dues, the sum of \$5,476; his whole disbursements are small, and for a boat and boatmen only \$15 is charged.

Mr. Russell was in office from the 18th of March, 1851, to May 29, 1853, and during all this period there seems to have been no foreign entries whatever in the district, and the only money credited to the United States amounts to \$10 80, and \$148 95 for official fees. And as regards the charge for boatmen and servants, it is admitted by Mr. Russell that Fox and Graham were his own men, taken from Missouri, and employed as boatmen and servants on their arrival at Monterey. There could be no pretence of claim for the allowance of the charges for these men as *servants*, it being manifest that where so little business was done there could be no occasion for such services. The charge for candles was disallowed for the same reason, and, if admissible

under any circumstances, would have been rejected for extravagance and waste, there being charged, from June to September, 3 boxes, containing 80 pounds, at 50 cents per pound.

The charge for travelling expenses was disallowed in accordance with the uniform practice of the department.

I may add, that the expenses of the office during Mr. Russell's administration of it were very high, and that both his predecessor and successor, though receiving considerable sums of money for duties, had very moderate charges.

I am, &c.

H. J. ANDERSON,
Commissioner of Customs.

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

TREASURY DEPARTMENT,
Second Auditor's Office, December 9, 1852.

SIR: The Secretary of War has referred your letter calling attention to the claim of William H. Russell for pay and emoluments from March 24 to August 24, 1847, filed September 5, 1851, to this office for an answer. The Secretary of War at that time declined to act on the claim, because "the subject of a provision for the settlement of the claims of and on account of the California battalion" was before Congress; and until the general subject shall have been disposed of by Congress, the Secretary refused to entertain individual cases.

The claim is now renewed, because the 6th section of the act making appropriations for the support of the army for the year ending the thirtieth of June, one thousand eight hundred and fifty-three, approved August 31, 1852, provides, under certain circumstances, payment to the mounted riflemen, under the command of Captain John C. Frémont, in California, during the year 1846.

Under the section above mentioned, the muster-rolls in the War Department (now on file in this office) must determine the admission or rejection of all claims for pay for services rendered in the California battalion under Captain J. C. Frémont.

On an examination of the vouchers, the only service I find of Captain William H. Russell, an ordnance officer, is from October 8, 1846, to January 21, 1847. The claim now presented is for services from March 24 to August 24, 1847.

Inasmuch, therefore, as the period of time embraced in the claim now presented for consideration does not accord with any muster or pay rolls on file in the War Department, (now on file in this office,) nor with any vouchers, I have no other alternative but to reject the claim.

I have no discretion in the matter, whatever might be the merits of the claims presented for adjustment, the law being binding on me as an accounting officer.

Very respectfully, your obedient servant,

P. CLAYTON,
Second Auditor.

RICHARD BURGESS, Esq., *Present.*

TREASURY DEPARTMENT, *May 22, 1854.*

SIR: I have to acknowledge the receipt of your letter of the 20th instant, asking to be furnished with certain papers in relation to the disallowance of certain items in the accounts of William H. Russell, esq., late collector of the customs at Monterey, California, for the purpose of laying the same before the President of the United States and Congress, and, in reply, to state, that when, as the attorney of Mr. Russell, you shall have laid the several subjects before the President and Congress, the department will furnish the President and the committees of Congress with such information in relation thereto as they may respectively require.

Very respectfully, your obedient servant,

JAMES GUTHRIE,

Secretary of the Treasury.

RICHARD BURGESS, Esq.,

Washington City, D. C.

TREASURY DEPARTMENT, *May 16, 1854.*

SIR: I have to acknowledge the receipt of your report of the 8th instant, setting forth your reasons for the disallowance of certain items in the accounts of W. H. Russell, esq., late collector of the customs at Monterey, California, for a revenue barge, payments to boatmen and servants, travelling expenses, candles for the use of his office, and of freights, repairs, and other small charges relating to the boat, and, in reply, to state that, having fully considered the same, I concur with you in the propriety of said disallowances.

You will please communicate this decision to Mr. Russell.

Very respectfully, your obedient servant,

JAMES GUTHRIE,

Secretary of the Treasury.

HUGH J. ANDERSON, Esq.,

Commissioner of Customs.

TREASURY DEPARTMENT,

Office of Commissioner of Customs, May 20, 1854.

SIR: I herewith enclose to you a copy of a letter received from the Secretary of the Treasury respecting the disallowances of your accounts.

Very respectfully, your obedient servant,

H. J. ANDERSON,

Commissioner of Customs.

WILLIAM H. RUSSELL, Esq.,

Late Collector, &c., at Monterey, California.

TREASURY DEPARTMENT,
Office of Commissioner of Customs, April 14, 1854.

