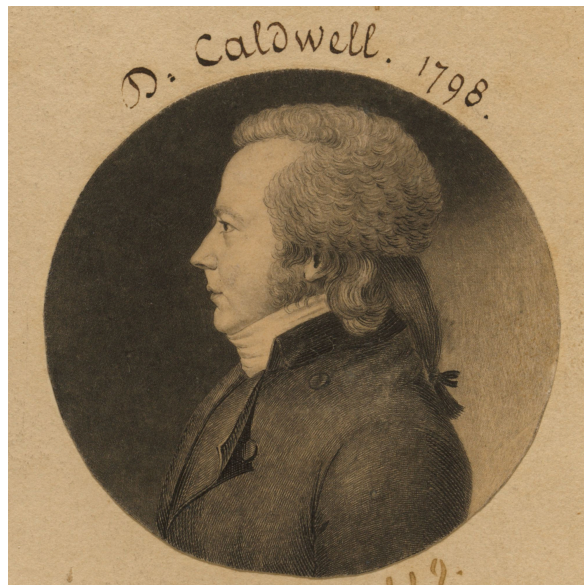




David Caldwell

Born: February 21, 1770 in Philadelphia, Pennsylvania
Died: November 11, 1835 in Philadelphia, Pennsylvania

Clerk of Court: 1798-1831

David Caldwell was appointed the Clerk of Court in 1798, to succeed his father, Samuel Caldwell, who served as the first Clerk of the Court. He too, was appointed to the position by Judge Francis Hopkinson.

In 1801, David Caldwell was also appointed to simultaneously serve as Clerk of the then United States Circuit Court for the Middle Circuit. He served as Clerk for both courts until his retirement in 1831.

He was married to Elizabeth Hewson (1774-1851, married 1802) and they had two children. On the occasion of his death on November 11, 1835, the Circuit Court issued the following statement:

CIRCUIT COURT OF THE UNITED STATES.
November 13th, 1835.

On Motion of C.J. Ingersoll, Esq. – *Ordered*,
That, in remembrance of the respect entertained by the Circuit and District Courts of the United States for the Eastern District of Pennsylvania, for DAVID CALDWELL, lately deceased, for many years Clerk of those Courts, in which office his fidelity, scrupulous integrity, and uniform devotion to all the duties of his station were always conspicuous and exemplary, it be entered on the minutes of the court, that the Judges and the Bar sincerely condole with the family of the deceased, in his loss, and cherish a deep sense of his virtues.
FRANCIS HOPKINSON, Clerk Circuit Court.

Following his death, his historical contributions and unpaid federal fees were acknowledged by the United States Congress through three specific relief bills in 1836 and 1837. The United States House of Representatives Committee of Claims issued a report on December 14, 1837, recommending the bill for the relief of his representatives for the sum of \$4,498.38.

* * *

Biographical Materials

1. Copy of For the relief of the legal representative of David Caldwell, deceased, H.R. 397, 24th Cong., 1st Sess. (1836).
2. Copy of For the relief of the legal representative of David Caldwell, deceased, S. 231, 24th Cong., 1st Sess. (1836).
3. Copy of For the relief of the legal representative of David Caldwell, deceased, H.R. 24, 25th Cong., 2nd Sess. (1837).
4. Copy of BANKS, THE COMMITTEE OF CLAIMS, TO WHICH WAS REFERRED THE PETITION OF THE EXECUTORS OF DAVID CALDWELL, DECEASED, REPORT, H.R. REP. No. 12 (1836), *reprinted* (1837).

MARCH 3, 1836.

Read twice, and committed to a Committee of the Whole House to-morrow.

Mr. BANKS, from the Committee of Claims, reported the following
bill :

A BILL

For the relief of the legal representatives of David Caldwell, deceased.

1 *Be it enacted by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled, That*
3 the Secretary of the Treasury pay, out of any money in the
4 Treasury not otherwise appropriated, to the legal representatives
5 of David Caldwell, deceased, late clerk of the court of the United
6 States for the eastern district of Pennsylvania, the sum of four
7 thousand four hundred and ninety-eight dollars and thirty-eight
8 cents, it being for fees and daily allowances which were due to
9 the said David Caldwell in his lifetime, as clerk of said court,
10 and the payment whereof, to the said David Caldwell or to his
11 representatives, has been refused at the Treasury Department.

IN SENATE OF THE UNITED STATES.

APRIL 23, 1836.

Mr. LEIGH, from the Committee on the Judiciary, reported the following bill;
which was read, and passed to a second reading.

A BILL

For the relief of the legal representatives of David Caldwell, deceased.

1 *Be it enacted by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled, That*
3 the proper accounting officers of the Treasury be, and they
4 are hereby, authorized and required to settle the account of
5 the legal representatives of David Caldwell, deceased, late
6 clerk of the circuit court of the United States for the eastern
7 district of Pennsylvania, for fees and allowances certified by
8 the said court to be due to the said Caldwell, for official ser-
9 vices to the United States, and to pay or cause to be paid to
10 them, out of any moneys in the Treasury not otherwise appro-
11 priated, the sum of four thousand four hundred and ninety-
12 six dollars thirty-eight cents, with interest thereon, after the
13 rate of six per centum per annum, from the twenty-fifth day
14 of November, eighteen hundred and thirty, till paid.

DECEMBER 14, 1837.

Read twice, and committed to a Committee of the Whole House to-morrow.

Mr. E. WHITTLESEY, from the Committee of Claims, reported the following bill :

A BILL

For the relief of the legal representatives of David Caldwell, deceased.

1 *Be it enacted by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled, That*
3 the Secretary of the Treasury pay, out of any money in the
4 Treasury not otherwise appropriated, to the legal represent-
5 atives of David Caldwell, deceased, late clerk of the court of
6 the United States for the eastern district of Pennsylvania, the
7 sum of four thousand four hundred and ninety-eight dollars
8 and thirty-eight cents ; it being for fees and daily allowances
9 which were due to the said David Caldwell in his lifetime, as
10 clerk of said court, and the payment whereof to the said
11 David Caldwell or to his representatives has been refused
12 at the Treasury Department.

DAVID CALDWELL—HEIRS OF.

[To accompany bill H. R. No. 24.]

DECEMBER 14, 1837.—Reprinted.

MARCH 3, 1836.

Mr. BANKS, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to which was referred the petition of the executors of David Caldwell, deceased, report:

That the petitioners claim the sum of three thousand seven hundred and twenty-four dollars, fees due the said David Caldwell, deceased, as late clerk of the United States court for the eastern district of Pennsylvania, in criminal cases in said court, at October session, 1826, October session, 1827, April and October sessions, 1828, and October session, 1829; and a further sum of seven hundred and ninety-two dollars and thirty-eight cents, for certified daily allowances for attending said court.

They set forth in their petition that said fees and daily allowances had been duly examined, allowed, and certified by the judge of said court.

They further state, that said claims were submitted to the proper officers of the Treasury of the United States for allowance and payment.

They also state, that said claims were allowed at the Treasury, and an appropriation made by Congress, sufficient and expressly to pay the same.

They further state, that no part of said sums thus due to their testator has been paid, either to him or to the petitioners; but that the same was passed as a credit to John Conard, the marshal, who was indebted to the United States.

It is also set forth in said petition, that by a letter from the Comptroller, dated the 13th of October, 1826, the marshal was advised that such costs as these, being for the most part in custom-house cases, would be paid at the custom-house; that the amount claimed being large, and part of it not payable at the custom-house, the whole was suspended at the Treasury, and so remained on the 10th of April, 1830.

It appears by document marked 1, 2, and 3, and which is made part of this report, that the account of John Conard, the marshal, was, on the 12th of October, 1826, adjusted at the Treasury Department, and a balance of eight thousand six hundred and thirty dollars and sixteen cents found due from him to the United States.

It further appears by the same document, that the account of the said marshal was adjusted at the Treasury Department on the 16th of November, 1830, and that a balance of six thousand five hundred and eighty-one dollars and eighty-seven cents was then found to be due from him to the United States. On this account is found the following entry:

"Amount of costs taxed in criminal prosecutions, from October, 1826, to October, 1829; undecided by whom the cost shall be paid:

In favor of clerk, attorney, and crier,	-	\$9,006 00
In favor of marshal,	-	1,165 33

\$10,171 33"

It also appears by said document, that the account of the said John Conard was adjusted at the Treasury Department on the 3d of December, 1830, and a balance of \$2,165 81 found due to him from the United States.

The Comptroller, in his report of this claim, under date of the 19th of June, 1834, and numbered 7, and which is made part of this report, states, that "these fees, it appears, accrued in certain criminal prosecutions, and were disallowed in a statement made by the Auditor of the Treasury, of the account of Marshal Conard, dated the 11th of March, 1830, because they were not supported by vouchers of payment, and under a supposition that, being connected with the revenue, he submitted the question whether they ought not, after being verified and vouched, to be paid by the collector of the customs."

It appears by this same report, that Richard Peters, Esq. enclosed in a letter, dated the 27th of March, 1830, the receipt of the said David Caldwell for \$3,724, and dated the 29th of January, 1830. This letter was not received at the Department until after the Auditor had made his report and statement.

After duplicate abstracts of the fees, regularly allowed by the court, and certified, with duplicate receipts thereon, signed by David Caldwell, had been received by the Treasury Department, it was there decided that the said fees and daily allowances were a proper charge on the appropriation for defraying the expenses of courts, &c.; and accordingly the Auditor made another settlement of Marshal Conard's accounts, dated the 25th of November, 1830, in which the fees due to the petitioners' testator were allowed, and passed to the credit of the marshal in the settlement of his account.

Marshal Conard was advised of this final settlement of his account from the Comptroller's office on the 3d of December, 1830; and on the same day Mr. Peters was informed that the fees of David Caldwell had been passed to the credit of the marshal.

Was this a legal payment, so as to exonerate the United States from the claim now made by the petitioners for the amount of the fees, which had been thus passed to the credit of the marshal in the settlement of his account?

This is the question which is presented in the case for the consideration of the committee; and on the decision of this question the whole case must ultimately rest.

Before we enter upon the examination of this question, the committee will present some further facts, which they deem important in regard to it.

By document marked A, and which is made part of this report, it will be seen that the following advances were made to John Conard, marshal:

During the year 1828	-	-	-	\$15,870
" " 1829	-	-	-	13,375
" " 1830	-	-	-	17,525

It is also shown by the same paper, that the marshal returned no estimates to the Treasury Department prior to 1833; that advances on account of expenses of courts, before that year, were generally made on requisitions of the marshals, drawn on the Secretary of the Treasury, which were filed in that office.

It appears from the bills of costs themselves, as well as from other documents presented to the committee, that by far the larger portion of the costs in criminal cases, which are now claimed by the petitioners, arose out of the numerous prosecutions ordered by the Treasury Department, and which were instituted at October session in 1826, and what were generally called "the tea cases."

Mr. Peters states, on oath, that the grand jury had required that bills of indictments, in various forms, and to a great number, should be presented and laid before them, in regard to the alleged offences in those "tea cases." These cases all terminated against the United States.

The same witness states, that the bills of costs, when presented to the court for allowance, were closely examined; that there was some difficulty in relation to their taxation; that on this examination it was proved, to the satisfaction of the court, that bills of indictment, in the forms and to the number presented, had been drawn up, and laid before the grand jury, at their positive request; that a certificate to this effect, signed by the grand jury, (gentlemen of high respectability,) was then laid before the court.

At October session, 1826, Richard Peters, Esq. was the presiding district judge of the eastern district of Pennsylvania; that, after his death, Judge Hopkinson became his successor, in February, 1829.

These bills of costs appear all to have been allowed by Judge Hopkinson, after he came on the bench; and Mr. Peters states that they were allowed by him (Judge Hopkinson) in November, 1829, and charged in the marshal's account of October session, 1829, and transmitted to the Treasury Department in January, 1830.

The Comptroller, in his report on this case, of the 19th of June, 1834, to the Secretary of the Treasury, places his authority for, and seeks his justification in, the application of these costs due to David Caldwell, as a credit on the marshal's account, in the act of Congress of the 8th of May, 1792. He there states that, to carry this law into effect, it has been usual to make advances to marshals, in estimates of the probable expenses of each court; that, out of the money thus advanced to the marshal, he has paid the expenses of the court and fees of the officers, taking their receipts, which have been transmitted to the Department with his account; which have been passed to the credit of the marshal, with his own charges, as an offset, *pro tanto*, to the sum advanced to him, if that exceeds the disbursements which he may have made. If the disbursements exceed the sum advanced, the balance in his favor has either been passed to him, or passed to his credit in a subsequent settlement. This the Comptroller states to have been the practice of the Department in obedience to the law referred to.

He also adds, that, previously to the settlement of Marshal Conard's account, in which these fees were passed to his credit, he had received advances sufficient to pay these fees, and nearly all the other expenses of the courts, up to the date of the settlement.

The act referred to provides "that the legal fees of the clerk, &c. shall be included in the account of the marshal; and having been examined and certified by the court, or one of the judges of it, in which the service shall have been rendered, shall be passed in the usual manner at, and the amount thereof paid out of, the Treasury of the United States, to the marshal, and by him shall be paid over to the persons entitled to the same; and the marshal shall be allowed two and a half per cent. on the amount by him so paid over, to be charged in his future account."

The provisions of this law are plain and free from all doubt. The duties of the court and of the Department are clearly pointed out. The course to be pursued by the officers to obtain fees which may be due them, is very obvious under this law. The provisions of the law also appear to be, in themselves, very proper, and well calculated to do justice to the individual officers, as well as to guard the public treasury against unjust or fraudulent claims.

By the terms of this law, the marshal is authorized to include the fees of these officers in his account. Before his account is sent on to the Treasury Department, the fees charged must be examined and allowed by the court. This is not all: but this examination and allowance must be certified by the court. Until these requirements of the law have been complied with, the claim for the fees of the clerk is not, and cannot rightfully be, transmitted by the marshal to the Department. Until this allowance and certificate is granted by the court, the Department has no control, by the law, over the subject; it is not in its possession, nor subject to its action, either for allowance or disallowance. The court must act first. When the court has done what is required of it by the law, then, and not before, the same "shall be passed on, in the usual manner, at the Treasury." After all this is completed, and not before, shall "the account thereof be paid out of the Treasury of the United States to the marshal." It is manifest, from the wording of this law, that it was not intended that these fees should be paid to the marshal until they had been examined, allowed, and certified by the court, and passed upon, in the usual manner, at the Treasury. This must all precede the payment. In the absence of these requirements, no legal payment can be made; for, in such case, it is most clearly unauthorized.

In the opinion of the committee, this law does not even countenance, much less authorize, an advancement of funds for the payment of these fees. By its provisions, no money is to be taken out of the Treasury for such purposes until the claim has been allowed, and so certified by the court. Until the claim for fees has passed into judgment, it ought not, under the law, to be paid. The payment thereof on requisition or estimate is not recognised. Nothing is found in the law to justify the advancement of funds for such payment. Such a construction cannot be put upon the law, without doing violence to its terms, and a total departure from its most obvious spirit and meaning.

