



# Texas Navy Association

## Historical Article



44TH CONGRESS, }  
1st Session. }

SENATE.

{ REPORT  
{ No. 111.

### IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1876.—Ordered to be printed.

Mr. COCKRELL submitted the following

### REPORT:

[To accompany bill S. 23.]

*The Committee on Claims, to whom was referred the bill (S. 23) for the relief of Edwin Fairfax Gray, late lieutenant in the Texan navy, have considered the same, and submit the following report:*

This bill asks to have paid to Edwin Fairfax Gray, late lieutenant in the Texan navy, the amount paid to officers of the same rank under act of Congress approved March 3, 1857, and for an appropriation of a sufficient sum to pay same.

This act of Congress, approved March 3, 1857, provides—

That the surviving officers of the navy of the republic of Texas, who were duly commissioned as such at the time of annexation, shall be entitled to the pay of officers of the like grade when waiting orders in the Navy of the United States, for five years from the time of said annexation; and a sum sufficient to make the payment is hereby appropriated out of any money in the Treasury not otherwise appropriated: *Provided*, That the acceptance of the provisions of this act by any of said officers shall be a full relinquishment and renunciation of all claim on his part to any further compensation on this behalf from the United States Government and to any position in the Navy of the United States. (See chap. iii, Statutes at Large, 1855, sec. 12.)

Was Edwin Fairfax Gray, the claimant, an officer of the navy of the republic of Texas, duly commissioned as such at the time of annexation?

The determination of this question settles the rights of the claimant.

The claimant, Edwin Fairfax Gray, has submitted to your committee his own petition to Congress, not verified by affidavit; his own separate affidavit, dated January 14, 1875; and the affidavits of James G. Hurd, Thomas Barnett, and Charles Rosignol, dated February 18, 1875; and the affidavit of John M. Rose, dated May 20, 1875; and the affidavit of John G. Tod, dated February 15, 1876; and the certificate of Hon. Stephen W. Darden, comptroller of the State of Texas, dated January 23, 1875.

Your committee made two applications to the honorable the Secretary of the Navy of the United States, and received from him in answer thereto his letter dated December 16, 1875, accompanied by a copy of a letter dated March 15, 1858, and signed by Hon. Isaac Toucey, then Secretary of the Navy, addressed by him to Hon. John C. Breckinridge, then President of the Senate, and also his letter, dated February 15, 1876, accompanied by copies of all rolls, memoranda, papers, &c., on file in his Office touching this and all like claims.

All these have been carefully examined, and the following is an abstract of all the material statements contained therein :

Edwin Fairfax Gray, in his petition, states that at the time of annexation of the republic of Texas to the United States he was a lieutenant in the Texan navy, serving as such on the flag-ship Austin, under Commodore E. M. Moore, and had so served for a length of time; that he participated in the battle of Sisal, and was in every cruise of that ship up to said annexation; that he gave his commission and all necessary proof of the same, together with a letter of certification of his service from Hon. Anson Jones, late president of the republic of Texas, to one Robert Rose, a lawyer of the city of Galveston, with power to collect from the United States the amount due him under act of March 3, 1857; that said Rose proceeded to Washington, D. C., and there died without settling his petitioner's claim, and he has never been able to recover his said commission and proofs; that he, through his agent lately appointed, made application to the honorable Secretary of the Navy of the United States for his pay, due him under said act of March 3, 1857, and filed such proof as was thought sufficient to authenticate his case; but that in March last his claim was rejected, as per letter of the honorable Fourth Auditor.

The affidavit of claimant, made January 14, 1875, states the loss of his commission and proofs, and states "that some time after the act of Congress he left in the care and possession of the banking-house of Corcoran & Riggs, or of Corcoran, in the city of Washington, say about the year 1858, or one or two years after said act was passed, his commission or appointment as such lieutenant in the Texan navy, as well as the certificate, or evidence, of his excellency Anson Jones, the last president of the republic of Texas, certifying and proving that he was a lieutenant at the date of annexation, and entitled to the benefit of said act." That recently he made application to the members of the late firm of Corcoran & Riggs for said papers by his agent, and is informed that such papers cannot be found or produced, and he therefore believes they are lost or mislaid, and that said papers, so left with the Corcoran firm, may have been filed by Robert Rose, esq., now deceased, but when so left they were full and complete evidence of the facts required to procure the benefits of the law, and that he has never received the pay, and now seeks to present other and secondary evidence. The duly-authenticated certificate of Hon. Stephen H. Darden, comptroller of the State of Texas, dated July 23, 1875, states that, from an examination of the rolls on file in his department, he finds that Edwin F. Gray was carried on the pay-rolls of the Texan sloop of war Austin as a midshipman, for several years, including 1842, 1843, and 1844; that he was in the navy as midshipman on the 5th day of August, 1843, and was reported as acting lieutenant; that he was still in service in that capacity on the 10th of February, 1844, as appears by the rolls of that date, certified by the Hon. G. W. Hill, secretary of war and marine, the said rolls being made out in accordance with the act of the Texas congress of date the 5th February, 1844, to provide for laying the navy up in ordinary; that no further rolls or records appear in his office to show any other facts than that said Gray was in the naval service up to the annexation of Texas to the United States, except to show that he, with several officers, were furloughed in August, 1843.

