

IN SENATE OF THE UNITED STATES.

DECEMBER 23, 1840.

Submitted, and ordered to be printed.

Mr. HUBBARD made the following

REPORT:

[To accompany Senate bill No. 139.]

The Committee of Claims, to whom was referred the claim of Francis Gehon, the late marshal of the Territory of Wisconsin, report :

That it appears from the evidence to which the committee have had access, that the claimant actually disbursed to sundry witnesses, on bills taxed and allowed by the court, the sum of \$773 10. In the settlement of the claimant's account at the department, this sum was disallowed by the accounting officers of the Treasury, for reasons set forth in the accompanying communication marked A. The committee are of the opinion that the claimant should be allowed this item of charge, as it appears that he acted in good faith, and under the authority of the court, and without any knowledge that he was making disbursements of money, (in which he personally had no interest,) which were against any established rule of practice at the Treasury Department. They therefore report a bill for that part of the claim.

TREASURY DEPARTMENT, February 18, 1840.

SIR: In compliance with the request contained in your communication of the 7th instant, respecting the claim of Mr. Francis Gehon, late marshal of Wisconsin Territory, which was referred to the First Auditor, I have the honor to transmit, herewith, the report of that officer, together with copies of the correspondence had on the subject, as containing every thing here on file in favor of or against the claim of Mr. Gehon.

The document accompanying your communication is, herewith, respectfully returned.

I am, sir, very respectfully, your obedient servant,

LEVI WOODBURY,
Secretary of the Treasury.

HON. HENRY HUBBARD,
Chairman of the Committee of Claims, Senate U. S.

Blair & Rives, printers.

A.

TREASURY DEPARTMENT,
First Auditor's Office, February 14, 1840.

SIR: In reply to the letter of the Honorable Mr. Hubbard, chairman of the Committee of Claims in the Senate, calling on you to furnish him with such evidence of Marshal Gehon's claim as may be on file in the department, which you referred to this office for information, I have the honor to state, that his claim, as I understand, consists of two items that have been refused to him in this department. The first is for expenses incurred and services rendered while he was marshal of Wisconsin Territory, (which then included Iowa,) in going to the receivers' offices and procuring the specie for certain drafts sent to him to defray the judicial expenses of the Territory, and carrying the same to the place of disbursement. The original bills, as presented by Mr. Gehon, are on file in your office. In order to a proper understanding of this question by the committee, I would respectfully suggest that copies of the whole correspondence on the subject should be transmitted to them; which I have prepared for that purpose, and herewith send you. The other item consists of payments made by the marshal to sundry witnesses, on bills taxed and allowed by the courts or judges, which have been disallowed in the settlement of his accounts, amounting to \$773 10. The bills and receipts are on file in the Register's office.

The question involved in this case, is, whether a witness, summoned on behalf of the United States, is entitled to receive more than one mileage and one per diem compensation for his attendance during any one term of the court, when he is summoned in several cases, or whether he is entitled to mileage and daily compensation in each case in which he is summoned. The uniform rule of the accounting officers has been, not to allow more than one mileage and one daily compensation in any case; and if it appeared from the papers that more had been paid, to disallow the excess. In the present case, the witnesses were paid double mileage and double daily compensation, and in some cases more. In adhering to the settled rule, the accounting officers rejected the excess, to the amount in question, notwithstanding the bills had been allowed by the proper judge and paid under his sanction. I looked upon the case, myself, as one of great hardship on the marshal; but there was no alternative for the accounting officers, but to apply the rule or abandon it altogether. There is, I am aware, a difference of opinion among some of the judges of our higher courts on this point; but as I believed the true construction of the law was the one adopted by the department, and that it had been uniformly adhered to by the accounting officers, I did not feel myself at liberty to change it.

I am, very respectfully, your obedient servant,

J. MILLER.

HON. LEVI WOODBURY, *Secretary of the Treasury.*

TREASURY DEPARTMENT,
First Auditor's Office, December 7, 1839.

SIR: Herein you will find two accounts presented by Francis Gehon, Esq., late marshal of Wisconsin Territory, and now marshal of Iowa, for expenses incurred and services rendered in procuring current funds to pay

the judicial expenses within the said Territories. The first bill is for the transportation and distribution of specie among his deputies, during the suspension of specie payments by the banks, in 1837 and 1838, and while he was marshal of Wisconsin, amounting to \$465. If I conceived that I had the power as an accounting officer, I should not hesitate to allow this claim at once. I think the requirement of such services from a disbursing officer, without compensation, unjust and unreasonable. The Government, in my judgment, was bound to furnish him with current funds, such as he could honestly disburse to the public creditors; and, if it required him to travel hundreds of miles to procure them, it is bound, in good faith, to pay him a fair compensation for such extra labor, responsibility, and expense. This, however, in my opinion, is a matter under the immediate supervision and direction of the Secretary of the Treasury, and should be sanctioned by him; and I do not hesitate, in case you concur with me, to recommend it to him for his favorable consideration.

