

SHEPHERD KNAPP.

MAY 16, 1856.—Reported from the Court of Claims. Committed to a Committee of the Whole House, and ordered to be printed.

SHEPHERD KNAPP *vs.* THE UNITED STATES.

To the House of Representatives of the United States :

The undersigned, by direction of the Court of Claims, in pursuance of law, herewith respectfully transmits the following papers in the case above mentioned.

1. Petition of Shepherd Knapp.
2. Opinion of the Court.

The case was submitted by consent, without briefs.

[L. s.]

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

WASHINGTON, *March 5*, 1856.

SHEPHERD KNAPP *vs.* THE UNITED STATES.

To the Honorable the Judges of the Court of Claims :

The petition of Shepherd Knapp, of the city of New York, respectfully shows : That in the month of September, 1838, being then and ever since president of the Mechanics' Bank, in said city, he was duly appointed army and navy pension agent of the United States for said city of New York, and continued to hold said office, and to discharge the duties thereof, to the acceptance of the government in all respects, from thence to the 29th of January, 1842.

At the time of his said appointment, and during the five years next succeeding, no provision existed by law for the compensation of pension agents, or the payment of the expenses of pension agencies. Previous to, and up to the time of said appointment, Jacob Lorillard had been president of said bank and pension agent. The petitioner, on succeeding said Lorillard in those offices, found that a correspondence had then recently taken place between said Lorillard and the Secretary of War and the Commissioner of Pensions, in which said Lorillard declined to continue in said agency without compensation and payment of expenses, and urged his claim for such compensation and expenses, as well for past as future services. The Secretary and Commissioner fully admitted the justice of the claim ; said that they were in constant expectation of provision being made by Congress for such payments, in compliance with recommendations they had made, and requested Mr. Lorillard to continue in said office, in

view of the expected compensation, and for the assistance and convenience of the government.

Under these circumstances the petitioner accepted the appointment of pension agent, upon succeeding Mr. Lorillard in the presidency of the bank, in the full belief that his compensation and expenses would be provided for by the government, as Mr. Lorillard had been assured, and upon no expectation or understanding whatever that he was to transact the business at his own expense and without compensation. In furtherance of this view, he continued the correspondence on the subject with the departments, which had been commenced by Mr. Lorillard, and expressly and repeatedly declined to continue in the discharge of the duties of the office unless the promised provision was made, but was induced to go on by the assurance from time to time of the departments that his compensation and expenses would be provided for. Beside the correspondence that took place, the petitioner went several times to Washington, and had personal interviews on the same subject with the Secretary of War and the Commissioner of Pensions, with the same result.

And the petitioner further shows, that the government deposits in said Mechanics' Bank, for the payment of pensions, were not at any time during the period for which compensation is now claimed sufficient to make it desirable for said bank, or for the petitioner as president thereof, to continue the payment of pensions without remuneration. On the contrary, owing to the depressed condition of the public finances which then existed, the government account at the bank was frequently and sometimes largely overdrawn, and advances were made by the bank at various times for the payment of pensions; while at other times the payment of pensions was necessarily suspended by the bank, on account of the want of deposits for that purpose. This deficiency in the deposits was a frequent source of embarrassment to the bank in the pressure which then prevailed in the money market, and the petitioner had frequently to exert his influence with the directors to induce them to continue longer the payment of pensions for the government upon the deposits furnished. And the petitioner further shows, that by act of Congress of February 20, 1847, provision was made for the compensation of pension agents thereafter, and the payment of their necessary expenses, in compliance with the recommendation of the departments above alluded to; and that under that provision his successor has received since that time the sum of one thousand dollars per annum as compensation for his services as pension agent; but the petitioner has never received any payment for his services, or for expenses incurred prior to that time.

And the petitioner further represents, that his services during that time were worth at least the sum of one thousand dollars per annum, being the amount his successor has since received for discharging the duties of the office under circumstances much less difficult. That a room was actually and necessarily occupied by him during that period at No. 33 Wall street, for the business of said agency, the rent of which was \$700 per annum. That the services of three clerks were also required and furnished during the same period—one at \$1,000, one at \$500, and one at \$300 per annum—the duties and accounts of the

agency, which is the largest in the United States, having been extensive and onerous.