SIR: In reply to your letter of this day's date, enclosing an account against the United States for your salary as collector, &c., at Monterey, from March 13 to June 23, 1851, I would respectfully state, that by the act of March 2, 1799, collectors of the customs are required to take the oath of office in the collection district before entering upon the duties thereof, and that in pursuance of this provision your compensation has been allowed, commencing upon the 23d of June, 1851, that being the date of certificate of your official oath in the district of Monterey. For any additional allowance, covering the time between the date of your appointment and said 23d of June, when you entered upon the discharge of your duties as collector, a special act of Congress will be necessary.

Very respectfully, &c.,

H. J. ANDERSON,
Commissioner of Customs.

Col. W. H. RUSSELL,
Late Collector, &c., Monterey.

WASHINGTON, D. C., *September 6, 1851.*

SIR: In reply to your letter of yesterday's date, in which you say that it is necessary for an officer out of service to accompany his account with a duly authenticated affidavit of its correctness before the case can be looked into on its merits, I have to remark that, in ordinary cases, the rule is as you state it to be, and would cheerfully be acquiesced in were it practicable now to obtain it from Major Russell, who is at this time engaged in the performance of his duty as collector of the port of Monterey, in California; but when it is taken into consideration that he has thrice taken the required oath—1st, to his account for pay, &c, to the 23d March, 1847, allowed by the Secretary of War; 2d, to his account for three months' extra pay, paid by Paymaster Van Ness; and, 3d, to his account for travelling allowance, all on the files of your office—it is hoped that rule will not be so far insisted upon as to require from him a *fourth* affidavit to the same facts.

The present claim is presented by me, as the attorney of Major Russell, in consequence of the rejection of the last above named claim, and under circumstances which render it impracticable to comply strictly with all the regulations of your department.

With respect to the other point of your letter, that the law *requires* the Second Auditor to report all cases to the Second Comptroller, and hence you cannot comply with my request to refer the case to the Secretary of War, unless required by him, I have to remark, that I am not aware of any *law* or *usage* which *precludes* such reference at the request of the claimant. On the contrary, the practice in other bureaus is to refer claims to the Secretary of War, when such claim requires his sanction, preliminary to a final adjustment by the

accounting officers. I know not whether this practice has other foundation than mere courtesy to the claimant, yet such is the course pursued by the Third Auditor, and I believe all others, except the Second Auditor.

The Secretary of War originally decided upon Major Russell's accounts for pay, &c., according to which the claim was paid. He also decided upon his claim for services as bearer of despatches, originating from and growing out of that decision. The record evidence, as well as all the other evidence connected with these claims, are in his department, which would seem to indicate the propriety of the reference to him. I can perceive no possible objection to such reference; and as the Secretary of War, I understand, will entertain no claim, or rather act upon any not submitted to him by the proper bureau, the effect of your decision will be to deprive the claimant, upon mere technical objections, to a full examination and decision upon the merits of his claim by the proper department. I do not believe such to be your intention.

Very respectfully, sir, your obedient servant,

R'D BURGESS.

P. CLAYTON, Esq., *Second Auditor.*

WASHINGTON, D. C., *September 18, 1851.*

SIR: On the 4th of this month I presented to the Second Auditor an account of Col. Wm. H. Russell, for pay, &c., which, from the circumstances of the case, would, I presume, require your sanction before it could be paid, and therefore requested the Auditor to submit it to your department; in reply, he states, "that the law REQUIRES the Second Auditor to report all cases to the Second Comptroller, and hence I cannot comply with your request to refer the case to the Hon. Secretary of War, unless required by him."

I have, therefore, to request that the Second Auditor be "required" to transmit to your department the account of Col. Russell, with all the papers connected therewith, for your decision, including my letter of the 6th September, in explanation.

I have the honor, most respectfully, to be your obedient servant,
R'D BURGESS.

Hon. C. M. CONRAD, *Secretary of War.*

WASHINGTON, D. C.,
September 16, 1852.

SIR: Congress having made an appropriation at its last session for the payment of the claims of the California battalion, under the command of Lieut. Colonel John C. Frémont, during the Mexican war, I beg leave to call your attention to the claim of Major William H. Russell, to which the enclosed communication refers, and to ask your decision thereon.

I have the honor to be, respectfully, your obedient servant,
R'D BURGESS.

Hon. C. M. CONRAD,
Secretary of War.

WASHINGTON, D. C.,
September 4, 1851.