As these expenses were incurred during the suspension of specie payments, I think the claim is much stronger on that account, and that its allowance cannot make a precedent of dangerous tendency.

The other claim is of more recent date. It seems that, during the last fall, a draft of \$3,000 was sent to him, on the receiver at Dubuque, and that there were no funds in his hands to pay it. For the purpose of getting this draft cashed, the marshal states that he had to go to Burlington, a distance of 200 miles, for which he claims \$130. This he claims as marshal of Iowa. This claim is somewhat different from the first. The receiver upon whom the draft was drawn had not funds to pay it; hence the necessity of negotiating elsewhere for the funds necessary. It is true there was no suspension of specie payments; but still, if by the act of the Government the extra expenses were rendered unavoidable, I cannot see why a reasonable compensation ought not to be allowed. I would not wish, however, in ordinary cases, and under ordinary circumstances, when drafts are negotiable for current funds, that a precedent should be made, by which disbursing officers might claim extra compensation for going to the depository and receiving and disbursing the specie. I believe the marshal only received a part of the draft at Burlington.

I am, very respectfully, your obedient servant,

J. MILLER.

JAMES N. BARKER, Esq.,

Comptroller.

Francis Gehon's account.

THE UNITED STATES,

To Francis Gehon, (late marshal of Wisconsin Territory,) Dr.

For the transportation of twenty hundred dollars in specie from Mineral Point to Green Bay, in said Territory, in the month of September, 1837, paid John Messersmith - - - - - \$50 00

Also, for travelling expenses in performing a journey from Dubuque to Green Bay, in said Territory, thence to Milwaukee and back to Dubuque, in the months of September and October, 1837, for the express purpose of distributing money for disbursement, at \$2 50 per day for 22 days - - - - - 55 00

Also, for services of himself and horse 22 days, at \$5 per day	\$110 00
Also, for the transportation of twenty-two hundred and odd dollars in specie from Milwaukie to Dubuque, in the month of February, 1838 (I have receipts for this sum) -	150 00
Also, for the transportation of six thousand dollars in specie, from St. Louis to Dubuque, 500 miles, in June, 1838—paid fare on steamboat Rolla to St. Louis and back -	40 00
For personal services and attention in performing said journey, 12 days at \$5 per day -	60 00
	<hr/>
	465 00
	<hr/>

DISTRICT OF COLUMBIA, *Washington county, ss.*

Before me, the subscriber, a justice of the peace in and for said county, personally came Francis Gehon, late marshal of Wisconsin Territory, who, being duly sworn, doth say, that the foregoing account is just and true; and the expenses incurred, and services rendered, were, in his judgment, necessary to the public interest, as he was not able to convert the drafts into current funds, and it therefore became necessary to get the specie from the receiver for actual disbursement.

FRANCIS GEHON.

Sworn and subscribed before me, this 6th of December, 1839.

N. B. VAN ZANDT, J. P.

The account as marshal of Iowa.

THE UNITED STATES,

To Francis Gehon, (marshal of Iowa Territory,) Dr.

For making a trip from Dubuque to Burlington, in Iowa Territory, 200 miles, for the purpose of getting a draft cashed, which was made payable at the Dubuque land office, and was presented at a time when there was no money in the hands of the receiver, in the months of September and October, 1839; for horse-hire, travelling expenses, per diem allowance, &c., 12 days - \$130 00

DISTRICT OF COLUMBIA, *Washington county, ss.*

Before me, the subscriber, a justice of the peace in and for said county, personally came Francis Gehon, marshal of Iowa Territory, who, being duly sworn, doth say, that the foregoing account is just and true; and the expenses incurred, and services rendered, were, in his judgment, necessary to the public interest.

FRANCIS GEHON.

Sworn and subscribed before me, this 6th December, 1839.

N. B. VAN ZANDT, J. P.

TREASURY DEPARTMENT,
First Comptroller's Office, December 7, 1839.

SIR: I have the honor to submit for your sanction a report of the First Auditor of the Treasury, of this day's date, in which I concur in reference to certain claims presented by Francis Gehon, Esq., as late marshal of Wisconsin Territory, and now marshal of Iowa.

I have the honor to be, very respectfully, your obedient servant,
J. N. BARKER, *Comptroller.*

HON. LEVI WOODBURY,
Secretary of the Treasury.

