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

REPORT

[To accompany S. 47]

The Committee on Claims, to whom was referred the bill (S. 47) making an appropriation to pay the State of Massachusetts for expenses incurred and paid, at the request of the President, in protecting the harbors and fortifying the coast during the Civil War, in accordance with the findings of the Court of Claims and Senate Report No. 764, Sixty-sixth Congress, third session, having considered the same, report favorably thereon with the recommendation that the bill do pass with an amendment as follows:

On page 1, line 3, after the word "hereby" insert the words "authorized and."

A similar bill passed the Senate in the Sixty-sixth and Sixty-seventh Congresses, and was favorably reported to the Senate in the Sixty-eighth Congress.

The facts are fully set forth in Senate Report No. 85, Sixty-eighth Congress, first session, which is appended hereto and made a part of this report.

[Senate Report No. 85, Sixty-eighth Congress, first session]

The Committee on Claims, to whom was referred the bill (S. 55) making an appropriation to pay the State of Massachusetts for expenses incurred and paid at the request of the President in protecting the harbors and fortifying the coast during the Civil War, in accordance with the findings of the Court of Claims and Senate Report No. 764, Sixty-sixth Congress, third session, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in Senate Report No. 24, Sixty-seventh Congress, first session, which is appended hereto and made a part of this report.

[Senate Report No. 24, Sixty-seventh Congress, first session]

The Committee on Claims, to whom was referred the bill (S. 546) making an appropriation to pay the State of Massachusetts for expenses incurred and paid, at the request of the President, in protecting the harbors and fortifying the coast during the Civil War, in accordance with the findings of the Court of Claims and Senate Report No. 764, Sixty-sixth Congress, third session, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts in the case are fully set forth in Senate Report No. 764, Sixty-sixth Congress, third session, which is appended hereto and made a part of this report.
Mr. SPENCER, from the Committee on Claims, submitted the following

REPORT.

[To accompany S. 2252.]

The Committee on Claims, to whom was referred the bill (S. 2252) making an appropriation to pay the State of Massachusetts for expenses incurred and paid at the request of the President in protecting the harbors and fortifying the coast during the Civil War, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts were fully set forth in Senate Report No. 1188, Sixty-second Congress, third session, which reads as follows:

This bill provides for the reimbursement by the Secretary of the Treasury to the State of Massachusetts of the money which the State paid as interest, and for coin as premium wherewith it paid interest, on bonds issued under the provisions of the act of its legislature approved March 30, 1863, for the purpose of strengthening the harbors and fortifying the coast.

Military operations in 1863 made it necessary to strengthen Boston Harbor and also to fortify the coast. President Lincoln and Secretary Seward had both recommended these improvements as a military necessity. The State made the improvements, but was obliged to borrow the money, issuing 5 per cent 20-year bonds for that purpose. They were authorized by the act of March 23, 1863, and were made payable, principal and interest, in coin. After these improvements were made the State presented a claim to the Treasury Department for reimbursement, which was disallowed. Subsequently, however, on July 7, 1884, Congress enacted as follows:

"That the proper accounting officers of the Department of the Treasury be, and they are hereby, authorized and directed to examine the claim of the State of Massachusetts for expenses incurred and paid, at the request of the President and Secretary of State, during the war, in protecting the harbors and strengthening the fortifications on the coast, now on file with the third auditor, under the act of July twenty-seventh, eighteen hundred and sixty-one (Twelth Statutes, page two hundred and seventy-six), and report the amount to Congress."

Under the provisions of this act the accounting officers found that the sum of $209,885.61 should be refunded to the State, said amount not, however, including any interest which the State had paid on this borrowed money. Congress made an appropriation to pay this sum by the act of October 19, 1888 (25 Stat., p. 600), and the act of March 2, 1889 (25 Stat., p. 937).

When the State presented its claim under the above-mentioned act, it also demanded reimbursement for the money which it had paid for interest and premiums on this bond issue. This claim, however, was disallowed by the Comptroller of the Treasury.
CLAIM OF STATE OF MASSACHUSETTS.

on the ground that the act of Congress authorized only the payment of the amounts expended and made no mention of interest.

