35TH CONGRESS, 2d Session. } SENATE. { MIS. DOC. No. 36.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1859.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

D. G. BARNITZ, ADMINISTRATOR OF DAVID GRIER, *vs.* THE UNITED STATES.

1. The petition of the claimant and amended petition.
2. Exhibits by the claimant, marked A, B, C, D, and numbered 15, 16, 17, 18, and 19, referred to in the opinion of the Court, and transmitted to the Senate.
3. Documents referred to by the Solicitor in his brief, and transmitted to the Senate.
4. Other evidence filed by the claimant, and transmitted to the Senate in a separate envelope.
5. Claimant's brief.
6. Solicitor's brief.
7. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this third day February, A. D. 1859. [L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

UNITED STATES COURT OF CLAIMS.

DAVID G. BARNITZ, Administrator of Lieut. Col. David Grier, *vs.* The UNITED STATES.

To the honorable the Court of Claims:

The petition of David G. Barnitz, a citizen of Pennsylvania, respectfully showeth: That he is the administrator with the will annexed of

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David Grier, deceased, who was a lieutenant colonel in the Pennsylvania line during the war of the revolution, and that the said David Grier having been seriously wounded during the battle of Paoli, from that time he became an acting assistant quartermaster, and was stationed at the borough of York, in the State of Pennsylvania That as such quartermaster he received and disbursed large sums of money on account of the United States, and made large advances for the benefit of the said United States out of his own private means, which at the time were ample. Your petitioner further states, that the said David Grier died somewhere in the year 1790, leaving four children, all of whom were at the time under age, and all unmarried ; and all of whom have since died without issue, except your petitioner's mother. Your petitioner was advised, that during the lifetime of said David Grier, he claimed to be entitled to commutation of five years' full pay, with interest, for his services in the war of the revolution, but, until within the last few years, he was unaware that large balances were due to him for his services and advances made by him while serving in the army of the United States. That, when seeking to prosecute the claim for commutation of the said Grier, he was advised to search among the papers left by his testator, to see what could be found among them to substantiate his claim, and, in doing so, he found in a desk which had remained unopened, so far as he knows or believes, from the time of his death, a paper which is in the following words :

"Certified that the United States are indebted to David Grier, an assistant in the quartermaster general's department at the post of York, in the sum of five thousand nine hundred and sixty dollars, for his services and expenses from the first day of April, one thousand seven hundred and seventy-eight, till the first of March instant.

"Given under my hand at Carlisle, in the State of Pennsylvania, this 15th day of March, A. D. 1780.

"JOHN DAVIS,
"*Quartermaster General.*"

That on finding said certificate he caused an examination to be made in the proper office in the city of Washington, and from such examination he is advised and believes, not only that the same is still due and unpaid, but that there was also due to him at the time of his death, and is now due to his testator, other large sums of money, to wit, the sum of five thousand five hundred and seventy-four dollars and fifteen cents, besides interest—all of which will appear by reference to the proper books in the office of the Third Auditor of the treasury. Your petitioner further avers, that on making these discoveries he took the necessary steps to have his claim presented at the proper department, and asked the payment thereof ; but there being no appropriation out of which it could be paid, he was advised to apply to Congress.

Your petitioner would further State, that at the 1st session of the 30th Congress, to wit, on the 12th January, 1848, as appears from the records, a petition was presented in the name of Margaret Barnitz, sole heir and legal representative of David Grier, to the House of Representatives, and was referred to the Committee on Revolutionary Claims, asking for the commutation due to her deceased father. On

the 9th March, 1848, Mr. Butler, from the committee, reported a bill, No 308, for the relief of Charles A. Barnitz, husband of Margaret Barnitz, the only surviving heir of Lieutenant Colonel David Grier, of the army of the revolution ; which bill, at the 2d session of the 30th Congress, to wit, on the 22d day of December, 1848, passed the House of Representatives without amendment, and was sent to the Senate ; when, as appears by the Journals, on the 26th December, 1848, the bill of the House, No. 308, was read a first and second time, and referred to the Committee on Revolutionary Claims. On the 9th February, 1849 Mr. Upham, from the committee, made an unfavorable report on the bill of the House, No. 308. At the 1st session of the 31st Congress, on the 23d January, 1850, in the House of Representatives, the petition of Margaret Barnitz, the surviving heir of Lieutenant Colonel David Grier, deceased, was presented and referred to the Committee on Revolutionary Claims ; but it does not appear that during that Congress any further action was had thereon.