Were advances made by the Department to the marshal with a view to meet this charge, and for the purpose of paying the same? This question is naturally presented at this point of the inquiry. That funds had been advanced to the marshal by, and that he was largely indebted to, the Department, is fully shown by his account. That he was indebted to the Government, is one thing; and that funds were placed in his hands

for the purpose of paying the fees now claimed, is another and a very different thing. At the time these fees were allowed to the marshal and credited in his account, the entire indebtedness of the marshal existed. All the money, with a small exception, had been advanced before this claim was allowed by the court and transmitted by the marshal to the Department. It cannot, with propriety, be said that the money was advanced to pay this claim, when it was not known of at the time the money was advanced. At the time that the claim was first allowed, all the money had been advanced. Prior to that time it had not been decided where or how the claim should be paid—whether at the Treasury Department, or at the custom-house in Philadelphia. It is not probable that the Treasury Department would make an advancement to pay a claim before it had been decided that it was to be paid at the Treasury of the United States. It does not appear that this claim was embraced in any estimate or requisition that had been made by the marshal; it is clearly established that it was not. At the time the claim was allowed at the Department, the marshal was indebted to the United States in a sum but little less than nine thousand dollars, and probably exceeding that amount.

Could the Government rightfully, under the circumstances of the case, apply the sum due to the clerk in payment of a debt due to it by the marshal? The whole case is resolved into this question. The great injustice of paying the debt due by one man with the money of another, would be very apparent. This is, in reality, what has been done in this case, as will be most obvious when carefully examined. Mr. Caldwell did not agree that it should be done. He was, at the very time it was done, pressing his own claim for payment, with much importunity, without even the agency of the marshal. It was known at the Department that Caldwell had not been paid by the marshal, and that the marshal was insolvent, and his sureties altogether insufficient. It was also known, at the same time, that Caldwell was unwilling that the money due him should be paid to the marshal. These are the circumstances under which the sum, confessedly due to Caldwell, was passed to the credit of the marshal.

It is proved that Mr. Peters, of Philadelphia, was the agent of Caldwell, in his lifetime, for the purpose of adjusting this claim.

Mr. Peters states, on oath, as follows: "The following agreement was specifically and expressly made between the Comptroller and myself: that the costs stated in abstract No. 1, a duplicate of the same, with the receipts thereon of the respective officers, amounting to \$7,604 13, being forwarded by me, should be paid by the collector of the port of Philadelphia, being the costs of revenue cases; and that on the reception of the said abstracts, and the said receipts, the Comptroller would give directions to the marshal to present them to the collector for payment, who would be authorized by the Treasury to pay the same. That as to the costs not connected with the revenue, and amounting to \$2,567 19, on the abstracts being forwarded with the receipts, they should be approved by the Comptroller, be returned to the marshal to be charged in his next account as costs against the United States, and afterwards paid to the officers entitled thereto."

Mr. Peters also says that, on the 10th of November 1830, the duplicate accounts and duplicate *pro forma* receipts were transmitted to the

Comptroller; that it was known at the Treasury that Marshal Conard was insolvent, and his sureties insufficient; that it had been expressly communicated to the Comptroller that the marshal was in embarrassed circumstances.

Mr. Peters further states, that he agreed to send the receipts of Mr. Caldwell, in order to enable the Auditor, Mr. Harrison, to pass the accounts; and thus to obtain payment of the sums due to him by the Secretary of the Treasury, or by the collector of the port of Philadelphia, as should be decided by the Secretary of the Treasury; that the *pro forma* receipts were promised solely for the purpose stated, and not for the purpose of authorizing a credit to the marshal on his account.

From this proof no authority was given to the Department, by sending on these receipts, for passing the credit to the marshal. The receipts were sent by arrangement between the Comptroller and the agent of Caldwell. The purpose for which they were sent was well known. They were sent, not as an evidence of payment, but as necessary to procure payment. They were never in the possession of Conard, nor were they sent on by him. Under this state of the case, they cannot be used by the Department as proof that the money had been paid by Conard, and thus justify the application of the amount to his credit. This would be directly against the arrangement itself, fully made, and well understood; and very unjust to the party.

That these costs were due to Mr. Caldwell, is established by the highest evidence. It is proved by the records and decree of the court. That they were due him, is a fact that is conceded. That he has not received them, nor have his representatives, is also conceded. It may well be asked, how it can be that this debt, thus due to him, could be applied in payment of a debt due to the United States from the marshal; and that, too, without his consent? The committee think that to hold this a good payment would be too severe and unjust to be sanctioned by Congress. If the Government advanced money to the marshal, through a misplaced confidence in him, Mr. Caldwell should not be made the victim to this negligence of its officers or insolvency of the marshal. The marshal was the officer of Government, appointed by the President, and the surety taken under his directions; and, in this case, the loss must, and ought to, fall upon the Government, and not upon an innocent individual. Caldwell had no agency in bringing this loss upon any one; he rendered service which he was bound to perform; he was vigilant in the prosecution of his claim; he communicated a statement of the marshal's circumstances; he was not remiss in any degree, in any one thing, in the whole transaction. No blame can be justly attached to him, and no loss should be thrown upon him. The committee, therefore, report a bill for the relief of his representatives for the sum of four thousand four hundred and ninety-eight dollars and thirty-eight cents, which is found to be the amount claimed by an addition of the usual items.

To the Senate and House of Representatives of the United States of America in Congress assembled :

The petition and memorial of the executors of David Caldwell, of the State of Pennsylvania, lately deceased,

RESPECTFULLY SHOW :

That, in the capacity of the deceased, of clerk of the United States for the eastern district of Pennsylvania, the sum of three thousand seven hundred and twenty-four dollars, and a further sum of seven hundred and ninety-two dollars and thirty-eight cents, for certified daily allowances, are due to him ; which sums were withheld from him by the Treasury officers of the United States, under circumstances of which the following outline is submitted to Congress, in order that such an act may be passed, for the relief of your petitioners in the premises, as to the wisdom of Congress may appear proper.

The said sums having been duly taxed and certified, according to law, by the Judges Washington and Hopkinson, of the circuit court of the United States for the eastern district of Pennsylvania, as payable to the deceased, together with the sum of one thousand one hundred and sixty-five dollars thirty-three cents, taxed and certified as due to John Conard, then marshal of the district, the said accounts were submitted to the proper officers of the Treasury of the United States, for allowance and payment, according to law ; but though allowed at the Treasury, and although provision was made by act of Congress, appropriating a sufficient sum expressly to pay the said costs, and the said John Conard, the marshal, has received payment of the aforementioned sum, being his proportion thereof, yet the deceased has not received any part of the sums due to him ; but the same were withheld, and your petitioners are suffering wrong, by the said sums being credited in account with the marshal, who is neither able nor willing to pay your petitioners, who are not bound, moreover, to look to the marshal, but respectfully submit that they are entitled to receive payment either at the Treasury or by act of Congress.

By letter from the First Comptroller, of 13th October, 1826, the marshal was advised that such costs as these, being for the most part costs in what may be considered custom-house cases, would be paid at the custom-house. But the sum claimed in this instance being large, and part of it not payable at the custom-house, the whole was *suspended* at the Treasury, and remained so on the 10th of April, 1830, and on the 2d of October of that year, when certain advances were made from the Treasury to the marshal.

On Marshal Conard's account No. 57,049, dated Auditor's office, 6th of March, 1830, and Comptroller's office, 13th of November, 1830, there is a memorandum that the tea cases' costs should be paid by the collector, when approved ; but that the whole charge was suspended, no part thereof being supported by vouchers of payment. In consequence of this suspension, the clerk and the marshal requested Richard Peters, Esq. to attend at the Treasury to the allowance of their accounts. Mr. Peters obtained from the former his receipts for the money as having been paid by the marshal, giving him a written certificate that no money was paid ; but that the receipts were obtained merely for exhibition at the

Treasury, as vouchers for the warrants for payment of the money. And in presenting the accounts at the Treasury, Mr. Peters, personally, and by his letter of the 12th April, 1830, explicitly stated that the receipts were given not as evidence of payment, which, it is well known, seldom is, or indeed can be, made until the money is obtained at the Treasury. In this instance, it must have been, moreover, known to the officers of the Treasury, from the general state of Marshal Conard's accounts, and also from the peculiar circumstance that, as respects the sums in question, their allowance was suspended and they were not allowed, when the receipts were provisionally presented as matter of routine as aforesaid. No intimation was given to Mr. Peters at the Treasury of what was afterwards done; but he was always told that nothing could or should be done till Congress made appropriation to pay the money. Mr. Peters's letter to the Comptroller, communicating the receipt, is explicit; and by that which he wrote on the 10th of November, 1830, which was immediately before the Treasury officers thought proper to carry the sums in question to the credit of the marshal, as actual payments, Mr. Peters says: "Duplicate receipts for the sums *receivable* will be found in the abstract; they are *payable* by the collector. Your direction to the marshal to present them to him for payment, will be all that is required." The Comptroller's letter of the 16th of November, 1830, debits the marshal \$13,377 56; and it was then undetermined out of what fund these costs should be paid; so that the Treasury not only knew, but wrote, that they were not paid.

By Marshal Conard's account, dated Auditor's office the 23d, and Comptroller's office the 13th of November, 1830, the sum of \$10,171 53, till then suspended, is for the first time allowed, but as a mere *credit* to the marshal. Of this he was apprized by letter, dated the 3d of December, 1830. By his answer thereto, dated the 17th of that month and year, and addressed to the Secretary of the Treasury, Marshal Conard, acknowledging the advice that the said sum heretofore suspended has been passed to his credit, asks permission to draw for it, as the greater part belongs to the district attorney and clerk, *who are now pressing to receive the amounts due to them*. The Comptroller's letter in reply, dated the 22d of December, 1830, refuses payment of the money, and informs the marshal that the same has been *credited* in his account.

Thus the money due to the deceased was absorbed in a Treasury credit to extinguish Marshal Conard's debts for advances made by the Treasury to him; and receipts given, without any value paid, as mere vouchers to the disbursing officers for their warrants for the money, were used to deprive the deceased of what was legally due to him.

Your petitioners forbear to enlarge upon their case, after thus submitting an outline of it, because the accounts, documents, correspondence, and evidence being all in the Treasury, more accessible to Congress than to your petitioners, will, no doubt, be examined; and it would be superfluous for your petitioners in their memorial to do more than indicate the grounds of a just conclusion in the premises.

They respectfully submit:

1. That as the deceased never has been paid, it is neither the law nor right that his receipt, even if given without notice, should be used to his prejudice, as conclusive evidence against him. The law is well

known to be, that a receipt is an admission only, and, though evidence, not conclusive evidence of payment, but liable to be contradicted or explained; and full contradiction was, in this instance, made and reiterated to the Treasury, in which these receipts are taken as evidence of payment.

2. There was notice given with the receipts, when handed, that they were but vouchers for warrants to be drawn for payment of the money, and not to be considered as importing that it had actually been paid. Such, moreover, was the intrinsic and unquestionable evidence of all the correspondence and conversation and of every communication that took place on the subject.

3. The act of Congress of May 8th, 1792, (vol. 1, Story's Laws U. S. 259, sec. 4,) declares that there shall be paid to the marshal certain expenses; also, the legal fees of the clerk, attorney, and marshal, in criminal prosecutions, shall be included in the marshal's accounts, and, being certified by the court, shall be passed in the usual manner at the Treasury, and the amount thereof *paid out of the Treasury* to the marshal, and by him paid over to the persons entitled; and the marshal shall be allowed two and a half per cent. on the amount by him *so paid* over to the persons entitled; and the commission of the marshal charged afterwards; which commission is credited to the marshal's account, as if the money had been actually paid.

4. Neither the marshal nor Mr. Peters had power from their principal, the deceased, to settle the account on any other basis than that of actual payment. There was no authority or agency to settle it by a credit, and there was no such settlement actually made with him.

Lastly. It is every day's common experience for tradesmen and others to give receipts with their bills before payment of them. But if they can show non-payment of the money, the existence of the receipt, though evidential, is never conclusive of the facts; and it is the fact of payment or non-payment which always determines.

Your petitioners conceive it sufficient for them thus to make known the circumstances of their case to Congress, relying on their justice and wisdom for relief in the premises.

ELIZABETH H. CALDWELL, *Ex'x.*

EDWARD FLORENS RIVINUS, *Ac. Ex.*

PHILADELPHIA, December 9, 1835.

Letters and accounts referred to in the within memorial to Congress.

Letter, October 13, 1826: First Comptroller to Marshal Conard.

Accounts, dated Auditor's office, March 6, 1830, and Comptroller's, November 13, 1830, and memorandum annexed.

Letter, Richard Peters, April 12, 1830, to Comptroller.

Same to same, November 10, 1830.

Letter, Comptroller to Marshal Conard, November 16, 1830.

Marshal Conard's account, dated Auditor's office, November 23, and Comptroller's, November 13, 1830.

Letter, Comptroller to Marshal Conard, December 3, 1830.

Answer thereto, addressed to the Secretary of the Treasury, December 17, 1830.

Letter, Comptroller in reply, December 22, 1830.

Treasury accounts, March 26 and May 2, 1831.

TREASURY DEPARTMENT, *January 4, 1836.*

SIR: In compliance with the request made by you on behalf of the Committee of Claims of the House of Representatives, under date of the 22d ultimo, to be furnished with certain information respecting the claim set forth in the petition of the executors of David Caldwell, deceased, late clerk of the district court of the United States for the eastern district of Pennsylvania, I have the honor to transmit herewith a report made to me by the acting Comptroller of the Treasury, dated the 29th ultimo, and the accompanying papers therein referred to; which contain all the information, in reference to the claim, in the possession of the Department,

The other documents respecting this case, referred to by the acting Comptroller, it is presumed, as suggested by him, may be found on the files of the Judiciary Committee of the House of the last session.

I have the honor to be,

Very respectfully,

Your obedient servant,

LEVI WOODBURY,

Secretary of the Treasury.

Hon. ELISHA WHITTLESEY,

Chairman Com. of Claims Ho. Reps.

TREASURY DEPARTMENT,

Comptroller's Office, Dec. 29, 1835.

SIR: In compliance with your reference to the Comptroller of the Treasury for a report of the information called for by the honorable E. Whittlesey, in behalf of the Committee of Claims in the House of Representatives, in relation to a petition of the executors of David Caldwell, deceased, to which is prefixed a list of documents, the originals or copies of which are applied for, together with any other information having a tendency to a correct understanding of the matters presented in the petition, I have the honor to transmit, herewith, copies of the following documents:

Nos. 1, 2, and 3, being copies of letters from the Comptroller to Marshal Conard, dated 12th October, 1826, and 16th November and 3d December, 1830.