It seems to your committee that this case is precisely parallel to that of the State of New York which was decided by the Supreme Court of the United States (160 U. S., p. 598). This decision allowed interest incurred and paid by such State in obtaining the money for which reimbursement was allowed under the act of July 27, 1861 (12 Stat., p. 276), and joint resolution of March 8, 1862 (12 Stat., p. 615). That this is the view of the Treasury Department is shown by a letter of the comptroller transmitted to the Secretary of the Treasury under date of February 4, 1911, referring to this claim, from which the following is an extract:

"I see no reason why the interest necessarily incurred and paid by the State on the bonds issued for the coast defense should not be allowed as a part of the costs incurred by the State in accordance with the decision of the Supreme Court in the New York case (160 U. S., 598) which allowed the interest incurred and paid by the said State in obtaining the money for which reimbursement was allowed under the act of July 27, 1861 (12 Stat., 276), and joint resolution of March 8, 1862 (12 Stat., 615)."

"As the money expended for coast defense was secured from bonds issued after the act of the Massachusetts Legislature which provided for payment in gold or silver coin of the interest and principal of all bonds hereafter issued, there was a legal contract between the State and the holders of said bonds when issued for the payment of principal and interest in coin. The additional cost of said coin was therefore a part of the costs incurred by the State in the matter of the coast defense."

The amount of this claim is stated in a letter of B. F. Harper, auditor, in a communication to the Secretary of the Treasury under date of January 11, 1911, of which the following is an extract:

"The evidence on file in this office shows that the State issued bonds for purposes of coast defense to an amount in excess of the amount reimbursed the State on that account, and that said bonds, bearing interest at the rate of 5 per cent, were sold by the State in October, 1863, at a premium. At the rate those bonds were sold it was necessary to sell bonds to the amount of $195,697.54. It appears, however, that the State received accrued interest at the date of sale to the amount of $3,057.81, leaving the amount actually paid as interest on bonds issued for the benefit of the United States $192,639.73. By computing the gold premium on the basis used by the comptroller in his settlement on bonds issued in 1862, it is ascertained that the amount paid for gold with which to pay this amount of interest was $41,246.09, making the total expense of the State of Massachusetts on account of interest and gold premium on bonds issued for coast-defense purposes, as evidenced by reimbursement heretofore made, $233,885.82."

"The expense thus incurred by the State of Massachusetts for interest and gold premium on its coast-defense bonds to the amount above stated is of the same character as that paid by the State on its bonds issued in the year 1862 and reimbursed under the act of July 27, 1861, as shown by the decision of the Comptroller of the Treasury dated March 3, 1904."

"Following the decision of the Supreme Court of the United States above mentioned (160 U. S., p. 598), many other States have presented claims of this same nature which have been allowed by Congress. Your committee is therefore of the opinion that the State of Massachusetts should be reimbursed for these expenditures and recommend favorable action on this bill amended as follows:

On page 1, line 6, after the comma following the word "agent," insert "$233,885.82."

Although, as will be noted, a favorable report was made by the committee having the bill in charge in the Sixty-second Congress, it did not become law.

In the Sixty-fourth Congress, first session, a bill (S. 3346) was introduced conferring jurisdiction on the Court of Claims to adjudge the claims of the State of Massachusetts, and the report of the committee thereon dated March 24, 1916 (S. Rept. 296), recommended the passage of the bill. The facts as recited in Senate Report No. 1188, Sixty-second Congress, third session, hereinafter set forth in full, were incorporated into the report of the committee on S. 3346, Sixty-fourth Congress, first session.

Congress passed the bill (S. 3346) conferring jurisdiction on the Court of Claims, and on July 16, 1916, it received Executive approval. The case was duly presented to the Court of Claims, and on April 9, 1917, said court rendered decision.
A reading of the opinion of the said court discloses that, although it was found that the money had been expended by the State of Massachusetts for the purposes stated, the conclusion was reached that there was no act of Congress authorizing the court to render judgment for the sum so expended by said State for interest and premium. In said opinion the court says:

We have been cited to no law of Congress promising to repay Massachusetts any part of the money so expended by her, from which it follows that, however generous and patriotic this action on the part of the State may have been, she has no legal status in this court for the repayment of the same.

The decision of the court, therefore, was based upon a technical construction, and your committee is of the opinion that had there been a law in existence authorizing the payment of the money to Massachusetts, the court would have rendered judgment in favor of the State. Justice and equity would seem to demand the reimbursement of the State of Massachusetts for her outlay made at the request of the President of the United States and for the benefit and in the interest of the United States, and as there appears to be no law under which payment can be made it is necessary for Congress to enact legislation for the relief of the State. Accordingly, the committee recommends favorable action upon the bill.

