

IN SENATE OF THE UNITED STATES.

APRIL 11, 1846.

Submitted, and ordered to be printed.

Mr. PHELPS made the following

REPORT :

The Committee on Revolutionary Claims, to which was referred the memorial of the representative of Francis Vigo, deceased, report :

That the memorialist claims the amount of a bill of exchange for \$8,616, dated December 4, 1778, drawn by Geo. Rogers Clark upon Oliver Pollock, the agent of the State of Virginia, under the following circumstances : Colonel Clark was the commander of the military expedition sent to Kaskaskias, in the Illinois Territory, by the State of Virginia, in 1778. As a mode of supplying him with the necessary funds to defray the expenses of the expedition, procuring supplies, &c., he was authorized to draw upon Pollock, the agent of the State of Virginia, who was to be furnished with the necessary funds to meet the drafts. In pursuance of this authority, the bill in question was drawn in favor of Francis Vigo, the claimant, professedly, and doubtless really, for the purpose of procuring supplies for the troops. The bill, when presented to Pollock, was protested for want of funds ; and whether the same has ever been paid by the State of Virginia does not appear. Clark, however, must be supposed to have obtained the amount in some form, or the bill would probably never have been put in circulation. Upon the return of the expedition, Clark settled his accounts with the State of Virginia, in which he gives credit for the draft in question, and charges his disbursements by way of accounting for the funds thus placed in his hands.

By the deed of cession, executed on the 1st of March, 1784, by which the northwestern territory was ceded by Virginia to the United States, it was provided that the necessary and reasonable expenses incurred by that State in subduing any British posts, or in maintaining forts or garrisons within, and for the defence, or in acquiring any part of, the territory so ceded or relinquished, should be fully reimbursed by the United States. It then provides for the appointment of commissioners to adjust and liquidate the amount of such expenses. In pursuance of this provision, commissioners were appointed ; who, after being occupied in this duty over eighteen months, made their report in May, 1788. This report is not now to be found in the archives either of the United States or Virginia ; but the result was, as appears from a report of the Secretary of War, dated June 21, 1790, (see State Papers, vol. on Claims, p. 22,) that it was agreed

by the said commissioners that the State of Virginia should be allowed the sum of \$500,000 for all expenses in acquiring said territory, "in which allowance were included the expenses of Captain Rogers's cavalry and the troops of all other denominations and descriptions whatever."

The sum thus found due to Virginia was included in the general settlement which took place between the several States and the United States in 1793.

In December, 1835, fifty six years, at least, after the bill was drawn, a claim was presented to John H. Smith, esq., commissioner of revolutionary claims of Virginia, upon the bill, which was then said to be lost, (and which has not yet been found,) and was by him allowed at the sum of \$32,654 85, including interest at 5 per cent. If interest at that rate is added to December, 1845, the amount will be about \$37,000.

This allowance by the commissioner in Virginia was doubtless made with a view to a claim against the United States, under the provisions of the deed of cession, as it was immediately afterwards presented to Congress.

Whether this allowance against the State of Virginia was just and proper the committee do not deem it necessary to inquire, as in their judgment the claim can in no aspect be sustained against the United States.

The bill itself could, under no circumstances, be evidence of a debt against the United States; it was merely the medium by which the State of Virginia placed her funds in the hands of her disbursing agent. For those funds thus deposited the United States could not be responsible; much less could they be held responsible to the holder of the draft that it should be duly honored. If the funds obtained upon the credit of the draft were not disbursed, the agent was accountable to the State of Virginia. If they were disbursed, so far as they were disbursed for the acquisition or defence of the territory, the United States are liable to Virginia under the deed of cession for the expenditure by her.

The money was disbursed, as appears by the account of Colonel Clark, still extant in the auditor's office at Richmond. And there cannot be a rational doubt that Virginia has been reimbursed for the expenditure. Colonel Clark was the principal disbursing agent of the expedition; his accounts amount nominally to over two millions of dollars, and in specie to several hundred thousand dollars. That the commissioners in adjusting the account of the expenses in 1788 overlooked his disbursements is not credible. They doubtless had his account before them, as it comprised a very large portion of those expenses.

But it is, perhaps, not important whether they had his account before them or not. The authorities of Virginia were aware of the expenditures; her commissioner cannot be supposed ignorant of them, and the compromise upon a gross sum (\$500,000) to be paid to Virginia in lieu of all expenditure was, in the absence of fraud and mistake, as conclusive as if the amount had been ascertained to a cent.

To hold the United States responsible for this draft would be to make them twice responsible, once in the form of expenditure, and again in the shape of provision for that expenditure; or, in other words, it would compel the United States to advance the funds and at the same time to pay the amount to Virginia as having been advanced by her.

The committee have not deemed it expedient to be more particular,

either in the statement of facts or in the reasons for their decision, as this claim has been long before Congress, and has been very minutely investigated and discussed on more than one occasion. They refer the Senate to Report No. 118, 2d session 26th Congress; Report No. 13, 3d session 25th Congress; Report No. 519, 1st session 26th Congress, and Reports Nos. 29 and 525, 2d session 27th Congress, all in the House of Representatives, in which the facts are more particularly set forth, and to which the evidence and documents in the case are appended.

They therefore recommend the following resolution :

Resolved, That the prayer of the petition be rejected.

