

PAYMENT OF PENSIONERS.

[To accompany bill H. R. No. 299.]

FEBRUARY 11, 1834.

Mr. POLK, from the Committee of Ways and Means, made the following

REPORT:

The Committee of Ways and Means, to which was referred the message of the President of the United States, of the 4th of February, 1834, with the accompanying documents, communicating to Congress the refusal of the Bank of the United States to deliver over, on the order of the Secretary of War, the books, papers, and funds connected with the disbursements to be made under the act of June 7, 1832, entitled, "An act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution," reports:

That they have given to the subject all the consideration which its importance demands, as well from its intrinsic character, as from the class of most meritorious persons, whose interests may be affected by the delay which may take place in the payment of the sums respectively due to them, in consequence of the refusal of the Bank of the United States to deliver over the funds heretofore provided by law for their payment, together with the books and papers connected with its disbursement.

The Bank, by the appointment of the Secretary of War, has heretofore been the disbursing agent of the Government, under the act of June 7, 1832, "for the relief of certain surviving officers and soldiers of the revolution." In ordinary circumstances all disbursing officers are responsible for the faithful performance of the duty assigned them, and are removable by the Executive. This control over them has been deemed essential to the correct performance of their duty, as well as to the just security of the public interests. The Bank, however, under the act of June 7, 1832, claims to be the disbursing officer of the Government, independent of the appointment of the Executive, to hold the office by law, and to be beyond the power of removal by the Executive authority. Such a claim, to be supported, should be clearly established, as it is at variance with the general principles of the constitution and laws.

The committee, on an examination of the documents accompanying the President's message, find that an order was given by the Commissioner of Pensions, which order was authorized by the Secretary of War, for removing from the Bank of the United States and its branches to the local banks of deposite, at places where such local banks had been selected, the books, papers, and funds relating to the execution of the act of June

7, 1832. With this requisition the Bank has declined a compliance, on the ground that the Bank is constituted by law the agent for making payments under the act of 1832, and that the Secretary of War has consequently no right to transfer these duties to any other agent.

The question is, therefore, one of authority between one of the departments of the Government and the Bank of the United States, in which the Bank has undertaken to retain the money and other property of the Government, until some measure, legislative or judicial, can be adopted, whereby the authority of the Executive over the public money and property, and the right claimed by the Bank to retain them, can be determined, and provision made for their ultimate disposition.

The committee are of opinion that the Bank has taken a position, and set up a claim to the possession of the funds, books, and papers in question, which cannot be supported. The opinion of the Attorney General, communicated by the President, contains a history of the agency of the Bank in the payment of pensions, and of claims under the act of 1832, and also a full, and, as the committee think, a correct view of the law of the case. To this opinion they refer, as greatly diminishing their labors on this part of the subject. It is concluded that by various legislative enactments, direct and indirect, the Bank was constituted the disbursing agent for paying invalid and revolutionary pensioners prior to and under the act of March 18, 1818. The Secretary of War has given no directions for the change of this agency, and the Bank remains as it was, the disbursing officer for the payment of pensions under these laws. But the case is otherwise under the act of June 7, 1832. Under that act the Bank was not, by the terms or any fair construction of the law, constituted the disbursing agent for paying the annuities which it granted. That act is supplementary to the act "for the relief of certain officers and soldiers of the army of the revolution," passed May 15, 1828. These two acts form parts of the same system. The act of 1832 has reference to that of 1828, and the phraseology of both is nearly identical. They provide for making payments to the surviving officers and soldiers of the revolutionary army in consideration of services, and the sums to be paid are denominated pay; and before any payments can be made under either of these laws, if the persons claiming their benefit are already receiving pensions under former laws, such pensions are required to be relinquished. No wounds are required to entitle a man to this "*monthly pay*," as they are, agreeably to the system of the invalid pension laws; nor is poverty essential to this aid, as it is under the acts of March 18, 1818, and the act of May 1, 1820, supplementary thereto. But the whole claim seems to be placed on the ground of services, and, in consideration of them, the "annuity" is given and received. The execution of both these acts was confided to the Secretary of the Treasury, and that officer was authorized to cause the payments to be made *at such times and places* as he thought proper. The act of 1828 provides "that the *pay* allowed by this act shall, under the direction of the Secretary of the Treasury, be paid to the officer or soldier entitled thereto, or to their authorized attorney, *at such places and days as said Secretary may direct.*" The act of 1832 provides "that the *pay* allowed by this act shall, under the direction of the Secretary of the Treasury, be paid to the officer, non-commissioned officer, musician, or private entitled thereto, or his or

their authorized attorney, *at such places and times as the Secretary of the Treasury may direct.*” And both acts contain a permanent appropriation of the sums necessary to carry them into effect. The Secretary of the Treasury, under the authority given by the act of 1828, has caused the payments to be made at the Treasury directly to the individuals entitled. The Bank never had any agency whatever under this law, nor is it known to the committee that they ever interposed any claim to make these payments. It is very clear that if the payments under the act of 1828 could be made at the Treasury, or at such other *place* as the Secretary of the Treasury might direct, without the intervention of the Bank as the disbursing agent, so could the payments under the act of 1832 be made in like manner, had the execution of the act of 1832 remained with the Secretary of the Treasury. The execution of this act was, however, by a joint resolution of June 28, 1832, devolved upon the Secretary of War, and the duties which the act required to be performed by the Secretary of the Treasury were “transferred to the Secretary of War.” The Secretary of War was, by this resolution, clothed with the same authority to make payments to those entitled under the act of 1832, at such times and places as he might direct, as was previously possessed by the Secretary of the Treasury. In whatever mode the payments could have been made by the Treasury Department previous to the adoption of the resolution of June 28, 1832, in the same mode they can be made at the War Department after the adoption of that resolution. The whole business then was to be done under the “direction” of the Secretary of War, and the payments made at such “*times and places*” as he may direct. It will not be disputed that the words of the law confer upon the Secretary of War a general supervisory authority over the payments to be made under it. They authorize the payments to be made whensoever, wheresoever, and by whomsoever the Secretary may direct. If the Secretary were to direct the payments to be made at the Treasury, (as by the law he has a clear right to do,) it surely cannot be maintained that an agent of the Bank must stand by to receive the money, and pass it over to those entitled. It surely cannot be contended that the money is not properly disbursed, unless it first pass through the hands of the Bank. If the Secretary of War thinks the convenience of those entitled to pay under this act, or the public interests, require that places of payment should be designated where there are no branches of the United States Bank, may the Bank, by refusing to establish an agency at such places, (and there is no law requiring them to do so,) defeat the contemplated arrangement? It appears to the committee that the power confided to the Secretary of War to designate *times and places* of payment necessarily includes the authority to select the persons who are to act as agents in making the payments, as, without such authority, the power to direct the *times and places* of payment would be wholly nugatory.

The committee are of opinion that upon no correct principles can the Bank claim the legal right to make these payments, either in their character of commissioners of loans, or as disbursing agents of the Government. The charter does not confer on the Bank the right of being in all cases the agent for the payment of pensions. It reserves to Congress the power to impose on the Bank the duty which was before performed by

the commissioners of loans; and as those commissioners, at the date of the Bank charter, performed the duties of agents for paying the invalid pensions, the reservation in the charter authorized Congress to impose that duty on the Bank. But Congress may, or may not, at its own pleasure, exercise the power it has thus reserved. The Bank can have no right to demand its exercise. The charter, therefore, in this respect, confers no right on the Bank. It merely reserves to Congress the power to impose a duty, and the duty of the Bank in this particular cannot be more extensive than the laws passed subsequently to the charter shall be found to require of it.

The act of the 3d of March, 1817, made it the duty of the Bank to pay as agent the pensions which before that time were paid by the commissioners of loans; but it does not require that all pensions afterwards created shall be paid in like manner by the Bank. Its provisions are expressly confined to the duties which were then performed by the commissioners of loans, and no allusion is made in the law to pensions which may afterwards be created.

The act of 1818 directs the pensions which it gave to be paid in the same manner as pensions to invalids had before that time been paid; and it is by virtue of this provision that the Bank pays the pensioners under this law. But this act, like that of 1817, makes no general provision on the subject of paying pensions. It directs the manner in which the particular pensions it created should be paid, but it does nothing more.

