

pliance with the requirements of the eighteenth section of the act entitled "An act to regulate the diplomatic and consular systems of the United States," approved August 18, 1856.

U. S. GRANT.

WASHINGTON, December 3, 1872.

To the Senate of the United States:

I transmit to the Senate, for its consideration with a view to ratification, a convention between the United States of America and the United States of Mexico, signed in this city on the 27th ultimo, further extending the time fixed by the convention between the same parties of the 4th of July, 1868, for the duration of the joint commission on the subject of claims.

U. S. GRANT.

WASHINGTON, December 3, 1872.

To the Senate of the United States:

I transmit to the Senate, for its consideration with a view to ratification, a treaty between the United States of America and the Republic of Ecuador, providing for the mutual surrender of fugitive criminals, signed at Quito on the 28th of June last.

U. S. GRANT.

WASHINGTON, December 3, 1872.

To the Senate of the United States:

I transmit, for the consideration of the Senate with a view to ratification, a convention between the United States and His Majesty the King of Denmark, relating to naturalization.

U. S. GRANT.

WASHINGTON, December 9, 1872.

To the Senate of the United States:

In answer to the resolution of the Senate of the 5th instant, I transmit herewith a report* from the Secretary of State.

U. S. GRANT.

EXECUTIVE MANSION, December 12, 1872.

To the House of Representatives:

In compliance with section 2 of the act making appropriations for the consular and diplomatic expenses of the Government for the year ended June 30, 1871, and for other purposes, I herewith transmit a report received from the Secretary of the Treasury, giving the name of, the report made by, and the amount paid to the single consular agent of the United States.†

U. S. GRANT.

*Stating that the correspondence relative to the existence of slavery on the coast of Africa and to the action taken by Great Britain and other countries for its suppression was transmitted with the annual message of the President on the 2d instant.

† De B. Randolph Keim.

WASHINGTON, December 16, 1872.

To the Senate and House of Representatives:

I transmit to Congress a report from the Secretary of State, accompanied by that of the commissioners for inquiring into depredations upon the frontier of the State of Texas, appointed pursuant to the joint resolution of the 7th of May last.

U. S. GRANT.

WASHINGTON, January 5, 1873.

To the Senate of the United States:

I transmit, for the consideration of the Senate with a view to ratification, a convention for the surrender of criminals between the United States of America and the Republic of Honduras, which was signed at Comayagua on the 4th day of June, 1873.

U. S. GRANT.

WASHINGTON, January 13, 1873.

To the House of Representatives:

In answer to resolution of the House of Representatives of the 16th of December last, calling for information relative to the condition of affairs in Louisiana, and what, if any, action has been taken in regard thereto, I herewith transmit the report of the Attorney-General and the papers by which it is accompanied.

U. S. GRANT.

WASHINGTON, January 22, 1873.

To the Senate of the United States:

I transmit herewith to the Senate, for its consideration with a view to ratification, an additional article to the treaty between the United States and Her Britannic Majesty of the 8th of May, 1871.

U. S. GRANT.

EXECUTIVE MANSION, January 31, 1873.

To the Senate and House of Representatives:

In compliance with section 2 of the act approved July 11, 1870, entitled "An act making appropriations for the consular and diplomatic expenses of the Government for the year ending June 30, 1871, and for other purposes," I have the honor to submit herewith a letter of the Secretary of the Treasury relative to the consular agent* appointed under authority of said act, together with the amounts paid such agent, and to transmit the report of the said agent upon the consular service of the United States.

U. S. GRANT.

* De B. Randolph Keim.

WASHINGTON, February 8, 1873.

To the House of Representatives:

In answer to the resolution of the House of Representatives of the 29th of January, requesting information in relation to the case of Bernhard Bernstein,* I transmit herewith a report from the Secretary of State upon that subject, with accompanying documents.

U. S. GRANT.

WASHINGTON, February 13, 1873.

To the Senate and House of Representatives:

I transmit herewith a report from the Secretary of State and accompanying papers.†

U. S. GRANT.

EXECUTIVE MANSION, February 14, 1873.