The findings of fact, conclusions of law, and opinion of the Court of Claims are contained in House Document No. 369, Sixty-fifth Congress, first session, and read as follows:

SEPTEMBER 17, 1917.—Referred to the Committee on Appropriations and ordered to be printed.

COURT OF CLAIMS,
OFFICE OF THE CLERK,
Washington, D. C., September 14, 1917.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

Sir: In the case of the State of Massachusetts v. The United States, No. 33632 in this court, the claimant has moved the court to report its determination of the law and facts to Congress and this motion has this day been allowed by the court.

Pursuant to the same I hereby inclose certified copy of the findings of fact, conclusion of law and opinion of the court in said case.

I deem it my duty to inform you at the same time that pursuant to section 1089 of the Revised Statutes a transcript of this judgment was delivered to Frank W. Hackett, attorney of record for the State of Massachusetts, to be lodged by him with the Secretary of the Treasury for payment and the Secretary of the Treasury reported the same to Congress as House Document 298, Sixty-fifth Congress, first session.

Respectfully,

SAML. A. PUTMAN,
Chief Clerk Court of Claims.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following FINDINGS OF FACT:

I. The act of Congress approved July 16, 1916, conferring jurisdiction on the Court of Claims, provides as follows:

"AN ACT CONFERRING JURISDICTION ON THE COURT OF CLAIMS TO ADJUDICATE THE CLAIMS OF THE STATE OF MASSACHUSETTS.

"Be it enacted, etc., That the claim of the State of Massachusetts for premium paid for coin with which it paid the interest and principal of its bonds issued in the year eighteen hundred and sixty-one for money borrowed and used to furnish troops of
the State for the service of the United States during the Civil War; and also its claim
for interest, and premium paid for coin in payment of such interest, on bonds issued
for money borrowed and expended at the request, during said war, of the President
of the United States, in protecting the harbors and fortifying the coast, which claims
were rejected by the Comptroller of the Treasury Department, be, and the same are
hereby, referred to the Court of Claims for determination of the facts and report to Congress. "The evidence of the amount of said expenditures and of the
computations of such premiums made by the accounting officers of the Treasury on
file in said department, as furnished by the State, may be considered by the court
so as to relieve the State of the necessity of again filing said evidence in court."
The act of July 27, 1861, 12 Stat., 276, and joint resolution of March 8, 1862, authorizing
reimbursement to the States for war expenditures, provides as follows:
"That the Secretary of the Treasury be, and he is hereby, directed, out of any money
in the Treasury not otherwise appropriated, to pay to the governor of any State, or
his duly authorized agent, the costs, charges, and expenses properly incurred by such
State in enrolling, subsisting, clothing, supplying, arming, equipping, paying, and
transporting its troops employed in aiding to suppress the present insurrection against
the United States, to be settled upon proper vouchers to be filed and passed upon by
the proper accounting officers of the Treasury."
The joint resolution approved March 8, 1862, 12 Stat., 615, provides that the foregoing
act shall be construed to apply to expenses incurred as well after as before the date
of the approval.
The act of Congress approved February 14, 1902, directing the accounting officers
of the Treasury to pay expenses for military purposes, provides as follows:
"And claims of like character [referring to the claims of States therein appropri-
ated for] arising under the act of Congress July twenty-seventh, eighteen hundred
and sixty-one (Twelfth Statutes, page two hundred and seventy-six), and the joint
resolution of March eighth, eighteen hundred and sixty-two (12 Statutes, page six
hundred and fifteen), as interpreted and applied by the Supreme Court of the United
States in the case of the State of New York against the United States, decided Janu-
ary sixth, eighteen hundred and ninety-six) One Hundred and Sixty United States
Reports, page five hundred and ninety-eight), not heretofore allowed or heretofore
disallowed by the accounting officers of the Treasury shall be reopened, examined,
and allowed, and, if deemed necessary, shall be transmitted to the Court of Claims
for findings of fact or determination of disputed questions of law to aid in the settle-
ment of the claims by the accounting officers." 32 Stat., 30.
The act of the Legislature of the State of Massachusetts approved March 22, 1862,
providing for the payment of the principal and interest of its bonds in coin, provides
as follows:

Chapter 82.

"Section 1. The interest and principal of all scrip or bonds of the Commonwealth
of Massachusetts which have been or may hereafter be issued shall when due be paid
in gold or silver coin.