SIR: I herewith present the claim of Major W. H. Russell, of the California battalion, for pay, &c., from 23d March, 1847, to 24th August, 1847, he being then in the city of Washington under orders, in the performance of official duties, as the documents on the files of the 2d and 3d Auditor's office will prove, and to which at the proper time I shall take leave to specially refer you. I deem it proper now, as the attorney of Major Russell, to state, that on the 23d March, 1847, he received orders from the commanding officer, Lieutenant Colonel John C. Frémont, to repair to Washington with despatches for the government; that he arrived and safely delivered them. He then presented his account for pay, &c., as major of the California battalion, up to the period of his receiving information of the disbandment of his battalion. The then Acting Secretary of War not having received official evidence of the fact, declined to authorize the payment of his claim for pay, &c., beyond the day of his leaving California. Major Russell then presented a claim, as a citizen, being the bearer of despatches, and referred to an analogous case in which the allowance was authorized and paid. His claim was rejected on the ground, among other reasons, that he was an officer *in service*, and therefore not entitled to extra pay for *that service*. He then presented a claim for travelling allowance from the place of his discharge to his place of residence; this was rejected, because his *residence* was *other* than his *home*; or, in other words, that residence and home were not synonymous. He now presents his claim for pay, &c., for the time that he was undeniably in the public service. He is unquestionably entitled to pay in some shape or other. The laborer is worthy of his hire, and a just government requires not the services of any of its citizens in a public capacity without paying a reasonable compensation therefor. Should you be averse to the payment of this account, I have respectfully to ask its submission to the Secretary of War, with your reasons. The necessary oaths, &c., will be found with Major Russell's accounts, &c., for travelling allowance, on the files of your office. Enclosed is a letter from Com. Jones, of 15th March, 1857.

Respectfully, sir, your obedient servant,

R'D BURGESS,
Att'y of Major Russell.

P. CLAYTON, Esq.,
Second Auditor.

TREASURY DEPARTMENT,
Second Auditor's Office, September 5, 1851.

SIR: Your letter of the 4th instant, enclosing the claim of Major Russell, has been received. In answer thereto, I can only say that it is necessary for an officer out of service to accompany his account with a duly authenticated affidavit of its correctness before the case can be looked into on its merits. I regret that the law requires the Second

Auditor to report all cases to the Second Comptroller, and hence I cannot comply with your request to refer the case to the Hon. Secretary of War, unless required by him.

Very respectfully, your obedient servant,

P. CLAYTON,
Second Auditor.

R. BUGESS, Esq., *Present.*

MAY 26, 1851.

SIR: I return herewith the papers connected with the claim of Major Wm. H. Russell, late of the California battalion of mounted volunteers, for travelling pay from Los Angeles to Fulton, Missouri, disallowed by you on the 15th ultimo, and appealed by the claimant to this office. I concur in your decision without consulting any other question arising on the papers. I am of opinion that the residence of Major Russell, within the intent and meaning of the 15th section of the act of Congress of January 29, 1813, must be considered as having been in California, and not in Missouri. The object of the section was, to provide an indemnity to the officer and soldier against any expense to which he might be put by being discharged from service at a place different from that at which he entered it.

The word residence, in the case of non-commissioned officers and privates, has always been understood to be the place of enlistment. If, for instance, a soldier having a family and a home in New Orleans were to enlist in New York, it has never been supposed that the government would be under obligation, when he should be discharged, to transport him to New Orleans, or to pay him for travelling there—the place of enlistment, appearing on the rolls, has been deemed his place of residence, and to which his travelling allowances have been made.

In the case of an officer, no instance is found in which travelling pay has been allowed to any other State or Territory than that in which the corps to which he belonged and where he received his appointment was raised. The corps of California volunteers to which Major Russell belonged was raised in California from persons then in the Territory—principally, if not wholly, from emigrants from the United States. Neither Major Russell nor any of its officers or men were called from Missouri or any other State to join it; they all entered the service in California, and California must be considered as their residence. The distinction to which you refer between the home and residence of an officer or soldier, within the meaning of the act of Congress, is sound and legal, and has often been recognized and acted upon in this office.

If Major Russell received his appointment and joined the corps at a different place in California from that at which he was discharged, he may, on proper proof, all other objections being removed, be allowed his travelling pay, &c., between those places; beyond that I do not think he can have any legal claim.

I am, &c.,

HILAND HALL, *Comptroller.*

P. CLAYTON, Esq.,
Second Auditor

TREASURY DEPARTMENT,
Second Auditor's Office, May 26, 1851.

SIR: I beg leave to inform you that the Second Comptroller of the Treasury has this day concurred in my decision rejecting the claim of Major William H. Russell, late of the California battalion of mounted volunteers, for travelling allowance from Los Angeles, California, to Fulton, Missouri.

Very respectfully, your obedient servant,

P. CLAYTON,
Second Auditor.

RICHARD BURGESS, Esq.,
City of Washington, D. C.

