The Committee on Claims, to whom was referred the bill (S. 1851) entitled "A bill for the relief of the legal representatives of the estate of Henry H. Sibley," respectfully reports the bill with the recommendation that the same do pass.

STATEMENT OF THE CASE

Henry H. Sibley was an officer of the United States Army for the period of 28 years, from 1833 to 1861. He invented an improved conical tent, known as the Sibley tent, upon which in 1856 the United States Government issued to him letters patent. On April 16, 1858, he sold and assigned a half interest in his patent and in the benefits and net proceeds arising therefrom after February 22, 1856, to Lieut. William W. Burns, of the United States Army. The letters patent were issued to Sibley on April 22, 1856, and on February 6, 1858, Sibley, acting through his agent, W. E. Jones, made an agreement with Gen. Charles Thomas, Assistant Quartermaster General, United States Army, by which he gave a permit to the United States to use his patent upon the payment of a royalty of $5 for each tent made for the use of the Army. The agreement was to hold good until the 1st day of January, 1859, and longer unless terminated by notice to the Government to be served by Sibley's agent, W. E. Jones. A formal contract embracing this agreement was made between the United States and W. E. Jones, acting as agent for Sibley, on February 18, 1858. In this contract the United States was authorized to make and procure as many of the
Sibley tents as the Government might require upon paying a royalty of $5 for each tent, and the agreement was to remain in force until January 1, 1859, and for a longer period unless the United States received notice to the contrary from Sibley or his agent. The Sibley tent was then adopted as one of the tents used in the United States Army by Army Regulations.

After Sibley had received letters patent for his tent the United States, under the agreement made as above set forth, manufactured the Sibley tent at United States arsenals and also had these tents manufactured for the Government under contracts entered into with individuals.

The entire number of tents made in this way for use and received by the Government was 47,541.

On October 26, 1861, Simon Cameron, the Secretary of War, directed that no further payments of the royalty should be made to William W. Burns, to whom Sibley had assigned a one-half interest.

On May 13, 1861, Henry H. Sibley resigned as an officer in the Army of the United States and was discharged from the service. He thereafter served as an officer in the Confederate Army. On August 22, 1861, the Quartermaster General of the United States Army directed that the one-half of the royalty to be paid for the Sibley tents which it had been paying to Sibley should thereafter be withheld, as well as all sums then due him, the reason assigned being his defection and service in the Confederate Army.

After the issuance of letters patent to Sibley the United States manufactured the Sibley tent at its arsenals and caused them to be made under contracts with individuals, and in this manner received and used Sibley tents to the number of 47,541. On these it paid the royalty prior to December 26, 1861, on 4,174. After December 26, 1861, it paid the royalty on 772.

Prior to December 26, 1861, the Government had entered into contracts for Sibley tents, which it afterwards received and used to the number of 38,158.

On December 26, 1861, the Government contracted for and afterwards received and used Sibley tents to the number of 558.

In other words, under the contract entered into with Sibley and pursuant thereto the Government contracted for, received, and used Sibley tents to the number of 47,351.

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Upon the number thus contracted for, received, and used it paid the agreed royalty on 3,849, leaving an unpaid royalty on Sibley tents to the number of 43,692.

In 1868 Burns brought a suit against the Government in the Court of Claims to recover his one-half of the royalties on the 43,692 tents. He recovered a judgment for one-half of the royalties on 40,497 tents, the judgment amounting to $101,242.50. There was a dispute as to the liability of the Government to pay for 3,196 tents, and that number was excluded from the claim in the suit brought by Burns; and he recovered on 40,497 instead of 43,692 tents. The Government appealed the case to the Supreme Court of the United States, which affirmed the judgment in favor of Burns. The case is reported in 12 Wallace, 246. It is the case of Burns v. The United States. The opinion was written by Mr. Justice Field.

In the opinion the court said:

"In the present case there is no question of the right of Sibley to the improved conical tent. He received a patent for the improvement in April, 1856, and by the contract with him the United States recognized his right to it and paid compensation for its use. * * * Burns had become equally interested with Sibley in the contract. * * * The War Department recognized this half interest of Burns and * * * paid a moiety of the royalty to him. It thus severed his claim under the contract from that of Sibley. (Burns v. The United States, 12 Wall. 246.)"

