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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 417
2d Session } { Part 2

C. M. WILLIAMSON ET AL.

FEBRUARY 24, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany S. 458]

The Committee on Claims, to whom was referred the bill (S. 458) for the relief of C. M. Williamson, Mrs. Tura Liljenquist, administratrix of C. E. Liljenquist, deceased, Lottie Redman, and H. N. Smith, having considered the same, further report thereon with the recommendation that it do pass.

There is attached hereto a letter from the Interior Department to the chairman of the Committee on Claims, under date of June 10, 1932.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 10, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. CHAIRMAN: Since my letter of January 21, 1932, reporting on H. R. 4391, for the relief of C. M. Williamson, Mrs. C. M. Lilijenquist, administratrix, Lottie Redman, and H. N. Smith, conferences have been held in the department and the whole case carefully reviewed. It is evident that while no legal obligation exists for the Government to reimburse these claimants for their investment in the pumping equipment on the Fort Hall project installed to irrigate their highlands, nevertheless, as evidenced by documents in the files, there was an implied obligation to supply project water to these highlands, which was later recognized by the department by supplying such project water. I therefore, since reconsideration and study of the matter, have no objection to the passage of this bill.

Very truly yours,

RAY LYMAN WILBUR, *Secretary*

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 870
2d Session } { Part 2

GEORGE OCCHIONERO

JANUARY 23, 1933.—Committed to the Committee of the Whole House and ordered to be printed

Mr. COYLE, from the Committee on Naval Affairs, submitted the following

SUPPLEMENTAL REPORT

[To accompany H. R. 9231]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 9231) for the relief of George Occhionero, having had the same under consideration, and having reported favorably on same with the recommendation that the bill do pass, on March 22, 1932; now makes this additional and supplementary report for the purpose of giving the House the following information which the committee did not have at the time the original report was made.

Under date of March 5, 1932, the Secretary of the Navy wrote to the chairman of the Committee on Naval Affairs recommending against the enactment of the bill, H. R. 9231, for the reasons set out in the letter, which was incorporated in the report of the committee to the House. Since that time the Navy Department has discovered that the recommendation was based on an erroneous belief and interpretation of the general law as related to the particular facts of this case. Consequently, the department has addressed letters to the chairman of the committee and to the author of the bill withdrawing its objection to the bill, and recommending that the bill be enacted.

The following excerpts are quoted from a letter from the Secretary of the Navy, addressed to Hon. Harold Knutson, House of Representatives (author of the bill) under date of January 20, 1932:

> It now appears that the unfavorable recommendation of the Navy Department on bill H. R. 9231 for the relief of George Occhionero was based upon an erroneous idea that he was entitled to receive a pension under the provisions of United States Code, title 38, section 229, above referred to.
>
> In view of all the circumstances in this case, I now have the honor to inform you that the Navy Department would favorably recommend the enactment of bill H. R. 9231 for the relief of this man, or a similar bill subsequently introduced for his relief.

The following is the letter from the Secretary of the Navy addressed to the chairman of the committee:

NAVY DEPARTMENT,
Washington, January 20, 1933.

The CHAIRMAN COMMITTEE ON NAVAL AFFAIRS,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to the Navy Department's letter of March 5, 1932, making an unfavorable recommendation on a bill H. R. 9231, for the relief of George Occhionero.

In the next to the last paragraph of this letter appears the statement: "While the service of Occhionero has been creditable, there is provision for him in the general laws, and there appears to be no sufficient reason for special legislation for his benefit."

This paragraph was written under the erroneous belief that Occhionero's service as a commissioned officer could be counted in computing the 20 years' service necessary to bring him within the provisions of the pension law. (U. S. C., title 38, sec. 229.) The recommendation against the enactment of this bill was based in part on this erroneous belief. After further consideration the Navy Department is now of the opinion that service as a commissioned officer can not be counted in computing length of service in the Navy under this law and therefore withdraws its objections to the enactment of the bill H. R. 9231.

Sincerely yours,

C. F. ADAMS, *Secretary of the Navy.*

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 935
2d Session } { Part 2

ADDIE I. TRYON AND LORIN H. TRYON

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

Mr. CLARK of North Carolina, from the Committee on Claims, submitted the following

SUPPLEMENTAL REPORT

[To accompany H. R. 3928]

The Committee on Claims, to whom was referred the bill (H. R. 3928) for the relief of Addie I. and Lorin H. Tryon, having considered the same, report further thereon with the recommendation that it do pass with the following amendment:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto to be made a part of this supplemental report the report of the Department of Agriculture.

DEPARTMENT OF AGRICULTURE,
Washington, D. C., February 20, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

DEAR Mr. BLACK: Reference is made to your letter of February 3, 1932, transmitting for information and the views of this department H. R. 3928, a bill for the relief of Addie I. Tryon and Lorin H. Tryon. The purpose of the bill appears to be to confer upon the United States District Court for the Northern District of California jurisdiction to hear and determine the claim of the above-named persons against the United States for the recovery of $23,149.63, paid to the United States by L. H. Tryon, administrator of the estate of E. H. Tryon, deceased, as excess profits made in handling wool of the domestic clip of 1918 under

a contract with the United States. The facts concerning the contract and the payment are briefly as follows:

By act of August 29, 1916 (39 Stat. 619, 649), Congress created the Council of National Defense, empowering it to organize subordinate bodies to assist it in its work. One such body was the War Industries Board which was brought into being on July 28, 1917, by an order of the council. On March 4, 1918, President Wilson, by a letter to Bernard M. Baruch, reorganized the War Industries Board and made it de facto a separate administrative agency answerable directly to the President for the purpose, among others, of assisting the executive departments of the Government in procuring war supplies. This letter also appointed Mr. Baruch chairman of the reorganized board.

Section 1133 Revised Statutes made it:

"* * * the duty of the officers of the Quartermaster Department, under the direction of the Secretary of War, to purchase and distribute to the Army all military stores and supplies, requisite for its use, which the other corps are not directed by law to provide * * *."

Subchapter VII of the act of July 9, 1918 (40 Stat. 845, 881), amended the above-quoted provision of the Revised Statutes, as follows:

"That so much of section 1133 of the Revised Statutes * * * as restricts the purchase and distribution of military stores and supplies to officers of the Quartermaster Corps, be, and the same is hereby, suspended for the period of the present war."

Army appropriation acts for the fiscal years ending June 30, 1918, (40 Stat. 40, 54), and June 30, 1919 (40 Stat. 845, 860), contained appropriations to the Quartermaster Corps—

"For cloth, woolens, materials, and for the purchase and manufacture of clothing for the Army * * *."

When, however, the Quartermaster Corps sought, in the spring of 1918, to procure woolens, it found itself unable to do so because the mills could not procure the necessary wool. The corps, therefore, called upon the War Industries Board for assistance. In a letter dated April 22, 1918, it laid before the board the status of the wool supply of the world, as related to the needs of the American armed forces and its availability to their use; called attention to the shortage and to the domestic clip of the United States then beginning to be sheared; and requested the board to recognize the existing situation "and to devise some plan by which the price of this raw material, absolutely essential for the conduct of this war, may be stabilized and further speculation in it prevented."

As a result of this letter the board, through its price-fixing committee, held a series of conferences of several days' duration with representatives of woolgrowers, of wool dealers, and of the Quartermaster Corps, and devised and recommended to the War Industries Board a plan which came to be known as the Government wool control. The board adopted the plan and, in cooperation with the Quartermaster Corps, put it into execution.

This plan consisted of the determination to purchase, through the Quartermaster Corps, from wool dealers under the control of the Government, so much of the domestic wool clip of 1918 as was necessary for military purposes. This proved to be the entire clip.

To exercise control over those from whom the clip was to be purchased, the War Industries Board adopted, and issued through its wool division, regulations which had been recommended by its price-fixing committee as a result of the conferences above described. These regulations, a copy of which is herewith sent, required all dealers who wished to handle the wool to obtain from the War Industries Board a permit or license so to do. In acknowledgment of the receipt of such permit, they signed and returned to the War Industries Board an agreement "to operate subject to the rules heretofore adopted or to be adopted by said board for the handling of fleece wools."

The wool dealers consisted of two general classes, namely, (1) dealers in distributing centers, called central dealers and (2) dealers in country districts called country dealers. The chief distinctions between the two lay in the fact that the central dealers graded the wool and sold it directly to the quartermaster, receiving from the quartermaster commission of 3 or 4 per cent, depending upon whether the wool was territory wool from the western section of the country or fleece wool from the eastern section thereof, while customarily the country dealers sold or consigned to the central dealers and received no commission from the Government.

Incorporated in the regulations governing the purchase of wool from these dealers were the following provisions:

"As a guard against profiteering the books of all approved dealers in distributing centers shall be at all times open to Government inspection and if it be found that their gross profits, including the aforesaid commissions of 4 per cent, are in excess of 5 per cent on the season's business, then such gross profits shall be disposed of as the Government decides.

"The books of the country dealers shall likewise be open to Government inspection. If it be found that their gross profit for the season's business is in excess of 1½ cents per pound then such excess profits shall be disposed of as the Government may decide."

It was these requirements which occasioned the Government's claim against the dealers for what came to be known as "excess profits."

E. H. Tryon, the decedent of the claimant in H. R. 3928, was in the year 1918 engaged in the business of a wool dealer at San Francisco, Calif., and also conducted, as a separate business, a wool-scouring mill at Stockton, in that State. He received from the War Industries Board a permit to operate as an approved dealer in country districts, and on June 19, 1918, signed and returned to the board an agreement to operate subject to the board's rules.

Ordinarily as a country dealer Mr. Tryon would not have sold wools directly to the quartermaster or received from the Government any commission, but special regulations, a copy of which is contained on pages 5 to 7, of the Service and Regulatory Announcements No. 50 herewith sent, were promulgated with respect to California wools. By virtue of the arrangements made under those regulations, Mr. Tryon sold large quantities of his wools directly to the Quartermaster Corps and received commissions of 3 per cent, aggregating more than $6,000.

On December 31, 1918, President Wilson, by Executive order, a copy of which is herewith sent, dissolved the War Industries Board and directed that on and after January 1, 1919, the powers and duties of that board respecting the 1918 domestic wool clip be transferred to and exercised by the Bureau of Markets of the Department of Agriculture. In order that this department might carry out in succeeding fiscal years the duties so imposed upon it, the agricultural appropriation act for 1920 (41 Stat. 234, 267), contained the following provision:

"To enable the Bureau of Markets to complete the work of the domestic wool section of the War Industries Board and to enforce the Government regulations for handling the wool clip of 1918 as established by the wool division of said board, pursuant to the Executive order dated December 31, 1918, transferring such work to the said bureau, $35,000."

This provision, changed only as to the amount appropriated, has been reincorporated in each of the agricultural appropriation acts succeeding the one above quoted. Beginning with the act for the fiscal year 1922 (41 Stat. 725) there has been added to the above-quoted language the following:

"* * * and to continue as far as practicable the distribution among the growers of the wool clip of 1918 all sums heretofore or hereafter collected or received with or without suit by the Government from all persons, firms, or corporations which handled any part of the wool clip of 1918."

When Mr. Tryon's transactions in wool of the domestic clip of 1918 had been completed his books were inspected and audited by this department and it was found that he had made excess profits in the sum of $25,275.84. After considerable correspondence and at least one conference with L. H. Tryon, administrator of E. H. Tryon who had died pending the audit and settlement, the administrator paid to this department on April 30, 1923, the $23,149.63 now sought to be recovered by the heirs of E. H. Tryon, deceased. The administrator refused to pay the remaining $2,126.21, claiming an allowance for that amount on account of insurance on the wool while being held for scouring at his mill in Stockton. Finally, the scouring claim was allowed by this department and the case closed on the basis of the amount paid being in full settlement.

The efforts of the department to collect excess wool profits have given rise to considerable litigation, in which the decisions have by no means been uniform. The earlier ones arose on demurrers filed by defendants. Decisions in those cases were uniformly in favor of the Government, except that in United States *v.* Traugott Schmidt & Sons (E. D. Mich.) (291 Fed. 382), the demurrer was sustained on a question of pleading; in United States *v.* Kraus (S. D., Ind.—unreported) the demurrer was sustained generally; and, in United States *v.* Ringle, District Court, Northern District of Ohio (N. D., Ohio—unreported) demurrer recently was sustained generally. However, when the Traugott Schmidt case

came again before the district court on demurrer to a new declaration the demurrer was overruled (see 2 Fed. (2d) 290) on the ground that—

"* * * defendants voluntarily recognized, and accepted the benefits of, the regulations in question, and, therefore, can not now be heard to challenge the validity of such regulations."

On appeal to the Circuit Court of Appeals for the Seventh Circuit in the Kraus case that court reversed the decision of the district court, which sustained the demurrer, saying:

"We are of opinion that defendants are bound by the contract alleged."

The Government did not appeal from the decision in the Ringle case, because under the peculiar circumstances of that case, recovery from defendant would have brought upon him the hardship of taking practically his entire gross profits rather than merely the excess above a specified percentage. This was brought about by the fact that this dealer had bought from other country dealers who had made the entire allowable profit and, therefore, under the strict letter of the regulations, was entitled to no profit.

The other decisions on demurrer based the liability of the defendants upon the contract entered into by them to operate their respective businesses subject to the regulations. These decisions are United States *v.* Powers (E. D., Mich.) (274 Fed. 131); United States *v.* Smith (district of Massachusetts) (285 Fed. 751); and United States *v.* Gordin (S. D., Ohio) (287 Fed. 565).

Decisions rendered after trials have not been so uniform. In United States *v.* Chicago Hide, Fur, and Wool House, Inc. (district of Wyoming—unreported), judgment was for the United States. The case was not contested but the court required the Government to prove its case and show its entitlement under the law to recover. United States *v.* Strange Bros. Hide Company (N. D., Iowa—unreported) though strongly contested, was decided in favor of the Government. The same was true of United States *v.* William Rea (district of Montana—unreported).

United States *v.* McFarland was, after trial in the district of Maryland, decided in favor of defendants. On appeal to the Circuit Court of Appeals for the Fourth Circuit (15 Fed. (2d) 823), the judgment of the district court was affirmed on the ground that the regulations were not enforceable as having the force and effect of law and that the facts did not show the implied contract alleged. The court also said, by way of dictum, that even if there had been a contract the provision for the recovery of excess profits would probably have been unenforceable, as imposing a penalty.

The next case to be decided after trial was United States *v.* Avery (N. D., N. Y.) (30 Fed. (2d) 728), in which the McFarland case was followed. Then came United States *v.* Smith (district of Massachusetts) (32 Fed. (2d) 901), in which Judge Morton reversed the position he had taken when the same case was before him on demurrer and held that the United States was not entitled to recover, the reason given being that the Government could not by agreement bind one to observe regulations which the Government had no authority to make as law. The same conclusion was reached by Judge Morton in United States *v.* Brown (unreported). Both cases were appealed to the Circuit Court of Appeals for the First Circuit and there affirmed (39 Fed. (2d) 851) on practically the same reasoning as that adopted by the district court. The result of these decisions was followed by the District Court for the Southern District of New York in United States *v.* McMurtry (48 Fed. (2d) 258), but the reasoning does not seem to be in complete harmony. The last-named court expressly held (48 Fed. (2d) 260) that the agreement was not made under duress.

That no particular significance attaches to the fact that the Solicitor General did not authorize appeals in the Avery and McMurtry cases or petitions for certiorari in the Smith and Brown cases is shown by the fact that in the Kraus case, which has been tried and in which the trial court instructed a verdict for nominal damages, the Solicitor General has authorized and there has been perfected an appeal to the Circuit Court of Appeals for the Seventh Circuit.

In the state of the decisions as outlined above this department has not found reason to change its original views with respect to the legal liability of the wool dealers to pay over to the department the excess profits realized by them. This view is based on the following theories:

First. There was an express contract voluntarily entered into whereby the dealer, in consideration of the 4 per cent commissions and other benefits to accrue to him, agreed to operated his business subject to the regulations.

Second. All the wool upon which the dealer realized the excess profits now claimed by the Government was sold by the dealer to the Government under and

subject to the regulations. Thereby, the regulations would necessarily become a portion of the terms and conditions of each contract of sale of the wool. It is noteworthy that in the trial of the Kraus case mentioned above one of the defendants testified that they understood at the time that they were selling the wool to the Government under the regulations. If the regulations were not valid and binding as having the force and effect of law and had there been no contract embodying the regulations there would have been no authority to pay the dealers, in addition to the agreed purchase price of the wool, a commission of 4 per cent, because nowhere else was such a commission agreed upon or mentioned.

Third. Assuming that the regulations when made were not valid and binding as having the force and effect of law, then each dealer had an election to pursue either of two courses, but neither in law nor in morals could he follow them both. One course was to ignore the Government and its regulations, go on conducting his business as he had always done, buying from and selling to whom he could. Of course, under such conditions, he could not have sold wool to the Government and could not have received the 4 per cent commission in addition to the purchase price, but he would have been under no obligation to surrender his excess profits. The other course was to come into the Government plan for the procurement of wool, as expressed in the regulations, conform to the Government's requirements and, thereby, enable himself to sell wool to the Government and receive the 4 per cent commission. This course was the one pursued by decedent of the claimants in the bill H. R. 3928, and, in the opinion of this department, bound him both legally and morally to surrender his excess profits.

It is hoped that the pending appeal in the Kraus case will result in a decision by the Supreme Court determining whether the department has been in error in the views above stated. Until such a decision is rendered or until it becomes apparent that such a one can not be obtained, it would seem premature to be taking steps which might result in the return of moneys already collected. It may be contended that the bill does not go further than to submit to the court the question of the right of the Government to have collected the moneys from the decedent of the claimants. Conceding for the moment the correctness of that contention, still the Government would be in the somewhat anomalous position of seeking to recover excess profits which have been withheld and, at the same time, expressing its uncertainty of its right to retain that which already has been collected. Moreover, the passage of the instant bill would no doubt encourage the introduction of bills in behalf of many of the numerous wool dealers who voluntarily paid their excess profits. The Government would thereby, be thrown into quite a mass of rather expensive litigation which probably would be avoided by deferring the matter of the return of the payments to the dealers until the question of the Government's right to make the collections has finally been decided.

In this connection it is noted that of the $23,149.60 paid to the Government by L. H. Tryon, as administrator, all but approximately $9,300 has been distributed to the growers of the wool, under the acts of Congress above referred to, and somewhat more than one-half of the $9,300 has been disbursed under authority of the act of Congress of May 17, 1928 (45 Stat. 593), providing for the use of the undistributable excess profits for certain wool marketing, studies, and investigation. Therefore, if reimbursement of the estate of E. H. Tryon, deceased, and others similarly situated, be decreed, by far the greater part of the money necessary for its accomplishment would have to be drawn from general public moneys.

In the year 1926 Joseph S. Williams and others, wool dealers of Boston, Mass., who had paid this department excess profits amounting to more than $80,000, sought by an action in the Court of Claims to recover the amount paid. The court sustained the Government's demurrer, holding (63 Ct. Cls. 668) that the claim was barred by the statute of limitations and that the action sounded in tort. Since that time the same question has come before that court in the cases of William A. Patterson et al., John T. Stone, and Louis Horkheimer, respectively, in each of which the court sustained, without opinion, the Government's demurrer based upon the grounds that the claim was barred by the statute of limitations and that the claim sounded in tort, in that the wrongful collection of money which the Government demanded as a matter of right, would raise no implied contract that they be returned.

Considering the bill in detail, it is noted, in passing, that the word "Division" has been used in line 5 of page 1 instead of the word "district" which apparently was intended. It further is noted that the only defenses eliminated by the bill are those of the statute of limitations and laches. This would leave available

to the United States a defense not involving the lawfulness of the original demand by the Government for the money, namely, that the payment, having been made voluntarily, can not be recovered, even though the Government could not have enforced its payment by legal process. (Railroad Co. *v.* Commissioners 98, U. S. 541, 543–544.) It also is noted that no provision is made in the bill for appeal from the decision of the district court. Without such a provision in acts submitting to the courts of different districts the claims of various wool dealers, it well may result that the right of a dealer to recover the excess profits which he has paid will depend upon his geographical location. It therefore is recommended that if the bill be passed it contain an appropriate provision conferring upon the Supreme Court of the United States jurisdiction to hear and determine an appeal directly from the district court. The following amendment is suggested to accomplish that purpose. After the word "appear" and before the word "Provided," in line 20 on page 2, insert the following:

"An appeal directly from the decision of said district court shall lie to the Supreme Court of the United States in manner as now provided for other direct appeals from the district courts of the United States to the said Supreme Court."

Very truly yours,

R. W. DUNLAP, *Acting Secretary.*

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 979
2d Session } { Part 2

CHARLES W. SUMNER

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

REPORT

[To accompany H. R. 913]

The Committee on Claims, to whom was referred the bill (H. R. 913) for the relief of Charles W. Sumner, having considered the same, further report thereon with the recommendation that it do pass with the following amendment:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto to be made a part of this report, copy of a letter of January 31, 1928, from the War Department.

JANUARY 31, 1928.

Hon. CHARLES L. UNDERHILL,
Chairman Committee on Claims,
House of Representatives.

DEAR MR. UNDERHILL: Reference is had to your letter of January 14, 1928, inclosing a copy of H. R. 9174, a bill for the relief of Charles W. Sumner in the sum of $750 on account of personal injuries sustained by him in a collision with an Army truck at Fortville, Ind., on July 10, 1927, and in which request is made for copies of papers in the case and an expression of opinion as to the merits of the bill.

In reply I beg to advise you that the records of the department indicate that this accident occurred on July 10, 1927, at the intersection of State road No. 67 and the Noblesville-Greenfield Pike, and was the result of a private car being driven by Mr. George W. McPherson of Noblesville, Ind., having collided with a Government car being driven by Private Ira L. Wyatt, Fifth Tank Company; that as a result of the accident Mrs. Anna L. McPherson was either thrown or

jumped out of the private car and was badly injured, and died within one hour and a half after the accident; that Mr. Charles W. Sumner was a passenger in the car driven by Mr. McPherson, and claimed to have received slight injuries. The officer who investigated the accident stated in his report "That, upon my visit to Noblesville, Ind., on July 22, 1927, I found both of the above-named men (Mr. George W. McPherson and Mr. C. W. Sumner) attending to their business and showing no signs of any injuries or disability that they might have received in the accident."

The recommendation of the investigating officer was that the claim of Mr. C. W. Sumner, 932½ Logan Street, Noblesville, Ind., for personal injuries received in this accident, be disallowed.

Copies of the findings and recommendations of the investigating officer are inclosed herewith for the information of your committee.

However, I may state that it is well established that the Government is not liable in damages for the tortious acts of its officers or agents unless Congress has by express legislation waived its sovereign immunity. This, Congress has not done so far as personal injuries are concerned. The party injured, therefore, has no legal claim against the United States and any legislation looking to compensation for his relief would be an act of grace by the Congress and not a recognition of any legal rights. The War Department has heretofore consistently refrained from expressing any opinion as to the merits of proposed legislation in such cases. In keeping with this policy I prefer to leave the determination in this instance to the Congress.

Sincerely yours,

DWIGHT F. DAVIS,
Secretary of War.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 980
2d Session } { Part 2

L. D. WORSHAM

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

Mr. BOEHNE, Jr., from the Committee on Claims, submitted the following

SUPPLEMENTAL REPORT

[To accompany H. R. 3905]

The Committee on Claims, to whom was referred the bill (H. R. 3905) for the relief of Maj. L. D. Worsham, having considered the same, report further thereon with the recommendation that it do pass with the following amendment:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this report a letter from the Comptroller General under date of January 31, 1931.

GENERAL ACCOUNTING OFFICE,
Washington, January 31, 1931.

Hon. ED. M. IRWIN,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. CHAIRMAN: There has been received your request for a report on H. R. 14330, Seventy-first Congress.

The bill authorizes and directs the payment, out of any money in the Treasury not otherwise appropriated, of $1,500 "* * * in full settlement of all claims against the Government of the United States, to Maj. L. D. Worsham, for moneys deducted from his salary on account of loss of funds in the disbursing account, Corps of Engineers, War Department, September 14, 1928."

I am unable to recommend favorable action on the bill.

During September and October, 1928, Major Worsham was a disbursing officer at Memphis, Tenn., without bond. On September 14, 1928, $1,500 of Government funds for flood control of the Mississippi River—for which Major Worsham was responsible and accountable—was stolen. The circumstances under which the theft occurred are administratively reported, as follows:

On September 14, 1928, John B. Chadwell, clerk, a civilian employed in the finance section of the office of the district engineer, Memphis engineer district, United States Engineer's Office, Memphis, Tenn., obtained $47,550 from the Federal reserve bank, Memphis, Tenn., on a check of the disbursing officer. Accompanied by a negro porter and guarded by two members of the Memphis city police he brought the money to the finance office, office of the district engineer, in the McCall Building, Memphis. Mr. Chadwell, with Roland E. Guthrie and William D. Tomlin, two other clerks in the finance section of the office, proceeded to count the money, distribute it, and divide it into several parcels for shipment to bonded field assistants for the payment of field personnel. In assembling the separate field shipments from the table on which the money was being counted a shortage of seventy-five $20 bills was discovered. After preliminary investigation on the day of the shortage by the district engineer and the disbursing officer the matter was referred to the Bureau of Investigations, Department of Justice, at Memphis, for investigation and action, with negative results.

At the time of the shortage employees handling cash in the district office were not bonded, and the responsibility for failure to bond them rested with the disbursing officer, Major Worsham, the beneficiary of this bill. The period between September 1, 1928, when Major Worsham took over the duties of disbursing officer, and September 14, 1928, when the $1,500 was stolen, was sufficiently long for Major Worsham to have selected the employees of the finance office who should handle cash and accomplish their bonding. Although Major Worsham is reported to have been to a considerable extent the victim of a situation, and of careless practice that had apparently existed for a long period of time, it is likewise reported that while he had initiated steps for bonding such employees he had not pressed the matter with sufficient diligence and had not observed in their entirety the provisions of Information Bulletins Nos. 1 and 11, Office of the Chief of Engineers, dated January and November, 1924, respectively, thus indicating negligence at the time of the theft on the part of Major Worsham.

Immediately after the theft precautionary measures against theft were taken. Three of the employees were placed under bonds, followed by the discontinuance of the bonds of two of them in order that the responsibility might be localized on one bonded cashier—the disbursing officer and the cashier working together when any large shipment of money to field parties must be made, and since the loss occurred all persons who have handled these cash shipments have been required to remain together until the several shipments were made up and delivered to the express office. The administrative recommendation in this case was that—

"Maj. L. D. Worsham, Corps of Engineers, be required to reimburse the Government under such conditions as may be prescribed by superior authority, in the amount of $1,500."

On December 15, 1928, a stoppage of $1,500 was administratively placed against the pay of Major Worsham, collection to be made at the rate of $40 per month, and credited to the appropriation "Flood control, Mississippi River." The records here show that to and including August, 1930, $840 of said $1,500 had been collected, leaving thereafter to be collected $660.

The duty and responsibility of safekeeping and accounting for public funds must be lodged somewhere. In this case it was lodged with Major Worsham. He failed in these respects, and, from the administrative reports, apparently through neglect to take precautionary measures it was his duty to take. This is not an isolated case; there are many cases of theft of public moneys supposed to be safeguarded, followed by bills to relieve the safeguarding officers of the effects of their safeguarding failures. If enacted, they in each instance operate to shift the loss from the responsible officer to the United States. (See private act of February 28, 1929, 45 Stat., pt. 2, p. 2330. See also, in this connection, my 1930 annual report, p. 68, copy herewith.) The responsibility imposed by law upon disbursing officers to account for public funds entrusted to them is not merely nominal. More in consonance with the intent of the law is the view that the responsibility is real, and, in consequence, that disbursing officers are required to make good to the United States losses of its funds while in their custody.

As a disbursing officer Major Worsham would have been responsible to the United States for this $1,500 stolen public moneys had he not in fact been at fault or negligent in safeguarding it. This rule is founded on public policy. See decisions of the Supreme Court of the United States to the effect that their responsibility is that of insurers for the safekeeping of public funds in their custody, and personally answerable for losses thereof, regardless of fault or negligence on their part, except only in cases of loss occasioned by the act of God or the public enemy. (Smythe *v.* United States, 188 U. S. 156, and cases therein discussed; United States *v.* Prescott, 3 How. 578; United States *v.* Morgan, 11 How. 154; United States *v.* Dashiel, 4 Wall. 182; United States *v.* Keehler, 9 Wall. 83; Boyden *v.* United States, 13 Wall. 17; Bevans *v.* United States, 13 Wall. 56; United States *v.* Thomas, 15 Wall. 337.) This rule is followed generally in the State courts. (See cases cited in Smythe *v.* United States, supra, and Tillinghast *v.* Merrill, 151 N. Y. 135, 34 L. R. A. 678.) In the latter case the court said:

"* * * As before intimated, we must consider and decide this question upon general principles, and in the light of public policy. In the case of an officer disbursing the public moneys, much may be said in favor of limiting his liability, where he acts in good faith and without negligence; and a strong argument can be framed against the great injustice of compelling him to respond for money stolen or lost while he is in the exercise of the highest degree of care, and engaged in the conscientious discharge of duty. When considering this side of the case, it shocks the sense of justice that the public official should be held to any greater liability than the old rule of the common law, which exacted proof of misconduct or neglect. It is at this point, however, that the question of public policy presents itself, and it may well be asked, whether it is not wiser to subject the custodian of the public moneys to the strictest liability, rather than open the door for the perpetration of fraud in numberless ways impossible of detection, thereby placing in jeopardy the enormous amount of the public funds constantly passing through the hands of disbursing agents. Without regard to decisions outside of our own jurisdiction, we think the weight of the argument, treating this as an original question, is in favor of the rule of strict liability, which requires a public official to assume all risks of loss, and imposes upon him the duty to account as a debtor for the funds in his custody."

What was said by this court as to the public policy of holding accountable officers to strict liability would appear equally applicable to the granting of legislative relief after they have been held accountable. The reliance by accountable officers on ultimately obtaining relief through legislation tends quite naturally to weaken their sense of responsibility for the funds in their control and the alertness and initiative which they otherwise would display in the performance of their safeguarding duties. While the Congress has at times granted such relief on a rather extensive scale (see private act of February 28, 1929, supra), it is still my own view, based on experience, that the granting of legislative relief encourages official laxity, and thereby tends to render less effective the whole system of Government accounting, the design of which is to prevent the loss of public funds. It is for this reason I have in general declined to recommend in favor of legislative relief, even in cases in which individual fault or negligence is not shown, and in which, in consequence, more reason for a favorable recommendation would maintain than in this case.