"Section 2. Whenever the interest or principal of any scrip or bonds of the Com-
monwealth shall become due the treasurer and receiver general shall procure coin
for the payment of the same, and the governor shall draw his warrant for such sum
as may be found necessary to procure such coin, to be paid out of any moneys then in
the treasury of the Commonwealth.

"Section 3. This act shall take effect upon its passage."

II. The State of Massachusetts at the request of the United States armed and
equipped its quota of Volunteers for the service of the Federal Government during
the Civil War. In order to raise the money required for that purpose it was neces-
sary for the State to borrow it. It, therefore, in pursuance of the act of its legislature
approved May 21, 1861, borrowed three millions of dollars on its bonds, which bore
interest at the rate of six per centum per annum from July 1, 1861. They were pay-
able beginning July 1, 1871, and ending July 1, 1876. Under the provisions of the
act of its legislature approved April 25, 1862, the State borrowed $600,000 more on
its bonds for said purpose. They bore interest at the rate of five per centum per
annum and were payable July 1, 1877. These bonds were all denominated "Union
loan bonds."
The three million dollars of bonds issued under said act of the legislature of May 21,
1861, were sold prior to March 22, 1862. The said act of May 21, 1861, under which
the bonds were issued, did not state that the bonds were payable principal or interest
in coin. No part of the principal or interest of these bonds was paid prior to the
legal-tender act.
III. On the tenth day of October, 1902, the State filed an amended claim in the Treasury Department for interest and premium paid for coin with which such interest and a part of the principal of said Union loan bonds had been paid. It also included a claim for interest, and premium paid for coin with which said interest was paid, on money borrowed by the State on its five per cent twenty-year bonds, issued under the act of its legislature of March 30, 1863, for the purpose of protecting the harbors and strengthening the fortifications on the coast. Other items of expense were also included in said claim.

The auditor for the War Department computed and allowed such interest and premium paid on $2,567,500 of the total issue of said Union loan bonds. He disallowed the interest and premium claimed on said coast defense improvement bonds.

IV. The comptroller overruled the allowance of the auditor of premium paid on the Union loan bonds issued in 1861 and disallowed the same. He affirmed the auditor's allowance of interest claimed thereon and also on the Union loan bonds issued under the act of the legislature approved April 25, 1862, and the premium which the State had paid on said bonds of 1862 and other expense. He affirmed the auditor's disallowance of the coast-defense claim. These allowances were paid by appropriation April 27, 1904, 33 Stat., 424.

V. An act of Congress was approved July 7, 1884, as follows:

"That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and directed to examine the claim of the State of Massachusetts for expenses incurred and paid, at the request of the President and Secretary of State, during the war, in protecting the harbors and strengthening the fortifications on the coast, now on file with the third auditor, under the act of July twenty-seven, eighteen hundred and sixty-one (12 Stat. page two hundred and twenty-six) and report the amount to Congress." 23 Stat., 204.

The State had made these improvements with money borrowed on its bonds issued in pursuance of the act of its legislature of March 30, 1863. The accounting officers allowed $209,885.61. This was paid by appropriations, as follows: Act of October 19, 1888, 25 Stat., 600; act of March 2, 1889, 25 Stat., 937.

The computation made by Auditor B. F. Harper, of the amount of interest and premium paid by the State on bonds representing above allowance, was $233,885.82, which amount, as stated, was by him and the comptroller disallowed.

VI. The State paid $979,395.94 for premium on coin to pay principal and interest on its Union loan bonds issued in 1861 and 1862 for the purpose stated in request for finding No. 2. There was refunded to the State $93,006.06, being premium thus paid on said bonds of 1862. The amount of such premium unpaid is $886,389.68. The State paid for interest and premium on coast-defense bonds $233,885.82, which has not been refunded to it.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the said sum of eight hundred eighty-six thousand dollars and sixty-eight cents ($886,389.68), shown in finding VI, and is not entitled to recover the said sum of $233,885.83 also shown in Finding VI, and the petition as to this item is dismissed.

OPINION.

BARNEY, Judge, delivered the opinion of the court.