4. Auditor's report on the account of Marshal Conard, for expenses of courts, October term, 1829.

5. Same, for expenses of November term, 1829, and February, April, and May terms, 1830.

6. Copy of a letter from the Comptroller to Marshal Conard, dated 22d December, 1830.

7. Copy of a letter from the Comptroller to the Secretary of the Treasury, explanatory of the settlement of Marshal Conard's accounts, dated 19th June, 1834 ; and

8, 9, 10, 11, 12, being abstracts of costs taxed, filed with the accounts of the marshal, and referred to in the letter of the Comptroller last mentioned.

The report referred to in page 6 of the letter from the Comptroller to the Secretary, as being made to him by the Auditor, was enclosed with the other documents to the Secretary, and by him transmitted, it is believed, to the honorable chairman of the Judiciary Committee of the last Congress, and on whose files, it is possible, may be found also the original letters of Richard Peters, Esq. to the Comptroller, of the 12th April and 30th November, 1830, mentioned in the list endorsed on the petition of the executors of David Caldwell.

The documents referred to me are herewith returned.

I have the honor to be,

With great respect,

Your obedient servant,

JNO. LAUB,
Acting Comptroller.

HON. LEVI WOODBURY,
Secretary of the Treasury.

No. 1.

TREASURY DEPARTMENT,

Comptroller's Office, October 12, 1826.

SIR: Your account of disbursements made at courts held in Philadelphia, in the months of April and May, 1826, has been adjusted at the Treasury, and a balance of \$8,630 16 found due to the United States from you, which remains to be accounted for on a future settlement.

Your account, as rendered, exhibits a balance of - - \$1,913 09

To which add:

Warrant No. 8229, dated the 26th of September, 1826, not credited - - - - - 5,800 00

This sum, being an over addition of abstract of compensation to jurors, circuit court, April term, 1826, - - - 144 70

This sum, charged in abstract of contingent expenses, April term, 1826, for rent of court room from 1st April to 30th September, 1826, not receipted for, (suspended) - 750 00

Commission on \$894 70, at 2½ per cent. - - - 22 37

\$8,630 16

Respectfully,

JOS. ANDERSON, *Comptroller.*

JOHN CONARD, Esq.,
Marshal, Philadelphia.

No. 2.

TREASURY DEPARTMENT,

Comptroller's Office, November 16, 1830.

SIR: Your account of expenditures at a circuit court held at Philadelphia, October term, 1829, has been adjusted at the Treasury, and a balance of \$6,581 87 found due to the United States from you.

Balance claimed per account rendered	-	-	-	\$6,795 69
Add balance, as adjusted	-	-	-	6,581 87
				<u>\$13,377 56</u>

Thus caused: Warrant No. 1163, dated 4th February, 1830	-	-	-	\$2,775 00
Amount of costs taxed in criminal prosecutions, from October, 1826, to October, 1829, undecided by whom the costs shall be paid:				
In favor of the clerk, attorney and crier	-	-	-	\$9,006 00
In favor of the marshal	-	-	-	1,165 33
				<u>10,171 33</u>
This sum, charged for expenses of district court, May term, 1829, heretofore allowed,	-	-	-	206 09
Commission charged more than allowed upon \$9,006	-	-	-	225 14
				<u>\$13,377 56</u>

Respectfully,

JOS. ANDERSON, *Comptroller.*

JOHN CONARD, Esq.

Marshal, Philadelphia.

No. 3.

TREASURY DEPARTMENT,

Comptroller's Office, 3d December, 1830.

SIR: Your account of expenditures at courts held at Philadelphia, in the months of November, 1829, and February, April, and May, 1830, has been adjusted at the Treasury, and a balance of \$2,165 81 found due from the United States to you, which remains to be credited on a future settlement.

Balance per account rendered	-	-	-	\$10,502 81
Add: This sum—a short addition of account current, November term, 1829	-	-	-	99 97
This sum—a short addition of abstract of compensation to witnesses, April term	-	-	-	2 00

This sum—short charge of A. Shaw's bill ; abstract and contingent expenses, same term	25
This sum—short charge for cost taxed by district court, February term	1 00
This sum—an error in transferring balance from account for February term, to succeeding account, April term	1,462 59
This sum—short charge for contingent expenses, May term, 1830	70
	\$12,069 32

Deduct: Warrants Nos. 1163 and 2283, dated 4th February and 2d October, for \$2,775 and \$6,750 - - \$9,525 00

This sum—charged in account for circuit court, October term, 1829, for expenses of district court, August term, (disallowed per report 57,049,) the amount having been previously admitted to your credit, (per report No. 56,355,) - - - 206 09

This sum—being an over addition of abstract of contingent expenses, November term, 1829 - - - 60 00

This sum—over-charged for contingent expenses, February term, 1830 - - - 2

This sum—being an over addition of account current, February term, - - - 10 00

This sum—an over addition of abstract of compensation to jurors, April term - - - 99 50

Commission charged more than allowed - - - 2 90

9,903 51

As above, - - - \$2,165 81

Respectfully,

JOS. ANDERSON, *Comptroller.*

JOHN CONARD, Esq.

Marshal, Philadelphia.

No. 4.

Dr. *John Conard, Marshal for the Eastern District of Pennsylvania, in account with the United States,* Cr.

To balance due from him, per report No. 56,355	-	\$1,400 66	By amount of compensation to himself for attendance, and summoning jurors at a circuit court at Philadelphia, October term, 1829	-	\$185 00
To Treasury warrants for amount of the following:			By amount of compensation to the clerk and attorney, for attendance at the above courts	-	\$270 00
No. 725, dated 13th October, 1829	- \$6,300	9,075 00	By amount of compensation to jurors, for attendance and mileage, at said court	-	2,405 85
No. 1163, dated 4th February, 1830	- 2,775	\$10,475 66	By amount of compensation to witnesses, for attendance and mileage, at the above court	-	131 25
			By contingent expenses of said court	-	347 12
			By amount of costs taxed by the above court in criminal prosecutions	-	455 70
The balance claimed by him, per his account	-	6,795 69	By this sum, charged in his account for district court, April term, 1829, for stationary; suspended, per report No. 56,355 for explanation, now admitted	-	9 25
The balance due from him, per this statement	-	6,581 87			
		\$13,377 56			
Which arises as follows:		2,775 00			
Warrant No. 1163, dated Feb. 4, 1830, not yet credited by him					
Amount of costs taxed by the above court in criminal prosecutions, from October, 1826, to October, 1829, suspended, not being receipted for, and it being yet undecided by whom the costs shall be paid, viz:					
This sum, taxed in favor of the clerk, attorney, and crier	- \$9,006 00		By commission on \$3,584 67, at 2½ per cent.	-	3,619 17
This sum, taxed in favor of the marshal	- 1,165 33				89 62
This sum, charged in his present account for expenses of the district court, August term, 1829, disallowed; having been allowed him, per report No. 56,355	-	10,171 33	By balance due to the United States	-	3,893 79
Commission charged by him more than allowed in this statement, being commission on \$9,006, the amount of costs taxed in favor of the clerk, attorney, and crier	-	206 09			6,581 87
		225 14			
As above	-	\$13,377 56			

Auditor's Office, March 6, 1830.

THOS. G. SLYE.

Comptroller's Office, November 15, 1830.

LUND WASHINGTON.

NOTE.—In the above sum of 10,171 33, taxed as costs attending criminal prosecutions, is included, per bill No. 1, \$7,604 13 for those accruing, as is understood, on the famous *tax cases*, which, being connected with the revenue, it is submitted whether it ought not to be paid, after being verified and vouched to his satisfaction, by the collector of the customs. In the mean time, the whole charge is suspended, no part thereof being supported by vouchers of payment.

R. HARRISON.

of payment.

No. 5.

Dr. *John Conard, Marshal for the Eastern District of Pennsylvania, in account with the United States.* Cr.

To balance due from him, per report No. 57,049	-		
To Treasury warrants, for amount of the following, viz :			
No. 1484, dated 10th April, 1830	-	\$6,900 00	
No. 2283, dated 2d October, 1830	-	6,750 00	
		<u>13,650 00</u>	
To balance due to the marshal	-	-	\$677 00
		2,165 81	
		<u>\$6,581 87</u>	
By amount of compensation to himself for attendance and summoning jurors at courts held in said district in the months of November, 1829, and February, April, and May, 1830	-	-	
By amount of compensation to the clerk and attorney for attendance at said courts	-	\$1,230 00	
By amount of compensation to jurors for attendance and mileage at the above courts	-	4,005 60	
By amount of compensation to witnesses for attendance and mileage at said courts	-	659 99	
By contingent expenses of the above courts, including rent of court-room from 1st April to 30th September, 1830	-	2,893 69	
By amount of costs taxed by said courts in criminal prosecutions	-	2,263 93	
			11,053 21
By amount of costs taxed by the circuit court, October term, 1829, in criminal prosecutions, suspended per report No. 57,049, now admitted	-	-	10,171 33
By commission on \$19,845 50, at $2\frac{1}{2}$ per cent.	-	-	496 14
		Total	\$22,397 68

AUDITOR'S OFFICE, November 18, 1830.

THOS. G. SLYE.

NOTE.—Upon settlement of the preceding account of John Conard for October term, 1829, audited in the office of the First Auditor on the 11th March, 1830, the sum of \$10,171 33, for fees to the marshal, clerk, and attorney, in sundry criminal prosecutions, was suspended for the following reasons : First, because not receipted for ; secondly, because it is not decided by whom these costs should be paid.

THOS. G. SLYE.

No. 6.

TREASURY DEPARTMENT,
Comptroller's Office, December 22, 1830.

SIR: From your letter of the 17th instant to the Secretary of the Treasury, which he has referred to me, it is to be inferred that, in consequence of the sum of \$10,171 33 costs, taxed in criminal cases, formerly disallowed, having been passed to your credit on the last settlement of your accounts, you consider that amount to be due to you and the other officers of the court in those cases, as you request permission to draw for the same; but such not being the fact, and the sum of \$2,165 81 only having been found due to you on said settlement, if, in addition to that balance, you stand in need of an advance to meet the current expenses of your office, it will be necessary that you should make a special estimate of such expenses, and forward the same to the Secretary.

I deem it proper at the same time to observe, that the appropriation for paying the expenses of courts, &c. being exhausted, whatever remittance you may require it will be impracticable to make until a new appropriation shall have been made, for which it is understood the Secretary will immediately apply to Congress.

Respectfully,

J. ANDERSON, *Comptroller.*

JOHN CONARD, Esq.

Marshal, Philadelphia.

No. 7.

TREASURY DEPARTMENT,
Comptroller's Office, June 19, 1834.

SIR: With a letter addressed to you by the honorable Thomas F. Foster, on the 9th instant, which you referred to me for my report thereon, he transmitted a petition of David Caldwell and Charles J. Ingersoll to be allowed the following fees in their respective capacities—the former of clerk, and the latter of attorney of the United States, for the eastern district of Pennsylvania, viz: David Caldwell, \$3,724, and Charles J. Ingersoll, \$5,083 20, besides \$174 80 due to the crier, and a further sum of \$792 38, for certified daily allowances due to David Caldwell; which, it is stated, have been withheld from them by the Treasury officers.

These fees, it appears, accrued in certain criminal prosecutions, and were disallowed in a statement made by the Auditor of the Treasury of the account of Marshal Conard, dated the 11th March, 1830, because they were not supported by vouchers of payment and, under a supposition of their being connected with the revenue, he submitted the question, whether they ought not, after being verified and vouched, to be paid by the collector of the customs.

In a letter received from Mr. Richard Peters, dated the 27th March, 1830, he enclosed the receipts of the said David Caldwell and Charles J. Ingersoll, which are in the following words, viz:

PHILADELPHIA, *January 29, 1830.*

Received from John Conard, Esq. three thousand seven hundred and twenty-four dollars, being the clerk's fees in criminal cases in the circuit court of Pennsylvania, at October session, 1826, October session, 1827, April and October sessions, 1828, and October session, 1829.

\$3,724.

D. CALDWELL, *Clk. Ct.*

PHILADELPHIA, *January 29, 1830.*

Received from John Conard, Esq. five thousand and eighty-three dollars twenty cents, being the fees of the district attorney in criminal cases in the circuit court, Pennsylvania, at October session, 1826, October session, 1827, and April and October sessions, 1828.

\$5,083 20.

CHAS. J. INGERSOLL,

Late District Attorney.

It will thus be perceived that the above receipts, although dated the 29th January, 1830, were not forwarded by Mr. Peters until after the Auditor had made his report and statement on Marshal Conard's account; which account, for reasons not now particularly recollected, but principally because the question, whether the fees claimed by the petitioners were properly chargeable on the revenue, or on the appropriation for defraying the expenses of courts, &c. had not been determined, was not finally acted upon by me until the 15th November, 1830. On the following day, Mr. Conard was advised of the settlement, and informed that, owing to the question alluded to remaining undetermined, said fees had not been passed to his credit.

Duplicate abstracts, regularly taxed and allowed by court, of the costs at the different sessions of the circuit court above specified, Nos. 1, 2, 3, 4, and 5, and duplicate receipts thereon, signed by the said clerk and district attorney, together with the erier, for the fees and compensation taxed in their favor, respectively, having, subsequently to the above-mentioned settlement, been received, it was decided that the said fees and compensation were a proper charge on the appropriation for defraying the expenses of courts, &c.; and accordingly the Auditor made another settlement of Marshal Conard's accounts, dated the 25th November, 1830, in which the fees of the petitioners were allowed and passed to the credit of the marshal upon the duplicate abstracts and receipts alluded to.

A copy of duplicate abstract No. 1, with the duplicate receipts of the petitioners thereon, is enclosed herewith; the other duplicate abstracts, Nos. 2, 3, 4, and 5, with the duplicate receipts thereon, being of a similar character.

Marshal Conard was advised of the last settlement from this office on the 3d of December, 1830; and on the same day Mr. Peters, who forwarded to the Department the documents alluded to, and made several communications in relation to the fees in question, was informed that those fees had been passed to the credit of the marshal.

It will be perceived from the 4th section of the act of 8th May, 1792, (Story, page 259, chap. 36,) that the expenses of courts, and also the legal fees of the clerk, attorney, and marshal, in criminal prosecutions, shall be included in the account of the marshal; and the same having been examined and certified by the court, or one of the judges of it, in which the service

shall have been rendered, shall be passed in the usual manner at, and the amount thereof paid out of, the Treasury of the United States to the *marshal*, and by *him* shall be paid over to the persons entitled to the same.

To carry this law into effect, according to what has been considered its true intent and meaning, the uniform rule has been made to make advances to the marshals; to obtain which, they make applications to the Secretary of the Treasury, containing an estimate of the probable expenses of each court, and the fees which will be due to the clerk, attorney, &c.

These applications are referred to the Comptroller of the Treasury, for the purpose of ascertaining whether the state of the applicant's accounts will justify the making of the advance. The requisite information being given to the Secretary, he then decides whether an advance is to be made or not.