To the Senate and House of Representatives:

I consider it my duty to call the attention of Congress to the condition of affairs in the Territory of Utah, and to the dangers likely to arise if it continues during the coming recess, from a threatened conflict between the Federal and Territorial authorities.

No discussion is necessary in regard to the general policy of Congress respecting the Territories of the United States, and I only wish now to refer to so much of that policy as concerns their judicial affairs and the enforcement of law within their borders.

No material differences are found in respect to these matters in the organic acts of the Territories, but an examination of them will show that it has been the invariable policy of Congress to place and keep their civil and criminal jurisdiction, with certain limited exceptions, in the hands of persons nominated by the President and confirmed by the Senate, and that the general administration of justice should be as prescribed by Congressional enactment. Sometimes the power given to the Territorial legislatures has been somewhat larger and sometimes somewhat smaller than the powers generally conferred. Never, however, have powers been given to a Territorial legislature inconsistent with the idea that the general judicature of the Territory was to be under the direct supervision of the National Government.

Accordingly, the organic law creating the Territory of Utah, passed September 9, 1850, provided for the appointment of a supreme court, the judges of which are judges of the district courts, a clerk, marshal, and an attorney, and to these Federal officers is confided jurisdiction in all important matters; but, as decided recently by the Supreme Court, the

* Claim against Russia for illegal arrest and imprisonment.

† Report of the United States commissioner to the International Penitentiary Congress of London, and appendix containing summary of proceedings of the National Prison Congress of Baltimore.

act requires jurors to serve in these courts to be selected in such manner as the Territorial legislature sees fit to prescribe. It has undoubtedly been the desire of Congress, so far as the same might be compatible with the supervisory control of the Territorial government, to leave the minor details connected with the administration of law to regulation by local authority; but such a desire ought not to govern when the effect will be, owing to the peculiar circumstances of the case, to produce a conflict between the Federal and the Territorial authorities, or to impede the enforcement of law, or in any way to endanger the peace and good order of the Territory.

Evidently it was never intended to intrust the Territorial legislature with power which would enable it, by creating judicatures of its own or increasing the jurisdiction of courts appointed by Territorial authority, although recognized by Congress, to take the administration of the law out of the hands of the judges appointed by the President or to interfere with their action.

Several years of unhappy experience make it apparent that in both of these respects the Territory of Utah requires special legislation by Congress.

Public opinion in that Territory, produced by circumstances too notorious to require further notice, makes it necessary, in my opinion, in order to prevent the miscarriage of justice and to maintain the supremacy of the laws of the United States and of the Federal Government, to provide that the selection of grand and petit jurors for the district courts, if not put under the control of Federal officers, shall be placed in the hands of persons entirely independent of those who are determined not to enforce any act of Congress obnoxious to them, and also to pass some act which shall deprive the probate courts, or any court created by the Territorial legislature, of any power to interfere with or impede the action of the courts held by the United States judges.

I am convinced that so long as Congress leaves the selection of jurors to the local authorities it will be futile to make any effort to enforce laws not acceptable to a majority of the people of the Territory, or which interfere with local prejudices or provide for the punishment of polygamy or any of its affiliated vices or crimes.

I presume that Congress, in passing upon the subject, will provide all reasonable and proper safeguards to secure honest and impartial jurors, whose verdicts will command confidence and be a guaranty of equal protection to all good and law-abiding citizens, and at the same time make it understood that crime can not be committed with impunity.

I have before said that while the laws creating the several Territories have generally contained uniform provisions in respect to the judiciary, yet Congress has occasionally varied these provisions in minor details, as the circumstances of the Territory affected seemed to demand; and in creating the Territory of Utah Congress evidently thought that circumstances

there might require judicial remedies not necessary in other Territories, for by section 9 of the act creating that Territory it is provided that a writ of error may be brought from the decision of any judge of the supreme or district court of the Territory to the Supreme Court of the United States upon any writ of *habeas corpus* involving the question of personal freedom—a provision never inserted in any other Territorial act except that creating the Territory of New Mexico.