The Government of the United States paid the judgment favor of Burns, amounting to $101,242.50. In that suit the liability of the Government to pay the royalties under the contract upon 40,497 tents was fully determined by the highest court of last resort in the United States. The decision is res adjudicata as far as any issues can arise as to the validity of the contract when executed, the liability to pay the royalty under it at the time it was executed, and the fact that the Government pursuant to that agreement contracted for, received, and used 40,497 Sibley tents. It is also beyond dispute that Burns received his one-half for these tents and that Sibley did not receive anything for his one-half.

The only question remaining is the question as to whether or not the fact that Sibley on May 13, 1861, tendered his resignation as an officer of the United States Army and afterwards served as an officer in the Confederate Army
relieved the Government of its obligation to pay his one-half of the royalty under a contract made before any war existed and which was in part executed before the war began and continued in full force between the Government and Burns after the war began.

On May 13, 1861, Major Sibley tendered his resignation as an officer of the United States Army and was discharged. He afterwards and until the close of the Civil War served as an officer in the Confederate Army. On August 16, 1867, President Johnson granted to Sibley full pardon and amnesty, which he accepted and took the oath of allegiance required. On December 25, 1868, the President by public proclamation granted an unconditional pardon to all who had been engaged in the rebellion. Sibley died in 1886. A widow, a daughter, and a son survive him. The claimants have not been guilty of laches, because it appears they petitioned for relief and that bills have been introduced in their behalf in the Forty-fifth, Forty-sixth, Forty-seventh, Forty-ninth, Fifty-first, Fifty-first, Fifty-second, Fifty-third, Fifty-fifth, Fifty-sixth, Fifty-seventh, Fifty-eighth, Sixtieth, Sixty-first, Sixty-second, and Sixty-third Congresses. A bill passed the Senate in the Fiftieth Congress. Another was reported favorably by the Senate committee in the Fifty-third Congress, another in the Fiftieth Congress, and another in the Fifty-eighth Congress.

It is a rule of international law, well settled and universally recognized, that existing valid contracts made before the commencement of a war, while suspended during the operation of war, are revived and resume a legal status upon the return of peace. The taint of disloyalty which stood against Sibley was removed by the pardon of President Johnson and the general amnesty. In a case decided in the Court of Claims on February 9, 1914, the case of Cicero L. Lincoln, administrator of Joseph A. Harvey, deceased v. The United States, relative to the seizure of cotton under the authority of the United States after June 1, 1865, the court decided that the effect of the general amnesty and pardon granted by the President of the United States December 25, 1868, was to relieve all persons who had participated in the Civil War from any imputation of disloyalty; and that while loyalty is jurisdictional in the Court of Claims, a claimant may plead loyalty and prove the averment by the said pardon, or he may allege the fact of participation in the Civil War and in connection therewith plead the said effect of the pardon. The court cites the case of Padelford v. The United States (9 Wall., 533), in which the Supreme Court declared that the pardon—

"Was sufficient to wipe out any imputation of disloyalty prior to the taking of the oath; and that if claimant's cotton had been seized before the oath was taken, the faith of the Government was pledged to its restoration when it also appeared that the oath had been taken in good faith. This decision made the proof of pardon a complete substitute for proof that the claimant gave aid and comfort to the rebellion."

Accepting the decision that the disability arising from his service in the Confederate Army was fully removed by the pardon granted to him, and that upon the return of peace the contract was fully restored, it seems clear that the liability of the Government has been determined by the decision of the case of Burns v. The United States, and that the heirs of Sibley are entitled to the same compensation which Burns received, to wit, the sum of $101,242.50.

The findings and conclusions of the Court of Claims are hereto attached and submitted as a part of this report.

[Senate Document No. 105, Sixty-first Congress, first session]

ESTATE OF HENRY H. SIBLEY

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, June 17, 1909.

Sir: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. James S. Sherman,
President of the Senate.
ESTATE OF HENRY H. SIBLEY


STATEMENT OF THE CASE

This is a claim of the estate of Henry H. Sibley for his share of the royalties of a certain patent issued to him for a conical tent under a contract with the United States in the year 1858.

