35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 163.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1858.—Ordered to be printed.

Mr. EVANS submitted the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of James Purvis, praying for commutation, have considered the same, and submit the following report:

The petition sets forth that James Purvis entered the service in the first Virginia regiment in 1775; he was afterwards appointed an ensign, and continued in the army until February, 1778, when he resigned. That in January, 1779, he was appointed a lieutenant, and afterwards was promoted to a captaincy in the regiment raised in Virginia to guard the prisoners stationed at Charlottesville, in which service he remained until the regiment was disbanded, in 1781. On these facts the petitioner claims that Captain Purvis' case is embraced within the resolution of the 20th October, 1780, by which half-pay for life was promised to all those officers of the army who should remain in the service to the end of the war, or who should become supernumerary by the reduction of the army, then about to take place. This case, and several others of the same class, have been before Congress for more than thirty-five years, upon which different reports have, from time to time, been made, some favorable and some unfavorable, but without any definite action of Congress on any of them, so far as is known to your committee. This circumstance has led your committee to enter more fully than they otherwise would into an examination of the case.

It appears that, on account of some difficulties in relation to the British prisoners captured at Saratoga, they were ordered to be removed from the north to Charlottesville, in Virginia, *and the board of war* was directed to appoint a proper officer to attend them, and to apply to the governor of Virginia for a sufficient force of militia to guard them. On the 19th of December, 1778, the general assembly of Virginia passed a resolution empowering the governor, with the advice of the council, to raise a regiment of soldiers of six hundred men, rank and file, with proper officers to command them, *for the particular purpose of guarding the British prisoners* then, or who thereafter might be, in

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the commonwealth. On the 9th of January, 1779, the following resolutions were adopted by Congress, viz:

Resolved, That a battalion, consisting of six hundred men, be forthwith raised on *continental establishment*, in Virginia, for the space of one year from their enlistment, unless sooner discharged under the direction of the governor and council of that State, who are hereby empowered to appoint the officers of the said battalion out of those of the Virginia line who have been left out of the late arrangement of the continental army, so far as their numbers will reach, &c.

Resolved, That these troops be stationed at, and not removed (except to such distance as the duty of the post may require) from, the barracks, in Albemarle county, as guards over the convention troops; that they receive the usual pay of the continental army, and a suit of clothes, as a bounty, to each non-commissioned officer and private.

Resolved, That as soon as the said regiment shall be so far completed as to be able to perform the duty of the post, the militia now in service there be discharged.

The question upon which the claim in this case depends is, whether the officers of this battalion are embraced in the resolution of October 21, 1780.

This question has given rise to considerable discussion, and, for a very full inquiry into its merits, the committee beg leave to refer to a report, No. 436, House of Representatives, first session, 25th Congress.

The resolution of 21st October, 1780, is as follows: "That the commander-in-chief and commanding officer in the southern department direct the officers of each State to meet and agree upon the officers to be raised by their respective States from those who incline to continue in the service, and where it cannot be done by agreement to be determined by seniority, and make returns of those who are to remain, which is to be transmitted to Congress, together *with the names of the officers reduced, who are to be allowed half-pay for life.*" "That the officers who shall continue in the service to the end of the war shall also be entitled to half-pay for life, to commence from the time of their reduction." Now, there is no pretence that Captain Purvis served to the end of the war, and his legal representatives, if entitled at all, must be under the first part of the resolution above quoted. To the proper decision of the question, it is necessary to understand what were the facts connected with the resolution, and why it was adopted.

On the 3d of October, 1780, a new organization of the army took place, to take effect on the 1st January following. A large reduction in the number of regiments, constituting the continental army, was made, and a different apportionment made among the States. Thus Virginia, which had before furnished fifteen regiments, under this new arrangement was required to furnish only eleven; and the quota of all the other States was reduced in a ratio to correspond to their several abilities to raise them. It would follow, of course, that there must be a great reduction in the officers, and, in order to reconcile them to this dismissal from the service, the promise of half-pay for life, or, in other words, they were to be put on the same footing as the officers who were retained, and served to the end of the war.

Who were the officers thus provided for? It would seem to be very clear they were *those reduced officers whose names were required to be returned to Congress*, who were to receive half-pay for life. It does not appear to your committee that this battalion or convention guards are embraced in this provision, for the following reasons:

1st. It does not appear that this battalion formed any part of the Virginia continental line, which was reduced by the new organization, and for whose displaced officers the resolution of October 21, 1780, would seem only to apply. 2d. The troops which they commanded were raised for a limited time, and restricted to a local duty. 3d. They were commissioned by the governor of Virginia, and it would appear from the commission of Colonel Taylor, who commanded the battalion, they were subject to the order of the governor of that State:—(See copy of the commission in the report above referred to, at page 107, No. 14.) In confirmation of these views, it is added that it appears, from a report hereunto added, that in a report made by General Knox, when Secretary of War, on the case of Francis Taylor, the colonel of this battalion, that, in his opinion, the officers of that corps were not entitled to half-pay; and the same opinion is expressed by Peter Hagner, Third Auditor, as appears by his letter of the 26th of April, 1836, on file among the papers submitted to the committee with the petition.

It is true, that by the resolution of Congress, ordering the raising of the battalion, it was directed to be raised on *continental establishment*. That, it is presumed, meant nothing more than that, as the service was natural, they should be paid out of the common treasury. That was done by the militia who preceded this regiment in guarding the prisoners by the Rhode Island brigade, and many other cases where troops were raised for local purposes; but such troops were never supposed to constitute any part of the line of the army, which alone was provided for by the half-pay resolution. It appears, from the papers in relation to the case, that after the act of July 5, 1832, by which Congress assumed to pay the debt of Virginia to certain officers of her State line, that application was made at the treasury for the payment of the claim of Captain Purvis for commutation, alleging that he belonged to Crocket's regiment, one of the regiments which the United States had agreed to pay. This claim, however, was not allowed, and afterwards, in 1834, it was presented to Congress, and has been at different times before Congress ever since.

Your committee, on the facts above stated, are of opinion that the prayer of the petitioners ought to be refused.