He further certifies that it is a well-authenticated fact that the office of the adjutant-general of Texas was destroyed by fire about the year 1855, and that was the office in which were contained the archives proper of the department of war and marine of the republic of Texas,

except such as may appertain to the payment or disbursement of funds which properly belong to the comptroller's office.

The affidavit of James G. Hurd, made February 18, 1875, states that he is sixty-one years old; that he was a lieutenant in the naval service of Texas during the war of independence which resulted in the separation of Texas from Mexico; that he resigned prior to annexation; that his father, the late Norman Hurd, now deceased, was one of the officers who remained in service and received his pay under the law; and that he was, while in said service, and is now, well acquainted with Ed. Fairfax Gray; that said Gray was a lieutenant in commission in the Texas navy, serving on board the armed ship Austin, while affiant's father was purser; that said Gray remained on the rolls of the navy at the time the same was laid up in ordinary in 1844, and was, to the best of affiant's belief and knowledge, an officer of said navy up to and at the annexation of Texas to the United States in 1845. Never heard of his having resigned or having been dropped from the navy, and verily believes he was in commission at annexation.

Thomas Barnett, in his affidavit made same day, states that he entered the Texas navy in 1842, and served on the Austin and lost an arm while in said service in an action with the Mexican navy; knows said Gray to be the same person who was then in commission as lieutenant in the navy on board same vessel and under whom he served from 1842 to 1844; that when the Texas navy was placed in ordinary in 1844 preparatory to annexation, the said Lieutenant Gray was then in commission; that said Gray never resigned or lost his status in the navy, but retained his rank and place up to annexation.

Charles Rosignol, in his affidavit made same day, states that he is sixty years old; was an officer in the Texas navy prior to annexation; was naval agent at Galveston and captain on the rolls of the navy, were having charge of the navy-yard at Galveston, and the war-vessels which were laid up in ordinary under the act of the Texan congress placing said navy in ordinary in 1844; is well acquainted with Gray; and was then; is the same person who was midshipman and subsequently appointed lieutenant on board the Austin; and that said Gray remained in service up to annexation, and neither resigned nor retired.

The foregoing, from the dates, constitutes the proof upon which said Gray made his application to the honorable Secretary of the Navy for his pay under said act, as referred to in his petition, when he states his application, and says: "But that in March last his claim was rejected, as per letter of the honorable Fourth Auditor herewith presented." The letter of the Fourth Auditor has not been presented to your committee, and is not with the papers, and we do not know his action, or the reasons for it, except as stated in the petition.

John M. Rose, in his affidavit made May 20, 1875, states that he is the brother of Robert Rose, deceased, and has in his possession most of the personal effects and papers of decedent, and was conversant with his business and avocations, and that said Robert Rose died in Washington City, D. C., in May, 1861; that he has made a careful and diligent search among the papers and documents of decedent for papers and documents relating to claim of said Gray, which he knows were intrusted to his brother, and that he has been unable to find them, and he believes they have been lost, destroyed, or mislaid, and cannot be found or recovered, and that he has seen said papers, and, to the best of his knowledge and belief, they contained the evidence complete of said Gray's appointment and commission in said Texas navy; that among said papers was a certificate of the late Anson Jones, president

of the republic of Texas, that said Gray was a lieutenant in said navy at annexation, and also the commission of Gray as lieutenant.

John G. Tod, in his affidavit made February 15, 1876, states that "at the time of annexation of the republic of Texas to the United States, and a long time previous, he was a captain in the navy of Texas; also was in charge of the same, though absent on official duty on the Rio Grande, where he had repaired, with some twenty men and a brass piece, during the threatened hostilities upon General Taylor; and that, after the battles of Palo Alto and Resaca de la Palma, he returned under orders to Galveston to bring down to the Rio Grande certain launches and boats belonging to the Texas navy; that on his arrival he found the navy had been transferred to the collector of customs of the port of Galveston, who delivered the same over to him again until further orders; that he was at that time, long previous, and since well acquainted with Ed. Fairfax Gray, and knows that the said Gray was acting lieutenant in the navy of Texas on the same footing and claim which enabled Capt. E. W. Moore and other officers in obtaining the five years' pay awarded them under a certain amendment of the naval appropriation bill of 1857."