Moreover, the granting of legislative relief for shortages does not encourage respect for law or law enforcement, and without law enforcement in fiscal matters the whole existing Federal system of checks on illegal expenditures of public moneys becomes endangered. On the other hand, a refusal by the Congress to sanction relief from responsibility for lost public funds not only strengthens law enforcement, but avoids, as in this case, the nullifying of administrative and accounting action that has already been taken for law enforcement.

Sincerely yours,

J. R. McCarl,
Comptroller General of the United States.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 982
2d Session } { Part 2

FIRST NATIONAL BANK, JUNCTION CITY, ARK.

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 8216]

The Committee on Claims, to whom was referred the bill (H. R. 8216) for the relief of the First National Bank of Junction City, Ark., having considered the same, report further thereon with the recommendation that it do pass with the following amendment:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this supplemental report, the report of the Post Office Department under date of February 19, 1927.

POST OFFICE DEPARTMENT,
OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., February 19, 1927.

Hon. CHARLES L. UNDERHILL,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

MY DEAR MR. UNDERHILL: With further reference to your communication of the 7th instant, transmitting for a report thereon bill (H. R. 16763) for the relief of the First National Bank of Junction City, Ark., I have to inform you that the claim for relief in this instance is based upon the fact that Joe F. Tullis, who was postmaster at Upland, Ark., issued certain postal money orders payable to the bank without depositing any money therefor. The money orders were credited to the account of Joe F. Tullis who thereafter checked out the amounts thus deposited. Upon discovery of the fact that the postmaster was fraudulently

issuing money orders, post-office inspectors demanded the return of the amount of all the irregular orders cashed by the bank.

The officers of the bank at first refused the demand of the inspectors, but upon being informed by the district attorney that in suit brought in similar cases the Government has been uniformly successful, the sum was paid under protest. The legal right of the Government to recover in such instances is unquestioned, but the bank maintains that it is equitably entitled to relief through congressional action. In support of this contention it is urged by the bank that at the time the orders were issued the person issuing them was a regularly commissioned postmaster performing his duties as such, and that the bank could have no knowledge of the irregularity of the transaction.

As tending to make the transactions appear entirely regular, the fact is cited that the postmaster conducted a general store and paid for bills of goods by checks against the bank account, and he explained his practice of making deposits by money orders to the officials by stating that it was the safest and cheapest method for transmitting his money to them.

The case is submitted without recommendation by the department, and the Director Bureau of the Budget, has advised that the report herein made in this case will not conflict with the financial program of the President.

Very truly yours,

HARRY S. NEW, *Postmaster General.*

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 984
2d Session } { Part 2

MERCHANTS AND FARMERS BANK OF JUNCTION CITY, ARK.

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 9476]

The Committee on Claims, to whom was referred the bill (H. R. 9476) for the relief of the Merchants and Farmers Bank of Junction City, Ark., having considered the same, report further thereon with the recommendation that it do pass with the following amendment:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this report a letter from the Post Office Department under date of February 11, 1930.

POST OFFICE DEPARTMENT,
Washington, D. C., February 11, 1930.

Hon. ED. M. IRWIN,
Chairman Committee on Claims,
House of Representatives.

MY DEAR MR. IRWIN: I have received your communication of the 7th instant, transmitting for a report thereon bill (H. R. 9288) for the relief of the Merchants & Farmers Bank, Junction City, Ark.

The claim for relief in this instance is based upon the fact that Joe F. Tullis, who was postmaster at Upland, Ark., issued certain postal money orders payable to the bank without depositing any money therefor. The money orders were credited to the account of Joe F. Tullis, who thereafter checked out the amounts thus deposited. Upon discovery of the fact that the postmaster was fraudulently issuing money orders, post-office inspectors demanded the return of the amount of all the irregular orders cashed by the bank.

The officers of the bank at first refused the demand of the inspectors, but upon being informed by the district attorney that in suit brought in similar cases the Government has been uniformly successful, the sum was paid under protest. The legal right of the Government to recover in such instances is unquestioned, but the bank maintains that it is equitably entitled to relief through congressional action. In support of this contention it is urged by the bank that at the time the orders were issued the person issuing them was a regularly commissioned postmaster performing his duties as such, and that the bank could have no knowledge of the irregularity of the transaction.

As tending to make the transaction appear entirely regular, the fact is cited that the postmaster conducted a general store and paid for bills of goods by checks against the bank account, and he explained his practice of making deposits by money orders to the bank officials by stating that it was the safest and cheapest method for transmitting his money to them.

In this connection I have to inform you that the bill herein referred to is an exact counterpart of bills H. R. 16764, H. R. 6805, and S. 4248. Reports on the House bills were submitted to the chairman of your committee on February 19, 1927, and March 2, 1928, respectively, and a report on the Senate bill was submitted to the chairman Committee on Claims, United States Senate, on May 4, 1928, without recommendation by the department. Inasmuch as the condition of the case remains unaltered, this department is again transmitting the facts without recommendation.

Very truly yours,

WALTER F. BROWN.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1002,
2d Session } { Part 2

MARY B. HINES

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 7757]

The Committee on Claims, to whom was referred the bill (H. R. 7757) for the relief of Mary B. Hines, having considered the same, report further thereon with the recommendation that it do pass with the following amendment:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Attached there is the report of the Post Office Department under date of February 4, 1932, to be made a part of this supplemental report.

POST OFFICE DEPARTMENT,
Washington, D. C., February 4, 1932.

Hon. ROBERT D. JOHNSON,
House of Representatives.

MY DEAR MR. JOHNSON: The Postmaster General has directed me to acknowledge receipt of your letter of the 26th ultimo, relative to a bill, H. R. 7757, introduced for the relief of one Mary B. Hines, who you stated was postmaster at the fourth-class post office of Cedar, Nowata County, Okla. Your statement is noted that on May 12, 1911, the post office of Cedar was held up and robbed by masked bandits and that Mrs. Hines was shot in the right arm by one of the bandits.

According to the records of the department, Mrs. Hines never served as postmaster at Cedar.

Mr. Harvey R. Hines was appointed postmaster at that place on August 27, 1909. His successor was appointed on January 6, 1912. Mrs. Hines may have

served as assistant postmaster during the time her husband was postmaster, but there is no record of that fact as an assistant or clerk at a fourth-class post office is a personal employee of the postmaster and not of the department.

The department therefore does not care to express an opinion as to the merit of this bill.

Very truly yours,

HAROLD N. GRAVES,
Executive Assistant to the Postmaster General.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1022
2d Session } { Part 2

PETER BESS

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 657]

The Committee on Claims, to whom was referred the bill (H. R. 657) for the relief of Peter Bess, having considered the same, report further thereon with the recommendation that it do pass with the following amendment:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto the report of the Department of Justice under date of January 22, 1931, to be made a part of this supplementary report.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 22, 1931.

Hon. ED. M. ERWIN,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: Further reference is made to your letter of December 10, 1930, transmitting H. R. 14847, for the relief of Peter Bess, to this department for an opinion as to its merits.

This bill would direct the return to claimant of the sum of $500, representing the amount of a fine imposed and subsequently revoked by order of the court.

The records of this department show that claimant was indicted under section 29 (b) (1) of the bankruptcy act. He pleaded guilty to the charge and was sentenced to imprisonment for a year and a day and to pay a fine of $500. The prison sentence was suspended and he was placed on probation. The amount of the fine was paid to the probation officer and turned over to the clerk of the

court on April 29, 1930, and on May 2 covered into the Treasury. On June 18 the court revoked the fine upon a showing that the section of the law in question does not give authority for the imposition of a fine. In view of the fact that the money had been covered into the Treasury it can not be returned to him without authority of Congress.

Under the circumstances I recommend the enactment of the measure in question.

Respectfully,

WILLIAM D. MITCHELL,
Attorney General.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1060
2d Session } { Part 2

LINDLEY NURSERIES (INC.)

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany S. 3438]

The Committee on Claims, to whom was referred the bill (S. 3438) authorizing the adjustment of the claim of the Lindley Nurseries (Inc.), having considered the same, further report thereon with the recommendation that it do pass with the following amendment:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this supplemental report the report of the Senate Committee on Claims, No. 382.

[Senate Report No. 382, Seventy-second Congress, first session]

The Committee on Claims, to whom was referred the bill (S. 3438) authorizing adjustment of the claim of Lindley Nurseries (Inc.), having considered the same report favorably thereon with the recommendation that the bill do pass without amendment.

Under the terms of the bill the Comptroller General of the United States is authorized and directed to adjust and settle the claim of Lindley Nurseries (Inc.), of Pomona, N. C., for damages resulting from the forced landing of Bureau of Lighthouses airplane *NS–7* at Greensboro Airport, N. C., September 10, 1931, and to allow not to exceed $77.40 in full and final settlement of the claim.

The following correspondence from the Comptroller General, recommending the passage of the bill, is appended hereto and made a part of this report.

WASHINGTON, *January 21, 1932.*

The PRESIDENT OF THE SENATE.

SIR: Pursuant to the act of April 10, 1928 (45 Stat. 413), I have the honor to transmit herewith my report and recommendation to the Congress concerning the claim of Lindley Nurseries (Inc.) against the United States with request that you lay the same before the Senate.

A duplicate of this report is being transmitted by me to the Speaker of the House of Representatives.

Respectfully,

J. R. McCARL,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, January 21, 1932.

The Congress:

Pursuant to the act of April 10, 1928 (45 Stat. 413), I have the honor to submit the following report and recommendation relative to the claim of Lindley Nurseries (Inc.), Pomona, N. C., in the sum of $77.40 as reimbursement for damages to nursery stock and grounds as a result of the emergency landing of Bureau of Lighthouses airplane NS–7 in attempting to take off from the Greensboro Airport September 10, 1931.

The facts and circumstances incident to the attempted take-off from the Greensboro Airport and the emergency landing which resulted in the damages claimed are stated in a detailed report of the airways extension superintendent, Department of Commerce, dated September 11, 1931, which shows that the pilot of the airplane, while en route from Washington, D. C., to Montgomery, Ala., after refueling at the Greensboro Airport, September 10, 1931, attempted to take off, when motor trouble developed at an altitude of about 10 feet and within approximately 100 feet of the north boundary of the airport, which required an emergency landing. Due to the speed of the ship it was impossible to bring it to a stop until after crossing the north boundary of the airport onto the property of the Lindley Nurseries (Inc.).

The claim for reimbursement of the damages sustained by the Lindley Nurseries (Inc.) has received the administrative approval of the Commissioner of Lighthouses and is itemized as follows:

Articles or services	Quantity	Unit price	Amount
For damage to nursery stock by airways division airplane NS–7:			
Abelia grandiflora	76	$1 each	$76.00
For use of tractor:			
Tractor and driver	[1] 3	30 cents per hour	.90
Helper	[1] 2	25 cents per hour	.50
Total			77.40

[1] Hours.

While there is no appropriation available for reimbursement of losses such as incurred in this instance, I believe the claim contains such elements of equity as to be deserving of the consideration of the Congress. Accordingly, it is recommended that an appropriation be made to enable an adjustment of the claim. If the Congress should approve this recommendation, it is suggested that the enactment of a bill substantially as follows will accomplish the purpose:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Comptroller General of the United States be, and he is hereby, authorized and directed to adjust and settle the claim of Lindley Nurseries (Inc.), Pomona, N. C., on account of damages to private property resulting from the forced landing of Bureau of Lighthouses airplane NS–7, at Greensboro Airport, N. C., September 10, 1931, and to allow not to exceed $77.40 in full and final settlement of said claim. There is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of $77.40, or so much thereof as may be necessary, to pay this claim."

J. R. McCARL,
Comptroller General of the United States.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT 1073
2d Session } { Part 2

CENTRAL ROMANA (INC.)

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 9338]

The Committee on Claims, to whom was referred the bill (H. R. 9338) authorizing adjustment of the claim of Central Romana (Inc.), having fully considered the same, further report thereon with the recommendation that it do pass with the following amendment:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this supplemental report a letter from the Navy Department under date of April 5, 1932.

NAVY DEPARTMENT
Washington, April 5, 1932,

The CHAIRMAN COMMITTEE ON CLAIMS,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Replying further to the committee's letter of February 24, 1932, transmitting a bill H. R. 9338 "Authorizing the Court of Claims to hear and determine the claim of Central Romana (Inc.), and to render judgment for just compensation," and requesting the opinion of the Navy Department as to its merits, I have the honor to inform you as follows:

The purpose of the proposed legislation is to confer jurisdiction on the Court of Claims to hear and determine the claim of Central Romana (Inc.), of New York, arising out of the requisition, sequestration, or taking by the armed forces of the United States acting as a military government of Santo Domingo of a certain quantity of granulated sugar belonging to said corporation and to authorize said court to render judgment against the United States in favor of said

corporation for just compensation for the loss, if any, resulting from the requisitioning of said sugar.

The claim of this corporation has heretofore been the subject of a suit in the Court of Claims and rejected on the ground that said court "was without jurisdiction to entertain a suit arising out of action taken by the President in foreign territory occupied by the military forces of the United States and governed by him." (70 Ct. Cls. 735, syllabus.)

The Court of Claims further said that the acts which are claimed to fix a liability on the United States "were done under the orders of the President and occurred in a foreign country. The policy which was adopted and the acts done pursuant thereto were matters of state and wholly within his discretion. Consequently they did not give rise to any contract, express or implied, upon which either plaintiff could being a suit in this court," (p. 739) and that "it follows under the circumstances appearing in the case we can not review the action of the Chief Executive in exercising his constitutional right in order to fix a liability upon the Government" (p. 740).

Aside from the question of jurisdiction, it is doubted by the Navy Department that the claimant has a legal right against the United States. The sugar which constitutes the subject matter of the bill was commandeered under food control order No. 10. This order was issued by the military government of Santo Domingo and recited that certain specified quantities of sugar "are hereby requisitioned, commandeered, and seized, and the distribution and sale thereof will be conducted by agents of the military government." It further contained the stipulation that "in case the Government through the food controllers releases any of the sugar hereby requisitioned, commandeered, and seized, it guarantees to the company any difference that may exist on the day of release between the New York market price for certain grades of sugar and certain prices specified in the order for such grades."

"The government" mentioned in this order obviously did not mean the Government of the United States of America as Congress had not authorized the Government of the United States to commandeer the sugar or to pay any price therefor. The order was signed "Arthur H. Mayo, lieutenant commander, United States Navy, food controller of the Dominican Republic" and approved by "Thomas Snowden, rear admiral, United States Navy, military governor of Santo Domingo."

In the case of Luther J. Bailey et al *v.* The United States (62 Ct. Cls. 77, writ of certiorari denied by the Supreme Court, 273 U. S. 751) the court said, page 94 "It is not every such taking which imposes an obligation on the United States to pay. An essential element of a taking out of which there may arise the implied promise to pay upon which recovery is to be had in such cases is the authority to take. No officer of the United States can create an obligation against the United States to pay for property taken unless he had authority to take it * * *."

Therefore, Congress not having authorized any officer of the United States to seize the sugar described in Food Control Order No. 10 or to agree to pay any price therefor, it would appear that no legal obligation rests on the United States by virtue of such order. This assumption is confirmed by the statement by the Court of Claims above quoted that the acts complained of performed under the orders of the President "did not give rise to any contract, express or implied," upon which suit could be brought in that court.

As to any legal rights the claimant might have against the Dominican Government such rights were expressly relinquished by it in a release executed January 24, 1921, whereby the Central Romana (Inc.), stated it "does hereby remise, release, and forever discharge the Government of the Dominican Republic, its agents and representatives, of and from any and all manner of actions and causes of actions, suits, debts, dues, accounts, covenants, contracts, agreements, and claims whatsoever which the said the Central Romana (Inc.), or its successors or assigns, ever had, hereafter can, shall, or may have against the Government of the Dominican Republic by reason of the provisions of food-control order No. 10 * * * whereby the food controller of the Government of the Dominican Republic commandeered, requisitioned, and seized from the said the Central Romana (Inc.) 640,000 pounds of grade 1–A granulated sugar and 768,000 pounds of grade 3–C granulated sugar: *Provided*, That should the Government of the Dominican Republic levy any extraordinary tax after date of this release for the purpose of deriving revenues from which to pay the Government of the Dominican Republic's obligation incurred by virtue of food-control order No. 10 and its amendments, the Government of the Dominican Republic hereby binds

itself to issue to the Central Romana (Inc.) certificates in the amount of $200,640, which the said the Central Romana (Inc.) may use in place of taxes other than customs duties * * *."

It will be noted from the language of the above-quoted release that the claimant expressly recognized that the seizure of the sugar was by the "food controller of the Dominican Republic" and it released "the Government of the Dominican Republic, its agents, and representatives." No allegation is made in the release that the sugar was commandeered by the United States of America or by any representative of the United States of America.

It appears from the reports of the naval officers who acted as food controllers of the Dominican Government during the period of the military occupation that if the Dominican Government had been obliged to pay to the sugar companies the amounts required under food control order No. 10, such payment would have made a large total to that Government and would have to be raised by additional taxation. Additional taxation for this purpose would almost certainly have had to be imposed on the sugar companies themselves. These companies, including the claimant, in order to avoid the necessity of such taxation executed releases discharging the Dominican Government from its obligations under said order. These releases contained a stipulation that should a special tax be levied for the purpose of paying any obligations under said order, in the event any of the sugar estates demanded a cash payment, the companies executing releases would be furnished certificates in amounts corresponding to the cash that the Government would have had to pay if the releases had not been effected, such certificates to be received by the Government in payment of any internal revenue taxes.

The claimant being fully advised as to these facts executed the instrument above mentioned whereby it released and forever discharged the Government of the Dominican Republic, its agents and representatives from any claim whatsoever against the Government of the Dominican Republic by reason of the provisions of food control order No. 10.

The cost of the proposed legislation is indeterminate, depending on the amount awarded, if any, by the Court of Claims. The sum previously claimed by this company on account of the issuance of food control order No. 10 is $200,640.

When the case was pending before the Court of Claims, reports were secured from the naval officers who acted as food controllers during the period of military occupation of the Dominican Republic. Copies of such reports described below, are inclosed for the information of the committee, viz:

(A) Statement of Lieut. Commander Arthur H. Mayo, Supply Corps, United States Navy.

(B) Second indorsement May 26, 1927, of Lieut. Commander Lybrand P. Smith, United States Navy.

(C) Sixth indorsement July 30, 1927, of Commander Duette W. Rose, Supply Corps, United States Navy.

(D) Thirteenth indorsement of Lieut. Commander Lybrand P. Smith, United States Navy.

(E) Fifteenth indorsement October 31, 1927, of Lieut. Commander Arthur H. Mayo, Supply Corps, United States Navy.

Particular attention is invited to inclosures (D) and (E), setting forth the grounds on which it was considered that the claim lacked merit.

There is also inclosed a copy of the release of claims executed on January 24, 1921, by the claimant.

In view of the foregoing and of the information contained in the attached papers, the Navy Department recommends against the enactment of the bill, H. R. 9338.

Sincerely yours,

C. F. ADAMS, *Secretary of the Navy.*

H R—72–2—vol. A——3

72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1074
2d Session } { Part 2

WILLIAM SHELDON

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 2810]

The Committee on Claims, to whom was referred the bill (H. R. 2810) for the relief of William Sheldon, having considered the same, report further thereon with the recommendation that it do pass with the following amendment:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorneys or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Attached hereto and made a part of this report are a letter of January 7, 1929, from the Department of Justice, together with letters from the United States marshal, the chief deputy, and the office deputy, all of the United States marshal's office for the eastern district of Oklahoma.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 7, 1929.

Hon. R. B. HOWELL,
Chairman Committee on Claims,
United States Senate, Washington, D. C.

MY DEAR SENATOR: Replying further to your letter of the 22d ultimo, relative to the bill S. 5079, for the relief of William Sheldon, former deputy marshal for the eastern district of Oklahoma, I have the honor to say that the files of this department contain nothing relative to the circumstances out of which Mr. Sheldon's claim arises, except two letters dated May 13, 1922, from Deputy Marshals E. H. Hubbard and A. R. Cottle, transmitted to the department by the United States marshal on the same date, in response to an inquiry prompted by the introduction in the Sixty-seventh Congress of H. R. 9305, also for the relief

of Mr. Sheldon. Copies of these letters, together with a copy of a letter dated May 17, 1922, transmitting copies of them to the then chairman of the House Committee on Claims, are inclosed herewith.

Respectfully.

JNO. G. SARGENT, *Attorney General.*

MAY 17, 1922.

Hon. GEORGE W. EDMONDS,
Chairman Committee on Claims, House of Representatives.

DEAR MR. CONGRESSMAN: I have the honor to acknowledge the receipt of your letter of April 29, 1922, inclosing a copy of bill (H. R. 9305) for the relief of one William M. Sheldon, "as the result of injuries suffered in the performance of his duty as a United States deputy marshal."

I beg to advise you that this matter was taken up with the United States marshal for the eastern district of Oklahoma and a copy of his reply, dated May 13, 1922, in reference thereto, is inclosed herewith. The department has no further information in regard to this claim.

Very truly yours,

H. M. DAUGHERTY, *Attorney General.*

UNITED STATES MARSHAL'S OFFICE,
EASTERN DISTRICT OF OKLAHOMA,
Muskogee, Okla., May 13, 1922.

The ATTORNEY GENERAL,
Washington, D. C.

SIR: Replying to your letter dated May 8, 1922, initialed McC–211838, I beg to advise that I am not personally familiar with the circumstances surrounding the injuries which were received by William Sheldon while he was employed in the capacity of a deputy United States marshal. However, my chief deputy, Mr. E. H. Hubbard, and civil deputy, A. R. Cottle, were both employed in this office at the time Mr. Sheldon was injured, and upon my request they have submitted to me a letter which contains the information asked for in your letter, and I am now inclosing these letters to you for your information.

Respectfully,

HENRY F. COOPER,
United States Marshal.

UNITED STATES MARSHAL'S OFFICE,
EASTERN DISTRICT OF OKLAHOMA,
Muskogee, Okla., May 13, 1922.

Hon. HENRY F. COOPER,
United States Marshal, Muskogee, Okla.

SIR: In reply to your request to furnish you with such information as I can relative to the claim of ex-Deputy United States Marshal William Sheldon, concerning a bill which is now pending to reimburse him in the sum of $1,937.10 on account of doctor and hospital bills incurred by him from injuries received while deputy United States marshal. I well remember when Mr. Sheldon was seriously injured while bringing a prisoner to Muskogee; he was assaulted and beaten over the head with an iron poker and was in the hospital and under the care of a doctor for some time, and some time after recovering from that injury he was over near the State line between Arkansas and Oklahoma and in endeavoring to arrest a man with a wagon load of contraband liquor he was shot in the side, and from that wound he was under the care of physicians for some time and was taken to Kansas City, Mo., and kept in the hospital there for several weeks.

In my opinion Mr. Sheldon's claim is a just one and is not at all excessive.

Respectfully,

E. H. HUBBARD, *Chief Deputy.*

UNITED STATES MARSHAL'S OFFICE,
EASTERN DISTRICT OF OKLAHOMA,
Muskogee, Okla., May 13, 1922.

Hon. HENRY F. COOPER,
United States Marshal, Muskogee, Okla.

DEAR SIR: Complying with your verbal request to furnish such information that I can relative to the merits of the claim of Ex-Deputy United States Marshal William Sheldon, concerning which a bill is now pending to reimburse him in the sum of $1,937.10, I beg to advise that I am very familiar with the circumstances connected with Mr. Sheldon's injuries, and I am absolutely certain that every item claimed by him is correct and just. I personally know that the injuries were received in line of duty. He received two very serious injuries within only a few weeks' interval, the first being received while he was transporting a prisoner from Grove to Muskogee, when he was assaulted by the prisoner; his head was fractured by the blow of his assailant, but in spite of this he handcuffed him and delivered him to the marshal's office before he became unconscious. After he recovered from this injury, although not quite well, he was ordered by the marshal to endeavor to intercept some liquor runners near the Arkansas line, and in attempting to make the arrest he was very seriously wounded and has not even now fully recovered. The last injury occurred about December 10, 1915.

I beg to advise further that during the time I have been office deputy United States marshal in this district, which extends over a period of 19 years, I have never seen a more conscientious worker than Mr. Sheldon, and I believe him to be absolutely honest.

Very respectfully.

A. R. COTTLE, *Office Deputy.*

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1086
2d Session } { Part 2

BENJAMIN STERN

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 8513]

The Committee on Claims, to whom was referred the bill (H.R. 8513) for the relief of Benjamin Stern, and Melville A. Stern, and Benjamin Stern as executors under the last will and testament of Louis Stern, deceased, etc., having considered the same, report further thereon with the recommendation that it do pass with the following amendment:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this report, a copy of a letter from the Treasury Department under date of May 31, 1924.

TREASURY DEPARTMENT,
Washington, May 31, 1924.

Hon. G. W. EDMONDS,
House of Representatives:

By letter dated May 11, 1920, the commissioner of internal revenue notified the lessor that owing to the consolidation of the office of the collector for the third district with the office of the collector for the second district on February 1, 1920, it was deemed advisable to terminate the lease now under consideration at the close of the fiscal year 1920, and that accordingly said lease would be terminated and canceled effective June 30, 1920.

Claimants contend that the lease was for a fixed period, which does not expire until January 31, 1924, and that since an appropriation for the Internal Revenue Service was made for the fiscal year beginning July 1, 1920, the surrender of the property on June 30, 1920, and the failure to pay rent therefor after said date

constituted a breach of the lease agreement, on account of which the Government is liable in damages.

It appears that the claim was before the Auditor for the Treasury Department for settlement and was disallowed by settlement No. 187976 dated June 13, 1921. The claimants on July 1, 1921, applied for a revision of the action of the auditor in disallowing the claim, and under date of July 12, 1921, the Comptroller General of the United States affirmed the action of the auditor in disallowing the claim, the syllabus of the decision reading as follows:

"As officers of the Government are prohibited by section 3679, Revised Statutes, as amended, limiting expenditures of the Government departments to the appropriations for the fiscal year, from executing a lease to run beyond the end of one fiscal year, except when specifically authorized by law, the legal effect of a lease for five years and four months was to bind the United States only to the end of the first fiscal year, with an option from year to year until the end of the term, and the termination of the lease at the close of the first fiscal year did not constitute a breach of contract on the part of the United States which could be made the basis of a claim for damages." (1 Comp. Gen. 10.)

In view of the Comptroller General's decision in disallowing the claim on the facts and law in the case, the department recommends that the claim be denied.

Sincerely yours,

A. W. MELLON,
Secretary of the Treasury.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1108
2d Session } { Part 2

LITTLE ROCK COLLEGE

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany S. 1421]

The Committee on Claims, to whom was referred the bill (S. 1421) for the relief of the Little Rock College, Little Rock, Ark., having considered the same, report further thereon with the recommendation that it do pass with the following amendment.

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto, and made part of this supplemental report the report of the War Department under date of January 15, 1927.

WAR DEPARTMENT,
Washington, January 15, 1927.

Hon. RICE W. MEANS,
Chairman Committee on Claims, United States Senate.

DEAR SENATOR MEANS: Further reference is had to your letter of December 22, 1926, inclosing a copy of S. 4931, a bill for the relief of Little Rock College, Little Rock, Ark., in the sum of $670.09, representing certain articles of ordnance, quartermaster, and engineer property for which the said Little Rock College is held liable on reports of surveys approved January 5 and 13, 1926, in which request is made for all papers relating to the matter, with an opinion as to its merits and I am pleased to submit the following information.

The records of the War Department show the Little Rock College charged with shortage of property as listed below:

Report of survey dated March 18, 1925, covering engineer property, approved May 15, 1926, in the sum of $2.

Report of survey dated June 30, 1925, covering engineer property, approved January 13, 1926, in the sum of $47.70.

Report of survey dated March 18, 1926, covering quartermaster property, approved May 15, 1926, in the sum of $153.70.

Report of survey dated March 18, 1926, covering ordnance property, approved May 15, 1926, in the sum of $157.44.

Report of survey dated June 30, 1925, covering quartermaster property, approved January 13, 1926, in the sum of $158.94.

Report of survey dated March 18, 1926, covering quartermaster property, approved May 15, 1926, in the sum of $168.23.

Report of survey dated June 30, 1925, covering ordnance property, approved January 13, 1926, in the sum of $190.88.

Report of survey dated June 30, 1925, covering quartermaster property, approved January 13, 1926, in the sum of $272.67.

Report of survey dated June 30, 1926, covering ordnance property, approved July 30, 1926, in the sum of $265.30.

Report of survey dated October 21, 1926, covering quartermaster property, approved November 17, 1926, in the sum of $28.10.

Report of survey dated November 1, 1926, covering ordnance property approved November 20, 1926, in the sum of $6.45.

Total amount for which the Little Rock College is held on aforementioned surveys, $1,451.41.

In addition to the surveys mentioned above, there is one pending covering shortages and overages of Signal Corps property shipped to the quartermaster intermediate depot (signal section) Chicago, Ill., the money value of which is unknown to this office at present. It is possible that this survey upon final approval will also hold the Little Rock College for the money value of the shortages.

The shortage of property was determined after physical inventories and the matter was investigated by a surveying officer who recommended that Little Rock College be held primarily responsible therefor, upon the following findings:

"These items of * * * property were lost or stolen after being issued to Little Rock College; that the loss or theft of these articles was due to neglect on the part of the accountable authority (Little Rock College) to provide such method and means to safeguard this property after he had been informed on several occasions of the insecurity of the property, the laxness of allowing the keys to the storeroom to get into the possession of unauthorized persons, a failure to make an effort to recover property that had been stolen, or to recover that which had been taken away by students withdrawing from the college after he had been informed of that fact; * * * at various times when the storeroom was broken into a complete check was not made to ascertain correctly the amount of property missing; clothing was allowed to remain piled on the floor in an office for a period of time without being locked night or day * * *."

Copy of correspondence relative to this shortage is inclosed, which is self-explanatory, and from which it will be seen the War Department has endeavored to adjust the discrepancies without avail.

The safeguarding of public property is a duty that should be performed most zealously. It appears that a laxity of this duty existed at Little Rock College, and that the proper effort has not been made by that college to locate the lost property, or otherwise adjust the account; therefore, to relieve the shortage under such circumstances would establish an undesirable precedent.

Unfavorable report is accordingly made upon the proposed legislation.