This extraordinary provision shows that Congress intended to mold the organic law to the peculiar necessities of the Territory, and the legislation which I now recommend is in full harmony with the precedent thus established.

I am advised that United States courts in Utah have been greatly embarrassed by the action of the Territorial legislature in conferring criminal jurisdiction and the power to issue writs of *habeas corpus* on the probate courts in the Territory, and by their consequent interference with the administration of justice. Manifestly the legislature of the Territory can not give to any court whatever the power to discharge by *habeas corpus* persons held by or under process from the courts created by Congress, but complaint is made that persons so held have been discharged in that way by the probate courts. I can not doubt that Congress will agree with me that such a state of things ought not longer to be tolerated, and that no class of persons anywhere should be allowed to treat the laws of the United States with open defiance and contempt.

Apprehensions are entertained that if Congress adjourns without any action upon this subject turbulence and disorder will follow, rendering military interference necessary—a result I should greatly deprecate; and in view of this and other obvious considerations, I earnestly recommend that Congress, at the present session, pass some act which will enable the district courts of Utah to proceed with independence and efficiency in the administration of law and justice.

U. S. GRANT.

WASHINGTON, February 17, 1873.

To the Senate of the United States:

In answer to a resolution of the Senate of the 14th instant, adopted in executive session, requiring of the Secretary of State information touching the business before the late mixed commission on claims under the convention with Mexico, I transmit a report from the Secretary of State and the papers by which it was accompanied.

U. S. GRANT.

WASHINGTON, February 24, 1873.

To the Senate and House of Representatives:

In my annual message to Congress at the opening of the second session of the present Congress, in December, 1871, I recommended the legislation

necessary on the part of the United States to bring into operation the articles of the treaty of Washington of May 8, 1871, relative to the fisheries and to other matters touching the relations of the United States toward the British North American possessions, to become operative so soon as the proper legislation should be had on the part of Great Britain and its possessions. That legislation on the part of Great Britain and its possessions had not then been had.

Having, prior to the meeting of Congress in December last, received official information of the consideration by Great Britain and its possessions of the legislation necessary on their part to bring those articles into operation, I communicated that fact to Congress in my annual message at the opening of the present session, and renewed the recommendation for your early adoption of the legislation in the same direction necessary on the part of this Government.

The near approach of the end of the session induces me again to urgently call your attention to the importance of this legislation on the part of Congress.

It will be remembered that the treaty of Washington resulted from an overture on the part of Great Britain to treat with reference to the fisheries on the coast of Her Majesty's possessions in North America and other questions between them affecting the relations of the United States toward these possessions. To this overture a reply was made on the part of this Government that while appreciating the importance of a friendly and complete understanding between the two Governments with reference to the subject specially suggested by the British Government, it was thought that the removal of the differences growing out of what were generically known as the Alabama claims was essential to the restoration of cordial and amicable relations between the two Governments, and the assent of this Government to treat on the subject of the fisheries was made dependent on the assent of Great Britain to allow the joint commission which it had prepared on the questions suggested by that Government to treat also and settle the differences growing out of the Alabama claims.

Great Britain assented to this, and the treaty of Washington proposed a settlement of both classes of questions.

Those relating to the Alabama claims and to the northwestern water boundary, commonly known as the San Juan question, have been disposed of in pursuance of the terms of the treaty.

Those relating to the fisheries were made by the terms of the treaty to depend upon the legislation which the constitutions of the respective Governments made necessary to carry those provisions into effect.

Great Britain and her possessions have on their part enacted the necessary legislation.

This Government is now enjoying the advantages of those provisions of the treaty which were the result of the condition of its assent to treat upon the questions which Great Britain had submitted.

The tribunal at Geneva has made an award in favor of the United States on the Alabama claims, and His Majesty the Emperor of Germany has decided in favor of the contention of the United States on the north-western boundary line.

I can not urge too strongly the importance of your early consideration of the legislation that may be necessary on the part of this Government.