The foregoing contains all the evidence presented to your committee, excepting what was obtained from the Navy Department. The letter of the Hon. Geo. M. Robeson, Secretary of the Navy, December 16, 1875, incloses the letter of Secretary Toucey, and states: "This Department is unable to give any further information relative to the case than is contained in the accompanying copy of a communication addressed to the President of the Senate by this Department March 15, 1858, with the several papers therewith transmitted, to which the committee are respectfully referred. It is presumed all these papers are on the files of the Senate."

Your committee at once had an examination of the files of the Senate made to obtain these papers, and the place where they should have been was found vacant, and they could not be found.

The copy of the communication from Secretary Toucey to Vice-President Breckinridge, sent with letter of Secretary Robeson, shows that the original communication was made in pursuance of a resolution of the Senate of February 3, 1858, asking for—

1st. "The names of the persons who have been paid under the act referred to, the amount to each, and the nature of the evidence on which payment was made."

2d. "A copy of his decision in the case of Capt. John G. Tod, of said navy, together with a copy of all the papers upon which said decision was founded."

Secretary Toucey gave the list of names and amounts paid as follows:

Capt. E. W. Moore.....	\$12,500
Lieut. William A. Tennison .....	6,000
Lieut. Cyrus Cummings .....	6,000
Lieut. Alfred B. Gray.....	6,000
Lieut. C. B. Snow.....	6,000
Purser Norman Hurd .....	5,000
Purser J. F. Stevens .....	5,000

And then states:

The evidence upon which these payments were made is herewith transmitted, and is marked from A to H inclusive; A to G being the evidence in each case individually, and H a copy of a general list, properly certified, of the officers of the navy of Texas, whose appointments were confirmed by the Senate. I also transmit a copy, marked "I," of my decision in the case of Captain Tod, and copies of the papers upon which the decision was made.

. These papers, &c., transmitted with this report, would be very important, but cannot be found, as stated.

Your committee then applied for the list of officers referred to in this report, and all other evidence on file in the Navy Department, and, in reply, received the letter of Secretary Robeson of February 15, 1876, transmitting copies of the list of officers and all other evidence on file, and the names of all persons paid, &c.

In this letter the Secretary says:

It appears that in addition to the seven officers named in Secretary Toucey's letter of 15th March, 1858, of which you have a copy, three other individuals, and only three, have been paid, viz: Lieut. William Oliver. June, 1858, \$6,000; P. W. Humphreys, as lieutenant, 1873, \$6,000; and the heirs of W. C. Brashear, 1874, \$6,974.75. This last payment was ordered by the act of June 23, 1874. (18 Stats., 608.)

It appears that very few persons, except those above named, have applied to this Department, under the act of 1857, and their names are as follows: J. W. Moore, purser; disallowed. J. G. Tod, captain; disallowed. Charles S. Accambal, and the widow of A. J. Lewis, lieutenant. This last was merely a request for information and not a claim.

I send, as you request, copies of such few rolls, lists, and records as can be found, and of affidavits, &c., not relating exclusively to persons whose claims have been allowed and paid. In no case, except that of Humphreys, so far as I am aware, has any person been paid whose name was not upon the authenticated list, a copy of which, marked "A," is herewith sent. The other papers transmitted herewith are as follows, viz:

1. A copy, marked "B," of a paper in the handwriting of Capt. E. W. Moore, purporting to be a copy of the above list, A, to which are appended various annotations, followed by Captain Moore's certificate that the list contains the names of all officers duly commissioned, who were in the navy at the time of annexation.

2. A copy, marked "C," of a letter and list, in which are the names of several officers whose appointments, so far as appears, were not confirmed by the Texan senate, viz: John G. Tod, C. J. Faysoux, and H. S. Garlick.

3. A copy, marked "D," of affidavit of E. W. Moore as to James W. Moore.

4. A copy, marked "E," of commissioner and comptroller of Texas in 1857 as to J. W. Moore.

5. A copy, marked "F," of letter to J. G. Tod from chief of naval bureau.

6. A copy, marked "G," of J. G. Tod's commission. (Not approved by senate of Texas.)

7. A copy, marked "H," of letter of Senator Kauffman to E. W. Moore, stating that J. G. Tod was not confirmed.

8. A copy, marked "I," of letter of Secretary Cooke to J. G. Tod.

9. A copy, marked "J," of order from Secretary Cooke to J. G. Todd.

10. A copy, marked "K," of certificate of Governor Pease and President Jones.

11. A copy, marked "L," of Secretary Toucey's decision against the claim of J. G. Tod.

The copy, marked "A," referred to in Secretary Robeson's letter, is entitled "List of naval officers whose appointments were confirmed by the honorable Senate 20th July, 1842." Then follows a list of the names of the Texas naval officers, with rank, number, and date of commission. At the end of such list of names, &c., is the following:

N. B.—The lowest number of the same date takes rank.

DEPARTMENT OF WAR AND MARINE, *July 21, 1842.*

Officers enumerated in the above list will take rank in the order in which their names are placed.