Sincerely yours,

DWIGHT F. DAVIS, *Secretary of War.*

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1137
2d Session } { Part 2

ADA B. (GOULD) GOLLAN

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTARY REPORT

[To accompany H. R. 3694]

The Committee on Claims, to whom was referred the bill (H. R. 3694) for the relief of Ada B. (Gould) Gollan, having considered the same, report further thereon with the recommendation that it do pass.

As a part of this report there is attached hereto a letter from the Treasury Department under date of May 9, 1930:

TREASURY DEPARTMENT,
Washington, May 9, 1930.

Hon. ED. M. IRWIN,
Chairman Committee on Claims,
House of Representatives.

DEAR MR. CHAIRMAN: Referring to your communication of May 3, 1930, requesting a report from this department on bill H. R. 12054, for the relief of Mary D. Gould, I beg to submit the following:

The records of the Treasury Department show that the sum of $576.41 referred to in the bill, which it is proposed to pay to Ada B. (Gould) Gollan, was included in a total amount of $1,049,800.17, which was deposited in the Treasury of the United States in the name of C. M. Towers, collector of taxes, D. C., by certificate of deposit No. 186, dated April 4, 1929. This sum of $576.41 was covered into the Treasury to the credit of miscellaneous receipts "(9572) escheated estates relief fund, District of Columbia (special fund)" by miscellaneous receipt covering warrant No. 3802, dated April 10, 1929.

This department, however, has no information in regard to the case referred to in the bill, and since it relates to a matter under the jurisdiction of the Government of the District of Columbia, I have taken the liberty of referring your communication and copy of bill to the president of the Board of Commissioners of the District of Columbia for consideration.

Very truly yours,

OGDEN L. MILLS,
Acting Secretary of the Treasury.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1160,
2d Session } { Part 2

DOMINIC FRACAPANE

JANUARY 31, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 1567]

The Committee on Claims, to whom was referred the bill (H. R. 1567) for the relief of Dominic Fracapane, having considered the same, further report thereon with the recommendation that it do pass with the following amendment:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Attached hereto and made a part of this report are photostatic copies of letter from the Solicitor of the Post Office Department presenting a brief on the claim.

In the matter of the claim for damages against the United States by Dominick Fracapane, sr. (father of Dominick Fracapane, jr.), 202 East One hundred and third Street, New York, N. Y. No. 4804

POST OFFICE DEPARTMENT,
OFFICE OF THE SOLICITOR,
Washington.

FACTS

This accident occurred in New York City on July 13, 1924. Involved therein was a United States mail truck. Claimant's 10-year-old son sustained personal injuries.

FILES

Report of post-office inspector. Transcript of police record. Sworn claim with bills attached. Transcript of hospital record. Regular report and affidavit of postal chauffeur. Statement of attending physician. Affidavits of two wit-

nesses. X-ray photo. Report of postmaster. Unsworn statement of a third witness.

ANALYSIS

Mail truck, operated south, turned east at an intersection of streets, proceeded some 50 or 75 feet and then turned in a southeasterly direction into the curb, preparatory to backing to a postal station located on the north side of the street at this point. Chauffeur sounded his horn prior to turning in to the south curb in order to warn a number of boys who were playing ball on the sidewalk at that place. These boys stopped playing ball and got out of the way of the truck, whereupon the chauffeur proceeded to back into the station in the manner described. Chauffeur alleges that after he had parked his truck in front of the postal station he observed a boy lying in the street and was accused of having run over the boy. He is at a loss to account for the manner in which the accident happened and even in the light of all of the testimony in the case there is considerable doubt as to the manner in which the boy was injured. It is deemed advisable to comment on the testimony with regard to the manner in which the accident happened.

Postal chauffeur's version has already been given and the chauffeur is unable to furnish any additional details. The transcript of police record shows "while backing in to the curb at post office struck boy in in unknown manner," which fails to throw any light on the situation. One witness, whose testimony was submitted by the claimant, states that he saw the accident; that postal chauffeur gave no signal; that the boy was standing on the sidewalk except for his right foot, which was extended into the gutter; that the driver of the truck began backing just as he, the witness, called out a warning and the front right wheel of the truck went over the boy's right leg. It is inconceivable that this accident happened in the manner related by this witness unless the boy deliberately straddled the right front wheel of the truck and in that manner got his leg in the way of the backing truck. Such a theory is hardly credible.

Another witness states that the injured boy was standing with one foot on the sidewalk and one foot in the gutter and that "as motor truck operated by the Post Office Department * * * was arriving at the post office and was making the necessary preparation for loading and unloading mail * * * and was proceeding to back up and get into a position so that it could do so and for this purpose the chauffeur headed and turned the motor car in the direction of the sidewalk across the street from the post office and as he was so doing he was looking in back of the truck to see the manner in which he should turn the steering wheel to back up most conveniently so that he load the truck easily and that while so doing and without any fault on the part of the boy who was standing as aforesaid one of the front wheels hit the boy crushing his right leg." This witness seems to be of the opinion that the boy was standing with his foot extended out into the street for a considerable period of time, in fact from the time that the truck turned the corner nearly a block away until the chauffeur maneuvered the truck in such a manner as to run over the boy's extended leg. This version is likewise entirely incredible.

The third witness states that "the mail truck came around the corner of One Hundred and Third Street very slow, blowing whistle, as the street was crowded with boys. All the boys moved out of the way, then mail truck commenced to back up very slowly, until rear wheels had touched the curb in front of Station V. Then over across the street a boy was lying on the ground groaning. No one seemed to know how he had been hurt. It appears that while mail truck was backing up the boy started to back off the sidewalk with his back to mail truck and caught foot between curb and front wheel. In my opinion an accident that in no way could be blamed upon chauffeur of mail truck as it was impossible for him to have foreseen what happened, for the boy really backed off the sidewalk into the mail truck."

The claimant in his sworn claim simply avers upon information and belief that his son was on the sidewalk at the time and the truck hit the boy while he was at the edge of the sidewalk. Of course, this statement could not possibly be correct. If the boy was up on the sidewalk he would not have been struck by the truck as there is no evidence that the truck mounted the curb.

CONCLUSION

It is my conclusion, based upon the testimony in this case that the mail truck drove to the middle of the block in an easterly direction and then turned south in to the curb; that the boys gathered in that vicinity scattered when apprised

of the approach of the truck by the sounding of the horn; that after the truck stopped and before it began to back toward the north curb the claimant's son, who probably became careless due to the fact that the forward motion of the truck had ceased, extended one of his feet into the street, his back being toward the truck at the time, and in some unaccountable manner one of the wheels of the truck pinched or ran over the extended foot; that the injury might well have resulted from a pinching of the leg between the wheel of the truck and the curb as suggested by one of the witnesses through failure of the reverse gear to take hold immediately; that it is equally possible that the wheel of the truck may have run over the boy's foot, but, if so, the boy must have placed his foot directly in back of the wheel as there is no other possible manner in which the wheel could have run over his foot. I am therefore of the opinion that the responsibility for the accident s attributable to the negligence of the injured boy and accordingly have to recommend the disallowance of the claim.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1182
2d Session } { Part 2

SARAH MADDOCKS FERGUSON

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

Mr. SMITH of Virginia, from the Committee on Claims, submitted the following

SUPPLEMENTAL REPORT

[To accompany H. R. 4064]

The Committee on Claims, to whom was referred the bill (H. R. 4064) for the relief of Sarah Maddocks Ferguson, having considered the same, further report thereon with the recommendation that it do pass, with the following amendments:

In lines 7 and 8, strike out the words "in reimbursement" and insert "in full settlement of all claims against the Government of the United States".

At the end of the bill, add the following:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this report, two letters from the War Department, under date of February 6, 1932, and July 7, 1930.

WAR DEPARTMENT,
Washington, February 6, 1932.

Hon. LORING M. BLACK, Jr.,
Chairman Committee on Claims, House of Representatives.

DEAR MR. BLACK: Careful consideration has been given to the bill (H. R. 4064) for the relief of Sarah Maddocks Ferguson, which you transmitted to the War Department under date of January 11, 1932, with request for information and the views of the department relative thereto.

The purpose of this bill is to pay to Mrs. Ferguson, widow of the late Lieut. Col. Arthur M. Ferguson, United States Army, the sum of $1,754.60 in reimbursement for the loss by fire of personal property at Fort Leavenworth, Kans., January, 1919.

This bill is similar to the one introduced in the last Congress as H. R. 13089, which was reported on by the War Department under date of July 7, 1930. A copy of that report setting forth the views of the department is inclosed herewith for your information.

Sincerely yours,

PATRICK J. HURLEY,
Secretary of War.

JULY 7, 1930.

Hon. ED. M. IRWIN,
Chairman Committee on Claims, House of Representatives.

DEAR MR. IRWIN: Careful consideration has been given to the bill, H. R. 13089, Seventy-first Congress, second session, for the relief of Sarah Maddocks Ferguson, which you transmitted to the War Department under date of June 23, 1930, with request for information and the views of the department relative thereto.

The proposed legislation is to pay to Sarah Maddocks Ferguson, widow of Arthur M. Ferguson, late lieutenant colonel, United States Army, the sum of $1,754.60 in full settlement for loss of personal property at Fort Leavenworth, Kans., in January, 1919.

The applicable provisions of existing law on the subject are found in the act of March 4, 1921 (41 Stat. 1436), the pertinent sections being:

"That private property belonging to officers, enlisted men, and members of the Nurse Corps (female) of the Army, including all prescribed articles of equipment and clothing which they are required by law or regulation to own and use in the performance of their duties, and horses and equipment required by law or regulations to be provided by mounted officers, which since the 5th day of April, 1917, has been or shall hereafter be lost, damaged, or destroyed in the military service, shall be replaced, or the damage thereto, or its value recouped to the owner as hereinafter provided, when such loss, damage, or destruction has occurred or shall hereafter occur without fault or negligence on the part of the owner in any of the following circumstances:

"When it appears that such private property was so lost, damaged, or destroyed in consequence of its owner having given his attention to the saving of human life or property belonging to the United States which was in danger at the same time and under similar circumstances, or while, at the time of such loss, damage, or destruction, the claimant was engaged in authorized military duties in connection therewith.

"That the Secretary of War is authorized and directed to examine into, ascertain, and determine the value of such property lost, destroyed, captured, or abandoned as specified in the foregoing paragraphs, or the amount of damage thereto, as the case may be; and the amount of such value or damage so ascertained and determined shall be paid by disbursing officers of the Army, or such property lost, destroyed, captured, or abandoned, or so damaged as to be unfit for service, may be replaced in kind from Government property on hand when the Secretary of War shall so direct."

The records of the War Department show that in November, 1916, upon being relieved from duty at the United States Disciplinary Barracks, Fort Leavenworth, Kans., for duty on the Mexican border, Lieutenant Colonel Ferguson placed his household goods and personal property in storage in the Government storehouse at Fort Leavenworth. He was on duty on the Mexican border until the end of 1917 when he was ordered to duty in Washington, D. C., where he remained until 1919.

On January 29, 1919, the storehouse at Fort Leavenworth, together with his household goods and personal property contained therein was destroyed by fire. At the time of this loss Lieutenant Colonel Ferguson was on duty in The Adjutant General's Office, Washington, D. C.

A claim was filed on account of the destruction of this property in the sum of $2,211 which was reviewed by a board of officers who recommended settlement in the sum of $1,745.60. This recommendation was approved by the Assistant Secretary of War on August 20, 1923. Settlement of this account has not been made, however, due to restricted decisions of the Comptroller General who has held in numerous cases that the provisions of the act of March 4, 1921, quoted above, pertain only to those cases in which the claimant at the time of the loss was engaged either in the saving of human life or the saving of property belonging to the United States which was in danger at the same time or under the same circumstances. As Colonel Ferguson was not present at Fort Leavenworth at the time his property was destroyed by fire, he could not, therefore, have been engaged in the saving of human life or Government property in danger at the same time, and payment of this claim is therefore prohibited.

The Assistant Secretary of War in approving the claim on August 20, 1923, certified that the articles allowed by the board were reasonable, useful, necessary and proper for the claimant to have while in the public service, in line of duty, and it is therefore recommended that favorable consideration be given the proposed legislation.

A complete copy of the board report is inclosed herewith.

Sincerely yours,

_____ _____,

Secretary of War.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1185
2d Session } { Part 2

RUFUS HUNTER BLACKWELL, JR.

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

Mr. CLARK of North Carolina, from the Committee on Claims, submitted the following

SUPPLEMENTAL REPORT

[To accompany H. R. 6975.]

The Committee on Claims, to whom was referred the bill (H. R. 6975) for the relief of Rufus Hunter Blackwell, jr., having considered the same, further report thereon with the recommendation that it do pass, with the following amendments:

In line 7 strike out the words "full compensation" and insert in lieu thereof the words "in full settlement of all claims against the Government of the United States."

At the end of the bill, add the following:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto, and made a part of this report, the report of the War Department.

WAR DEPARTMENT,
Washington, August 13, 1921.

Hon. GEORGE W. EDMONDS,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

MY DEAR MR. EDMONDS: In compliance with your request of July 27, 1921, there are forwarded herewith all papers on file in the War Department relating to the claim of Rufus Hunter Blackwell, jr.

This claim was considered by the War Department board of appraisers upon the entire record, the claim having been passed upon by a board of officers and relief denied. This action was reconsidered by the same board upon instructions from the Chief of Air Service. Upon this reconsideration the claimant was allowed the sum of $250.

The case was thereupon presented to the Judge Advocate General for a decision as to the liability of the United States to claimant. The Judge Advocate General held that the United States was not liable to claimant irrespective of whether or not the lieutenant driving the plane that caused the injury was guilty of negligence, as the United States is in no sense liable for personal injury sustained by its citizens as a result of any Government activity, except as provided for in the act of Congress making appropriations for the support of the Military Establishment for the fiscal year ending June 30, 1921; the said provision being set forth in General Orders No. 15, War Department, 1920.

The facts are fully set forth in the decision of the appraisal section herewith denying relief to claimant.

Pursuant to the request contained in your letter of July 27, 1921, the inclosed record pertaining to the same is returned herewith.

It is requested that as soon as these papers have served their purpose that they be returned to the appeal section, War Department claims board, Munitions Building, Washington, D. C.

Sincerely yours,

J. M. WAINWRIGHT,
Assistant Secretary of War.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1186
2d Session } { Part 2

CHARLES A. BROWN

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 7649]

The Committee on Claims, to whom was referred the bill (H. R. 7649) for the relief of Charles A. Brown having considered the same, further report thereon with the recommendation that it do pass with the following amendments:

In line 6 strike out the words "as compensation" and insert in lieu thereof the words "in full settlement of all claims against the Government of the United States".

At the end of the bill, add the following:

: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this Act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto, and made a part of this report, the report of the Post Office Department.

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., March 15, 1930.

Hon. ED. M. IRWIN,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. IRWIN: In compliance with the request of your committee dated March 13, 1930, there are transmitted herewith for consideration with H. R. 10563, copies of all papers on file in the department relating to the claim of Mr. Charles A. Brown in the amount of $5,000 for injuries sustained in an

accident involving a United States mail truck; also a copy of the department's report to the Committee on Claims dated April 20, 1928, on H. R. 7973, a bill for the relief of Mr. Brown, at that time pending before Congress.

By direction of the Postmaster General.

Yours very truly,

HAROLD N. GRAVES,
Executive Assistant to the Postmaster General.

APRIL 20, 1928.

Hon. CHARLES L. UNDERHILL,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. UNDERHILL: In compliance with the request of your committee, dated April 13, 1928, I beg to transmit for consideration with H. R. 7973 copies of all papers on file in the department relating to the claim of Charles A. Brown, in the amount of $5,000, for injuries sustained in an accident involving a United States mail truck.

The evidence disclosed in the investigation of this case shows that the claimant was a passenger in an automobile which was involved in an accident with a United States mail truck. The accident occurred at an intersection of streets. The mail truck was northbound and the private car eastbound. The testimony of the only disinterested witness is to the effect that the mail truck was being operated at a medium rate of speed and the private car was operated at a speed of 35 to 40 miles an hour. A claim was presented to the department by Mr. Brown under the provisions of the Act of June 16, 1921, and after due consideration and investigation the department disallowed same for the reason that the evidence does not show that the responsibility for this accident rests with the Government.

The department would not be justified in recommending favorable action with reference to this bill. The Bureau of the Budget advises that this report to your committee would not be in conflict with the financial program of the President.

Sincerely yours,

HARRY S. NEW, *Postmaster General.*

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1187
2d Session } { Part 2

VINCENT J. CONRAD

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

Mr. SMITH of Virginia, from the Committee on Claims, submitted the following

SUPPLEMENTAL REPORT

[To accompany H. R. 7654]

The Committee on Claims, to whom was referred the bill (H. R. 7654) for the relief of Vincent J. Conrad, having considered the same, further report thereon with the recommendation that it do pass, with the following amendment:

At the end of the bill add the following:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto the report of the War Department to be made a part of this report.

WAR DEPARTMENT,
Washington, March 1, 1932.

Hon. LORING M. BLACK, Jr.,
Chairman Committee on Claims, House of Representatives.

DEAR MR. BLACK: Careful consideration has been given to the bill (H. R. 7654) for the relief of Vincent J. Conrad, which you transmitted to the War Department under date of February 5, 1932, with request for information and the views of the department relative thereto.

The purpose of the proposed legislation is to pay Vincent J. Conrad, first lieutenant, United States Infantry, $670.37 in full settlement of his claim against the United States for loss of personal property destroyed by fire at Camp Furlong, Columbus, N. Mex., December 6, 1919.

The records of the War Department show that a claim was filed by Vincent J. Conrad, then second lieutenant, Twenty-fourth Infantry, January 12, 1920, in the sum of $694.67 covering personal property destroyed by fire at Columbus, N. Mex., on December 6, 1919. Lieutenant Conrad, at the time of the fire, was on a 24-hour pass away from the post.

Based on existing legislation (act March 4, 1921), settlement of claims of this nature for military personnel can only be allowed where the loss was occasioned by reason of the claimant having given his attention to the saving of human life or property, belonging to the United States, which was in danger at the same time and under similar circumstances or was engaged in authorized military duties in connection therewith.

Under the circumstances attendant in this case the War Department does not feel that the Government was placed in a position of responsibility for securing this officer from loss, and, therefore, does not recommend favorable action on the inclosed bill.

Sincerely yours.

PATRICK J. HURLEY,
Secretary of War.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1231
2d Session } { Part 2

CHARLES J. EISENHAUER

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 919]

The Committee on Claims, to whom was referred the bill (H. R. 919) for the relief of Charles J. Eisenhauer, having considered the same, further report thereon, with the recommendation that it do pass, with the following amendments:

In line 5 strike out the words "in compensation" and insert in lieu thereof "in full settlement of all claims against the Government of the United States".

At the end of the bill, add the following:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto, to be made a part of this report, letter from the Navy Department.

L11–15/QQ–Eisenhauer, Charles J. (300521)
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NAVY DEPARTMENT,
Washington, June 4, 1930.

The CHAIRMAN COMMITTEE ON CLAIMS,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Replying further to the committee's letter of May 21, 1930, transmitting the bill (H. R. 12509) for the relief of Charles J. Eisen-

hauer, and requesting the opinion of the Navy Department as to its merits, I have the honor to inform you as follows:

The purpose of the proposed legislation is to compensate the claimant in the sum of $5,000 for injuries received when struck by a Marine Corps truck.

On June 2, 1919, the claimant, while crossing a street in Brooklyn, N. Y., was struck by a Marine Corps truck driven by Walter Murray, private, United States Marine Corps, and injured. Before starting to cross the street claimant looked both ways and saw no lights and proceeded on his way. When he reached the first railroad track in the center of the street he heard a noise that caused him to look up when he saw a Marine Corps truck almost upon him. He stood still for an instant and then tried to jump on the radiator but slipped off and fell under the truck wheel.

An officer detailed by the commandant of the third naval district investigated the case and reported that Murray was responsible for the injuries sustained by the claimant, inasmuch as he drove his truck through a most dangerous thoroughfare of Brooklyn, N. Y., where five streets intersect, at a rate of speed too great for safety, without lights, although it was 9 o'clock in the evening, and without properly sounding a warning. The convening authority and the Acting Secretary of the Navy approved the findings and opinion of the investigating officer. The convening authority recommended that disciplinary action be taken and a summary court-martial was ordered. Murray was using the truck at the time of the accident to take the wife and child of an acquaintance to the railway station after leaving Prospect Park with some baseball paraphernalia. He was charged with "using a motor truck without permission" and "recklessly driving a motor truck." He was sentenced to lose $30 pay and this was later remitted upon the expiration of his enlistment in accordance with then existing law.

The investigating officer also reported that claimant received lacerations on the right shoulder and left iliac regions and contusions of both lower limbs. Claimant was confined in a hospital for 13 days and to his home for a period of 5 weeks. A medical officer examined him on August 1, 1919, and a copy of his statement is attached hereto. The claimant was again examined by a medical officer on January 31, 1928, and a copy of said officer's report of that date is also inclosed. While the first medical report gave the probable duration of the disability as two months, it appears from the second medical report that there is evidence of some permanent injury, as the claimant in 1928, nine years after the first examination, did not have the full use of his right arm. The claimant also stated to the medical officer that his financial loss because of the accident was about $800.

Notwithstanding the fact that it was decided that Murray was responsible for the injuries suffered by the claimant, his responsibility may not be imputed to the United States for, as stated above, Murray was not at the time of the accident engaged in the duty which he had been instructed to perform. Under the general law of master and servant, where the servant diverges from the duty set for him and commits a tort during such divergence, the master is not liable for the results of that tort.

The cost of the proposed legislation is $5,000.

In view of the foregoing and as it appears that the claimant was injured through the reckless driving of Walter Murray, a private in the United States Marine Corps, while said driver was not acting within the scope of his employment, the Navy Department recommends against the enactment of the bill H. R. 12509.

Sincerely yours,

C. F. ADAMS, *Secretary of the Navy.*

UNITED STATES NAVY, FLEET SUPPLY BASE,
MEDICAL DEPARTMENT,
South Brooklyn, N. Y., August 1, 1919.

From: Medical officer.
To: Investigation officer.
Subject: Examination of Charles J. Eisenhauer, civilian.

1. The above-named civilian examined this date and report as follows:

Examination shows a healed lacerated wound about 3 inches long on anterior surface of upper part right arm. A healed punctured wound about one-fourth

inch in diameter upper anterior surface right arm. A small simple ganglion right shoulder. A healed contused and lacerated wound right hip. A healed contusion and abrasion lower left part abdomen.

2. Complains of pain upper right arm and left calf of leg and posterior surface left knee joint. Walks with a limp left leg. Motions of all joints normal except left knee joint which is limited on account of pain. Hearing normal 15/15 each ear. Vision defective; without glasses, 1/20 each eye. With glasses, right eye, 9/20, left eye, 4/20 (normal vision is 20/20).

3. Probable duration two months.

J. B. MEARS.

NAVAL SUPPLY DEPOT,
Brooklyn, N. Y., January 31, 1928.

From: Lieut. N. C. Robey (M. C.), United States Navy.
To: Commandant third naval district.

1. Mr. Eisenhauer reported this date and physical examination reveals the following:

There is a healed scar at upper third of right arm. The motion of the arm is restricted; the arm can not be raised above the level of the shoulder; there is no atrophy of the arm or shoulder muscles; no loss of sensation in arm or hand. This appears to be a permanent injury.

2. Mr. Eisenhauer states that his financial loss was about $800.

N. C. ROBEY.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1303
2d Session } { Part 2

MARY E. RONEY

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 2453]

The Committee on Claims, to whom was referred the bill (H. R. 2453) for the relief of Mary E. Roney, having considered the same, further report thereon, with the recommendation that it do pass, with the following amendments:

In line 4, page 2, strike out the word "damages" and insert in lieu thereof "all claims against the Government of the United States".

At the end of the bill, add the following:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1328
2d Session } { Part 2

FRANCES O. SPERRY

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 2045]

The Committee on Claims, to whom was referred the bill (H. R. 2045) for the relief of Frances O. Sperry, having considered the same, report further thereon with the recommendation that it do pass, with the following amendment:

At the end of the bill add:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto the report of the Commerce Department to be made a part of this report.

DEPARTMENT OF COMMERCE,
Washington, February 19, 1931.

Hon. ED. M. IRWIN,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN: I have your letter of the 9th instant, requesting a report from this department on H. R. 16870, entitled "For the relief of Frances O. Sperry."

For the information of your committee, I am inclosing herewith a memorandum dated February 13, 1931 (with accompanying papers), from the Acting Director of the Bureau of Mines, regarding this bill.

Very truly yours,

E. F. MORGAN,
Acting Secretary of Commerce.

DEPARTMENT OF COMMERCE,
BUREAU OF MINES,
Washington, February 13, 1931.

Memorandum from: C. P. White, Acting Director Bureau of Mines.

To: J. J. O'Hara, Assistant Solicitor Department of Commerce.

Subject: Report on bill H. R. 16870, providing for the relief of Frances O. Sperry.

Inclosures: (A) Letter from Committee on Claims transmitting bill H. R. 16870. (B) Bill H. R. 16870. (C) File of correspondence on above subject.

Bill H. R. 16870 is for the relief of Frances O. Sperry, who was injured while riding in a taxicab owned by Mr. E. R. Thorson, which was in collision with a fuel yards' coal-delivery truck on June 19, 1930.

This accident was reported to you on July 16, 1930, in connection with a claim submitted by the owner for damages to his taxicab. The acting solicitor on September 23, 1930, in his memorandum to the Acting Secretary, stated that the damages to the taxicab were not, in his opinion, caused by the negligence of the driver of the Government vehicle, and the claim should be disallowed. In lieu thereof, it is believed that bill H. R. 16870 should be disapproved.

The file containing all papers regarding this accident is inclosed.

C. P. WHITE, *Acting Director*
(For Scott Turner, *Director*).

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1329
2d Session } { Part 2

RUBY F. VOILES

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 4154]

The Committee of Claims, to whom was referred the bill (H. R. 4154) for the relief of Ruby F. Voiles, having considered the same, further report thereon with the recommendation that it do pass, with the following amendments:

In line 5, after the figures "$75" insert "in full settlement of all claims against the Government of the United States."

At the end of the bill, add the following:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this report, the report of the Post Office Department.

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., March 7, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. BLACK: The receipt is acknowledged of your letter of February 29, 1932, with which you transmitted a copy of a bill (H. R. 4154) introduced by Hon. Louis Ludlow on December 8, 1931, for the relief of Ruby F. Voiles. The bill provides for the payment of $500 to Mrs. Voiles for furnishing information leading to the apprehension of criminals who held up and robbed a mail truck at the Dearborn Street Station, Chicago, Ill., on April 6, 1921.

On that date five armed men in an automobile held up a United States mail truck at Polk and Dearborn Streets, Chicago, Ill., and took three pouches, one of which contained registered mail valued at $388,000. The files of the department indicate that Mrs. Voiles furnished information regarding one George W. Hecker, alias George B. Bradford, who was implicated in this case.

Investigation by inspectors disclosed that Hecker had assisted in planning the holdup. He was a friend of a railway postal clerk who was involved, and was advised by the latter of the identity of the truck which carried the valuable registered mail. This information was conveyed by Hecker to other members of the gang. The inspectors learned that Hecker was in New York City. His wife, who lived at that place had been located and inspectors were having her home watched in the expectation that Hecker would appear. About this time Mrs. Voiles informed Federal Judge Anderson of Indianapolis, Ind., that a man had been attempting to take her sister from Indianapolis to Chicago in violation of the Mann Act. A post-office inspector and an agent of the Department of Justice interviewed Mrs. Voiles and ascertained that the man she had in mind was Hecker, alias Bradford. At the inspector's suggestion, Mrs. Voiles ascertained from a letter received by her sister, the street address of Hecker in New York City and the assumed name used by him. This information was conveyed to the inspectors in New York City and may have hastened the apprehension of Hecker.

Hecker was later convicted on the charge of stealing mail and sentenced on May 19, 1922, to serve from June 7, 1921, to May 17, 1922, in the Kane County Jail, Geneva, Ill., and the Cook County Jail, Chicago, Ill. Under paragraph 2 of order No. 5773 of the Postmaster General, the notice of reward in effect at the time Hecker was apprehended, the maximum reward payable for his arrest and conviction on the above-mentioned charge was $200. This sum was paid to claimants who had identified him and who had furnished information regarding his whereabouts.

The notice of reward contained a provision to the effect that claims for reward covering the arrest and conviction of persons for the various offenses mentioned therein, would not be considered unless presented to a postal official within six months from the date of the offender's conviction. The files of the department do not show that a claim for reward was received from Mrs. Voiles until the latter part of 1929, when a letter written by her to Congressman Ludlow was transmitted to the department. The appropriation to which her claim would be chargeable has long since lapsed and the department has no funds available for the payment of a reward to Mrs. Voiles. The services rendered by her were more or less incidental in character, but had it been known at the time the reward claims in this case were being paid that she wished to be considered as a claimant, it is probable that a small reward would have been paid to her.

The records show that a favorable recommendation was made in the letter of this department dated January 13, 1931, addressed to Hon. Ed. M. Irwin, concerning House bill No. 15697, introduced by Hon. Louis Ludlow on January 5, 1931, providing for the payment of $75 to Mrs. Voiles. Approval could not consistently be given the payment of more than about $75 to Mrs. Voiles. It is, accordingly, the opinion of the department that favorable consideration should not be given the bill providing for the payment of $500 to her.

By direction of the Postmaster General:

Very truly yours,

HAROLD N. GRAVES,
Executive Assistant to the Postmaster General.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1332
2d Session } { Part 2

JACOB DURRENBERGER

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 6759]

The Committee on Claims, to whom was referred the bill (H. R. 6759) for the relief of Jacob Durrenberger having considered the same, further report thereon, with the recommendation that it do pass, with the following amendments:

In line 6 strike out the words "as compensation" and insert in lieu thereof "in full settlement of all claims against the Government of the United States."

At the end of the bill, add the following:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto, to be made a part of this report, letter from the War Department.

WAR DEPARTMENT,
Washington, March 15, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

DEAR MR. BLACK: Careful consideration has been given to the bill (H. R. 6759) for the relief of Jacob Durrenberger, which you transmitted to the War Department under date of February 24, 1932, with request for information and the views of the department relative thereto.

The purpose of the proposed legislation is to pay to Jacob Durrenberger the sum of $5,000 as compensation for personal injuries caused as a result of an accident involving an Army vehicle at Jamaica, Long Island, N. Y., on September 16, 1929.