From this statement, it appears that the duty of pension agent has been imposed on the Bank by law, in those cases where the pensions were given by the act of 1818, or by some previous act of Congress. But it is not the duty of the Bank to act as pension agent, in relation to pensions created since the law of 1818, unless some subsequent act of Congress has imposed that duty on it.

If, then, it be assumed that the payments under the act of 1832 are to be regarded as pensions, yet the Bank would not be bound to take upon itself that duty, unless it was required of it by act of Congress. For it is not enough that new pensions are created; there must also be some law directing the Bank to act as agent in paying them, otherwise the Bank can be nothing more than a voluntary agent, and at liberty, therefore, to surrender their trust whenever they think proper.

But there is no pretence that the law or resolution of 1832 contains any direction that the Bank should act as agent in paying these claims. There is no reference in the law to any former act of Congress, from which such an intention can be inferred, even by the most strained and forced construction. And, therefore, if these *payments* be considered *pensions*, in the legal sense in which the word is used in the acts of Congress, yet the duty of paying them has not been imposed on the Bank, and they were not bound to perform the duty, unless they supposed it to be to their interest to do so.

There is another point of view in which the subject presents itself, and which it is believed is still more important, and that is, the attitude assumed by the Bank. They do not claim the books, papers, and funds as belonging to them; these are confessedly the property of the Government. But they claim the right to retain the possession of them, not from any

interest which they have in them, for this is disavowed, but merely that they may take care that the laws be faithfully executed. This is certainly a novel pretension, and it is believed is now for the first time asserted—by a corporation, at least, in the United States. By the constitution, the execution of the laws is confided to the Executive.

The allegation of the Bank, as contained in the letter of the President of the Bank, of January 23, 1834, that “it is no justification to the Bank to obey any other authority,” (than Congress,) “for, if it pays money, or transfers money, without the authority of Congress, its accounts may be disallowed by the accounting officers,” does not, in the opinion of the committee, deserve to be seriously considered or refuted. It is impossible to conceive upon what grounds such an apprehension as is here pretended could be seriously entertained: for whatever authority the Bank had to disburse the annuities under the act of June 7, 1832, was derived not from Congress, for the act directs the payments to be made “*under the direction of the Secretary,*” but, from their appointment as paying agent, by the Secretary of War; and if he gave the authority, it would be strange, indeed, if he could not revoke it. The public money had been placed in the hands of the Bank by the order of the Secretary of War; and if he makes that order, and directs the money to be returned to the Treasury, or transferred to other agents, it is absurd to suppose that the Bank, by obeying, should be in any way embarrassed in the settlement of their accounts. There was not the slightest ground for such a belief, and it cannot therefore be urged as any extenuation or apology for the course of the Bank.

In no view of the subject can the Bank, in the opinion of the committee, rightfully retain possession of the money and property of the Government. If the law of 1832 had constituted the Bank (which the committee do not concede, but on the contrary maintain it did not) the paying agent of the Government, it would not necessarily follow that they must keep possession of these books, papers, and funds. Many cases might be conceived in which it would be not only proper, but the duty of the Government, to resume the possession of them. The books and papers might be wanted for copying, examination, or correction, or other conceivable purposes. The money appropriated for these payments, might be accumulated in an unnecessary degree at a given point, and might be wanted elsewhere, in consequence of a diminished supply at other “*places*” designated by the Secretary for the payments. But the ground taken by the Bank excludes all possibility of the exercise of this supervisory regulation of the head of the department, whose duty the law makes it to see that the “*pay,*” allowed by the act, shall be made under his “*direction,*” and at such “*times and places*” as he may designate. The Bank in effect says, we have decided that we are the proper agents to make the payments, and, therefore, the Government shall in no case have any power to withdraw the property which it has heretofore placed in our possession. Such a principle, if applied to all other cases of disbursing officers, who may assume the ground that they have been illegally dealt with, would lead to consequences which do not require to be stated, and could not for a moment be tolerated.

If the Bank, when the demand was made for the books, papers, and money of the Government, in its possession, had “*protested*” if they

thought the demand illegal, and had then delivered them up, and had afterwards appealed to Congress or the judicial tribunals for such redress or decision as the nature of the case might call for, their position would have been far different from what it now is. Assuming to decide the law for themselves, and arrogating the power to see that the laws be faithfully executed, they assume a power heretofore unknown to our laws and institutions. Claiming to define their own legal rights, they have so far forgotten the rights of the public as to withhold vouchers and funds to which they can have no title.

It further appears to the committee that the change directed to be made by the Secretary of War was called for by the circumstances. It is understood that the change has been confined to a substitution of the local banks of deposite for the Bank of the United States and its branches, at those places where local banks of deposite have been selected. Where the public funds are yet deposited in the branches of the United States Bank, those branches are yet the agents for making the payments, by appointment of the Secretary of War, under the act of June 7, 1832. Where the change has been made, the business is to be done by the new agency, without any charge whatever to the Government.

The reason and propriety, therefore, of the measure are obvious. The object is to direct the banks holding the public money to pay out this money to persons claiming it under the act of June 7, 1832, instead of having the funds drawn from these banks, and placed in the United States Bank and its branches, for the mere purpose of doing what the former may do as well. To have continued the agency of the Bank of the United States in making these payments, when the public moneys were in other banks, would have been unnecessarily to put it in the power of the Bank of the United States, by means of the public funds, to draw large amounts of specie, from time to time, from the selected banks, to hoard in its own vaults, thereby to increase, for its own purposes, a needless and unjustifiable pressure on the people.

It remains to be considered what effect this unwarrantable act of the Bank may have upon the future payments to be made to the officers and soldiers entitled to the benefits of the provisions of the act of 1832.

The committee called upon the Secretary of War for information on this point, and herewith submit the answer which has been received. It appears that on the 1st of January last, the Bank, as disbursing agent for the payment of claims under the act of June 7, 1832, held, of public moneys drawn from the Treasury for this object, the sum of \$470,546 98. Since then, other payments to a comparatively small amount may have been made, and it is possible that subsequent settlements may further reduce this balance. This sum had been regularly drawn from the Treasury by warrants in the usual way, and placed in the possession of the Bank to be disbursed. The act of 1832 makes a standing appropriation of the amount necessary to carry its provisions into effect. The Bank, by withholding the sum which it has in possession, stands in the situation of any other defaulting disbursing agent, and a sum equal to that which it thus wrongfully retains, must be drawn from the Treasury, and applied to the payments, until the amount withheld by it shall be recovered. The detention of the books and papers by the Bank will not necessarily postpone the payments until the possession of such books and papers may be re-

covered from the Bank, but it will render it necessary for the Department of War to make out new lists of those entitled to pay, and there is no probability that this can be done sufficiently early to enable the payments under the act of June 7, 1832, to be made on the 4th of March next, especially at the distant agencies, agreeably to the established usage. The labor of preparing new lists and papers is understood to be great, and, with all the care that can be taken, there will be a liability to error, in many cases, until the present agents settle their accounts, resulting from the uncertainty of the periods to which the payments may have been made. But as no surviving claimants have been paid to a period later than the 4th of September last, all who are now living may be paid on the 4th of March, for the half year ending at that time.

If any inconvenience should be felt by any of those veterans of the revolution, as the committee believe it will be by all by the delay which will take place in the payment of the next annuity due to them, it is to be attributed to the unjustifiable conduct of the Bank in interposing to thwart the views of Government, in withholding from the officers of Government the public money and public property, to which they do not pretend to have any claim. The committee cannot condemn in terms too strong the conduct of the Bank in this transaction. The Bank withholds from the public service the large sum of four hundred and seventy thousand five hundred and forty-six dollars and ninety-eight cents, and thus puts the Government to the inconvenience of applying other funds to the objects for which the sum they retain was appropriated and drawn from the Treasury.

So far as respects the delivery of the public property in their possession, they refuse to obey the instructions issued; but, so far as respects the termination of the duty of making payments, they yield a ready acquiescence, and yet there is the same authority for the one order as for the other. But in the former case they have a direct pecuniary interest in the course they pursue; in the latter, their interest is not at stake, and no one suffers but the Government, which must advance other funds to supply the place of those illegally retained by the Bank, and the veterans of the revolution, who must wait for the amount due to them, until the necessary documents can be prepared to justify their payment.