If he decides in favor of an advance, he issues a warrant accordingly, with which the marshal is charged, and held accountable on the books of the Treasury.

With the money thus advanced the marshal pays the expenses of courts, the fees of the clerks, attorneys, &c., taking their receipts therefor; which being forwarded to the Department, with an account current, are passed to the credit of the marshal, together with his own fees and compensation, as an offset *pro tanto* to the sum with which he stands charged, if the latter exceeds the amount of his disbursements including his own compensation.

If the disbursement exceed the advances, the balance due to him is either paid or passed to his credit in a subsequent settlement.

It will thus be perceived, that, in order for a marshal to obtain an advance of money from the Treasury, it is not necessary, nor is it required, that he should produce receipts from the officers of the court and others acknowledging payment of money.

Previously to the time Marshal Conard's account was settled, in which the fees of the petitioners were passed to his credit, he had received advances sufficient to pay those fees, and nearly all the other expenses of courts, to the date of settlement.

It is alleged by Mr. Ingersoll, one of the petitioners, that he had, both in person and by letters, cautioned me against paying any portion of his accounts to Marshal Conard.

In reply I have to observe that I have no recollection of having received any such caution from Mr. Ingersoll in person, as I do not remember to have seen him from the time the account of Mr. Conard was rendered to the Treasury, until some time after its settlement, when I recollect that Mr. Ingersoll called at my office, and I gave him, at his request, copies of some of the papers appertaining to the account of Mr. Conard. I have received many letters from Mr. Ingersoll at different times, but, upon examination of the files of my office, no letter of the kind referred to by Mr. Ingersoll can be found, nor do the records show that any letter was addressed to him containing assurances of the kind alluded to in the memorial.

From the act passed the 3d March, 1817, to provide for the prompt settlement of the public accounts, it will be perceived that the First Auditor is to receive all accounts accruing in the Treasury Department, among which are the accounts of marshals.

In conformity with that act, therefore, when any claim is presented the settlement of which would require the action of the First Auditor, the documents connected with the claim are referred to him for his report

thereon. In accordance with that rule, the petition under consideration was enclosed to him ; whereupon he made a report, a copy of which is enclosed herewith.

From a comparison of the views already expressed by me as to the general principles which are to govern in the settlement of the marshal's accounts, with the views contained in the Auditor's report, it will be perceived that we fully accord upon the subject.

The petition received is returned herewith.

I have the honor to be,

With great respect,

JOSEPH ANDERSON, *Comptroller.*

Hon. ROGER B. TANEY,

Secretary of the Treasury.

No. 8.—List of costs in criminal cases, circuit court, October session, 1826.

	Attorney.	Clerk.	Marshal.	Crier.	Attorney.	Clerk.	Marshal.	Crier.	Total.
The United States <i>versus</i> —									
Edward Thomson,	\$6 each	\$4 33 $\frac{1}{2}$	\$1 33 $\frac{1}{2}$	20 cts.	\$42 00	\$30 33 $\frac{1}{2}$	\$9 33 $\frac{1}{2}$	\$1 40	\$83 06 $\frac{1}{2}$
Charles Mackie,	do	do	do	do	42 00	30 33 $\frac{1}{2}$	9 33 $\frac{1}{2}$	1 40	83 06 $\frac{1}{2}$
Edward Thomson,	do	do	do	do	18 00	13 00	4 00	60	35 60
Francis H. Nicoll,	do	do	do	do	18 00	13 00	4 00	60	35 60
Edward H. Nicoll,	do	do	do	do	48 00	34 66 $\frac{2}{3}$	10 66 $\frac{2}{3}$	1 60	94 53 $\frac{1}{3}$
Edward Thomson,	do	do	do	do	30 00	21 66 $\frac{2}{3}$	6 66 $\frac{2}{3}$	1 00	59 33 $\frac{1}{3}$
Francis H. Nicoll,	do	do	do	do	30 00	21 66 $\frac{2}{3}$	6 66 $\frac{2}{3}$	1 00	59 33 $\frac{1}{3}$
Floyd S. Bailey,	do	do	do	do	30 00	21 66 $\frac{2}{3}$	6 66 $\frac{2}{3}$	1 00	59 33 $\frac{1}{3}$
Floyd S. Bailey,	do	do	do	do	42 00	30 33 $\frac{1}{2}$	9 33 $\frac{1}{2}$	1 40	83 06 $\frac{1}{2}$
Edward Thomson,	do	do	do	do	24 00	17 33 $\frac{1}{2}$	5 33 $\frac{1}{2}$	80	47 46 $\frac{1}{2}$
Charles Mackie,	do	do	do	do	24 00	17 33 $\frac{1}{2}$	5 33 $\frac{1}{2}$	80	47 46 $\frac{1}{2}$
Rodney Fisher,	do	do	do	do	6 00	4 33 $\frac{1}{2}$	1 33 $\frac{1}{2}$	20	11 86 $\frac{1}{2}$
Edward H. Nicoll,	do	do	do	do	24 00	17 33 $\frac{1}{2}$	5 33 $\frac{1}{2}$	80	47 46 $\frac{1}{2}$
Francis H. Nicoll,	do	do	do	do	24 00	17 33 $\frac{1}{2}$	5 33 $\frac{1}{2}$	80	47 46 $\frac{1}{2}$
Floyd S. Bailey,	do	do	do	do	24 00	17 33 $\frac{1}{2}$	5 33 $\frac{1}{2}$	80	47 46 $\frac{1}{2}$
Edward Thomson,	do	do	do	do	36 00	26 00	8 00	1 20	71 20
Charles Mackie,	do	do	do	do	36 00	26 00	8 00	1 20	71 20
Edward H. Nicoll,	do	do	do	do	36 00	26 00	8 00	1 20	71 20
Francis H. Nicoll,	do	do	do	do	36 00	26 00	8 00	1 20	71 20
Floyd S. Bailey,	do	do	do	do	12 00	8 66 $\frac{2}{3}$	2 66 $\frac{2}{3}$	40	23 73 $\frac{1}{3}$
Edward Thomson,	do	do	do	do	12 00	8 66 $\frac{2}{3}$	2 66 $\frac{2}{3}$	40	23 73 $\frac{1}{3}$
Charles Mackie,	do	do	do	do	12 00	8 66 $\frac{2}{3}$	2 66 $\frac{2}{3}$	40	23 73 $\frac{1}{3}$
Edward H. Nicoll,	do	do	do	do	30 00	21 66 $\frac{2}{3}$	6 66 $\frac{2}{3}$	1 00	59 33 $\frac{1}{3}$
Francis H. Nicoll,	do	do	do	do	606 00	437 66 $\frac{2}{3}$	134 66 $\frac{2}{3}$	20 20	1,198 53 $\frac{1}{3}$
Floyd S. Bailey,	do	do	do	do	606 00	437 66 $\frac{2}{3}$	134 66 $\frac{2}{3}$	20 20	1,198 53 $\frac{1}{3}$
Edward Thomson,	do	do	do	do	606 00	437 66 $\frac{2}{3}$	134 66 $\frac{2}{3}$	20 20	1,198 53 $\frac{1}{3}$
Charles Mackie,	do	do	do	do	606 00	437 66 $\frac{2}{3}$	134 66 $\frac{2}{3}$	20 20	1,198 53 $\frac{1}{3}$
Francis H. Nicoll,	do	do	do	do	606 00	437 66 $\frac{2}{3}$	134 66 $\frac{2}{3}$	20 20	1,198 53 $\frac{1}{3}$
Edward H. Nicoll,	do	do	do	do	12 00	8 66 $\frac{2}{3}$	2 66 $\frac{2}{3}$	1 00	33 00
Floyd S. Bailey,	2 40	2 66 $\frac{2}{3}$	do	do	12 00	13 33 $\frac{1}{2}$	6 66 $\frac{2}{3}$	1 00	33 00
Edward Thomson,	do	do	do	do	12 00	13 33 $\frac{1}{2}$	6 66 $\frac{2}{3}$	1 00	33 00

Charles Mackie,	5 do	645 to 649	-	do	do	do	do	do	12 00	13 33½	6 66½	1 00	33 00
Edward H. Nicoll,	5 do	650 to 654	-	do	do	do	do	do	12 00	13 33½	6 66½	1 00	33 00
Francis H. Nicoll,	5 do	655 to 659	-	do	do	do	do	do	12 00	13 33½	6 66½	1 00	33 00
Peter Mackie,	7 do	660 to 666	-	do	do	do	do	do	16 80	18 66½	9 33½	1 40	46 20
Peter Mackie,	4 do	667 to 670	-	6 00	4 33½	do	do	do	24 00	17 33½	5 33½	80	47 4½
									\$3,814 80	\$2,785 00	\$1873 33½	\$131 00	\$7,604 13½

Examined and allowed by

JOSEPH HOPKINSON.

November 8, 1830.—Received of John Conard, Esq., marshal, three thousand eight hundred and fourteen dollars and eighty cents, my fees, taxed as above. (Duplicate.)

C. J. INGERSOLL, *late Dist. Att'y.*

November 8, 1830.—Received of John Conard, Esq., marshal, two thousand seven hundred and eighty-five dollars, my fees, taxed as above. (Duplicate.)

D. CALDWELL, *Clerk.*

November 8, 1830.—Received of John Conard, Esq., marshal, one hundred and thirty-one dollars, my fees. (Duplicate.)

J. COX, *Crier.*

No. 9.—List of costs in criminal cases, circuit court, October session, 1827.

	No.	Bill.	Attorney.	Clerk.	Marshal.	Crier.	Attorney.	Clerk.	Marshal.	Crier.	Total.
The U. S. vs. Louis A. Imbert, murder	1	1	each \$2 40	\$2 66 $\frac{2}{3}$	\$1 33 $\frac{1}{2}$	\$0 20	\$2 40	\$2 66 $\frac{2}{3}$	\$1 33 $\frac{1}{2}$	\$0 20	\$6 60
Do. Louis A. Imbert, manslaughter	2	1	each 6 00	4 33 $\frac{1}{2}$	"	"	6 00	4 33 $\frac{1}{2}$	1 33 $\frac{1}{2}$	20	11 86 $\frac{2}{3}$
Do. Wm. Clew, stealing from bank	3	1	each "	"	"	"	6 00	4 33 $\frac{1}{2}$	1 33 $\frac{1}{2}$	20	11 86 $\frac{2}{3}$
Do. Wm. Clew, embezzlement do	4	1	each "	"	"	"	6 00	4 33 $\frac{1}{2}$	1 33 $\frac{1}{2}$	20	11 86 $\frac{2}{3}$
Do. Reuben Moses, forgery	5	1	each "	"	"	"	6 00	4 33 $\frac{1}{2}$	1 33 $\frac{1}{2}$	20	11 86 $\frac{2}{3}$
Do. John W. Craig, forgery	6 to 9	4	each "	"	"	"	24 00	17 33 $\frac{1}{2}$	5 33 $\frac{1}{2}$	80	47 46 $\frac{2}{3}$
Do. Reuben Moses, forgery	10 to 13	4	each "	"	"	"	24 00	17 33 $\frac{1}{2}$	5 33 $\frac{1}{2}$	80	47 46 $\frac{2}{3}$
Do. Bernard Johnson, forgery	14	1	each "	"	"	"	6 00	4 33 $\frac{1}{2}$	1 33 $\frac{1}{2}$	20	11 86 $\frac{2}{3}$
Do. Benjamin Moses, forgery	15 to 19	5	each "	"	"	"	30 00	21 66 $\frac{2}{3}$	6 66 $\frac{2}{3}$	1 00	59 33 $\frac{1}{2}$
Do. Ebenezer Gleason, forgery	20 to 23	4	each "	"	"	"	24 00	17 33 $\frac{1}{2}$	5 33 $\frac{1}{2}$	80	47 46 $\frac{2}{3}$
Do. Jacob K. Boyer, forgery	24 to 25	2	each "	"	"	"	12 00	8 66 $\frac{2}{3}$	2 66 $\frac{2}{3}$	40	23 73 $\frac{1}{2}$
Do. John Dager, forgery	26 to 27	2	each "	"	"	"	12 00	8 66 $\frac{2}{3}$	2 66 $\frac{2}{3}$	40	23 73 $\frac{1}{2}$
Do. Abraham Hause, forgery	28 to 29	2	each "	"	"	"	12 00	8 66 $\frac{2}{3}$	2 66 $\frac{2}{3}$	40	23 73 $\frac{1}{2}$
Do. Samuel Brewster, forgery	30 to 31	2	each "	"	"	"	12 00	8 66 $\frac{2}{3}$	2 66 $\frac{2}{3}$	40	23 73 $\frac{1}{2}$
Do. James Purdy, forgery	32 to 33	2	each "	"	"	"	12 00	8 66 $\frac{2}{3}$	2 66 $\frac{2}{3}$	40	23 73 $\frac{1}{2}$
Do. David Kendrick, forgery	34 to 35	2	each "	"	"	"	12 00	8 66 $\frac{2}{3}$	2 66 $\frac{2}{3}$	40	23 73 $\frac{1}{2}$
Do. John W. Craig, forgery	36 to 104	69	each "	"	"	"	414 00	299 00	92 00	13 80	818 80
Do. Benjamin Moses, forgery	105 to 108	4	each "	"	"	"	24 00	17 33 $\frac{1}{2}$	5 33 $\frac{1}{2}$	80	47 46 $\frac{2}{3}$
Do. Ebenezer Gleason, forgery	109 to 111	3	each "	"	"	"	18 00	13 00	4 00	60	35 60
Do. Daniel Malony, forgery	112	1	each "	"	"	"	2 40	2 66 $\frac{2}{3}$	1 33 $\frac{1}{2}$	20	6 60
Do. Ann Haney, forgery	113	1	each "	"	"	"	6 00	4 33 $\frac{1}{2}$	1 33 $\frac{1}{2}$	20	11 86 $\frac{2}{3}$
Do. Ann Haney, forgery	114	1	each "	"	"	"	6 00	4 33 $\frac{1}{2}$	1 33 $\frac{1}{2}$	20	11 86 $\frac{2}{3}$
Do. Eliza Haney, forgery	115 to 116	2	each "	"	"	"	12 00	8 66 $\frac{2}{3}$	2 66 $\frac{2}{3}$	40	23 73 $\frac{1}{2}$
Do. Reuben Moses, forgery	117 to 179	63	each "	"	"	"	378 00	273 00	84 00	12 60	747 60
Do. Reuben Moses, forgery	180 to 184	5	each "	"	"	"	30 00	21 66 $\frac{2}{3}$	6 66 $\frac{2}{3}$	1 00	59 33 $\frac{1}{2}$
Do. James Morrow, forgery	185	1	each "	"	"	"	6 00	4 33 $\frac{1}{2}$	1 33 $\frac{1}{2}$	20	11 86 $\frac{2}{3}$
							\$1,102 80	\$798 33 $\frac{1}{2}$	\$246 66 $\frac{2}{3}$	\$37 00	\$2,184 80

Examined and allowed by

JOS. HOPKINSON.