The records of the War Department show that the accident to Mr. Durrenberger on September 16, 1929, was investigated by a board of officers appointed for that purpose and the facts developed may be stated, briefly, as follows:

"That the claimant alighted from the front end of a street car at the intersection of One hundred and eighty-sixth Street and Jamaica Avenue, and then proceeded to cross the street in front of the street car, at which time he was struck by an Army ambulance which was attempting to pass the street car on the left side, and as a result the claimant incurred damage to his personal property amounting to $6.25, and also sustained personal injuries. It is further shown by the proceedings of the board that the Army ambulance was en route for a sick patient and legally had the right of way; that the Army driver gave the proper signal in attempting to pass the street car; that the speed of the ambulance was about 15 miles per hour but that its speed was greatly reduced prior to colliding with the claimant; and that the street car was in motion at the time of the accident. Traffic regulations applicable require that in overtaking a street car another vehicle shall pass to the right, if the distance between car and curb permits.

The evidence submitted by the board of officers indicated that there was sufficient space for the ambulance to have passed the street car on the right, and it appeared that a passenger alighting from a street car, may, instead of proceeding to the nearest curb, pass around either in the rear or front of a street car, if he exercises ordinary care in so doing.

After considering all the facts and circumstances in the case, the War Department approved the claim in the amount of $6.25 covering the loss of private property, and the records show that this amount has been paid to claimant by the General Accounting Office.

A complete copy of the proceedings of the board which investigated this accident is inclosed herewith.

While the accident to Mr. Durrenberger is sincerely regretted, attention is invited to the well-established principle of law that the Government can not be held liable for the torts of its agents, and that, in the absence of special legislation, there is no authority of law, or appropriation available to the War Department, for the payment of claims for personal injuries or expenses incident thereto arising out of the activities of the Army, except those occasioned by the operation of aircraft not exceeding $250.

In view of the above the War Department is of the opinion that such grace as may be deemed appropriate in this case is one for the sole determination of Congress.

Sincerely yours,

PATRICK J. HURLEY,
Secretary of War.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1333
2d Session } { Part 2

MAYOR AND ALDERMEN OF JERSEY CITY, N. J.

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 7324]

The Committee on Claims, to whom was referred the bill (H. R. 7324) for the relief of mayor and aldermen of Jersey City, N. J., having considered the same, further report thereon with the recommendation that it do pass, with the following amendments:

In line 7, after the figures "$62,340.65," insert "in full settlement of all claims against the Government of the United States".

At the end of the bill, add the following:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this report, the report of the United States Railroad Administration under date of March 31, 1930.

UNITED STATES RAILROAD ADMINISTRATION,
Washington, March 31, 1930.

Hon. ED. M. IRWIN,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

SIR: Your favor of March 15, 1930, inclosing copy of above bill and requesting the facts relating to it, with the opinion of the Director General of United States Railroad Administration, as to its merits, has been duly received.

The facts as disclosed by our files, are as follows:

On February 20, 1908, the Erie Railroad Co. made a contract with the city of Jersey City for a supply of water, as I understand, for its locomotives; this agreement was to run for a period of 25 years, and the amount to be charged was 60 cents per 1,000 cubic feet for water supplied within the territorial limits of Jersey City, and at a rate of 65 cents per 1,000 cubic feet for water supplied outside the territorial limits of the city.

There was a clause in this agreement to the effect that if water was supplied to any other consumer in the city of Jersey City at a less rate than 60 cents per 1,000 cubic feet, the Erie Railroad Co. was to have the benefit of this lower rate.

In the year 1914, and prior to the Government control of the Erie Railroad, said railroad company contended that the Delaware, Lackawanna & Western Railroad Co. was receiving water within the territorial limits of Jersey City at a lower rate than that agreed upon in said contract of February 20, 1908; whereupon, on July 14, 1914, suit was brought by the said railroad company against the city to recover about $50,000, alleged overpayment at the 60-cent rate. All this occurred prior to the Federal control of the Erie, which control took place on December 28, 1917, but for accounting purposes, January 1, 1918.

During the pendency of this suit, on August 4, 1914, a stipulation was entered into between the Erie Railroad Co. and the mayor and aldermen of Jersey City, by their respective attorneys, as follows:

"Erie Railroad Company *v.* Mayor and Aldermen of Jersey City; a suit for overpayments on water bills.

"Agreement made August 4, 1914, between Erie Railroad Co. and the mayor and aldermen of Jersey City.

"Whereas the parties hereto, on February 20, 1908, entered into a contract for a supply of water to said railroad company in Jersey City; and

"Whereas the city claims that water furnished under said contract should be paid for at the rate of 60 cents per 1,000 cubic feet, and the railroad company claims that such water should be furnished at a lesser rate.

"It is stipulated that the said railroad company may pay, and the city will accept the amount of 45 cents per 1,000 cubic feet of water furnished under all bills now rendered and unpaid or which may hereafter be rendered under said contract, without prejudice to either party or to any litigation now pending or to be brought in connection with said supply of water.

_____, _____,

Attorneys for Erie Railroad Co.

_____, _____,

Corporation Counsel of Jersey City."

I can not find from our files that the Director General or the General Solicitor of the Railroad Administration had any notice of the pendency of this suit until March, 1927. In the meantime, the aforesaid stipulation remained in effect, and the suit remained in status quo during the whole period of Federal control.

I am advised and believe that water was furnished by Jersey City to the locomotives of the Erie during the period of Federal control, and while being operated by the Director General of Railroads; said water having been furnished in accordance with the terms of this stipulation; bills therefor being rendered to the Erie Railroad Co. and paid by it out of funds belonging to the Director General at the rate of 45 cents per 1,000 cubic feet, except certain bills aggregating $6,228.48 which accrued during the period of Federal control, and which have not been paid.

It further appears that in 1917, i. e., prior to Federal control, the Erie Railroad Co. opened a new engine terminal just outside of the city of Jersey City, at a place called Secaucus, and that through misunderstanding the terms of the aforesaid stipulation which applied only to water furnished within the territorial limits of the city were applied to water furnished at Secaucus, and, therefore, laboring under this misunderstanding, the city accepted and the Erie Railroad Co. paid 45 cents per 1,000 cubic feet for water furnished at Secaucus during the entire period of Federal control, whereas the lawful rate was 65 cents per 1,000 cubic feet.

Under date of September 26, 1928, I was advised by the general solicitor of the Erie Railroad Co. that that company had settled with Jersey City for water furnished at Secaucus for the period prior and subsequent to the Federal control of that railroad at the rate of 65 cents per 1,000 cubic feet.

On January 21, 1929, I was further advised by the general solicitor of said railroad company that his company had made full settlement with Jersey City both for water furnished at Secaucus and for water furnished within the city of Jersey City. He did not disclose at what rate the railroad company settled for the water furnished within the territorial limits of the city prior to and subsequent to the Federal control period. I am further advised that neither of said settlements included the period of Federal control of said Erie Railroad, viz from January 1, 1918, to February 29, 1920, inclusive.

Our files show that the Director General of Railroads has an unpaid claim against the city of Jersey City for labor and material for repairs to trestle in Secaucus during November and December, 1918, which was necessary for the purpose of affording protection to a water pipe. This account was prepared by General Auditor Clark of the Erie Railroad in June, 1923, who stated that said account had not been collected for the reason that the city did not feel obligated to pay it, and invited a friendly suit. Our investigation fails to show that any such suit was instituted.

The claim covered by said bill was first called to my attention some time in 1927, and I was of opinion that the same was barred in view of the fact that no suit had been instituted thereon against the Director General within the period provided by Congress in section 206 of the transportation act of 1920, which statute provided that all claims against the Director General arising out of Federal control should be put in suit on or before February 29, 1922, otherwise they would be barred. I so stated to the representatives of Jersey City, and told them that having such an opinion, I was not willing to approve the payment of this bill. There was nothing to have prevented the attorneys for Jersey City in having the matter presented to a court in order to ascertain whether or not my opinion was well founded. They did not see fit to take this course, but instead of that, they presented the above bill to Congress for relief.

Owing to the present illness of our comptroller, I have been unable to verify the correctness of the amount of these bills, but should the committee desire this done, I will send one of our accountants to New York City to go over the books of the Erie Railroad Co. and verify the amount claimed.

We have had a great number of meritorious claims presented which we have had to decline owing to the aforesaid statute of limitations, the courts having held that the director general had no authority to waive the benefit of such a statute, and I know of no special reason why an exception should be made in this case. Congress adopted the policy of giving all claimants a period of two years from the passage of the act within which to proceed in court.

Should your committee desire any further information in relation to this matter, I shall be most pleased to furnish all within my power.

Respectfully yours,

SIDNEY F. ANDREWS,
Assistant Director General and General Solicitor.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1334
2d Session } { Part 2

K. S. SZYMANSKI

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 8189]

The Committee on Claims, to whom was referred the bill (H. R. 8189) for the relief of K. S. Szymanski, having considered the same, further report thereon with the recommendation that it do pass, with the following amendments:

In line 6, after the figures "$5,000" insert "in full settlement of all claims against the Government of the United States."

At the end of the bill, add the following:

: *Provided:* That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this report, the report of the Post Office Department, together with a letter describing the accident from the postmaster of the Pittsburgh, Pa., post office.

POST OFFICE DEPARTMENT,
Washington, D. C., January 26, 1926.

Hon. CHARLES L. UNDERHILL,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. UNDERHILL: In compliance with the request of your committee dated December 21, 1925, I beg to transmit for consideration with H. R. 1997 all papers on file in the department relating to the claim of K. S. Szymanski, in the amount of $5,000, for personal injuries sustained as a result of being struck by a United States mail truck in Pittsburgh, Pa.

In this connection I beg to advise that from the evidence before the department it is my opinion that the accident in which Mr. Szymanski was injured was unavoidable on the part of the postal chauffeur.

Under date of January 16, 1926, I submitted to the Bureau of the Budget, in compliance with Budget Circular No. 49, with a view of determining whether or not the same is in conflict with the financial program of the President, bill H. R. 1997, for the relief of Mr. Szymanski, and I inclose with the papers a copy of the reply of the director of that bureau in which he states that this report to your committee would not be in conflict with the financial program of the President.

Very truly yours,

HARRY S. NEW, *Postmaster General.*

FEBRUARY 10, 1921.

FIRST ASSISTANT,
Division of Post Office Service:

This office is in receipt of your communication of the 8th instant, relative to personal injuries sustained by Mr. K. S. Szymanski, of 1812 Larkins Way, this city, on September 11, 1920. The case is covered by your file S. G.

An investigation of this accident established that Government-owned mail truck No. 2229, in custody of subcarrier George Wolfe, was westbound on Carson Street, going about 12 to 15 miles per hour, on the right hand car tracks but not riding in the rails. At the intersection of South Eighteenth Street, a woman carrying a child ran suddenly in front of the mail truck; to avoid striking them subcarrier Wolfe turned sharply to the right, driving onto that portion of the street lying between the car tracks and the curb.

Mr. Szymanski, who states that he did not see or hear the truck coming, stepped off the pavement directly in the way of the truck, the chauffeur of which made a sharp turn to the left in an effort to avoid striking him. When he saw his danger, Mr. Szymanski became bewildered and made a couple of false starts, apparently being unable to decide what to do. The mail driver had applied his brakes in order to avoid striking the woman and child but the momentum of the car carried it about 15 feet. By making the sharp turn to the left he almost succeeded in preventing the accident, but the right front fender hit the man and knocked him down, the right front wheel passing over his leg.

The investigator from this office visited Mr. Szymanski at the St. Joseph Hospital and was informed by the hospital authorities that the man would be incapacitated for about four months, as he had sustained a compound fracture of the right leg.

Clerk W. C. Miller, of Carson Station, had been sent with the truck and was riding on the seat with Subcarrier Wolfe, and he witnessed the entire occurrence. He stated that the driver made every effort to avoid striking either the woman and child or the man. I am submitting his signed statement for your information.

In view of the above this office held that the accident was unavoidable and that no liability attached to the Government or to Subcarrier Wolfe for the injuries sustained by the complainant in this case.

GEO. W. GOSSER, *Postmaster.*

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NATIONAL BANK OF COMMERCE, EL DORADO, ARK.

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 8215]

The Committee on Claims, to whom was referred the bill (H. R. 8215) for the relief of National Bank of Commerce, El Dorado, having considered the same, report further thereon with the recommendation that it do pass, with the following amendment:

At the end of the bill add:

: *Provided*, That no part of the amount appropriated by this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto the report of the Post Office Department to be made a part of this report.

POST OFFICE DEPARTMENT,
Washington, D. C., March 2, 1928.

Hon. CHARLES L. UNDERHILL,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

MY DEAR MR. UNDERHILL: With further reference to your communication of the 21st ultimo, transmitting for a report thereon bill (H. R. 6804) for the relief of the National Bank of Commerce, El Dorado, Ark., I have to inform you that the claim for relief in this instance is based upon the fact that Joe F. Tullis, who was postmaster at Upland, Ark., issued certain postal money orders payable to the bank without depositing any money therefor. The money orders were credited to the account of Joe F. Tullis who thereafter checked out the amounts

thus deposited. Upon discovery of the fact that the postmaster was fraudulently issuing money orders, post-office inspectors demanded the return of the amount of all the irregular orders cashed by the bank.

The officers of the bank at first refused the demand of the inspectors, but, upon being informed by the district attorney that in suit brought in similar cases the Government has been uniformly successful, the sum was paid under protest. The legal right of the Government to recover in such instances is unquestioned, but the bank maintains that it is equitably entitled to relief through congressional action. In support of this contention it is urged by the bank that at the time the orders were issued the person issuing them was a regularly commissioned postmaster performing his duties as such, and that the bank could have no knowledge of the irregularity of the transaction.

As tending to make the transactions appear entirely regular, the fact is cited that the postmaster conducted a general store and paid for bills of goods by checks against the bank account, and he explained his practice of making deposits by money orders to the officials by stating that it was the safest and cheapest method for transmitting his money to them.

The case is submitted without recommendation by the department, and the Director, Bureau of the Budget, has advised that the report herein made in this case will not conflict with the financial program of the President.

Very truly yours,

HARRY S. NEW, *Postmaster General.*

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1336
2d Session } { Part 2

FIRST NATIONAL BANK, EL DORADO, ARK.

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 8217]

The Committee on Claims, to whom was referred the bill (H. R. 8217) for the relief of First National Bank of El Dorado, Ark., having considered the same, report further thereon with the recommendation that it do pass, with the following amendment.

At the end of the bill add:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto the report of the Post Office Department to be made a part of this report.

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., February 11, 1930.

Hon. ED. M. IRWIN,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. IRWIN: I have received your communication of the 7th instant, transmitting for a report thereon bill (H. R. 9289) for the relief of the First National Bank, El Dorado, Ark.

The claim for relief in this instance is based upon the fact that Joe F. Tullis, who was postmaster at Upland, Ark., issued certain postal money orders payable to the bank without depositing any money therefor. The money orders were credited to the account of Joe F. Tullis, who thereafter checked out the amounts thus deposited. Upon discovery of the fact that the postmaster was fraudulently issuing money orders, post-office inspectors demanded the return of the amount of all the irregular orders cashed by the bank.

The officers of the bank at first refused the demand of the inspectors, but upon being informed by the district attorney that in suit brought in similar cases the Government has been uniformly successful, the sum was paid under protest. The legal right of the Government to recover in such instances is unquestioned, but the bank maintains that it is equitably entitled to relief through congressional action. In support of this contention it is urged by the bank that at the time the orders were issued the person issuing them was a regularly commissioned postmaster performing his duties as such, and that the bank could have no knowledge of the irregularity of the transaction.

As tending to make the transaction appear entirely regular, the fact is cited that the postmaster conducted a general store and paid for bills of goods by checks against the bank account, and he explained his practice of making deposits by money orders to the bank officials by stating that it was the safest and cheapest method for transmitting his money to them.

In this connection I have to inform you that the bill herein referred to is an exact counterpart of bills (H. R. 16761) and (H. R. 6803), reports on which were submitted to the former chairman of your committee without recommendation by this department on February 19, 1927, and March 2, 1928, respectively Inasmuch as the condition of the case remains unaltered, this department is again transmitting the facts to you without recommendation.

Very truly yours,

WALTER F. BROWN.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1337
2d Session } { Part 2

INGENIO PORVENIR C. POR A.

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 9339]

The Committee on Claims, to whom was referred the bill (H. R. 9339) authorizing the Court of Claims to hear and determine the claim of Ingenio Porvenir C. por A., and to render judgment for just compensation, having considered the same, further report thereon with the recommendation that it do pass.

There is attached hereto and made a part of this report letters from the Department of Justice and the Navy Department.

DEPARTMENT OF JUSTICE,
Washington, D. C., March 24, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of March 12, transmitting H. R. 9339, for the relief of Ingenio Porvenir C por A, to this department for an opinion as to its merits.

The facts in this case are set out in the decision of the Court of Claims of the United States of November 3, 1930, in the case of Ingenio Porvenir C por A *v.* The United States, a printed copy of which is inclosed herewith. From the circumstances as set out therein, it would appear that nothing is to be gained by referring the matter again to the Court of Claims. The matter was fully presented to the court resulting in special findings of fact. The claimant in this bill seems clearly to have suffered a loss as a result of certain action taken by the military government then in control. This action by the military government, however, was taken on behalf of the Republic of Santo Domingo, and I fail to see any liability on the part of the United States for this loss.

Under these circumstances I do not recommend the enactment of this measure.

Respectfully,

WILLIAM D. MITCHELL,
Attorney General.

NAVY DEPARTMENT,
Washington, April 5, 1932.

The CHAIRMAN COMMITTEE ON CLAIMS,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Replying further to the committee's letter of February 24, 1932, transmitting a bill (H. R. 9339) authorizing the Court of Claims to hear and determine the claim of Ingenio Porvenir C. por A., and to render judgment for just compensation, and requesting the opinion of the Navy Department as to its merits, I have the honor to inform you as follows:

The purpose of the proposed legislation is to confer jurisdiction on the Court of Claims to hear and determine the claim of Ingenio Porvenir C. por A., of New York, N. Y., arising out of the requisition, sequestration, or taking by the armed forces of the United States acting as a military government of Santo Domingo of a certain quantity of granulated sugar belonging to said corporation and to authorize said court to render judgment against the United States in favor of said corporation for just compensation for the loss, if any, resulting from the requisitioning of said sugar.

The claim of this corporation has heretofore been the subject of a suit in the Court of Claims and rejected on the ground that said court "was without jurisdiction to entertain a suit arising out of action taken by the President in foreign territory occupied by the military forces of the United States and governed by him." (70 Ct. Cls. 735, syllabus.)

The Court of Claims further said that the acts which are claimed to fix a liability on the United States "were done under the orders of the President and occurred in a foreign country. The policy which was adopted and the acts done pursuant thereto were matters of State and wholly within his discretion. Consequently they did not give rise to any contract, express or implied, upon which either plaintiff could bring a suit in this court" (p. 739), and that "it follows under the circumstances appearing in the case we can not review the action of the Chief Executive in exercising his constitutional right in order to fix a liability upon the Government." (p. 740.)

Aside from the question of jurisdiction, it is doubted by the Navy Department that the claimant has a legal right against the United States.

The sugar which constitutes the subject matter of the bill was commandeered under food control order No. 10. This order was issued by the military government of Santo Domingo and recited that certain specified quantities of sugar "are hereby requisitioned, commandeered, and seized and the distribution and sale thereof will be conducted by agents of the military government." It further contained the stipulation that "in case the Government through the food controllers releases any of the sugar hereby requisitioned, commandeered, and seized, it guarantees to the company any difference that may exist on the day of release between the New York market price for certain grades of sugar and certain prices specified in the order for such grades."

"The Government" mentioned in this order obviously did not mean the Government of the United States of America, as Congress had not authorized the Government of the United States to commandeer the sugar or to pay any price therefor. The order was signed "Arthur H. Mayo, lieutenant commander, United States Navy, food controller of the Dominican Republic," and approved by "Thomas Snowden, rear admiral, United States Navy, military governor of Santo Domingo."

In the case of Luther J. Bailey et al. *v.* The United States (62 Ct. Cls. 77, writ of certiorari denied by the Supreme Court, 273 U. S. 751) the court said, page 94 "it is not every such taking which imposes an obligation on the United States to pay. An essential element of a taking out of which there may arise the implied promise to pay upon which recovery is to be had in such cases is the authority to take. No officer of the United States can create an obligation against the United States to pay for property taken unelss he had authority to take it * * *."

Therefore, Congress not having authorized any officer of the United States to seize the sugar described in food control order No. 10 or to agree to pay any price therefor, it would appear that no legal obligation rests on the United States by virtue of such order. This assumption is confirmed by the statement by the Court of Claims above quoted that the acts complained of performed under the orders of the President "did not give rise to any contract, express or implied," upon which suit could be brought in that court.

As to any legal rights the claimant might have against the Dominican Government such rights were expressly relinquished by it in a release executed March 28, 1921, whereby the Ingenio Porvenir C. por A., stated it "does hereby remise, release, and forever discharge the Government of the Dominican Republic, its

agents, and representatives of and from any and all manner of actions and causes of actions, suits, debts, dues, accounts, covenants, contracts, agreements, and claims whatsoever which the said Ingenio Porvenir C. por A., or their successors or assigns ever had, hereafter can, shall, or may have against the Government of the Dominican Republic by reason of the provisions of food control order No. 10 * * * whereby the food controller of the Government of the Dominican Republic commandeered, requisitioned, and seized from the said Ingenio Porvenir C. por A., 688,000 pounds of grade 96 test sugar: *Provided*, That should the Government of the Dominican Republic levy any extraordinary tax after date of this release for the purpose of deriving revenues from which to pay the Government of the Dominican Republic's obligation incurred by virtue of food control order No. 10 and its amendments, the Government of the Dominican Republic hereby binds itself to issue to Ingenio Porvenir C. por A., certificates in the amount of $92,880, which the said Ingenio Porvenir C. por A., may use in place of taxes other than customs duties * * *."

It will be noted from the language of the above-quoted release that the claimant expressly recognized that the seizure of the sugar was by the "food controller of the Dominican Republic" and it released "the Government of the Dominican Republic, its agents, and representatives." No allegation is made in the release that the sugar was commandeered by the United States of America or by any representatives of the United States of America.

It appears from the reports of the naval officers who acted as food controllers of the Dominican Government during the period of the military occupation that if the Dominican Government had been obliged to pay to the sugar companies the amounts required under food control order No. 10, such payment would have made a large total to that Government and would have to be raised by additional taxation. Additional taxation for this purpose would almost certainly have had to be imposed on the sugar companies themselves. These companies, including the claimant, in order to avoid the necessity of such taxation executed releases discharging the Dominican Government from its obligations under said order. These releases contained a stipulation that should a special tax be levied for the purpose of paying any obligation under said order in the event any of the sugar estates demanded a cash payment, the companies executing releases would be furnished certificates in amounts corresponding to the cash that the Government would have had to pay if the releases had not been effected, such certificates to be received by the Government in payment of any internal revenue taxes.

The claimant, being fully advised as to these facts, executed the instrument above mentioned whereby it released and forever discharged the Government of the Dominican Republic, its agents and representatives from any claim whatsoever against the Government of the Dominican Republic by reason of the provisions of food control order No. 10.

The cost of the proposed legislation is indeterminate, depending on the amount awarded, if any, by the Court of Claims. The sum previously claimed by this company on account of the issuance of food control order No. 10 is $92,880.

When the case was pending before the Court of Claims, reports were secured from the naval officers who acted as food controllers during the period of military occupation of the Dominican Republic. Copies of such reports described below, are inclosed for the information of the committee, viz:

(A) Statement of Lieut. Commander Arthur H. Mayo, Supply Corps, United States Navy.

(B) Second indorsement, May 26, 1927, of Lieut. Commander Lybrand P. Smith, United States Navy.

(C) Sixth indorsement, July 30, 1927, of Commander Duette W. Rose, Supply Corps, United States Navy.

(D) Thirteenth indorsement of Lieut. Commander Lybrand P. Smith, United States Navy.

(E) Fifteenth indorsement, October 31, 1927, of Lieut. Commander Arthur H. Mayo, Supply Corps, United States Navy.

Particular attention is invited to inclosures (D) and (E), setting forth the grounds on which it was considered that the claim lacked merit.

There is also inclosed a copy of the release of claims executed on March 28, 1921, by the claimant.

In view of the foregoing and of the information contained in the attached papers, the Navy Department recommends against the enactment of the bill H. R. 9339.

Sincerely yours,

C. F. Adams, *Secretary of the Navy.*

Know all men by these presents, that the Ingenio Porvenir C. por A., a corporation organized in the State of New York, United States of America, and doing business in the Republica Dominicana, with its domicile in San Pedro de Macoris, does hereby remise, release, and forever discharge the Government of the Dominican Republic, its representatives and agents, of and from any and all manner of actions and causes of actions, suits, debts, dues, accounts, covenants, contracts, agreements, and claims whatsoever, which the said Ingenio Porvenir C. por A., or their successors or assigns, ever had, hereafter can, shall, or may have, against the Government of the Dominican Republic, by reason of the provisions of food control order No. 10, as amended by food control orders Nos. 11, 12, 14, 15, and 16, whereby the food controller of the Government of the Dominican Republic commandeered, requisitioned, and seized from the said Ingenio Porvenir C. por A. 688,000 pounds of grade 96 test sugar: *Provided*, That should the Government of the Dominican Republic levy any extraordinary tax after date of this release for the purpose of deriving revenues from which to pay the Government of the Dominican Republic's obligation incurred by virtue of food control order No. 10 and its amendments, the Government of the Dominican Republic hereby binds itself to issue to the Ingenio Porvenir C. por A. certificates in the amount of $92,880, which the said Ingenio Porvenir C. por A. may use in payment of taxes other than customs duties.

And the Government of the Dominican Republic, represented by the food controller thereof, does hereby release unto the said Ingenio Porvenir C. por A. the entire amount of 688,000 pounds of grade 96 test sugar commandeered, requisitioned, and seized as aforesaid for such use as the said Ingenio Porvenir C. por A. may see fit.

In witness thereof, this release has been signed in duplicate this 28th day of March, 1921, for and in behalf of the Ingenio Porvenir C. por A. by its attorney in fact and in behalf of the Government of the Dominican Republic by the food controller, both thereto duly authorized.

(Signed) INGENIO PORVENIR C. POR A.,
FRANK GARNETT,
Administrador Delegado.
ARTHUR H. MAYO,
Food Controller for the Government of the Dominican Republic.

SANTO DOMINGO CITY, R. D.

Approved.

THOMAS SNOWDEN,
Rear Admiral, United States Navy, Military Governor of Santo Domingo.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1338
2d Session } { Part 2

OSCAR F. LACKEY

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 9862]

The Committee on Claims, to whom was referred the bill H. R. 9862, having considered the same, further report thereon, with the recommendation that it do pass, with the following amendment:

At the end of the bill add the following:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this report, the report of the Comptroller General of the United States.

GENERAL ACCOUNTING OFFICE,
Washington, March 28, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. CHAIRMAN: As of possible immediate aid to you in connection with H. R. 9862, Seventy-second Congress, entitled "A bill for the relief of the estate of Oscar F. Lackey," pending before your committee, I am transmitting a copy of my report of March 25, 1932, to the Hon. R. B. Howell, chairman Committee on Claims, United States Senate, on S. 3333, Seventy-second Congress, the provisions of which are identical with those of said H. R. 9862.

Sincerely yours,

J. R. MCCARL.
Comptroller General of the United States.

GENERAL ACCOUNTING OFFICE,
Washington, March 25, 1932.

Hon. R. B. HOWELL,
Chairman, Committee on Claims, United States Senate.

MY DEAR MR. CHAIRMAN: Complying with your request of March 12, 1932, I have the honor to report on S. 3333, entitled "A bill for the relief of Oscar F. Lackey."

The bill proposes to authorize and direct the Secretary of the Treasury to pay—

"* * * out of any money in the Treasury not otherwise appropriated, to Mary Lackey Combs, of Riderwood, Maryland, as executrix of the estate of Oscar F. Lackey, deceased, the sum of $1,500, representing the amount appropriated for said Oscar F. Lackey as compensation by the act approved February 18, 1913 (37 Stat. 1372), for injuries received by him on November 21, 1906, while employed as assistant engineer in construction of the Panama Canal, which amount was not claimed by or paid to him during his lifetime. Such payment to said Mary Lackey Combs, as executrix, shall be in full satisfaction of all claims against the United States of the estate of said Oscar F. Lackey for such injuries received by him."

It is noted that line 10 of the bill gives the date of the injuries received by the deceased as November 21, 1906, whereas the act approved February 18, 1913 (31 Stat. 1372), states the date as November 21, 1905. This office has no other information as to the correct date of the injuries.

It appears that Oscar F. Lackey died December 19, 1928, over 15 years after the appropriation was made for his relief, without ever having filed claim for the amount. By letter dated September 19, 1931, Mrs. Combs, as widow and executrix of the estate of the deceased, filed claim in this office for said amount and stated that following the death of Mr. Lackey she married C. Manning Combs, and that Mr. Lackey died without learning of the provision made in the act of February 18, 1913, for his benefit. In support of her claim, she submitted a certified copy of the record of her marriage to Mr. Lackey in September, 1903, which was prior to the date he received the injuries on account of which the act of February 18, 1913, made an appropriation for his benefit, and a certified copy of the last will and testament of the deceased beneficiary showing her appointment as executrix of said will. After providing for payment of all the decedent's just debts and liabilities, said will provided in Article II, that:

"ART. II. I give, devise, and bequeath unto my beloved wife, Mary M. Lackey, all of my property, real, personal, and mixed, of every kind and character, wheresoever the same may be situate, to have and to hold, to deal with and dispose of the same as she may see fit."

The claim of the widow and executrix for the amount appropriated for Mr. Lackey's benefit in the act of February 18, 1913, was disallowed by this office for the reason set forth in decision of November 23, 1931, copy inclosed herewith.

This office has no objection to interpose to the passage of S. 3333 for the relief of Mrs. Combs. However, since the appropriation made in the act of February 18, 1913, for the benefit of Mr. Lackey was made as available until expended and has never been expended, it is suggested that instead of making a new appropriation as proposed in the pending bill, said bill be changed to read substantially as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Comptroller General of the United States be, and he is hereby, authorized to adjust and settle the claim of Mary Lackey Combs, of Riderwood, Maryland, as executrix of the estate of Oscar F. Lackey, deceased, for $1,500, and to allow said claim under the appropriation made by the act of February 18, 1913 (37 Stat. 1372), for payment to the deceased for injuries received on November 21, 1905, while in the employ of the Isthmian Canal Commission as assistant engineer in the construction of the Panama Canal, he having died without receiving said amount."

