

REPORT

Of the Military Committee on the Georgia militia claim.

MARCH 26, 1822.

Read, and ordered to lie on the table.

DECEMBER 20, 1822.

Reprinted by order of the House of Representatives.

The Committee on Military Affairs, to whom was referred the memorial and resolutions of the Legislature of the state of Georgia, asking payment from the United States for services rendered by the militia of that state, in the years 1792, 1793, and 1794,

REPORT:

That they have examined the documents referred to in the memorial, to wit: a report made by the Secretary of War on the 3d February, 1803, in compliance with a resolution of the House of Representatives of the 5d of April, 1802, and sundry other documents attached to that report. (See Executive papers No. 41, second session 7th Congress,) by which it appears that the sum then claimed for services rendered by the militia, amounted to \$142,535 29.

The destruction of the war office and public documents by fire, it is believed, prevents the committee from giving a history of some of the facts and circumstances in relation to this claim, in the early stages of its existence, necessary to give a fair view of its merits. There is abundant evidence, however, yet of record, to shew that its justice against the United States was never admitted by Congress; and, in the opinion of your committee, there is strong, if not insuperable objections, on principle, why its justice should not be admitted. The committee, however, deem it unnecessary, at this time, to go into an investigation of the original merits of the claim; because, in their opinion, *it has long since been cancelled and paid* to the state of Georgia, under a provision in the convention and agreement entered into between the United States and the state of Georgia, on the 24th day of April, 1802, whereby that state ceded to the United States her western lands, to which agreement the committee refer the House for further information. In support of this opinion, the House are referred to facts and reasons contained in a report made by the Committee of Claims, on the 16th of December, 1803, at the second session of the

7th Congress, and to a letter from Levi Lincoln, then Attorney General, and one of the commissioners on the part of the United States, who, with commissioners on the part of Georgia, negotiated that treaty of cession; which letter bears date the 3d of December, 1803, is directed to said committee, and attached to their report, and which report and letter this committee adopt as part of their report. (See No. 22, reports of committees, 1st session 8th Congress.)

Your committee find, on examining the proceedings of Congress, that this claim, in substance, was before Congress at each session, from the year 1797, by citizens of the state of Georgia, until the year 1803, when the report by the Committee of Claims, above referred to, was made and adopted, and payment refused, as is believed, in consequence of the objectionable principles involved therein.

Your committee further find, that, in the years 1804, 5, and 6, this claim was presented to Congress by citizens of the state of Georgia, and was each year referred to the Committee of Claims, and regularly reported against, referring to and adopting the report made in the year 1803.

From the year 1806 to the year 1816 your committee find no account of this claim in the journals of Congress; when it was again presented, and the subject referred to a *select committee*, who made a favorable report thereon, accompanied by a bill, which was not finally acted on, since which time your committee presume the House are sufficiently acquainted with the proceedings had thereon.

Your committee are unanimous in the opinion that the claim ought not to be paid by the United States.

STATE OF GEORGIA.

IN THE HOUSE OF REPRESENTATIVES,

Thursday, 20th December, 1821.

The select committee, to whom was referred the communication of his Excellency the Governor, upon the subject of claims which accrued in favor of certain of our citizens for militia services, rendered in the years 1792, 1793, and 1794, under the authority of the President of the United States, have bestowed upon the reference an attention, if not proportioned to the importance of the subject, at least as extensive as their time would admit. Your committee cannot withhold an expression of their surprize, that services, rendered under such high sanctions, at such hazardous periods, and so beneficial in their results, should have passed so long even without the scanty requital which constitutes the soldier's pay. But, believing, as your committee do, that neither the justice of the claim, nor the disposition to satisfy it, has been impaired by time, they have had reference to documents, by which they are induced to the recommendation of a course, in the success of which they have a confident hope. Your committee submit the following memorial:

The memorial of the Legislature of the state of Georgia to the President of the United States, sheweth:

That your memorialists feel constrained, through the highest organ of the government, to make this appeal in behalf of a portion of the citizens of the state, whose interests have been long forgotten, or remembered but to be disregarded. Your memorialists cherish no belief that this protracted neglect has proceeded from a deliberate intention to practice towards Georgia an act of injustice, and yet they are at a loss to assign a reasonable apology for the frequent rejection of such well founded demands. Georgia, from her exposed and frontier situation, has perhaps found it necessary to sustain more of the cruelties and sufferings incident to Indian aggression, than any state in the Union. Although she was one of the original confederation, and bore her full portion of the burthen by which the colonies were oppressed, yet the treaty of peace of 1783 did not furnish that repose which resulted to others of the states, and which she so ardently wished.

Her agonies were of longer duration, and were not alleviated by the reflection that she was suffering in the cause of liberty. Her enemy was savage, and her warfare was for protection only. Your memorialists proceed to enumerate the grounds of their reliance for success.

In the year 1792, the frontier of the state, which was bounded by savages, was upwards of four hundred miles in extent. The Creek and Cherokee nations were numerous and warlike, and wrought up to desperation by repeated defeats, and the total discomfiture of a more formidable foe, with whom they had lately been in close alliance.

