FRENCH SPOLIATIONS

APRIL 19 (calendar day, APRIL 21), 1926.—Ordered to be printed.

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

REPORT

[To accompany S. 62]

The Committee on Claims, to whom was referred the bill (S. 62) for the allowance of certain claims for indemnity for spoliations by the French prior to July 31, 1801, as reported by the Court of Claims, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendments: On page 52, after line 8, insert the following:

On the vessel schooner Hannah, Gerald Byrne, master, namely:
Charles D. Vassey, administrator of Ambrose Vasse, $784.
Charles Prager, administrator of Mark Prager, junior, surviving partner of the firm of Prager and Company, $490.
George Harrison Fisher, administrator of Jacob Ridgway, surviving partner of the firm of Smith and Ridgway, $474.32.
William D. Squires, administrator of Henry Pratt, surviving partner of the firm of Pratt and Kintzing, $490.
J. Bayard Henry, administrator of George Rundle, $392.
J. Bayard Henry, administrator of Thomas Leech, $392.

On page 95, after line 12, insert the following:

On the vessel sloop New York and Philadelphia Packet, Casper Faulk, master, namely:
George A. Faulk, administrator of Caspar Faulk, $417.
Richard C. McMurry, administrator of Daniel W. Coxe, $588.
Charles Willing, administrator of Thomas M. Willing, surviving partner of Willing and Francis, $392.
William Brooke-Rawle, administrator of Jesse Waln, $784.
J. Bayard Henry, administrator of John Leamy, $490.
John Cadwalader, junior, administrator of Thomas W. Francis, $294.

During the Sixty-eighth Congress the Committee on Claims reported favorably an identical bill to the Senate, but owing to the lateness of the session it failed of passage.
In the same Congress President Coolidge, in his annual message, December 3, 1924, recommended favorable action by the Congress which would permit the payment of these remaining French spoliation claims. He said:

During the last session of the Congress legislation was introduced looking to the payment of the remaining claims generally referred to as the French spoliation claims. The Congress has provided for the payment of many similar claims. Those that remain unpaid have been long pending. The beneficiaries thereunder have every reason to expect payment. These claims have been examined by the Court of Claims and their validity and amount determined. The United States ought to pay its debts. I recommend action by the Congress which will permit of the payment of these remaining claims.

The facts are fully set forth in Senate Report No. 404, Sixty-eighth Congress, first session, which is appended hereto and made a part of this report.

The Committee on Claims, to whom was referred the bill (S. 56) for the allowance of certain claims for indemnity for spoliations by the French prior to July 31, 1801, as reported by the Court of Claims, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendments:

This bill was favorably reported to the Senate on January 14, 1924, and remained on the calendar until January 31, 1924, when, upon request of a member of the committee, it was recommitted to the committee for the purpose of further investigation.

On Thursday, March 27, an exhaustive hearing was held before the full committee.

In every case in this bill the capture and spoliation took place prior to September 30, 1800; not one occurred after that date. The Court of Claims dismissed every case where the loss occurred after September 30, 1800.

A complete history of these claims is set forth in a letter from Secretary Hughes under date of April 7, 1924, and in Senate Report No. 45, Sixty-eighth Congress, first session, which are appended hereto and made a part of this report.

Sir: I have the honor to acknowledge the receipt of your letter of March 21, 1924, in which you refer to S. 56, entitled "a bill for the allowance of certain claims for indemnity for spoliations by the French prior to July 31, 1801, as reported by the Court of Claims." You request an expression from the department as to the merits of the claims to which S. 56 relates.

By treaties concluded April 30, 1803, and July 4, 1831, between the United States and France, and February 22, 1819, between the United States and Spain, provision was made for the settlement of certain classes of claims of American citizens arising out of French spoliations. No provision was made for the payment of certain claims of American citizens against France arising out of spoliations which occurred prior to July 31, 1801. The act of Congress approved January 20, 1885 (23 Stat. L. 283), provides in section 1 as follows:

That such citizens of the United States, or their legal representatives, as had valid claims to indemnity upon the French Government arising out of illegal captures, detentions, seizures, condemnations, and confiscations prior to the ratiﬁcation of the convention between the United States and the French Republic concluded on the thirtieth day of September, eighteen hundred, the ratifications
of which were exchanged on the thirty-first day of July following, may apply by petition to the Court of Claims within two years from the passage of this act, as hereinafter provided: Provided, That the provisions of this act shall not extend to such claims as were embraced in the convention between the United States and the French Republic concluded on the thirtieth day of April, eighteen hundred and three; nor to such claims growing out of the acts of France as were allowed and paid, in whole or in part, under the provisions of the treaty between the United States and Spain concluded on the twenty-second day of February, eighteen hundred and nineteen; nor to such claims as were allowed, in whole or in part, under the provisions of the treaty between the United States and France concluded on the fourth day of July, eighteen hundred and thirty-one."