Sincerely yours,

J. R. MCCARL,
Comptroller General of the United States.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1339
2d Session } { Part 2

ADELPHIA BANK & TRUST CO.

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 10169]

The Committee on Claims, to whom was referred the bill (H. R. 10169) authorizing adjustment of the claim of the Adelphia Bank & Trust Co. of Philadelphia, having considered the same, further report thereon with the recommendation that it do pass, with the following amendments:

In line 7, page 2, at the end of the bill add, "Such sum to be in full settlement of all claims against the Government of the United States."

At the end of the bill, add:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty or a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto the report and recommendation to Congress of the Comptroller General of the United States.

GENERAL ACCOUNTING OFFICE,
Washington, December 7, 1931.

To the Congress:

Pursuant to the provisions of the act of April 10, 1928 (45 Stat. 413), I have the honor to make the following report and recommendation on the claim on behalf of the Adelphia Bank & Trust Co. of Philadelphia for refund of $850 collected by the clerk of the United States District Court for the Eastern District of Pennsylvania under circumstances in substance as follows:

It appears that early in the present year, the judges of the said court gave notice to various banks in Philadelphia who act as depositories for funds of bankrupt

estates to increase their surety bonds, in view of the number of bank failures that were then taking place throughout the country, and particularly in Philadelphia. The Adelphia Bank & Trust Co., as such a depository, was ordered to increase its bond by an amount of approximately $75,000. Due to the same cause, namely, the increasing number of bank failures, it was very difficult for the banks to have these surety bonds increased, the surety companies naturally insisting that they make a thorough examination of each depository's condition before writing the additional bond.

It appears that the president of this trust company, wishing to comply immediately with the court requirements, even though the surety company advised that it would take three weeks at least before they could ascertain the condition of the bank, suggested to the clerk of the district court that his bank would be willing to deposit with the court securities acceptable to it in an amount equivalent to the increase in the depository bond, namely, $75,000, pending the writing of the surety bond. The suggestion, it appears, was accepted and the Adelphia Bank & Trust Co. thereupon deposited with the clerk securities of approximately the market value of $80,000, and voluntarily offered to pay for the cost of a safe deposit box in any bank which would be designated by the clerk or the court for the safe-keeping of the securities. This offer, also it appears, was accepted and the securities were deposited in a safe deposit box subject to the exclusive control of the United States district court, the bank paying the charges for the safe deposit box. A short time later the additional surety bond was executed and filed with the court, whereupon the securities theretofore deposited were released. Upon the release of the securities, however, it appears that the clerk of the court filed a bill, which was paid by the bank, for a fee of $850 as for services in receiving, keeping, and paying out the amount of these securities on the basis of 1 per cent of the face value of the securities deposited, as authorized under the provisions of paragraph 8, section 8, of the act of February 11, 1925 (43 Stat. 858), which provides as follows:

"For receiving, keeping, and paying out money in pursuance of any statute or order of court, including cash bail or bonds or securities authorized by law to be deposited in lieu of other security, 1 per cent of the amount so received, kept and paid out, or of the face value of such bonds or securities."

It has been reported by the Department of Justice that the amount in question was duly deposited by the clerk of the court and covered into the general fund of the Treasury as a miscellaneous receipt from which it can not be withdrawn except in consequence of an appropriation made by law.

While the action of the clerk of the court in collecting the fee of $850 was legal and proper, it seems unconscionable to withhold said amount from the bank under the facts and circumstances presented. It would appear to be equitable and just that the bank should bear the expense of the rental of the safe deposit box but it does not appear to be just that the Government should derive a profit of $850 at the expense of the bank for its zeal in endeavoring to comply so promptly with the order of the court that its security be increased.

While the claim for refund of the $850 may not be settled under appropriation heretofore made, it is believed that it contains such elements of equity as to be deserving of the consideration of the Congress.

Accordingly, I feel justified in submitting the claim to the Congress, pursuant to the provisions of the act of April 10, 1928, supra, with the recommendation that an appropriation be made for its payment. If the Congress agrees with this view of the matter, it is suggested that the desired purpose may be accomplished by the enactment of a bill substantially as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Comptroller General of the United States be, and he is hereby, authorized and directed to settle and adjust the claim of the Adelphia Bank & Trust Co. of Philadelphia for refund of a fee of 1 per cent collected by the clerk of the United States District Court for the Eastern District of Pennsylvania on $85,000, the face value of securities temporarily deposited by said company with the clerk pending the filing of an increased surety bond required by the court from the bank as depository of funds in bankruptcy estates, said fee having been covered into the general fund, Treasury of the United States, as a miscellaneous receipt, and to allow said claim in an amount not to exceed $850. There is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of $850 or so much thereof as may be necessary for the payment of this claim."

J. R. McCarl,
Comptroller General of the United States.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1340
2d Session } { Part 2

ALLEGHENY FORGING CO.

FEBRUARY 24, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 10406]

The Committee on Claims, to whom was referred the bill (H. R. 10406) for the relief of the Allegheny Forging Co., having considered the same, further report thereon with the recommendation that it do pass, with the following amendments:

In line 6 after the word "in" insert "full" and after the word "of" insert "all claims against the Government of the United States"

At the end of the bill, add:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto, and made a part of this report, the report of the War Department.

WAR DEPARTMENT,
Washington, February 23, 1933.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

DEAR MR. BLACK: Careful consideration has been given to the bill (H. R. 10406, 72d Cong., 1st sess.) for the relief of the Allegheny Forging Co., which you transmitted to the War Department under date of February 13, 1933. You ask to have forwarded for the use of the committee all papers or copies of same on file in this department relating to the claim and request an opinion as to its merits.

The bill proposes that the Secretary of the Treasury be authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Allegheny Forging Co. the sum of $1,724.45 in settlement of overcharge on surplus steel from Army ordnance salvage division.

According to the records of the War Department this claim grows out of the sale to the Allegheny Forging Co. of a lot of surplus steel. The records indicate that on October 2, 1918, the Allegheny Forging Co. placed an order with the then Cleveland District Salvage Board for 961,472 pounds of 2⅝-inch round cold-drawn steel at $35 per net ton, total $16,825.76. The steel was located at the works of the Vim Motor Co., Sandusky, Ohio. The records further show that the Allegheny Co. forwarded to the War Department its check, amounting to $1,682.58, for 10 per cent of the amount of the purchase price and agreed to pay the balance on sight draft through the Marine National Bank of Pittsburgh, Pa.

The steel was duly delivered and the entire purchase price paid. Thereafter, the Allegheny Co. made claim for a refund of $1,724.45, asserting that in a conference between a Mr. Sims, representing the Allegheny Co., and Mr. Simon S. Martin, then employed in the office of the director of sales at Washington, the sale price of this steel had been fixed at $35 per gross ton. There is nothing in the records of the War Department to substantiate this assertion. On the contrary, there is on file in the department a signed statement of Mr. Martin that no sale was made by him to the Allegheny Co. at $35 per gross ton, as at the time the sale in question was consummated, the office of the director of sales was not selling material and it was then necessary to purchase such material through district offices.

As the material purchased was delivered at the stipulated price, and as there is nothing in the records of the War Department to indicate that any change was made in this price, this department is of the opinion that the claim in question is not a valid one, and accordingly recommends that H. R. 10406 be not favorably considered.

It is noted that your letter calls for all papers or copies of same in the files of the War Department concerning the matters to which the bill inclosed herewith relates. The records of the War Department pertaining to this and two other claims of the Allegheny Forging Co., the payment of which is proposed in H. R. 10407 and H. R. 10408, Seventy-second Congress, first session, are in four different branches and are bulky and numerous, and reproduction would entail considerable expense and delay the desired reports on these bills. It is believed that the information submitted herewith will be sufficient for your present purpose. If further information should be required, the War Department will be pleased to designate the proper persons to appear as witnesses before your committee with the necessary documents.

Sincerely yours,

PATRICK J. HURLEY,
Secretary of War.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1341
2d Session } { Part 2

ALLEGHENY FORGING CO.

FEBRUARY 24, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 10407]

The Committee on Claims, to whom was referred the bill (H. R. 10407) for the relief of the Allegheny Forging Co., having considered the same, further report thereon with the recommendation that it pass with the following amendments:

In line 6, after the word "in" insert "full" and after the word "settlement" insert "of all claims against the Government of the United States".

At the end of the bill add:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto the report of the War Department, to be made a part of this report.

WAR DEPARTMENT,
Washington, February 23, 1933.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

DEAR MR. BLACK: Careful consideration has been given to the bill (H. R. 10407, 72d Cong., 1st sess.) for the relief of the Allegheny Forging Co., which you transmitted to the War Department under date of February 13, 1933. You ask to have forwarded for the use of the committee all papers or copies of same on file in this department relating to the claim and request an opinion as to its merits.

The bill proposes that the Secretary of the Treasury be authorized to pay, out of any money in the Treasury not otherwise appropriated, to the Allegheny

Forging Co., the sum of $11,699.36 in settlement for refund of cash deposited, etc., on steel which the Army Air Service failed to deliver.

According to the records of this department, the $11,699.36 is claimed to be due by way of refund of a deposit and as damages in connection with a sale of steel by the United States to the Allegheny Forging Co. The claim has already been litigated and the facts of the case and the decision of the court appear in an opinion of the United States District Court for the Western District of Pennsylvania in the case of United States of America against the Allegheny Forging Co., No. 2878 May term, 1923, a copy of which is inclosed. After the judgment in favor of the United States was obtained, the Allegheny Forging Co. offered $1,750 in compromise in full settlement of the judgment which was accepted. Thereafter, the Allegheny Forging Co. presented to the War Department a claim for $11,699.36, which was stated in general terms, as follows:

Amounts advanced on portion not shipped and loss on portion shipped as itemized on page 5	$6, 450. 31
Loss on portion not shipped as itemized on page 6	3, 455. 65
Allegheny paid United States July 20, 1927, for judgment, interest, and costs	1, 750. 00
Allegheny paid United States court Nov. 5, 1927, for costs	43. 40
	1, 793. 40
Total	11, 699. 36

On April 20, 1929, the Secretary of War wrote the Allegheny Forging Co., in part, as follows:

"In connection with your fifth claim ($11,699.36) alleged to be due on account of failure on the part of the United States to deliver steel in accordance with the specifications and contract of sale, you were advised by my letter dated March 21, 1929, that the matters out of which the dispute arose were submitted to a court of competent jurisdiction with the result that judgment for $13,549.09 was rendered against you, and as that judgment was not appealed from, and until reversed or set aside stands as final adjudication of your claim, no reason appeared for further consideration by the War Department. The brief inclosed with your letter of April 6, 1929, and records of the War Department show that subsequent to rendition of judgment you offered to pay $1,750 in full satisfaction thereof, and this offer was accepted by the United States. The judgment and subsequent settlement made by you would appear to be final, and conclusive upon the War Department."

Nothing has transpired which would appear to require or justify a change in this department's attitude toward this claim as indicated above. It is accordingly recommended that the bill transmitted with your letter be not favorably considered.

It is noted that your letter calls for all papers or copies of same in the files of the War Department concerning the matters to which the bill inclosed therewith relates. The records of the War Department pertaining to this and two other claims of the Allegheny Forging Co., the payment of which is proposed in H. R. 10406 and H. R. 10408, Seventy-second Congress, First session, are in four different branches and are bulky and numerous, and reproduction would entail considerable expense and delay the desired reports on these bills. It is believed that the information submitted herewith will be sufficient for your present purpose. If further information should be required, the War Department will be pleased to designate the proper persons to appear as witnesses before your committee with the necessary documents.

Sincerely yours,

PATRICK J. HURLEY,
Secretary of War.

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ALLEGHENY FORGING CO.

FEBRUARY 24, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 10408]

The Committee on Claims, to whom was referred the bill (H. R. 10408) for the relief of the Allegheny Forging Co., having considered the same, further report thereon with the recommendation that it do pass, with the following amendments:

In line 6 after the word "in" insert "full" and after the word "of" insert "all claims against the Government of the United States for".

At the end of the bill add:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto, to be made a part of this report, the report of the War Department.

WAR DEPARTMENT,
Washington, February 23, 1933.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

DEAR MR. BLACK: Careful consideration has been given to the bill (H. R. 10408, 72d Cong., 1st sess.), for the relief of the Allegheny Forging Co., which you transmitted to the War Department under date of February 13, 1933. You ask to have forwarded for the use of the committee all papers or copies of same on file in this department relating to the claim and request an opinion as to its merits.

The bill proposes that the Secretary of the Treasury be authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, "to the Allegheny Forging Co. the sum of $1,700 in settlement of balance due on forgings for kitchen trailers for Army quartermaster."

The records of the War Department show that the Ohio Trailer Co., under date of October 3, 1918, entered into a contract with the United States for the con-

struction of trailers. Work under this contract was suspended on account of the armistice, and a settlement was made under date of April 5, 1919, between the Ohio Co. and the United States in full payment of all claims arising out of the contract, except the commitment of the Ohio Co. to the Allegheny Forging Co. as subcontractor. There was no privity of contract between the Allegheny Forging Co. and the United States.

A settlement was made between the United States and the Ohio Co. of the balance of its claim, viz, that portion based upon its commitment to the Allegheny Forging Co. as subcontractor, under date of February 24, 1931, pursuant to which an award of $7,500 was made to the Ohio Co., the amount thereof being paid to its representative at Washington. The Allegheny Co. had previously instituted a suit against the Ohio Co. in the United States courts, and it appears from the records of the War Department that in obtaining the award of $7,500, the Ohio Co. whose representatives were also acting for the Allegheny Co. in the matter, concealed an agreement for settlement of the litigation which had been made at the office of the attorneys for the Allegheny Co. in Cleveland, Ohio. This fact being brought to the attention of the War Department, and it appearing that the representatives of the Ohio Co. had paid $4,100 to the Allegheny Co. in full of the latter's claim, and retained the balance of $3,400, Maj. Gen. John A. Hull, retired, then colonel and vice chairman, War Department Claims Board, upon the ground that a fraud had been committed in obtaining the award, demanded that the difference between the sum received by the Ohio Co. and the amount paid to the Allegheny Co. be returned to the United States. The Allegheny Co. demanded that this amount be paid to it. Pending settlement of the dispute as to the proper disposition of this sum, pursuant to a written agreement entered into March 15, 1921, two certified checks, each for $1,700, one payable to the vice chairman, War Department Claims Board, and the other payable to the Allegheny Co., were deposited with the trustee who appears to have been a member of the firm of attorneys representing the Allegheny Co. in its suit against the Ohio Co.

The agreement contained an offer to the effect that if the War Department would make an additional award to the Allegheny Co. of $1,700, that company would release the Ohio Co. of all claims and demands and dismiss the action pending in the Federal court at the Ohio Co.'s expense, the remaining $1,700 to be paid to the United States. The acceptance of this offer was directed by the then Assistant Secretary of War in a memorandum dated March 16, 1921. Colonel Hull, with his letter of March 18, 1921, to the trustee, transmitted a copy of the memorandum of the Assistant Secretary of War as authority for settlement in accordance with the agreement mentioned. By letter to Colonel Hull dated March 21, 1921, the trustee advised that he would deliver one check to the Allegheny Co. and inclosed the other check to Colonel Hull as vice chairman of the War Department Claims Board. He also inclosed a copy of a receipt signed by the Allegheny Co., through its treasurer, for $1,700 in satisfaction of its claim against the Ohio Co. pursuant to the memorandum of agreement of March 15, 1921.

The Allegheny Co. had no legal claim against the United States, its claim being against the Ohio Co. When the Allegheny Co. settled with the Ohio Co. and gave it an acquittance for the amount owed by it to the Allegheny Co., there was no obligation upon the United States to pay the Allegheny Co. any additional sum. The action taken is binding upon the officers of the United States, as well as upon the Allegheny Co., and it would appear that no futrher action can or ought to be taken by the War Department in the matter. Accordingly, the War Department recommends that H. R. 10408 be not favorably considered.

It is noted that your letter calls for all papers or copies of same in the files of the War Department concerning the matters to which the bill inclosed therewith relates. The records of the War Department pertaining to this and two other claims of the Allegheny Forging Co., the payment of which is proposed in H. R. 10406 and H. R. 10407, Seventy-second Congress, first session, are in four different branches and are bulky and numerous, and reproduction would entail considerable expense and delay the desired reports on these bills. It is believed that the information submitted herewith will be sufficient for your present purpose. If further information should be required, the War Department will be pleased to designate the proper persons to appear as witnesses before your committee with the necessary documents.

Sincerely yours,

PATRICK J. HURLEY,
Secretary of War.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1344
2d Session } { Part 2

AUGUSTUS THOMPSON

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 10973]

The Committee on Claims, to whom was referred the bill (H. R. 10973) for the relief of Augustus Thompson, having considered the same, further report thereon with the recommendation that it do pass, with the following amendments:

In line 6, strike out the word "payment" and insert in lieu thereof "settlement of all claims against the Government of the United States".

At the end of the bill, add:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto, and made a part of this report, affidavit of the claimant, together with a letter from the lieutenant of the Capitol police department.

CAPITOL POLICE,
HOUSE OFFICE BUILDING.

I, Augustus Thompson, will inform you, the Claims Committee, that on February 27, 1930, at 7.15 a. m., as I was going down the stairs to police headquarters to go on duty, I slipped and fell on the steps on account of soap powder and water being on the steps. I had to be carried to my room in a wheel chair, from there to the hospital in an ambulance. I laid in the hospital for seven months. Have now been out of the hospital over three months, but have to go on crutches yet.

I have a nurse to put on my shoes and stockings every morning, also the nurse has to rub my limbs every night and morning and some nights my limbs hurt me so badly that the nurse has to treat them through the night.

I have an auto to take me to and from my work to my room and at times I suffer intense pain, all on account of the fall I had on the steps and by the way it looks I have on doubt that I will be a cripple the rest of my life.

I sincerely hope the Claims Committee will be liberal and generous with me on account of the suffering I have gone through with.

AUGUSTUS THOMPSON.

UNITED STATES CAPITOL POLICE,
Washington, D. C., April 14, 1932.

Hon. LORING BLACK, Jr.,
House of Representatives, Washington D. C.

DEAR SIR: In line with your request of this date, we are pleased to advise that the daily report sheet for the Capitol police department, (House Office Building) for Thursday, February 27, 1930, carries the following statement:

"A. Thompson fell down steps leading from second floor to first floor. Injured leg."

We trust the above information from the records will meet with your approval.

Very respectfully yours,

P. H. CROOK, *Lieutenant in Charge.*

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1346
2d Session } { Part 2

ROBERT D. BALDWIN

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 11902]

The Committee on Claims, to whom was referred the bill (H. R. 11902) for the relief of Robert D. Baldwin, having considered the same, further report thereon with the recommendation that it do pass.

There is attached hereto and made a part of this report the report and recommendation of the Comptroller General of the United States and the report of the Interior Department.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, May 14, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. CHAIRMAN: As of possible immediate aid to you in connection with H. R. 11902, Seventy-second Congress, entitled "A bill for the relief of Robert D. Baldwin," pending before your committee, I am transmitting a copy of my report of May 7, 1932, to the Hon. R. B. Howell, chairman Committee on Claims, United States Senate, on S. 4467, Seventy-second Congress, the provisions of which are identical with those of H. R. 11902.

Sincerely yours,

J. R. MCCARL,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, May 7, 1932.

Hon. R. B. HOWELL,
Chairman Committee on Claims, United States Senate.

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of April 25, 1932, receipt of which was acknowledged April 26, 1932, requesting a report with respect to S. 4467, which provides:

"That the Comptroller General of the United States be, and he is hereby, authorized and directed to allow credit in the accounts of Robert D. Baldwin,

superintendent and special disbursing agent of the Haskell Institute, at Lawrence, Kans., for an expenditure of $1,359.26 made in October, 1931, and paid from the appropriation for Indian boarding schools, fiscal year 1932."

It appears from the records of this office that the claim here involved was considered in a decision of March 5, 1932, copy inclosed.

You will note from the facts stated in the said decision that the item of $1,359.26, represents a payment made to the Wolverine Shoe & Tanning Corporation for 584 pairs of shoes at $2.45 a pair, where the United States maintains a shoe factory at the Leavenworth Penitentiary, and it is specifically required by the acts of February 11, 1924 (43 Stat. 6), and May 27, 1930 (46 Stats. 391, 392); that Government departments and establishments make their purchases from the Federal penitentiaries when articles manufactured therein may be needed by them.

As there was a clear violation of law in making the purchase here involved, this office had no choice but to disallow credit for the item in the accounts of the disbursing officer. Aside from the fact that if the Congress authorizes credit for this payment made in violation of the law, it may tend to encourage other administrative and disbursing officers to disregard the laws in making purchases and payments, this office would interpose no objection to the bill.

It is shown that the superintendent of the Indian institution must have known of the requirements of the law for he made inquiry of the Federal penitentiary with respect to the price of shoes before purchasing them from the Wolverine Shoe & Tanning Corporation.

If there is further information which your committee should desire in this matter and you will so advise me, an effort will be made to furnish same.

Sincerely yours,

J. R. McCarl,
Comptroller General of the United States.

The Secretary of the Interior,
Washington, April 22, 1932.

Hon. Loring M. Black, Jr.,
Chairman Committee on Claims, House of Representatives.

My Dear Mr. Black: Doctor Baldwin entered on duty as superintendent of Haskell Institute, Lawrence, Kans., on September 1, 1931. He found that in estimating for shoes for pupils, to be secured from the Federal penitentiary at Lawrence, Kans., his predecessor had made no provision for men's shoes. Superintendent Baldwin made inquiry and found that he could purchase a satisfactory grade of shoe more cheaply locally than from the penitentiary, and the purchase was made to meet immediate needs. The superintendent, who was new to the Government service, misinterpreted instructions in regard to purchase of penitentiary shoes, and made the emergency purchase in the belief that he was warranted in so doing because the price was lower than that of the penitentiary shoes. The superintendent's error was doubtless due to language in the act of May 27, 1930 (46 Stat. 392), providing in part: "The several Federal departments * * * shall purchase at not to exceed current market prices * * *." The contract price from the penitentiary was $3.30 a pair, whereas local purchase was made at $2.45 per pair, less 5 per cent.

Settlement of the superintendent's accounts has been suspended for the reason that the purchase was not made under the acts of February 11, 1924 (43 Stat. 6), and May 27, 1930 (46 Stat. L., 391–392). The Comptroller General holds that no credit can be allowed for the item of $1,359.26 paid for the shoes, and has sustained the disallowance in the accounts of the disbursing officer. The shoes were required for pupils and they have been issued and worn and found substantial and satisfactory. It seems that the only relief which can be offered is to have a special bill passed by Congress, relieving the purchasing agent's accounts of the charge in question. It is recommended that the proposed legislation submitted herewith receive your early and favorable consideration.

Very truly yours

Jos. M. Dixon, *Acting Secretary.*

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1347
2d Session } { Part 2

HARRIET C. HOLADAY

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany S. 287]

The Committee on Claims, to whom was referred an act (S. 287) to compensate Harriet C. Holaday, having considered the same, report further thereon with the recommendation that it do pass.

There is attached hereto and made a part of this report the report of the State Department.

DEPARTMENT OF STATE,
Washington, February 18, 1933.

Hon. LORING M. BLACK,
House of Representatives.

SIR: Receipt is acknowledged of your letter of February 13, 1933, concerning bill S. 287, introduced for the relief of Harriet C. Holaday, widow of Ross E. Holaday, late American consul at Manchester, England.

The following is the record of service of the late Mr. Holaday:

"Holaday, Ross Edgar: Born in Westboro, Ohio, July 14, 1869; home, Wilmington, Ohio; graduated from the Wilmington (Ohio) High School; engaged in teaching; practiced law; was a representative in the General Assembly of Ohio for two terms; clerk in the Wilmington post office; appointed consul at Santiago de Cuba June 6, 1902; consul of class 4 by act approved February 5, 1915; appointed consul of class 2 February 22, 1915, and assigned to Manchester; appointed foreign service officer of class 4 July 1, 1924; died November 27, 1929."

There is inclosed, for your information, a list indicating the action taken in similar cases to the one mentioned in the above bill. It is believed that this claim is one deserving of favorable consideration.

As requested, a copy of this report is being forwarded to the Senate Committee on Claims.

Very sincerely yours,

WILBUR J. CARR,
Assistant Secretary
(For the Secretary of State).

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1348
2d Session } { Part 2

ALICE M. A. DAMM

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany S. 631]

The Committee on Claims, to whom was referred an act (S. 631) for the relief of Alice M. A. Damm, having considered the same, further report thereon with the recommendation that it do pass.

There is attached hereto, and made a part of this report, the report of the State Department on the proposed legislation.

DEPARTMENT OF STATE,
Washington, February 17, 1930.

Hon. WILLIAM EDGAR BORAH,
United States Senate.

MY DEAR SENATOR BORAH: There is transmitted herewith the information in reply to your telephone call of February 14, 1930, concerning a bill S. 1798, for the relief of Alice M. A. Damm, the widow of Henry C. A. Damm, late American consul at Nogales, Mexico.

The following is a record of service of the late Mr. Damm:

Appointed, after examination (April 7, 1908), consul at Cornwall May 31, 1909; consul at Stettin April 9, 1912; consul of class 8 by act approved February 5, 1915; appointed consul of class 7 February 22, 1915; and assigned to Aix la Chapelle; assigned to Stavanger June 5, 1917; detailed to Vardo June 20, 1918; to Kirkens August 10, 1918; to Christiania October 5, 1918; unassigned from October 28, 1918; returned to Stavanger April 24, 1919; detailed to Copenhagen August 13, 1919; appointed consul of class 6 September 5, 1919; class 5 June 4, 1920; detailed to Malaga September 23, 1920; assigned to Valencia June 27, 1921; detailed to Nogales May 17, 1922; assigned to Nogales October 2, 1923; appointed Foreign Service officer of class 6 July 1, 1924; class 5 December 17, 1925. Died at his post August 24, 1929.

There is inclosed a copy of a list indicating the action taken in cases similar to the one mentioned in the above bill.

Concerning your request for an opinion relative to the merits of the present claim, it is believed that it is one deserving of favorable consideration.

Very sincerely yours,

J. P. COTTON.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1405,
2d Session } { Part 2

JOE SETTON

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 10800]

The Committee on Claims, to whom was referred the bill (H. R. 10800) for the relief of Joe Setton, having considered the same, further report thereon with the recommendation that it do pass, with the following amendments:

In line 6 after the figures "$500" insert "in full settlement of all claims against the Government of the United States".

At the end of the bill, add the following:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this report, the report of the Labor Department.

DEPARTMENT OF LABOR,
Washington, April 11, 1931.

Hon. ED. M. IRWIN,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

MY DEAR MR. IRWIN: I have the honor to refer to your letter of February 18, 1931, with which you inclosed a copy of (H. R. 12814) for the relief of Joe Setton and requested that there be forwarded for the use of the Committee on Claims, all papers or copies of same on file in this department relating to the subject with which the bill deals, together with an expression of the opinion of this department respecting the merits of the claim.

Bill H. R. 12814 proposes to authorize the Secretary of Treasury to pay, out of any money in the Treasury not otherwise appropriated, to Joe Setton of New York City, the sum of $500 which, it is stated, represents the amount of a bond forfeited to the United States by the said Joe Setton, such bond being conditioned upon the voluntary departure of his mother, Sabout Setton, from the United States at the expiration of one year after her admission thereto as a nonimmigrant alien. It is claimed in the bill that her failure to depart from the United States was due to illness and that her son made no application for an extension of the temporary stay because he had no knowledge that such extension was necessary.

In accordance with the usual practice in such cases, instead of forwarding the department's file, a statement of the facts in the case will be made for your benefit.

Mrs. Sabout Setton, a native of Syria, 62 years of age, arrived at the port of Providence, R. I., on the steamship *Canada*, November 13, 1924. She was given a hearing on that date by a board of special inquiry at the United States immigration station at East Boston, Mass., for the purpose of determining her eligibility for admission as a nonquota immigrant temporary visitor under the provisions of section 3 (2) of the immigration act of 1924. The applicant presented a passport which was visaed at Cairo, Egypt, on October 13, 1924, by a United States consular officer under the provisions of the statute mentioned. There was also in evidence a medical certificate executed by a United States public health surgeon certifying that the applicant was partially blind in the left eye. That fact and others developed by the evidence cast some doubt upon the bona fides of the visitor status of Mrs. Setton and it was not altogether clear that she might not become a public charge while in the United States. Her son, Joe, was present at that hearing and testified in his mother's behalf. When asked by an immigrant inspector whether he would guarantee that his mother would return to her native country within six months, Mr. Setton answered, "Yes"; and further stated that he would furnish a $500 bond in her behalf to guarantee that she would not become a public charge while in the United States. Mr. Setton was then asked how long he wished his mother to stay in this country with him to which he answered: "I desire that she stay with me for one year," whereupon the immigration officials decided to admit Mrs. Setton to this country as a temporary visitor for one year on condition that she file a bond in the sum of $500.

A $500 bond was executed on November 14, 1924, by the American Surety Co. of New York. Under the conditions of the bond the surety company assumed the obligation of seeing that the alien did not become a public charge during the time she was in the United States, that a written report would be submitted to the immigration officer in charge at the port of Boston, within 30 days prior to the expiration of six months from the date of the bond and within 30 days prior to the expiration of each six months thereafter, respectively, showing the residence and occupation of Mrs. Setton, and whether or not she was an inmate of a public institution during the period covered by the report; further, the conditions of the bond required the alien to depart from this country before November 15, 1925, without expense to the United States, and to furnish the commissioner of immigration at Boston, at least five days prior to departure, with information as to the date, name of port, and vessel on, through, and by which the departure would be effected.

In a report dated March 29, 1926, several months after the date on which Mrs. Setton should have departed from the United States, the commissioner of immigration at Boston advised the Department that he had written the American Surety Co. of New York several times concerning the departure of the alien and that in their response dated March 13, 1926, the company stated it had communicated with the persons who were responsible for the immigration bond it had executed and learned from one Dimitry K. Khoury, 267 Atlanta Avenue, Boston, one of the persons interested in the case, who called at the office of the company's representative at Boston on that day, that arrangements had been made at Washington for an extension of the stay of Mrs. Setton and that the immigration authorities at Boston would be notified in due course. The commissioner of immigration was advised in a letter dated April 5, 1926, that there was no record of the receipt in the Bureau of Immigration of an application for the extension of Mrs. Setton's stay, and that officer was instructed to take the usual procedure to enforce the alien's departure from this country. In another report dated April 30, 1926, commissioner of immigration at Boston stated that his office had communicated with the American Surety Co. on various occasions since January 25, 1926, with a view to bringing about compliance by the alien with the terms of the

bond but nothing had been accomplished in that direction. Upon consideration of the facts then in the record, this department entered an order on May 4, 1926, declaring the bond breached and directed that steps be taken to collect the $500 penalty thereof and that a warrant be issued for the arrest of Mrs. Setton for deportation.