The existing laws are, in the opinion of the committee, adequate to enable the Government to effect a recovery from the Bank of its money and property; and, therefore, they propose no measure of legislation in this respect. Neither is any further appropriation required to supply the place of the sum thus retained by the Bank, for, as has been already remarked, the act of June 7, 1832, makes a standing appropriation of the sums necessary to carry its provisions into effect. If the Bank, or any other disbursing agent for the payment of these claims, become defaulters, and refuse to pay over the public moneys placed in their hands to make such payments, the meritorious class of citizens provided for by the act cannot, on that account, be deprived of their rights, though some of them may experience delay in receiving the sums due to them, as in this case they probably will, in consequence of the conduct of the Bank in withholding the public books and papers, by which the exact amount of their claims is to be ascertained.

The committee deem the course of the Bank such, in this case, as to

justify the repeal of the several provisions constituting them pension agents, under the invalid acts and the acts of 1818 and 1820. There seems to be no propriety in the separation of these duties, but as one may be conveniently performed by the agents selected by the Secretary of War, so may the other. There seems to be a propriety, too, in confiding to a responsible officer of the Government the duty of making these payments, rather than leave it in the hands of an irresponsible corporation. They therefore recommend this course, and report a bill accordingly.

DEPARTMENT OF WAR,
February 6, 1834.

SIR: I have the honor to reply, in part, to your letter of this date, by transmitting a report received from the Commissioner of Pensions.

A further statement, now in preparation by the Third Auditor, will be furnished as soon as possible. I will remark, however, that a similar paper was prepared and sent with the President's message, and may be found among those papers.

Very respectfully, I am, sir, your obedient servant,
LEW. CASS.

Hon. J. K. POLK,
House of Representatives.

WAR DEPARTMENT,
Pension Office, February 6, 1834.

SIR: In reply to the inquiry of the Hon. J. K. Polk, I have the honor to make the following report:

The effect of the refusal of the United States Bank to surrender the possession of the books, papers, and funds, to meet payments under the act of June 7, 1832, will not be to postpone the payments until the books, &c. shall be recovered from the Bank, but it will reduce this office to the necessity of making out new lists, which will consume so much time, that the lists will not be prepared sufficiently early to reach distant agencies by the 4th of next month, when the semi-annual payments should be made, in conformity with the practice which has heretofore existed. Funds can be drawn from the Treasury at any time for paying pensioners under the act of June 7, 1832, and placed in the hands of the newly appointed agents. The funds now in the hands of the United States Bank and its branches, for paying pensioners under the act of 1832, were drawn from the Treasury by warrants under the standing appropriation which that law makes. I cannot furnish so particular a statement showing the amount of funds set apart for paying pensioners under this law as is desirable, but the Third Auditor can give such a statement, and I would respectfully suggest the propriety of requiring the necessary information from that officer.

I have the honor to be,
Very respectfully,
Your obedient servant,
J. L. EDWARDS.

P. S. It is proper for me to add, that we shall not be able to ascertain in many cases to what time the pensioners have been paid, until the former agents settle their accounts at the end of the first quarter of the present year; but as none have been paid to a period later than the 4th of last September, all who are now surviving may be paid on the 4th March, for the half year ending at that time.

J. L. E.

HON. LEWIS CASS,
Secretary of War.

The Secretary of War has the honor to enclose the statement prepared by the Third Auditor in relation to pension funds, which was promised to the Hon. Mr. Polk, in a note of the 6th instant.

WAR DEPARTMENT, *February 7, 1834.*

TREASURY DEPARTMENT,
Third Auditor's Office, 7th February, 1834.

SIR: I have the honor to hand you, enclosed, agreeably to your request, a copy of a "statement of balances on hand on the 1st January, 1834, on account of 'pensions under the act of 7th June, 1832,' as appears from the accounts of the agents, as far as they have been rendered to that date," the original of which was furnished to Mr. Edwards, Commissioner of Pensions, on the 3d instant, for the President of the United States.

It is proper to add, that two accounts were accidentally omitted in the statement above mentioned, viz.

Bank of the United States, Washington city	-	-	\$7,957 68
Do do Portland, Maine	-	-	35,596 85

And since the statement was furnished, the account of the Bank of the United States at Boston has been received, exhibiting a balance on hand the 1st of January, 1834, of \$36,731 52.

The letter of the Hon. J. K. Polk is herewith returned.

With great respect, your most obedient servant,
PETER HAGNER, *Auditor.*

The Hon. LEWIS CASS,
Secretary of War.

Statement of balances on hand on the 1st of January, 1834, on account of "pensions under the act of 7th June, 1832," as appears from the accounts of the agents, as far as they have been rendered to that date.

Burlington, Vt., under act of 7th June, 1832,	-	\$22,930 96
Charleston, S. C.	-	13,637 75
Nashville, Tenn.	-	13,096 30
Baltimore, Md.	-	30,970 50
Cincinnati, O.	-	42,819 13

Providence, R. I.	-	-	-	-	\$22,910	26
Hartford, Conn.	-	-	-	-	44,693	27
Lexington, Ky.	-	-	-	-	31,723	53
Corydon, Ind.	-	-	-	-	8,947	13
Mobile, Ala.	-	-	-	-	13,280	69
Utica, N. Y.	-	-	-	-	11,649	65
Savannah, Geo.	-	-	-	-	12,792	25
Fayetteville, N. C.	-	-	-	-	24,749	26
Jonesborough, Tenn.	-	-	-	-	1,807	51
Richmond, Va.	-	-	-	-	41,585	24
Carmi, Ill.	-	-	-	-	7,492	52
Detroit, M. T.	-	-	-	-	5,628	91
Newcastle, Del.	-	-	-	-	5,956	53
New Orleans, La. (to 4th December, 1833)	-	-	-	-	6,536	00
Buffalo, N. Y.	-	-	-	-	1,523	37

The foregoing accounts were received up to the 1st February; the following have since been received:

Knoxville, Tenn.	-	-	-	-	4,674	67
Philadelphia, Pa.	-	-	-	-	29,330	66
Portsmouth, N. H.	-	-	-	-	27,555	48

The account of the agent at Boston, and the vouchers for payment of pensions for the third quarter of 1833, were received this morning. The agent states in his letter of the 29th ultimo that the abstract, &c. for the fourth quarter will soon be forwarded.

TREASURY DEPARTMENT,

Third Auditor's Office, February 3, 1834.

PETER HAGNER.

ATTORNEY GENERAL'S OFFICE,

February 3, 1834.

SIR: Pursuant to your directions, I have carefully examined the communication addressed to the Secretary of War by the President of the Bank of the United States, under date of the 23d ultimo, and, after a brief notice of the circumstances which have given rise to the questions submitted to me, will proceed to state my opinion thereon.

The act of the 7th of June, 1832, after granting to certain officers and other persons, for their services in the war of the revolution, the pay and annuities therein prescribed, proceeds to enact that the pay so allowed shall, *under the direction of the Secretary of the Treasury*, be paid to the persons entitled thereto, at such *places and times* as that officer may direct. By a joint resolution, approved on the 28th of June, 1832, all the duties imposed on the Secretary of the Treasury by this act were transferred to the Secretary of War. In the execution of the duties thus devolved on him, the latter officer assigned to the Pension Office, then, and still, a bureau of his department, the task of receiving, examining, and deciding on, applications for the benefits of this act. This arrangement was made, not because the law was, strictly speaking, a *pension law*, but because the whole subject bore so much analogy to the pension system,

as to make it proper to commit its general management to the Pension Office.

For the like reason, the duty of paying those persons whose claims were duly admitted, was assigned by the Secretary of War to the Presidents of the Bank of the United States and of its branches, those officers being then the disbursing agents actually employed by the Government under the various pension laws.

With the view of enabling them to make the proper payments under the act of 1832, various lists and other documents have been transmitted to them from the Pension Office; and they have also, from time to time, been provided with funds from the same office, by means of drafts on the banks in which the public moneys were deposited. In this way, the Bank and its branches, or the Presidents of those institutions, have become possessed of various books, vouchers, and other documents relating to payments under the act referred to, and are now also in possession of a considerable amount of funds belonging to the Government, being the unexpended balances of moneys placed in their hands in the manner and for the purposes above stated.

In the exercise of the same authority, by virtue of which he originally committed this agency to the Bank of the United States, the Secretary of War has recently thought proper to discontinue the employment of that institution and its branches, so far as relates to payments under the act of June 7, 1832, and has appointed in their stead certain of the State banks lately selected as banks of deposite by the Treasury Department. In the city of Philadelphia, the Girard Bank was appointed for this purpose; and, in order to carry this arrangement into effect in that city, the Commissioner of Pensions, in obedience to an order of the Secretary of War, has directed the President of the Bank of the United States to transfer to the President of the Girard Bank the funds, books, and papers of the agency, under the act of the 7th of June, 1832.