Section 6 of the act reads as follows:

"That on the first Monday of December in each year the court shall report to Congress for final action the facts found by it, and its conclusions in all cases which it has disposed of and not previously reported. Such finding and report of the court shall be taken to be merely advisory as to the law and facts found and shall not conclude either the claimant or Congress; and all claims not finally presented to said court within the period of two years limited by this act shall be forever barred; and nothing in this act shall be construed as committing the United States to the payment of any such claims."

The claims mentioned in the act of Congress referred to were known as "French spoliation claims." A large number of petitions were filed with the Court of Claims pursuant to the act of Congress of January 20, 1885, and the court found and advised the Congress that many of them were just claims against the Government of the United States. The status of these claims was exhaustively considered by the Court of Claims in Gray, Administrator, v. United States (21 C. C. 340), and in Cushing, Administrator, v. United States (22 C. C. 1). These claims were discussed also by the Supreme Court of the United States in Blagge v. Balch (162 U. S. 439).

It appears that four appropriations have been made by the Congress to pay claims in accordance with reports of the Court of Claims made pursuant to the act of January 20, 1885, as follows: March 3, 1891 (26 Stat. L. 897); March 3, 1899 (30 Stat. L. 1161); May 27, 1902 (32 Stat. L. 207); and February 24, 1905 (33 Stat. L. 743).

On December 6, 1910, President Taft in his annual message (Cong. Rec. vol. 46, p. 24) said:

"I invite the attention of Congress to the great number of claims which, at the instance of Congress, have been considered by the Court of Claims and decided to be valid claims against the Government. The delay that occurs in the payment of the money due under the claims injures the reputation of the Government as an honest debtor, and I earnestly recommend that those claims which come to Congress with the judgment and approval of the Court of Claims should be promptly paid."

President Taft, on December 21, 1911 (Cong. Rec., vol. 48, p. 589), again referred to the matter of these claims in the following language:

"In my last message, I recommended to Congress that it authorize the payment of the findings or judgments of the Court of Claims in the matter of the French spoliation cases. There has been no appropriation to pay those judgments since 1905. The findings and award were obtained after a very bitter fight, the Government succeeding in about 75 per cent of the cases. The amount of the awards ought, as a matter of good faith on the part of the Government, to be paid."

Inasmuch as these claims were referred to the Court of Claims by act of Congress, and the Court of Claims, in proceedings in which the right of claimants to recover was contested by the Government of the United States, found and certified to the Congress that claimants were entitled to relief, it would seem that, as recommended by President Taft, provision should be made for their payment. The department does not have before it the record of the various claims mentioned in S. 56, and is not therefore in a position to examine them on their merits. Furthermore, these claims were thoroughly examined on their merits by the Court of Claims and there would seem to be no occasion for the department to undertake to review the findings of that tribunal.

I have the honor to be, sir,

Your obedient servant,

CHARLES E. HUGHES.
Mr. Spencer, from the Committee on Claims, submitted the following REPORT.

[To accompany S. 56.]

The Committee on Claims, to whom was referred the bill (S. 56) for the allowance of certain claims for indemnity for spoliations by the French prior to July 31, 1801, as reported by the Court of Claims, 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. 1184, Sixty-seventh Congress, fourth session, which is appended hereto and made a part of this report.

[Senate Report No. 1184, Sixty-seventh Congress, fourth session.]

The Committee on Claims, to whom was referred the bill (S. 4607) for the allowance of certain claims for indemnity for spoliations by the French prior to July 31, 1801, as reported by the Court of Claims, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The question involved in these claims has been repeatedly reported on in past Congresses by committees of the Senate and appropriations made in accordance with such reports.

All of these claims have now been decided by the Court of Claims. This report covers the last claims reported by the court. There are now no further claims on the docket. Your committee does not deem it necessary to enter into an exhaustive discussion of the origin of the claims. We merely set forth herein the subject matter out of which these claims arose, the action of the Court of Claims and of Congress itself upon reports of that court, and the final approval by the Executive.

