Mr. Waldo, from the Committee on Revolutionary Pensions, made the following

REPORT:

The Committee on Revolutionary Pensions, to whom was referred the petition of William Thomas, son of Captain John Thomas, deceased, respectfully report:

The petitioner represents that his father, the said John Thomas, deceased, was, in the month of June, 1776, appointed a lieutenant in the navy of the State of Virginia, and was afterwards, to wit, on the 26th day of August, 1778, promoted to the office of captain, in which grade he continued in the service in the war of the Revolution to the close thereof; that he thereby became entitled, by the laws of the State of Virginia, to half-pay during life, to commence from the determination of his command or service; that he deceased in the year 1796, without ever having received any part of said half-pay; that, by the act of Congress approved the 5th day of July, 1832, the United States assumed the payment of the claims of the officers of the army and navy of the State of Virginia who were entitled by its laws to half-pay for life, and that the claim of the said Captain Thomas has never been paid, but is now justly due to the petitioner, as the legal representative of the said Captain Thomas, from the United States, by virtue of the aforesaid laws.

The General Assembly of the commonwealth of Virginia, at its session in May, 1779, passed an act, among other things providing as follows, to wit: "all general officers of the army, being citizens of the commonwealth, and all field officers, captains, and subalterns, commanding, or who shall command, in the battalions of this commonwealth on continental establishment, or serving in the battalion raised for the immediate defence of this State, or for the defence of the United States; and all chaplains, physicians, surgeons, and surgeons' mates, appointed to said battalions, or any of them, being citizens of this commonwealth, and not being in the service of Georgia, or of any other State, provided Congress do not make some tantamount provision for them, who shall serve henceforward or from the time of their being commissioned until the end of the war, and all such officers who have, or shall, become supernumerary on the reduction of said battalions, and shall again enter into the said service, if required so to do, in the same or any higher rank, and continue therein until the end of the war, shall be entitled to half-pay during life, to commence from the determination of their command or service." [Vide Henning's Statutes at Large, vol. 10, page 25.]
By a subsequent act of said General Assembly, passed May session, 1780, it was further provided that the captains, together with the subaltern and all other commissioned officers, in the service of the navy of said commonwealth, the master, surgeon, and surgeon’s mate, shall be entitled to the same pay and rations; the same privileges and emoluments, and rank in the same degree, with officers of the like rank belonging to regiments heretofore raised for the internal defence of the State. [Vide Henning’s Statutes at Large, vol. 10, page 288.]

It is believed that the General Assembly of the State of Virginia intended by this last act to place her naval officers upon the same basis as her army officers, and to allow such of them as complied with the conditions by serving to the end of the war, or becoming supernumerary by any act of the commonwealth, half pay during their lives. If any doubt could be entertained upon this point, that would be removed by the decisions of the courts in said State, in various cases, and particularly in the case of Lilly, decided by the court of appeals, in the year 1830. Lilly was a captain in the Virginia navy in 1776, served to the end of the war therein, and died in 1798. By a process peculiar to the State of Virginia, her citizens were permitted to prosecute their claims against her in the courts of that State. The claim of the representatives of Lilly, for half of his monthly pay during life, came before the court of appeals under this process, and the court decided that the claimants were entitled to their demand, upon the ground that the naval officers were equally entitled with the officers of the army to this emolument. Subsequent to this decision, and with a full knowledge of the fact, Congress passed the act of July 5, 1832, which, among other things, provides for the payment by the United States of the amount of the judgments which had been obtained, and which were then unsatisfied, in favor of the officers, or their legal representatives, who had served in the navy of Virginia during the war of the Revolution—clearly embracing the case of Lilly, decided by the court of appeals about two years before the passage of said act.

The evidence in this case satisfactorily proves that John Thomas was a lieutenant in the Virginia navy, and was promoted to the office of captain, on the 26th day of August, 1778; and that he deceased in the year 1796, without ever having obtained any half-pay, or other pension, from the State of Virginia or the United States. His legal representatives have presented this claim to the Commissioner of Pensions, under the act of July 5, 1832, and the same was refused by him on the ground that Captain Thomas did not serve to the end of the war, but resigned in the year 1779. A petition has also heretofore been preferred to Congress for relief in this case, but was reported against by the committee to whom it was referred, for the same reason. The only evidence relied upon in each of these cases was a certified copy of a certificate made by James Innes, under date of November 9, 1785, which is in the words and figures following, to wit:

"According to my best recollection, I do hereby certify that John Thomas resigned his commission of captain in the navy of the commonwealth some time in the month of June or July, in the year 1779, at which time I was president of the board of war."

It will be perceived that this certificate is dated more than five years after the time when the event is said to have happened about which it speaks; and that its weight depends entirely upon the correctness of the
recollection of Mr. Innes. That Captain Thomas could not have resigned, if at all, at the time mentioned by Mr. Innes, is apparent from the following items of evidence filed in this case:

1st. A copy of the discharge of one Matthew Nightingale, dated the 10th day of September, 1779, and signed by John Thomas, captain, certified from the records of the executive department in the State of Virginia.

2d. A copy of an order that a warrant issue to Captain John Thomas for one hundred pounds, on account, to purchase necessaries for the use of the navy, passed by the navy board on the 19th day of June, 1799, certified from record by the 1st auditor of the State of Virginia.

3d. A like certified copy of a settlement, made on the 29th day of December, 1785, in the name of John Thomas, as captain, at which time the indebtedness of said State to him was found to be one hundred and ninety-five pounds, seven shillings, and eight pence, a sum that would very much exceed his whole pay from the date of his appointment to the time of his pretended resignation.

4th. The deposition of John S. Kesterson, whose credibility is duly verified, that he knew Captain John Thomas in the revolutionary war, and that he served therein as captain in the Virginia navy to the close thereof; that he often saw him in said service; that he first commanded the "Protector" galley, which was destroyed by fire on the 9th day of June, 1779, after which he was transferred to the command of the "Dragon," in which he remained to the close of the war. Also the depositions of Richard Cockerell, Charles L. Broadwater, and others, all corroborating the statements of John S. Kesterson, and tending to prove a service to the end of the war.

5th. The fact that Captain Thomas received from the State of Virginia land, to the amount of five thousand three hundred and thirty-three and one-third acres, the whole amount to which any captain of the navy serving to the end of the war would have been entitled.

This evidence satisfies the committee that Captain Thomas could not have resigned in the month of June or July, 1779, and that he might have continued in service to the close of the war. But the committee find that a portion of this evidence, and a part of that which they deem material, was not before the Commissioner of Pensions, or considered by him when he had this claim under consideration. If the facts are as claimed by the petitioner, his case is provided for by the act of July 5, 1832, and should be settled by the proper department, which should first decide upon the weight of the evidence filed in the case; and, inasmuch as this has not been done in this instance, the committee forbear any expression of an opinion thereon, except this: that in their judgment it does not, when taken together, prove that Captain Thomas resigned his command in June or July, 1779. In this view of the case, the committee would not recommend any further legislation at this time, but would ask to be discharged from the further consideration of this subject; and recommend that the petitioner have leave to withdraw his petition and papers from the files of the House, to be used by him in the adjustment of his claim before the proper department.