In addition to the claim that Great Britain may have upon the good faith of this Government to consider the legislation necessary in connection with the questions which that Government presented as the subject of a negotiation which has resulted so favorably to this Government upon the other questions in which the United States felt so much interest, it is of importance that the rights of the American fishermen, as provided for under the treaty, should be determined before the now approaching fishing season opens, and that the serious difficulties to the fishing interests and the grave questions between the two Governments that may arise therefrom be averted.

U. S. GRANT.

EXECUTIVE MANSION, February 25, 1873.

To the Senate and House of Representatives:

Your attention is respectfully invited to the condition of affairs in the State of Louisiana.

Grave complications have grown out of the election there on the 6th of November last, chiefly attributable, it is believed, to an organized attempt on the part of those controlling the election officers and returns to defeat in that election the will of a majority of the electors of the State. Different persons are claiming the executive offices, two bodies are claiming to be the legislative assembly of the State, and the confusion and uncertainty produced in this way fall with paralyzing effect upon all its interests.

Controversy arose as soon as the election occurred over its proceedings and results, but I declined to interfere until suit involving this controversy to some extent was brought in the circuit court of the United States under and by virtue of the act of May 31, 1870, entitled "An act to enforce the right of citizens of the United States to vote in the several States of the Union, and for other purposes."

Finding that resistance was made to judicial process in that suit, without any opportunity, and, in my judgment, without any right, to review the judgment of the court upon the jurisdictional or other questions arising in the case, I directed the United States marshal to enforce such process and to use, if necessary, troops for that purpose, in accordance with the thirteenth section of said act, which provides that "it shall be lawful for the President of the United States to employ such part of the land or naval forces of the United States or of the militia as

shall be necessary to aid in the execution of judicial process under this act."

Two bodies of persons claimed to be the returning board for the State, and the circuit court in that case decided that the one to which Lynch belonged, usually designated by his name, was the lawful returning board; and this decision has been repeatedly affirmed by the district and supreme courts of the State. Having no opportunity or power to canvass the votes, and the exigencies of the case demanding an immediate decision, I conceived it to be my duty to recognize those persons as elected who received and held their credentials to office from what then appeared to me to be, and has since been decided by the supreme court of the State to be, the legal returning board.

Conformably to the decisions of this board, a full set of State officers has been installed and a legislative assembly organized, constituting, if not a *de jure*, at least a *de facto* government, which, since some time in December last, has had possession of the offices and been exercising the usual powers of government; but opposed to this has been another government claiming to control the affairs of the State, and which has to some extent been *pro forma* organized.

Recent investigation into said election has developed so many frauds and forgeries as to make it doubtful what candidates received a majority of the votes actually cast, and in view of these facts a variety of action has been proposed. I have no specific recommendation to make upon the subject, but if there is any practicable way of removing these difficulties by legislation, then I earnestly request that such action may be taken at the present session of Congress.

It seems advisable that I should state now what course I shall feel bound to pursue in reference to the matter in the event of no action by Congress at this time. Subject to any satisfactory arrangement that may be made by the parties to the controversy, which of all things is the most desirable, it will be my duty, so far as it may be necessary for me to act, to adhere to that government heretofore recognized by me. To judge of the election and qualifications of its members is the exclusive province of the Senate, as it is also the exclusive province of the House to judge of the election and qualifications of its members; but as to State offices, filled and held under State laws, the decisions of the State judicial tribunals, it seems to me, ought to be respected.

I am extremely anxious to avoid any appearance of undue interference in State affairs, and if Congress differs from me as to what ought to be done I respectfully urge its immediate decision to that effect; otherwise I shall feel obliged, as far as I can by the exercise of legitimate authority, to put an end to the unhappy controversy which disturbs the peace and prostrates the business of Louisiana, by the recognition and support of that government which is recognized and upheld by the courts of the State.

U. S. GRANT.

VETO MESSAGES.