It was against these that Georgia had to make her defence; she was young, her population sparse, and her resources few, yet, being a member of the Union, she was entitled to protection. With a view to its attainment, a communication was made to the only authority capable of affording aid. In the fall of that year the Secretary of War, under the directions of the President, vested the Governor of Georgia with a discretion suited to the exigency, which discretion was exercised in a demand upon the agent of the United States for furnishing supplies to provide rations at different stations, for the militia that might be called into service. The obedience which the agent yielded to the demand is at least conclusive that he did not question his authority, and the additional fact that the general government paid the expense of the supplies, is conclusive that the authority existed, and that it was of the highest order. Your memorialists see no distinction between the obligation to pay for the supplies, and the services rendered, by those who received them.

Rations and pay are inseparable, and form the necessary concomitants of a soldier in service. Under the same authority a line of forts were built from the sea shore to the mountains, and garrisoned by sufficient force. This plan was in pursuance of the authority dele-

gated, which required that the operations should be purely "defensive." If Georgia had conducted the enterprise without dependance, and without restraint, its character would have been different. The murders and aggressions of the spring of 1793 made those tribes the objects of just vengeance, and a war of extermination, if in any case, would have been here justifiable. But the state, having no original authority of her own, pursued her conformity to the rules which were prescribed. Being a mere agent, she had but to execute the will of her principal, and that will was expressed under limitations which cost the lives of many of our citizens. These limitations are to be found in a communication from the War Department, dated in May, 1793, where, from "considerations of policy," Georgia was directed to avoid "offensive expeditions." These considerations of policy were not predicated upon the safety of our state, but were founded upon our relations "with foreign powers," and the pendency of "treaties with the northern Indians." These facts are adverted to for the purpose of shewing, with the greater certainty, that Georgia did not act for herself, but that she was paying obedience to her federal head. Another circumstance carries this position beyond dispute. There is not to be found in our statute book, or file, or of record, in the state of Georgia, any legislative authority for the service which was rendered during those periods; no one, however, doubts, either the performance of the service, or its hazard and severity; the only question to be settled, is, Who is responsible for the expense?

Your memorialists, in disclaiming all liability on the part of Georgia, will ever contend that a most solemn obligation rests upon the United States; an obligation doubly sacred, involving, as it does, the faith of the Republic, and the pledge of the Republic's father. Instances are not wanting to prove that the like service, during the same periods, and rendered under the like authority, has been compensated from the general treasury. Georgia was not alone, during those times of trial, in her exposure to the incursions of savages: the state of South Carolina, and the North and Southwestern territories, which have since been divided into rich and flourishing states, have had their periods of hostility; and, although they passed the boundary of *defensive* warfare, and actually invaded the enemy's country, and this, too, against orders, yet these have never been reduced to the humiliating necessity of repeating their application. If we be told that we have slumbered over our rights, and that our demand is stale, we answer, that, as between governments we know no limitation; and that the subject has been frequently brought to public notice by the able and vigilant representatives of the state. It may be the misfortune of Georgia that the evidence of the performance of these services is not so full and satisfactory as could be wished, but the defect proceeds from no omission of her own. It may be her further misfortune that she is compelled so often to repeat her application; but this does not impair the strength of her claims. She renews the subject, on this occasion, under increased hopes of success, believing that there is no disposition on the part of the general government to withhold from our state the things that are hers.

Your memorialists beg leave to refer to the following documents, in support of their views upon the subject under investigation.

Letter from the Secretary of War to the Governor of Georgia, dated the 27th of October, 1792.

Another letter between the same parties, dated the 30th of May, 1793.

Another letter between the same parties, dated the 10th of June, 1793.

A letter of the same date from the Secretary of War to the Governor of South Carolina.

A letter from the Secretary of War to the Governor of Georgia, dated 19th July, 1793.

A letter from the Secretary of War to Captain Constant Freeman, dated 5th September, 1793.

A letter from the Secretary of War, to the Governor of Georgia, dated the 22d February, 1794. And a letter of the same date to Mr. Habersham, collector of the customs; and, also, to a report of the Department of War, dated the 3d February, 1803. The whole of these, it is presumed, will be found in the office of the Secretary of War. The amounts which are claimed for the services rendered, are specified in the document last above referred to.

Your memorialists pray that the subject may receive the consideration to which it is entitled, and that the result may be to the benefit of the citizens of Georgia.

The committee also recommend the adoption of the following resolutions:

Resolved, That his Excellency the Governor be requested to transmit copies of the foregoing preamble and memorial to the President of the United States, and to our Senators and Representatives in Congress. And that he also forward such documents and information as he may possess, or be able to obtain, calculated to facilitate inquiry or effect the end intended.

And be it further resolved, That our Senators in Congress be instructed, and our Representatives requested, to use their best exertions to procure an appropriation, or other arrangement, finally adjusting the points as set forth in the foregoing memorial.

(Approved 22d December, 1821.)

WAR DEPARTMENT,

February 3d, 1803.

SIR: I have the honor of transmitting herewith a report on the claims of the state of Georgia, agreeably to a resolution of the House of Representatives of the United States of the 3d of April, 1802; also, copies and extracts of the letters and documents referred to in said report.

I have the honor to be,

Very respectfully, sir,

Your obedient servant,

H. DEARBORN.

The Hon. the SPEAKER

Of the House of Representatives of the United States.

REPORT.

The Secretary of War respectfully reports to the House of Representatives of the United States,

That, in obedience to their resolution of the 3d of April, 1802, relative to the claims of the state of Georgia, for militia services, the secretary has taken measures to obtain all such documents as relate to the subject, some of which were not received until the month of January, past.

