

IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1863.—Ordered to be printed.

Mr. TRUMBULL made the following

REPORT.

[To accompany S. R. No. 114.]

*The Committee on the Judiciary, to whom was referred the memorial of Hon. Perry E. Brocchus, praying compensation as associate justice of the Supreme Court of the United States for the Territory of New Mexico, report :*

That upon examination the committee find that the memorialist, Perry E. Brocchus, was, on the 7th day of January, 1861, nominated as an associate justice of the Supreme Court of the United States for the Territory of New Mexico, and on the 24th day of the same month confirmed by the Senate to that office.

The memorialist shows that, as he was by law bound to do (see 2 Stat. at Large, 788) on receiving his appointment, he relinquished and declined all professional business, and became entirely dependent on the emoluments of the office to which he had been commissioned.

The winter at that time prevailing was of such severity that it made the journey across the plains to New Mexico one of great difficulty and peril : but the memorialist represents that he used due diligence in preparing to go to his post of duty as soon as it could be safely done, and for that purpose purchased an ambulance, mules, horses, &c., which he was afterwards obliged to dispose of at a great sacrifice.

On the 30th day of April, in the same year, as memorialist was setting out for the Territory of New Mexico, he was superseded and removed from office.

Afterwards, as memorialist shows, he applied to the First Auditor of the United States Treasury to furnish to the Comptroller thereof his account for his salary from the 24th of January, 1861, to the 30th of April following, which, for that space of time, being three months and six days, amounted to the sum of six hundred and sixty-five dollars, at the yearly salary of twenty-five hundred dollars.—(See 10 Stat. at Large, page 311.) The First Auditor refused compliance with this request upon the ground that the memorialist had never taken the oath of office, which, by law, (see 9 Stat. at Large, 451,) can only be

taken in the Territory, and which he could not take on account of his removal from office before he could arrive in the Territory. The only reason assigned by the Comptroller, to whom an appeal from the First Auditor was taken, and whose written report in the case is among the papers, for the refusal to pay the memorialist his claim, is the non-compliance by the memorialist with the strict letter of the statute in not taking the oath of office.

The committee are of the opinion that the memorialist has presented a sufficient cause for equitable relief, and therefore recommend the adoption of the accompanying joint resolution.