EXECUTIVE MANSION, *January 6, 1873.**To the House of Representatives:*

I return herewith, for the further consideration of Congress, House bill No. 2291, entitled "An act for the relief of Edmund Jussen," to which I have not appended my approval, for the following reasons:

The bill directs the accounting officers to transfer from Mr. Jussen's account to that of his successor all indebtedness arising from the loss or destruction or nontaking of warehouse bonds on certain spirits destroyed by fire. This provision would be wholly ineffective in so far as it proposes to increase the liability of Mr. Jussen's successor, he having been appointed subsequently to the destruction of the spirits. It might operate to relieve Mr. Jussen, but it seems probable that he is already relieved by the act of May 27, 1872, passed since the introduction of this bill. That act provides for the rebatement of taxes on distilled spirits destroyed by fire, except in cases where the owners of such spirits may be indemnified against tax by a valid claim of insurance. The relief of the taxpayers of course includes the relief of collectors from liability caused by failure to take bonds. It does not appear whether there was any insurance in this case. If not, the applicant is already relieved; but if there was an insurance the effect of this bill, if it became a law, might be to except Mr. Jussen from the operation of the general rule established by the proviso of the act of May 27, 1872. If such exception be proper, it should not be confined to an individual case, but extended to all. If there was an insurance, this bill would relieve Mr. Jussen from the liability with which it is very doubtful if his successor could be legally charged, or with which he ought to be charged.

U. S. GRANT.

EXECUTIVE MANSION, *January 22, 1873.*

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: I herewith return to the House of Representatives, in which it originated, H. R. No. 630, entitled "An act in relation to new trials in the Court of Claims," without my approval.

The object of the bill is to reduce from two years to six months the time in which a new trial, upon motion of the United States, may be granted in the Court of Claims.

Great difficulties are now experienced in contesting fraudulent and unjust claims against the Government prosecuted in said court, and the effect of this bill, if it becomes a law, will be to increase those difficulties. Persons sue in this court generally with the advantage of a personal knowledge of the circumstances of the case, and are prompted by personal interest to activity in its preparation for trial, which consists

sometimes in the production of false testimony and the suppression of the truth, while the United States are dependent for defense upon such inquiries as the officers of the Government, generally strangers to the transaction, are enabled to make, not infrequently in remote parts of the country and among those not averse to depredations upon the National Treasury. Instances have occurred where the existing opportunities for a new trial have enabled the Government to discover and defeat claims that ought not to have been allowed, after judgments thereon had been rendered by the Court of Claims.

By referring to the act which it is proposed to modify it will be seen that the payment of judgments recovered is not necessarily suspended for two years; but where the proofs are doubtful or suspicious the Government may appeal to the Supreme Court, and in the meantime may avail itself of any discovery or revelation of new evidence touching the facts of the case.

I fail to see the necessity or advantages of the proposed change in the law, and whatever may be the purposes of the bill, its effect, if passed, I am apprehensive will be to facilitate the prosecution of fraudulent claims against the United States. Believing that justice can and will be done to honest claimants in the Court of Claims as the law now stands, and believing also that the proposed change in the law will remove a valuable safeguard to the Treasury, I must for these reasons respectfully withhold my assent to the bill.

U. S. GRANT.

EXECUTIVE MANSION, *January 29, 1873.**To the Senate of the United States:*

I have the honor to return herewith Senate bill No. 490, entitled "An act for the relief of the East Tennessee University," without my approval.

This claim, for which \$18,500 are appropriated out of the moneys of the United States, arises in part for the destruction of property by troops in time of war, and therefore the same objections attach to it as were expressed in my message of June 1, 1872, returning the Senate bill awarding \$25,000 to J. Milton Best.

If the precedent is once established that the Government is liable for the ravages of war, the end of demands upon the public Treasury can not be forecast.

The loyalty of the people of the section in which the university is located, under circumstances of personal danger and trials, thus entitling them to the most favorable construction of the obligation of the Government toward them, is admitted, and nothing but regard for my duty to the whole people, in opposing a principle which, if allowed, will entail greater burdens upon the whole than the relief which will be afforded to a part by allowing this bill to become a law, could induce me to return it with objections.