WASHINGTON, D. C., *April 16, 1851.*

SIR: I have received your letter informing me of the rejection of the claim of Major William H. Russell for travelling allowances from Los Angeles, in California, to Fulton, Missouri, and assigning your reasons for the disallowance. In reply, I have to state, that you seem to have overlooked the fact of Major Russell's having been duly recognized by the proper officers of the government to have been in the service of the United States as an officer of the battalion raised by Lieut. Col. Frémont in California, as shown by his accounts adjusted and paid through your office. It is true he left California in March, 1847, with despatches for the War Department, under orders from his commanding officer, addressed to him as "secretary of state of California," but the history of the country in relation to the war with Mexico in California establishes the fact that no other than a military government existed there. Colonel Frémont, as governor of California, held his appointment as a military officer; and Major Russell, in virtue of his commission, was appointed his secretary of state, and as such dared not disobey his orders. The battalion was not disbanded or discharged from service until April, 1847, as the records of the Adjutant General's office will prove. I endeavored to procure the evidence, but it could not be found. In March 23, 1847, Major Russell was detached under orders, which are now on the files of your office, to perform a special duty, and whilst so engaged and absent from his post the battalion was disbanded. There is abundant evidence on the files of the War Department to show the recognition of the battalion. Colonel Frémont himself, and many of his officers, were mustered and recognized by the Secretary of War, and under the same authority Major Russell received his pay, &c. Hence he was considered as honorably discharged; and it is not customary to give to officers written discharges, therefore none in his case can be produced.

In regard to the objection raised by you as to *residence*, I have only to remark that the numerous decisions on that point are so generally understood, it would be a waste of time to enter at large upon the subject; and it is presumed the oath of Major Russell, appended to his account, should be regarded as of paramount importance to the

loose inferences and surmises suggested in your letter. It is enough to say : he resided at Fulton, when, in 1832, he engaged in the Black Hawk war ; he resided there in 1837, when he raised and equipped, at his own expense, a company of mounted volunteers, and commanded them in the Florida war. He resided there in 1841, when he was appointed by President Harrison marshal of the district of Missouri. He resided there in 1846, when he joined Colonel Frémont, in California ; and he resided there in 1848, when he was appointed a delegate to the Philadelphia convention ; and in 1851, when he was nominated and unanimously confirmed as collector of the port of Monterey, in California. During all this time he pursued his professional avocations as an attorney-at-law at that place, and, moreover, exercised his political privilege of voting, and was at one time a member of the legislature of Missouri. The most of these facts are of easy proof from the records of your own office and others. His wife and children and servants all reside there. How, then, can it be inferred that he was a resident of Los Angeles ?

The law quoted by you is too plain and obvious to admit of doubt as to its meaning. The principle of the law, and unquestionably the intention of the legislature, was to secure to those who were or had been engaged in the public service when discharged, the means of paying their expenses to their homes and families. It was a just and humane provision, and I feel assured it never entered into the minds of its framers that any other construction could have been given to it.

Should you not concur in the views herein expressed, I respectfully ask its reference to the Second Comptroller of the Treasury.

I have the honor to be, very respectfully, your obedient servant,

R'D BURGESS,
Attorney of Major Russell.

P. CLAYTON, Esq.,
Second Auditor.

CIUDAD DE LOS ANGELES,
March 20, 1847.

SIR : You are hereby ordered, at the head of a party of about fifteen men, to repair, with as little delay as possible, to the United States on business confided to you by written and oral instructions already communicated.

The company will obey you as leader or commander, and Mr. William Knight will act as your pilot or guide.

The quartermaster, Major Snyder, the commissary, Major Hensley, and Captain Richard Owings, of the California battalion, will furnish you with everything in their respective departments that may, in your judgment, be considered necessary to enable you to make your journey safe and prosperous. Captain Wilson, of the ordnance department, will furnish you such arms and ammunition as you may need.

Very respectfully,

J. C. FRÉMONT,
Gov. of California, and Lieut. Col. U. S. Army.

WM. H. RUSSELL, Esq.,
Secretary of State of California.

TREASURY DEPARTMENT,
Third Auditor's Office, March 5, 1856.

I certify that the foregoing is a true copy from the original on file in this office.

ROBT. J. ATKINSON, *Auditor.*

CIUDAD DE LOS ANGELES,
Upper California, March 20, 1847.

DEAR SIR: The difficulty of remitting silver coin, the only circulating medium we have in this Territory, compels me to ask of you the favor that you will furnish to the bearer, Colonel William H. Russell, secretary of State, funds sufficient to enable him to prosecute his journey to the United States, whither he is despatched by me, with a party of fifteen men, on business that I regard of primary importance to the interests of our common country.

The mode of repayment you can arrange so as to subject you to the least possible inconvenience.

I am, with considerations of very high respect, your obedient servant,

J. C. FRÉMONT,
Governor of California.

His Excellency CHARLES BENT and others,
Governor of New Mexico.

TREASURY DEPARTMENT,
Comptroller's Office, March 13, 1851.