With this requisition, the Bank of the United States, after first ascertaining that the Commissioner of Pensions had acted under the directions of the Secretary of War, has refused to comply, on the ground that the requisition was not warranted by law, and that the Bank has not only the right to disobey it, but is bound to do so, by its duty to Congress, and by a due regard to its own safety. The letter referred to me contains an elaborate argument by the President of the Bank, in support of these positions; and it is upon the points thus taken and defended that you have required my opinion.

I have given to the whole subject, and especially to the argument transmitted by the Bank, a mature, and, I trust, dispassionate consideration. The result of my investigations and reflections is a decided conviction that the order in question was fully warranted by law, and that no valid reason has been assigned for refusing to obey it.

The President of the Bank admits that there is nothing in its charter which grants or promises to that institution any agency in the payment of pension moneys; but he refers to various legal provisions, for the purpose of showing that Congress has devolved upon the Bank, to the exclusion of every other officer or agent, the duty of paying pensions and pensioners in those States where the Bank and its branches are established, and has given to it the power of selecting some State bank for that pur-

pose, in States where there is no branch of the Bank of the United States. And to prove that this agency has been so confided by positive law to the Bank of the United States, that no change can be made in it except by special act of Congress, he refers to several such acts, establishing in particular places new pension agencies, and quotes from a letter of the present Secretary of War, under date of the 1st of March, 1832, a distinct admission that the War Department had, at that time, no authority to appoint "a pension agent in any State or Territory where the United States Bank has established one of its branches."

The letter referred to me then proceeds to consider what is really at this time the only subject of controversy, the law of June 7, 1832; and on the assumption that this law is a part of the pension system, and merely extends the benefits of that system to a new class of pensioners, it maintains, in effect—

1st. That the pensioners thus created by the act of 1832 are, as a matter of course, to be paid by the Bank of the United States, as the general pension agent of the Government, unless the clause which declares that they shall be paid "at such *places* and *times* as the Secretary may direct," can be construed to authorize him not only to designate the place and time of payment, but also to appoint the agent by whom such payment is to be made.

2dly. That the clause referred to cannot, with propriety, be so construed; and

3dly. That the Bank of the United States has, therefore, always been, and still is, the sole agent for making payments under the law of 1832, and can only be discharged from this employment by act of Congress.

I have already mentioned that the Bank of the United States was, at the time of the enactment of the law of 1832, the general agent for the payment of pensions, properly so called; and it may also be conceded, for the purposes of the present inquiry, (although the point is by no means clear as to all the pension laws,) that this agency has been so conferred on it by law, that it cannot be taken from it, except by some new exertion of legislative power. But after giving the Bank the full benefit of this concession, I cannot yield to it the positions above maintained. On the contrary, I think them wholly untenable, and for the following, among other reasons:

1st. The general pension agency would not embrace the payments authorized by the act of June 7, 1832, even had that act contained no special provision in relation to those payments; because it is not, properly speaking, a *pension law*, and does not come within the legal regulations for the payment of pensions.

I have already stated that the execution of this law was, immediately after its passage, assigned to the Pension Office; and that, until the recent order of the Secretary of War, the general pension agents had been employed to make payments under it. From these and other circumstances, those payments have usually been spoken of by public officers and others as "pensions under the law of 1832," and the President of the Bank builds his entire argument on the assumption that such is their true character, and that, as part and parcel of the pension system, they are subject to all the incidents of that system. In this I think it very clear that he has fallen into an error, probably in consequence of adopting, without

sufficiently considering the history, character, and provisions of the law itself, the general language usually applied to it.

The exposition of this error will, independently of any other consideration, be perfectly decisive of the questions referred to me. I shall therefore endeavor to place this point in its true light, though, in order to do so, some minuteness of detail will be found to be unavoidable.

The first pension law passed after the organization of the Federal Government, was the act of the 29th of September, 1789. By this act certain military pensions which had been granted by the States to invalids, wounded or disabled during the war of the revolution, were assumed by the United States for one year, and directed to be paid "*under such regulations as the President of the United States might direct.*" This act was continued or its place supplied by subsequent laws; and various other laws, were also, from time to time, passed by Congress, granting pensions to invalids by name, or prescribing regulations under which persons who might be wounded, or otherwise disabled in the public service, might entitle themselves to pensions. By some of these acts, the payments were to be made under such regulations as the President might direct; by others, and this was the more usual direction, the pensioners were to be paid in the same manner as the invalids before placed on the pension list.

In the meantime, the President of the United States, in pursuance of the authority vested in him by some of the first laws, had directed that the several commissioners of loans, in those States where such officers existed, should be employed as agents of the Government in the payment of pensions, and they continued to be so employed until after the organization of the Bank of the United States. In the charter of that institution, Congress reserved the right of requiring the Bank, by law, to perform the duties of commissioners of loans; and this reserved right was afterwards exercised by the act of the 3d of March, 1817, quoted at length by the President of the Bank in the letter referred to me. Along with the duties imposed on the commissioners of loans by the laws creating their offices, or supplementary thereto, the special duties of pension agents, assigned to them by the Executive, were also transferred to the *Presidents* of the Bank and of its branches, who thus became the disbursing agents of the Government under the pension laws then in force.

Those laws, up to this period, provided only for invalids; but at the next session of Congress a large addition was made to the pension list, by the act of the 18th of March, 1818, which authorized the payment of pensions to certain indigent officers and soldiers of the revolution; and which declared that they should be paid "*in the same manner as pensions to invalids who have been placed on the pension list are now paid.*" By virtue of this reference to the then existing usage under the invalid pension laws, the Bank of the United States and its branches also became the paying agent under the law of 1818; and as similar clauses have been inserted in the various acts since passed supplementary to that law, and to the other pension laws, the payments under them are to be made through the agency of the Bank, except so far as Congress shall have authorized, by special laws, the employment of other agents. In respect to all the laws now spoken of, it is also to be observed that they invariably direct that the parties entitled to the benefit of their provisions shall be placed on the "*pension list,*" and always speak of the moneys

granted as "*pensions*," and of the persons who are to receive them as "*pensioners*;" thus furnishing the means of distinguishing with precision those laws which really belong to the pension system, from those that merely bear some analogy to it.

We are now prepared to look into the act of June 7, 1832; and the first observation which occurs is, that this act, so far from being supplementary to the pension laws, or to any one of them, is expressly declared by its title to be supplementary to the act of the 15th of May, 1828, "for the relief of certain officers and soldiers of the army of the revolution." The first section also refers to that law, and the whole act is evidently a mere extension of the principle established by the act of 1828.

Now the act of May 15, 1828, has no connexion whatever with the general system of pension laws. It was the commencement of another and an entirely different system, as will be seen by referring to its provisions.

The first section of the act of the 15th May, 1828, is in the following words:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each of the surviving officers of the army of the revolution, in the continental line, who was entitled to half pay by the resolve of October twenty-one, seventeen hundred and eighty, be authorized to receive, out of any money in the Treasury not otherwise appropriated, the amount of his full pay in said line, according to his rank in the line, to begin on the third day of March, eighteen hundred and twenty-six, and to continue during his natural life: Provided, That, under this act, no officer shall be entitled to receive a larger sum than the full pay of a captain in said line."

On the face of this section we perceive that, instead of extending the bounty of the nation to a new class of invalids or indigent persons, in the form of a pension, the law merely makes provision for the satisfaction of an equitable claim on the justice of the Government, and carefully avoids any such expression as might connect it with the system of pensions then in force. The like distinction is recognised in the second and fifth sections; and still more emphatically in the third, which is in the following words:

"SEC. 3. And be it further enacted, That every surviving non-commissioned officer, musician, or private, in said army, who enlisted therein for and during the war, and continued in its service until its termination, and thereby became entitled to receive a reward of eighty dollars, under a resolve of Congress, passed May fifteen, seventeen hundred and seventy-eight, shall be entitled to receive his full monthly pay in said service, out of any money in the Treasury not otherwise appropriated, to begin on the third day of March, one thousand eight hundred and twenty-six, and to continue during his natural life: Provided, That no non-commissioned officer, musician, or private, in said army, who is now on the pension list of the United States, shall be entitled to the benefits of this act."