The petitioner, therefore, claims that there was a legal as well as equitable contract on the part of the government to pay him for his services as pension agent what they were reasonably worth, and the expenses necessarily incurred in discharging the duties of this office, and that, in pursuance of such contract, his services were rendered and expenses paid; and prays to be allowed by the court the sum of five thousand dollars for five years' services, at one thousand dollars per annum, and the further sum of twelve thousand dollars for rent and clerks' hire, during the same period, at the rates aforesaid, together with the interest thereon since due, if allowable against the government. And that said allowance may be reported by the court to Congress, as provided by law.

And the petitioner further shows, that in the month of March, 1854, he presented a petition to Congress stating in substance the facts herein set forth, and asking for payment of his aforesaid claim.

That said petition was presented in the Senate, and was referred, with several similar petitions from other pension agents, to the Committee on Military Affairs; that on the 18th of April, 1854, said committee, by Hon. Mr. Shields, their chairman, made a report in regard to said claims in favor of paying the same, accompanied with a bill for that purpose, (copies of which are hereto annexed and referred to,) and that said bill failed to receive the final action of Congress.

Dated at New York, this 1st day of January, 1856.

JNO. J. LATTING,
Attorney for Petitioner.

S. KNAPP.

CITY AND COUNTY OF NEW YORK:

Shepherd Knapp, of said city, the claimant above named, being duly sworn, says, that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

S. KNAPP.

Sworn this 12th day of January, 1856, before me.

G. R. J. BOWDOIN,
Com'r Court of Claims.

Report and bill referred to in the foregoing petition.

IN THE SENATE OF THE UNITED STATES.

APRIL 18, 1854.

The Committee on Military Affairs, to whom were referred the petitions of Daniel Hay and others, having had the same under consideration, report:

The petitioners ask to be remunerated for their services as pension agents, prior to the 20th of February, 1849, and subsequent to the 20th of April, 1836.

It appears that upon the 20th of April, 1836, Congress repealed the law which authorized the bank of the United States to pay pensions, (*vide* Statutes at Large, vol. 5, page 16,) and at the same time enacted "That all such payments shall be hereafter made at such times and places, by such persons or corporations, and under such regulations, as the Secretary of War may direct; but no compensation or allowance shall be made to such persons or corporations for making such payments without authority of law."

Soon after the passage of this act, many of the pension agents tendered their resignations, which, however, they were induced to withdraw, with the assurance that Congress would speedily compensate them for their services. Numerous efforts were, from time to time, made to fix the compensation of these officers, but nothing was done in the matter until the 20th of February, 1847, when an act was passed allowing pension agents a commission of two per cent. upon their disbursements, provided the same should not exceed in any case the sum of one thousand dollars per annum. But this law had no retrospective effect; and in consequence of this omission, no compensation has been made to the pension agents who served during the whole or any part of the time from the 20th of April, 1836, to the 20th of February, 1847—nearly eleven years.

It is not to be presumed that these persons would serve as agents of the government—providing their own books and stationery, employing their own clerks, paying their own office rent, and, in many instances, advancing their own funds to pay the pensioners—unless they were induced to do so by the promise and expectation of adequate compensation. The Secretary of War and the Commissioner of Pensions, in their annual reports to the 1st session of the 26th Congress, and in their reports before and since, call the attention of Congress to the necessity and justice of making provision for the payment of these agents, and the committee think it only reasonable that they should be paid for services rendered under such circumstances.

And the committee, while examining this matter, although the subject has not been formally referred to them, have thought fit to consider the recommendation of the Commissioner of Pensions, made in his annual reports, (see S. Ex. Doc. No. 1, 33d Congress, 1st session, pp. 493-4,) in which he states that the present compensation to agents for paying pensions is not adequate to the services and responsibilities of some of these agents. With a view therefore of carrying out the recommendation of the department, and of properly remunerating a number of worthy individuals for services cheerfully and faithfully performed without compensation, but with the expectation and promise thereof, the committee have reported a bill to embrace the whole subject, and confidently recommend its passage.