By letter dated May 7, 1926, the commissioner of immigration at Boston forwarded for appropriate attention by this department an application which had been forwarded to Boston by Hon. Royal S. Copeland, United States Senator, asking for an extension of the temporary stay of Mrs. Setton. The extension application was executed before a notary public in Kings County, N. Y., on March 24, 1926, by Mrs. Setton. It was stated in the application that the nature and character of the business requiring the alien's presence in the United States was: "Widow desiring to reside with her children, has no relatives in Egypt." With reference to the length of extension desired and reasons in detail why departure can not take place at the time as originally fixed it was stated: "Poor health, under care of physician, and unable to travel ever since she arrived." In an order dated May 13, 1926, the department denied the application and reaffirmed its order of May 4, 1926, and the commissioner of immigration at Boston and Senator Copeland were advised accordingly. By letter dated June 16, 1926, the commissioner of immigration at Boston transmitted a formal application for issuance of a warrant for the arrest of Mrs. Setton for deportation on the ground that she had remained in the United States for a longer period than permitted by the immigration act of May 26, 1924, and the regulations made thereunder, and requested that such warrant be forwarded to the immigration authorities at Ellis Island, New York Harbor, because Mrs. Setton was then residing within the jurisdiction of the commissioner of immigration at that place. A warrant of arrest dated June 24, 1926, was forwarded to Ellis Island for appropriate attention.

By letter dated June 18, 1926, the commissioner of immigration at Boston forwarded to the department a draft for the sum of $500, payable to the Secretary of Labor, which had been received from the American Surety Co. of New York in full payment of the liability that company had incurred under the bond by reason of Mrs. Setton's failure to depart from the United States. That draft was covered into the Treasury by the disbursing officer of this department and deposited to the credit of "Miscellaneous receipts."

In communication dated June 29, 1926, Senator Copeland advised the department that Mrs. Setton's failure to depart from the United States at the time designated therefor was due purely to a misunderstanding; request was made that no action be taken in the matter of forfeiting the bond given in her behalf, and that the alien be given an extension of six months. In its response dated July 10, 1926, Senator Copeland was informed of the department's action in declaring the bond breached, the payment of the $500 penalty by the surety company, the covering of the proceeds of the check into the Treasury Department, and the department's action in issuing a warrant for the alien's arrest for deportation. In a letter dated July 22, 1926, Hon. Sol Bloom, Representative in Congress, advised the department that he had been informed by Joe Setton that the latter's mother was seriously ill and hardly able to walk, in view of which facts Mr. Bloom expressed the belief that the deporation of Mrs. Setton would not be justified and requested that a stay be granted for a few months until she was in proper physical condition to travel.

Mr. Bloom transmitted with his communication a statement dated July 20, 1926, made on the letterhead of Dr. Marc Robbins, 1978 Sixty-fifth Street, Brooklyn, N. Y., signed by Dr. Max S. Rabinowitz, to the effect that Mrs. Setton had been his patient for over one year receiving treatment for chronic myocarditis with myocardial insufficiency; that her physical condition would make it impossible to remove her without compromising her life, and that it would practically be impossible for her to get about freely for at least six months. Upon consideration of these facts the department on August 20, 1926, directed that if the alien were not in proper physical condition to undergo a hearing on the warrant of arrest that such action be held in abeyance for a period of six months and in the meantime the alien would be allowed to depart from the United States voluntarily. On September 10, 1926, an immigrant inspector located Mrs. Setton at 143 Liberty Avenue, Atlantic City, N. J., where she was visiting Jacob Terzi, her son-in-law. As Mrs. Setton appeared to that officer to be in poor physical condition he took no action in connection with the warrant of arrest.

On February 18, 1927, the department directed that proceedings under the warrant of arrest be held in abeyance for a further period of four months in view of

a statement dated February 11, 1927, by Dr. Marc Robbins that Mrs. Setton was under his care and treatment for bronchitis, myocarditis, arthritis, and anemia, the physician stating that she was unable to travel without seriously endangering her health. On June 14, 1927, Doctor Robbins made substantially the same statement upon consideration of which, and the application of Mrs. Setton dated June 17, 1927, for an extension of her temporary stay, the department again directed that the proceedings under the warrant of arrest be held in abeyance for six months. Another extension of stay being requested because of the continued poor physical condition of the alien the department directed on June 5, 1928, that the immigration authorities at Ellis Island submit a report concerning the alien's physical condition and whether or not she was able to travel. On May 9, 1929, an immigrant inspector called upon Mrs. Setton at 1932 Sixty-sixth Street, Brooklyn, N. Y., where he found her confined to bed. The alien's daughter-in-law informed that officer that Mrs. Setton was in bed practically all the time since she arrived in the United States; that Doctor Robbins stated she had a weak heart and was very weak otherwise. Upon receipt of that report the department directed on May 18, 1929, that action with a view to deporting the alien be stayed until she is physically able to travel, this being the last action taken in the case.

In view of the facts set forth above it is the opinion of this department, because of the inaction of the alien or by persons related to her, to apprise the immigration authorities what prospects there were that the alien would depart from the United States, and her failure to depart before expiration of the time designated therefor, that it was fully justified in declaring the bond breached and in collecting the $500 penalty of that bond. The statement in H. R. 12814 that Joe Setton made no application for the extension of nis mother's stay because he had no knowledge that such extension was necessary seems to be insupportable in view of the fact that he was present at the hearing at which the immigration authorities admitted his mother for one year at his specific request. Hence, it must have been obvious to him that her stay here beyond that time would have to be authorized by the immigration authorities and such authorization could be procured only by application therefor being made to such authorities. The department, therefore, does not consider that there is any merit in the claim of Joe Setton and recommends against passage of any legislation for his relief.

Cordially yours,

W. W. HUSBAND,
Second Assistant Secretary.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1447
2d Session } { Part 2

CITY OF GLENDALE, CALIF.

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 627]

The Committee on Claims, to whom was referred the bill (H. R. 627) for the relief of the city of Glendale, Calif., having considered the same, further report thereon, with the recommendation that it do pass, with the following amendments:

In line 6 strike out the words, "as full compensation" and insert in lieu thereof the words "in full settlement of all claims against the Government of the United States."

At the end of the bill, add:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto the report of the Navy Department to be made a part of this report.

NAVY DEPARTMENT,
Washington, March 28, 1930.

The CHAIRMAN COMMITTEE ON CLAIMS,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Replying to the committee's letter of March 15, 1930, transmitting bill (H. R. 10693) for the relief of the city of Glendale, Calif., and requesting an opinion as to its merits, with all papers or copies of same on file in the Navy Department relative to this claim, I have the honor to inform the committee as follows:

The purpose of the proposed legislation is to authorize and direct the Secretary of the Treasury to pay the sum of $2,157.96 to the city of Glendale, Calif., as full compensation for damages to a pump house and equipment owned by the said city of Glendale, resulting from the crashing of a United States Navy airplane on October 16, 1924.

The records of the Navy Department show that on October 16, 1924, United States Navy airplane *A–5986*, piloted by Commander Gratten C. Dichman, United States Navy, collided with a hangar at the municipal field, Glendale, Calif., damaging a pump house, pump, electric motor, and certain tools and accessories belonging to the city of Glendale, Calif. The report submitted after investigation of the damage shows that the pump house was burned to a shell of charred timber and badly buckled corrugated iron, and the electric equipment contained therein was rendered unfit for use or salvage.

A claim was submitted to the Navy Department by the city of Glendale under date of May 12, 1925, for the sum of $2,157.96. The Navy was unable to pay this claim in view of the fact that the only authority for the payment of claims for damages resulting from the operations of naval aircraft was that contained in the current appropriation act under "Aviation," which limited the amounts that could be paid to $250.

A naval board of investigation was convened to inquire into the property damages resulting from the above accident. The Board found that the pump house containing electric motor and pump, together with certain tools and other accessories, belonging to the city of Glendale, was burned, requiring replacement of all items except the pump which was considered not to have been damaged as it was underground and so escaped the intense heat. The board estimated $2,300 as the cost of replacements. A copy of the report of the board, and a supplemental report of the senior member, in which he recommends payment of the sum of $2,157.96 to the city of Glendale for the above damage, are inclosed herewith. There is also inclosed a copy of the claim submitted to the Navy Department.

Bill H. R. 10693, if enacted, will result in additional cost to the Government of $2,157.96.

In view of the foregoing the Navy Department recommends that favorable action be taken on bill H. R. 10693.

Sincerely yours,

ERNEST LEE JAHNCKE,
The Acting Secretary of the Navy.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1448
2d Session } { Part 2

M. AILEEN OFFERMAN

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 1806]

The Committee on Claims, to whom was referred the bill (H. R. 1806) for the relief of M. Aileen Offerman, having considered the same, further report thereon with the recommendation that it do pass, with the following amendments:

In line 6 after the figures "$2,500" insert "in full settlement of all claims against the Government of the United States."

At the end of the bill, add the following:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this report, the report of the War Department.

WAR DEPARTMENT,
Washington, January 28, 1932.

Hon. LORING M. BLACK, Jr.,
Chairman Committee on Claims, House of Representatives.

DEAR MR. BLACK: Careful consideration has been given to the bill (H. R. 1806) for the relief of M. Aileen Offerman, which you transmitted to the War Department under date of January 5, 1932, with request for information and views of the department relative thereto.

The purpose of the proposed legislation is to pay to M. Aileen Offerman the sum of $25,000 for personal injuries and property damage resulting from a collision with United States truck No. 430870, at Five Corners of the Shore Highway, at Middletown, N. J., on December 4, 1930.

The records of the War Department show that at about 8.55 p. m., on December 4, 1930, an Army truck driven by an enlisted man of the Quartermaster Corps, while en route to Fort Hancock, N. J., from Fort Wadsworth, N. Y., pursuant to proper orders, was struck in the left rear by the private automobile of Mr. Henry Offerman (the owner and driver) of 1400 South Wanamassa Drive, Asbury Park, N. J. The records also show that the collision took place on the south side of route No. 35, opposite a road direction sign, at a road crossing known as Five Corners, Middletown Township, N. J.; that the driver of the truck having lost his way had stopped the truck on the proper (south) side of the road in order to read the road direction sign; that Mr. Offerman's car going along route No. 35 headed toward Red Bank, N. J., crashed into the left rear of the truck. There is evidence in the records indicating the possibility that the tail light on the truck was not burning at the time of the accident. While the investigating officer found that Mr. Offerman was exceeding the authorized speed limit and, therefore, contributed to the cause of the accident, the War Department takes the view that the Army truck could have pulled off the side of the road onto a dirt shoulder, and should have had the rear light burning, both in accordance with the traffic laws of the State of New Jersey, and therefore was the direct cause of the accident. The report of the surveying officer stated that Mr. Offerman's car was badly wrecked, and that Mr. Offerman received slight injuries and Mrs. Offerman was severely injured.

Under date of March 19, 1931, the Travelers Insurance Co. filed claim with the War Department for damages to the automobile of Mr. Offerman in the amount of $900, stating in such claim that they carried a $100 deductible collision insurance on Mr. Offerman's car and had paid $800 to the owner on account of his accident. They requested that consideration be given their claim under its subrogation rights for $800 and to Mrs. Offerman's claim in the amount of $100. They were advised "that it has always been the view of the War Department, which is now written into its governing regulations on the question, that Congress in enacting the various claims acts for the relief of private claimants, under which the War Department and the General Accounting Office are enabled to consider and adjust claims for property damage and personal injury, did not intend that subrogation claims should be favorably considered. Such acts, being in derogation of the well-known common-law immunity of the sovereign to respond in damages for the negligent acts of its agents, should be viewed as acts of grace and therefore not to be given any wider application than their positive language warrants. The language of such legislative enactments is silent as to the rights of subrogees. In fact a fair reading of them leads to the not unreasonable conclusion that Congress did not intend them to cover subrogation cases."

Under date of February 7, 1931, the War Department received a letter from Norman S. Rein, in which he stated he represented the Federal Insurance Co. and advised that Mr. Offerman was reimbursed in the amount of $275 for damages as a result of the accident in which Mr. Offerman's car was badly damaged and both his own and his wife's clothes were torn and spattered with blood beyond repair. Under date of November 25, 1931, the Federal Insurance Co. advised in reply to a letter from the War Department that the $275 paid Mr. and Mrs. Offerman was for full damages to clothing and jewelry and it was the opinion of the company that this constituted their entire loss in this respect.

Under date of October 30, 1931, Mr. and Mrs. Offerman agreed to accept the sum of $154.25 from the Government in full payment for damages to car, clothing, and jewelry as a result of the collision with the Army truck December 4, 1930, such amounts being the difference between the amounts received by them from the two insurance companies and the amounts they claim to be their actual loss. In agreeing to accept this sum they stated that it in no way was to be considered as compensation for personal injuries, medical expenses, or loss of services, and in no way prevented them from seeking compensation for personal injuries, medical expenses, and loss of services from the United States Government or the War Department by act of Congress or any other means.

Under date of December 2, 1931, Mr. Offerman was advised that the $100 difference between the total damage to his automobile and the amount paid by the insurance company would be considered by the War Department as a proper claim for settlement under existing statutes, but that the $54.25 for damage to jewelry and clothing would not be considered as properly payable for the reason that the Federal Insurance Co. had stated that Mr. Offerman had accepted $275 from that company in full settlement for the entire loss of his jewelry and clothing,

If Mr. and Mrs. Offerman are willing to accept the $100, referred to above (which amount can be paid under existing law) in payment for damages to their car and personal property, it would appear that they would then be fully paid for their total property loss as a result of the collision. Therefore, the War Department does not recommend favorable consideration for the enactment of so much of the bill as would reimburse Mrs. Offerman for her property loss.

In regard to so much of the bill as pertains to reimbursement for personal injuries to Mrs. Offerman, the War Department is of the opinion that Mrs. Offerman is entitled to some relief for such injuries and recommends favorable consideration of relief for this cause in such amount as Congress in its wisdom may determine to be just. In this connection attention is invited to the claim of Mr. Offerman in his letter of June 18, 1931, copy of which is inclosed, in which he states that the hospital, nurse service, and doctors' bills for Mrs. Offerman and himself totaled $314.50.

A copy of the report of the board proceedings on this accident and of the correspondence had with the insurance companies and with Mr. and Mrs. Offerman is inclosed herewith for your information.

Sincerely yours,

PATRICK J. HURLEY,
Secretary of War.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1453
2d Session } { Part 2

GRACE P. STARK

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 9653]

The Committee on Claims, to whom was referred the bill (H. R. 9653) for the relief of Grace P. Stark, having considered the same, further report thereon with the recommendation that it do pass, with the following amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That the Postmaster General is authorized and directed to credit the accounts of Grace P. Stark, postmaster at Marked Tree, Arkansas, in the sum of $161.58. Such sum represents the amount of a deficit in the accounts of said Grace P. Stark, caused by the loss of postal funds deposited in the First National Bank of Marked Tree, Arkansas, which failed November 15, 1926.

There is attached hereto, to be made a part of this report, a letter from the Post Office Department under date of March 9, 1932.

POST OFFICE DEPARTMENT,
Washington, D. C., March 9, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. BLACK: The Postmaster General has asked me to acknowledge the receipt of your letter of March 3, with which you inclose a copy of H. R. 9653, authorizing the payment to Grace P. Stark, Marked Tree, Ark., of the sum of $161.58 as full reimbursement for loss by bankruptcy of the First National Bank at Marked Tree, Ark., of postal funds which she was required by the Post Office Department to replace.

The records of this department show that when the bank closed the postmaster had on deposit $179.53 postal funds. Claim for this amount was filed by the postmaster with the receiver and has been assigned to the Postmaster General. A dividend of $17.95 has been paid on the claim, leaving a balance due of $161.58.

Title 39, section 47, United States Code, authorizes postmasters to deposit public money belonging to the Government temporarily at their own risk and in their official capacity in any National or State bank in the State in which the said postmaster resides or in which his office is located. The temporary deposit

of postal funds in banks by postmasters is approved by the Post Office Department because of the great liability of loss by robbery when cash is kept in the post offices.

It is therefore recommended that relief be given to Grace P. Stark, postmaster at Marked Tree, Ark., in the sum of $161.58.

The bill as drawn provides for the payment to the postmaster of $161.58 "which she was required by the Post Office Department to replace." She has not been required to replace the funds and her postal account shows a balance due the United States of $161.58 on account of the bank failure. It is therefore suggested that the bill be modified to read as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Postmaster General is authorized and directed to credit the accounts of Grace P. Stark, postmaster at Marked Tree, Arkansas, in the sum of $161.58. Such sum represents the amount of a deficit in the accounts of the said Grace P. Stark, caused by the loss of postal funds deposited in the First National Bank of Marked Tree, Arkansas, which failed November 15, 1926."

Very truly yours,

HAROLD N. GRAVES,
Executive Assistant to the Postmaster General.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1458

CORNELIA CLAIBORNE

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

Mr. SMITH of Virginia, from the Committee on Claims, submitted the following

SUPPLEMENTAL REPORT

[To accompany S. 1088]

The Committee on Claims, to whom was referred an act (S. 1088) for the relief of Cornelia Claiborne, having considered the same, further report thereon with the recommendation that it do pass.

There is attached hereto, and made a part of this report, the report of the State Department on the proposed legislation.

DEPARTMENT OF STATE,
Washington, February 8, 1932.

The honorable WILLIAM E. BORAH,
United States Senate.

SIR: Receipt is acknowledged of your letter of January 5, 1932, in regard to bill S. 1088, introduced for the relief of Mrs. Cornelia Claiborne, the widow of the late Hamilton Cabell Claiborne, American consul at Frankfort-on-Main, Germany, who died August 25, 1928.

The following is the record of service of the late Mr. Claiborne:

"Hamilton Cabell Claiborne, born in Richmond, Va., October 10, 1888; home, Richmond; attended the Episcopal High School, Alexandria, Va, two years and the University of Virginia three years; employed by life insurance companies in Richmond, Va., 1911–1914; appointed, after examination (January 25, 1915), consular assistant March 24, 1915; vice consul at Bradford May 1, 1915; vice consul at Swansea, October 12, 1915; reappointed vice consul at Bradford April 7, 1916; appointed vice consul at London April 2, 1918; consul of class 7 September 5, 1919; remained at London on detail; appointed consul of class 6 June 4, 1920; detailed to Havre, December 24, 1920; detailed to the Department of State October 18, 1921; appointed consul of class 5 November 19, 1921; class 4 March 1, 1923; Foreign Service Officer of class 5 July 1, 1924; class 4 September 20, 1924; secretary in the Diplomatic Service August 29, 1925; assigned as first secretary of legation at Bucharest, August 31, 1925; consul at Frankfort-on-Main, January 6, 1926; class 3 June 8, 1927; married."

There is inclosed a copy of a list indicating the action taken in cases similar to the one mentioned in the above bill. It is believed that this claim is one deserving of favorable consideration.

Very sincerely yours,

H. L. STIMSON.

72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1459
2d Session } { Part 2

ANNE B. SLOCUM

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany S. 3191]

The Committee on Claims, to whom was referred an act (S. 3191) for the relief of Anne B. Slocum having considered the same, further report thereon with the recommendation that it do pass.

There is attached hereto and made a part of this report the report of the State Department on the proposed legislation.

DEPARTMENT OF STATE,
Washington, May 11, 1929.

Hon. ROBERT B. HOWELL,
Chairman Committee on Claims, United States Senate.

MY DEAR SENATOR: In reply to your communication of April 22, 1929, inclosing a copy of the bill (S. 194) for the relief of Anne B. Slocum, which has been referred to your committee, I take pleasure in setting forth below a statement of service of Mrs. Slocum's late husband, Clarence Rice Slocum:

SLOCUM, CLARENCE RICE, STATEMENT OF SERVICE

Born in Brooklyn, N. Y., June 12, 1870; educated by private tuition and at Williams College; engaged in exporting and importing; private in the New York State National Guard; appointed consul at Warsaw March 9, 1903; consul at Weimar March 8, 1905; consul general at Boma June 28, 1906; consul at Zittau May 6, 1907; consul at Fiume June 10, 1908. He died at his post of duty, Fiume, February 25, 1912.

As of interest to your committee there is inclosed a copy of H. R. Report No. 688, which contains a statement of the action of the Congress in the cases of widows of officers dying while in the service.

I am, my dear Senator,
Very sincerely yours,

HENRY L. STIMSON.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1466
2d Session } { Part 2

ANNA VOLKER

FEBRUARY 21, 1933.—Committee to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 2609]

The Committee on Claims, to whom was referred the bill (H. R. 2609) for the relief of Anna Volker, having considered the same, report further thereon with the recommendation that it do pass.

There is attached hereto the report of the United States Employees' Compensation Commission and the Bureau of the Public Health Service, both to be made a part of this report.

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,
Washington, March 13, 1928.

Hon. CHARLES L. UNDERHILL,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMEN UNDERHILL: At the request of Congressman R. Walton Moore, I am submitting for the consideration of your committee such information as the commission has on file in regard to the case of Anna Volker for whose relief bill H. R. 10525 is now pending before your committee.

Miss Volker's first injury of which we have a record occurred when the act of May 30, 1908, was in effect. The records of her claim under that act show an injury on July 6, 1911, while she was employed as a printer's assistant at the Bureau of Engraving and Printing. The official record shows that she was near the coil of fire hose suspended from a rack, when from some cause the hose fell, the nozzle striking her a glancing blow on the right side of the head. She was immediately attended by the physician at the bureau and the record states that there were no bruises visible, but that she was suffering from shock. As a result of this injury she was absent at the time for two days and then returned to work.

Our records show that later, namely in July, 1915, Miss Volker was sick and was visited by the medical officer of the Bureau of Engraving and Printing. At that time she in her conversation with the medical officer, attributed her physical condition to an accident which happened in the bureau about four years before when she "was struck by a pipe falling from the ceiling causing a traumatic congestion of the brain and a resulting nervous disorder." You will notice that this story of a pipe falling from the ceiling is similar to one which appears in her record. The incident referred to is evidently the one of July 6, 1911, which I have above described from the official record of the time. I may state further

that Miss Volker on December 14, 1921, described to the medical director of the commission and Commissioner Verrill the injury of 1911 in accordance with the official record which I have given above. The medical officer of the bureau further noted that "this girl is very nervous. She has something more than simple hysteria."

On July 29, 1915, the medical officer of the Bureau of Engraving and Printing reported to the director:

"Further inquiry in the case of Anna Volker shows that she has been afflicted with nervous derangement for a number of years. The alleged injury of July 6, 1911, does not seem to have any bearing on the case more than that her general condition has gradually grown worse since it happened. Doctor Mazzei, 2 T Street NE., her attending physician at the time of the injury, said that she had always had this trouble but at the time of the injury the symptoms were aggravated but improved in a short time. He does not consider the accident as having anything to do with her present condition."

Miss Volker's second injury, and the only one for which this commission has made an award, occurred September 18, 1920. The accident which occurred at this time and which was described by Miss Volker to the medical director of the commission and Commissioner Verrill on December 14, 1921, was that she was struck upon the back of the shoulder blades by two bundles of paper which fell from near the ceiling. These bundles, according to Miss Volker's description, perhaps weighed as much as 25 pounds each. She said that she attempted to continue her work and did so for a short time, but realized that she was hurt and went home after being given first aid by the medical officer at the bureau. The medical officer noted a muscular bruise. Miss Volker, in the claim which she submitted on November 12, 1920, said the "muscles in my back were bruised and very painful. My back was also slightly sprained." When questioned at the commission, Miss Volker described a stabbing pain across the back in the region of the shoulder blades which hurt her when she breathed. This pain appears to have begun following the blow from the falling bundles.

As the result of the questioning of Miss Volker and a medical examination which showed pulmonary tuberculosis, the commission was satisfied that there was a pleurisy following the injury and an aggravation of a tuberculosis which probably had existed for some time, perhaps since shortly after the injury of 1911 when Miss Volker mentioned a loss of weight of over 30 pounds. On account of this injury Miss Volker was paid compensation for the period of disability in 1920 immediately following the injury. She was paid for a later period of disability from July 19, 1921, to May 23, 1923. The payment of compensation was then discontinued, because medical examinations showed there was no longer any disability on account of tuberculosis or on account of any result of the accident of September 8, 1920.

Miss Volker's second claim before this commission was on account of tuberculosis which she attributed to dust and ink fumes to which she was exposed in connection with her work. The commission made an investigation of the conditions which Miss Volker described but did not find anything which would warrant the assumption that her tuberculosis was due to working conditions as distinguished from accident. As a consequence the claim attributed to dust and ink fumes was disallowed and it was after this disallowance that an award was made for tuberculosis under the injury of September 18, 1920.

Since the termination of compensation payments Miss Volker's case has been reviewed several times and the payment of compensation refused because medical opinion did not support her belief that her present condition was the result of any accident which has occurred since the present law was in effect, namely, since September 7, 1916.

On January 29, 1926, Senator Samuel M. Shortridge requested the commission to reopen and review the case. The commission did so and referred the entire record to the board of medical officers especially convened by the Surgeon General of the Public Health Service for the purpose of considering the medical aspects of the case. Upon receipt of the board's report the commission again considered the case and found it necessary to adhere to its former disallowance of the claim. There is also inclosed herewith a copy of the report of the medical board, dated March 18, 1926.

Very truly yours,

BESSIE P. BRUEGGEMAN, *Chairman.*

BUREAU OF THE PUBLIC HEALTH SERVICE,
Washington, D. C., March 18, 1926.

The SURGEON GENERAL,
United States Public Health Service, Washington, D. C.

SIR: The board convened by your order of May 24, 1923, to consider special cases referred to it by the Employees' Compensation Commission, has the honor to submit the following report of the claim of Miss Anna Volker, which was transmitted from the Employees' Compensation Commission on February 11, 1925.

From the facts presented by the board it appears that the claimant was first injured July 6, 1911, when she was struck on the head by a hose nozzle, evidently a minor injury for which she was absent two days. In 1915 she ascribed sickness to this injury. At that time (July, 1915) there was no evidence of injury found; her family physician, Doctor McKenzie, called at her home and found her confined to bed. He stated under date of July 22, 1915, that her case was of a chronic nature and added: "She attributes her present physical condition to an accident which happened in the bureau about four years ago when she was struck by a pipe falling from the ceiling. * * * The girl is very nervous; she has something more than a simple hysteria."

The injury for which Miss Volker now claims compensation occurred September 18, 1920, when two packages of "work" fell upon her. X-ray examination of her spine September 19, 1920, was negative, although she was disabled from September 18 to October 1, 1920, at which date she returned to her work. In 1921, however, it was found that she had pulmonary tuberculosis, and although a claim for compensation for this disability on the grounds that it was caused by dust and other occupational conditions was disapproved, she was awarded compensation for disability due to tuberculosis as a result of the injury occurred September 18, 1920. This compensation was continued from July, 1921, to June, 1923, when it was discontinued because her tuberculosis was then found to be arrested.

The board believes the evidence sufficient to show conclusively that the commission was entirely justified in discontinuing the compensation in June, 1923, because her tuberculosis had existed prior to the injury and was not, at the time compensation was discontinued, any worse, but, on the contrary, was better than at the time of injury. The board believes that the commission, in awarding compensation for tuberculosis in July, 1921, gave the patient the benefit of considerable doubt in ascribing the pains, possibly pleural in character, and other slight evidence of exacerbation of an old and inactive pulmonary tuberculosis to the injury. The board believes that the commission would not have been justified in continuing the compensation after June, 1923, when the reports of chest examination showed arrestment.

If we go back into the previous history of this patient, we find record of the fact that she was employed first in the Government service in 1910. There seems to be evidence that within the year following her injury in 1911 the patient lost weight from 162 to 123 pounds. It appears that she worked for 6 of the 10 years 1910–1920 as a printer's assistant at a power press; that in all she worked 4 months at counting old money at the Treasury Department, and that the remainder of the time—a period of 3 years and 9 months—she worked at picking tissues. Her loss of weight in the first year of her employment in the Government service, especially as viewed in the light of her subsequent history, would suggest the development of her pulmonary condition at this early date, or prior to the time when she was engaged in handling soiled money and in picking tissues.

The board feels that the Employees' Compensation Commission was justified in declining to award compensation for tuberculosis due to the occupation per se, first, because the exposure to dust seems to have been inconsequential; and, second, because the claimant was not complaining of a pulmonary condition and aggravation of a pulmonary condition when she applied for treatment in 1921, and the diagnosis in September, 1921, stated that the condition was moderately advanced, and that the activity was doubtful. Again, on January 25, 1922, the examining physician added parenthetically "patient is also obviously a neuropsychiatric case." The X ray in this instance showed moderate bronchial changes in each lung. In each of these examinations the sputum was negative for tuberculosis.

On June 20, 1923, a diagnosis was given as chronic bronchitis, there being practically no change in the X-ray conditions found. On February 4, 1924, an examination by Dr. W. D. Tewksbury states "My examination shows no evidence of active tuberculosis of the lungs."

Coming now to her present physical condition, as reported in the most recent examination from the Johns Hopkins Hospital she has, according to the report

of physical examination dated October 1, 1925 "slight bronchitis with emphysematous type of chest" and, according to the impression abstracted February 3, 1926, from the Johns Hopkins Hospital, she has "fibroid inactive pulmonary tuberculosis, left upper lobe. Questionable upper right upper lobe. Acute bronchitis." It is also evident that she has some disturbance of the nervous system, as she did on January 25, 1922, but this she had in 1915, at which time she attributed it to an injury that occurred July 6, 1911.

In summing up the findings in this case, the board desires to point out that the pulmonary condition for which the patient is claiming compensation was accidentally discovered when an examination was being made for another condition. The claimant returned to the Employees' Compensation Commission in September, 1921, complaining not of any pulmonary condition, but, as stated in the letter from the chairman of the commission the "present complaint" was "pains in the back." During the general course of the physical examinations an inactive pulmonary condition was discovered, whereupon the examing officer and the Medical and Sanitary Officer of the Bureau of Engraving and Printing investigated the association of this condition with claimant's previous employment.

It is the opinion of the board, derived from the review of the papers which were submitted, and the numerous physical examinations made in the course of the past five years, that it is not justifiable to ascribe any disability that the claimant now has, whether due to tuberculosis or disturbance of nervous system to the injury that occurred September 18, 1920 or any other result of her employment.