It was during our Nation's struggle for independence that a treaty of amity and commerce between the United States and France was concluded at Paris on February 6, 1778, and finally ratified by Congress May 4, 1778. For the much-needed assistance thus given by France in our hour of distress, our country by that treaty guaranteed to France her possessions in America and certain port privileges for the conduct of the prizes of her ships of war and privateers. Subsequently, on the breaking out of hostilities between Great Britain and France, instead of our Nation going to the aid of France, as we had solemnly promised by the treaty of 1778, we ignored our national obligation and guaranty and became a party to the Jay treaty of 1794 with Great Britain and granted to that power the like guaranties we had given to France.
It was at this time the conflict between France and Great Britain became very bitter. Neutral shipping, as well as that of the belligerents, was indiscriminately seized and condemned. Our neutral commerce suffered greatly, particularly those vessels trading with the West Indies. Although these depredations were committed against our merchantmen, yet at no time was there any declaration of war and no actual break of friendly relations occurred. The French courts, at no time, based their proceedings upon the existence of a state of war. None in fact existed and the diplomatic relations created under the treaty of 1778 remained in full force and effect.

Our Government insisted at all times that the seizures and condemnations of American property by the French were illegal, and violative not only of international law but of the existing treaty of 1778.

Conditions had reached such a crisis at this time that our Government was only saved from an actual diplomatic break by the tact of the commission sent out by President John Adams. Chief Justice Ellsworth was the head of these envoys. Finally, after long and protracted negotiations, the treaty of September 30, 1800, was concluded. During these negotiations France kept insisting that our Government make good our guaranty to protect her in her American possessions. On the other hand, our envoys pressed with equal vigor the claims of our merchantmen for redress from France for the seizure of their vessels and cargoes. The validity of these mutual claims was admitted by both sides and mutual offers were made to settle the disputes, but finally the claims of both were surrendered. France renounced her national claim against us and our envoys released France from her obligations to compensate our own citizens for their illegal seizures and spoliations of their vessels and cargoes, or, as has been said, "The rights of American shipowners and merchants were traded away in return for a great national advantage."

PROCEEDINGS IN CONGRESS—ACT OF 1885.

From the time these claims arose until 1885 when Congress passed the act referring them to the Court of Claims (23 Stat. 283) they were persistently pressed by the claimants, and were supported by many of the greatest statesmen in our public life and history.

The legislature of every one of the original States passed resolutions calling upon Congress to make provision for their payment, and Chief Justice Marshall at one time said:

Having been connected with the events of the period and conversant with the circumstances under which the claims arose, he was from his own knowledge satisfied that there was the strongest obligation on the Government to compensate the sufferers by the French Spoliations. (21 C. Cls. 390.)

January 20, 1885, in order to settle definitely the liability of the United States for these claims, Congress referred the claimants to the Court of Claims.

Upon this reference, by which the Government designated its own arbitrator, the court was directed to "examine and determine the validity and amount of all the claims * * * together with their present ownership."
The Supreme Court by Chief Justice Chase thus defined the status of the Court of Claims in 1872:

It was urged in argument that the right to sue the Government in the Court of Claims is a matter of favor; but this seems not entirely accurate. It is as much the duty of the Government as of individuals to fulfill its obligations.

By establishing this court the United States created a tribunal to determine the right to receive moneys due by the Government. (United States v. Klein, 13 Wallace, 128, 144.)

As, however, the court was by its organic law (12 Stat. 767; Rev. Stat., sec. 1066; Judicial Code of 1911, sec. 153) prohibited from entertaining claims "growing out of or dependent on any treaty stipulation entered into with foreign nations," it was necessary to confer jurisdiction of these claims by special act, and this Congress did by the act of 1885.

PROCEEDINGS IN THE COURT OF CLAIMS.

After the passage of this act, claimants having filed their petitions, exhaustive argument was made, lasting more than a week, and the learned court unanimously decided that they were just and valid claims upon our Government, the property of the claimants "having been taken without just compensation" to pay and cancel our national obligation to France. (Gray, 21 C. Cls. 340, 390.) Rehearings having been had upon the request of the Government, resulted in the court adhering to its former decision (Cushing and Hooper cases, 22 C. Cls. 1, 57, 408, 469.)