This is a suit brought by the State of Massachusetts by virtue of the following jurisdictional act of Congress, which speaks for itself as to its purpose:

"That the claim of the State of Massachusetts for premium paid for coin with which it paid the interest and principal of its bonds issued in the year eighteen hundred and sixty-one for money borrowed and used to furnish troops of the State for the service of the United States during the Civil War; and also its claim for interest and premium for coin in payment of such interest, on bonds issued for money borrowed and expended at the request, during said war, of the President of the United States, in protecting the harbors and fortifying the coast, which claims were rejected by the Comptroller of the Treasury Department, be, and the same are hereby referred to the Court of Claims for determination of the law and the facts, and report to Congress.

The evidence of the amount of said expenditures and of the computations of such premiums made by the accounting officers of the Treasury on file in said department, as furnished by the State, may be considered by the court so as to relieve the State of the necessity of again filing said evidence in court.

It will be seen that this act provides for the consideration of two claims; first, the claim for the State of Massachusetts on account of premium paid for coin in payment
of interest on bonds issued for money borrowed and expended to furnish troops of the State for the service of the United States during the Civil War; second, its claim for interest and premium paid for in payment of such interest on bonds issued for money borrowed and expended during said war in protecting harbors and fortifying the coast.

The facts involved are all a matter of record and are in effect agreed upon by the parties. The legal aspect of the case and its history are substantially as follows:

First claim. — July 27, 1861, 12 Stats. 276, the Congress enacted the following statute:

"That the Secretary of the Treasury be, and he is hereby, directed, out of any money in the Treasury not otherwise appropriated, to pay to the governor of any State, or his duly authorized agent, the costs, charges, and expenses properly incurred by such State in enrolling, substating, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury."

A joint resolution of Congress approved March 8, 1862, 12 Stats., 615, provides that the foregoing act shall be construed to apply to expenses incurred after as well as before the date of approval.

Pursuant to this, the State of Massachusetts armed and equipped volunteers for the service of the Federal Government during the Civil War and paid the cost, charges, and expenses incurred for that purpose. There being no money in the treasury of the State not otherwise appropriated, it became necessary for the State to raise the money required by borrowing it upon its bonds. Therefore, in pursuance of the act of its legislature approved May 21, 1861, it borrowed three millions of dollars on its bonds, which bore interest at the rate of 6 per cent per annum. They were payable beginning July 1, 1871, and ending July 1, 1876. Under the provisions of the act of its legislature approved April 25, 1862, the State borrowed $600,000 more on its bonds for the same purpose, and these bonds bore interest at the rate of 5 per cent per annum and were payable July 1, 1871. These bonds were all denominated Union loan bonds.

The act of the legislature of the State of Massachusetts approved March 22, 1862, provided that:

"The interest and principal of all scrip or bonds of the Commonwealth of Massachusetts which have been or may hereafter be issued shall, when due, be paid in gold or silver coin.

The Supreme Court in the case of New York v. United States, 160 U. S. 598, decided that that State was entitled to recover from the United States interest upon its bonds issued to defray the expenses to be incurred in raising troops for the national defense pursuant to the act of June 27, 1861. Whereupon the several States which had paid interest for that purpose, including the State of Massachusetts, filed claims with the Treasury Department for interest so expended. The State of Massachusetts also included in her claim as a part thereof the premium expended upon coin for that purpose. This premium, paid for coin which paid the interest on bonds issued under the act of the legislature of April 25, 1862, for the sum of $600,000, as hereinbefore stated, was paid. But the claim for premium on coin used to pay the interest on the bonds issued in July, 1861, was rejected, the same being the sum of $586,399.68; and it is for the recovery of that sum so rejected that this suit is brought, together with the second claim, which is as follows:

Second claim. — The State of Massachusetts had expended the sum of $209,885.61 soon after the outbreak of the Civil War for the purpose of protecting the harbors and strengthening the fortifications on the coast and had filed a claim for said sum so expended with the accounting officers of the Government, but did not include in said claim any claim for interest.

July 7, 1884, Congress passed the following act:

"That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and directed to examine the claim of the State of Massachusetts for expenses incurred and paid, at the request of the President and Secretary of State, during the war, in protecting the harbors and strengthening the fortifications on the coast, now on file with the third auditor, under the act of July twenty-seven, eighteen hundred and sixty-one (12 Stat., page two hundred and twenty-six) and report the amount to Congress."

Pursuant to said act the accounting officers examined said claim and found that said sum had been expended for the purposes mentioned and reported the same to Congress, which was duly paid by appropriations for that purpose. October 10, 1902, the State filed another claim in the Treasury Department for which included a claim for interest and premium paid for coin with which such interest was paid on money borrowed by the State on bonds issued under the act of its legislature of March 30, 1863, for the purpose of protecting the harbors and strengthening the fortifications on
the coast, which said claim was rejected and has never been paid. This constitutes
the second claim in the plaintiff's petition.