November 8, 1830, received of John Conard, Esq., marshal, \$1,102 80, my fees taxed as above. (Duplicate.)

C. J. INGERSOLL, late Dist. Atty.

November 8, 1830, received of John Conard, Esq., marshal, \$798 33 $\frac{1}{2}$, my fees taxed as above. (Duplicate.)

D. CALDWELL, Clerk.

November 8, 1830, received of John Conard, Esq., marshal, \$37, my fees.

J. COX, Crier.

No. 10.—List of costs in criminal cases, circuit court, April session, 1828.

The United States versus—	Attorney.	Clerk.	Marshal.	Crier.	Attorney.	Clerk.	Marshal.	Crier.	Total.
Henry Howland, murder, No. 1 } Henry Howland, manslaughter, No. 2 } 3 bills each Henry Howland, assault with an intent to perpetrate felony, No. 3 }	\$2 40	\$2 66½	\$1 33½	\$0 20	\$7 20	\$8 00	\$4 00	\$0 60	\$19 80
Ann Haney, forgery, No. 4, 1 bill	6 00	4 33½	1 33½	20	6 00	4 33½	1 33½	20	11 86½
Eliza Haney, forgery, Nos. 5 & 6, 2 bills	6 00	4 33½	1 33½	20	12 00	8 66½	2 66½	40	23 73½
David Hendrick, forgery, Nos. 7 & 8, 2 bills	6 00	4 33½	1 33½	20	12 00	8 66½	2 66½	40	23 73½
Benjamin Moses, alias Thompson, forgery, Nos. 9 & 10, 2 bills	6 00	4 33½	1 33½	20	12 00	8 66½	2 66½	40	23 73½
Jacob R. Boyer, forgery, No. 11, 1 bill	6 00	4 33½	1 33½	20	6 00	4 33½	1 33½	20	11 86½
Benjamin Moses, forgery, No. 12, 1 bill	6 00	4 33½	1 33½	20	6 00	4 33½	1 33½	20	11 86½
David Selzer, forgery, No. 13, 1 bill	6 00	4 33½	1 33½	20	6 00	4 33½	1 33½	20	11 86½
Jacob R. Boyer, forgery, No. 14, 1 bill	6 00	4 33½	1 33½	20	6 00	4 33½	1 33½	20	11 86½
Ebenezer Gleason, forgery, No. 15, 1 bill	6 00	4 33½	1 33½	20	6 00	4 33½	1 33½	20	11 86½
Benjamin Moses, alias Thompson, forgery, No. 16, 1 bill	6 00	4 33½	1 33½	20	6 00	4 33½	1 33½	20	11 86½
Peter Miers, forgery, No. 17, 1 bill	6 00	4 33½	1 33½	20	6 00	4 33½	1 33½	20	11 86½
John Dagers, forgery, Nos. 18 to 20, 3 bills	6 00	4 33½	1 33½	20	18 00	13 00	4 00	60	35 60
John McClintock, forgery, do. 21 to 23, 3 bills	6 00	4 33½	1 33½	20	18 00	13 00	4 00	60	35 60
Ebenezer Gleason, forgery, do. 24 & 25, 2 bills	6 00	4 33½	1 33½	20	12 00	8 66½	2 66½	40	23 73½
Benjamin T. Moses, alias B. Thompson, forgery, do. 26 & 27, 2 bills	6 00	4 33½	1 33½	20	12 00	8 66½	2 66½	40	23 73½
	151 20	112 00	36 00	5 40					304 60

Examined and allowed by

JOS. HOPKINSON.

November 8, 1830.—Received of John Conard, Esq., marshal, one hundred and fifty-one dollars and twenty cents, my fees, taxed as above.

C. J. INGERSOLL, late Dist. Atty.

November 8, 1830.—Received of John Conard, Esq., marshal, one hundred and twelve dollars, my fees, taxed as above.

D. CALDWELL, Clerk.

November 8, 1830.—Received of John Conard, Esq., marshal, five dollars and forty cents, my fees.

(Signed duplicates.)

J. COX, Crier.

No. 11.

List of costs in criminal cases, circuit court, October session, 1838.

	No.	Bill.	Attorney.	Clerk.	Marshal.	Crier.	Attorney.	Clerk.	Marshal.	Crier.	Total.
The U. S. vs. James S. Mace, forgery -	1	1	\$6 00	\$4 33½	\$1 33½	\$0 20	\$6 00	\$4 33½	\$1 33½	\$0 20	\$11 86½
The U. S. vs. Wm. Kirk, prosecuting warrant against a foreign minister -	2	1	6 00	4 33½	1 33½	20	6 00	4 33½	1 33½	20	11 86½
The U. S. vs. Elizabeth McCulloch, having blank bank notes in her possession -	3	1	2 40	2 66½	1 33½	20	2 40	2 66½	1 33½	20	6 60
							14 40	11 33½	4 00	60	30 33½

Examined and allowed by

JOS. HOPKINSON.

November 8, 1830.—Received of John Conard, Esq., marshal, &c. \$14 40, my fees, taxed as above. (Duplicate.)

C. J. INGERSOLL, *late Dist. Att'y.*

November 8, 1830.—Received of John Conard, Esq., marshal, &c. \$11 33½, my fees, taxed as above. (Duplicate.)

D. CALDWELL, *Clerk.*

November 8, 1830.—Received of John Conard, Esq., marshal, &c. 60 cents, my fees, taxed as above. (Duplicate.)

J. COX, *Crier.*

No. 12.

List of costs in criminal cases, circuit court, October session, 1829.

	No.	Bill.	Attorney.	Clerk.	Marshal.	Crier.	Attorney.	Clerk.	Marshal.	Crier.	Total.
The United States vs. Henry Kesler, alias Henry Wood, murder -	1	1	\$6 00	\$4 33½	\$1 33½	\$0 20	\$6 00	\$4 33½	\$1 33½	\$0 20	\$11 86½
The United States vs. Henry Kesler, alias Henry Wood, perjury -	2	1	6 00	4 33½	1 33½	20	6 00	4 33½	1 33½	20	11 86½
The United States vs. Henry Kesler, alias Henry Wood, misdemeanor -	3	1	6 00	4 33½	1 33½	20	6 00	4 33½	1 33½	20	11 86½
The United States vs. Thomas Cobb, piracy and endeavor to make revolt -	4	1	6 00	4 33½	1 33½	20	6 00	4 33½	1 33½	20	11 86½
							\$24 00	\$17 33½	\$5 33½	80	\$47 46½

Examined and allowed by

JOS. HOPKINSON.

November 8, 1830, received of John Conard, Esq., marshal, &c., \$24, my fees taxed as above. (Duplicate.)

C. J. INGERSOLL, *late Dist. Att'y.*

November 8, 1830, received of John Conard, Esq., marshal, &c., \$17 33½, my fees taxed as above. (Duplicate.)

D. CALDWELL, *Clerk.*

November 8, 1830, received of John Conard, Esq., marshal, &c., \$0 80, my fees taxed as above. (Duplicate.)

J. COX, *Crier.*

WASHINGTON, February 12, 1836.

The Hon. ELISHA WHITTLESEY,
Chairman Committee of Claims :

SIR: The petition of the executors of David Caldwell, late clerk of the circuit court of the United States for the eastern district of Pennsylvania, claiming to be paid certain fees of the clerk of the circuit court of the eastern district of Pennsylvania, and due to the estate of their testator, having been referred by the House of Representatives to the committee of which you are the chairman, I beg leave respectfully to present, for the consideration of this committee, this communication, and to solicit their attention to it and the accompanying documents.

Anterior to March, 1828, I was employed as the agent of Mr. Caldwell, since deceased, then clerk, and of John Conard, then marshal of the eastern district of Pennsylvania, to present a claim on the Treasury of the United States for fees due to those officers by the United States, in suits instituted by order of the Treasury, and by direction of the collector of the customs in Pennsylvania; in which suits the defendants had become insolvent, or in which, by order of the Government, the suits had been discontinued, or the defendants had been discharged by the President of the United States, or by the Secretary of the Treasury.

The liability of the Government for these costs was, in the first instance, denied; and after a long and laborious investigation and discussion on the subject, I succeeded in establishing the rights I represented to be paid those costs, and they were, in 1828, accordingly paid. In the course of my correspondence with the Comptroller, Mr. Anderson, and of frequent personal interviews with him on the subject of these claims, I became particularly acquainted with that respectable gentleman. This circumstance I deem important, because, at a subsequent period, when I again presented myself at the Treasury, representing the rights of Mr. Caldwell to the costs which are now claimed by the petition of his executors, my acquaintance with the Comptroller, and my intimate knowledge of the principles of law and of the decisions of the Treasury on claims of the officers of courts of the United States to costs, prevented or diminished many of the difficulties which otherwise would have existed.

Between October term, 1826, and October term, 1829, inclusive, the officers of the circuit court of the United States for the eastern district of Pennsylvania became entitled to the sum of \$10,171 33 for costs in criminal prosecutions instituted by the United States in the circuit courts.

The claims of the officers were as follows:

The district attorney, clerk, and crier	-	-	-	\$9,006 00
The marshal	-	-	-	1,165 33
			Total	\$10,171 33
The costs due to David Caldwell, Esq., composing a part of this sum	-	-	-	\$3,724 00
And to the marshal \$1,065 33	-	-	-	1,065 33
			Together	\$4,789 33

The residue of the sum of 10,171 dollars and 33 cents was due to the district attorney, Mr. C. J. Ingersoll, and to the crier.

The larger portion—far the larger portion—of these costs were those of the numerous prosecutions which grew out of the “tea cases” in Pennsylvania; prosecutions ordered by the Treasury Department, and instituted at October term, 1826; all which terminated against the United States. The grand jury had required that bills of indictment in various forms, and in great numbers, should be laid before them by the district attorney against Edward Thomson, Charles Mackie, Francis H. Nicoll, Edward Nicoll, and Floyd S. Bailey, and the costs of these prosecutions amounted to 7,604 dollars 13 $\frac{1}{2}$ cents. The costs of criminal cases at October term, 1827, amounted to 2,184 dollars 80 cents; the costs of criminal cases at April and October terms, 1828, and at October term, 1829, added to the sums stated, amounted to 10,171 dollars 33 $\frac{1}{2}$ cents. I beg leave to repeat, that the largest portion of these costs arose out of the “tea cases,” as this fact had an important influence in the adjustment of the claims on the Treasury for payment, and in their original taxation by the circuit court.

The usual practice of the circuit courts of Pennsylvania had been to tax the bills of costs of each term, as soon as each term was over, by the district judge; and thus the marshal was enabled to present in his accounts the claims of the officers, respectively, for their fees, to the Treasury for payment. *Pro forma* receipts always accompanied the marshal's account, which were given by the respective officers in order to facilitate its adjustment. It has always been well known at the Treasury that these receipts were given for no other purpose than that stated. To suppose that they were evidence of *payment actually made* by the marshal, would be to allow him to judge of the propriety and legality of their payment, and thus to involve him in the obligation to advance large sums of money, the ultimate reimbursement of which would depend upon the allowance of those payments in his accounts with the United States. It is asserted, with emphasis, that in no case has the marshal of Pennsylvania paid such claims to the officers of the courts of the United States until after their admission to his credit by *pro forma* receipts, given to him for the sole purpose of enabling him to make payments by direct receipts from the Treasury, or out of funds previously advanced to him by the Treasury, in the confidence that he will appropriate the same to the payment of the debts of the United States, due and allowed at the Treasury, on the settlement of his accounts.

At the October term, 1826, of the circuit court, and until after April term, 1828, Richard Peters, Esq., was the district judge of the eastern district of Pennsylvania. After his decease, Judge Hopkinson became his successor, whose appointment took place in February, 1829.

It is personally known to me that some obstructions existed in relation to the taxation of the costs of the prosecution in the “tea cases” in October, 1826: the large amount of these costs, arising from the bills of indictment being so numerous, created this difficulty, and the costs were not taxed until after Judge Hopkinson took his seat in the circuit court. The question of their taxation was then regularly presented to the court, composed of Judges Washington and Hopkinson; the bills were carefully scrutinized and examined; and, by the deliberate judgment of the court, they were approved and ordered to be taxed. Judge Washington

had presided in the circuit court when those indictments were laid before the grand jury, and it was proved to the satisfaction of the court that the bills of indictment, in the various forms and to the number presented, had been drawn up and submitted to the grand jury at their especial and positive request. A certificate to this effect, signed by the grand jury, (gentlemen of the highest respectability,) was laid before the court, and a copy of the same was transmitted to the Treasury with the tax bills.

These tax bills were charged in the marshal's account of October session, 1829, transmitted to the Treasury Department in January, 1830; but no receipts for the sums due to the district attorney, the clerk, or the crier, accompanied the accounts. The marshal had presented his accounts of the expenses of the administration of justice in his district in 1826, 1827, 1828, and for April term, 1829, without any reference to these bills of costs. Advances had been made to him by the Treasury Department in 1826, 1827, 1828, and 1829, on requisitions for such expenses, *these costs not having been included in any of the estimates in which said requisitions were made*; nor was their payment by the marshal, at any time, out of these advances, anticipated, or expected, or authorized by the Treasury Department.

In 1828, April, there was advanced by the Secretary of the Treasury					
to the marshal, the sum of					
					\$6,950
"	May	-	-	-	1,470
"	October	-	-	-	6,500
"	December	-	-	-	950
In 1829, April					
				\$6,350	
"	June 30th	-	-	-	725
"	October 13th	-	-	-	6,300
					13,375
In 1830, February 4th					
					2,775
Total (see document marked A)					
					32,020

Assuredly the advance of October 13, 1829, and of February 4, 1830, was not made with a view to provide for the payment of the costs now claimed. They were not taxed until November, 1829, nor claimed in any account by the marshal before January, 1830; and they were not so favorably regarded by the Treasury as that they, before their admission into the marshal's accounts at the Treasury, were so considered as to induce the placing of money in his hands to pay them.

The accounts of the marshal for October term, 1829, transmitted in January, 1830, were examined by the First Auditor on the 6th March, 1830. The charges for the costs in criminal cases first presented, as has been stated, in those accounts, were not admitted to his credit by the Auditor, but were "*suspended, not being receipted for, and it being yet undecided by whom the costs shall be paid.*"

In the report of the Auditor to the Comptroller on this account there is the following note:

"*Note.*—In the above sum of \$10,171 33, *taxed* as costs attending criminal prosecutions, is included, per bill No. 1, \$7,604 13, for those accruing, as is understood, on the famous *tea cases*; which being connected with the revenue, it is submitted whether it ought not to be paid, after being

verified and vouched to his satisfaction, by the collector of the customs. In the mean time, the whole charge is suspended, no part thereof being supported by vouchers of payment.