At the 1st session of the 32d Congress, in the House of Representatives, leave was granted for the withdrawal from the files of the House of the petition and papers of Margaret Barnitz, surviving heir of David Grier, for the purpose of reference to the Senate.

At the said 1st session of the 32d Congress the petition of Margaret Barnitz was presented to the Senate, and referred to the Committee on Revolutionary Claims. No further action appeared to have been taken at that session ; and at the 2d session of the same Congress the Committee on Revolutionary Claims were, on motion, discharged from the further consideration of the claim of Margaret Barnitz, and leave was granted to her to withdraw her papers. At the 1st session of the 33d Congress, your petitioner, having as before stated found the certificate and evidence of debt due to the said David Grier, again presented to the Senate an amended petition, asking for the payment of the amount which appeared on the books of the treasury to be due to Lieutenant Colonel Grier, and also the commutation to which he was entitled. Her petition was referred to the Committee on Revolutionary Claims, who, on the 25th April, 1854, made a report, in which they admitted that the books of the treasury showed that there was due to Colonel Grier the sum of ; but that, inasmuch as the claim was of such long standing, it was to be presumed that it had been paid ; and therefore they reported adversely to that portion of her claim. They did not report a bill in favor of paying his commutation, because the committee say, that Colonel Grier being entitled to commutation, his claim was provided for in a general bill which they had reported, and which passed the Senate.

The foregoing contains, so far as your memorialist is informed and believes, a true statement of all the action taken on the claims herewith presented by either House of Congress, and will show that up to this time your petitioner has not been paid either the amount due to Lieutenant Colonel Grier for commutation, or the amounts shown to be due to him by the books in the Treasury Department. Your petitioner claims commutation under the act of Congress of March 22, 1783, (Laws of the U. S., vol. 1, page 687,) and alleges that the said claims are, as he believes, justly due to him as administrator with the

will annexed of the said Lieutenant Colonel David Grier; that as such administrator, and in right of his mother, who is the only surviving child of the said David Grier, he asks the court to decree the same as payable to him, the same never having been sold or conveyed away either by the said David Grier in his lifetime, so far as your petitioner is advised and believes, nor by him, as administrator, since his death; and that the said claims are the property of the said estate of Colonel Grier.

Your petitioner therefore prays an examination of this claim by your honorable court, and such an award as to you may seem meet.

STEVENS, BAXTER & BRYAN,
Attorneys.

SIMON STEVENS, *Attorney in fact of David G. Barnitz, ad'mr C. T. A. of Col. David Grier, deceased.*

DISTRICT OF COLUMBIA, }
Washington County. }

Personally appeared before me, a justice of the peace in and for said county, Simon Stevens, attorney in fact for David G. Barnitz, administrator of David Grier, deceased, who, being duly sworn, deposes and says, that the facts stated in the foregoing petition are just and true so far as they exist in his own knowledge, and so far as obtained from the knowledge of others, he believes them to be true.

SIMON STEVENS.

Sworn to and subscribed before me, this 29th day of January, A. D. 1856.

JOHN S. HOLLINGSHEAD, *J. P.*

UNITED STATES COURT OF CLAIMS.—No. 497.

BARNITZ, Administrator of Grier, *vs.* THE UNITED STATES.

Petitioner's brief.