GEO. W. HOCKLEY,  
*Secretary War and Marine.*

STATE OF TEXAS, ADJUTANT-GENERAL'S OFFICE.

I, Wm. Gordon Cooke, adjutant-general of the State of Texas, do hereby certify that the foregoing is a correct copy, taken from the records of the department of war and marine of the late republic of Texas, which records have been attached to this office by act of the legislature of the State of Texas.

Given under my hand and official seal this 30th day of November, A. D. 1847.

WM. G. COOKE,  
*Adjutant-General.*

The name of Edwin Fairfax Gray, the claimant, does not appear in this list—is not mentioned.

The copy, marked "B," of a paper in the handwriting of Captain E. W. Moore, purporting to be a copy of the above list A, referred to in Secretary Robeson's letter, is headed, "Naval officers whose appointments were confirmed by the Senate on 20th July, 1842, and the subsequent sessions of Congress," and contains all the names in the list A, and also the name "James W. Moore, purser, 1st September, 1842, commissioned to fill vacancy occasioned by death of W. T. Brannum, he having been an acting purser in 1840, '41, and '42."

In addition to the same certificate of George W. Hockley, secretary of war and marine, attached to list A and to this list B, is the following certificate from Captain E. W. Moore, to wit:

I hereby certify that this is a correct list of the officers of the late Texas navy, who were duly commissioned as such during the time that I commanded the navy of that republic, viz, from 1839 to February 17, 1846, when Texas became one of the States of the Union; that it includes all the commissioned officers who were in the service at the consummation of annexation, and that the remarks made by me are correct in every particular.

Given under my hand this 14th day of September, 1857.

E. W. MOORE,

*Captain, commanding late Texas Navy.*

"The remarks," referred to by Captain Moore, are in the face of this list and on the margin, and give the dates of the deaths of the various officers named, and explain those who were married and whose widows were then living; the dates of deaths range from 1842 up to 1851.

The name of Edwin Fairfax Gray does not appear in this list B.

The copy, marked "C," referred to by Secretary Robeson in his letter, is as follows, to wit:

DEPARTMENT OF WAR AND MARINE,  
Austin, 26th Jan., 1846.

SIR: In compliance with the request contained in your letter of 16th instant, you are herewith furnished with a list of the officers of the navy at present in service, with their rank and the date of their appointments.

I have the honor to be,

WM. G. COOKE.

WM. C. BRASHEAR,  
*Commander Texas Navy.*

Then follows a list of nine names of officers then in service, with rank and date of appointment opposite each name.

There are only three names on this list not given in lists A and B, to wit: "John G. Tod, captain; commission bearing date 23d June, 1840. C. J. Faysox, midshipman, 29th June, 1842. H. S. Garlick, midshipman, 29th June, 1842."

The name of Edwin Fairfax Gray does not appear on this list C.

The copy marked "D," referred to, is a certificate from Capt. E. W. Moore, under oath, dated "Washington City, D. C., September 14, 1857," stating that James W. Moore was a purser, but does not name Edwin Fairfax Gray.

The copy marked "E," referred to, is a certificate signed by the commissioner of claims and comptroller of Texas, dated "Austin, Texas, August 11, 1857," and states, "that the name of James W. Moore appears as a purser on the rolls of the Texas navy, during the year of 1841, and part of the year of 1842," but does not mention Edwin Fairfax Gray.

James W. Moore was the only name on list B, made out by Captain Moore, which was not on list A.

The copy marked "F" is a letter from chief of naval bureau to John G. Tod, dated 20th April, 1841, relieving him from service. The copy

marked "G" is the commission of said John G. Tod from Anson Jones, president of republic of Texas, dated at Washington, July 12, 1845.

The copy marked "H" is a letter from Daniel S. Kauffman, a senator of the republic of Texas, to E. W. Moore, dated Washington City, August 10, 1846, in regard to Captain Tod.

The copy marked "I" is a letter from William G. Cooke, secretary war and marine, to Captain Tod, dated Austin, 10th February, 1846.

The copy marked "J" is an order from said Cooke to Captain Tod, of same date.

The copy marked "K" is a certificate from Governor Pease, of Texas, dated May 4, 1857, as to the presidency of Anson Jones, and the destruction of the records of the department of war and marine of the late republic of Texas by fire, by the burning of the adjutant-general's office in the fall of 1855, and is attached to the certificate of said Anson Jones, dated Washington, Texas, April 28, 1857, stating that Captain Tod was in Texas navy, &c.

The copy marked "L" is the decision of the late Secretary Toucey, rejecting claim of Capt. John G. Tod, for pay under said act of Congress, dated January 27, 1858.