SIR: Your official bond having been received and approved, your commission as collector of the customs for the district, and inspector of the revenue for the port of Monterey, in the State of California, is herewith handed to you. Before entering upon the discharge of the duties of your office, you will take the oath prescribed by law, in accordance with the enclosed form, before some judge or magistrate authorized to administer oaths within your collection district, and have the official character and signature of such officer certified by the clerk of a court of record of the proper county, under his seal of office, and you will please transmit the same so certified forthwith to this office.

Very respectfully,

ELISHA WHITTLESEY,
Comptroller.

WM. H. RUSSELL, Esq., *Present.*

ADJUTANT GENERAL'S OFFICE,
Washington, April 2, 1856.

SIR: In compliance with your verbal request, I transmit herewith a copy of an order issued by General S. W. Kearney, March 1, 1847,

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directing the muster into service, under the law of May 13, and the supplemental law of June 18, 1846, of such men of Lieutenant Colonel John C. Frémont's battalion of California volunteers as might be willing to continue in service under the conditions recited in the laws specified, and the discharge of the remainder. The records of this office afford no evidence that any of these volunteers elected to remain in service.

Very respectfully, your obedient servant,

S. COOPER,
Adjutant General.

RICHARD BURGESS, Esq.,
Washington, D. C.

TREASURY DEPARTMENT,
Second Auditor's Office, April 11, 1856.

I certify that it appears from the records of this office that Colonel J. C. Frémont, in command of the California battalion of volunteers during the Mexican war, and William N. Loker, adjutant of said battalion, were mustered out of service on the 19th April, 1847.

P. CLAYTON,
Second Auditor.

Extract from orders No. 2, headquarters 10th Military Department, dated March 1, 1847.

[Orders No. 2.]

HEADQUARTERS 10TH MIL. DEPT.,
Monterey, March 1, 1847.

1. With a view to regular payment, it is necessary that the battalion of California volunteers, now under the command of Lieutenant Colonel Frémont of the army, and stationed at the Ciudad de los Angeles, if not originally mustered under the law of May 13, and the supplemental law of June 18, 1846, should now be mustered into service under those laws. This muster will be made at once by Lieutenant Colonel Frémont. Should any men of that battalion be unwilling to continue in service under the above named laws, they will be conducted by Lieutenant Colonel Frémont to Yerba Buena, via Monterey, and be there discharged.

2. Lieutenant Gillespie, of the marines, now serving with the battalion of California volunteers, is relieved from that duty; he will repair to Washington city, and will report himself to the commanding officer of his corps.

* * * * *

By order of Brigadier General S. W. Kearney.

H. S. TURNER,
Captain, A. A. A. General.

ADJUTANT GENERAL'S OFFICE,
April 2, 1856.

I certify that the foregoing is a true extract.

S. COOPER,
Adjutant General.

To all whom it may concern, greeting :

Having, by authority of the President and Congress of the United States of North America, and by right of conquest, taken possession of that portion of territory heretofore known as Upper and Lower California, and having declared the same to be a Territory of the United States, under the name of the Territory of California, and having established laws for the government of the said Territory :

I, Robert F. Stockton, governor and commander-in-chief of the same, do, in virtue of the authority in me vested, and in obedience to the aforementioned laws, appoint William H. Russell, esq., secretary of the Territory of California until the President of the United States shall otherwise direct.

Given under my hand and seal on this sixteenth day of January, anno Domini one thousand eight hundred and forty-seven, at the "Ciudad de los Angeles."

R. F. STOCKTON,
Governor, &c.

TREASURY DEPARTMENT,
Second Auditor's Office, April 15, 1851.

SIR : The claim of William H. Russell, late major of the California battalion of volunteers, under the command of Lieutenant Colonel J. C. Frémont, for travelling allowances from Los Angeles, California, to Fulton, Missouri, amounting to \$633 22, presented by you on his behalf, has been examined and disallowed for the following reasons:

I have not been able to find any evidence showing that Major Wm. H. Russell was regularly discharged from the battalion of volunteers in which he served. The time and place of his discharge are unknown to this office. I find he left California in the month of March, 1847, with despatches for the War Department, under orders from Lieutenant Colonel J. C. Frémont, addressed to him, not as major of the battalion, but as "Secretary of State for California." Whether he was still considered as attached to the battalion, or not, I have had no means of judging.

By the 15th section of the act 29th January, 1813, an officer or soldier, when honorably discharged from the service, shall be allowed his pay and rations or an equivalent in money, for such term of time as shall be sufficient for him to travel from the *place of discharge* to the place of *his residence*, computing at the rate of twenty miles to a day.

The law requires an officer as well as a soldier to be honorably discharged from the service, before he can avail himself of the benefits of the act. Major Russell does not show, nor do the records show, that he was discharged, and, in the absence of such proof, and taking into consideration that he was acting as major of the California battalion, not by any authority of the United States, but under the orders of Lieutenant Colonel J. C. Frémont, who gave him his commission as major, and from whom he accepted said commission, I am inclined to the opinion Major Russell cannot claim the benefit of the act of January, 1813.