David Grier was commissioned by John Hancock, President of Congress, to be a captain of a company of Pennsylvania troops, in the army of the United Colonies, on the 9th day of January, 1776. On the 6th of June following, was promoted and commissioned by John Hancock, President of Congress, as major of the 6th battalion of Pennsylvania, and on the 12th of January, 1777, was promoted to and commissioned a lieutenant colonel of the 7th battalion of Pennsylvania, which said commissions are on file among the papers in this case. While in the service of the United States under said commissions, he received. laid out, and expended large sums of money on account of the United States, and made large advances for the benefit of the United States out of his own private means; and in March, 1778, the government was his debtor to the extent of $5,574 15, which he has never been reimbursed, and now stands to his credit on the books of the Treasury Department, in the Third Auditor's office,

in ledger "A," page 331, a certified copy of which is on file among the papers in the case.

That Lieutenant Colonel Grier resigned his commission as lieutenant colonel, and on the 1st day of April, 1778, became an assistant in the quartermaster's department, at the post of York, in the State of Pennsylvania; in which latter capacity he also received and disbursed large sums of money, and made further large advances at various times out of his private means; when on the 15th of March, 1780, and on the 3d day of October, 1780, he received from John Davis, D. Q. M. G., certificates of the balances due said Colonel Grier on a settlement of his accounts, the sum of $80,845 16-90, which, scaled at specie value, amounts to $6,260; which original certificates are on file among the papers in the case. That Colonel Grier died in 1790, leaving four children, all of whom were at the time under age and unmarried, and have since died without issue, except your petitioner's mother, who died last year, leaving six children. That the military chest, containing the evidences of debt against the government, remained unopened from the time of the death of Colonel Grier until 1854, which accounts for the claim never having been presented to the government before. The proceedings as recited in the amended petition filed May 17, 1858, fully sets forth the petitioner's claim and the action of Congress thereon.

RECAPITULATION.

For a balance standing to his credit on the books of the treasury, March, 1778	$5,574 15
For balance of account rendered October 3, 1780, and certified by John Davis, D. Q. M. G., $80,845 16-90, or specie value of	6,260 00
Making the entire claim	11,834 15

exclusive of interest on the same from the time it became due.

SIMON STEVENS,
Attorney for petitioner.

UNITED STATES COURT OF CLAIMS.—No. 497.

BARNITZ, Administrator of Grier, *vs.* THE UNITED STATES.

Petitioner's brief.

David Grier was commissioned by John Hancock, President of Congress, to be a captain of a company of Pennsylvania troops, in the army of the United Colonies, on the 9th day of January, 1776. On the 6th of June following was promoted and commissioned by John Hancock, president of Congress, as major of the 6th battalion of Pennsylvania, and on the 12th of January, 1777, was promoted to and commissioned a lieutenant colonel of the 7th battalion of Penn-

sylvania. which said commissions are on file among the papers in this case. While in the service of the United States under said commissions he received, laid out, and expended large sums of money on account of the United States, and made large advances for the benefit of the United States out of his own private means, and in March, 1778, the government was his debtor to the extent of $5,574 15, which he has never been reimbursed, and now stands to his credit on the books of the Treasury Department, in the Third Auditor's office, in ledger "A." page 351, a certified copy of which is on file among the papers in the case.

That Lieutenant Colonel Grier resigned his commission as lieutenant colonel, and on the first day of April, 1778, became an assistant in the quartermaster's department at the post of York, in the State of Pennsylvania; in which latter capacity he also received and disbursed large sums of money, and made further large advances at various times out of his private means, when, on the 15th of March, 1780, and on the 3d day of October, 1780, he received from John Davis, deputy quartermaster general, certificates of the balances due said Colonel Grier, on a settlement of his accounts, the sum of $80,845.$\frac{16}{90}$, which, scaled at specie value, amounts to $6,260 00; which original certificates are on file among the papers in the case. That Colonel Grier died in 1790, leaving four children, all of whom were at the time under age and unmarried, and have since died without issue, except your petitioner's mother, who died last year, leaving six children. That the military chest containing the evidences of debt against the government remained unopened from the time of the death of Colonel Grier until 1854, which accounts for the claim never having been presented to the government before. The proceedings as recited in the amended petition, filed May 17, 1858, fully sets forth the petitioner's claim and the action of Congress thereon.