Twenty-five years later after the personnel of the court had entirely changed the five new judges, on an independent reexamination of the questions, reaffirmed the decision of their predecessors and held the United States liable to the citizens for all property lost by the illegal action of French cruisers and privateers.

Judge Howry, rendering the unanimous opinion of the court said:

The spoliation claims as a class were valid obligations from France to the United States, and our Government surrendered them to France for a valuable consideration benefiting the Nation, and this use of the claims raised an obligation founded upon right. (46 C. Cls. 214, 224.)

The main question, the liability of our Government to pay for the losses, having been decided, the court thereupon proceeded with the trial of the individual cases and from time to time duly certified to Congress its awards, covering not only their validity but the ownership and amount of loss as well.

In passing it is worthy of note that every particle of evidence presented to the court in these cases consisted of the official records of the French tribunals and our own customhouse records; also such other data as had been filed with the Department of State shortly after the losses had taken place. The suggestion that such evidence be filed was made by Thomas Jefferson, Secretary of State. In fact, the Court of Claims insisted in each case upon strict proof of ownership, value of the property, and that the claim under the existing treaty and international law was a valid one against France and consequently a valid obligation against the United States under its assumption in the mutual negotiations with France.
FRENCH SPOLIATIONS.

APPROPRIATIONS BY CONGRESS.

Congress has heretofore made four leading appropriations to pay the court's awards, as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Appropriation Number</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mar. 3, 1891 (26 Stat. L. 897, 51st Cong.)</td>
<td>$1,304,095.37</td>
<td></td>
</tr>
<tr>
<td>Mar. 3, 1899 (30 Stat. L. 1161, 56th Cong.)</td>
<td>1,055,473.04</td>
<td></td>
</tr>
<tr>
<td>May 27, 1902 (32 Stat. L. 207, 57th Cong.)</td>
<td>798,631.27</td>
<td></td>
</tr>
<tr>
<td>Feb. 24, 1905 (33 Stat. L. 743, 58th Cong.)</td>
<td>752,660.93</td>
<td></td>
</tr>
</tbody>
</table>

Total: 3,910,860.61

All these acts of appropriation have provided that payment shall only be made if a personal representative of the original sufferer satisfy the Court of Claims after the appropriations are made that such personal representative represents the next of kin of the original sufferer of the loss—a provision by which as construed by the court "Congress wished to protect the flesh and blood of the original sufferer from any invasion or sacrifice of right." (The Eliza, 28 C. Cls. 480, 482.)

In an earlier opinion under the original act of 1885 the court said:

It is due to truth and the facts of history to say that in all the cases already tried in this court we find the claims to have been retained with the papers, documents, and other evidence, in the numerous families of the original losers, with uncommon tenacity, still subject to distribution as assets of those who first made the losses. (The Industry, 26 C. Cls. 249, 251.)

Since 1905 the Court of Claims insisted upon the claimants whose claims had been filed within the time limited by the jurisdictional act—that is to say, by January 20, 1887—either presenting the remaining cases for trial or, if no further evidence was obtainable, such cases were dismissed. This was also insisted upon by the Attorney General in order that Congress might know definitely the amount of obligations under this act. Every case filed under the jurisdictional act of 1885 has been passed on and certified to Congress—those in which favorable awards were made and those which were dismissed. This being so, Congress is now informed that no further outstanding claims exist. The Attorney General, in his annual report of December 6, 1915, announced the final disposition of all French spoliation claims remaining on the docket of the Court of Claims and said that no further outstanding claims existed.

Those that are now before Congress and unpaid and are provided for by the present bill amount to $3,248,202.47. It can not fail to be recognized as violative of justice and good faith not to provide for these remaining awards when the majority of them have been paid, especially so when we realize that their validity and justice have been ratified by the three coordinate branches of our Government, the judicial, legislative, and executive.

The claimants have been to great expense in presenting their cases to the Court of Claims, the arbitrator selected by the Government, and it would be unconscionable to refuse to mete out justice to these remaining claimants and further delay redress when the others have been paid.