R. HARRISON."

I beg leave to state briefly the condition of these matters in March, 1830.

The accounts of the marshal for expenses of the administration of justice in Pennsylvania, for 1826, 1827, and 1828, had been from time to time transmitted to the Treasury by him, without any charge in those accounts of the costs in criminal cases in those years. Advances had been made to him by the Treasury with no view or purpose connected with the payment of those costs, and no receipts for the sums payable to the district attorney, the clerk, and the crier; for their respective portions of the sum of ten thousand one hundred and seventy-one dollars and thirty-three cents, had accompanied the accounts of the marshal. The account of the marshal had been examined by the First Auditor, and the whole amount of these costs was suspended, because no receipts for the sums due to the district attorney, clerk, and crier, had been transmitted with the account, and it had not been determined by whom—whether by the Treasury of the United States, or by the collector of the port of Philadelphia—they should be paid.

From this period (from about the 18th March, 1830,) the writer of this letter became personally connected with the claims of the clerk, marshal, and crier, to their portion of the costs included in the large sum stated; having been authorized by them, specially and particularly, to obtain an adjustment of the same at the Treasury. He had no authority to represent the district attorney in relation to his claim for a portion of those costs, and, although he appeared to have a connexion with the claims of that officer at a subsequent period, it was confined and limited to the act stated in the correspondence with the Comptroller of the Treasury—that of transmitting his *pro forma* receipt.

About the 18th March, 1830, after the Supreme Court of the United States had adjourned, I presented myself at the Treasury Department, and had an interview with the Comptroller. I distinctly stated to him that I was the agent of Mr. Caldwell, and of the marshal and of the crier, to claim the payment of the sums due, respectively, to these officers. After some discussion on the subject of the claims, and after having given to the Comptroller, as I supposed, satisfactory explanations, I received from him an assurance that the accounts should be audited and adjusted.

In the course of the examination of the bills as taxed, a question was again raised by the Comptroller as to the mode in which they should be paid—whether by a warrant on the Treasurer, or by an order on the collector of the port of Philadelphia to pay them to the marshal for the respective claimants. This question was not decided by the Comptroller, and he considered it proper to submit it to the Secretary of the Treasury. To the clerk, marshal, and crier, represented by me, the decision of the question was of no moment. As no receipts had accompanied the accounts of the marshal, and as they were by the Auditor required to authorize the payment by the United States, either by a warrant for the whole sum, or by an order on the collector, who would, on

the receipt of the same, pay over to the parties, respectively, the sums receivable by them, I promised, on my return to Philadelphia, to transmit the *pro forma* receipts of the clerk and crier, and to communicate to Mr. Ingersoll the suggestion of the Comptroller. I had explicitly, in the course of my communications with the Comptroller, stated to him that I had no authority from Mr. Ingersoll to represent him or act for him. I distinctly and positively state—and I ask the attention of the committee to the fact—that I agreed to send the receipts of Mr. Caldwell and the crier, and, if he should desire me to do so, of Mr. Ingersoll, in order to enable the Auditor, Mr. Harrison, to pass the accounts, and thus to *obtain payment* of the sum due to those officers by the Treasury, or by the collector of the port of Philadelphia, as should be decided by the Secretary. The *pro forma* receipts were promised solely for the purpose stated, and not for the purpose of authorizing a *credit* to the marshal in his accounts with the United States, then or at any time afterwards. It was known to me, so far as I could know it from assurances given to me by the marshal, as well as from the fact of bills of costs not having been taxed for fees in criminal cases at the usual periods, that they had not been charged to the United States in any account which had been transmitted to the Treasury before 1830. No suggestion was made of an intention to pay the claim of the clerk, or those I represented, by a credit to the marshal in his accounts. Had this been intimated, it would have been the subject of a distinct protest. I well knew that at that time the marshal was in great pecuniary embarrassments; I had reason to believe, and did believe, that he was indebted to the United States in a large sum of money; I believed that he was indebted to Mr. Caldwell for a large sum, now ascertained to be seven thousand dollars, for fees collected and not paid over, and other transactions; I knew that his securities were altogether insufficient; I should have been false to my trust, if, aware of such a purpose, I had agreed to send on the receipts as required. I repeat the assertion, that the receipts were sent on, in order to lead to the adjustment of the accounts, and to their payment to those I represented, by the United States.

I returned to Philadelphia about the 22d March, 1830, and I communicated to Mr. Caldwell and Mr. Ingersoll the arrangement I had made with the Comptroller. I stated to both these gentlemen that the receipts required were only to enable the Auditor to pass the account, and that the money would soon afterwards be paid by the Treasury in one form or other. On the 27th March, 1830, I wrote to Mr. Anderson, the Comptroller, the letter marked B.

In that letter I transmitted the receipt of Mr. Caldwell, for \$3,724, and of Mr. Ingersoll for \$5,083, in order to enable the First Auditor to re-examine the claims of those officers, and to bring the same to an early adjustment; or, in other words, that the accounting officers of the Treasury might be authorized to transmit to the marshal, or authorize him to receive from the collector, the sums required to pay Mr. Caldwell and Mr. Ingersoll, and which, from my own statements, from the tenor of that letter, and from the necessary state of things, the Department knew were due and unpaid, and for the payment of which no funds had ever been placed in the hands of the marshal.

Not having been favored with a reply to my letter of March 27th, and

trusting to the assurances of the Comptroller, that on the transmission of the receipts the account would be sent to the Auditor, Mr. Harrison, on the 7th April I wrote to that officer, inquiring into the subject. I was promptly favored with a reply to my letter, and on April 11th, 1830, received from him the letter dated 9th April, herewith, marked C.

It became necessary again to address Mr. Anderson on the subject, and I wrote to him on the 12th April, a copy of which is marked D. I respectfully solicit the attention of the committee to that letter. After referring to the engagement of the Comptroller to transmit the account with the receipts to the First Auditor, it proceeds to call the attention of the Comptroller to his decision on the claims formerly represented by me, and suggests that decision as the rule for the payment of these costs. The importance of this reference, and of the whole language of that letter, will, I respectfully ask, be considered by the committee.

The difficulty and the objection now raised to the payment of the claims of the executors of Mr. Caldwell, arise from the allegation that, by the United States this claim, and the claims of the other officers of the court, have been paid by a credit of the amount in the accounts of Marshal Conard. At no period of the intercourse between the writer of this letter and the Comptroller was a suggestion made of a credit in the marshal's accounts for any purpose than that of form. The question before the Treasury was not a question of the admission of the charge of these costs in the accounts of the marshal with the United States: it was a question of the manner in which the same should be paid. In possession of the *pro forma* receipts to be transmitted by me, these sums would be credited in the marshal's accounts; but the payment was *suspended, it not being decided by whom the costs should be paid*—whether by the Treasury or by the collector. The very fact of the payment being stated as suspended, and the question being unsettled how the same was to be paid, is conclusive to show that the advances made to the marshal prior to March, 1830, from which a balance was due to the United States, did not arise from any circumstances connected with the claim now presented. Of these advances, \$6,300 (the whole sum being \$9,075) were made on the 13th October, 1829; and the \$6,300 added to the balance then due by the marshal to the United States on his last previous settlement, (being \$1,466 66,) made the sum due to the United States, before the costs were taxed, \$7,700 66.

Why the marshal was allowed to become so largely indebted to the United States cannot now be known. The whole expenses of the circuit court, of October term, 1829, to be provided for by advances from the Treasury, was \$3,893 93, which being paid out of the balance due, after the advance of \$6,300, would have left the marshal a debtor \$3,906 87; and although this balance was due to the United States, yet on February 4th, 1830, before any credit was given in the accounts of the marshal for the costs in criminal cases, and certainly with no view to the payment of these costs, a further advance was made by the Treasury of \$2,775, making the balance due by the marshal on that day \$6,581 89.

It may therefore be assumed—and it is a position from which the petitioners cannot be driven—that the balance of \$6,581 87, due by the marshal on the settlement of March 6th, 1830, was a debt due to the Gov-

ernment, which had not arisen in any manner connected with the claim of the costs in criminal cases; and that the officers of the Treasury, in allowing that balance to become due, had not done so, looking for its repayment by charging to the marshal those costs which were "suspended," because it was not determined in what manner these costs should be paid, nor whether the claim was to be extinguished, at least to the amount of \$6,581 87, by crediting the same to the marshal.

To my letter addressed on the 12th April, 1830, to the Comptroller, I was not favored with a reply. The business of a long session of Congress pressing heavily on his time, prevented his attending to the subjects of my communication. Anxious to bring the claims to a final adjustment, I addressed a letter to the Comptroller, on the 6th October, 1830, a copy of which is herewith, marked E; and soon afterwards I proceeded from Philadelphia to this city.

I arrived in Washington on the last days of October, and found the claims under my charge in the situation stated in a letter addressed to Mr. Caldwell on the 31st of that month, from which I beg leave to give an extract:

"Had I not visited this place in pursuit of your, and the marshal's, and district attorney's claims, they would have remained unsettled. I have found out the fact, that the original papers have become so mislaid as that they may be considered *lost*, and but for my presence and importunities they would have been concealed or covered up under the pressure of *official business*. I also found the claims laboring under the influence of strong prejudices, and I have been so fortunate as to remove all these with the Secretary and Solicitor of the Treasury. I can now with certainty say the accounts will be allowed as soon as they are again presented in the forms agreed upon."

In my personal communications with the Comptroller, after satisfying him again, as I had done in March preceding, of the legality and justice of the claims for costs, and after having had an interview with the Secretary and Solicitor of the Treasury, the following agreement was specifically and expressly made between the Comptroller and myself: That the costs stated in abstract No. 1, a duplicate of the same, with the receipts thereon of the respective officers, amounting to \$7,604 13, being forwarded by me, *should be paid by the collector of the port of Philadelphia*, being the costs of "revenue cases;" and that, on the reception of the said abstracts and the said receipts, the Comptroller would give directions to the marshal to present them to the collector for payment, who would be authorized by the Treasury to pay the same. That, as to the residue of the costs, being the residue of the sum of \$10,171 33, which were costs in criminal cases not connected with the revenue, and amounting to \$2,567 19, on the abstracts being forwarded with the receipts, they should, when approved by the Comptroller, be returned to the marshal, to be *charged in his next account* as costs against the United States, and afterwards paid by the marshal to the officers entitled thereto.

Under these arrangements, explicitly and positively made, and in the full confidence that all the obstacles to the full payment of the said costs were removed, and that they would be immediately paid in the manner agreed upon, I returned to Philadelphia. On the 10th November, 1830,

the duplicate accounts, and duplicate *pro forma* receipts, were transmitted to the Comptroller of the Treasury with a letter of that date, a copy of which is herewith, marked F. That letter refers to the principles on which the payments were to be made, and asks for the performance of the agreements which had been made for their payment.

It is out of the extraordinary and unjust action of the Treasury Department, in violation of a positive contract entered into with me, as the known agent of the clerk and marshal, and as representing, informally, the district attorney, that the claims now referred to the committee of which you are chairman, arose, and I beg leave to state these proceedings of the Treasury particularly.

By document No. 4, transmitted to the committee by the acting Comptroller, it appears that after the receipt of my letter of November 10, 1830, and upon the 16th November, the Comptroller addressed a letter to Marshal Conard, in which he states that his accounts for expenditures at a circuit court held at Philadelphia, at October term, 1829, had been adjusted, and a balance of \$6,581 87 had been found due to the United States. To this, he states, there is an addition of \$2,775, paid by warrant of the Treasury of February 4, 1830; (these sums together made \$9,356 87;) that the amount of costs in criminal prosecutions, from October term, 1826, to October term, 1829, was "suspended, it being undecided by whom the costs shall be paid."

At that date, (the 16th November, 1830,) although the Comptroller had positively agreed otherwise, and the accounts with the receipts for the amount of the same having been received by the Treasury, it is stated that the payment of the same was *suspended*, it being undecided by whom the sums respectively due were to be paid. At that date, and up to that period, not a dollar had been advanced by the Treasury to the marshal upon requisitions looking to the payment of those sums; and the marshal was indebted to the Government, as has been stated, in the sum of \$9,356 87, for advances made for other purposes.

On the 3d December, 1830, the Comptroller addressed a letter to the marshal, in which he states that his accounts for these costs had been adjusted at the Treasury, and the amount of the same, \$10,171 33, *had been passed to his credit!!!* making a balance due to Marshal Conard of \$2,165 81. Thus his debt to the United States, not contracted for the purpose of paying these costs, was satisfied by appropriating the just debts due by the United States to Mr. Caldwell, the clerk, and Mr. Ingersoll, the district attorney. The marshal was insolvent, and never paid any part of the money due by the United States to those officers. He is yet insolvent, and, but for the relief expected from the justice of Congress, the amount due to the petitioners will be utterly lost to them.

By placing to the credit of the marshal the amount of costs due to Mr. Caldwell, it was intended to make him the creditor of an insolvent officer, and not of the Treasury of the United States; and this, without his consent or knowledge. By this arrangement, as unexpected as it was unjust, as destructive of the rightful claims of Mr. Caldwell as it was in violation of the positive agreement made with me by the Comptroller, Mr. Caldwell, and afterwards his executors, have been kept out of a sum of money to which, by positive law, they are fully entitled, for five years.

The credit given to Marshal Conard by the Treasury, on the 3d De-

ember, must have been so given without any expectation that the amounts due to the clerk and district attorney would be paid by him, but for the exclusive and known purpose of obtaining payment by the United States of a debt which he owed to the Government, for advances incautiously or improvidently made to him.

It was known at the Treasury that Marshal Conard was insolvent; that his securities were altogether insufficient; and on the question, who should suffer—the United States or the officers of the court; the United States, who had trusted him, or the officers,* who had never looked to the marshal for payment—the question was decided by the Treasury, having the power, but not the right, to decide it in favor of the United States.

I now beg leave respectfully to solicit your attention, and that of your committee, to the objections which have been made at the Treasury to the payment to the petitioners of their claims by Congress.

These are contained in a report made by Mr. Anderson, the Comptroller, under date of June 19, 1834, to Mr. Taney, then Secretary of the Treasury, in consequence of a letter addressed by Mr. Foster, the chairman of the Judiciary Committee of the House of Representatives, to the Secretary of the Treasury, when the petition of the late David Caldwell, Esq. and of C. J. Ingersoll, Esq. was before the House of Representatives. That report was communicated to the Committee of Claims by the Secretary of the Treasury, under date of January 4, 1836.

The objections stated by the Comptroller to the payment of these claims are as follows:

1. That these claims have, on receipts given by the officers, respectively, been passed to the credit of the marshal of the eastern district of Pennsylvania in his accounts settled at the Treasury on the 15th and 25th November, 1830, of which the marshal was advised on December 3, 1830. The Comptroller omits to state that this course of proceeding was immediately objected to by those to whom this injustice was done, and done in violation of specific or positive arrangements that the sums due the clerk and district attorney should be paid in the mode stated in this communication, and in my letter to him of November 10, 1830.