In the course of an examination of the various documents, the following facts appear, which, with the circumstances attending them, are considered as affording the best view of the subject, of which it is susceptible at this distant period of time. The muster and pay-rolls received from lieut. col. Constant Freeman, who acted as agent of the War Department in Georgia, at the time the services were principally performed, are offered as evidence of services actually performed by the militia of that state, for which compensation is claimed, amounting in the whole to the sum of 142,535 dollars and 29 cents; of which sum 13,159 dollars and 63 cents appear by the rolls to be due to such corps as were specially authorized by the executive of the United States, for services subsequent to 1793; the remaining sum of 129,375 dollars and 66 cents, is for services which were not considered by the executive of the United States, nor by the agent of the War Department, as fully authorized by the general government, and for which no payments have been made.

Sundry letters from the Secretary of War are offered as the principal grounds on which a decision may be made relative to the latter claims. On the 27th October, 1792, the Secretary of War wrote to the governor of Georgia, and gave him a discretionary power as to

the force he should think proper to employ, in case sufficient evidence appeared of the hostile intentions of the Creeks, against the frontiers of the state.

On the 30th of May, 1793, the Secretary wrote to the Governor, and authorized him to raise and organize one hundred horse and one hundred militia foot, to be armed and paid by the United States, which force, in addition to the regular troops then stationed in Georgia, and a suitable number of spies and small scouts, was considered as competent to the defence of the frontiers; and directed, that whatever force might be employed, should be regularly mustered.

On the 10th of June, 1793, the Secretary wrote again to the governor, and informed him, that if the state was invaded, or in imminent danger of being invaded, the measures which he (the governor) had taken, might be considered as indispensable; that he was the judge of the degree and duration of the danger, and would proportion the defence to exigencies; that the President had the fullest confidence, that when the danger which had induced the governor to call out such large bodies of militia should subside, that he would reduce the troops to the existing state of things. A letter of the same date as the last, was written to the Governor of South Carolina, informing him that the President of the United States, having received authentic information of the unprovoked and cruel outrages of the Creeks on the frontiers of Georgia, requested that he would, in case of a serious invasion by the Indians, and on the request of the Governor of Georgia, direct such parties of the militia of South Carolina to march to the assistance of Georgia, as the case might require, for the expense of which the United States would be responsible.

On the 19th of July, 1793, another letter from the Secretary of War to the Governor of Georgia, states, as no information had been received at the seat of government of any late depredations of the Indians, and as there was reason to hope that they would be brought to a sense of their crimes, and induced to give up some of the authors thereof, the directions given in the letter of the 30th of May, still ought to operate: captain Constant Freeman is mentioned as having been appointed agent for the War Department, who would regulate the issues of public property to the troops which might be in service.

On the 5th of September, 1793, a letter was written by the Secretary of War to captain Constant Freeman, by which he was directed not to concur in any measures, at the expense of the United States, for invading the Creek country. And on the 22d of February, 1794, another letter was written by the Secretary of War to the Governor of Georgia, from which it appears, that the President of the United States has been induced to believe that a greater number of troops had been employed than was necessary; and the governor was informed that the general government would not, except in case of an actual invasion, be pledged for the expense, if, in future, any number of troops should be employed, which exceeded the force that the President had previously authorized, viz: one hundred horse and one hundred foot. He is also informed, that, if it was expected that th-

militia were to be paid by the United States, it would be necessary that returns, muster and pay rolls, should be made and delivered to captain Freeman, the agent of the War Department, in order that the whole case might be submitted to Congress, as the only authority competent for deciding on what proportion of the expenses should be defrayed by the United States.

By a letter, of the date of the foregoing, addressed by the Secretary of War to Mr. Habersham, collector of the customs in Georgia, who also had acted as an agent of the War Department, he is informed that the number of militia, which had been supplied in the state of Georgia at the expense of the United States, appeared by his representations to the War Department, to have greatly exceeded the number contemplated, and that one hundred horse and one hundred foot, in addition to the continental troops, were considered as adequate to the protection of the frontiers against small parties of Indians; and that orders had been given for that number to the late Governor, dated the 30th of May, 1793, which number the President of the United States consented might be kept up on certain conditions mentioned to the governor. Mr. Habersham was then directed not to furnish supplies, without particular orders from the proper department, to any greater number than one hundred horse and one hundred foot.

Copies of many other letters, and extracts of letters, are among the documents, which are not considered by the Secretary of sufficient importance to require particular notice.

From the preceding exhibition of facts, and from the other less important documents, and the circumstances connected with the subject, it appears, that the actual services performed by the militia of the state of Georgia, in the course of the several years to which this inquiry is directed, for which payments have not been made, amount, in the whole, according to the rolls delivered to the agent of the War Department, and by him transmitted to that Department, to 142,535 dollars and 29 cents. That such part of said services, as were performed under the immediate direction of the Executive of the United States, amounts to 13,159 dollars and 63 cents; that, from October, 1792, to May, 1793, the governor was, by direction from the Executive of the United States, to employ such force as, in his opinion, should be necessary; that, from the 30th of May to the 10th of June, there was a suspension of his discretionary authority, and, on receiving the letter of the 10th of June, he was again authorized to act altogether at his own discretion, as to the number of troops he should employ; and, until he received the letter of the 19th of July, 1793, he was authorized by the Executive of the general government, to employ such force as he should judge necessary for defensive protection, and that, from the general tenor of the directions of the Executive of the United States, he probably considered the United States as responsible for the expenses. Whether the governor exercised the power confided to him by the Executive of the general government with sufficient caution or not, must depend on