No interest or costs have been allowed to the claimants by the court or by this bill. The amounts claimed have been greatly reduced by the court on account of the inability of the claimants to obtain needed documentary evidence, much of which has been lost or destroyed during the lapse of years.
Whenever the court decided adversely to the claimants in any case and certified its conclusion to Congress such action was considered final. Such were cases for personal, as distinguished from property, injuries (Fanny and Hope, 46 C. Cls. 214), seizures on land, the act being held limited to captures at sea (The Leghorn Seizures, 27 C. Cls. 224), cases where the captured vessel made resistance to search although such resistance was expressly authorized by act of June 25, 1798 (1 Stat. 572) (Schooner Industry, 22 C. Cls. 1, 37; Schooner John, 22 C. Cls. 408, 426-440; Schooner Nancy, 27 C. Cls. 99; Ship Rose, 36 C. Cls. 290; Ship Amazon, 36 C. Cls. 378; Schooner John, 37 C. Cls. 24; Schooner Mary, 37 C. Cls. 33; Schooner Endeavor, 44 C. Cls. 242), and all cases occurring after September 30, 1800, although the jurisdictional act fixed July 31, 1801, as the terminal date of the claims (The Poll Cary, 45 C. Cls. 219). None of the claimants whose claims were excluded by these rulings have attempted to obtain further redress, nor would there be any hope of doing so if such a proposition were brought before Congress. If that be so, why should not an award in favor of the claimants be as final and binding upon the Government?

PRESIDENT TAFT'S RECOMMENDATIONS.

On December 6, 1910 (61st Cong.), which was since the last appropriation of February 24, 1905, President Taft (now Chief Justice), in his annual message brought to the attention of Congress its delay in not making provision for the payment of these awards. He said:

I invite the attention of Congress to the great number of claims which, at the instance of Congress, have been considered by the Court of Claims and decided to be valid claims against the Government. The delay that occurs in the payment of the money due under the claims injures the reputation of the Government as an honest debtor, and I earnestly recommend that those claims which come to Congress with the judgment and approval of the Court of Claims be promptly paid.

No action being taken in the Sixty-first Congress, President Taft, on December 21, 1911, again referred to the question of the payment of the awards of the Court of Claims, as follows:

In my last message I recommended to Congress that it authorize the payment of the findings or judgments of the Court of Claims in the matter of the French spoliation cases. There has been no appropriation to pay those judgments since 1905. The findings and awards were obtained after a very bitter fight, the Government succeeding in about 75 per cent of the cases. The amount of the awards ought, as a matter of good faith on the part of the Government, to be paid.

CLAIMS OF INSURANCE COMPANIES.

The claims of the insurance companies are identical with the claims that have been paid, except in the fact that they happen to be held by corporations instead of by individuals.

Like all other French spoliation claims, they were referred by Congress to the Court of Claims to be adjudicated both as to the facts and as to law, and after the fullest possible argument pro and con the court unanimously found in favor of the companies in identically the same manner as for the other claimants.

Congress has recognized the claims of insurance corporations in their French spoliation losses, as follows:
First. French spoliations, where the ships were condemned in Spanish ports. Thirty-one insurance companies were reimbursed for their losses, aggregating $1,486,929.58, from the allowance made by Spain under the treaty of February 22, 1819. (See S. Ex. Doc. No. 74, 49th Cong., 1st sess., p. 25 et seq.)

Second. French spoliations since July 31, 1801, where the ships were condemned in French ports. Fifty-two insurance companies were reimbursed on account of their losses, aggregating $1,760,699.21, from the allowance made by France under the treaty of July 4, 1831. (See S. Ex. Doc. No. 74, 49th Cong., 1st sess., p. 41 et seq.)

Third. French spoliations prior to July 31, 1801, where the ships were condemned in French ports. (This is the class to which all the present unsettled French spoliation claims belong.) Two insurance companies were paid for their losses aggregating $26,860, under the act of Congress dated March 3, 1891. (See 51st Cong., vol. 26, pp. 902, 905, 907.)

The above three classes cover all of the different kinds of French spoliation claims, and in each class insurance companies' claims have been paid, making an aggregate of precedents for insurance companies already paid of $3,274,488.79.

As a matter of fact insurance company claims passed the Senate on March 1, 1889, in the first bill for French spoliation payments after the reference of the subject to the Court of Claims. (See Cong. Rec., 50th Cong., 2d sess., pp. 2519-2521.) All French spoliations, however, were dropped in conference from the deficiency bill that year.

Notwithstanding the precedents just cited, an erroneous impression has grown up of recent years in the minds of some members that Congress has never paid such insurance claims. The facts are, however, that until late years the companies have been treated in the same manner and to the same extent as all other claimants. For example, when the whole subject of French spoliations was referred in 1885 to the Court of Claims, Congress included the insurance cases on exactly the same basis as the others, and as late as 1891 (that is, after findings of the Court of Claims had been reported back to Congress), appropriations in accordance therewith were actually made, making a direct precedent for the present claims.