2. That the mode adopted for the adjustment and payment of the sums unpaid, and then and now claimed, was adopted under the authority of the act of Congress of 8th May, 1792. [Story's Laws, 259, chap. 36.]

3. That the payments due to the officers of courts, under the authority of this act, and in conformity with its true intent and meaning, have been made by advances made to the marshals of the United States, on requisitions addressed to the Secretary of the Treasury, founded on estimates of the expenses of courts, which estimates are examined and approved by the Comptroller before such advances are made, and out of which the fees due to the officers are paid by the marshal, and the amount of these payments are credited in his subsequent settlements with the accounting officers of the Treasury.

4. Previous to the time when Marshal Conard's accounts were settled at the Treasury, and the fees due to the officers of the courts were passed to his credit, he had received advances nearly sufficient to pay these fees. *He does not state, for he could not, that advances were made for the purpose of paying these fees; nor that they had been mentioned in any estimate which had been submitted to the Comptroller for examination and*

ratification; nor that they had been included in any requisition addressed by the marshal to the Secretary of the Treasury.

5. That he, the Comptroller, has no recollection of having received any caution from Mr. Ingersoll not to pay his fees to Mr. Conard, and it is to be inferred that the Comptroller is equally without a recollection of the same caution given by me to him, relative to Mr. Caldwell's fees, and of the agreement made by him that the clerk and district attorney's fees should be paid in the mode stated in my letter dated November 10, 1830.

I beg permission to examine consecutively, and with all possible brevity, these objections, which I have endeavored to state faithfully from the report of the Comptroller.

First. As to the first, that the sums due to the clerk and district attorney were passed to the credit of the marshal, in a settlement of his accounts, on November 15 and 25, 1830, upon receipts given to him by those officers respectively, this is not denied; but, on the contrary, it is the specific subject of complaint, and the precise measure by which the injustice was done to Mr. Caldwell, for which his executors ask relief in their petition.

It is respectfully and confidently submitted that I have shown in this communication that this proceeding, in passing to the credit of the marshal the fees due to the officers of the court, was in direct contravention of the positive and express arrangement made with me, and in variance from the manner in which it was agreed these fees should be paid, to wit: \$7,604 13½ by an order of the Treasury on the collector of the port of Philadelphia, and \$2,184 80 to be passed to the credit of the marshal in his *next* settlement, and *to be then paid to the officers of the court.*

When it was known to the Comptroller that the receipts had been twice given to the marshal *pro forma only*; when it was also known to that officer that no part of the balance due to the United States by the marshal had become due by advances made to him to pay those fees; and also when it had been expressly communicated to the Comptroller that the marshal was in embarrassed circumstances; and when, by the measure of crediting to the marshal these fees in the manner stated, the United States obtained payment, by appropriating, for the payment thereof, the moneys due by them to the clerk and district attorney, of a debt due to the United States by the marshal, and thus the claims of these officers on the United States were sought to be extinguished, such a course of proceeding cannot receive the sanction of Congress. If a defence of this character, in resistance of such claims as are now before your committee, should be presented before a court of justice, it would not be sustained.

Second. The second ground of objection to the allowance of the claims of the petitioners is founded upon an allegation that the mode of adjustment and payment, by crediting the same in the accounts of the marshal, was adopted under the authority of the act of Congress of May 8, 1792.

The provisions of the act will be found in section 4. That section enacts that there shall be paid to the marshal "the compensation of the clerk and district attorney, for attendance daily at the district and circuit courts;" and also, "the legal fees of the clerk, attorney, and marshal, *shall be included in the account of the marshal*; and the same having been *examined and certified* by the court, or one of the judges of it, in which the service shall have been rendered, shall *be passed* in the usual manner at,

and the amount thereof be *paid out of, the Treasury of the United States* to the marshal, and by him *shall be paid* over to the persons entitled to the same; and the marshal shall be allowed two and a half per cent. on the amount so by him paid over, to be *charged in his future account.*"

Now it is manifest, from the plain language of this section, that it was not contemplated by the Legislature, nor in any manner is authority given, to pay the per diem allowances and the fees, to which the officers of the courts of the United States are entitled, until the bills for the same had been "examined and certified by the court, or one of the judges of it, in which the services may be rendered;" and it is equally manifest that to pass the same to the credit of the marshal, requiring receipts from the officers entitled thereto, before such bills shall have been passed at the Treasury, having been examined and certified by the court or judge, is equally without the authority of the law. By the provisions of this section, they are to be included in the marshal's accounts, "and, when examined and certified by the court or judge," they are to be passed in the usual manner; "and *after this*, the amount thereof paid out of the Treasury of the United States" to the marshal, and by him paid over to the persons entitled to the same; and the residue of the section may be safely read, that the amount so paid, and two and a half per cent. on the same, shall be charged in the *future account* of the marshal. This construction of the last part of the section is submitted, but is not insisted upon. But it is with all respect insisted that the credit is to be given to the marshal, (if credit it may be called,) on the transmission to, or production at, the Treasury, of the examined and certified "statements of the fees of the officers, which, having been included in his accounts," is then to be passed; and then, without the production at the Treasury of any previous receipts from the officers of the courts, the amount of the same is to be paid out of the *Treasury of the United States* to the marshal, and by him paid over to the persons entitled to the same.

No advance of funds to pay the same, or any part thereof, is authorized by the provisions of the section: it permits no payment thereof before the examined and certified "statements have been passed at the Treasury." No money is to be paid out of the Treasury, or drawn from it to pay the persons entitled to these fees, until after the examined and certified "statements shall have been passed in the usual manner;" then, and *then only*, the amount is to be paid to the marshal, to be paid to the persons entitled. To assert that an advance of money to the marshal, for the purpose of paying the per diem allowances of the officers of the courts of the United States, and the fees for costs in criminal cases, before they have been included in the marshal's accounts, before the bills for the same had been examined and certified "by the court or the judge," &c., and before they have been passed at the Treasury, is authorized by the true intent and meaning of this act, is to mistake and misread its plain and express language.

Third. The third objection of the Comptroller to the admission of the claims of the clerk and district attorney to relief by Congress, is on the assertion that, under the authority of the act of 1792, and in conformity with "its true intent and meaning," advances are made to the marshals from the United States Treasury, on statements and requisitions of the sums prospectively payable for the expenses of courts of justice, &c.;

and that out of these funds, *in conformity with the provisions of the law*, he pays the per diem allowances and the fees due to the officers of the courts; and on his production of the receipts for the same, the amounts so paid by him are passed to his credit in subsequent settlements of the Treasury.

The assertion that this is the construction of the true intent and meaning of the act, has been already met, and, it is respectfully submitted, has been successfully denied. The law authorizes no money to be drawn from the Treasury, as advances to the marshal for payments which he cannot make, until the claims to be paid have been passed by the accounting officers of the Treasury, upon the examined and certified evidence of their right to payment, which the law requires to be furnished to the Treasury before their payment shall be allowed. The proceeding which has been adopted in reference to this matter is a mere *Treasury regulation*, adopted on its responsibility, and without the authority of law, for its convenience; adopted on its responsibility, without the consent of the parties interested; and therefore the Treasury of the United States is morally, justly, and legally bound for the consequences, for the *mala fides* of the persons intrusted by them with the money of the United States; and none should suffer for the breach of trust by the officer to whom the advance has been made without the authority of law, but the United States. It is denied that if funds to pay the officers entitled to receive the same shall have been put into the hands of the marshal, after the statement of the fees due to them had been included in the marshal's accounts, "examined and certified by the court or judge," and had been passed in the "usual manner" by the accounting officers of the Treasury, have not been paid over by the marshal to the persons entitled to the same, but have been withheld by him and appropriated to his own use, the United States are discharged from a continuing obligation and responsibility to pay them. *To advance money for their payment*, before they have been included in the marshal's accounts, examined or certified "by the court or judge," and to claim that the United States are not liable to pay these costs, the marshal having failed to pay them, is denied with equal and with greater emphasis.

The marshal is the chosen officer or agent of the United States, and for his acts, as between all persons affected thereby, as in other cases of the liability of a principal for the conduct of his agent, the United States are responsible. He is the selected officer of the Government, and is by law constituted the agent for the payment of money in such cases as that which is the subject of this petition. The law gives the authority of the officers of the court to receive from the United States, through him, the sums due to them for services rendered to the United States. In no other manner can they claim payment for those services. The law provides that he shall give security to the United States for the faithful performance of his duties; the amount of the security to be given, and the sufficiency of the sureties, are to be determined by the Government; and at all times, if the securities shall be considered insufficient, new or additional security may be required and insisted upon. In all this, the Government acts exclusively for the safety and fidelity of *their officer*; and if any are to suffer for his violations of duty, it certainly ought not to be those who had no agency in his appointment, nor in the determination

of the amount or sufficiency of his securities, and who, in constituting him an agent to pay debts due to them by the United States, are not by law authorized to interfere.

It is respectfully submitted that there are no analogies in the transactions of the United States with their officers and others which authorize or justify such a course as that which is now defended, and claimed to have the sanction of law, by the Comptroller, and thereby to defeat the relief sought by the petitioners.

It is repeated, that the requirement of receipts in favor of the marshal for the fees due for the officers of the courts before they shall be passed by the Treasury, and of money paid to those officers by the marshal, by a specific payment to him for the discharge of the same, is a Treasury regulation not authorized by the true intent and meaning of the act of Congress; that the advances to the marshal before their payment, before they are passed at the Treasury, if not paid by him, does not discharge the United States from their liability to pay the same to the persons entitled.

Fourth. It is asserted by the Comptroller, that previous to the time when Marshal Conard's accounts were settled at the Treasury, when the fees due to the officers of the court were passed to his credit, advances had been made to him by the Treasury to pay those fees.

I have altogether failed in establishing one of the propositions which I have attempted to establish in this communication, if I have not shown conclusively that, up to the period at which the fees due to the officers of the court were placed to the credit of Marshal Conard, not a dollar had been included in requisitions made by the marshal upon the Treasury for the expenses of the courts in Pennsylvania, in the expectation or for the purpose of paying those fees. It is unnecessary to repeat that those advances, if they had been specifically made for the purpose, and not so applied by the marshal, would not have released the United States from their liability to pay the same. The debt due by Marshal Conard to the United States arose from improvident, incautious, and perhaps illegal advances made to him upon estimates and requisitions for the payment of other anticipated expenses of courts in the eastern district of Pennsylvania. I have already, in stating the proposition, observed that the Comptroller does not assert that the advances had been made to the marshal to pay these fees. His high character and known respectability were assurances that no such assertion would be made. The position assumed is, that the marshal, being indebted to the United States for advances made to him for other purposes, might be discharged from his debt by admitting to his credit, in his accounts with the United States, *pro forma* receipts given to him by the officers of the courts—not for the purpose of admitting to his credit the amount stated in those receipts to be paid to them by him, but for the purpose of authorizing the Treasury to place money in his hands to pay the same by an order on the collector of the port of Philadelphia—and credit in his *next* account the amount of the fees known to be due and unpaid to the clerk and district attorney. To state this proposition in the only terms in which it can be stated, is to obtain for it a positive, emphatic, and irrevocable negative.

Fifth. The fifth and last proposition of the Comptroller is approached

with delicacy and respect. It is met and denied with an entire sense of respect for that officer. In the immensity, the intricacy and the variety, the responsibility and the labors, of the office of Comptroller of the Treasury, will be found the cause of his recollection not being more accurate. My recollection is clear and positive. It was expressly stated by me that I represented Mr. Caldwell in his claim to be paid these costs; it was plainly intimated to him that it was desired that the payment should be made without connecting the same with the subsisting accounts between Marshal Conard and the United States. My correspondence with the Comptroller shows clearly and unquestionably that payment by the Treasury of the claim I represented was sought for and expected. If a credit of any portion of the claim, in the accounts of the marshal, was to be given, it was to be so given in his *next account*, and to be followed forthwith, according to the true "intent and meaning" of the act of Congress, by a payment from the Treasury of the amount so "passed" by the accounting officers of the Treasury. I had no authority from Mr. Ingersoll to authorize any course of proceeding which would make him the creditor of Mr. Conard instead of the United States.

It will be observed by you, sir, that, in all these statements, no particular reference has been made to the *per diem* allowances, &c. due to Mr. Caldwell, amounting to seven hundred and seventy-two dollars and thirty-eight cents. It is not known to the executors of Mr. Caldwell that receipts for the respective sums which make up this amount, excepting for the sums of seven dollars and thirty-seven cents, for subpoenas, and fifteen dollars and five cents, also for subpoenas, were ever given to the marshal by Mr. Caldwell. But if any such receipts were given, no part of the amount has been paid to Mr. Caldwell, or to his executors, by him. If the Treasury has credited Marshal Conard with these allowances, &c. they are yet due to the estate represented by the petitioners, and, on the principles stated in this communication, they should be paid by the United States. The negligence, the fraud, the insolvency, the unmerited confidence in their agents by the United States, do not release the United States from the legal, much less the moral, obligation to pay them. I personally know that, in 1832, these sums, with the other amounts claimed in this petition, were unpaid by Mr. Conard. At that time he admitted to me that he had not paid them; and from that time to the present, it is well known that he has been entirely insolvent. The paper marked G is a copy of the abstracts of the compensation or *per diem* allowances, &c. due to Mr. Caldwell, and also to Mr. Dallas, then attorney of the United States, as examined and certified by Judge Hopkinson.

In conclusion, I respectfully state, that there is due from the United States to the executors of David Caldwell—

For fees in criminal cases.	-	-	-	-	\$3,724 00
For per diem allowances, &c.	-	-	-	-	772 38
Making together					<u>\$4,496 38</u>

This sum has been due and withheld after it was presented to the Treasury, in conformity with all the requirements of law, and after \$3,724 of the amount had, on the proper evidence of the right of the clerk to the

same, been "examined and certified" by the judge, from the 25th November, 1830; and the per diem allowances from about the same period. From that time, it is respectfully submitted, interest upon the whole sum of \$4,496 38 should be paid to the petitioners, the executors of Mr. Caldwell.

I have the honor to be,

Respectfully,

Your obedient servant,

RICH. PETERS.

CITY OF WASHINGTON, ss:

Richard Peters, being duly sworn according to law, says that the facts and circumstances which are stated in the foregoing communication, as having occurred through his own personal agency, are truly and faithfully detailed and set forth; and all the facts and circumstances therein mentioned are true, to the best of his knowledge, judgment, and belief.

RICH. PETERS.

Sworn and subscribed before me, February 16, 1836.

HENRY BALDWIN.

A.

TREASURY DEPARTMENT,

Register's Office, January 26, 1836.

The following advances were made to John Conard, marshal for the eastern district of Pennsylvania, during the years 1828, 1829, and 1830.