mere opinion. When the situation of the state of Georgia, at that period, is considered, having a thinly inhabited frontier, of about four hundred miles in extent, bordering on numerous hostile and warlike Indian nations, and threatened with a general invasion from one of the most powerful, which was actually committing frequent depredations on the frontier inhabitants, it is not improbable but that the governor might have been induced to believe, that a greater number of men were necessary for the protection of the frontiers, than would have been considered needful by persons remote from the scene of action. At the time when these services were performed, a hostile disposition pervaded the greater part of the Indian nations within the United States: a serious war then existed between the United States and the numerous tribes of Indians in the country northwest of the Ohio; and a predatory war was carried on between the territory southeast of the Ohio, now the state of Tennessee, and the Cherokees, the expenses of which were principally defrayed by the United States: troops were kept in pay at the expense of the United States, on the frontiers of South Carolina.

As it would be impracticable at this time to ascertain, with precision, what number of troops was really necessary to have been kept in service, at different periods, in the state of Georgia; and, as the opinion of the Executive of the United States appears to have varied on the subject in respect to the degree of danger with which that state was threatened, and as the suspension of the governor's discretionary power between the 27th of October, 1792, and the receipt of the Secretary's letter of the 19th of July, 1793, was but of ten days' duration, it is considered by the Secretary, that the services of the whole of the militia, called out by the Governor of Georgia, in the year 1793, do constitute a just claim upon the United States for pay, up to the time in which the said troops could have been disbanded, after the receipt of the said letter, of the 19th of July; which probably could not have been effected earlier than the last of September; and when it is considered that they were spread over an extensive country, it may be doubtful whether the necessary arrangements could have been made and carried into execution, at so early a period.

Under a full view of all the circumstances relating to the subject, the Secretary respectfully submits to the consideration of Congress, whether justice would not require an admission of the claims for all services performed for defensive protection in the year 1793, up to the 1st of October of the same year, for which regular pay and muster rolls have been received; and whether the admission of the claim for like services, for which muster and pay rolls have been received, for the other three months of the year 1793, would not, under all circumstances, do less injustice, than would result from a rejection of that part of the claim. The services, for which pay and muster rolls have been received, up to the end of the year 1793, amount to 95,971 dollars and 23 cents, exclusive of the sum of 13,159 dollars and 63

cents, due to the particular corps and spies, specially authorized subsequent to the year 1793.

What weight should in this instance be given to the provision in the constitution "that no state shall make war unless in case of invasion, or of such imminent danger as will not admit of delay?" which is referred to by the Secretary of War, in his statement to the President of the United States (as per document marked K,) and which the state of Georgia may consider as authorizing her claims, is submitted to the determination of Congress.

H. DEARBORN.

WAR DEPARTMENT,

February 3d, 1803.

CORRESPONDENCE ON THE GEORGIA CLAIM.

A.

GEORGIA.

By his Excellency John Milledge, governor and commander in chief of the army and navy of this state, and of the militia thereof.

To all to whom these presents shall come, *greeting:*

Know ye, That George R. Clayton, esquire, who hath certified the documents hereunto annexed, is one of the Secretaries of the Executive Department of this state, in whose office the archives of the same are deposited.

Therefore, all due faith, credit, and authority, are and ought to be had and given his certificate and attestation as such.

In testimony whereof, I have hereunto set my hand, and caused the great seal of this state to be put and affixed, at the state house, in Louisville, this sixth day of November, in the year of our Lord eighteen hundred and two, and in the twenty-seventh year of the independence of the United States of America.

[L. S.]

JOHN MILLEDGE.

By the Governor,

HOR. MARBURY, *Sec'ry.*

SAVANNAH, 23d April, 1793.

SIR: The very critical situation to which the frontier settlers are reduced, from the late murders and depredations committed by the Indians, renders it indispensable, that means be taken to guard against their inroads. I have made the needful communications to the War Department, and in the interim have to request your issuing orders to the contractors to provide rations for such part or

parts of the militia of this state, as may be called into service, to be furnished at the several stations and places of rendezvous. In order that you may be informed how far such a measure is correspondent with the system adopted by the general government, I herewith furnish a certified copy of a clause of a letter from the Secretary of War, dated 27th October, 1792, on the subject of Indian Affairs.

I am, Sir,

Your most obedient servant,

EDWARD TELFAIR.

Extract of a letter from the Secretary of War, to his Excellency the Governor of Georgia, alluded to in the foregoing letter.

“If the information which you may receive shall substantiate clearly any hostile designs of the Creeks against the frontiers of Georgia, you will be pleased to take the most effectual measures for the defence thereof, as may be in your power, and which the occasion may require.

I have the honor to be, sir,

Your most obedient servant,

H. KNOX.

Secretary of War.”

EXECUTIVE DEPARTMENT,

Louisville, 6th November, 1802.

I certify that the foregoing extracts are truly copied from the originals on the journals and files of this department.

GEO. R. CLAYTON, *Sec'y.*

SAVANNAH, April 23, 1793.

SIR: I am favored with your Excellency's letter of this date, in respect to supplying such part or parts of the militia as may be called into service at the several stations and places of rendezvous with rations, and enclosing a certified copy of a clause of a letter from the Secretary of War, dated the 27th October, 1792, which has reference to the subject.

Being of opinion that I shall be justified by the aforesaid clause in doing so, I shall immediately give directions to the contractor, who is now here, to furnish supplies to such of the militia as may be drawn out under the sanction of your excellency, and will commu-

licate the same to the Secretary of War, and the commanding officer of the federal troops in this state, without delay.