Your committee, therefore, recommends payment of the last remaining awards of the Court of Claims as they appear in the accompanying bill, being identical in character with those heretofore paid.
Mr. Howell, from the Committee on Claims, submitted the following

MINORITY REPORT

[To accompany S. 62]

The majority of the Committee on Claims has submitted a report favorable to the payment of certain gratuities as provided in S. 62 and in which the undersigned members of the committee do not concur, for reasons that may be inferred from the following facts:

Among the thousands of bills now before Congress probably the most unique is this S. 62, it being, in effect, both a Christmas tree and a catalogue of antiquities.

Under the terms of this measure certain beneficiaries are to receive gratuities aggregating millions of dollars, the reasons for which lead back into the distant past, through the first quarter of the twentieth century, all through the nineteenth, and into the closing years of the century that witnessed the birth of American independence.

Those first seeking these gratuities, who originally filed these ancient claims, are all but forgotten. They began to besiege Congress 124 years ago. Hence the prospective beneficiaries of to-day are their great, great, great grandchildren, or cousins four and five times removed, to whom the misfortunes that befell and were pleaded by these ancestors mean nothing.

ORIGIN OF CLAIMS

During 1793 France began the seizure of our vessels and cargoes on the high seas. The motive was to prevent supplies reaching her encircling enemies, but the excuse for such hostile acts was, of course, based upon other grounds.

She charged, in extenuation of her conduct, that we had violated the treaty of 1778 in refusing to join her in a declaration of war against Sardinia, the United Netherlands, Austria, Prussia, and Great Britain. That this was a mere pretext is evident from the
fact that the alliance that preceded Yorktown was not an offensive but a defensive alliance.

Ignoring our protests France continued her depredations, and naturally we retaliated. This led to reprisals and thus, step by step, hostilities developed between the two nations. Ultimately we seized certain French vessels and cargoes as good prize, just as France was seizing ours. All treaties were abrogated. Congress ordered the Navy to attack the public vessels of France wherever found, and the history of that time is not wanting in brilliant exploits by our naval commanders.

Although the war had not yet involved our land forces, George Washington was recalled from his retirement and again made commander in chief of the armies of the United States.

Finding that we would fight, and fight effectively, France concluded that, in her situation, our neutrality was preferable to our hostility, and sued for peace.

As a consequence a treaty was concluded providing for a "firm, inviolable, and universal peace" between the French Republic and the United States, and our envoys, in accord with their instructions, secured a stipulation for the reimbursement of our citizens for losses, due to the French spoliations in connection with vessels and cargoes not "definitely condemned" by prize courts prior to the agreement's final sanction.

The ratification of this treaty in 1801 met with general approval, except among certain interested merchants, shipowners, insurance companies, and underwriters, they insisting that France should make restitution irrespective of whether prize courts had passed upon captures, and that in not securing such compensation our Government had failed in its duty or, what was worse, had offset American private claims, properly payable by France, against the national claims of that country, and therefore, in the place of France, we should pay such claims out of the Treasury.

The Government answered in effect that, as actual warfare existed between the nations, the demands of claimants were invalid, especially in those cases where prize courts had finally disposed of the property involved. The correctness of this view could not be successfully controverted; however, the claimants took the position that a declaration of war had not been made by either country and therefore war did not exist, in fact. This, however, was effectively combatted by the citation of a formal opinion by the then Attorney General and decisions of the Supreme Court of the United States, to the effect that there was actual war between the United States and France.

Such, in short, is the genesis and character of these claims which, since the beginning of the last century have been intermittently pending before Congress, down to the present time, and for the payment of which S. 62 makes definite and final provision.

PRESIDENTIAL VETOES

When first presented, in 1802, the Members of both the Senate and the House of Representatives were, from their own knowledge, familiar with the facts and circumstances surrounding these claims, and, during the immediately subsequent decades the events involved
had not so far receded into the past as to distort congressional perspective. Hence, for nearly half a century Congress was adamant in its refusal to consider these shadowy claims upon any grounds whatever.

In the meantime on-coming generations augmented both the number of claimants and their influence to such an extent that finally in 1846 legislative scruples were submerged by expediency, and $5,000,000 was appropriated to forever quiet their persistent importunities. This bill was promptly vetoed by President Polk, who stated in his message:

I can perceive no legal or equitable ground upon which this large appropriation can rest.