In 1828, April 4	-	-	-	-	\$6,950	
May 26	-	-	-	-	1,470	
Oct. 3	-	-	-	-	6,500	
Dec. 2	-	-	-	-	950	
						\$15,870
In 1829, April 3	-	-	-	-	6,350	
June 30	-	-	-	-	725	
Oct. 13	-	-	-	-	6,300	
						13,375
In 1830, Feb. 4	-	-	-	-	2,775	
April 10	-	-	-	-	6,900	
Oct. 2	-	-	-	-	6,750	
Nov. 29	-	-	-	-	1,100	
						17,525

The marshals returned no estimates to this office prior to 1833. The advances on account of the expenses of courts before that year were generally made on requisitions of the marshals, drawn on the Secretary of the Treasury, and were filed in that office.

MICH'L NOURSE.

B.

PHILADELPHIA, *March 27, 1830.*

DEAR SIR: I have the honor to enclose, according to promise, the receipts of David Caldwell, Esq., clerk of the circuit court of the United States, for \$3,724, being for the clerk's fees in criminal cases in the circuit court of Pennsylvania, at October session, 1826, October session, 1827, April and October sessions, 1828, and October session, 1829; and of Charles J. Ingersoll, Esq., late district attorney of the eastern district of Pennsylvania, for \$5,083 20, for his fees in criminal cases at the same sessions, except October, 1829. These receipts are the vouchers to sustain the claims of John Conard, Esq., marshal of the eastern district of Pennsylvania, according to the account rendered by him to the Treasury Department, and in which these sums are charged, and which charges are in all respects sustained by the requirements of the acts of Congress.

You had the goodness, sir, to assure me that, on the receipt of these documents, you would cause the account received from the First Auditor to be re-examined by him, and that the claims upon the same should be brought to early adjustment. May I be excused for calling your attention to these assurances.

I am, with great personal esteem, sir,

Very respectfully,

RICH'D PETERS.

HON. JOSEPH ANDERSON,

Comptroller of the Treasury.

PHILADELPHIA, *January 29, 1830.*

Received from John Conard, Esq., three thousand seven hundred and twenty-four dollars, being the clerk's fees in criminal cases in the circuit court, Pennsylvania, at October session, 1826, October session, 1827, April and October sessions, 1828, and October session, 1829.

\$3,724.

D. CALDWELL,

Clerk Circuit Court.

PHILADELPHIA, *January 29, 1830.*

Received from John Conard, Esq., five thousand and eighty-three dollars twenty cents, being the fees of the district attorney in criminal cases in the circuit court of Pennsylvania, at October session, 1826, October session, 1827, and April and October sessions, 1828.

\$5,803 20.

C. J. INGERSOLL,

Late District Attorney.

C.

TREASURY DEPARTMENT,

Auditor's Office, April 9, 1830.

SIR: Your letter of the 7th instant has been received, and referred by me to the Comptroller. Neither the receipts you mention, nor the accounts of Marshal Conard as stated in this office, have been sent by

the Comptroller to me; nor is it proper they should be so sent, until he or the Secretary shall decide on the mode of paying the costs in question, when allowed.

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

R. HARRISON.

RICHARD PETERS, Esq.,
Attorney at law, Philadelphia.

D.

PHILADELPHIA, April 12, 1830.

DEAR SIR: When I had the pleasure of seeing you upon the 22d and 23d of March, it was understood that I should transmit to you the receipts of the late district attorney, and of the clerk of the circuit court of this district, for certain fees taxed to them by the circuit court, and charged to the United States in the accounts of John Conard, Esq., marshal of the eastern district of Pennsylvania. The absence of these vouchers had been noted by the First Auditor in his examination of the account, and they were required by you. I therefore, soon after my return, transmitted those vouchers to you, with a respectful request that they might be sent to the First Auditor, and the account re-examined.

I received yesterday a letter from Mr. Harrison, under date of April 9, in which he informs me that the vouchers have not been sent to him, "nor is it proper that they should be so sent to him, until yourself or the Secretary shall decide on the mode of paying the costs, when allowed."

I had the honor, when I saw you, to refer in our conversation to your former decision upon this very question presented by Mr. Harrison, and you recollected the same. You decided that such charges as these in the marshal's accounts, for his fees and those of the district attorney and clerk, being the expenses *incidental* to the administration of justice, were to be paid at the Treasury. I afterwards left with one of the gentlemen in your department your letter to me containing this decision.

The claims of the officers of the court represented by me, and in relation to which I now address you, stand upon the same long established and practised principles with all those which are allowed under the authority of the acts of Congress for the expenses of the administration of justice in the courts of the United States. They are presented to the Treasury in precise accordance with the forms, and in full compliance with all the regulations, of the law. The bills of the late district attorney, of the marshal, and of the clerk, have been "taxed" by the circuit court, and this is certified in form.

The amount of these claims has no operation on their legality or justice. With this amount the officers had nothing to do. In the course of the careful scrutiny instituted by the circuit court when the taxation of these bills was under consideration, it was made most manifest that the number of the bills presented by the grand jury was the *work* of the *grand jury exclusively*. A document which shows this fact accompa-

nies, the marshal's account, and I also gave a copy of the same to the gentleman in your department before referred to.

Will you permit me, sir, earnestly and respectfully to ask your attention and consideration of this matter. Until the Secretary, or you, shall decide on the mode of paying these costs, nothing can or will be done. To the officers entitled to receive them, this is an important question; and as it is, therefore, a question of official regulation only, I presume no difficulties will interpose to its speedy adjustment.

I am, sir, very respectfully,

RICHARD PETERS.

HON. JOSEPH ANDERSON,
Comptroller of the Treasury.

E.

PHILADELPHIA, October 6, 1830.

DEAR SIR: I have not been favored with a reply to my letter of April 12th, on the subject of the claims of the clerk, and marshal, and late district attorney of the United States for this district, for costs as stated in the account which was presented to the Treasury by the marshal. In my letter of that date I stated the principles upon which those claims are founded, and, as I then presumed, referred to documents and provisions of law which placed the legality and justice of these claims out of question.

I urged as respectfully as in my power this matter on your consideration, and I trusted to your assurance, which I had the pleasure to receive from you in person, that as soon as the pressure of business consequent to the extended session of Congress should be removed, you would take up the accounts officially. Mr. Ingersoll, who afterwards visited Washington, was also informed that after the adjournment of Congress the accounts should be considered.

Allow me, sir, again earnestly to ask you to look into these claims. I refer you to my letter of the 12th April for the views I maintain in this matter. I will also add, that, if I read the act of Congress correctly, there cannot be a legal objection to the payment of the claims. *They have passed* into "judgment;" "taxed" by the circuit court; they are now before the Treasury with every support which the law requires; and, accompanied with which, I say with deference, they are as well entitled to payment as any other expenditure for the administration of justice.

But, sir, if I am not correct in these views, may I not ask that the objections of the Treasury to the allowance of these claims shall be stated, and the parties interested shall be informed of them? Nearly twelve months have passed since the accounts were rendered, and the non-payment of them is felt by the parties. If the Department has objections to their payment which cannot be obviated, and which are founded in law, they will be submitted to; but they ask to know them.

It is, sir, in no spirit of disrespect that I thus address you. I solicit the attention of the Department to claims considered lawful, vouched in exact compliance with the requirements of the act of Congress. If in this view I am mistaken, I ask that the error under which I and the parties are shall be stated.

Should you, sir, desire or prefer a personal interview with me on this subject, for the purpose of further explanation, I will most willingly repair to Washington. I have always had so much satisfaction in my intercourse with you, both official and private, that I am ever ready to avail myself of an occasion to renew the same.

I now ask, and I repeat it earnestly and respectfully, an early reply to this letter.

With sentiments of high esteem,

I am, sir, your obedient,

RICHARD PETERS.

Hon. JOSEPH ANDERSON,

Comptroller of the Treasury.

F.

PHILADELPHIA, *November 10, 1830.*

SIR : I have now the honor to enclose abstracts of costs due to the late district attorney of the United States for the eastern district of Pennsylvania, to the clerk of the circuit court, to the marshal, and to the crier.

These abstracts are as follows :

No. 1. Fees in criminal cases, called "the tea cases." Upon the abstract there are due to these officers, respectively, the following sums :

To Mr. Ingersoll, the late district attorney	-	-	\$3,814 80
To Mr. Caldwell, the clerk	-	-	2,785 00
To Mr. Conard, the marshal	-	-	873 33½
To Mr. Cox, the crier	-	-	131 00
Total	-	-	<u>\$7,604 13½</u>

The abstract No. 1 is a duplicate of one which has been for some time in the Department, and has become mislaid. The costs have been again taxed and allowed by Judge Hopkinson, the district judge; and duplicate receipts for the sums receivable by the late district attorney, Mr. Caldwell, the clerk, and the crier, will be found upon it. I also ask your reference to a duplicate of documents before presented to you, in which the causes of the large amount of these costs are fully explained, and by which I trust all impressions of an unfavorable nature, so far as the gentlemen who claim these fees may have been connected with these proceedings, will be fully removed, as I am confident they should be.

Thus stated, taxed, verified, and receipted, the vouchers for these claims bring them within all the provisions of the acts of Congress relative to criminal proceedings in the courts of the United States. As "revenue cases," they stand within your decision given some time since, by which they are payable by the collector of this port. Your directions to the marshal to present them to him for payment will be all that is required.

No. 2 is an abstract of costs in criminal cases not connected with the revenue, at October session of the circuit court, 1827.

Upon this, the fees of the late district attorney are	-	-	-	-	\$1,002 80
of the clerk	-	-	-	-	793 33½
of the marshal	-	-	-	-	246 66
of the crier	-	-	-	-	37 00
Total	-	-	-	-	<u>\$2,184 80½</u>

No. 3. Abstract of costs in criminal cases at April session of the circuit court, 1828, not connected with the revenue :

Upon this, the late district attorney's fees are	-	-	-	-	\$151 20
the clerk's	-	-	-	-	112 00
the marshal's	-	-	-	-	36 00
the crier's	-	-	-	-	5 40
Total	-	-	-	-	<u>\$304 60</u>

No. 4. Abstract of costs in criminal cases at October session, 1828, not connected with the revenue :

Upon this, the late district attorney's fees are	-	-	-	-	\$14 40
the clerk's	-	-	-	-	11 33½
the marshal's	-	-	-	-	4 00
the crier's	-	-	-	-	60
Total	-	-	-	-	<u>\$30 33½</u>

No. 5. Abstract of costs in criminal cases at October session, 1829, not connected with the revenue :

Upon this, the late district attorney's fees are	-	-	-	-	\$24 00
the clerk's	-	-	-	-	17 33½
the marshal's	-	-	-	-	5 33½
the crier's	-	-	-	-	80
Total	-	-	-	-	<u>\$47 46½</u>

All these abstracts, being Nos. 2, 3, 4, 5, are the fees in cases incidental to the expenses of courts. They are verified and receipted, and will, I trust, have your sanction; after which, they will be returned to Mr. Conard, the marshal, with instructions to charge them in his next account as costs against the United States.

In preparing the documents now forwarded, an anxious wish has prevailed to conform to the views of your Department. As these claims have remained unsettled for some time, I respectfully solicit for them your early attention.

I am your obedient servant,

RICHARD PETERS.

Hon. JOSEPH ANDERSON,
Comptroller of the Treasury.

G.

Abstract of compensation to George M. Dallas, attorney, and to D. Caldwell, clerk of the circuit court of the United States, for their attendance at said court, holden at Philadelphia, for the eastern district of Pennsylvania, from the 9th of October, A. D. 1829, to the 1st of April, A. D. 1830.

For the daily compensation of the attorney, sixteen days' attendance at stated sessions of said court, at \$5	- \$80 00
Sixteen days' attendance at special sessions of said court, at \$5	- 80 00
	\$160 00
For the daily compensation of the clerk for attendance as above	- 160 00
	\$320 00

G. M. DALLAS, *Attorney.*D. CALDWELL, *Clerk.*

Examined and allowed by

JOS. HOPKINSON.

Abstract of compensation to George M. Dallas, attorney, and to D. Caldwell, clerk of the circuit court of the United States, for their attendance at said court, holden at Philadelphia, for the district of Pennsylvania, at October session, A. D. 1829.

For the daily compensation of the attorney, twenty-seven days' attendance at court, at \$5	- \$135 00
For the daily compensation of the clerk, twenty-seven days' attendance at court, at \$5	- 135 00
	\$270 00

G. M. DALLAS, *Attorney.*D. CALDWELL, *Clerk.*

Circuit Court, October session, 1829. Examined and allowed by
JOS. HOPKINSON.

Abstract of compensation to George M. Dallas, attorney, and to D. Caldwell, clerk of the circuit court of the United States, for their attendance at said court, holden at Philadelphia, by adjournment between October session, 1829, and April session, 1830.

For the daily compensation of the attorney, seven days' attendance at court, at \$5	- \$35 00
For the daily compensation of the clerk, seven days' attendance at court, at \$5	- 35 00
	\$70 00

G. M. DALLAS, *Attorney.*D. CALDWELL, *Clerk.*

Examined and allowed by

JOS. HOPKINSON.

Abstract of compensation to George M. Dallas, attorney, and to D. Caldwell, clerk of the circuit court of the United States, holden at Philadelphia, in and for the district of Pennsylvania, in the third circuit, from the 3d of March to and including the 6th September, A. D. 1830.

For the daily compensation of the attorney, fifty-seven days' attendance at court, at \$5	-	-	-	-	-	285	00
For the daily compensation of the clerk, fifty-seven days' attendance at court, at \$5	-	-	-	-	-	285	00
						<u>\$570</u>	<u>00</u>

G. M. DALLAS, *Attorney.*
D. CALDWELL, *Clerk.*

Circuit Court, September 6, 1830. Examined and allowed by
JOS. HOPKINSON.

Abstract of compensation to George M. Dallas, attorney, and to D. Caldwell, clerk of the district court of the United States, for their attendance at said court, holden at Philadelphia, for the eastern district of Pennsylvania, from the 1st of April to and including the 17th September, A. D. 1830.

For the daily compensation of the attorney, twenty-seven days' attendance at court, at \$5	-	-	-	-	-	\$135	00
For the daily compensation of the clerk, twenty-seven days' attendance at court, \$5	-	-	-	-	-	135	00
						<u>\$270</u>	<u>00</u>

G. M. DALLAS, *Attorney.*
D. CALDWELL, *Clerk.*

District Court, September 17, 1830. Examined and allowed by
JOS. HOPKINSON.

Philadelphia, January 27, 1830. Received from John Conard, Esq. marshal, seven dollars and thirty-three cents, for subpoenas issued on behalf of the United States, returnable October session, 1829.

\$7 33.

D. CALDWELL,
Clerk Circuit Court.

Philadelphia, September 22, 1830. Received from John Conard, Esq. marshal, &c. fifteen dollars and five cents, for subpoenas issued on behalf of the United States, returnable circuit court, April session, 1830.

\$15 05.

D. CALDWELL,
Clerk Circuit Court.