In this decision the late Secretary Toucey gives some important dates and facts, as follows, to wit:

That, by an act of the Texan congress, approved January 18, 1841, section 11, it is provided "that as soon after the arrival in port as may be found practicable, the Texas navy be laid up in ordinary," &c. That "the Congress of the United States by a joint resolution, approved March 1, 1845, consented to the annexation of Texas. The congress of the republic of Texas consented June 23, 1845. The convention of deputies authorized by the congress of Texas, which met at Austin, consented on the 4th July, 1845. Texas was admitted as a State by a joint resolution of the United States Congress, approved December 29, 1845. By the constitution of the republic of Texas, the president had the power, with the consent of the senate, to appoint and to fill all vacancies that may happen during the recess of the senate, to be reported to the senate within ten days after the next congress shall convene."

In none of these various papers, lists, certificates, &c., does the name of Edwin Fairfax Gray appear.

The foregoing is all the evidence in the case.

Under the constitution of the republic of Texas, the appointment of an officer of the navy was made by the president "with the consent of the senate." If claimant Gray were a duly-commissioned lieutenant in the navy of the republic of Texas at the time of annexation, he must have been appointed by the president and his appointment confirmed or consented to by the senate of that republic, and the records and proceedings of the senate of that republic should show that fact. No such records or proceedings have been furnished to your committee.

Claimant says that at the time of annexation he was a lieutenant in the Texas navy, serving as such on the flag-ship Austin, under Commodore E. W. Moore, and had so served for a length of time.

The list A of the officers of the Texas navy, certified by William G. Cooke, adjutant-general of Texas, November 30, 1847, long before the loss or destruction of any of the records, does not give the name of claimant.

The list B, in the handwriting of E. W. Moore, under whom claimant says he served as such lieutenant, was made out on the 14th day of September, 1857, after the passage of the act of Congress in question, and evidently for the purpose of enabling all the officers of the Texas navy who were entitled to the benefits of said act of Congress to obtain the same, and does not contain the name of claimant.

Certainly Capt. E. W. Moore would not omit the name of one of his own officers serving under him on his own flag-ship.

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REPORT:

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This bill asks to have paid to Edwin Fairfax Gray, late lieutenant in the Texan navy, the amount paid to officers of the same rank under act of Congress approved March 3, 1857, and for an appropriation of a sufficient sum to pay same.

This act of Congress, approved March 3, 1857, provides—

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Was Edwin Fairfax Gray, the claimant, an officer of the navy of the republic of Texas, duly commissioned as such at the time of annexation?

The determination of this question settles the rights of the claimant.

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Your committee made two applications to the honorable the Secretary of the Navy of the United States, and received from him in answer thereto his letter dated December 16, 1875, accompanied by a copy of a letter dated March 15, 1858, and signed by Hon. Isaac Toucey, then Secretary of the Navy, addressed by him to Hon. John C. Breckinridge, then President of the Senate, and also his letter, dated February 15, 1876, accompanied by copies of all rolls, memoranda, papers, &c., on file in his Office touching this and all like claims.

All these have been carefully examined, and the following is an abstract of all the material statements contained therein:

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He further certifies that it is a well-authenticated fact that the office of the adjutant-general of Texas was destroyed by fire about the year 1855, and that was the office in which were contained the archives proper of the department of war and marine of the republic of Texas,

except such as may appertain to the payment or disbursement of funds which properly belong to the comptroller's office.

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Thomas Barnett, in his affidavit made same day, states that he entered the Texas navy in 1842, and served on the Austin and lost an arm while in said service in an action with the Mexican navy; knows said Gray to be the same person who was then in commission as lieutenant in the navy on board same vessel and under whom he served from 1842 to 1844; that when the Texas navy was placed in ordinary in 1844 preparatory to annexation, the said Lieutenant Gray was then in commission; that said Gray never resigned or lost his status in the navy, but retained his rank and place up to annexation.

Charles Rosignol, in his affidavit made same day, states that he is sixty years old; was an officer in the Texas navy prior to annexation; was naval agent at Galveston and captain on the rolls of the navy, were having charge of the navy-yard at Galveston, and the war-vessels which were laid up in ordinary under the act of the Texan congress placing said navy in ordinary in 1844; is well acquainted with Gray; and was then; is the same person who was midshipman and subsequently appointed lieutenant on board the Austin; and that said Gray remained in service up to annexation, and neither resigned nor retired.

The foregoing, from the dates, constitutes the proof upon which said Gray made his application to the honorable Secretary of the Navy for his pay under said act, as referred to in his petition, when he states his application, and says: "But that in March last his claim was rejected, as per letter of the honorable Fourth Auditor herewith presented." The letter of the Fourth Auditor has not been presented to your committee, and is not with the papers, and we do not know his action, or the reasons for it, except as stated in the petition.