Recapitulation.

For a balance standing to his credit on the books of the treasury March, 1778	$5,574 15
For balance of account rendered October 3, 1780, and certified by John Davis, deputy quartermaster general, $80,845.$\frac{16}{90}$, or specie value of	6,260 00
Making the entire claim	11,834 15

exclusive of interest on the same from the time it became due.

SIMON STEVENS,
Attorney for Petitioner.

IN THE COURT OF CLAIMS.—No. 497.

BARNITZ, Administrator of Grier, *vs.* THE UNITED STATES.

Solicitor's brief.

The petitioner claims payment of two several demands against the United States arising from transactions during the revolutionary war.

1st. An amount of $5,574$\frac{15}{90}$, standing to his credit under date March, 1778, on ledger A, in the Third Auditor's office. 2d. A balance $80,845$\frac{16}{90}$ (continental money) due him October 3, 1780, per account rendered to John Davis, deputy quartermaster general.

Both of these claims are barred by acts of limitation, particularly by act of February 12, 1793, section 1, (1 Statutes, 301.)

A balance on the books of the treasury is but prima facie evidence of the indebtedness of the government, and against it we show that there is at least one item of charge for money advanced to Grier on the books of the Register's office which has not been brought to his debit on the Third Auditor's ledger A, (Auditor's report of March 10, 1854,) and, moreover, that the books of the treasury are incomplete, several journals and day-books having been burnt, (Third Auditor's report of February 11, 1853 ;) the latest of the balances claimed is in October, 1780. Col. Grier remained a long time in the service of the United States after this date, receiving and disbursing money and settling accounts as late, certainly, as May, 1782, (see papers numbered 15, 16, 17, and 18,) and the presumption is, that all balances due in 1778 and 1780 were carried forward and merged in the subsequent accounts.

About the close of the war commissioners were appointed under resolutions of February 27, 1782, (3 Journals, 465,) and July 4, 1783, (4 Journals, 437,) to settle all accounts of every kind and issue certificates in liquidation thereof. One of these commissioners was Benjamin Stelle, and on the 20th of December, 1785, Col. Grier gave, or at least prepared for, this commissioner a list of claims for which he himself had given certificates, for the purpose of being so liquidated, (original filed by claimant.) Being thus in communication with the proper authorities on the subject of his own official accounts and transactions, it is not to be presumed that he would omit the opportunity to have his own accounts settled, as well as aid others in obtaining settlements. That no final settlement certificate was issued to him, (Register's letter to the Hon. T. Stevens, June 20, 1853,) only shows that no balance was due him, not that no settlement took place.

Col. Grier himself made no claim in his lifetime, though he lived till 1790 ; and it would further appear from the manner in which the claim is stated to have been discovered by the administrator, that Col. Grier died without informing any of his family that he had a claim against the United States.

J. D. McPHERSON,
U. S. Deputy Solicitor.

IN THE COURT OF CLAIMS.

D. G. BARNITTZ, Administrator of David Grier, *vs.* THE UNITED STATES.

LORING, Justice, delivered the opinion of the Court.

David Grier was a lieutenant colonel in the Pennsylvania line in the war of the revolution, from the 12th January, 1777, until April

1, 1778, when he resigned his commission as lieutenant colonel, and was appointed assistant deputy quartermaster general. He served in the latter capacity for some years, and as is shown by the papers in the case, at least till May, 1782 He died in 1790, leaving four children who were then unmarried and under age; of these children, three died without issue, the other was married, and died about 1857, leaving six children, one of whom is the petitioner.

The allegation in the petition is, that David Grier, both as lieutenant colonel, and as acting deputy quartermaster general, received and expended, and advanced large sums of money on account of the United States, and that there was due to him at his decease a balance in each department of his service, and which the petitioner sets forth, as follows:

For a balance standing to his credit on the books of the treasury, March, 1778	$5,574 15
For a balance of account rendered October 3, 1780, and certified by John Davis, deputy quartermaster general, $80,845 $\frac{16}{90}$	6,260 00
	11,834 15

The evidence relied on for the first item, which relates to Colonel Grier's accounts as lieutenant colonel, is the account shown in schedule A, and taken from the books of the treasury, and it states the balance to Colonel Grier's credit to be $5,574 75.