Here, again, it is apparent that the payments directed by this section are granted, not as pensions gratuitously conferred, but for the purpose of providing an equitable equivalent for the reward promised in the resolve to which the section refers. And by referring to the debates, and

other proceedings which accompanied the passage of the law, it will be seen that its enactment was advocated principally, if not exclusively, on this ground.

The only remaining section, not quoted or alluded to, is the *fourth*, which is as follows :

“ **SEC. 4.** *And be it further enacted,* That the *pay* allowed by this act shall, *under the direction of the Secretary of the Treasury*, be paid to the officer or soldier entitled thereto, or to their authorized attorney, *at such places and days as said Secretary may direct*, and that no foreign officer shall be entitled to said *pay*; nor shall any officer or soldier receive the same until he furnish to said Secretary satisfactory evidence that he is entitled to the same, in conformity to the provisions of this act: and the *pay* allowed by this act shall not in any way be transferable, or liable to attachment, levy, or seizure, by any legal process whatever, but shall enure wholly to the personal benefit of the officer or soldier entitled to the same by this act.”

In this section, and, indeed, throughout the whole act, we have the clearest indications that the *pay* then provided for was considered as entirely different from the *pensions* before granted; and that it was intended by the Legislature to leave the selection of paying agents, if any should become necessary, to the Secretary of the Treasury, an officer who had no connexion whatever with the pension laws. They do not say, as had been done in the act of 1818, that the payments should be made “in the same manner as pensions to invalids are now paid;” nor do they in any manner allude to the regulations on that subject then in force. But with full knowledge, as must be presumed, of the terms of the pension laws, and of the fact that the Bank of the United States was then employed as the pension agent, they place the whole subject under the direction of the Secretary of the Treasury.

The practical construction of the act of 1828 has, in principle and effect, corresponded in all respects with the foregoing view of its intent. Drafts for the moneys payable under it are transmitted, under the special direction of the Secretary of the Treasury, to the claimants at their respective residences, or are delivered at the city of Washington to their authorized attorneys. And although the *Cashier* of the Branch Bank at Washington, as one of the depositories of the public moneys, has been employed by the Treasury Department as its agent to furnish these drafts, and to deliver or remit them, as the case might require, yet this was done by the Secretary of the Treasury, under the authority given him by the law itself, and not upon the ground that the Bank was entitled to be so employed, by virtue of its general agency under the pension laws. This is evinced by the facts that this agency has been committed to the *Cashier*, and not to the *President* of the office; that in all transactions between him and the department he is styled an “*agent for paying claims under the act of the 15th of May, 1828,*” and not a *pension agent*; that no list or roll is kept by him containing the names of the persons entitled with authority to pay on being satisfied as to the identity and life of the party; and that every draft furnished by him is so furnished in obedience to a special direction given by the Secretary, who not only decides on the original claim, but on every subsequent claim for a semi-annual payment. In all these respects, the course of

the pension agency is entirely different. The law of 1817, by which the duties then performed by the commissioners of loans, including the general pension agency, are transferred to the Bank of the United States, expressly declares that these powers "shall be performed" by the *Presidents* of the Bank and its branches, and that their acts shall be countersigned by the Cashier; they are styled in all transactions with them under this law, "pension agents," or "agents for pensions," and they are entrusted with the custody of the lists or pension rolls of each class of pensioners connected with their agency. When a claim to a pension is admitted, the President of the bank, at the proper location, is directed by the Pension Office to inscribe the name of the party on the roll kept at the bank, and to pay up to the time of the last semi-annual payment if the claimant should be still living, and if not, then up to the day of his death. The duty of ascertaining the identity and life of the party is thus left to the pension agent, and the same responsibility is committed to him in respect to all subsequent payments, which he makes from the roll in his possession, and without any special direction from the Pension Office, so long as he is satisfied of the life of the party. This whole course of proceeding recognises the distinction above stated, and, indeed, is only to be warranted by it.

On recurring to the law of 1832, the next observation to be made is, that it is truly supplementary to that of 1828; it proceeds on the same principle, is a part of the same system, and merely extends the policy of that law to a new and larger class of persons, who are to be paid in the same manner as those embraced in the former law.

This will be rendered manifest by a comparison of its provisions with those of the act of 1828, from which some of them are copied in terms, and others with such variations only as were rendered necessary by the wider scope of the new act. The officers and soldiers embraced within its provisions, like those provided for in the act of 1828, are treated as having a claim on the justice of the nation, and not merely as objects of its bounty; the moneys directed to be paid to them are denominated *pay*, and not *pensions*; and those moneys are to be paid to all who have performed the requisite service, whether wounded or otherwise disabled, or not, and without regard to their pecuniary circumstances. The third section, which is substantially a transcript of the fourth section of the act of 1828, will furnish a sufficient illustration of this general conformity. It is in the following words:

"SEC. 3. *And be it further enacted*, That the *pay* allowed by this act shall, *under the direction of the Secretary of the Treasury*, be paid to the officer, non-commissioned officer, musician, or private, entitled thereto, or his or their authorized attorney, *at such places and times as the Secretary of the Treasury may direct*, and that no foreign officer shall be entitled to said *pay*; nor shall any officer, non-commissioned officer, musician, or private, receive the same, until he furnish the said Secretary satisfactory evidence that he is entitled to the same, in conformity to the provisions of this act; and the *pay* hereby allowed shall not be in any way transferable, or liable to attachment, levy, or seizure, by any legal process whatever, but shall enure wholly to the personal benefit of the officer, non-commissioned officer, musician, or soldier entitled to the same."

The two acts, then, have the same general objects, and are framed, so far as the present question is concerned, in substantially the same words. And as Congress must have known that the law of 1828 had never been executed by the pension agents, the careful manner in which they have conformed the third section of the last law to the fourth section of the act of 1828, is decisive to show that they intended to place the business of making the payments authorized therein on precisely the same footing with the like business under the former law.

The analogy which exists between the law of 1828 and that of 1832 is adverted to in the communication referred to me, and an argument against the power claimed by the Secretary of War under the latter law is attempted to be derived from the course of the Treasury Department under the former. For this purpose it is remarked, that "although the act of May 15, 1828, gave the same power to the Secretary of the Treasury as the act of 1832 does, yet that officer, never, it is believed, appointed any agent, or directed any transfer of pension funds, under its authority." This reference, it appears to me, is peculiarly unfortunate. The mode in which claimants, under the act of 1828, have been paid by the department, has already been explained; and as the whole matter was transacted at the seat of Government, it was unnecessary to appoint agents or provide funds at any other place. In point of fact, however, it is incorrect to say that the Secretary of the Treasury "never appointed any agent under the authority" of this law. So far as any agency was required, he appointed the Cashier of the Branch Bank at Washington to perform its duties; and the appointment of that officer, and all the details connected with the mode of payment, were not less repugnant to the present claims of the Bank, than if payments had been directed to be made at places other than the seat of Government, and by agents having no connexion with the Bank. Indeed, it is quite clear that neither the Secretary of the Treasury nor the Bank has, at any time since the passage of the act of 1828, supposed that payments under it were to be made through the intervention of the Presidents of the Bank and its branches, as *pension agents*. The claim now set up under the corresponding provision in the act of 1832, is, as we have seen, entirely new, and in direct opposition to the construction given to the same words, in 1828, by the then Secretary of the Treasury, and by every one of his successors since, and constantly acquiesced in by the Bank, without complaint or remonstrance.

Without dwelling longer on the numerous particulars by which the act of 1832, as well as that to which it is supplementary, is to be distinguished from the pension laws embraced within the general agency of the Bank, I think they fully warrant me in saying that these laws, though properly enough, in common parlance, spoken of as *pension laws*, do not belong to that general agency, but are to be treated precisely as if no such agency had ever been created. In that case no one would have doubted the power of the department, to which they were referred, to appoint all the agents necessary to their proper execution. Even, therefore, if the law of 1832 had contained no provision in respect to the payments to be made under it, I could not have doubted the power of the War Department to appoint agents for that purpose, and to dismiss or change them at its pleasure. But,

Secondly. The act of June 7, 1832, contains an express provision in relation to payments, which, in my judgment, vests in the Secretary of War ample authority to appoint the paying agents, as well as to direct the times and places of payment.