On the 22d day of May, 1908, the Senate by resolution, referred the following bill to the court, under the provisions of the act of March 3, 1887:

"[S. 5942, Sixtieth Congress, first session]  
"A BILL For the relief of the legal representatives of the estate of Henry H. Sibley, deceased  

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to the legal representatives of Henry H. Sibley, deceased, one hundred and ten thousand dollars, in full settlement of his claim against the United States for the use of a patented invention in the manufacture of a tent known as the Sibley tent."

The claimant appeared and filed his petition herein on the 7th day of November, 1908, in which he makes the following allegations:

That he is the executor of Henry H. Sibley, who died on the 21st day of August, 1886.

That the said Sibley was the patentee of a military tent known as the Sibley tent, which the United States had, by contract, secured the right to use, and had agreed to pay five dollars ($5) royalty on each tent procured, which contract was, by its terms, to continue until the 1st of January, 1859, and thereafter unless the said Sibley notified the Government of the termination of it; said Sibley never gave the United States notice of its termination, and the United States continued to use the rights under the contract.

That the said Sibley assigned to W. W. Burns a one-half interest in the royalties, and during the time that the patent was in force to 1873 the United States manufactured or caused to be made by contract 47,541 of the said tents under the contract aforesaid.

Under date of August 22, 1861, officers of the United States directed that Burns be paid $2.50 for every tent manufactured, and that the other half of the royalty formerly paid to Sibley be withheld, and from and after that date the United States has failed to pay Sibley or his personal representatives under the contract any accounting for the tents so manufactured, which numbered 43,692, and on these one-half of the royalty is claimed, amounting to $109,430.

That the United States has paid the said W. W. Burns one-half of the royalties on 40,497 tents under a judgment of this court in the sum of $101,242.50 (see judgment of this court reported in the Fourth Court of Claims Reports, pages 113 to 127; affirmed by the Supreme Court, 12 Wallace 246), and to his widow the sum of $5,000 balance due on royalties on 3,195 tents (see 33 Stat. L. 800).

That on May 13, 1861, the said Henry H. Sibley was discharged from the service of the United States upon the tender of his resignation, and thereafter he served as an officer in the Confederate army until the close of the rebellion, and it was on account of such service, and for no other reason, that the United States authorities refused an accounting under the contract aforesaid.

That no proceedings were ever begun by the United States in any of the courts of the United States to secure the condemnation of the property of the said Sibley under the provisions of section 7 of the act of July 17, 1862 (12 Stat. L. 589, 591), or any other act passed by Congress prohibiting the condemnation of property of persons engaged in the rebellion, and none of the property of the said Henry H. Sibley, including his property in the patent aforesaid, was ever condemned in accordance with law or otherwise, and that his contract with the Government remained in full force until the expiration of the letters patent.

That on the 16th day of August, 1867, President Johnson granted the said Sibley a full pardon and amnesty for all offenses, which pardon the said Sibley accepted, took the oath required, and fully complied with all conditions therein; that on the 25th of December, 1868, the President of the United States by public proclamation granted unconditionally and without reservation pardon to all who had been engaged in the rebellion, and that by reason of these pardons, both special and general, Henry H. Sibley was absolved from all guilt or taint resulting from his participation in the rebellion.
That by reason of the provisions of the act of Congress approved February 3, 1863 (12 Stat. L. 767), which provides "in order to authorize the said court to render a judgment in favor of any claimant, if a citizen of the United States, it shall be set forth in the petition that the claimant and the original and other prior owner thereof, in favor of the claim has been assigned, has at all times borne true allegiance to the Government of the United States, and whether a citizen or not, that he has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said Government," the said Sibley was advised he could not maintain suit in the said court, this advice being in accordance with the construction of the act then and for a long time thereafter generally accepted as correct, and it was not until the 29th day of January, in the year 1872, that it was decided by the Supreme Court that one who had been pardoned, as had this claimant, might sue and recover judgment, notwithstanding the said statute. At the time this decision was rendered the claim of Sibley was barred from the consideration of this court by the statute of limitations, and the said Sibley was beyond the seas.

