REPORT

Of the Committee on Revolutionary Pensions in the case of James Barker, with a bill for his relief.

January 31, 1825.

Read, and, with the bill, committed for to-morrow.

The Committee on Revolutionary Pensions, to whom was referred the petition of James Barker, having examined the case, present the following REPORT:

The petitioner prays that he may be placed on the list of Revolutionary Pensioners. By evidence accompanying the petition, it appears that the said Barker, on the 24th of February, 1777, enlisted for three years, as a private, in Captain Joshua Browne’s company, in the 15th Massachusetts regiment, commanded by Col. Timothy Bigelow, on the Continental establishment.—That he served in said company until the 12th of March, 1778, when, having been severely wounded in one of his legs, and attacked with fever and ague, he was rendered unfit for duty. And, by recommendation of the Surgeon of the regiment, he obtained permission to return home, and received from Major Bradish, at that time the acting commander of the regiment, an unlimited pass. He accordingly returned to Stow, in Massachusetts, his native town, and there remained lame and unable to walk, until the term of his enlistment had expired; during which time he was under the care of physicians, and entirely unable to return to duty. These facts do not appear to have been known by his officers, and he was noted as a deserter on the 9th of July, 1778.

On the 28th or 29th of April, 1818, said Barker appeared before the District Judge, for the District of Maine, and made the declaration required by the act of Congress of the 18th of March, 1818, but the requisite proof not being then produced, the application was not at that time forwarded to the War Department, but was subsequently transmitted by mail, together with several depositions relating thereto. It does not appear that these papers were ever received at the War Department. On the 17th of May, 1823, a new declaration was made before the District Judge, a schedule of property was exhibited, and the legal proof of the poverty of the petitioner, and of his
having served more than nine months on Continental establishment, were adduced, and all the requisitions of the law were complied with. These papers, with the proper certificates of the Judge, were transmitted to the War Department, by which it appeared that the whole amount of the petitioner's property, necessary clothing and bedding excepted, was only seventy dollars. On the examination of the rolls in the War Department, it appeared that the petitioner was noted as a deserter on the 9th of July, 1778, and for this cause and no other, his application was rejected. And this is the only cause which now exists, why he should not be placed on the pension list. It therefore becomes necessary to determine whether he really deserted or not. For if he was erroneously noted as a deserter, it is unjust that he should be subjected to so injurious an imputation, and deprived of his pension, having served his country in the campaign which terminated in the capture of Burgoyne, and previous to that, in the battle of Bunker Hill.

The Committee are sensible of the credit which is due to the rolls of the army, and of the danger of admitting evidence to contradict them, after such a lapse of time. Still, as it was usual to note soldiers as deserters, who did not return to duty at the expiration of their furloughs, cases may exist, in which a person was noted as a deserter, who was prevented from returning to duty, by inevitable accident or necessity. In such cases, it would be unjust to consider the roll conclusive. But the proof admitted to contradict it should be clear, distinct, and positive, and from witnesses of the most unquestionable character and veracity.—Such is the evidence produced in this case. The petitioner, though poor, is proved to be a man of strict integrity and veracity, and the facts are verified by his oath. In addition to this, the original pass, which was granted to him at Valley Forge, on the 12th of March, 1778, is produced; and it is proved, by the depositions of two respectable witnesses, who were with him in the army, that the petitioner had leave to return home in consequence of his lameness and sickness. It is also proved by three witnesses of the most unquestionable respectability and veracity, that he returned home from the army, in the spring of 1778, lame, sick, and unfit for duty, and that he so continued until after his term of enlistment had expired. And at the time he was noted as a deserter, he was confined at home, so lame as not to be able to walk.

With this proof, the Committee are satisfied that the petitioner was prevented from returning to the army by inevitable necessity, and ought not to be considered as a deserter. He is now seventy-three years old, poor, and disabled in the service of his country, and, in the opinion of the Committee, is entitled to a pension. They therefore report a bill for his relief.