TREASURY DEPARTMENT, *December 7, 1839.*

SIR: I have just received a letter from the First Comptroller, of this date, enclosing one from you to him, of the same date, on the subject of the account of Francis Gehon, Esq. late marshal of Wisconsin, and now marshal of Iowa, with the account of Mr. Gehon enclosed therein. The Comptroller expresses his concurrence, and asks the sanction of this department to the same.

I have to inform you that I can approve of none of these claims without a full explanation in writing from the marshal, of all the circumstances connected with each.

It must be a very peculiar and strong case to justify such claims, or marshals all over the country using specie, and living at any distance from the depositories, could and would make similar claims.

I am, very respectfully, your obedient servant,

LEVI WOODBURY,
Secretary of the Treasury.

J. MILLER, Esq.,
First Auditor.

TREASURY DEPARTMENT,
First Auditor's Office, December 9, 1839.

SIR: In answer to your letter of the 7th instant, relative to Marshal Gehon's claim, I herewith transmit you a letter from him, explanatory of the grounds on which it is made. I understand him to put that part which accrued in the years 1837-'38, on the ground that the suspension of specie payments by the banks rendered the distribution of the specie indispensable. The allowance in this case would not establish the precedent you wish to avoid.

The last claim is on the ground that there was no money in the hands of the receiver on whom the draft was drawn, and that it became necessary to go to Burlington to negotiate it.

Very respectfully, &c.,

J. MILLER.

HON. LEVI WOODBURY,
Secretary of the Treasury.

WASHINGTON CITY, *December 9, 1839.*

SIR: In answer to the letter of the Hon. Levi Woodbury, Secretary of the Treasury, of the 7th instant, I very respectfully make the following explanation. On the 12th of September, 1837, I left my residence at Dubuque, then in Wiskonsin Territory, for the purpose of presenting a draft then in my possession, on the receiver of public moneys at Mineral Point. This was the first money I had received as marshal of Wiskonsin Territory. And [it was] absolutely and indispensably necessary for that money to be distributed, for paying expenses of courts held in the months of March, April, May, June, and July, preceding that time, at the following places: at Green Bay, more than 200 miles from Mineral Point, \$2,000; at Milwaukie, about 180 miles from Mineral Point, \$500; the balance at Burlington, Fort Madison, 220 to 240 miles, and many other intermediate points. In the winter of 1838, I presented a draft on the receiver of public moneys at Milwaukie, (in the month of February, if my memory serves me right,) for the sum of \$5,000; which sum had to be distributed in a very similar manner. In the month of June or July, 1838, I presented a draft at the State Bank of Missouri for the sum of \$6,000; in which case I have charged travelling expenses and time only from Dubuque and back, for distributing this sum; although received and paid out in silver, I have made no charge, for the reason that it did not cost me any thing to distribute it, nor did I give it any attention except to count it, and charge my deputies accordingly. In the month of September, 1839, I received a draft from the Treasury Department, on the receiver of public moneys at Dubuque, Iowa Territory, at a time when the receiver had no money in his hands to pay the amount. Believing that I could cash that draft by presenting it to the receiver at Burlington, in person, I repaired to that place; for which travelling expenses and personal service I have made what I conceive to be a reasonable and fair charge. I take occasion now to say, that, from the most northeastward to the most southwestward points at which courts were held in the years of 1837 and 1838, it was not any short of 500 miles. A great portion of this distance was then, and is now, a wilderness, without any means except by special or private conveyance. It will also be recollected that the great suspension of the banks was in the years 1837 and 1838, and there was but little paper money in that section of the country, except that which was depreciated in value; and I, as a disbursing officer, was expressly directed to disburse gold and silver, or its equivalent, at the place where the payment was made; and the fact that paper at that time was not equivalent to specie, shows conclusively the necessity of conveying the specie to the various points; which, in fact, I did do.

I have the honor to remain, very respectfully, your obedient servant,

FRANCIS GEHON,

Late Marshal of Wiskonsin, and now

Marshal of Iowa Territory.

HON. JESSE MILLER,

First Auditor, Washington City.