This balance, as the account shows, is made up chiefly of $4,400, paid by Colonel Grier to William Palfrey on account of the United States. But it appears from schedule B annexed, which is William Palfrey's account with the United States of moneys received by him "of several officers of the army on a settlement of their accounts with the auditors of the army. and not before entered in the books of the treasury;" that Colonel Grier received this $4,400 from Mease and Caldwell, as *recruiting money;* and it appears from schedule C annexed, that Colonel Grier "*has been omitted to be charged*" with such receipt, and deducting said sum of $4,400 from the balance of $5,574 15, claimed by the petitioner, reduces that balance to $1,174 15.

Moreover, the entry in schedule B is in these words: "September, 1777. Lieutenant Colonel Grier, 7th regiment, being '*part of*' recruiting money received of Mease and Caldwell, $4,400." The expression "*part of*" indicates that Colonel Grier received of Mease and Caldwell a larger sum, as recruiting money, than the $4,400 paid over to William Palfrey. But what the amount received was, cannot now be shown, for the names of Mease and Caldwell do not appear on the books at the treasury. Some of its books (day books and journals) have been burnt, (schedule C,) and there are now, therefore, no means of tracing the transaction further. Then the balance claimed of $5,574 15 is an item of an account in the Third Auditor's office, and not a final balance entered or certified at the registry; and that it cannot be relied on as evidence of *a final* balance, is shown by the entry in William Palfrey's account, and the facts above stated.

As to the second item claimed, viz: the balance of $6,260, alleged

to be due to Colonel Grier as assistant deputy quartermaster general, in his accounts with the United States, the evidence relied on is the account and certificate of John Davis, shown in schedule Z annexed, and set forth in the amended petition, pp. 2 and 3.

These evidences, as the petition shows, were found among Colonel Grier's papers after his death.

But there is no evidence that those accounts were ever presented at the treasury by Colonel Grier, or that he ever claimed there such balance in his lifetime, and neither the accounts or balance appear in any shape on the books of the treasury. And it appears on the certificate of John Davis, deputy quartermaster general, appended to the account, that the vouchers presented with it were *not examined.* It is certain, therefore, that the certificate was not intended for a final adjustment of the account, or to establish the apparent balance it specifies ; and the inference is that the certificate was given only as a receipt for the papers delivered between Colonel Grier and John Davis.

It is a matter of general history, that before and after the close of the war of the revolution, strenuous efforts were made by Congress to collect the debts and demands outstanding against the United States, that they might be fixed in amount, and certificates for them issued. Under the resolves of February 27, 1782, (3 Journals, 465,) and July 4, 1783, (4 Journals, 437,) commissioners were appointed for the purpose, and one of these was Benjamin Stelle. It appears from the evidence (schedules 15, 16, 17, 18) that Colonel Grier himself certified such debts ; and from schedule 19, that as late as December 20, 1785, he furnished for Mr. Stelle a list of the debts against the United States which he had himself certified. And there is no evidence that he preferred or claimed any debt as due to himself, nor does it appear that any certificate of debt was issued in his favor, (schedule D.)

It moreover appears that Colonel Grier lived until 1790, (petition, p. 1,) and it is not shown or alleged that he ever, in his lifetime, claimed any balance to be due to him from the United States ; and all the evidence now adduced by the petitioner was found by him after Colonel Grier's death, when seeking for evidence for another matter.

Under the circumstances above stated, impugning the evidence adduced by the petitioner for each of the items he claims, connected with the facts that Colonel Grier lived until 1790, ten years after these claims are alleged to be due—was an accounting officer of the United States, certified the debts of others, and made no claim or representation (so far as is shown) of any debt due to himself—we are of opinion the petitioner fails to establish a title to the relief he prays.