John M. Rose, in his affidavit made May 20, 1875, states that he is the brother of Robert Rose, deceased, and has in his possession most of the personal effects and papers of decedent, and was conversant with his business and avocations, and that said Robert Rose died in Washington City, D. C., in May, 1861; that he has made a careful and diligent search among the papers and documents of decedent for papers and documents relating to claim of said Gray, which he knows were intrusted to his brother, and that he has been unable to find them, and he believes they have been lost, destroyed, or mislaid, and cannot be found or recovered, and that he has seen said papers, and, to the best of his knowledge and belief, they contained the evidence complete of said Gray's appointment and commission in said Texas navy; that among said papers was a certificate of the late Anson Jones, president.

of the republic of Texas, that said Gray was a lieutenant in said navy at annexation, and also the commission of Gray as lieutenant.

John G. Tod, in his affidavit made February 15, 1876, states that "at the time of annexation of the republic of Texas to the United States, and a long time previous, he was a captain in the navy of Texas; also was in charge of the same, though absent on official duty on the Rio Grande, where he had repaired, with some twenty men and a brass piece, during the threatened hostilities upon General Taylor; and that, after the battles of Palo Alto and Resaca de la Palma, he returned under orders to Galveston to bring down to the Rio Grande certain launches and boats belonging to the Texas navy; that on his arrival he found the navy had been transferred to the collector of customs of the port of Galveston, who delivered the same over to him again until further orders; that he was at that time, long previous, and since well acquainted with Ed. Fairfax Gray, and knows that the said Gray was acting lieutenant in the navy of Texas on the same footing and claim which enabled Capt. E. W. Moore and other officers in obtaining the five years' pay awarded them under a certain amendment of the naval appropriation bill of 1857."

The foregoing contains all the evidence presented to your committee, excepting what was obtained from the Navy Department. The letter of the Hon. Geo. M. Robeson, Secretary of the Navy, December 16, 1875, incloses the letter of Secretary Toucey, and states: "This Department is unable to give any further information relative to the case than is contained in the accompanying copy of a communication addressed to the President of the Senate by this Department March 15, 1858, with the several papers therewith transmitted, to which the committee are respectfully referred. It is presumed all these papers are on the files of the Senate."

Your committee at once had an examination of the files of the Senate made to obtain these papers, and the place where they should have been was found vacant, and they could not be found.

The copy of the communication from Secretary Toucey to Vice-President Breckinridge, sent with letter of Secretary Robeson, shows that the original communication was made in pursuance of a resolution of the Senate of February 3, 1858, asking for—

1st. "The names of the persons who have been paid under the act referred to, the amount to each, and the nature of the evidence on which payment was made."

2d. "A copy of his decision in the case of Capt. John G. Tod, of said navy, together with a copy of all the papers upon which said decision was founded."

Secretary Toucey gave the list of names and amounts paid as follows:

Capt. E. W. Moore.....	\$12,500
Lieut. William A. Tennison .....	6,000
Lieut. Cyrus Cummings .....	6,000
Lieut. Alfred B. Gray.....	6,000
Lieut. C. B. Snow.....	6,000
Purser Norman Hurd .....	5,000
Purser J. F. Stevens .....	5,000

And then states:

The evidence upon which these payments were made is herewith transmitted, and is marked from A to H inclusive; A to G being the evidence in each case individually, and H a copy of a general list, properly certified, of the officers of the navy of Texas, whose appointments were confirmed by the Senate. I also transmit a copy, marked "I," of my decision in the case of Captain Tod, and copies of the papers upon which the decision was made.

, These papers, &c., transmitted with this report, would be very important, but cannot be found, as stated.

Your committee then applied for the list of officers referred to in this report, and all other evidence on file in the Navy Department, and, in reply, received the letter of Secretary Robeson of February 15, 1876, transmitting copies of the list of officers and all other evidence on file, and the names of all persons paid, &c.

In this letter the Secretary says:

It appears that in addition to the seven officers named in Secretary Toucey's letter of 15th March, 1859, of which you have a copy, three other individuals, and only three, have been paid, viz: Lieut. William Oliver, June, 1858, \$6,000; P. W. Humphreys, as lieutenant, 1873, \$6,000; and the heirs of W. C. Brashear, 1874, \$6,974.75. This last payment was ordered by the act of June 23, 1874. (18 Stats., 608.)

It appears that very few persons, except those above named, have applied to this Department, under the act of 1857, and their names are as follows: J. W. Moore, purser; disallowed. J. G. Tod, captain; disallowed. Charles S. Accambal, and the widow of A. J. Lewis, lieutenant. This last was merely a request for information and not a claim.

I send, as you request, copies of such few rolls, lists, and records as can be found, and of affidavits, &c., not relating exclusively to persons whose claims have been allowed and paid. In no case, except that of Humphreys, so far as I am aware, has any person been paid whose name was not upon the authenticated list, a copy of which, marked "A," is herewith sent. The other papers transmitted herewith are as follows, viz:

1. A copy, marked "B," of a paper in the handwriting of Capt. E. W. Moore, purporting to be a copy of the above list, A, to which are appended various annotations, followed by Captain Moore's certificate that the list contains the names of all officers duly commissioned, who were in the navy at the time of annexation.