Numerous bills have been introduced for the claimant’s relief, and several have been favorably reported. The said Sibley left surviving him a widow, Charlotte Kendall Sibley, and two children, Helen S. White, who was born in 1846, and Sidney J. Sibley, who was born in 1861. That Charlotte K. Sibley was born in the State of New York and was throughout the Civil War loyal to the Government, and the said children, by reason of their tender years, were incapable of disloyalty.

The case was brought to a hearing on loyalty and merits on the 22d day of April, 1909, William B. Matthews, Esq., appearing for the claimant, and the Attorney General, by Maleom A. Coles, Esq., his assistant and under his direction, appearing for the defense and protection of the interests of the United States.

The court, upon the evidence adduced and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT

I. Claimant’s decedent, Henry H. Sibley, was not loyal to the Government of the United States throughout the late Civil War.

II. The claimant’s decedent, Henry H. Sibley, who was the inventor and half owner of a patented device known as the Sibley tent, which is the subject matter of this case, was an officer of the United States Army from July 1, 1833, until May 13, 1861, when he resigned therefrom, and was thereafter appointed a brigadier general in the Confederate Army, serving in said army throughout the late Civil War.

III. On the 22d of April, 1856, letters patent were issued to Henry H. Sibley for an improved conical tent, since known as the Sibley tent.

IV. February 6, 1858, Gen. Charles Thomas, assistant quartermaster general, made a proposition to W. E. Jones, agent for the Sibley patent tent, to permit the United States to use the patent upon the payment of a royalty of $5 for each tent made for the use of the Army. The said Jones agreed to enter into a temporary arrangement of this nature to hold good until the 1st of January, 1859, and longer, unless notified to the contrary by the said Jones.

V. On the 18th of February, 1858, the terms proposed by Mr. Jones were approved by the Secretary of War, and accordingly a contract was made between the United States and W. E. Jones, as agent for the Sibley patent tent, by which the United States were authorized to make and procure as many of the Sibley tents as the Government might require by paying $5 for each tent, and this arrangement was to hold good until January 1, 1859, and longer, unless the United States were notified to the contrary. The Sibley tent was adopted as one of the tents for the Army by Army Regulations.

VI. On the 16th day of April, 1858, an agreement was entered into between Maj. Henry H. Sibley, United States Army, and Lieut. William W. Burns, United States Army, whereby the said Burns acquired a one-half interest in all of the benefits and net proceeds arising from and belonging to the invention of the Sibley tent from and after the 22d of February, 1856.
ESTATE OF HENRY H. SIBLEY

VII. After the 22d of February, 1856, the United States made the Sibley tent at their arsenals and caused them to be made by contracts with individuals and—

The whole number thus procured was.................................................. 47,541
Of these the United States, prior to Dec. 26, 1861, paid the royalty on.. 3,849

Leaving unpaid and on which one-half of the royalty is claimed here.......................................................... 43,692
Of these the United States made prior to Dec. 26, 1861.......................... 4,174
After Dec. 26, 1861................................................................. 772
The United States contracted for prior to Dec. 26, 1861.......................... 38,155
After Dec. 26, 1861................................................................. 568

VIII. At the December term, 1868, this court rendered a judgment in favor of W. W. Burns for his one-half interest in the royalty of $5 for each tent on 40,497 tents, making the sum of $101,242.50; as to 3,195 tents there was a controversy as to the liability of the Government, a majority of the court excluding them from said judgment, as shown by the last finding in the case of Burns v. The United States (4 C. Cis. R. 113, 124), and the judgment so rendered was affirmed on appeal (12 Wall. 246).

IX. On the 22d day of August, 1861, General Meigs, Quartermaster General, instructed General Thomas, assistant quartermaster general at Philadelphia, under whose direction Sibley tents were made and contracted for for the United States, as follows:

QUARTERMASTER GENERAL'S OFFICE,
Washington, D. C., August 22, 1861.