I am, sir, with respect,

Your Excellency's most obedient servant,

JOHN HABERSHAM,

Agent for the supplying the troops in Georgia.

His Excellency ED. TELFAIR, Governor, &c.

EXECUTIVE DEPARTMENT,

Louisville, 6th November, 1802.

I certify, that the foregoing letter is truly copied from the original, now on the files of this department.

GEO. R. CLAYTON, *Sec'y.*

B.

WAR DEPARTMENT,

30th May, 1793.

SIR: The duplicates of your two letters, dated at Savannah on the 22d and 29th ultimo, were received on the 28th instant, and submitted to the President of the United States, who, after having seriously considered their contents, has directed me to make the following reply to your excellency.

That, from considerations of policy at this critical period, relative to foreign powers, and the pending treaty with the northern Indians, it is deemed advisable to avoid, for the present, offensive expeditions into the Creek country. But, from the circumstances of the late depredations on the frontiers of Georgia, it is though expedient to increase the force in that quarter for defensive purposes; the President, therefore, authorizes your excellency to call into and keep in service, in addition to the regular force stationed in Georgia, one hundred horse, and one hundred militia foot, to be employed under the orders of lieutenant colonel Gaither, in repelling inroads, as circumstances shall require.

You will please to nominate and appoint the commissioned officers to the above corps of horse, to consist of one captain, two lieutenants, and two cornets; the non-commissioned and privates to consist of six sergeants, six corporals, one trumpeter, and one farrier, and eighty-six dragoons.

In order that the corps shall be well equipped, the public will find the caps, swords, pistols, saddles, bridles, and carbines, all of which however, will be deducted, at their prime cost and charges, from the pay of each individual, which you will perceive, by the enclosed schedule, is very liberal. This corps of horse to be engaged of pro-

per characters, to serve until the first day of May or June next, *unless sooner discharged*; which the government must hold the right of doing, if it should think fit: if the non-commissioned and privates cannot be engaged for the above period, it must be left to your discretion to engage them for as long a time as possible.

The authority for the above purpose is specially vested by law in the President of the United States. But the infantry or foot militia must be called into service according to the general course of the militia law, to which you will please to advert; the pay of the infantry will be the same as the troops of the United States, agreeably to the schedule No. 2.

It will, however, be important that proper endeavors be used to engage them for as long a period as the cavalry. The commissioned and non-commissioned officers for the infantry to be the same as for the continental troops, to wit: one captain, one lieutenant, one ensign, six sergeants, six corporals, one drum, one fife, and eighty-six privates.

An additional thousand stand of arms and accoutrements, fifty barrels of powder, and a proportional quantity of lead and flints will be forwarded to Major Habersham, with all expedition, to be by him forwarded to Augusta, to the care of Major Forsythe, under the provisions of the former quantity.

As it does not yet appear that the whole force of the Creek nation is disposed for, or engaged in hostility, it is considered that the above force will be sufficient for the object designated.

As it is to be apprehended, that the object of the western frontiers may (notwithstanding the treaty) require the energy of all the regular troops in that quarter, and also of the recruits who are marching that way, it has been considered that no part of them could be sent to Georgia in the present instance. But if the treaty should be successful, or if the troops should be victorious, it may be otherwise in future.

The case of a serious invasion of Georgia, by large bodies of Indians, must be referred to the provisions of the constitution; but the proceeding with efficacy in future, (the necessity of which appears but too probable) requires absolutely that no unnecessary expense shall be incurred in the mean time.

It has been heretofore considered, that block houses afford but a very imperfect security to a frontier, and nothing has occurred lately to induce a contrary impression. They serve to cover little more than the persons who are actually within them. The garrisons are necessarily too small to afford any considerable party to sally out, and the experience of Indian warfare evinces that the savages soon learn the force within, and either despise or avoid it. It has been found by practice, in Kentucky, and along the whole western frontiers, that a few scouts or spies, who are formed of the hardiest and best hunters, and who shall be advanced a few miles of the settlements, traversing incessantly, at right angles, the paths most used by the Indians, are better calculated to give the alarm to the settlers, and se-

cure them from danger, than any other species of troops whatever; and in order that nothing on the part of the government should be wanting to induce the best frontier citizens to undertake this service, the high rate of five-sixths of a dollar per day has been allowed to each scout. Two men or scouts will cover an extent of ten or twelve miles; they are to be mustered upon oath at the time of their entering and leaving the service; this is essential in order to prevent abuse.

Indeed it is indispensable that all troops who are to be paid by the general government, should be mustered in the same manner, by some respectable magistrate or high officer of the militia.

If your Excellency should have any map, which may be depended upon, of the Creek country, a copy of it would be of service.

I have the honor to be, with great respect,

Your excellency's most obedient servant,

H. KNOX,

Secretary of War.

His Excellency the GOVERNOR OF GEORGIA.

EXECUTIVE DEPARTMENT, GEORGIA,

Louisville, 24th September, 1802.

The foregoing letter is truly copied from the original, now in this office.

GEO. R. CLAYTON, *Sec'y.*

C.

WAR DEPARTMENT,

June 10th, 1793.

SIR: Your letter, of the 8th of May, has been received, and submitted to the President of the United States.