2. A copy, marked "C," of a letter and list, in which are the names of several officers whose appointments, so far as appears, were not confirmed by the Texan senate, viz: John G. Tod, C. J. Faysoux, and H. S. Garlick.

3. A copy, marked "D," of affidavit of E. W. Moore as to James W. Moore.

4. A copy, marked "E," of commissioner and comptroller of Texas in 1857 as to J. W. Moore.

5. A copy, marked "F," of letter to J. G. Tod from chief of naval bureau.

6. A copy, marked "G," of J. G. Tod's commission. (Not approved by senate of Texas.)

7. A copy, marked "H," of letter of Senator Kauffman to E. W. Moore, stating that J. G. Tod was not confirmed.

8. A copy, marked "I," of letter of Secretary Cooke to J. G. Tod.

9. A copy, marked "J," of order from Secretary Cooke to J. G. Todd.

10. A copy, marked "K," of certificate of Governor Pease and President Jones.

11. A copy, marked "L," of Secretary Toucey's decision against the claim of J. G. Tod.

The copy, marked "A," referred to in Secretary Robeson's letter, is entitled "List of naval officers whose appointments were confirmed by the honorable Senate 20th July, 1842." Then follows a list of the names of the Texas naval officers, with rank, number, and date of commission. At the end of such list of names, &c., is the following:

N. B.—The lowest number of the same date takes rank.

DEPARTMENT OF WAR AND MARINE, July 21, 1842.

Officers enumerated in the above list will take rank in the order in which their names are placed.

GEO. W. HOCKLEY,  
*Secretary War and Marine.*

STATE OF TEXAS, ADJUTANT-GENERAL'S OFFICE.

I, Wm. Gordon Cooke, adjutant-general of the State of Texas, do hereby certify that the foregoing is a correct copy, taken from the records of the department of war and marine of the late republic of Texas, which records have been attached to this office by act of the legislature of the State of Texas.

Given under my hand and official seal this 30th day of November, A. D. 1847.

WM. G. COOKE,  
*Adjutant-General.*

The name of Edwin Fairfax Gray, the claimant, does not appear in this list—is not mentioned.

The copy, marked "B," of a paper in the handwriting of Captain E. W. Moore, purporting to be a copy of the above list A, referred to in Secretary Robeson's letter, is headed, "Naval officers whose appointments were confirmed by the Senate on 20th July, 1842, and the subsequent sessions of Congress," and contains all the names in the list, A, and also the name "James W. Moore, purser, 1st September, 1842, commissioned to fill vacancy occasioned by death of W. T. Brannum, he having been an acting purser in 1840, '41, and '42."

In addition to the same certificate of George W. Hockley, secretary of war and marine, attached to list A and to this list B, is the following certificate from Captain E. W. Moore, to wit:

I hereby certify that this is a correct list of the officers of the late Texas navy, who were duly commissioned as such during the time that I commanded the navy of that republic, viz, from 1839 to February 17, 1846, when Texas became one of the States of the Union; that it includes all the commissioned officers who were in the service at the consummation of annexation, and that the remarks made by me are correct in every particular.

Given under my hand this 14th day of September, 1857.

E. W. MOORE.

*Captain, commanding late Texas Navy.*

"The remarks," referred to by Captain Moore, are in the face of this list and on the margin, and give the dates of the deaths of the various officers named, and explain those who were married and whose widows were then living; the dates of deaths range from 1842 up to 1851.

The name of Edwin Fairfax Gray does not appear in this list B.

The copy, marked "C," referred to by Secretary Robeson in his letter, is as follows, to wit:

DEPARTMENT OF WAR AND MARINE,  
Austin, 26th Jan., 1846.

SIR: In compliance with the request contained in your letter of 16th instant, you are herewith furnished with a list of the officers of the navy at present in service, with their rank and the date of their appointments.

I have the honor to be,

WM. G. COOKE.

WM. C. BRASHEAR,  
*Commander Texas Navy.*

Then follows a list of nine names of officers then in service, with rank and date of appointment opposite each name.

There are only three names on this list not given in lists A and B, to wit: "John G. Tod, captain; commission bearing date 23d June, 1840. C. J. Faysox, midshipman, 29th June, 1842. H. S. Garlick, midshipman, 29th June, 1842."

The name of Edwin Fairfax Gray does not appear on this list C.

The copy marked "D," referred to, is a certificate from Capt. E. W. Moore, under oath, dated "Washington City, D. C., September 14, 1857," stating that James W. Moore was a purser, but does not name Edwin Fairfax Gray.

The copy marked "E," referred to, is a certificate signed by the commissioner of claims and comptroller of Texas, dated "Austin, Texas, August 11, 1857," and states, "that the name of James W. Moore appears as a purser on the rolls of the Texas navy, during the year of 1841, and part of the year of 1842," but does not mention Edwin Fairfax Gray.