For the purposes of this part of the case, I shall consider the act of 1832 as a pension law, and shall concede to the Bank the agency claimed by it, unless it can be shown that the employment of other agents is expressly authorized by the act itself. The third section, which has already been quoted, appears to me to have placed the whole business of payment, including the agency by which, and the mode in which, it is to be made, under the control of the Secretary of the Treasury, and, as amended by the joint resolution, of the Secretary of War.

In opposition to this view, the President of the Bank submits a labored argument to prove that the section does not confer any such authority on the Secretary, because it only empowers him to direct "the *places* and *times*" at which the payments are to be made, which terms, it is contended, are not to be construed to authorize the appointment of a *person to pay*, but only of a place where, and a time when, to receive.

It is a fatal objection to the universality of this proposition, that, as the power to appoint the *places* of payment is unlimited, the Secretary may appoint a place at which there is no bank or other pension agent; in which case, the power to appoint *an agent to pay* must necessarily exist, or the acknowledged power to appoint a place of payment be defeated. In this class of cases, the power to appoint a *place* of payment is thus seen to include, as incidental to it, the power of appointing an agent to pay. And if that power be possessed in any one case, it would seem to be possessed in every other, unless it can be held that the same word in this law means one thing in reference to one place, and a totally different thing in reference to another—a construction too refined to be readily adopted.

It is also objected that the order of the Secretary of War, appointing the President of the Girard Bank as the paying agent, and the banking house of that corporation as the place of payment, makes no change in the place, but only in the *agent*, who is still to make payment in one and the same place with the former agent. The argument by which this objection is maintained strikes me as rather plausible than solid; and that portion of it which undertakes to define the word "*places*," seems to violate the very rule of interpretation announced in the context. That word, we are told, (and the remark is undoubtedly a just one,) must be construed "in its ordinary and common sense meaning, without being strained from its natural construction, in order to diminish the power of Congress." Now, "the banking house of the United States Bank, in Chesnut street, Philadelphia," and "the banking house of the Girard Bank, Philadelphia," are certainly, each of them, "*places*," within the natural and ordinary sense of the word. I think, also, they are more clearly "*places*," within the meaning of that word, as used in this act, than "the city of Philadelphia," or any such general designation. The Legislature may reasonably be presumed to have intended a specific designation, rather than a general one, because the former is more distinct and useful in the information it communicates, and is, moreover, usually employed in all business transactions, when it is intended that the pay-

ment of money shall be made at a place certain. If this construction be correct, then there has been, in this case, an attempt to change the *place of payment* as well as to change the agent; and, as the former power is clear, and the latter has been shown to be incidental to it, I think the order was valid in both respects.

With respect to the extraordinary and dangerous consequences imputed to the construction claimed by the War Department, the special acts passed since the act of 1832, or now pending before Congress, the former employment of the Bank to make payments under the act in question, or the terms in which that act is spoken of by the Commissioner of Pensions, all which are objected, or referred to as auxiliary to the main argument, it is sufficient to observe that the pertinency of these topics to that argument is mainly founded on the assumption that the law of 1832 is a part of the pension system, and therefore embraced within the general pension agency of the Bank. And, as this assumption has already been shown to be erroneous, I deem it unnecessary to extend this communication by any further observations on this branch of the subject.

In remarking on the phraseology of the third section of the act of 1832, I have thus far followed the course of argument of the President of the Bank. In addition to what has already been said, it remains to be observed that although much ingenious and labored reasoning has been expended, in his communication, upon the words "at such *places and times* as the Secretary may direct," yet, that other, and much more important words, in the same section, have been passed over without remark. The law not only provides that the pay, allowed by it, shall be paid "at such *places and times* as the Secretary may direct," but it also enacts that it shall be paid "*under the direction of the Secretary of the Treasury.*" It is a sound rule in the interpretation of statutes, and indeed of all written language, that such a construction should be adopted, if it can be done without violence to the context, as will give effect to every sentence, clause, and word. On the construction contended for by the President of the Bank, no effect whatever is given to the clause "*under the direction of the Secretary of the Treasury.*" The grammatical sense of the section will be complete without it, and so will be its practical effect, according to the construction of the Bank. On that construction, then, these words are mere expletives, which are to be wholly disregarded. I cannot so consider them. They are found in the law, and cannot be stricken out; and, if the context will permit it, they must receive their natural and ordinary construction. This effect may be given to them, in the present instance, without violence to any other part of the law; and it obviously is to confide the whole business of making payment, including the power of appointing the person by whom, and the manner in which, it shall be made, to the head of the department.

This point is so clear and palpable to my own understanding, that I cannot think it needful to support it by argument or illustration. But, if either were needed, they would be found in the course of the Executive under the early pension laws. I have already had occasion to observe that several of those laws directed the pensions to be paid "*under such regulations as the President of the United States shall direct.*" Under the authority of these words, the first President of the United States directed

the payments to be made by the commissioners of loans, and, in States where no such officers were found, he appointed other agents for the purpose. The pertinency and weight of this precedent are too obvious to require remark, but it deserves to be noticed, as a striking illustration of the unsoundness of the construction I am opposing, that it is through **this** very exercise of Executive authority that the Bank has itself become the legal agent for the payment of pension moneys. It took the agency from the commissioners of loans, by substitution in their stead ; and those commissioners, as we have seen, derived it from an Executive regulation, made under words certainly not stronger than those now under discussion.

To conclude, so far as this part of the subject, referred to me, is concerned, the order given by the Secretary of War to the Commissioner of Pensions, and through him to the President of the Bank of the United States, appears to me to have been fully warranted by law, and not to be successfully impugned by the objections which have been made to it. It follows, as a necessary consequence, that the refusal of the Bank, and of its President, to comply with that order, was a breach of trust, and a violation of its duty to the Government.

But the communication referred to me presents another point, which, from its peculiar character, and the importance of its general bearings, deserves very grave consideration.

The Bank, whilst it admits that it has no *chartered right* to be employed as disbursing agent under any of the pension laws, yet, on the assumption that it is in the execution of the acts of Congress, claims to be considered as a public officer, and to be invested with authority to decide on the validity of the orders of the War Department. And the doctrine is distinctly asserted, that the Congress of the United States, "as the common and only judge," is alone competent to decide on any conflict between the department and the Bank. The reason assigned in defence of this pretension, independently of the professed desire to perform with fidelity the duties imposed on the Bank, is, "that it would be no justification to it to obey any other authority than that of Congress ; for if it pays money, or transfers money, without the authority of Congress, its accounts may be disallowed by the accounting officers." And, in support of this suggestion, the Secretary of War is reminded that such a disallowance has already occurred, in consequence of the obedience of the Bank to the instructions of the Commissioner of Pensions.

I cannot agree, either to the validity of the pretension thus set up by the Bank, or to the pertinency of the particular fact referred to in its support.

If the relations which exist, under the pension laws, between the Government and the Bank, be of such a nature as to entitle the latter, or its Presidents, to the character and consideration of public officers, it is very clear that they must be regarded as holding only *inferior* and *subordinate* offices. They are merely *paymasters of pensions* ; and they stand in precisely the same relation to the Secretary of War—to whose department the laws have assigned the execution of all the military pension laws, except that of May 15, 1828—which the ordinary paymasters of the army stand in to the same department. The claim of the Bank, that it is authorized to look beyond the orders of the department, to which, in this respect, it is subordinate, and to inquire into the manner in which the head of that de-

partment intends to dispose of the books, papers, and funds demanded from the Bank, is a claim which might, with equal propriety, be made by every other paymaster, and indeed by all the disbursing agents of the Government. If this be the real character of the power asserted by the President of the Bank, (and that it is so, is confidently believed,) then it can require no argument or reference to prove that it is utterly repugnant, not only to our laws and constitution, but to the first principles on which Government and society are organized.

The apprehension that the Bank, if it should comply with the present order, might still not receive a credit at the Treasury, I cannot but think entirely chimerical. Independently of the full and exclusive control which the law has given to the Secretary of War over the disbursement of all moneys to be paid under the act of June 7, 1832, that officer, as the head of the department to which belongs the execution of the military pension laws, is authorized, even in reference to pension moneys, properly so called, to withdraw from any one pension agent any portion of the pension moneys in his hands, either for the purpose of immediately transferring them to another agent, or of retaining them in the custody of the department, until it shall become necessary to disburse them. These acts must necessarily be subject to the responsibility, on the part of the Secretary of War, of applying the moneys so withdrawn to some lawful purpose ; but his order is an ample voucher and indemnity to the agent who, in obedience to it, has made the payment it requires. This is a principle which is constantly acted on at the Treasury, especially in the case of military and other paymasters, and indeed of all disbursing agents. Whenever any such agent pays over money in gross to another officer or agent, in obedience to an order emanating from the head of the department to which his agency is subordinate, it is uniformly and necessarily allowed to him by the accounting officers of the Treasury.