Again, the California battalion of volunteers were not only raised but discharged in California. Major Russell was in California at the time the battalion was raised; how long before that period he was in that section of country I have no means of knowing. He accepts his commission as major in California, and in his accounts rendered to this office for adjudication he claims travelling allowances from Los Angeles, California, to Fulton, Missouri, his place of residence. The inference therefore is, that Los Angeles was his place of discharge, although he does not so state.

That California was his residence at the time he accepted his commission from Lieutenant Colonel J. C. Frémont, as major of the California battalion, and his home at Fulton, Missouri, appears to be clear from the facts of the case. Misapprehension arises in supposing that a man's home and residence are synonymous. It is compatible with reason to say that a person's home and residence may be at different sections of the country at the same period of time. Major Russell's home may be, it is true, at Fulton, Missouri, but I conceive his residence was in California, for, from the order to him by Lieutenant Colonel J. C. Frémont, he is designated as "Secretary of State for California."

I do not believe that the act of January, 1813, ever contemplated travelling allowances to officers beyond their place of residence; nor can I see by what mode of reasoning the government is under obligation to transport officers to their homes, when their residence where they accepted their commissions were at different places. The practice of the accounting officers has been to allow travelling pay only from the place of discharge to the place of residence, in the words of the law.

Major Russell claiming, as a discharged officer in California, travelling allowances from Los Angeles, California, to Fulton, Missouri, I am of opinion, is not entitled thereto, for the reasons I have fully stated in this letter.

Very respectfully, your obedient servant,

P. CLAYTON,
Second Auditor.

RICHARD BURGESS, Esq.,
City of Washington, D. C.

CIRCUIT COURT, APRIL TERM, 1851.—TRIALS, No. 38.

THE UNITED STATES *vs.* JOSEPH WHITE, JOHN MCCOLGAN, WM. P. WHYTE.*Plaintiff's prayers.*

The United States, plaintiffs, by Z. Collins Lee, their attorney, pray the court to instruct the jury—

1. That the defendant, Joseph White, whose emoluments and pay were fixed by law as navy agent, is not entitled in this case to any extra compensation, nor any extra allowance for the disbursement of the public money.—(See act 3d March, 1839, sec. 8.)

2. That the Secretary of the Navy had not the power, under the laws or regulations of the navy, to appoint the defendant "acting purser," no such office being authorized by Congress.

3. That Congress had prohibited any person from acting as purser who shall not have been first nominated and appointed by and with the advice and consent of the Senate, and given bond. The defendant is therefore not entitled to the pay claimed by him as "acting purser" in this case, as he was not appointed by and with the advice and consent of the Senate, and never gave a bond as required by law.—(See act 30th March, 1812, sec. 6.)

Court's opinion.

This case must be governed by the acts of Congress of 1839 and 1842. The decisions of the Supreme Court in relation to cases of this description, made previous to the passage of these two laws, do not therefore apply; under these acts of Congress, an officer with a fixed salary is not entitled to any additional compensation for extra services, unless it is provided for by law or by the regulation of an officer of the government authorized by law to make it. And the regulation authorized by these acts we understand to be a general regulation, fixing prospectively the additional compensation for specified services within the limits prescribed by law, and graduating it in different places as he may in his discretion seem just and most advisable for the public interest. He is not authorized to give or refuse compensation at his discretion or pleasure in each particular instance after the service is performed; for that would open the door to favoritism and partiality which it was the object of the laws to prevent.

A navy agent, therefore, is not entitled to compensation beyond his salary as fixed by law for any extra services, although such services may be out of the district for which he is appointed, and may more properly appertain to the duties of another navy agent, or even to an officer of the government filling an office of a different character.

His salary is the only compensation for services required of him and performed by him, if he holds no other office or appointment.

The credits and set-off claimed by the defendant must be tried and determined upon these principles.

1. He is not entitled to extra compensation for the disbursing money under the orders of the Navy Department to pay for articles delivered

or purchased out of his district. And it makes no difference in this respect whether they be purchased by himself or by any other person under the orders of the department. The item of \$1,149 84 must therefore be disallowed.

2. Neither is he entitled to the credit of \$742 50 for the hire of a porter while he held the office. The services of such a person in the office of a navy agent would indeed seem to be necessary, and the Secretary, we think, had the power, by a general regulation upon the subject, to have made a reasonable allowance to provide one. But as he has not done so, the credit claimed cannot be allowed.