James W. Moore was the only name on list B, made out by Captain Moore, which was not on list A.

The copy marked "F" is a letter from chief of naval bureau to John G. Tod, dated 20th April, 1841, relieving him from service. The copy

marked "G" is the commission of said John G. Tod from Anson Jones, president of republic of Texas, dated at Washington, July 12, 1845.

The copy marked "H" is a letter from Daniel S. Kauffman, a senator of the republic of Texas, to E. W. Moore, dated Washington City, August 10, 1846, in regard to Captain Tod.

The copy marked "I" is a letter from William G. Cooke, secretary war and marine, to Captain Tod, dated Austin, 10th February, 1846.

The copy marked "J" is an order from said Cooke to Captain Tod, of same date.

The copy marked "K" is a certificate from Governor Pease, of Texas, dated May 4, 1857, as to the presidency of Anson Jones, and the destruction of the records of the department of war and marine of the late republic of Texas by fire, by the burning of the adjutant-general's office in the fall of 1855, and is attached to the certificate of said Anson Jones, dated Washington, Texas, April 28, 1857, stating that Captain Tod was in Texas navy, &c.

The copy marked "L" is the decision of the late Secretary Toucey, rejecting claim of Capt. John G. Tod, for pay under said act of Congress, dated January 27, 1858.

In this decision the late Secretary Toucey gives some important dates and facts, as follows, to wit:

That, by an act of the Texan congress, approved January 18, 1841, section 11, it is provided "that as soon after the arrival in port as may be found practicable, the Texas navy be laid up in ordinary," &c. That "the Congress of the United States by a joint resolution, approved March 1, 1845, consented to the annexation of Texas. The congress of the republic of Texas consented June 23, 1845. The convention of deputies authorized by the congress of Texas, which met at Austin, consented on the 4th July, 1845. Texas was admitted as a State by a joint resolution of the United States Congress, approved December 29, 1845. By the constitution of the republic of Texas, the president had the power, with the consent of the senate, to appoint and to fill all vacancies that may happen during the recess of the senate, to be reported to the senate within ten days after the next congress shall convene."

In none of these various papers, lists, certificates, &c., does the name of Edwin Fairfax Gray appear.

The foregoing is all the evidence in the case.

Under the constitution of the republic of Texas, the appointment of an officer of the navy was made by the president "with the consent of the senate." If claimant Gray were a duly-commissioned lieutenant in the navy of the republic of Texas at the time of annexation, he must have been appointed by the president and his appointment confirmed or consented to by the senate of that republic, and the records and proceedings of the senate of that republic should show that fact. No such records or proceedings have been furnished to your committee.

Claimant says that at the time of annexation he was a lieutenant in the Texas navy, serving as such on the flag-ship Austin, under Commodore E. W. Moore, and had so served for a length of time.

The list A of the officers of the Texas navy, certified by William G. Cooke, adjutant-general of Texas, November 30, 1847, long before the loss or destruction of any of the records, does not give the name of claimant.

The list B, in the handwriting of E. W. Moore, under whom claimant says he served as such lieutenant, was made out on the 14th day of September, 1857, after the passage of the act of Congress in question, and evidently for the purpose of enabling all the officers of the Texas navy who were entitled to the benefits of said act of Congress to obtain the same, and does not contain the name of claimant.

Certainly Capt. E. W. Moore would not omit the name of one of his own officers serving under him on his own flag-ship.

The certificate of Hon. Stephen H. Darden, comptroller of the State of Texas, shows that claimant was carried on the pay-rolls of the Texan sloop of war Austin as a midshipman for several years, including 1842, 1843, and 1844, and that he was in the navy as midshipman on the 5th day of August, 1843, and was reported as acting lieutenant, and that he was still in service in that capacity on the 10th day of February, 1844, as shown by the rolls made out in accordance with the act of the Texas congress of date February 5, 1844, providing for laying the navy up in ordinary. That claimant may have acted as lieutenant is not doubted. The question is not whether he acted as lieutenant, but whether he was a duly-commissioned officer at the time of annexation. With the justice or propriety of the act of Congress confining the benefits only to duly-commissioned officers we have nothing to do.

Whether P. W. Humphreys was properly paid \$6,000 in 1873 we do not know, not having the facts before us. If paid improperly it binds no one.

We do not question the veracity of the gentlemen whose affidavits have been presented. They honestly testified according to their best recollection of matters which had taken place thirty years ago.

We do not think the evidence and facts before us sufficient to prove that claimant was a duly-commissioned officer of the Texas navy at the time of annexation.

We have not considered the provisions of section 38480, of the Revised Statutes, as it is not necessary under our view of this case.

Your committee recommend that the prayer of the petitioner be not granted, that this report be adopted, and the bill indefinitely postponed.

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