COLONEL: The case of the claim of Capt. W. W. Burns to the "royalty of the Sibley tent" having been examined by this department, it is considered that Captain Burns is entitled to one-half of the royalty, as originally fixed between the Government and Major Sibley, the inventor. It is accordingly directed that you pay to Capt. (now Maj.) W. W. Burns, United States Army, or to his accredited agent, the sum of $2.50 on each and every tent of that peculiar description manufactured by the Government, whether at its own establishment or through the agency of contractors—of course all contracts to be made with this understanding. The other half of the original royalty, formerly paid to Maj. H. H. Sibley, United States Army, will for the future be withheld, as well as all that may be due him, for in consequence of the defection of that officer it is considered that all his right and title thereto reverts to the Government.

M. C. MEIGS, Quartermaster General.

Col. CHARLES THOMAS,
Assistant Quartermaster General, Philadelphia.

X. On the 23d of August, 1861, Quartermaster General Meigs, by the following order addressed to Colonel Vinton, of New York, under whose direction the Sibley tents were then made and contracted for for the United States, instructed him as follows:

QUARTERMASTER GENERAL'S OFFICE,
Washington, D. C., August 23, 1861.

The royalty will depend on the terms of the contract.
No man has a right to make a patented article without permission of patentee.
No man can sell one without permission. None can use one without permission.

Colonel Thomas can inform you of the state of this matter. He has been in the habit of paying the royalty, but he has made the tents. The royalty has been $5 per tent, of which, since the defection of the patentee, only $2.50 have been paid, and that to Captain Burns, who is half owner of the patent.

I am, respectfully,

M. C. MEIGS, Quartermaster General.

Col. D. H. VINTON,
Deputy Quartermaster General, New York.
XI. On the 26th of October, 1861, Quartermaster General Meigs submitted to the Secretary of War the following communication:

**Quartermaster General's Office, Washington, October 26, 1861.**

Sir: I have the honor to call the attention of the honorable Secretary of War to paragraph 1002, Revised Regulations of the Army, 1861, and in connection therewith the matter of the “royalty” allowed to Maj. W. W. Burns, of the commissary department, United States Army, on the “Sibley tent.”

The records of this office show that in February of 1558 an arrangement was entered into by Col. Charles Thomas, assistant quartermaster general, and Mr. W. E. Jones, agent of Sibley, the patentee of the Sibley tent, and approved by the then Secretary of War, that for the use of said patent the Government was to pay $5 on each tent manufactured by the Government.

It is also shown that Maj. W. W. Burns, United States Army, was admitted to an equal share in the profits thus arising from the manufacture of these tents.

The inventor, Maj. H. H. Sibley, resigned his commission about the beginning of our present troubles, leaving Maj. W. W. Burns the only loyal citizen invested with the right of this “royalty.”

The department, acting under the decision of the predecessor of the honorable Secretary of War, has thus far allowed Major Burns $2.50 “royalty.”

For convenient consultation paragraph 1002 is copied. (See below.)

Hon. Simon Cameron, Secretary of War.

“1002. No officer or agent in the military service shall purchase from any person in the military service or make any contract with any such person to furnish supplies or services, or make any purchase or contract in which such person shall be admitted to any share or part or to any benefit to arise therefrom.”

Upon this communication Secretary Cameron indorsed as follows:

“No further payments will be made to Maj. W. W. Burns on account of ‘royalty’ on the Sibley tent.

SIMON CAMERON, Secretary of War.

“WAR DEPARTMENT, December 26, 1861.”

XII. This order was communicated to officers of the War Department as above shown and was not communicated to the petitioner or the patentee, Major Sibley; and from its date no payments on account of the royalty were made, and the last payment on account of the royalty shown to be made was on September 3, 1861, and of $515, paid to W. W. Burns, for his moiety of the royalty ($2.50) on 206 tents.

XIII. On August 16, 1867, a pardon was granted to said Henry H. Sibley by the President of the United States, which pardon was accepted by said Henry H. Sibley, with all the conditions therein specified, under date of August 26, 1867.

XIV. The claimant’s decedent, Henry H. Sibley, died August 21, 1886, never having presented said claim to any department or officer of the United States, and no claim was presented by the heirs of said decedent or by his executor until the presentation of said claim to Congress and its reference to this court as hereinbefore set forth in the statement of the case.

Filed May 20, 1909.

A true copy.

Test this 16th day of June, 1909.

[Seal.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.