We will now proceed to examine and discuss these claims in the order in which
they are stated.

The first legal-tender act was passed by Congress February 25, 1862, 12 Stat., 345.
This act was declared unconstitutional by the Supreme Court in the case of Hepburn
v. Griswool, 8 Wallace, 606, which decision was overruled by the Supreme Court in
the case of Knox v. Lee, 12 Wallace, 457, and the law decided to be constitutional.
It
will thus be seen that the first issue of the war loan bonds by the States of Massa-
chusetts was made several months before the passage of this act, at which time these
bonds were only payable in coin.

The Legislature of Massachusetts passed an act March 22, 1862, making all of its
bonds, both principal and interest, theretofore issued or thereafter to be issued pay-
able in coin. This act was passed less than a month after the passage of the legal
tender act by Congress, at which time the legal tender issue of currency had depre-
ciated very little in value. These historical facts are given as throwing some light
upon the reason for this legislation by the State of Massachusetts. She had issued
her bonds in good faith and upon the credit of the Commonwealth at a time when
they were payable in coin.

These bonds had been taken probably by her own citizens, but there was nothing
to show that they designed to stop at home. The fair name of the Commonwealth it
was assumed would give them currency in other States and in foreign lands as well,
notwithstanding the only security behind them was the promise of the State to pay.
Except in the case of a State holding some of the bonds and suing as such there was
no legal remedy for the enforcement of the obligation by the courts. Upon the good
credit of the State the bonds were taken and the money supplied and used to aid the
United States. There can be no doubt that when the bonds were issued and sub-
scribed for or purchased they were payable only in coin. By the terms of the Con-
stitution the State could not make them payable in anything else. The State so
thought that they were payable in coin, and the holders of the bonds had a right to
think the same. The legal tender act reserved the right to pay interest on the bonds
of the United States in coin, and the principal was payable in coin. If it was proper
for the United States in determining what policy was best as to its obligations to
declare that their bonds and the interest thereon should be payable in coin, can it
be said to be improper for Massachusetts to follow so illustrious an example? She
had failed to express on the face of the bonds the real understanding when they
were issued and purchased, namely, that they were payable in coin, but was it not
proper, having regard to her own promise and her own fair name, that she should
subsequently recognize her obligation by giving the assurance as solemnly as possible
that her compact would be kept according to its original intention? Certainly among
the duties of a State not the least of them is that the State shall be honest.

In this connection it may be well to call attention to what was done by the Federal
Government to strengthen its credit after the close of the Civil War. While some of
its bonds provided that the interest should be paid in coin, there was no specific state-
ment as to the kind of money in which the principal should be paid. In order to keep
faith with the holders of these bonds and do what it believed was the understanding
of the parties at the time they were issued, Congress enacted the following law 16
Stat., 1:

"In order to remove any doubt as to the purpose of the Government to discharge
all just obligations to the public creditors, and to settle conflicting questions and inter-
pretations of the laws by virtue of which such obligations have been contracted, it is
hereby provided and declared that the faith of the United States is solemnly pledged
to the payment in coin or its equivalent * * *, of all the interest-bearing obliga-
tions of the United States, except in cases where the law authorizing the issue of any
such obligation has expressly provided that the same may be paid in lawful money or
other currency than gold and silver." * * *

By the enactment of this law the Federal Government did almost exactly what
Massachusetts did under similar circumstances; and this was done when coin was
still at a high premium.

It is unthinkable that at this time any one dreamed that the State of Massachusetts
would ever have to prosecute a claim against the Federal Government for the interest
paid on these bonds. The State of Massachusetts never could have had any such
thought in view. She simply said to her creditors, "You loaned me money upon
these bonds of the standard of gold and silver, and though I may be enabled to pay
for this loan by cheaper money I will never do so, but will pay you in kind." Hence
there is no room for the assumption that the State of Massachusetts in the enactment
of this statute had any other object in view than that of keeping good faith with her
creditors. If any motive can be ascribed to a municipal corporation we think it is a presumption amounting to a conclusion that the State of Massachusetts thereby was only doing what she believed to be proper because it was honest, and had no intent of increasing the expense to the Federal Government in the raising and equipping of these troops.