The state of Georgia being invaded, or in imminent danger thereof, the measures taken by your Excellency may be considered as indispensable. You are the judge of the degree of danger, and of its duration, and will undoubtedly proportion the defence to exigencies. The President, however, expresses his confidence, that as soon as the danger, which has induced you to call out so large a body of troops, shall have subsided, that you will reduce the troops to the existing state of things—indeed, to the number mentioned in my letter of the 30th ult.; duplicates of which have been forwarded, provided the safety of the frontiers will admit the measure.

The articles mentioned in the enclosed invoice have been shipped this day on board the schooner Peggy, Captain Skilly, consigned to John Habersham of Savannah, who has been directed to take your orders, as to their further disposition. The remainder will be for-

warded, as soon as prepared, so as to complete the number and quantity mentioned in my letter of the 30th ultimo.

As a general and open Creek war, in the present crisis of European affairs, would be complicated and of great magnitude, the President of the United States is anxiously desirous of avoiding such an event; for this purpose he has again directed Mr. Seagrove to repair to the heart of the Creek country, provided the measure can be attempted with any reasonable degree of safety. If a few of the most violent depredators could be put to death, it ought, in the present conjuncture, to be considered as satisfactory.

I enclose you a copy of the letter which has been written to Mr. Seagrove on this occasion.

I also enclose a copy of a letter to the governor of South Carolina, in case circumstances should require you to call for aid from that state.

I have the honor to be,
Your Excellency's

Most obedient servant,

H. KNOX,

Secretary of War.

His Excellency the GOVERNOR OF GEORGIA.

EXECUTIVE DEPARTMENT, GEORGIA,

Louisville, 24th Sept. 1802.

The foregoing letter is truly copied from the original now in this office.

GEO. R. CLAYTON, *Sec'y.*

D.

[Duplicate.]

WAR DEPARTMENT,

June 10th, 1793.

SIR: The President of the United States having received authentic information from Georgia, of the unprovoked and cruel outrage of parties of Creeks upon the frontiers of that state, and as it is at present uncertain to what degree the evils complained of may be extended, the President has directed me to request your Excellency, that, in case the frontiers of Georgia should be seriously invaded by large bodies of Indians, that you would, upon the request of the Governor of the said state, direct such parties of the militia of the state of South Carolina to march to the assistance of Georgia, as the case may require; for the expenses of which the United States will be responsible: the militia to provide themselves with provisions to the place of rendezvous, which shall be appointed by the Governor of

Georgia, where arrangements, for further supplies, will be made by the contractors for the continental troops.

I have the honor to be,

With great esteem,

Your most obedient servant,

H. KNOX,

Secretary of War.

His Excellency the

GOVERNOR OF SOUTH CAROLINA.

EXECUTIVE DEPARTMENT,

Louisville, 24th September, 1802.

The foregoing duplicate is truly copied from the one now in the office.

GEO. R. CLAYTON, *Sec'y.*

E.

WAR DEPARTMENT,

July 19th, 1793.

SIR: Your Excellency's letters of the 12th and 18th ultimo have been received, and submitted to the President of the United States.

The reasons given by his order, in my letter of the 20th May, still operate to prevent any departure from the line of conduct therein specified, and it is to be hoped, from no information having been received of any late depredations of the Creeks, that they may be brought to a sense of their crimes, and be prevailed upon to give up at least some of the authors thereof.

The swords and equipments for the hundred horse could not be completed by the manufacturers until this time; they are now sent, together with the arms, accoutrements, and ammunition, contained in the enclosed list.

The public have no horsemen's swords in store; some are in train of being mounted, which will be finished with all possible expedition; as soon as one hundred are mounted, application will be made to the President for permission to forward them to Georgia.

This letter will be delivered by Captain Constant Freeman, who is ordered into Georgia, as an agent of this Department, to regulate the issues of public property to the troops who may be in the service of the United States, and to prevent or remedy any abuses which exist, or which may exist hereafter.

I have the honor to be, sir, your humble servant,

H. KNOX,

Secretary of War.

His Excellency Governor TELFAIR.

EXECUTIVE DEPARTMENT, GEORGIA,
Louisville, 24th September, 1802.

The foregoing letter is truly copied from the original now in this office.

GEO. R. CLAYTON, *Secretary.*

F.

Copy of a letter from the Secretary of War to Constant Freeman, agent for the War Department.

WAR DEPARTMENT,
September 5th, 1793.

SIR: You are not to concur in any arrangements, at the expense of the United States, which the Governor of Georgia may choose to make for the purpose of invading the Creeks.

I am, sir, your humble servant,

H. KNOX,
Secretary of War.

Capt. CONSTANT FREEMAN.

H.

Extract of a letter from the Secretary of War to Constant Freeman, agent for that Department in Georgia, dated the 22d February, 1794.

“It is difficult, or almost impossible to say how you can muster the militia, whose times of service must have long ago expired. If the hundred horse and the hundred foot, authorized on the 30th of May, should have been organized, or indeed any corps in lieu of them, there would be no exception to your mustering of them.

“You will, however, perceive, by my letter to the Governor, of this date, a copy of which is herewith transmitted, that you may receive returns, muster and pay rolls, for the purposes herein mentioned, and transmit them to this office.

“You have also, enclosed, a copy of a letter to John Habersham, Esq. If the Governor should arrange the hundred horse and hundred foot which he is authorized to do, you are to muster them from time to time, as mentioned in your former instructions.”

Copy of the letter to the Governor.

WAR DEPARTMENT,

22d February, 1794.