A distinction, however, exists between payments made under transfer drafts, or special orders like that now under consideration, and payments in detail to those who claim to be the creditors of the Government. In reference to all such payments, it is undoubtedly true that, if the Bank or any other disbursing agent pays out the money of the Government to persons not entitled to it by law, or in a manner different from that which has been legally prescribed, such payments will be disallowed by the accounting officers of the Treasury. The special instance referred to by the Bank belongs, if I am correctly informed, to this latter class of cases. According to the regulations prescribed by Congress, the disbursements made to pensioners, under the orders of the War Department, are subjected to the revision of the Treasury Department, the accounting officers of which have directed that those disbursements shall be accompanied by certain formalities, prescribed by them under the authority of law. In the course of its agency, a pensioner was paid by the Bank, in obedience to instructions from the Pension Office, without requiring all the formalities prescribed at the Treasury ; and the payment, for the want of those formalities, was subsequently disallowed by the Auditor of the Treasury, although the order of the War Department was produced to him. The distinction between this case and the one before us is too obvious and decisive to need any additional remark.

The refusal of the Bank to deliver over the books and papers belong-

ing to this agency, is a still more palpable breach of the duty which results from the subordination of the agent to his principal, because not excused by any apprehension, well or ill founded, of prejudice to the Bank. These documents having been received from the War Department alone, and not being the subject of accounting at the Treasury, might have been delivered with absolute safety to the Bank and its officers. They are, moreover, exclusively the property of the Government, and have been entrusted to the Bank for the sole purpose of guiding it in its payments; and as those payments are to be made semi-annually, the Government is certainly entitled, if it thinks proper to claim it, to the custody of the documents during the interval, even though it should be obliged to return them again to the Bank when the day of payment shall arrive. The same remark may also be applied to the moneys of the agency which the Government is not bound to leave on deposit in the Bank, even if it were admitted that the law has imposed on it the duty of employing the Bank to pay them out. The conduct of the Bank, regarding it in this light, and independently of every other objection, appears to me to be wholly indefensible.

I have only to add, in closing this communication, that the importance of the subject, the elaborate discussion it had received in the paper referred to me, the obscurity in which some of the points were involved by the erroneous assumptions of that document, and the strong desire which I have felt that the grounds of my opinion should be distinctly understood, have led to a prolixity which, however I may regret it, has seemed to be unavoidable.

I have the honor to be,
With high respect,
Your obedient servant,

B. F. BUTLER.

To the PRESIDENT of the United States.

BANK OF THE UNITED STATES,

January 23, 1834.

SIR: I have had the honor of receiving your favor of the 13th inst., in which you state that the directions of the Commissioner of Pensions to transfer the funds, books, and papers of the pension agency, under the act of Congress of June 7, 1832, from the Bank of the United States to the President of the Girard Bank, were in conformity to instructions given to him by you. Having thus ascertained that these directions emanated from the highest authority claiming the power to give them, the Board of Directors have proceeded to consider how far they would be justified in conforming to them; and, after a very deliberate examination, they have instructed me to apprise you that they cannot, consistently with their duty under the act of Congress, assigning the pension agency to the Bank, make the transfer you have requested. Having communicated this determination, I might stop here, but it accords better with the feelings of respect entertained for you, both personally and officially, to explain to you, without reserve, the reasons of their decision. This I shall do in a few words. The payment of pensions was no part of the original con-

tract with the Bank, which stipulated only to perform the duties of commissioners of loans. It was not until after the Bank was chartered that an act of Congress devolved upon it this charge, which was not declined, from a natural desire to give every facility which it could afford for the transaction of the public business. But having assumed the duty, the Bank will not the less faithfully perform it, because it is at once voluntary, gratuitous, and burdensome. The Bank then is in the execution of the acts of Congress. These acts prescribe certain duties to certain officers—the Congress itself being the common and only judge between them when they differ in opinion as to their respective powers, and all agreeing that whatsoever Congress has prescribed must be obeyed till Congress otherwise directs. It is no justification to the Bank to obey any other authority, for if it pays money, or transfers money, without the authority of Congress, its accounts may be disallowed by the accounting officers. This, as you are aware, has already occurred, in consequence of its obedience to the instructions of the officer now issuing this order; and the question which now presents itself is, whether Congress, having, by positive enactment, placed the pension moneys in the Bank, has authorized the Secretary of War to withdraw them. The decision of this question depends, of course, on two things: 1st. What Congress has directed the Bank to do; and, 2d, what Congress has authorized the Secretary of War to do: of these in their turn. The charter of the Bank, passed on the 10th of April, 1816, declared that the Bank “shall also do and perform the several and respective duties of commissioners of loans for the several States, or any one or more of them, whenever required by law.” As soon as the Bank was organized, the act of March 3, 1817, passed, providing

1st. That “the several duties of commissioners of loans for the several States shall be performed by the President of the Bank of the United States, the Presidents of the several branches of said Bank, and by the Presidents of such State banks as the Bank of the United States might employ, in States where no branch of the Bank of the United States should be established;” and

2d. That “it shall be the duty of the Secretary of the Treasury to notify the President of the Bank of the United States that the duty now performed by the commissioners of loans will be transferred to the Bank of the United States; and he shall direct the commissioners of loans, and the agents for military pensions, where there is no commissioner, respectively, in the several States, to deliver to the President of the Bank of the United States, or to the President of a branch thereof, or to the President of such State bank as the Bank of the United States may employ, on such day or days as he may designate, the register, and all the books and papers of their respective offices.” Concluding with a proviso, that “this should not be construed to extend to any agent for military pensions in any State where there was no bank established by law.”

An act of Congress had in the mean time passed on the 24th of April, 1816, declaring “that the Secretary of War is authorized and required to appoint some fit and proper person in those States and Territories where there is no commissioner of loans, and also in the district of Maine, to perform the duties in those States and Territories, and in said district, respectively, relating to pensions and pensioners, which are now required of said commissioners in their respective States.”

These acts form the basis of the pension agency system of the United States, which is—

That the Bank of the United States and its branches pay the pensions in States where the Bank and those branches are established.

That the Bank designates for that purpose some State bank in States where there is no branch bank ; and

That where there is neither a branch of the United States Bank, nor any State bank which it can designate, the Secretary of War is authorized to appoint a pension agent.

Accordingly, whenever a new pension agency, not provided for in these acts, was to be established, a special act of Congress was necessary.

Thus, on the 3d of March, 1819, an act passed by which the Secretary of War was “authorized to appoint an agent, in addition to the one already appointed, in the State of Tennessee, for the purpose of paying pensioners of the United States residing in East Tennessee.” So, on the 20th of May, 1826, the Secretary of War was in like manner “authorized to establish a pension agency at Pittsburg, in the State of Pennsylvania, for the payment of pensioners of the United States resident” in that vicinity, and “that the Secretary of the Treasury is authorized to make the necessary arrangements with the Bank of the United States, for paying the before mentioned pensioners at the office of discount and deposite of said bank at Pittsburg.”

From these, it is manifest that a positive law directed the transfer to the Bank of the United States of the pension agency, and that the Secretary of War had no authority whatsoever to change the system of Congress ; so clear was this, that when, in the year 1829, the same officer who has directed this transfer, ordered a similar transfer at Portsmouth, New Hampshire, the order was retracted. In like manner, when your predecessor established a pension agency in Albany, the subject was examined by yourself, in consequence of the representations of the Bank against that measure ; and you did me the honor to write to me on the 1st of March, 1832, as follows : “I am satisfied, from a careful examination of the laws of Congress, that this department is not warranted in appointing a pension agent in any State where the United States Bank has established one of its branches. Hence the agent at Albany has been notified that his appointment, by this department, has this day ceased.”