It was urged by the defendants at the trial that we are not allowed to look at this feature of the case but must apply the hard letter of the law as though this suit was between individuals. Let us briefly examine that question. By the act of July 27, 1861, 12 Stat. 276, the Federal Government said to the sovereign State of Massachusetts (sovereign with its limitations): "If you will help us in this our time of distress by advancing funds to raise and equip troops for our service we will refund to you all expense "properly incurred" for that purpose." In order to respond to this call it was necessary for the State of Massachusetts to pledge her credit by the issuance of bonds at that time payable only in coin. Thereafter the Federal Government enacted a law which subsequent events showed would enable the State to pay this loan in cheaper money. Within 30 days after the passage of this law and when its unfortunate history had hardly begun, was it otherwise than "proper" for Massachusetts to say to her creditors on these and other bonds, You loaned us coin and we promise you that we will never compel you to take cheaper money in payment."

The proper construction to be given by courts to the word "proper" as used in section 8 of Article I of the Constitution was decided in the case of United States v. Fisher, 2 Cranch, 358. The question for decision there was whether a statute making the United States a preferred creditor was constitutional. The court held that it was, and Chief Justice Marshall in his opinion said:

"In construing this clause it would be incorrect, and would produce endless difficulties, if it the opinion should be maintained that no law was authorized which was not indispensably necessary to give effect to a specified power.

"Where various systems might be adopted for that purpose, it might be said with respect to each that it was not necessary because the end might be obtained by other means. Congress must possess the choice of means, and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the Constitution." Id. 396.

The same subject came before the Supreme Court in the famous case of Knox v. Lee, already referred to, and there the court said:

"It was, however, in McCulloch v. Maryland [4 Wheat., 416] that the fullest consideration was given to this clause of the Constitution granting auxiliary powers, and a construction adopted that has ever since been accepted as determining its true meaning. We shall not now go over the ground there trodden. It is familiar to the legal profession and, indeed, to the whole country. Suffice it to say in that case it was finally settled that in the gift by the Constitution to Congress of authority to enact laws 'necessary and proper' for the execution of all the powers created by it, the necessity spoken of is not to be understood as an absolute one. On the contrary, this court has held that the mode of construction of the Constitution must allow to the National Legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Said Chief Justice Marshall, in delivering the opinion of the court: 'Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.',' Id., 538.

There is another feature of this case which merits consideration. It is undisputed that Massachusetts in good faith actually spent the amount claimed in the payment of premium for coin for the payment of the interest on her bonds issued for money borrowed to answer the call for help by the Federal Government. As a matter of justice, ought not the statute in question be given such a construction as to entitle the plaintiff to a judgment for this amount expended? In the New York case Justice Harlan, speaking for the court, said that the statute of July 27, 1861, should be liberally construed. New York v. United States, 160 U. S. 620. He further said:

"On February 11, 1862, he [the Secretary of War] telegraphed: 'The Government will refund the State for the advances for troops as speedily as the Treasurer can obtain funds for that purpose.' Liberally interpreted, it is clear that the acts of July 27, 1861, and March 8, 1862, created, on the part of the United States, an obligation to indemnify the State for any costs, charges, and expenses "properly incurred" for the purposes expressed in the act of 1861, the title of which shows that its object was 'to indemnify the State for expenses incurred by them in defense of the United States.'"

After Massachusetts had expended this money in good faith regarding it as a "proper" expense for the purposes for which it was required, is it for this court to inquire into the
question as to whether the State might have raised the money at less expense? Can we be called upon to find whether she might have put bonds upon the market at par which bore a lower rate of interest than those which she issued?

In *Johnson's case*, 124 U. S., 236, the court considered a provision in the captured or abandoned property act which provided that the Secretary of the Treasury should make "such rules and regulations as are necessary to secure the proper and economical execution of the provisions of this act, and shall defray all expenses of such execution from the proceeds" of sales, etc. The question was upon the meaning of the term "the proper and economical execution" in the statute. The court, while recognizing that the approval of the President was made essential to the validity of the rules and regulations, declared that the entire administration of the system devised by Congress was committed to the Secretary of the Treasury, and said (p. 249): "Upon him alone was imposed the responsibility, in the first instance, of making rules and regulations for the 'proper and economical execution' of the statutes in question, through agents whom he should designate. * * * Such authority was conferred upon the Secretary of the Treasury, subject to no other restriction than that the expenses charged upon the proceeds of sales be 'proper and necessary,' and be approved by him. But no rule was prescribed for its guidance in determining what expenses were to be regarded as of that character; for the reason, perhaps, that as each collection and sale of captured and abandoned property must depend upon its special circumstances, it was not practicable to establish a rule that would control every case.