SIR: It has been understood by the President of the United States, that a body of militia has been kept upon the frontiers of the state of Georgia during the greater part of the last year, exceeding greatly the number which, according to the information received at this office, would seem to have been required by the state of things in that quarter. This number has been represented from one thousand to twelve hundred men.

If this number, or indeed any excess of the force hereafter described, should be continued to be kept up in ordinary cases, the President of the United States desires that it may be explicitly understood by your Excellency that the general government will not be pledged for the expense thereof.

If, indeed, there should be a powerful and sudden invasion of the state of Georgia, by Indians, such a case must be referred to the provisions contained in the constitution, and submitted to the consideration of Congress.

The enclosed letter was written to your predecessor, upon the 30th May last.

The President consents that the hundred horse, and the hundred foot, therein described, should, in addition to the continental troops, posted in Georgia, be kept up at present, or during any considerable danger, on the condition that you should, monthly, state to this office, in order to be submitted to him, your reasons for the continuance of this force. Instructions are also transmitted to Mr. Habersham, the agent for the contract in Georgia, prohibiting his making any provision for supplies, of any sort, to a greater number than the said hundred horse and hundred foot, in addition to the regular troops.

No returns have been received at this office of the number kept in service during the last year, excepting the information before mentioned from Mr. Habersham, of the number being from one thousand to twelve hundred. If it should be expected that the said militia are to be compensated from the United States, it would be necessary and proper that returns, muster and pay rolls, should be given to the agents of this Department in Georgia, in order that the whole case might be submitted to Congress, for it is deemed that Congress alone are competent to decide, under a full view of the circumstances of the case, whether any expenses incurred, or what proportion of them, are to be defrayed by the United States; hitherto no estimate could be formed of the amount of the charges of a corps of which no returns or musters have been transmitted.

I have the honor, &c.

H. KNOX,

Secretary of War.

His Excellency the GOVERNOR OF GEORGIA.

Copy of the letter to John Habersham, collector of the customs, Savannah.

WAR DEPARTMENT,

February 22d, 1794.

Sir: The number of militia in the state of Georgia, which were supplied at the expense of the United States, appears, by your representation, to have greatly exceeded the number contemplated.

It was considered, that one hundred militia horse and one hundred foot, in addition to the continental troops, would have been adequate to the protection of the frontiers of Georgia against small parties; in pursuance of this opinion, orders were given for the number to the late Governor, on the 30th of May, 1793, a copy of which is herewith transmitted.

Upon mature consideration, the President of the United States consents that this number should be kept up on certain conditions mentioned to the Governor of this date, a copy of which is herein enclosed.

In consequence of this arrangement, you will not, after receiving this letter, furnish supplies of any sort, to any greater number of militia, than the one hundred horse and one hundred foot, unless in cases specially sanctioned by the general government, and previously notified to you by the proper department.

I am, sir, with great esteem,

Your most obedient servant,

H. KNOX,

Secretary of War.

JOHN HABERSHAM, Esq.

K.

Extracts of a letter from the Secretary of War to Constant Freeman, agent for the War Department in Georgia, dated 14th May, 1794.

The Governor of Georgia is authorized to establish a block-house on the frontiers every twenty five miles, and to garrison the same from the militia, each with one lieutenant, one sergeant, one corporal, and fifteen privates.

The utility of these block-houses will depend upon the discipline of the garrisons, and the regularity of the musters.

You will, therefore, make an efficient arrangement for the regular inspection and muster of these garrisons, once in every two months.

I have written to colonel Gaither, in order to furnish you with necessary assistance of the continental officers for this purpose, and the rules herein directed must be rigidly adhered to.

Extracts from the report of the Secretary of War, to the President of the United States, relative to the defensive protection of the frontiers, dated May 1st, 1794.

“Influenced by this opinion, I beg leave to submit the following ideas:

1. That no more than one hundred horse be allowed for the defensive protection of Georgia.

2. That as many additional militia foot be allowed to the hundred already permitted, and the continental troops, as will admit of a block-house being erected every twenty-five miles or thereabouts; each block-house to have one subaltern, one sergeant, one corporal, and fifteen privates.

3. That Governor Blount be permitted the same sort of defence for his territory, with thirty mounted volunteers. It is understood that by an order of the 14th April, Mero District has been arranged.

4. That a correspondent number of garrisons for block-houses be allowed for the south-western parts of Virginia and the Ohio, but no mounted militia; the usual number of scouts is, however, to be retained.

That the several block-houses be erected by the militia, without expense to the United States.

That this arrangement be for defence; that in cases of invasion, the provisions in the constitution to be resorted to.

That returns of the number of garrisons aforesaid be made to the Secretary of War, and continental officers to be appointed to muster the men as often as once in every three months, or oftener if possible, and that any of the garrisons who should be absent, unless by actual sickness, of which ample evidence should be produced, should forfeit his pay; and if by permission of his officer, he should forfeit his pay.

Very special circumstances, upon which the safety of the garrison may have rested, as to procure a supply of ammunition, provisions, or to warn the inhabitants of any imminent danger, or upon a scout, to be considered as good reasons for dispensing with this order.

REPORT

Of the Committee of Claims, made 16th December, 1803.