Respectfully,

F. C. SMITH.
M. C. GUTHRIE.
L. R. THOMPSON.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1469
2d Session } { Part 2

NORTHWEST MISSOURI FAIR ASSOCIATION

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 6890]

The Committee on Claims, to whom was referred the bill (H. R. 6890) for the relief of the Northwest Missouri Fair Association, of Bethany, Harrison County, Mo., having considered the same, report further thereon with the recommendation that it do pass, with the following amendment:

In line 7, strike out the word "compensation" and insert in lieu thereof the words "settlement of all claims against the Government of the United States".

There is attached hereto, and made a part of this report, the report of the War Department under date of June 16, 1932.

WAR DEPARTMENT,
Washington, June 16, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

DEAR MR. BLACK: Careful consideration has been given to the bill (H. R. 6890) for the relief of the Northwest Missouri Fair Association, of Bethany, Harrison County, Mo., which you transmitted to the War Department under date of June 4, 1932, with request for information and the views of the department relative thereto.

The purpose of the proposed legislation is to reimburse the above-named association in the sum of $25,000 in full compensation for damage and destruction by fire of certain buildings, owned by said association, while occupied by and under the exclusive control of the Seventeenth Field Artillery, United States Army, on September 13, 1931.

The records of the War Department show that a claim submitted by the Northwest Missouri State Fair Association for the loss covered by this proposed legislation was investigated by a board of officers, who visited the scene of the fire, and was later considered by the real-estate claims board in the War Department and the General Accounting Office and disapproved. The evidence adduced shows that the Third Battalion of the Seventeenth Field Artillery, while on a march from Fort Leavenworth, Kans., to Des Moines, Iowa, encamped on the fair grounds at Bethany, Mo., from the afternoon of Saturday, September 12, 1931, to the morning of Monday, September 14, 1931; that the use and occupation of

the fair grounds as a camp site was by verbal agreement between an officer of the Seventeenth Field Artillery and members of the fair committee at an agreed rental of $10, plus $2.50 for water; that this agreement did not include any of the buildings on the grounds; that the commanding officer of the Seventeenth Field Artillery assumed no responsibility for the care and protection of the buildings, and none of the troops occupied any of them; that the State fair ended on Friday, September 11, 1931, the day before the troops arrived; that there was a baseball game in the fair grounds on the afternoon of Sunday, September 13, 1931, the grand stand being used by the spectators on that occasion; that the fire started in the grand stand at about 4 p. m., that date; and that the military personnel did all within their power to control and extinguish the fire.

The fair association did not allege that the fire resulted from the fault or negligence of any member of the military personnel, but did allege that, but for the presence of the military personnel, there would have been no ball game and, therefore, no fire.

The attached printed reported on H. R. 6890 states that the Army troops drove their trucks and tractors over the fire hose used in fighting the fire and injured it to such an extent that the hose could not carry sufficient water pressure to reach the roof of the burning Liberal Arts Building. This statement was of recor at the time the claim was originally disallowed by the War Department real-estate claims board and by the General Accounting Office, but it is refuted by the following extracts from the report of the board of officers which originally investigated the fire:

"(5) That the allegation of Mr. Frisby that the Liberal Arts Building was destroyed because Army vehicles passed over the hose rendering it useless for fighting the fire is not based on fact.

"(6) That the water pressure in the vicinity of the Liberal Arts Building was totally inadequate for any purpose except filling buckets."

There is no law or appropriation authorizing payment of claims of this character, and although the evidence indicated no liability on the part of the Government, the claim was nevertheless forwarded to the General Accounting Office, which office has jurisdiction over claims of this character, and there is enclosed herewith copy of an undated communication from the General Accounting Office, addressed to the Northwest Missouri State Fair Association, advising that association of the disallowance of its claim.

A copy of the report of the board of officers which investigated the fire and of the report of the real estate claims board on the claim of this association are inclosed herewith for your information.

In view of the fact that there is nothing in the records indicating that the fire was caused by the use and occupancy of the grounds by members of the United States military service, there appears to be no legal or moral responsibility on the part of the Government to reimburse the claimant for this loss, and, therefore, the War Department does not recommend favorable consideration of the proposed legislation.

Sincerely yours,

F. H. PAYNE, *Acting Secretary of War.*

FORT DES MOINES, IOWA,
October 10, 1931.

Proceedings of a board of officers convened at Fort Des Moines, Iowa, October 3, 1931, pursuant to paragraph 1, Special Orders, No. 210, headquarters, Fort Des Moines, Iowa, dated September 30, 1931, copy of order and summary of testimony appended hereto and marked Exhibits "A" to "S."

Purpose: To investigate and report upon the claim for damages which was submitted to the Secretary of War on September 15, 1931, by the Northwest Missouri State Fair Association, Bethany, Mo.

The board met on October 3, 1931, and took the testimony of Lieutenants Bratton and Crigger, appended hereto and marked Exhibits "B" and "C", respectively. The board then adjourned.

On October 5, 1931, the board, accompanied by Maj. Mert Proctor, commanding officer, Third Battalion, Seventeenth Field Artillery, Capt. Charles R. Doran, and Lieut. Herman J. Crigger, visited Bethany, Mo., and interviewed Mr. Ezra Frisby. The board then visited the scene of the fire, made a sketch appended hereto and marked "Exhibit D," showing the relative locations of the destroyed buildings, and witnessed a demonstration of the local fire department for the purpose of observing the water pressure. The board then took the testimony of Mr.

Ezra Frisby, vice president, Mr. Olan Kies, president, and Mr. Lial E. Dowell, a fireman. The testimony is appended hereto and marked Exhibits "E" to "G," respectively. The board returned to Mr. Frisby's office and continued the investigation. The testimony of Lieutenants Crigger and Bratton was read by Mr. Frisby and Mr. Frisby was present and allowed to question all witnesses interviewed in his office. He was permitted to introduce any witnesses he desired. The following witnesses appeared: Mr. W. T. Lingle, Mr. William A. Tilley, Mr. A. C. Cole, Mr. Roscoe Gillespie, Mr. F. Noll, Maj. Mert Proctor, and Capt. Charles R. Doran.

Their testimony is appended hereto and marked "Exhibits H to N" respectively. The book of the Northwest Missouri State Fair is appended hereto marked "Exhibit O". On page 105 is shown a photograph of the building referred to in these proceedings as "the school building" and "the Liberal Arts Building". Opposite pages 32 and 65 are airplane photographs of the fair grounds with the grandstand and Liberal Arts Building indicated in red pencil. Two additional photographs showing the ruins of the grandstand and Liberal Arts Building, marked respectively "Exhibits P and Q", are appended. Two lengths of fire hose purported to have been used at the fire were introduced and were examined by the board. The board then adjourned.

The board met on October 6, 1931, and took the testimony of Lieut. G. W. Vaughn, appended hereto, marked "Exhibit R." A copy of this exhibit has been mailed to Mr. Frisby. The board then adjourned.

Affidavit of Mr. Henry G. Sutton, contractor, showing estimated cost of restoring destroyed buildings was received from Mr. Frisby and is appended, marked "Exhibit S".

Findings: The board met on October 10, 1931, and after having considered all evidence finds as follows:

(1) That the grandstand and Liberal Arts Building at the Northwest Missouri State Fair Grounds were destroyed by fire, starting about 4 p. m. on September 13, 1931.

(2) That at the time of the fire the Third Battalion, Seventeenth Field Artillery, was encamped in the fair grounds in the immediate vicinity of these buildings and that the commanding officer had assumed no responsibility for the buildings on the grounds and that no troops were occupying any of these buildings.

(3) That the officials of the fair association do not claim that any member of the military service was responsible for the origin of the fire.

(4) That from testimony gathered that the only basis for claiming damage from the Government is that if the troops had not been there, there would not have been a fire.

(5) That the allegation of Mr. Frisby that the Liberal Arts Building was destroyed because Army vehicles passed over the hose rendering it useless for fighting the fire is not based on fact.

(6) That the water pressure in the vicinity of the Liberal Arts Building was totally inadequate for any purpose except filling buckets.

(7) That the cost of restoring these buildings is $27,500 as shown in the affidavit of Mr. Henry G. Sutton, marked "Exhibit S."

Recommendations: The board recommends that the claim of the Northwest Missouri State Fair Association against the United States Government for $30,000 be not allowed.

WILLARD S. WADELTON,
Major, Fourteenth Cavalry,
President.

CLARENCE H. GUNDERSON,
Second Lieutenant, Eighteenth Field Artillery,
Recorder.

WOODBURY F. PRIDE,
Captain, Eighteenth Field Artillery,
Member.

Headquarters, Fort Des Moines, Iowa, October 15, 1931.
Approved:

C. E. STODTER,
Colonel, Fourteenth Cavalry, Commanding.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1496
2d Session } { Part 2

CORA A. BENNETT

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 3625]

The Committee on Claims, to whom was referred the bill H. R. 3625 having considered the same, further report thereon with the recommendation that it do pass with the following amendment:

At the end of the bill add the following:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto and made a part of this report the report of the Quartermaster General of the War Department.

WAR DEPARTMENT,
Washington, April 4, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

DEAR MR. BLACK: The department received your letter of the 1st ultimo, inclosing a copy of the bill (H. R. 3625) for the relief of Cora A. Bennett.

I return your letter herewith and to it have attached a report of the Quartermaster General and an expression of opinion by the Judge Advocate General on the subject. In view of the facts as stated I am unable to express a favorable opinion of the proposed legislation.

Sincerely yours,

PATRICK J. HURLEY,
Secretary of War.

[Second indorsement]

WAR DEPARTMENT, O. Q. M. G., *March 15, 1932.*

To: Administrative assistant, War Department.

1. Attention is invited to the added inclosure in connection with the death of James D. Bennett.

2. James D. Bennett, inspector of textiles, a temporary employee of the Atlanta depot, died on October 29, 1918, of Spanish influenza, while on temporary duty at the Aragon cotton mills, Aragon, Ga.

3. His body was removed to Eagan, Ga., for interment, at the request of relatives, and burial expense in the amount of $85 was paid by the Government.

4. His death was not "in line of duty" as construed by the compensation act. To receive compensation, death must occur while on duty or as the direct cause of such duty, such as accidents or results thereof. The ruling of the compensation commission is: "It should be clearly understood that the law as construed heretofore and as now amended, does not permit the payment of money compensation or the furnishing of medical care for any disease unless the result of an accident or unless its direct casual relationship to the employment is shown. The mere fact that disease develops after the employee enters Government service can not be accepted as sufficient basis for an award of compensation. The common diseases, such as colds, pneumonia, tuberculosis, typhoid fever, rheumatism, and the like, which may be and usually are due to causes entirely outside the employment, can very rarely and only under most unusual conditions be the basis of an award under the compensation law."

5. This office sees no objection to the passage of H. R. 3625, which proposes to authorize the Employees, Compensation Commission to consider and pass upon the application of Cora A. Bennett, presumably for a compensation under the provisions of the employees, compensation act on account of the death of her husband, James D. Bennett, a former employee of the Quartermaster Corps. However, since Mr. Bennett's death was not incident to his service, this office does not believe that Mrs. Bennett has any just claim under the provisions of the employees, compensation act.

J. L. DE WITT,
Major General,
The Quartermaster General.

[Third indorsement]

WAR DEPARTMENT,
OFFICE OF THE SECRETARY,
March 19, 1932.

To the Judge Advocate General.

[Fourth indorsement]

WAR DEPARTMENT, J. A. G. O.,
March 24, 1932.

To the Secretary of War.

1. You have referred to this office for remark and recommendation the bill (H. R. 3625, 72d Cong., 1st sess.) for the relief of Cora A. Bennett.

2. The bill proposes that the United States Employees' Compensation Commission be authorized to pass upon the application of the claimant, widow of James D. Bennett, deceased, formerly an inspector of textiles in the employment of the United States, who died on October 29, 1918, while so employed, for the benefits of the compensation act approved September 7, 1916, notwithstanding the provisions of section 20 of the act requiring that all claims be filed within one year from the date of death.

3. The Quartermaster General has reported that James D. Bennett died of Spanish influenza while on temporary duty and that his death was not incident to his service. He has reported further that his office does not believe that the claimant has any just claim under the provisions of the employee's compensation act but he has stated that no objection is seen to the passage of the bill.

4. In view of the fact that Mr. Bennett's death was not incident to his service and that no compensation could therefore be awarded under the law, even if the

pending bill were passed, it is believed that the Committee on Claims, House of Representatives, should be advised that the War Department does not recommend favorable consideration of the bill, H. R. 3625.

For the Judge Advocate General:

A. W. BROWN,
Colonel, J. A. G. D.,
Assistant to the Judge Advocate General.

WAR DEPARTMENT,
Atlanta, Ga., February 15, 1919.

Zone Supply Officer, Atlanta, Ga.
Director, purchase storage and traffic, administrative branch, personnel section, Washington, D. C.
Report of death of James D. Bennett, inspector of textiles.

1. In compliance with paragraph No. 246, Manual for the Quartermaster Corps, 1916, the death of James D. Bennett, inspector of textiles (classified civilian employee) October 29, 1918, is reported, death resulting from the effects of Spanish Influenza.
2. The body was removed by his family to Egan, Ga., for interment.
3. There is no pay due the deceased. The matter of per diem allowance due him at death is being adjusted and voucher will be forwarded for settlement.
4. Due to oversight, this report of death was not forwarded at the proper time.

JACK HAYES,
Colonel, Infantry,
Acting Zone Supply Officer.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1516
2d Session } { Part 2

LOTTIE BRYANT STEEL

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 1950]

The Committee on Claims, to whom was referred the bill (H. R. 1950) for the relief of Lottie Bryant Steel, having considered the same, further report thereon with the recommendation that it do pass, with the following amendment:

On page 2, in line 2, after the figures "$105.07", insert "in full settlement of all claims against the Government of the United States".

At the end of the bill, add the following:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto, to be made a part of this report, the report of the Veterans' Administration.

VETERANS' ADMINISTRATION,
Washington, March 25, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

MY DEAR MR. BLACK: Your letter of February 29, 1932, addressed to Hon. Patrick J. Hurley, Secretary of War, War Department, Washington, D. C., transmitting a copy of H. R. 1950, Seventy-second Congress, a bill for the relief of Lottie Bryant Steel, requesting an opinion as to its merits, has been forwarded to this administration for reply, inasmuch as the subject of pensions is a matter under the jurisdiction of the Veterans' Administration.

This bill would provide "That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Lottie Bryant Steel, remarried widow of Montgomery Bryant, who formerly served as a captain of the Sixth Regiment United States Infantry, and as a colonel of the Thirteenth Regiment United States Infantry, out of any money in the Treasury not otherwise appropriated, the sum of $1,064, being the amount of pension due at the rate of $8 per month under the pension act of June 27, 1890, from May 22, 1892, date of filing claim, to June 26, 1903, date of her remarriage."

The proposed beneficiary was married to Colonel Bryant March 23, 1879, at Salt Lake City, Utah, and lived with him until he died June 17, 1901, death having been due to a hemiphlegia of the left side and resulting paralysis.

The officer is shown to have been continuously in the active service from date of his appointment as second lieutenant, Sixth Infantry, on February 21, 1857, to the date of his retirement, March 1, 1894. He was a colonel, retired, United States Army, at date of his death.

The widow's claim for pension under the general law (W. O. 744823) was rejected April 12, 1902, on the ground that the cerebral apoplexy, which caused the officer's death, was not due to any disability for which he received treatment in the service, and the rejection was twice sustained on appeal to the Honorable Secretary of the Interior.

A claim under the act of June 27, 1890, as amended by the act of May 9, 1900, was filed May 22, 1902. This claim was rejected January 2, 1903, on the ground "the soldier was not honorably discharged from his service during the war of the rebellion, as required by said act, but died in the service."

This rejection was based on the peculiar wording of the act invoked, which reads in part:

"That if any officer or enlisted man who served 90 days or more in the Army or Navy of the United States during the late War of the Rebellion, and who was honorably discharged has died or shall hereafter die," etc.

The language quoted appears to require an honorable discharge, and death thereafter, and was so construed (Houser, 6 P. D., 281). Hence, widows of officers of the Regular Army and Navy who were not discharged but who died in the service while on either the active or retired list were not eligible to pension thereunder. Where death occurred in the service, pension could be allowed under the general law if death was due to the service.

It is to be noted that this bill proposes to allow pension from May 22, 1892. This date is erroneous. It is prior to the date of the officer's retirement and antedates the filing of the June act claim by 10 years. Between the date of filing of that claim and the remarriage of the claimant, June 26, 1903, there is a period of only 13 months and 4 days. Pension for this period at $8 per month would amount to $105.07 only.

If the proposed beneficiary is again a widow, she may have title to pension as a remarried widow under provisions of the act of May 1, 1920.

The facts in this case are not different from others in which widow claimants have been refused pension under the act of June 27, 1890, as amended by the act of May 9, 1900, because of the provisions of the law. It is contrary to the policy of the administration to recommend special bills in individual cases, except where legal technicality or administrative error has worked detriment or disadvantage to the person in whose favor such legislation is sought. This case does not come within either exception.

A copy of this letter is inclosed for your use.

Very truly yours,

FRANK T. HINES, *Administrator.*

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1524
2d Session } { Part 2

JOHN S. CATHCART

FEBRUARY 24, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 7046]

The Committee on Claims, to whom was referred the bill (H. R. 7046) for the relief of John S. Cathcart, having considered the same, further report thereon with the recommendation that it do pass with the following amendment:

In line 6, after the figures "87.80" insert "in full settlement of all claims against the Government of the United States."

At the end of the bill add the following:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto, to be made a part of this report, the report of the Post Office Department.

POST OFFICE DEPARTMENT,
Washington, D. C., February 21, 1933.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. CHAIRMAN: Receipt is acknowledged of your letter of the 9th instant, transmitting a copy of bill (H. R. 7046) for the relief of John S. Cathcart, postmaster of Hartsville, S. C., in the sum of $87.80, and requesting a report thereon.

Inquiry of the General Accounting Office has elicited the information that the amount suspended from the postal account of Postmaster Cathcart is $89.50 (rather than $87.80), this amount having been paid to a postal employee (other

than a regular or substitute city or village delivery carrier), for vehicle hire at Hartsville, S. C.

Under the existing law vehicles may be hired from regular and substitute carriers in the city and village delivery and collection service. There are, however, a considerable number of instances where postmasters rent vehicles from postal employees not included in the two groups named and credit for the amount expended in payment for the hire of these vehicles now stands suspended in their postal accounts.

The Postmaster General, on pages 9 and 62 of his annual report for the fiscal year ended June 30, 1931, recommended legislation retroactive to July 1, 1927, that would permit payment for the hire of vehicles from any postal employee not filling a supervisory position. This same recommendation was renewed in the annual report of the Postmaster General for the fiscal year ended June 30, 1932, pages 2 and 63.

Bill H. R. 9555 was introduced under date of February 19, 1932, and if enacted into law, will extend the necessary relief to Postmaster Cathcart and other postmasters who have hired vehicles in good faith from postal employees other than regular and substitute city and village carriers. Bill H. R. 9555 has been favorably reported by the committee to which referred and is now calendared for consideration by the House of Representatives.

It is possible of course that bill H. R. 9555 may not become a law at the present session of Congress and in order that the postmaster of Hartsville, S. C., may receive the relief to which he is entitled, it is recommended that bill H. R. 7046, in the amount of $89.50 be favorably reported. This will reduce by one the number of claims to be adjusted under the general legislation contemplated by H. R. 9555 should such general legislation ultimately be enacted.

By direction of the Postmaster General.

Very truly yours,

HAROLD N. GRAVES,
Executive Assistant to the Postmaster General.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1570
2d Session } { Part 2

HARRY L. HABERKORN

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 9775]

The Committee on Claims, to whom was referred the bill (H. R. 9775) for the relief of Harry L. Haberkorn, having considered the same, report further thereon with the recommendation that it do pass, with the following amendments:

In line 6, after the figures "$3,445" insert "in full settlement of all claims against the Government of the United States."

At the end of the bill, add:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto, and made a part of this report, affidavit of the claimant, Harry L. Haberkorn, and a letter to the Comptroller General from the former Clerk of the House of Representatives, William Tyler Page.

CITY OF WASHINGTON,
District of Columbia, ss:

Before me, the undersigned authority, on this day personally appeared Harry L. Haberkorn, to me known to be the person whose name is subscribed hereto, who upon being by me first duly sworn, on oath deposes and says:

"That his name is Harry L. Haberkorn, and that his post-office address is 1147 Essex Street, San Antonio, Tex., and that he is, and has been, for the past five years, secretary to Hon. Harry M. Wurzbach, Representative in Congress from the fourteenth congressional district of Texas.

"That this said affiant continued as such secretary after March 4, 1929, and until February 10, 1930, when the House of Representatives unanimously voted that the said Hon. Harry M. Wurzbach was the duly and legally elected Representative in Congress from the fourteenth congressional district of Texas as aforesaid, and that Augustus McCloskey, who had been temporarily seated as such Representative, upon a qualified certificate, issued by the Governor of the State of Texas, was not entitled to a seat in Congress, and that this said affiant has continued and is continuing as such secretary.

"That during the aforesaid period of time from March 4, 1929, to February 10, 1930, this said affiant was not engaged in any other occupation or vocation. That he performed no service of any other kind, saving and excepting the duties as secretary to Congressman Harry M. Wurzbach, and that during the aforesaid period, this affiant handled, as such secretary, pension cases in the approximate number of 450 cases; war risk insurance and compensation claims to the approximate number of 350; claims for benefits under the emergency officers' retirement act of May 24, 1928, of the approximate number of 150. That in connection with the pension claims, there were written official letters of the approximate number of 850; that with reference to compensation claims there were written approximately 500 official letters; and approximately 175 letters in connection with claims under the emergency officers' retirement act.

"That during this same period of time, as aforesaid, there were handled other official communications of the approximate number of 500, requiring approximately the writing of 3 official letters for each, or about 1,500 letters. That in addition to the foregoing there were received and handled applications for fish, requests for farmers' bulletins and other Government documents, etc.

"That in addition to the foregoing, personal calls were made on the Veterans' Bureau regional office, San Antonio, Tex., in company with claimants in scores of cases, of which no office record was kept; dozens of calls were made on veterans' bureau claimants and veterans of other wars temporarily confined for hospitalization or treatment at station hospital, Fort Sam Houston, Tex., of which, likewise, no office record was made or kept. Personal calls and telephonic conferences were had with practically every bureau of the Federal Government which has an office in San Antonio, as, for instance, the Immigration and Customs Services, Bureau of Agriculture, Civil Service, United States Army constructing quartermaster, Randolph Field, etc.

"That during this same period of time, as aforesaid, this affiant acted and did perform the duties of a secretary to a Member of Congress as he had been accustomed to theretofore, and was recognized as such by the hundreds upon hundreds of persons that called upon Congressman Wurzbach for services.

"Further affiant sayeth not."

HARRY L. HABERKORN.

Sworn and subscribed to before me, this the 23d day of April, 1930.

[SEAL.] HOWARD F. BREESE,
Notary Public, District of Columbia.

My commission expires April 27, 1931.

HOUSE OF REPRESENTATIVES,
Washington, D. C., February 13, 1930.

The COMPTROLLER GENERAL,
Treasury Department, Washington, D. C.

DEAR SIR: On February 10, 1930, the House of Representatives decided the contested election case of Harry M. Wurzbach *v.* Augustus McCloskey, from the fourteenth congressional district of the State of Texas, by declaring that Harry M. Wurzbach had been duly elected and was therefore entitled to the seat, whereupon Mr. Wurzbach took the oath of office, the term of which began March 4, 1929.

Mr. Wurzbach has filed in this office designations of clerks dating their appointments as of March 4, 1929, and declaring that the persons so designated were necessarily employed by him from that date to the time he was sworn in. Mr. Wurzbach contends that having been declared elected to the Seventy-first Congress, the term of service for which began March 4, 1929, he was elected for the entire Congress and not merely for any part of it, and that although not actually given title to the seat until January 10, 1930, the persons he has designated as his clerks to receive compensation from the appropriation made in the legislative acts for the fiscal years 1929 and 1930.

It is not clear in my mind whether the case of Mr. Wurzbach falls within the decision of Comptroller Warwick (27 Comp. Dec. 766). Will you kindly advise me whether I am authorized to place upon the roll of employees of the House of Representatives the names of the two persons designated by Mr. Wurzbach and pay them compensation from March 4, 1929, to February 10, 1930. During that period of time Augustus McCloskey held the seat as Representative from the fourteenth congressional district of Texas on the strength of a certificate of election and designated clerks who were paid compensation. But the House having unseated Mr. McCloskey, declaring him not to have been elected as a Member of such Congress, it would appear that Mr. Wurzbach is entitled to exercise all of the prerogatives and receive all of the emoluments accruing and authorized by law to a member of the Seventy-first Congress as though his name had been placed upon the roll of Representatives at the beginning of the Seventy-first Congress.

Very truly yours,

WM. TYLER PAGE,
Clerk of the House of Representatives.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1598
2d Session } { Part 2

MOSES ISRAEL

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 5269]

The Committee on Claims, to whom was referred the bill (H. R. 5269) for the relief of Moses Israel, having considered the same, report further thereon with the recommendation that it do pass, with the following amendment:

In line 6, after the figures "$3,500" insert "in full settlement of all claims against the Government of the United States".

There is attached hereto, to be made a part of this report, a letter from the Post Office Department under date of March 23, 1932, together with affidavits of Moses Israel, Samuel Gross, Samuel N. Caplow, and Samuel Feinberg.

POST OFFICE DEPARTMENT,
Washington, D. C., March 23, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. BLACK: In further reference to your letter of February 17, 1932, requesting a report on H. R. 5269, a bill for the relief of Moses Israel in the sum of $10,000 for injuries sustained in an accident involving an automobile driven by an employee of the Post Office Department at New York City on May 1, 1920, I transmit herewith a letter from the postmaster dated February 24, 1932. It will be noted that the postmaster's files relating to this accident have been destroyed.

By direction of the Postmaster General.

Very truly yours,

HAROLD N. GRAVES,
Executive Assistant to the Postmaster General.

In the matter of the application of Moses Israel for compensation for injuries received by reason of the negligence of an employee of the United States Post Office Department

STATE OF NEW YORK,
County of New York, City of New York, ss:

Moses Israel, being duly sworn, deposes and says: I am 64 years of age and reside at No. 2875 Sedgwick Avenue, in the Borough of the Bronx, city of New York, and am a citizen of the United States, having been naturalized in Lowell, Mass., in 1896.

On May 1, 1920, I resided at No. 53 West One hundred and eleventh Street, in the Borough of Manhattan, city of New York. On that day at about 20 minutes past 8 o'clock p. m., I was walking in a westerly direction on the south side of One hundred and twelfth Street from the direction of Madison Avenue toward Fifth Avenue, in the Borough of Manhattan, city of New York.

When I reached the Fifth Avenue corner, namely, the southeasterly corner of One hundred and twelfth Street and Fifth Avenue, I proceeded to cross Fifth Avenue from east to west, watching all the time the traffic on either side of me. I had not gone more than 10 feet from the curb and had not yet reached the center of the roadway, when I was suddenly struck by a motor truck which I afterwards ascertained was a United States mail truck No. 412 driven by Leslie M. Fabio, an employee of the United States Post Office Department. The said truck came down on me swiftly and suddenly and without the blowing of any horn or warning of any kind. At the time it struck me it was on the wrong side of the street, as it was going south and the point where I was struck was east of the center of the roadway, and the machine was therefore on the left side of the street.

The machine struck me with great force, threw me down and dragged me along the roadway, tearing my coat and trousers. I was unable to get up myself. Several young men picked me up and took me in another machine to the Mount Sinai Hospital at Fifth Avenue and One hundredth Street, New York City. I was attended by a physician there and taken home in a taxicab late the same night.

When I arrived home, I sent for my family physician, Dr. Samuel Gross, then of 746 East Fifth Street, now at 35 Park Avenue, New York City, and placed myself in his professional care. I suffered great pain and agony and was unable to walk or leave my bed for a period of eight weeks. After that I began to walk about the house with a marked limp, but was unable to go out and attend to my business at all for four more weeks. Since then I have never regained the full use of my right leg, and I can not walk about freely as I used to before the said accident. I also have dizzy spells and back-aches frequently, something I never had before the accident. In addition to treatment by my family physician, I also received treatment for many weeks at the Vanderbilt Clinic, New York, for my back, right leg, and right arm.

My occupation at the time of the accident was that of jobber of linings and tailors' and furriers' supplies, and my business required me to do a great deal of walking in order to obtain orders from my customers who were scattered all over the city. At the time of the accident my income averaged about $100 per week. As a result of the accident I have been unable to walk about more than an hour or two a day, and I am therefore unable to obtain orders and attend to my business as I did before the accident. As a result, my business has been steadily declining, and my earnings are practically nil.

In the three months that I was confined to my home immediately after the accident, I incurred expenses for medical treatment in the sum of $270. Since then I have expended many hundreds of dollars for medical treatment for the disability to my right leg and for the dizzy spells, and back-aches, and pain in my right arm, from which I have been suffering since the accident, but have thus far been unable to obtain permanent relief. I still find it very difficult to do any considerable amount of walking.

Shortly after the accident aforesaid, my attorney, Samuel N. Caplow, who is my son-in-law, now of No. 2 Lafayette Street, New York City, at my request, communicated with the United States Post Office Department in reference to the said accident. He informs me that under the law no right of action is given against the United States Government to a person injured through the negligence of a Government employee, and that the only possible way of obtaining compensation for my injuries is by a special act of Congress. I annex hereto a copy of the report of the accident made by the New York City police department. I obtained the said copy on or about April 1, 1932, upon my personal application for same at the police station at One hundred and twenty-third Street between Seventh and Eighth Avenues, in the Borough of Manhattan, city of New York.

I respectfully submit that as the result of the accident aforesaid, caused by the negligence of an employee of the United States Post Office Department, I have sustained permanent injuries and suffered damage amounting to at least $10,000, and I pray that I may be compensated accordingly by the passage of the bill introduced in Congress for that purpose.

MOSES ISRAEL.

Sworn to before me this 20th day of April, 1932.

SAMUEL N. CAPLOW,
Commissioner of Deeds, City of New York.

In the matter of the application of Moses Israel for compensation for injuries received by reason of the negligence of an employee of the United States Post Office Department.