TREASURY DEPARTMENT, *December 10, 1839.*

SIR: I have to acknowledge the receipt of your letter of yesterday's date, enclosing a letter from Mr. Gehon, late marshal, in relation to his claim. In

reply, I have to observe, that I am not aware any allowance has ever been made since 1789, to any public officer, such as a marshal, for going to a bank, a receiver, or collector, to get his money. A creditor might claim one with equal propriety, as the money would never, in all cases, or a large part of them, be paid at his own door. Nor am I aware that any allowance has been made to either, if the money is specie rather than bills, whether paid near or distant, and carried to be distributed far or near. The practice in such cases is usually not to go to the distant place, but to sell the draft; and the price obtained is usually at or above par, the money drawn for generally being at the most commercial and valuable places. No allowance can, therefore, be sanctioned by me for such a claim, in this instance, unless precedents are found in cases where the facts are similar. In respect to the other claim, for going to obtain the money of a receiver when none was there, it rests on different principles; and if the marshal shows that he actually went in *person* for the money to a receiver, and on that business *alone*, and, by the fault of the receiver or of the United States, no money was there to be paid to him, I think a fair allowance for travel should be made to him. There has been a precedent for that. But if he incurred no expense in that way, but only in going to other receivers or places to sell that draft, I do not see how an allowance for this last claim can be made, unless there be some precedent in its favor. If there be, I should like to see it; and I should like to know, also, what were the reasons why the first receiver had not the money; and why the marshal did not return the draft here, to be placed on some other receiver than him who had neglected to arrange it.

Very respectfully, your obedient servant,

LEVI WOODBURY,
Secretary of the Treasury.

JESSE MILLER, Esq., *First Auditor.*

TREASURY DEPARTMENT,
First Auditor's Office, February 14, 1840.

SIR: As it seems that Marshal Gehon has applied to Congress for an act to authorize the payment of certain claims disallowed him in this department, I deem it my duty to make a few observations in reply to your letter of the 10th December last, refusing to sanction his claim for expenses incurred in going to receivers' offices for specie, and distributing it among the deputies in Wisconsin Territory. *I do this merely that my own views may be correctly understood.* You observe that you are "not aware that any allowance has ever been made, since 1789, to any public officer, such as a marshal, for going to a bank, a receiver, or collector, to get his money. A creditor might claim with equal propriety, as the money would never, in all cases, or a large part of them, be paid at his own door; nor [are you] aware that any allowance has ever been made to either, if the money is specie rather than bills, whether paid near or distant, and carried to be distributed far or near. The practice in such cases is *usually not to go to the distant place*, but to sell the draft; and the price obtained is usually at or above par, the money drawn for being at the most commercial and valuable places. No allowance can, therefore, be sanctioned by me [you] for such a claim, in this instance, unless precedents are found in cases where

the facts are similar." My recommendation of the claim was founded on a different view of the case from that assumed in your letter. Had the drafts which were sent the marshal been convertible into funds equal to specie in that country, without expense, I should certainly not have recommended any allowance to him for going to the receivers' offices and obtaining and distributing the specie; but such was not the fact. The drafts in question, except the last, were sent to him during the suspension of specie payments, in the years 1837 and 1838; and, as I am well assured, could not be converted into current funds at the places where the disbursements had to be made. He therefore had no alternative but to go to the depositories, and carry out the specie and distribute it. For this, I think he ought to be paid all *expenses* necessarily incurred. As to precedents, I am not aware that I know of any one, in the accounts of marshals, precisely in point; but the principle which I proposed to extend to this case has long existed in the War Department, in relation to disbursing officers attached to that department. Upon reflection, I do not think the department could give the marshal any compensation beyond his expenses, for his own personal services, as the law organizing the Territory allows him a salary of \$200 per annum for extra services. I did not advert to this when I wrote my first letter recommending the claim; but I do think, upon the most mature reflection, all *reasonable* and *necessary expenses* incurred by him, under the circumstances that existed, ought to be paid. He would not have been justified in exchanging his drafts for depreciated paper, and paying the public creditors with such paper. As to the case you put, in regard to a public creditor, I have only to observe, that, should a draft be sent to such a creditor for his debts, which he could not convert into current funds without incurring loss or expense in going for his money, he would complain of it as injustice to him, and would not submit to it if it could be avoided.

I am, very respectfully, your obedient servant,

J. MILLER.

I have attached hereto a letter from the Second Auditor, showing the practice in the War Department.

Hon. LEVI WOODBURY,

Secretary of the Treasury.

TREASURY DEPARTMENT,

Second Auditor's Office, December 14, 1839.

SIR: In answer to your letter of the 13th instant, inquiring what "the practice is, in the War Department, in regard to the payment of expenses of the transportation of specie from the place of deposit to the place where it has to be disbursed," I have the honor to state, that the agents of the Indian Department are allowed the actual expenses incurred for the transportation of specie; and when an officer of the army is employed on similar duty, he is allowed the same rate as when travelling upon military service.

Whenever it is deemed necessary, they are authorized to employ such assistants as the wants of the public service may require, and upon the best terms they can.

I am, very respectfully, sir, your obedient servant,

W. B. LEWIS.

J. MILLER, Esq., *First Auditor.*