"As no expenses could be charged against the proceeds of any sale except upon the approval of the Secretary of the Treasury, and as his discretion must have been exercised with reference to the special facts of each case, his approval of an account of expenses in relation to the collection and sale of any particular lot of captured and abandoned property should be deemed conclusive evidence that such expenses were proper and necessary, unless it appeared that the allowance of such expenses were procured by fraud, or that the expenses were incurred in violation of some positive statute or of public policy." The principle thus announced is applicable here when we consider that no rules were announced in the statute by which the expenses incurred by the several States should be determined. What was proper for one State might not apply in another. Each State had to determine for itself. The method for raising the money was left entirely to the State, and what the State determined was a necessary and proper expense should be determinative of the question unless we find that the expenses incurred by the State were in violation of some statute or of public policy. There was no statute which forbade in terms a State making its bonds and the interest payable in coin, nor can it be said that it was contrary to public policy that this should be done, because it is well recognized that notwithstanding the legal-tender act parties could contract for the payment of their obligations in coin, and such contracts have been enforced. *Bronson v. Rodes*, 7 Wallace, 229; *Treiblick v. Wilson*, 12 Wallace, 687.

In short, under the act of July 27, 1861, is this court called upon to question the policy of Massachusetts in her manner of raising the money which it was necessary for her to raise to answer the call of the Federal Government? If we are not called upon to inquire into these things, are we allowed to question her right, at the time she did, to promise her bondholders that they should receive their interest in coin? It might well be remarked here that if the defendants had then borrowed the money for the purposes for which Massachusetts borrowed it the interest paid would have been more than it cost Massachusetts.

The case of *Willard v. Tayloe*, 8 Wallace, 557, was a suit brought by the plaintiff for the specific performance of a contract entered into in 1854. The suit was brought in 1864 and at a time when coin was at a very high premium (one dollar in gold being worth $1.80 in United States notes); and the court decreed a specific performance only on the condition that the plaintiff should pay the amount due by the terms of the contract in gold or silver coin.

While it is true that in decreeing specific performance of contracts the court exercises large discretion as to its terms, this decision seems to us clear justification for Massachusetts in providing, after the legal-tender act had been passed, that the interest on her bonds should be payable in coin. If a court of equity could decree that a contract entered into before the Civil War for the payment of money should be paid in coin before specific performance would be decreed, on the ground that it would be inequitable to do otherwise, why was not Massachusetts justified in saying that on a contract entered into with her bondholders for money payable in coin she should afterwards agree that the interest should be paid in coin, even though the law at that time would enable her to pay it in cheaper money?
We now come to the consideration of the second claim in the plaintiff's petition. The findings show that at the outbreak of the Civil War Massachusetts expended the sum of $209,885.61 for the purpose of protecting the harbors and strengthening the fortifications of the coast. July 7, 1884, Congress recognized this expenditure by passing an act referring this claim to the accounting officers of the Treasury Department and authorizing and directing them to examine the claim of Massachusetts for expenses so incurred. Pursuant to said act, the State of Massachusetts filed its claim for the same, together with interest upon the bonds which she had issued for borrowing money for that purpose, together with the premium paid for coin with which such interest was paid. Thereupon the accounting officers allowed the claim for the principal on the bonds, but rejected the claim for interest and premium. Congress afterwards appropriated for the principal sum so expended by the State, but never made any appropriation for the interest and premium. We have been cited to no law of Congress promising to repay Massachusetts any part of the money so expended by her, from which it follows that however generous and patriotic this action on the part of the State may have been, she has no legal status in this court for the repayment of the same. The action of Congress in repaying her the principal sum expended was entirely voluntary and created no legal foundation for anything more.

It follows, from the foregoing, that the plaintiff should have judgment for the sum of $886,389.68 upon the first claim in the petition, and that the second claim should be dismissed, and it is so ordered.

Hay, Judge; Downey, Judge; Booth, Judge; and Campbell, Chief Justice, concur.

By the Court.

Filed April 9, 1917.
A true copy:
Test this September 14, 1917.

Saml. A. Putman,
Chief Clerk Court of Claims.