3. Nor can he set off the sum of \$810 99 for services as pension agent. Undoubtedly an appointment as pension agent is a distinct one from that of navy agent; and if by law or regulation any compensation was allowed to a pension agent, the defendant would be entitled to it. But the act of April 20, 1836, in express terms forbids any compensation to be made for the payment of pensions without authority of law.

It is true that at that time the public money was deposited in banks and the pensions paid by them. But this provision shows that it was the intention of Congress that this duty should always be superadded to the duties of some other appointment or office.

The act of February 23, 1840, authorizes pension agents to take certain fees from the parties interested for administering oaths, but gives them nothing more. And the first act which authorizes compensation by the public is the act of February 20, 1847; and by this act the Secretary of War was authorized to allow a sum not exceeding two per cent. for the payment of pensions; the whole allowance to any one agent not to exceed one thousand dollars in any one year. It does not, however, appear that the Secretary of War, or Secretary of the Interior, who has succeeded to the power of the Secretary of War in this respect, has exercised the discretionary power conferred by this law, or made any regulation upon the subject. This item also must therefore be disallowed.

4. But he is entitled to set off the sum of \$5,328 08 for his salary as acting purser to the naval establishment at Annapolis.

The Secretary of the Navy had a right to appoint a purser *ad interim*, usually called acting purser, to discharge the duties of purser at this establishment, if the demand of the public service elsewhere, or any other sufficient cause, put it out of his power to employ a purser regularly appointed. The court is bound to presume that the power in this instance was exercised under circumstances that justified the appointment of the defendant as acting purser. He performed all the duties of purser at the naval establishment; settled his accounts with the proper officer at Washington as such, and not as navy agent; and was recognized as acting purser in the reports to Congress concerning certain expenditures chargeable to that branch of the service.

The act of Congress fixes the salary of purser, when not otherwise provided for, at \$1,500 a year. As the defendant performed all the duties of the office, and performed them in the name and in the character of purser, he is entitled to the compensation which the law has provided for such services.

The circumstance that he held the office of navy agent at the same time can make no difference. There is no law which prohibits a person from holding two offices at the same time. As a matter of policy it would certainly be highly objectionable in most cases, as a permanent arrangement. But in the absence of any legal provision to the contrary, this appointment was valid. Indeed, it often happens that in unexpected contingencies, and for temporary purposes, the appointment of a person already in office to execute the duties of another office, is more convenient and useful to the public than to bring in a new officer to execute the duty; and if the duties of the second office are performed and the law has fixed the compensation which it deemed just for such services, it cannot be material whether they are rendered by one holding another office or not, provided they are faithfully discharged.

5. He is also entitled to the \$69 83 for office rent and clerk hire for the twenty-five days which intervened between the day of his dismissal and the expiration of his quarter. He was entitled to office rent and clerk hire, and the shortest period for which, according to the usual course of business, he could rent an office or engage a clerk, was by the quarter; and if before the expiration of the time it was deemed proper to remove him from office, his successor was entitled to the use of the office and the services of the clerk until the end of the quarter. They were engaged for the use of the officer and not of the defendant individually. And as he had a right to engage them by the quarter, the expense justly belongs to the office, and ought not to fall upon the individual.

He is also clearly entitled to the small item of \$30 paid to Midshipman Reany, and the objection to this item has very properly been abandoned by the government.

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 their 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.

The jury will find their verdict for the balance due to the government, after deducting the credits and set-off to which the defendant is entitled, as hereinbefore stated.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Thomas Spicer, clerk of the circuit court of the United States for the fourth circuit in and for the Maryland district, do hereby certify that the foregoing is a true copy of the original on file among the records and proceedings of the circuit court aforesaid.

I hereunto subscribe my name and affix the seal of the said circuit court this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and fifty-four.

[L. s.]

THO. SPICER,
Circuit Clerk.

The 15th section of the act approved 29th January, 1813, provides: "That whenever any officer or soldier shall be discharged from the service, except by way of punishment for an offence, he shall be allowed his pay and rations, or an equivalent in money, for such term of time as shall be sufficient for him to travel from his place of *discharge* to the place of his *residence*, computing at the rate of 20 miles per day."

The 9th section of the act of 13th May, 1846, provides: "That whenever the militia or volunteers are called and received into the service of the United States, under the provisions of this act, they shall have the same organization of the army of the United States, and shall receive the same pay and allowances," &c.

The 10th section of the act approved 17th June, 1846, directs that the non-commissioned officers, &c., of volunteers and militia, when called into the service of the United States, shall be entitled to receive fifty cents in lieu of subsistence, &c., for every twenty miles, by the most direct route, from the period of leaving their homes to the place of general rendezvous, and from the place of discharge back to their HOMES.

The joint resolution, No. 9, approved 16th June, 1848, provides for the USUAL pay and travelling allowances from the time they left their homes, &c., and from the place where they were mustered out of service until they reach their HOMES.