IN THE SENATE OF THE UNITED STATES.

APRIL 18, 1854.

Mr. Shields, from the Committee on Military Affairs, submitted a report, (No. 218,) accompanied by the following bill, which was read and passed to a second reading :

A BILL making provision to compensate agents for paying pensions, and prescribing the time and manner of settling their accounts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and required to make suitable compensation to agents for paying pensions, but in no case shall such compensation exceed three per centum on the amount of moneys by such agent annually disbursed, and shall be paid out of the fund appropriated for the payment of revolutionary pensioners. Said compensation shall be in full for all services and contingent expenses of said agency, except for books, printing, and stationery : *Provided*, That the amount of compensation allowed to any one agent shall not exceed the sum of one thousand five hundred dollars a year.

SEC. 2. *And be it further enacted*, That each of said agents shall state his account quarterly, and transmit the same to the proper accounting officer of the treasury for settlement, and a duplicate thereof to the Commissioner of Pensions. He shall also transmit semi-annually to said Commissioner the names of all pensioners on the lists in his agency at the commencement of each half year to whom he was liable to make payments ; also the names of such pensioners as have been inscribed on said lists, or transferred to his agency during said time, and shall designate the names of those he has paid, those who have died, those whose pensions have terminated, those who have not demanded their pensions for fourteen months, those who have been transferred to other agencies, and the names of the female pensioners who have married.

SEC. 3. *And be it further enacted*, That the Secretary of the Interior shall regulate the remittances of funds to said agents for the payment of pensioners in such manner and at such times as to prevent any accumulation of balances in their hands.

SEC. 4. *And be it further enacted*, That the provisions of the first section of this act be also extended to those persons who served as pension agents prior to the twentieth of February, eighteen hundred and forty-seven, and subsequent to the twentieth of April, eighteen hundred and thirty-six, when no compensation was provided by law for such services.

Opinion of the Court.

The opinion of the Court was delivered by Judge Scarburgh.

In the month of September, A. D. 1838, the petitioner was duly appointed army and navy pension agent of the United States, for the city of New York, and continued to hold that office till the 29th day of January, A. D. 1842.

At the time of his appointment, and for the next succeeding five years, no provision existed by law for the compensation of pension agents, or the payment of the expenses of pension agencies. His predecessor, in a correspondence which took place between him and the Secretary of War and the Commissioner of Pensions, recently before the petitioner succeeded him, had declined to continue in the agency without compensation and payment of expenses, and claimed such compensation as well for past as future services; but both the Secretary and the Commissioner of Pensions requested him to continue in office, and assured him that Congress would make provision for the payment of his claim.

The petitioner accepted the appointment of pension agent, in the full belief that his compensation and expenses would be provided for by the government, as his predecessor had been assured, and upon no expectation or understanding whatever that he was to transact the business at his own expense and without compensation. He continued the correspondence with the departments, which had been begun by his predecessor, and expressly and repeatedly declined to continue in the discharge of the duties of the office unless the promised provision was made, but was induced to go on by the assurance from time to time of the departments that his compensation and expenses would be provided for.

The petitioner alleges that a room was actually and necessarily occupied by him during his continuance in office, at No. 33 Wall street, for the business of his agency, the rent of which was \$700 per annum. The services of three clerks were also required, and furnished during the same period—one at \$1,000, one at \$500, and one at \$300 *per annum*—the duties and accounts of the agency, which is the largest in the United States, having been extensive and onerous.

The petitioner claims five thousand dollars for five years' services, at one thousand dollars *per annum*, and the further sum of twelve thousand dollars for rent and clerk's hire during the same period, at the rates above mentioned, together with interest thereon, if allowable against the government.

In the month of March, A. D. 1854, the petitioner presented a petition to Congress, asking for the payment of his claim. It was referred, with several similar petitions from other pension agents, to the Committee on Military Affairs. That committee, on the 18th day of April, A. D. 1854, made a favorable report, accompanied by a bill.