The Committee of Claims, to whom was referred the petition of John F. Randolph and Randolph M. Gillis, together with the "Report of the Secretary of War, respecting claims against the United States, for services of the militia of the state of Georgia,"

REPORT:

By the convention, concluded between the United States and the state of Georgia, relative to the cession of the territory therein described, the sum of \$1,250,000 is stipulated to be paid by the United States to the state of Georgia "*As a consideration for the expenses incurred by the said state in relation to the said territory.*" When the present case was before the House at the last session, a question arose whether this claim was not finally extinguished by that convention? Your committee, believing it their duty to direct their first inquiries to this object, requested of the attorney general his opinion as to the construction which ought to be given to the passage above recited. His answer, accompanying this report, is such, as, in the opinion of your committee, precludes the necessity of investigating, at this time, the original merits of the claim.

The late commissioners on the part of Georgia sent also to the Committee a certificate, under their hands, in which they explicitly declare, that the militia services, which are the basis of the present application, were not at all contemplated as part of the consideration expressed in the articles of cession. If the construction of that instrument is to depend on extraneous facts, not only is the information derived from the commissioners important, but also it would have been desirable that a particular statement of the "*expenses*" for which the sum already mentioned is stipulated to be paid, had likewise been presented. On this point your committee are still uninformed. And although, it is believed, upon a question of construction merely, such information cannot be necessary, yet, as affecting the equity of the case, it would have been highly satisfactory.

To obviate the inference which would necessarily be drawn from the interpretation given to the convention by the attorney general, it is said that the present is not a claim made by the state of Georgia, but by individuals of that state, and of course cannot be affected by any negotiations between the general government and the government of Georgia.

The manner of exhibiting the demand, assuredly, cannot change its nature. In the view of your committee, the claim, whatever shape it may assume and whether originally well-founded or not, is virtually a claim of the state of Georgia. The militia were called into service by the executive of that state, and notwithstanding the ulterior responsibility of the general government, the state must be considered as accountable, in the first instance, for the expenses incurred.

Any other supposition would derogate equally from the theory of our national union, and the acknowledged sovereignty of the individual states. It will not be doubted that the state of Georgia possessed the power of exonerating the general government from all supposed liability in the case, and thereby rendering itself responsible to its own citizens. That such is the course it has thought proper to pursue, is to be presumed from the sound construction which the late convention ought to receive.

Under these impressions your committee respectfully offer to the House, as their opinion, that the petitioners have leave to withdraw their petition.

Letter from the Attorney General to the Committee of Claims.

DECEMBER 3, 1803.

SIR: I had the honor of receiving your note of the 30th ultimo. Wishing to take time for the recollection of what depended on memory, my answer has been delayed.

Having no authority to determine, whether the *consideration* for the expenses incurred by the state of Georgia in relation to the ceded territory, (as expressed in your first question) ought to be so construed as to include an allowance for the defensive operations carried on by the executive of that state, under the sanction of the general government, in the years 1792, 1793, and 1794, I can only, in compliance with the request of the honorable Committee of Claims, state to them my private ideas and recollections on the subject.

The expenses incurred by the state, for which the \$1,250,000 is to be paid as a *consideration*, appears to me to be a description so extensive, by the mere force of the terms, as to include every species of expense which had been previously incurred by the same state, having *any relation* to the ceded territory, *exclusively*, or to it in *common* with what now constitutes that state. I know of no principle of construction which can so limit the description of expenses, expressed in the treaty of cession, as to exclude therefrom any, which were then considered, by *either party*, as *chargeable* on the United States for the past military defensive operations of Georgia. Although, in the sense of the convention, "*said territory*" means the ceded territory, as distinguished from the remaining territory of the state, yet, at the time of incurring the said expenses, both territories were considered as undivided parcels of an entire whole. And of course any defensive operations in one part, had a relation to the other as included in the whole, and were in fact thus an expense for the defence of both.

Further, the \$1,250,000 is expressly for *expenses incurred*. If expenses, *to this amount*, had not been incurred at the time of making the cession, *exclusively*, on account of the *ceded territory*, the presumption is strong, that the allowance was not made *merely* in conse-

quence of such expenses, but in consideration of those incurred on some *common ground*: indeed I have no recollection of any expenses *exclusively* on account of the ceded territory having been stated by the commissioners on the part of Georgia, while in treaty with them.

In reference to your other queries, “whether the *commissioners considered the present claims satisfied by the convention*,” and “*what*” in fact, “*were the particular expenses referred to*” in the above construed passage, I can only state my own impressions. It is perfectly recollected, in the course of the negotiation with the commissioners on the part of Georgia, at one or more of the interviews with them, they stated, as a reason why an allowance, to a certain amount, ought to be made them, out of the proceeds of the ceded territory, that their state then had a debt, which had been incurred for military services in defence of the state, or of the ceded territory; and which the United States, on an application, had unreasonably refused to allow them. The reply was, that those expenses were incurred for the benefit of the state, and that some other states which had incurred similar expenses, had received for them no compensation from the general government. I have not been able to recollect the precise words which either party made use of on this occasion, and therefore cannot now say that my impressions were correct. I am, however, certain, that I had no knowledge of the expenses in question, until they were disclosed for the aforesaid purpose; nor have I any recollection of any other ones being insisted on as reasons for the allowance. It is impossible for me to say, what influenced the minds of the other commissioners, or what weight the recited circumstance had in conjunction with other considerations, in reconciling my own mind to the sum finally agreed on. The above is the substance of my own reflections and recollections in reference to the object of your inquiries.

I have the honor to be,

Very respectfully,

Your and the committee's

Obedient humble servant,

LEVI LINCOLN.

Hon. J. C. SMITH,