Nine years later registered another high tide of importunity, and the claimants, further reinforced in numbers, succeeded in logrolling another similar appropriation through Congress. This was vetoed by President Pierce, who stated in part—

In view of what has been said, there would seem to be no ground on which to raise a liability of the United States, unless it be the assumption that the United States are to be considered the insurer and the guarantor of all claims, of whatever nature, which any individual citizen may have against a foreign nation.

And he closed his message with the following:

It is apparent * * * that the circumstances must be extraordinary which would induce the President to withhold approval of a bill involving no violation of the Constitution. The amount of the claims proposed to be discharged by the bill before me, the nature of the transactions in which those claims are alleged to have originated, the length of time during which they have occupied the attention of Congress and the country, present such an exigency.

A generation later there was added to these vetoes a third by President Cleveland, who particularly called attention to the inequity of paying such gratuities to insurers because of losses in connection with risks assumed with full knowledge and at rates of premium increased above normal up to 1,000 per cent or more. He concluded this subject, in his message, with the following words:

The appropriations to indemnify against insurance losses rest upon weaker grounds, it seems to me, than those of owners; but in the light of all the facts and circumstances surrounding these spoliation claims, as they are called, none of them, in my opinion, should be paid by the Government.

Toward the close of the last century the heirs of the original claimants had so multiplied that the interest of each in the possible salvage became relatively small. Then, too, as time went by, in many families the claims assumed the character of fables. As a consequence the personal clamor of individual claimants largely ceased. Not so, however, with attorneys and insurers, which together had millions at stake.

CERTAIN CLAIMS PAID

Finally, to rid itself of further importunities, for a time at least, Congress referred the whole matter to the Court of Claims, as a sort of master in chancery, for a determination of facts in each case, but provided that no findings by the court should be in the nature of a judgment or in any way binding upon the United States. Ultimately, the Court of Claims largely accepted the views of these claimants, holding that there was but a limited war between
the two countries, and that, while the claims had no legal standing, they ought to be viewed and acted upon in the light of equity.

Much encouraged, the claimants besiegged Congress with renewed vigor, and finally secured the insertion of a little more than $1,300,000 in the general deficiency bill, on March 3, 1891, in the very last hours of that short session. Eight years later, another appropriation for a less amount was secured under similar circumstances; and in 1902 and 1905 similar appropriations were also made of less than a million dollars in each case.

ALL PAYMENTS GRATUITIES

The meaning of the payments provided for under these appropriations is made clear by what was said in 1896 by the United States Supreme Court in Blagge v. Balch to-wit:

We think that payments thus prescribed to be made were purposely brought within the category of payments by way of gratuity, payments as of grace, and not of right.

In short, it was because these payments were gratuities that Congress adopted the policy that the next of kin only should be the beneficiaries in every case; as also decided by the United States Supreme Court in Henry, administrator, v. United States, thus:

the limitation is express and that creditors, legatees, and assignees, all strangers to the blood, are excluded.

In consonance with this policy Congress also excluded all insurance companies as beneficiaries, although in 1891, two claims of this character slipped through as a part of the first appropriation. However, to avoid repetition of such an error, in the three subsequent acts it was specifically provided that no claim should be payable to any insurance company. Notwithstanding these facts, all the insurance claims, heretofore discarded by Congress, are catalogued in the bill now pending and aggregate millions of dollars.

INSURANCE CLAIMS

During the period of the French spoliations all Europe was in arms and American commerce flourished as never before. This situation, combined with the risk of capture on the high seas and confiscation, created a tremendous demand for marine insurance and at rates previously quite unknown.

Thus, in 1792 the premiums for voyages ran about 2½ per cent, but shortly thereafter they began rapidly to increase and reached as high as 33 per cent and more. In short, the demands for insurance outstripped the resources of private underwriters and as a consequence numbers of insurance companies were organized.

Of course, this was all due to the fact that during this period the business of underwriting had become highly profitable. Nevertheless these same insurers are catalogued among those seeking gratuities under the pending bill, their claim being that they were legally subrogated to the rights of policyholders who sustained spoliation losses, the whole or part of which the insurers paid.

The indefensible character of such claims was clearly presented by President Cleveland, as follows, in the veto message previously referred to:
These insurers by the terms of their policies undertook and agreed "to bear and taken upon themselves all risks and perils of the sea, men-of-war, fire, enemies, rovers, thieves, jettison, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detaiments of all kings, princes, or peoples of what nation, condition, or quality whatsoever."