Recognizing the claims of these citizens to sympathy and the most favorable consideration of their claims by the Government, I would heartily favor a donation of the amount appropriated by this bill for their relief.

U. S. GRANT.

WASHINGTON, February 8, 1873.

To the House of Representatives:

I have the honor to return herewith House bill (H. R. 2852) entitled "An act for the relief of James A. McCullah, late collector of the fifth district of Missouri," without my approval, for the following reasons:

It is provided in section 34 of the act of June 30, 1864, as amended by the act of July 13, 1866, that it shall be proved to the satisfaction of the Commissioner of Internal Revenue that due diligence was used by the collector, who shall certify the facts to the First Comptroller. This bill, should it become a law, clearly excuses Mr. McCullah, late collector, from showing that he used due diligence for the collection of the tax in question while the lists remained in his hands.

U. S. GRANT.

EXECUTIVE MANSION, February 11, 1873.

To the Senate of the United States:

I return herewith without my approval Senate bill No. 161, entitled "An act for the relief of those suffering from the destruction of salt works near Manchester, Ky., pursuant to the order of Major-General Carlos Buell."

All the objections made by me to the bill for the relief of J. Milton Best, and also of the East Tennessee University, apply with equal force to this bill.

According to the official report of Brigadier-General Craft, by whose immediate command the property in question was destroyed, there was a large rebel force in the neighborhood, who were using the salt works and had carried away a considerable quantity of salt, and were preparing to take more as soon as the necessary transportation could be procured; and he further states "that the leaders of the rebellion calculated upon their supply of salt to come from these works," and that in his opinion their destruction was a military necessity. I understand him to say, in effect, that the salt works were captured from the rebels; that it was impracticable to hold them, and that they were demolished so as to be of no further use to the enemy.

I can not agree that the owners of property destroyed under such circumstances are entitled to compensation therefor from the United States. Whatever other view may be taken of the subject, it is incontrovertible that these salt works were destroyed by the Union Army while engaged in regular military operations, and that the sole object of their destruction was to weaken, cripple, or defeat the armies of the so-called Southern Confederacy.

I am greatly apprehensive that the allowance of this claim could and would be construed into the recognition of a principle binding the United States to pay for all property which their military forces destroyed in the late war for the Union. No liability by the Government to pay for property destroyed by the Union forces in conducting a battle or siege has yet been claimed, but the precedent proposed by this bill leads directly and strongly in that direction, for it is difficult upon any ground of reason or justice to distinguish between a case of that kind and the one under consideration. Had General Craft and his command destroyed the salt works by shelling out the enemy found in their actual occupancy, the case would not have been different in principle from the one presented in this bill. What possible difference can it make in the rights of owners or the obligations of the Government whether the destruction was in driving the enemy out or in keeping them out of the possession of the salt works?

This bill does not present a case where private property is taken for public use in any sense of the Constitution. It was not taken from the owners, but from the enemy; and it was not then used by the Government, but destroyed. Its destruction was one of the casualties of war, and, though not happening in actual conflict, was perhaps as disastrous to the rebels as would have been a victory in battle.

Owners of property destroyed to prevent the spread of a conflagration, as a general rule, are not entitled to compensation therefor; and for reasons equally strong the necessary destruction of property found in the hands of the public enemy, and constituting a part of their military supplies, does not entitle the owner to indemnity from the Government for damages to him in that way.

I fully appreciate the hardship of the case, and would be glad if my convictions of duty allowed me to join in the proposed relief; but I can not consent to the doctrine which is found in this bill, as it seems to me, by which the National Treasury is exposed to all claims for property injured or destroyed by the armies of the United States in the late protracted and destructive war in this country.

U. S. GRANT.

PROCLAMATION.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas objects of interest to the United States require that the Senate should be convened at 12 o'clock on the 4th of March next, to receive and act upon such communications as may be made to it on the part of the Executive:

Now, therefore, I, Ulysses S. Grant, President of the United States,