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

REPORT

[To accompany H. R. 8477]

The Committee on Claims, to whom was referred the bill (H. R. 8477) for the relief of Frank J. Dwyer, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1577, Sixty-ninth Congress, first session, which is appended hereto and made a part of this report.

[House Report No. 1577, Sixty-ninth Congress, first session]

The Committee on Claims, to whom was referred the bill (H. R. 8477) for the relief of Frank J. Dwyer, having considered the same, report thereon with a recommendation that it do pass.

The full facts in the case are stated in the following memorandum of the Secretary of War, which is made a part of this report.

WAR DEPARTMENT,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, June 16, 1922.

Memorandum for the Secretary of War.
Subject: Proposed legislation for the relief of Frank J. Dwyer.

1. You have referred to this office "for study and preparation of letter for signature Secretary of War" the attached copy of H. R. 11499, which provides:
   "That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Frank J. Dwyer, of Suffolk County, Commonwealth of Massachusetts, the sum of $68, in full compensation against the Government as a result of injury sustained by said Frank J. Dwyer, caused by negligence on the part of Corpl. C. L. Jenkins in the operation of Army car No. 17111, owned and operated by the United States Government on June 30, 1921."

2. This office has obtained from the office of the Chief of Finance a copy of the report of the proceedings of an officer detailed by the commanding general, First Corps Area, to investigate this accident, and has had a photostat copy made of said report. This photostat copy is attached. This report shows that
on June 30, 1921, Corpl. Colie U. Jenkins, United States Army, since discharged, operating a Government automobile, was driving south along Summer Street extension, proceeding from Boston toward South Boston. At about 10:30 a.m. he approached the Fort Point Channel drawbridge at a rapid rate of speed, estimated at 35 miles per hour. As he neared the bridge the upstream gates (which are on the right-hand side of the road) were closed; thereupon he crossed diagonally to the left-hand side and entered the drawbridge from the Boston side through the downstream gates. Dwyer was closing the gates on the South Boston side. He had closed the upstream gate and was closing the gate on the downstream side when he was hit by the automobile operated by Corporal Jenkins and knocked down. His clothing was torn (estimated damage, $5), and he suffered contusion and abrasions of both elbows, right thumb, right thigh, and right knee, for the treatment of which he has expended $14 for doctors' bills, $44 for masseur treatment, and $10 (estimated) for medicines. The investigating officer recommended that Mr. Dwyer be paid $5 for damage to his private property (from annual appropriations for payment of claims for loss or damage to private property incident to the training, practice, operation, or maintenance of the Army), and that the War Department make recommendations to Congress with a view to having it appropriate the sum of $68 for the purpose of reimbursing the claimant for the money which he spent for doctors, massage, and medicines. These papers are now in the office of the Chief of Finance awaiting a signed statement of claimant that he will accept $5 in full satisfaction of his damage, as is required by statute before payment thereof can be made. (Act of June 30, 1921, 42 Stat. 68, 85.)

The investigating officer further found "that the driver of the United States Army car disobeyed no traffic regulations of the city of Boston when he crossed the bridge on the left-hand side," but "that had he been going more slowly he could have avoided hitting the claimant who was not looking out for cars coming from Boston over the downstream side, as he thought Skayhan had closed the Boston side of the bridge." No copy of the traffic regulations of the city of Boston is available to this office, so it is not advised as to the basis of this finding. However, both claimant and another witness testified that vehicles from Boston were not supposed to cross on the left-hand or downstream side of the bridge, and this is in accord with the universal practice in this country that, except on one-way streets and bridges, traffic should confine itself to the right-hand side of street or bridge. Furthermore, the evidence is uncontroverted that the Government car was moving at a high rate of speed, and that this contributed to the accident. I feel justified in concluding, therefore, that Corporal Jenkins was guilty of negligence, and that under the respondent superior rule the Government would be liable in damages therefor were it not for its sovereign immunity. It is well settled, however, that, except where Congress by appropriate legislation has waived such immunity, no liability arises in a case such as this. The granting of damages in such cases is an act of grace and not the recognition of a legal right, and this office has uniformly refrained from expressing any opinion as to the advisability thereof. It might be remarked, however, that there is no general legislation authorizing the payment of damages for personal injuries in such cases. Draft of letter to the chairman Committee on Claims, prepared for the signature of the Secretary of War, is attached.

J. A. Hull,
Acting Judge Advocate General.

WAR DEPARTMENT,
Washington, February 10, 1926.

Hon. Charles L. Underhill,
Chairman Committee on Claims,
House of Representatives.

My Dear Mr. Underhill: Receipt is acknowledged of your letter of February 3, 1926, enclosing a copy of H. R. 8477 for the relief of Frank J. Dwyer and requesting all papers, or copies of same, on file in this department relating to this claim, together with an expression of opinion as to its merits.

The records of this department show that under date of June 19, 1922, a report was made to the chairman Committee on Claims, House of Representatives, on H. R. 11499, which was a bill for the relief of this man. For your information there is enclosed herewith a copy of that letter, from which it will be noted that there was also sent the committee photostatic copy of the proceedings of the
board of officers that investigated this accident, as well as a copy of a memorandum of the Acting Judge Advocate General in regard to the matter.

It is assumed that the records previously furnished the chairman Committee on Claims are available for use of your committee in connection with the consideration of the present bill, and as the records of this department do not show that any new evidence has been submitted, the War Department refrains from any expression of opinion as to the merits of the present proposed legislation.

Sincerely yours,

Dwight F. Davis, Secretary of War.

JUNE 19, 1922.

The Chairman Committee on Claims,

House of Representatives.

Sir: Referring to your letter of June 3, 1922, relating to the claim of Frank J. Dwyer and inclosing copy of bill (H. R. 11499) for relief of claimant, with request for pertinent War Department records and opinion on the merits thereof, I have the honor to transmit herewith the following papers in the case for the information of your committee:

(a) Photostat copy of report of the proceedings of the investigating officer who investigated the accident out of which this claim originated.

(b) Copy of memorandum of the Acting Judge Advocate General to the Secretary of War, dated June 16, 1922, wherein the facts are fully discussed and the views of the Acting Judge Advocate General with regard thereto stated.

From the foregoing it appears that, since the United States is immune from any liability to Mr. Dwyer, any indemnification by Congress will be wholly an act of grace involving a matter exclusively of legislative discretion, on which the War Department abstains from any expression of opinion.

Respectfully,

John W. Weeks, Secretary of War.