STATE OF NEW YORK,
County of New York, city of New York, ss:

Samuel Gross, being duly sworn, deposes and says: I am a practicing physician duly licensed to practice medicine in the State of New York, and now have my office at No. 35 Park Avenue, Borough of Manhattan, city of New York. I am now and have been for many years past the family physician of Mr. Moses Israel, referred to in the latters affidavit annexed hereto. The said Mr. Israel in May, 1920, resided at No. 53 West One-hundred eleventh Street, and now resides at No. 2875 Sedgwick Avenue, in the Borough of Bronx, city of New York.

I have read his said affidavit and I find the same correct in so far as I am acquainted with the facts therein recited, namely, those facts relating to the physical condition and medical treatment of the said Moses Israel since May 1, 1920.

After the accident referred to in his affidavit, I was called in to treat Mr. Israel on May 1, 1920, and found him in great pain. He was suffering from periostitis ecchymosis and partial dislocation of the right hip joint. I treated him continuously for a period of eight weeks and after that treated him on numerous occasions for conditions directly associated with the injuries received by him in said accident. I also caused to be taken X-ray photographs of his right leg in order to determine its exact condition. The last time I examined him was at my office on April 18, 1932.

The injuries resulting from the accident aforesaid seem to have left his right lower extremity in a permanently weakened condition which makes it difficult for him to do any considerable amount of continuous walking.

SAMUEL GROSS.

Sworn to before me this 20th day of April, 1932.

SAMUEL N. CAPLAN,
Commissioner of Deeds, City of New York.

In the matter of the application of Moses Israel for compensation for injuries received by reason of the negligence of an employee of the United States Post Office Department.

STATE OF NEW YORK,
County of New York, City of New York, ss:

Samuel N. Caplow, being duly sworn, says: That he is an attorney at law, having his office at No. 2 Lafayette Street, in the Borough of Manhattan, city of New York. Deponent is a graduate of Columbia University Law School, class of 1914, and has been continuously engaged in the practice of law since that year.

Deponent is a son-in-law of Moses Israel, whose affidavit is annexed hereto. Shortly after the accident referred to therein, deponent was requested by the said Moses Israel to see what could be done toward obtaining redress for the serious injuries sustained therein by the said Moses Israel.

Deponent communicated with the Post Office Department and was informed that no funds were available for the payment of such claims. Owing to the lapse of time, some of the correspondence with the said Post Office Department has been lost or mislaid but deponent has found in his file a copy of a letter which he addressed to the postmaster dated May 19, 1920, and the reply thereto from Postmaster Patten dated May 26, 1920. Said copy and said letter are annexed hereto. About the same time deponent obtained a copy of the New York City police report of the said accident, which copy is exactly the same as the copy annexed to the said affidavit of the said Moses Israel.

In connection with his investigation of the said accident, deponent on May 11, 1920, called on one Sam Feinberg, a witness to said accident, and obtained from him a statement of what he witnessed. The said statement was written out by deponent in long hand and signed by the said Sam Feinberg in deponent's presence. On June 24, 1921, the said Sam Feinberg made an affidavit in duplicate concerning the said accident which was sworn to before deponent as a commissioner of deeds. The said original statement signed by Sam Feinberg and a duplicate original of the said affidavit sworn to June 24, 1921, are also annexed hereto.

Deponent does not know the present whereabouts of the said Sam Feinberg, although diligent effort to locate him has been made by deponent. For this reason deponent is unable to procure a new affidavit from the said Sam Feinberg.

From the investigation made by deponent shortly after the accident, deponent is of the opinion and verily believes that same was due entirely to the negligence of one Leslie M. Fabio, then an employee of the United States Post Office Department, who drove United States mail truck No. 412 in such a careless and reckless manner as to cause it to knock down and seriously injure the said Moses Israel without fault on the part of the said Moses Israel.

SAMUEL N. CAPLOW.

Sworn to before me this 20th day of April, 1932.

FRANK CIRAOLO,
Notary Public, Bronx County.

My commission expires March 30, 1933.

In the matter of the application of Moses Israel for compensation for injuries received by reason of the negligence of an employee of the United States Post Office Department.

STATE OF NEW YORK,
County of New York, City of New York, ss:

Samuel Feinberg, being duly sworn, deposes and says: I reside at 1328 Fifth Avenue, in the Borough of Manhattan, city of New York. I am 23 years of age and am employed in the city of New York as a fur operator.

On May 1, 1920, at about 8.30 p. m., I was standing on the stoop of my residence at the said address, which is on Fifth Avenue near One hundred and twelfth Street, when I saw a United States mail motor truck No. 412, coming down Fifth Avenue from the direction of One hundred and thirteenth Street. The above-named Mr. Moses Israel was crossing Fifth Avenue from east to west at the south crosswalk of One hundred and twelfth Street and Fifth Avenue. The mail truck was going very fast, at the rate of about 30 miles an hour, and in trying to pass a touring car just ahead of it and also another machine standing near the west curb, the said truck passed between the said touring car and the said machine near the west curb, turned sharply and suddenly toward the easterly curb and as it passed the said touring car it struck the said Mr. Israel on his right side and knocked him down. The spot where he was knocked down was at a point east of the center of the driveway. He was dragged about 5 feet, and the truck turning diagonally westward again traveled about 35 feet from the point where Mr. Israel was struck, and it finally stopped at the curb in front of my house which is on the west side of the street.

At the time the said truck struck Mr. Israel, it was traveling at the rate of about 30 miles an hour. I have frequently traveled in an automobile and sat next to the driver of the car watching the speedometer, and therefore am enabled to judge approximately the speed at which a machine travels.

The driver of the said mail truck at no time blew his horn or gave any other warning signal. Another young man or two and I picked up Mr. Israel. He was unable to walk. We hailed another passing mail truck and took Mr. Israel in it to the Mount Sinai Hospital, at One hundredth Street and Fifth Avenue.

Before we left One hundred and twelfth Street and Fifth Avenue another young man and I asked the driver of the mail truck which had struck Mr. Israel for his name and address, which he gave to us as follows: "Leslie M. Fabio, 2116 Madison Avenue, New York City."

SAM FEINBERG.

Sworn to before me this 24th day of June, 1921.

SAMUEL N. CAPLOW,
Commissioner of Deeds, New York City.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1604
2d Session } { Part 2

STEAMSHIP "W. I. RADCLIFFE"

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 11869]

The Committee on Claims, to whom was referred the bill (H. R. 11869) to amend the act of March 2, 1929, conferring jurisdiction upon certain courts of the United States to hear and determine the claim by the owner of the steamship *W. I. Radcliffe* against the United States, and for other purposes, having considered the same, further report thereon with the recommendation that it do pass.

There is attached hereto a letter and memorandum from the Department of Justice to be made a part of this report.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., May 13, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives,
Washington, D. C.

MY DEAR MR. CHAIRMAN: Replying further to your letter of May 5, transmitting H. R. 11869, to amend the act of March 2, 1929, conferring jurisdiction on certain courts of the United States to hear and determine the claim by the owner of the steamship *W. I. Radcliffe* against the United States, to this department for an opinion as to its merits, I inclose herewith a copy of an office memorandum of May 11, by Assistant Attorney General St. Lewis for the use of the committee during consideration of this measure.

Respectfully,

WILLIAM D. MITCHELL, *Attorney General.*

MAY 11, 1932.

Memorandum for Assistant Attorney General Sisson.

Private act, approved March 2, 1925, granted authority to the Wynstay Steamship Co., a British corporation, owner of the steamship *Radcliffe*, to bring an action in admiralty against the Government to recover losses due to collision between the steamship *Radcliffe* and the Government-requisitioned vessel *Sylvan Arrow*, then being operated by the Navy, which occurred December 1,

1918, in New York Harbor. By authority of that act, libel was filed by the Wynstay Steamship Co. (Ltd.), and the W. I. Radcliffe Steamship Co. (Ltd.), both of whom, we understand, are equal owners of the steamship *Radcliffe*. Recovery by the terms of that act could only be had in favor of the Wynstay Steamship Co. The attached bill, H. R. 11869, is intended to amend the prior special act so as to permit the libel to be continued in the names of both owners and for both owners to recover their full damages.

The damages here claimed are stated at $65,000, and the nature of the collision suggests that the Government may be held responsible for the full losses. During the course of the litigation, a suggestion of settlement on the basis of 90 per cent of provable damages was made. However, as the act specifically requires the question of liability and damages to be determined by the court, settlement on that basis was not accomplished. The Government pointed out to counsel that in any view, recovery under the act as it had been passed was limited to the actual interest of the one owner.

We have previously stated our views to the Committee on Claims respecting legislation granting relief for maritime losses arising during the war period. The question is a legislative one and relief in many cases has been granted. If the bill is considered proper legislation, we see no objection to its form.

Respectfully,

ROY ST. LEWIS, *Assistant Attorney General.*

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1607
2d Session } { Part 2

YVONNE HALE

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany S. 4379]

The Committee on Claims, to whom was referred an act (S. 4379) for the relief of Yvonne Hale, having considered the same, report further thereon with the recommendation that it do pass.

There is attached hereto the report of the State Department, which is made a part of this report.

DEPARTMENT OF STATE,
Washington, February 18, 1933.

Hon. LORING M. BLACK,
House of Representatives.

SIR: Receipt is acknowledged of your letter of February 13, 1933, concerning bill S. 4379, introduced for the relief of Yvonne Hale, widow of Bernard F. Hale, late American consul at Venice, Italy.

The following is the record of service of the late Mr. Hale:

"Born, Lunenburg, Vt., July 22, 1896; attended school in United States and Canada; Goddard Seminary; Hebron Academy graduate; private tutors in England; appointed clerk in American consulate general at London December 28, 1916; vice consul at Edinburgh, March 5, 1918; at Swansea, June 11, 1918; at Leeds, November 24, 1919; at Plymouth, January 3, 1920; appointed, after examination, consular assistant, November 17, 1920; vice consul of career of class 3, May 26, 1922; assigned to Plymouth, June 23, 1922; to Dundee, July 18, 1923; class 2, November 23, 1923; class 1, May 10, 1924; Foreign Service officer, unclassified, July 1, 1924; class 9 and consul, August 8, 1924; assigned to Dunfermline, August 30, 1924; class 8, February 24, 1925; assigned to Marseille, May 29, 1925; class 7, May 9, 1930; assigned to Geneva, temporarily, October 21, 1930; to Trieste, temporarily, March 19, 1931; to Venice, April 4, 1931; died, March 7, 1932."

There is inclosed for your information, a list indicating the action taken in similar cases to the one mentioned in the above bill. It is believed that this claim is one deserving of favorable consideration.

As requested, a copy of this report is being forwarded to the Senate Committee on Claims.

Very sincerely yours,

WILBUR J. CARR,
Assistant Secretary
(For the Secretary of State).

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1661
2d Session } { Part 2

BERNARD McSHANE

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 2814]

The Committee on Claims, to whom was referred the bill (H. R. 2814) for the relief of Bernard McShane having considered the same, further report thereon with the recommendation that it do pass, with the following amendment:

In line, 5, after the figures "$861.33", insert "in full settlement of all claims against the Government of the United States".

At the end of the bill, add the following:

Provided, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto, to be made a part of this report, the report of the Post Office Department.

POST OFFICE DEPARTMENT,
Washington, D. C., December 18, 1930.

Hon. ED. M. IRWIN,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. IRWIN: Receipt is acknowledged of your communication of December 10, 1930, inclosing a copy of a bill (H. R. 14843) introduced by Hon. Harry L. Englebright on December 9, 1930, for the relief of Bernard McShane. The bill provides for the payment of $861.33 to Mr. McShane, the amount being the balance, plus interest from November 2, 1923, of an award of $1,400 made to him for services rendered in connection with the arrest and conviction of one Roy G. Gardner, who was prosecuted for holdup and robbery of the Southern Pacific train No. 20, between Roseville and Newcastle, Calif., on May 20, 1921.

On that date Gardner entered the mail storage car of Southern Pacific train No. 20 as it was leaving Roseville, Calif. A substitute railway postal clerk was riding in this car under official instructions, though not performing any actual work. This clerk was asleep when Gardner entered the car, but was awakened by the latter, who intimidated him with a revolver and then securely bound him with straps. Gardner cut open a total of 51 pouches of mail in his search for registered mail, but there was none in the car at the time. Gardner finally pulled the signal cord, bringing the train to a stop, and tossed out of the car a sack of parcels, after taking a watch, some mail keys, and $11 in cash from the clerk. Gardner escaped under cover of darkness but did not make away with the sack of parcels he had thrown from the train.

When this crime was reported, Mr. McShane, then a special agent of the Southern Pacific Co., started for the scene, where he was joined by the chief special agent of the company and three post-office inspectors. The clerk gave a good description of the bandit, with the result that the decision was reached that Gardner was undoubtedly the one who committed the crime. At the time Gardner was an escaped prisoner from a United States marshal who was taking him to the Federal penitentiary at McNeil Island to serve a sentence of 25 years for holdup and robbery of a mail messenger at San Diego, Calif., about one year previous to this offense.

Mr. McShane worked faithfully day and night and rendered every possible assistance to the inspectors before and after the arrest of Gardner. He took a personal hand in the arrest, thus subjecting himself to possible injury and death.

Under order No. 5773, the notice of reward in effect at the time Gardner was apprehended, the maximum reward payable in this case was $5,000. This sum was payable from the appropriation for the "Payment of rewards, fiscal year, 1921."

It was the desire of the department to allow the maximum reward in this case, but owing to a deficiency which existed in the reward appropriation, it was found necessary to prorate the claims and $2,738.47 was distributed among the several claimants. Of this sum, $766.77 was paid to Mr. McShane with advice that it represented only a partial settlement of his claim. Similar statements were made in letters transmitting the checks to the other claimants. As a supplemental appropriation to cover these particular claims was not obtained, no further payments in this case were made.

Under the circumstances, the department is of the opinion that favorable consideration should be given to this bill providing for the relief of Mr. McShane.

By direction of the Postmaster General.

Very truly yours,

HAROLD N. GRAVES,
Executive Assistant to the Postmaster General.

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OSWALD H. HALFORD ET AL.

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 3840]

The Committee on Claims, to whom was referred the bill (H. R. 3840) for the relief of Oswald H. Halford et al., having considered the same, further report thereon with the recommendation that it do pass, with the following amendments:

At the end of line 5, after the word "appropriation" insert "in full settlement of all claims against the Government of the United States".

At the end of the bill, add the following:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There are attached hereto, to be made a part of this report, several letters from the War Department, under dates of June 2, 1932, March 28, 1924, June 7, 1932, and June 10, 1932.

WAR DEPARTMENT,
Washington, June 2, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives.

DEAR MR. BLACK: I have your letter of May 25, 1932, in which you ask for information regarding House bill 3840, seventy-second Congress, first session, proposing to reimburse Oswald H. Halford and 11 other former soldiers the amount of salary deducted on account of general court-martial sentences adjudged in June, 1918.

The bill, H. R. 3840, now pending before the committee is identical with prior bills—H. R. 993, sixty-eighth Congress, first session, dated December 5,

1923; H. R. 6810, sixty-ninth Congress, first session, dated January 5, 1926; and H. R. 1822, seventy-first Congress, first session, dated April 23, 1929, which bills were referred to this department by the Committee on Claims January 21, 1924, April 28, 1926, and January 22, 1930, respectively.

Careful consideration has been given to these bills, and an expression of opinion regarding the merits of House bill 993 is contained in the inclosed copy of the letter from this department, dated March 28, 1924, to the chairman Committee on Claims. For the reasons therein expressed, I do not recommend favorable consideration of the pending bill, H. R. 3840.

Sincerely yours,

PATRICK J. HURLEY,
Secretary of War.

WAR DEPARTMENT,
Washington, March 28, 1924.

Hon. G. W. EDMONDS,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. EDMONDS: I acknowledge receipt of your letter of January 21, 1924, inclosing a copy of House bill 993, now pending before your committee, to reimburse Oswald H. Halford and 11 other former soldiers the amount of salary deducted on account of general court-martial sentences adjudged in June, 1918, and requesting copies of all papers on file in the War Department relating to the matter, together with an expression of opinion as to the merits of the bill.

It appears from the court-martial order promulgating the sentence in each case that the soldiers in the bill were tried at Camp Beauregard, La., in May, 1918, and each was convicted of absenting himself without proper leave from his organization from about May 10 to May 16, 1918, after having been designated for overseas service and informed of such designation. They were severally sentenced to terms of confinement at hard labor for from one to three years and forfeiture of two-thirds of their unallotted pay for a like period. In each case the reviewing authority in approving the sentence suspended that portion thereof adjudging confinement.

Your attention is invited to the action taken by the reviewing authority in the case of Private Halford (General Court-Martial Order No. 220, attached), which is typical of the others, giving his reasons for suspending the confinement adjudged against Halford:

"In the foregoing case of Pvt. Oswald H. Halford, Battery B, One hundred and fortieth Field Artillery the particular conditions of the case were brought to the court's attention when the record of trial was returned for reconsideration of the sentence.

"A sentence which imposes a long term of confinement without dishonorable discharge is unwise, and, in a degree, subversive of military discipline in retaining in ranks a man whose punishment in itself brands him undesirable as a soldier. Still, in order that the accused may not escape a deservedly severe punishment, the sentence is approved, except that the execution of that portion thereof imposing confinement is suspended under the provisions of the fifty-third article of war, in order that the United States may, during the time the accused is undergoing punishment, give him the training essential to fit him for the efficient performance of his military duties."

The unexecuted portion of the sentence imposed was remitted in each case by paragraph 2, Special Orders, No. 124, General Headquarters, American Expeditionary Forces, France, dated May 4, 1919, and the soldiers continued to serve with their organizations until discharged from the service on June 19, 1919.

The records of the General Accounting Office, military division, show deductions as follows from the pay of each soldier under his court-martial sentence:

Oswald H. Halford	$77. 20
Charles G. Ventrees	217. 87
William C. Horne	226. 77
Felix M. Smith	192. 37
Edwin C. Smith	79. 80
Robert S. Sutherland	77. 67
Hunter M. Henry	192. 13
Rupert R. Johnson	221. 34
David L. Lacey	214. 33
Fenton F. Rogers	151. 87
William Z. Lee	212. 60
Henry F. Seale	193. 17

I have given full and careful consideration to the circumstances attending the offense for which each soldier was convicted. In each case the evidence shows that they were regularly selected for overseas service and notified thereof and that they left their organizations on the night following notification or shortly thereafter. The only excuse given was that they wished to visit their homes and relatives before going to France. They were all young men at the time, and I am not unmindful of the manner in which such a desire, assuming that to have been the sole motive for leaving, may have completely controlled their actions. Within three or four days after reaching their homes they reported to the civil authorities that they were ready to return. Their conduct, however, just as effectively deprived the country of their services for the time being as if they had deserted or were actuated by cowardice. It need not be stated that we were then engaged in a war requiring full use of the man power of the Nation and that in leaving their command in the manner stated they measurably lowered that high degree of efficiency and discipline essential for success in war.

The evidence shows that the decision of one or two to leave their organization led others to follow. Thousands of others could have urged the same excuse for leaving and unless checked would have skeletonized that and other organizations. Experience has taught that with many soldiers the principal deterring force is a certainty of adequate punishment for the commission of an offense. Light sentences are considered a license for the commission of offenses by others. In my opinion, the sentences here adjudged were not overcommensurate with the offenses of which they were found guilty.

There are some mitigating circumstances in the present cases. Each soldier is shown to have conscientiously and faithfully performed his duties prior to his absence and even after his return to military control.

They failed, however, at a critical moment to appreciate properly the duty each owed to his country. To reimburse them in any sum for forfeitures incurred by reason of their lack of respect for authority would only serve to condone their offenses. Their pay, of which they have been deprived by the execution of the sentences should not be restored to them. The passage of the proposed bill would establish, in my opinion, an unusual and harmful precedent.

For these reasons I do not recommend favorable action on the proposed bill.

It is the policy of the War Department not to remove its original records from the files where no duplicate copies are available, but to furnish photostat copies of such originals. In view of the expense of making photostat copies of the evidence in the 12 trials by court-martial, and further that the principal facts shown therein are substantially stated above, I venture the hope that the statement will be sufficient without making photostat copies of the evidence in each record of trial. If the committee still desires the record in each case I will promptly, upon being advised of your wishes, furnish photostat copies of the evidence in each case. There are inclosed a copy of the court-martial order in each case and a copy of the order remitting the unexecuted portion of the sentence.

Sincerely yours,

JOHN W. WEEKS, *Secretary of War.*

WAR DEPARTMENT,
Washington, June 7, 1932.

Hon. LORING M. BLACK, Jr.,
Chairman Committee on Claims, House of Representatives.

DEAR MR. BLACK: I have your letter of May 31, 1932, with which you inclosed a copy of H. R. 3840, for the relief of Oswald H. Halford and 11 other former soldiers, and call attention to the case of Charles P. Hardy (1599403), in which so much of his sentence as was in excess of the reduction to the rank of private, hard labor for three months, without confinement, and forfeiture of two-thirds of his unallotted pay per month for a like period, was remitted on August 5, 1918. You state that in the opinion of the committee similar consideration should be given to the claimants whose names appear in H. R. 3840.

The matter is receiving consideration, and you will be fully advised therein at an early date.

A copy of a letter from this department to the chairman Committee on Claims, House of Representatives, dated March 28, 1924, containing an expression of opinion regarding the merits of House bill 993, which is identical with H. R. 3840, was forwarded to the committee on June 2, 1932.

Sincerely yours,

PATRICK J. HURLEY, *Secretary of War.*

WAR DEPARTMENT,
Washington, June 10, 1932.

Hon. LORING M. BLACK,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

DEAR MR. BLACK: Supplementing my letter to you of June 7, 1932, regarding H. R. 3840, Seventy-second Congress, first session, proposing to reimburse Oswald H. Halford and 11 other former soldiers the amount of salary deducted on account of general court-martial sentences adjudged in June, 1918, and in response to the expressed opinion of the committee, as stated in your letter of May 31, 1932, that similar consideration should be given to the claimants in H. R. 3840 as was given to Pvt. (First Class) Charles P. Hardy (C. M. 116864), I submit the following:

Pvt. (First Class) Charles P. Hardy, Battery E, One Hundred Fortieth Field Artillery, was tried on May 16, 1918, by a general court-martial, Headquarters Thirty-ninth Division, Camp Beauregard, La., on the following charge and specification:

"Charge: Violation of the sixty-first article of war.

"Specification: In that Pvt. (First Class) Charles P. Hardy (1599403), Battery E, One Hundred Fortieth Field Artillery, did, at Camp Beauregard, La., after having been designated by his commanding officer for oversea service and notified of such designation, without proper leave, absent himself from Camp Beauregard, La., from about May 9, 1918, to about May 16, 1918."

The accused plead guilty to, and was found guilty of, the specification and charge, and was sentenced to be reduced to the grade of private, confined at hard labor at such place as the reviewing authority might direct for a period of two years, and to forfeit two-third of his unallotted pay per month for a like period.

The action taken by the reviewing authority, as published in General Court-Martial Order No. 277, Headquarters Thirty-ninth Division, Camp Beauregard, La., June 26, 1918, was as follows:

"In the foregoing case of Pvt. (first class) Charles P. Hardy, Battery E, One Hundred and Fortieth Field Artillery, the particular conditions of the case were brought to the court's attention when the record of trial was returned for reconsideration of the sentence.

"A sentence which imposes a long term of confinement without dishonorable discharge is unwise and, in a degree, subversive of military discipline in retaining in ranks a man whose punishment in itself brands him as undesirable as a soldier. Still, in order that the accused may not escape a deservedly severe punishment, the sentence is approved except that the execution of that portion thereof imposing confinement is suspended under the provisions of the fifty-third article of war, in order that the United States may, during the time the accused is undergoing punishment give him the training essential to fit him for the efficient performance of his military duties."

The case of Private Hardy was examined in the military justice division, office of the Judge Advocate General, and as a result of such examination a recommendation was made to The Adjutant General by letter dated July 30, 1918, that so much of Hardy's sentence as exceeded hard labor for three months, without confinement, and forfeiture of two-thirds of his unallotted pay for a like period, be remitted. It was stated in that letter that—

"It is the policy of the War Department that a court shall not, by a single sentence, which does not include dishonorable discharge, adjudge against a soldier forfeiture of pay in an amount greater than two-thirds of his pay for six months or confinement at hard labor for a period greater than six months; and that a soldier shall not be required to perform as a punishment hard labor without confinement for a period greater than three months."

The War Department records show that Pvts. Charles P. Hardy, Hunter M. Henry, Rupert R. Johnson, Charles G. Ventress, William Z. Lee, Oswald H. Halford, David L. Lacey, Fenton F. Rodgers, Felix M. Smith, William C. Horne, Henry F. Seale, Robert S. Sutherland, and Edwin C. Smith, all of Battery B, One hundred and fortieth Field Artillery, were tried by general courts-martial at Beauregard, La., in May, 1918, and each was convicted of absenting himself without leave from his organization at Camp Beauregard, La., from about May 10 to May 16, 1918, after having been designated for overseas service and informed of such designation. They were severally sentenced to terms of confinement at hard labor for from one to three years, and forfeiture of two-thirds of their unallotted pay for a like period. In each case the reviewing authority

approved the sentence but suspended that portion thereof adjudging confinement under the provisions of the fifty-third article of war.

In addition to the above-mentioned case of Pvt. Charles P. Hardy, the cases of the other soldiers named above were also examined in the military justice division of the Judge Advocate General's office in June or July, 1918, and were held legally sufficient to support the sentences approved. The War Department records show that the unexecuted portion of the sentence imposed in the case of each soldier named in H. R. 3840, was remitted by paragraph 2, Special Orders, No. 124, General Headquarters, American Expeditionary Force, France, dated May 4, 1919, and the soldiers continued to serve with their organizations until discharged from the service on June 19, 1919.

I trust that the foregoing will furnish your committee the desired information with respect to the case of Pvt. Charles P. Hardy (C. M. 116864).

Sincerely yours,

PATRICK J. HURLEY,
Secretary of War.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1666
2d Session } { Part 2

G. T. FLEMING

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

Mr. CLARK of North Carolina, from the Committee on Claims, submitted the following

SUPPLEMENTAL REPORT

[To accompany H. R. 5171]

The Committee on Claims, to whom was referred the bill (H. R. 5171) for the relief of G. T. Fleming, having considered the same, report further thereon with the recommendation that it do pass, with the following amendments:

In line 5 after the figures "$500" insert "in full settlement of all claims against the Government of the United States".

At the end of the bill add:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto the report of the Department of Justice which is to be made a part of this report.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., May 17, 1930.

Hon. ED. M. IRWIN,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: Further reference is made to your letters of April 14 and April 15, transmitting to this department for an opinion thereon, H. R. 11602, H. R. 11603, and H. R. 11604, for the relief of G. T. Fleming, C. J. Holliday, and J. B. Trotter, respectively, sureties on three forefeited criminal bail bonds.

I have carefully considered the merits of these bills. I do not favor their enactment.

Respectfully,

WILLIAM D. MITCHELL, *Attorney General.*

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1667
2d Session } { Part 2

J. B. TROTTER

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

Mr. CLARK of North Carolina, from the Committee on Claims submitted the following

SUPPLEMENTAL REPORT

[To accompany H. R. 5173]

The Committee on Claims, to whom was referred the bill (H. R. 5173) for the relief of J. B. Trotter, having considered the same, report further thereon with the recommendation that it do pass, with the following amendments:

In line 5 after the figures "$537.65" insert "in full settlement of all claims against the Government of the United States."

At the end of the bill add:

: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

There is attached hereto the report of the Department of Justice which is to be made a part of this report.

DEPARTMENT OF JUSTICE,
Washington, D. C., May 17, 1930.

Hon. ED. M. IRWIN,
Chairman Committee on Claims,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Further reference is made to your letters of April 14 and April 15, transmitting to this department for an opinion thereon, H R. 11602, H. R. 11603, and H. R. 11604, for the relief of G. T. Fleming, C. J. Holliday, and J. B. Trotter, respectively, sureties on three forfeited criminal bail bonds.

I have carefully considered the merits of these bills. I do not favor their enactment.

Respectfully,

WILLIAM D. MITCHELL,
Attorney General.

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72D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1720
2d Session } { Part 2

RESTORE WATER OF HIGH MINERAL CONTENT ON LAND OWNED AND CONTROLLED BY THE FEDERAL GOVERNMENT

FEBRUARY 21, 1933.—Committed to the Committee of the Whole House and ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H. R. 2481]

The Committee on Claims, to whom was referred the bill (H. R. 2481) making appropriation to restore water of high mineral content on land owned and controlled by the Federal Government, having considered the same, further report thereon with the recommendation that it do pass.

There is attached hereto a letter from the Treasury Department under date of May 16, 1932, to be made a part of this report.

TREASURY DEPARTMENT,
Washington, May 16, 1932.

DEAR MR. CHAIRMAN: Receipt is acknowledged of your letter of February 25, 1932, transmitting a copy of bill (H. R. 2481) making appropriation not to exceed $250 to restore water of high mineral content on land owned and controlled by the Federal Government at Lincoln, Nebr.

In 1907 when the original wing of the Lincoln post-office building was constructed the stone fountain was in the center of the post-office square and salt water flowed very freely through the fountain. The water was used extensively by residents of the city of Lincoln, and also of the State of Nebraska, who claimed it had certain medicinal properties of value to them. In 1916 an additional wing to the building was constructed which necessitated the moving of the stone fountain approximately 100 feet to the west. Two or three years later it was noted the amount of water coming through the fountain was steadily diminishing in volume and at the present time the water has entirely ceased flowing.

The spring is located directly under the post office building and the valves controlling the salt well are reached through a manhole located in the basement of the building. The custodian of the Lincoln building reports that, by experimenting with a hose, it was found that a good and sufficient volume of water would flow to within two feet of the exit of the fountain and estimates that the necessary force to raise the water the additional 2 or 3 feet to run freely through the stone fountain could be brought about by one direct connected electric and centrifugal pump.

The well was sunk by the city and a condition of the deed transferring the property to the Government is that the water flowing from this well "shall not be obstructed." From the above statement of facts it appears that the difficulty arises from a reduction in the natural flow of water rather than from any "obstruction" occasioned by the Federal Government's use of the property. Therefore, there would seem to be no legal obligation resting upon the Government to restore the flow, but in view of the small cost involved and of the fact that the necessary pump would be located upon the Government's property, the department recommends the passage of the proposed legislation.

Very truly yours,

OGDEN L. MILLS,
Secretary of the Treasury.

Hon. LORING M. BLACK,
Chairman Committee on Claims, House of Representatives,
Washington, D. C.

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