Under the provisions of the above recited acts, Colonel William H. Russell, late of the California battalion of mounted volunteers, then commanded by Lieutenant Colonel Frémont, claims his travelling allowances from Los Angeles, the place where *discharged*, to Fulton, Missouri, the place of his RESIDENCE, under the following circumstances, viz:

In the spring of 1846 he was chosen to conduct and command a party of emigrants from Missouri to California. The men composing this party subsequently constituted more than half of the California battalion. In the month of October, 1846, Russell joined Frémont at the mouth of San Francisco bay. He there informed Russell of the war with Mexico, and solicited him to accept the appointment of major of ordnance. He did so; and most of his party enlisted as privates, and continued in active service, uninterruptedly, under Frémont, until he left the country, finally, on the 23d March, 1847, by the order of Colonel Frémont, to bear despatches to the government at Washington. Before, however, Frémont had been appointed military governor, and Russell his *military* secretary of state. He arrived in Washington in July or August, 1847, then returned to and remained at his *residence* or home, at Fulton. But before he left California General Kearney had issued orders for the disbandment of the battalion, which was carried into effect on the 19th April, 1847. Whilst in Washington, his pay accounts, from the date of his original appointment to the day he left California, were paid by the special authority of the Secretary of War, Governor Marcy, in the latter part of 1847, and during the year 1848, he received three months' extra pay, &c.

The accounting officers reject his claim for travelling allowances on the grounds stated in their letters herewith, Nos. 1 and 2. I con-

sider their decisions upon such grounds wholly untenable. The intention of the legislature was unquestionably to provide the means to those who entered the public service and endured the toils and privations, and risked life and limb therein—the means of returning to their *homes* without expense. It was a humane and just provision, and in this view of the case, surely the Treasury construction in regard to *residence* is not such as the framers of the law intended; besides, Russell, at the time of his appointment by Frémont, was a mere traveller or sojourner in California, as is proved by the fact of his return to his home, in Missouri, at the close of the war, &c.; and it may probably be that in joining Frémont and accepting his commission was to obtain the means of returning to his home, under the promise implied by the acts above referred to.

The oath of Russell to his account should at least be regarded as of paramount authority to the vague inferences and surmises of the Auditors, as to his place of residence. He resided in Fulton when, in 1832, he engaged in the Black Hawk war; he resided there in 1837, when he raised and equipped, at his own expense, a company of mounted volunteers, and commanded them in the Florida war; he resided there in 1841, when he was appointed by President Harrison marshal for the district of Missouri; he resided there in 1846, when he joined Frémont in California; he resided there in 1848, when he was appointed a delegate to the Philadelphia convention, and in 1857, when he was appointed collector of the port of Monterey, in California; and during all this time he pursued his professional avocations as an attorney at law at that place, and exercised his political privilege of voting, and as a member of the legislature. His homestead was there; wife, children, and servants, all remained there. How then could it be inferred that his residence was at Los Angeles? From the decision of the accounting officers of the Treasury I have taken an appeal to the Attorney General as to the legal interpretation of the acts of Congress referred to, or, in other words, as to the legal meaning of the term *residence*, to which objection is taken.

R. BURGESS.

WASHINGTON, *July* 31, 1851.

after their departure upon such grounds wholly untenable. The intention of the legislature was unquestionably to provide the means by which the public could be enabled to obtain the full and entire view of the public and private affairs—the means of obtaining their names without expense. It was a humane and just provision, and in this view of the case, surely the Treasury construction in regard to residence is not such as the framers of the law intended. Besides, Howell, at the time of his appointment by Fremont, was a free traveler or sojourner in California, as is proved by the fact of his return to his home in Missouri, at the close of the war, &c.; and it may probably be that in joining Fremont and accepting his commission was to obtain the means of returning to his home, under the promise implied by the vote above referred to.

The oath of Howell to his account should at least be regarded as of permanent authority to the various interests and services of the Republic, as to his place of residence. He resided in Elkhorn when in 1857, 1858, he engaged in the Black Hawk war; he resided there in 1857, when he raised and equipped, at his own expense, a company of mounted volunteers, and commanded them in the Florida war; he resided there in 1841, when he was appointed by President Harrison to the district of Missouri; he resided there in 1842, when he was appointed a delegate to the Philadelphia convention, and in 1857, when he was appointed collector of the port of Monterey, in California; and during all this time he pursued his professional avocations as an attorney at law at that place, and exercised his political privilege of voting, and as a member of the legislature. His household was then: wife, children, and servants; all remained there. How then could it be claimed that his residence was at Los Angeles? From the decision of the accounting officers of the Treasury I have taken an appeal to the Attorney General, as to the legal interpretation of the acts of Congress referred to; or, in other words, as to the legal meaning of the term *residence*, to which objection is taken.

W. H. DUNN.

Washington July 31, 1861.

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