The premiums received on these policies were large, and the losses were precisely those within the contemplation of the insurers. It is well known that the business of insurance is entered upon with the expectation that the premiums received will pay all losses and yield a profit to the insurers in addition; and yet, without any showing that the business did not result in a profit to these insurance claimants, it is proposed that the Government shall indemnify them against the precise risks they undertook, notwithstanding the fact that the money appropriated is not to be paid (as held by the United States Supreme Court) "except by way of gratuity, payments as of grace and not of right."

President Cleveland instinctively pointed out the vital defect and indefensible feature of these claims. A loss suffered by an individual implies a misfortune, but not so with insurers. The losses of an insurance company constitute the reason for its existence, as, for instance, it must be evident that if there were no marine losses there would be no marine insurance companies.

Prior to 1793 these insurers had charged for voyages, as previously stated, a rate of about 2½ per cent, but after the French spoliations began this rate was often increased as much as 1,000 per cent or more, due to the fact that the policies guaranteed against men-of-war, enemies, letters of mart and countermart, surprisals, takings at sea, and detaiments of all kings, princes, or peoples whatsoever.

As a consequence the losses were precisely within the contemplation of the insurers, and the rate was ample not only to pay the losses sustained but also to afford an underwriting profit.

That concrete examples of underwriting experience for that period might be available, the various claimants were requested to appear before a subcommittee of the Senate Committee on Claims. However, but two presented themselves for interrogation, viz, The Insurance Co. of the State of Pennsylvania and the Insurance Co. of North America.

In the case of the first company it was developed that it was organized and incorporated in 1794 with a capital of $500,000; that for the years immediately following it wrote marine insurance, but some time after the termination of the French spoliations it gave up this form of underwriting and devoted itself to other lines. It was further developed that during the period in question its underwriting profits, after deducting all expenses, approximated 8 per cent, not including income from other sources, such as interest on capital and premium reserves invested, which probably doubled this return.

Notwithstanding these facts, this company, under the provisions of this bill, is to receive gratuities amounting to $463,439.31, not for the mitigation of misfortunes endured, but to the end of increasing the large profits enjoyed during the period of its marine underwriting.

In the case of the Insurance Co. of North America, it appears from a history of that organization, published in 1885 by authority of its board of directors, that although the company was not incorporated until 1794 it began to issue policies as an unincorporated association in December, 1792. The spoliations beginning shortly thereafter,
the success of the enterprise was almost instant, as indicated in the following quotation taken from the history referred to:

The marine premiums written to the close of the year 1793 amounted to $213,465.31, and the losses paid to $38,484.16. In 1794 the premiums were $290,656.83, and they increased to $1,304,208.91 in 1798, when they began to decrease, and in 1802 they were but $103,902.26. This first decade showed premiums written $6,037,456.71, and losses paid $5,500,887.57.

From the above it will be noted that the excess of premiums above losses for the period covered was $536,569.14, to which should be added, to determine the net profit, income from other sources, such as interest on capital and premium reserves invested, less expenses.

As a result of the remarkable success of the company a 6 per cent dividend was paid at the end of the first six months of its existence and 6 per cent at the end of the next six months. During the next four years the dividends averaged about 28 per cent, and the year following they were 20 per cent.

PROFITS DUE TO SPOLIATIONS

From a consideration of this data it is evident that the French spoliations were a godsend to the company, as to all other insurers of that day, because as soon as the French depredations terminated, about 1801, the companies' premiums dropped from $1,082,113.58 in 1800 to $103,902.26 in 1802, and reached the low-water mark of $5,843.55 in 1808.

Although the company is still in business, it is a significant fact that its marine insurance premiums, according to the last report at hand, that for 1923, did not reach the total written in 1798. As a matter of fact, during the decade that witnessed the French spoliations this company was highly prosperous, whereas for every decade during the next 30 years it lost money as a result of its marine underwriting.

Yet in the face of these facts this bill S. 62, proposes to take out of the Public Treasury $748,906.13 and present it as a gratuity to this corporation that its handsome underwriting profits for the period in question may be more than doubled. It is because of such facts as these that the undersigned have refused to concur in the report of the majority of the committee.

R. B. Howell.
Gerald P. Nye.
Park Trammell.
T. H. Caraway.
Earle B. Mayfield.