It will therefore be admitted that, up to the 1st of March, 1832, there was not the least authority in the Department of War to make this transfer ; and it remains to be seen what power Congress has since given to that department. The only authority alleged on this occasion by the Commissioner of Pensions is, that the act of the 7th of June, 1832, provides “that the pay allowed by this act shall, under the directions of the Secretary of the Treasury, be paid at such *places* and *times* as the Secretary of the Treasury shall direct ;” which authority was, by a resolution of Congress of the 28th of June, 1832, transferred to the Secretary of War.

The effect of this provision is now to be considered. When Congress passed the act of June 7, 1832, there had existed a pension agency from the year 1789, a period of forty-three years. The laws had fixed that the Bank of the United States and its branches should be the pension agents, and that the Secretary of War should appoint pension agents

where there was neither a branch of the Bank of the United States nor a State bank. That system has been in full operation for fifteen years, and was perfectly familiar to Congress, who had been legislating upon it for those fifteen years, adding to the pension list numerous classes of pensioners, to be arranged, according to their residences, to the agencies most convenient for them. In prosecution of the same design, the act of June 7, 1832, made a large addition to the pension list, accompanying it with a general declaration that these pensioners should receive their allowances "at such *places* and *times* as the Secretary of the Treasury might direct."

It is very difficult to imagine that in this phraseology Congress had any other design than to do what they had so often done before—authorize the arrangement of the pensioners according to localities, by paying them at the pension agencies most convenient to their respective residences.

To the payment of any pension there must be a union of four things—a time when to receive, a place where to receive, a person to receive, and a person to pay. Congress knew this perfectly, and in this act of June 7, 1832, they designated the receiver, the time and place of receipt, but said nothing about the agent who was to pay; because to assign the place was only to designate the pension agency existing at that place—a pension agency being established by previous acts of Congress, and which could not even be altered, as has just been seen, except by special act of their own. The question then arises, does the authority to name the *place* of payment authorize the Secretary to appoint the *person* who is to make the payment? Still further, does an authority to name the place of payment, at which there is already an agent, authorize the Secretary to dismiss that agent—to appoint another in that same place—to withdraw the funds from the old agent, and place them in the custody of the new agent? The question, in short, is whether places and persons are synonymous. The word "places" must be used in its ordinary and common sense meaning, without being strained from its natural construction, in order to diminish the power of Congress. In that meaning, Philadelphia is a place, New York is a place, Baltimore is a place; and when the Secretary is authorized to assign the pensions to those places respectively, it must have been intended to designate the general locality of those cities. To go further than this: to say that Chesnut street is one place, and that Third street is another place; that the banking house of the United States Bank is one place, and the Girard banking house another place, and that the Secretary may appoint a pension agent for every street, seems to involve an utter confusion of all distinction of persons or places. Such a change is a change of agency, but certainly not a change of place. There would be more plausibility, though not more justice, in this construction, if any actual change of "place" had occurred. But this is not even contemplated. The Commissioner of Pensions, in his letter of the 15th instant to the President of the Girard Bank, says expressly that "it is determined at present to confine the payments, under the act of June 7, 1832, to *the banks of deposite*," which are of course in the places where the Bank and its branches now are; and in your letter to me of the 13th instant, you mention "that the Commissioner of Pensions, in authorizing the banks of deposite to make the payments under the act of June 7, 1832, instead of the Bank of the United States

and its branches, *at those places where local banks have been selected by the Treasury Department as banks of deposit*, acted in conformity with instructions given him by me.

It is manifest, then, that these instructions do not direct the *place* where the payments are to be made. They direct the *person* who *pays* in that *place*. They make no change in the *place*. They only changed the agent who is to make the payment in that *place*; and here seems to lie the radical error of the whole proceeding. The unsoundness, moreover, of such a construction will be seen in the dangerous consequences to which it leads. The Secretary is simply authorized to direct the *times* and *places* at which certain soldiers are to receive their pensions. From this phrase it is attempted to deduce the following consequences:

The Secretary of War, by the act of 1816, is authorized to appoint pension agents "in those States and Territories where *there is no commissioner of loans*." Under the authority of these phrases, he appoints them in States and Territories where there is a commissioner of loans.

The act of March 3, 1817, directs a formal surrender to the Bank of all the records of pension agencies. The Secretary, by virtue of these phrases, orders the Bank to give up funds and records to agents of his own appointment. Congress deemed it necessary to pass a special act to enable the Secretary of War to appoint a pension agent in Pittsburg, and again in Tennessee. These phrases are now construed to empower the Secretary to appoint pension agents without limitation.

The pension money of last year, amounting to more than three millions and a half of dollars, was mainly placed in the Bank of the United States, whose whole capital was pledged for the safe keeping and the proper disbursement of the funds. The Commissioner of Pensions finds in these words a power to withdraw the whole of these funds, and place them in the hands of individuals on personal security alone; to appoint an indefinite number of agents; to make contracts with banks, and to take bonds and securities from individuals. Congress is now legislating to authorize the Secretary to appoint a pension agent in Alabama. According to this construction, their labor is superfluous, since the Secretary may appoint an agent not only in Alabama, but wherever and whenever he thinks proper.

The very title of the act seems conclusive against ascribing to it any such design. We have seen that the original transfer of the pension agencies was made by a formal act of Congress, with all its cautionary stipulations. We have seen that whenever any authority over pension agencies was given to the Secretary of War, it was by virtue of a separate and clear act of Congress. Now, if Congress intended to alter their established system, undoubtedly they would have said so. Yet this act, which is supposed to repeal, and supersedes no less than five acts of Congress, the act of 1809, the act of April 10, 1816, of 24th April, 1816, of 1819, of 1826, is merely an act supplementary to the "Act for the relief of certain surviving officers and soldiers of the revolution." It says nothing about pension agencies; professes to repeal nothing, to transfer nothing, to change nothing in regard to them; and the only words it uses, from which this extraordinary power can be extorted, are words absolutely necessary to convey the intention that, as some times and places of payment must be designated, these, as matters of detail, were left to the executive officers.

That neither Congress, nor the executive officers themselves, supposed that the act was liable to such a construction, is apparent from their conduct since its passage.

The act itself was passed on the 7th of June, 1832; yet, on the 7th of January, 1833, the House of Representatives of that same Congress passed a bill "authorizing the Secretary of War to establish a pension agency in the town of Decatur, in the State of Alabama, and provided for the paying of certain pensioners in said town of Decatur." That bill was lost in the Senate, on the ground, it is believed, of its being an interference with the provision for paying the pensioners through the Bank of the United States. At the present session of Congress, that bill, with the same title, is again reported, and now awaits its third reading. Now, if the Congress who passed the act of June 7, 1832, thought it empowered the Secretary of the Treasury or of War to establish pension agencies, why did they propose a specific act for the purpose of authorizing him to establish a single agency? That the Secretary of the Treasury did not so construe it, is manifest from the fact that, although the act of May 15, 1828, gave the same power to the Secretary of the Treasury as this act of 1832 does, that is, authorizes the payments "at such places and days as the said Secretary may direct," yet that officer never, it is believed, appointed any agent, or directed any transfer of pension funds under its authority.

That the War Department did not so construe it, is evident from the fact that, during eighteen months from the passage of the act to the present time, the pensioners, under this act, have been arranged to the respective pension agencies, and have been paid there without any distinction of place between them and the other pensioners. Thus, in the report made to you by the Commissioner of Pensions, on the 27th of November, 1833, he says: "To pay the pensioners under the acts of March, 18, 1818, May 1, 1820, and March the 1st, 1823, there have been sent to the pension agencies during the year past

	-	\$774,376 88
To pay invalid pensioners	-	287,134 66
To pay pensioners under the act of June 7, 1832,	-	3,547,179 57

intimating no difference of any kind between the pensioners under this act and under preceding acts.

On the whole, it appears to the Board of Directors that the instructions of the Commissioner of Pensions have no warrant of law; that they cannot surrender the books and papers and funds committed to their custody by Congress, without a revocation by Congress of that trust. Congress is fortunately now in session, and if it be the pleasure of that body to release the Bank from this charge, it will be very promptly and willingly surrendered. But until then, they do not feel themselves at liberty to do what they would deem a violation of their duty to Congress.

In the mean time, however, the pension agents will not consider themselves at liberty to pay any pensions under this act while the present injunction not to pay them exists, as it may create an obstacle in the settlement of their accounts. Accordingly no pensions under this act will be paid without further instructions from the Commissioner of Pensions.

I have the honor to be,

Very respectfully, yours,

N. BIDDLE, *President.*

To the SECRETARY OF WAR.