On the 20th day of April, A. D. 1836, the following act of Congress was passed: "That all laws and parts of laws authorizing or requiring the Bank of the United States, or its branches, to pay any pensions granted under the authority of the United States, shall be,

and the same are hereby, repealed ; and such payments shall be hereafter made at such times and places, by such persons or corporations, and under such regulations, as the Secretary of War may direct ; but no compensation or allowance shall be made to such persons or corporations, for making such payments, without authority of law.”—(5 Stat. at Large, 16.) This act continued in full force till the 20th day of February, A. D. 1847, when the following act was passed : “ That from and after the passage of this act the Secretary of War is hereby authorized to make such compensation to agents for paying pensions as may be just and reasonable, to be paid out of the fund appropriated for the payment of revolutionary pensions, but in no case to exceed two per centum on moneys disbursed by them ; the said compensation to be in full for all their services, and any contingent expenses that may arise in the discharge of their official duties, books, printing and stationery excepted : *Provided*, That the amount of compensation allowed to any one pension agent shall not exceed one thousand dollars per annum : *And provided further*, That the Secretary of War shall so regulate the remittances made to pension agents as to prevent an undue accumulation of balances in their hands.”—9 Stat. at Large, 127.

By the express terms of the act of February 20th, A. D. 1847, it is prospective only in its operation. The consequence is, that during the whole period for which the petitioner claims compensation for his services, there was an act of Congress in full force, which, in clear and unequivocal language, declared that “ no compensation or allowance shall be made ” to any pension agent “ without authority of law.” It was not, therefore, competent for the Secretary of War, at any time during that period, to make a contract binding on the United States for the compensation of any person whom he might appoint to pay pensions. Nor is it alleged by the petitioner that the Secretary of War did undertake to make any such contract. All that he did was to assure the petitioner that he should recommend the passage of a law providing for his compensation, and that his expectation was that such an act would be passed. The petitioner relied on this assurance, and acted upon it. But these circumstances are insufficient to constitute a contract, either express or implied, on the part of the United States, to make compensation to the petitioner for his services. So far from this being the case, the law then was that no compensation or allowance should be made to any person for paying pensions, without authority of law.—*The United States vs. Joseph White et al.*, in circuit court of Maryland. “ Without authority of law ” means, we think, without authority of an act of Congress ; and the clear meaning of the statute was, that no compensation or allowance should be made to a pension agent until Congress should by law provide for it. The necessary result is, that those who acted as pension agents whilst that law was in force, must be regarded as having acted with the full knowledge that the law forbade the making of any compensation to them, and that the United States were under no legal obligation to compensate them.

This court, therefore, has no jurisdiction to grant relief to the petitioner.

But we entirely concur in the following remarks made by the Committee on Military Affairs in the Senate in the report to which we have already referred: "It is not to be presumed that these persons would serve as agents of the government—providing their own books and stationery, employing their own clerks, paying their own office rent, and in many instances advancing their own funds to pay the pensions—unless they were induced to do so by the promise and expectation of adequate compensation. The Secretary of War and the Commissioner of Pensions, in their annual reports to the first session of the twenty-sixth Congress, and in their reports before and since, call the attention of Congress to the necessity and justice of making provision for the payment of these agents, and the committee think it only reasonable that they should be paid for services rendered under such circumstances."

In addition to these considerations, we may be allowed to make this further suggestion. Whilst Congress, by the act of April 20, A. D. 1836, plainly designed to reserve, and did reserve, absolute control over this subject, still the reasonable inference from that act is, that it was the intention of Congress, if in its wisdom it should thereafter deem it proper, to authorize by law the compensation of the agents who might be appointed under that act. It manifestly contemplated the contingency that this might become proper and right. Whether it should be done or not, Congress clearly designed should depend upon circumstances to be subsequently developed, and upon its own discretion; for it is the obvious intention of the act of 1836 to protect the United States from any legal obligation to compensate those agents. Hence it was that the petitioner, and doubtless other pension agents, acted, and we think might reasonably have acted, under the impression that Congress would provide by law for the allowance of a fair and just compensation to them, or, in other words, that the authority of law for that purpose would be granted, if justice and right should require it. But whether this shall be done must depend entirely on Congress.

No order will be made authorizing testimony to be taken in this case.