

MAINE STATE LEGISLATURE

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RESOLVES

OF THE

TENTH LEGISLATURE,

OF THE

STATE OF MAINE,

PASSED AT THE SESSION,

WHICH COMMENCED ON THE SIXTH DAY OF JANUARY, AND ENDED ON
THE NINETEENTH DAY OF MARCH ONE THOUSAND EIGHT HUN-
DRED AND THIRTY.

Published agreeably to the Resolve of the 28th June, 1820.

Portland :

DAY & FRASER.....PRINTERS TO THE STATE.

1830.

part thereof, as justice and equity require ; and to take such measures to collect any balances, which upon such settlement shall appear to be due to the State, as shall be deemed necessary and proper.

CHAP. 40.

Resolve in relation to the unexpended balances of certain appropriations.

Approved March 18, 1830.

RESOLVED, That the unexpended balance of the appropriation made by the "Resolve authorizing the Governor to appoint a person to negotiate with the Penobscot Indians," passed June 20, 1820, being twenty dollars ; the unexpended balance of the appropriation made by the "Resolve relative to costs in criminal prosecutions" passed June 22, 1820, being three hundred seven dollars and nine cents ; the unexpended balance of the appropriation made by the "Resolve authorizing the appointment of a Surveyor and Land Agents," passed June 26, 1820, being two hundred eight dollars and forty five cents ; the unexpended balance of the appropriation made by the "Resolve appropriating a sum of money to the Quarter Master General's department" passed March 19, 1821, being five hundred dollars ; the unexpended balance of the appropriation made by the "Resolve making an appropriation for the payment of the Board of Commissioners, appointed under the Act of separation," passed March 21, 1821, being four hundred and twenty five dollars ; the unexpended balance of the appropriation made by "an Act to provide for the erection and government of a State Prison," passed February 8, 1823, being nine hundred thirty five dollars and sixty five cents ; and the unexpended balance of the appropriation made by the "Resolve making an appropriation for carrying into effect the Act respecting public lands" passed February 25, 1824, being nine hundred dollars, be withdrawn from the appropriations above named ; and that the Resolves and Act aforesaid, so far as they relate to said unexpended balances, be, and the same are hereby repealed.

MESSAGE OF THE GOVERNOR.

To the Senate and House of Representatives :

I communicate for your consideration a letter from the Secretary of State of the Commonwealth of Massachusetts, dated the 18th instant, with a copy of a "Report and Resolves relat-

ing to the Massachusetts claim," which have been adopted by the Legislature of that Commonwealth; and a copy of a circular letter from the Governor thereof upon the same subject.

JONATHAN G. HUNTON.

COUNCIL CHAMBER, }
February 22, 1830. }

The Committee of both Houses to whom was referred so much of the Governor's Message as relates to the Massachusetts Claim, REPORT,

That this claim is made on the government of the United States by the Commonwealth of Massachusetts, for disbursements made and expenses incurred for the defence of the State, during the late war with Great Britain, and by the terms and conditions of the separation of this State from the Commonwealth, whatever shall be derived from the United States on account of this claim, shall be received by the Commonwealth, and when received, shall be divided between the two States in the proportion of two thirds to the Commonwealth of Massachusetts, and one third to the State of Maine. This claim is founded on those principles of our government, which are beyond dispute. The power of controlling the relations of war and peace, and of providing for the common defence of the country, having been yielded to the general government, at the forming of the Union of the States, the whole means of the country to be used, for defence and protection were placed within the control of that Government. To correspond with this power, the United States were laid under express obligation to guarantee to every State in the Union, a republican form of government; "to protect each of them against invasion, and on application of the State authority," against domestic violence.

Among the means for fulfilling this obligation, which have been placed under the control of the general government, is the power of Congress "to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States," as well as the power "to provide for calling forth the Militia to execute the laws of the Union, suppress insurrections and repel invasions;" and the authority vested in the President of the United States, to be commander in chief of the militia of the several States, when called into the actual service of the United States. On the happening of any of the contingencies laid down in the Constitution of the United States, the President has been vested by a law of Congress, with power to call out the militia for service "by issuing his orders" to such officer or officers of the militia, as he should think proper. By law likewise, penalties, and the mode of enforcing them are provided, as to all officers, non-commis-

sioned officers, and privates of the militia, who should fail to obey the orders issued by the President.—The pay and sustenance for such of the militia as should be called into the service of the United States, has been limited and fixed by law, so that as far as is practicable, the expense for the service of each individual according to his grade is made uniform through the different States. And if these laws were inadequate to enforce the exercise of the powers of the general government upon the militia of the several States, it was at all times within the authority of Congress to make such provisions, as could not be evaded by the Executive power of a State.

Under these principles of the Constitution, and provisions made by the laws of Congress, to enforce and insure their operation, it became the duty of the general government of the United States, to protect every State and every part thereof with the people from invasion : and the obligation to perform that duty during a war declared by that Government, became imperious in the highest degree. If then owing to any fault in any of the agents, or constituted authorities of that government ; or if through the defects of the operation of government itself, any State, or any of the people of a State, were from the necessity of the case obliged to do that for themselves in anticipation of the movements of the government, which the government would be under obligation to do for them, such State and such people would be justly entitled to indemnity for such service from the government. And it is well understood, that on this principle, the claims of various States for militia services, rendered without any call or agency of the general government of the United States, have been audited and allowed. A large portion of the Massachusetts claim, formerly objected to as not being for such services of the militia, as was rendered under the authority of the United States, has been found, on more mature examination, to come within the scope of this principle, and to be for services rendered at a time of invasion, or well grounded apprehension of invasion.

Thirteen years since, the Commonwealth of Massachusetts, presented her claim for disbursements made, and expenses incurred for the defence of that State during the late war, to the War Department for examination and allowance ; but the auditing of it was denied when first presented in 1817, upon the ground *that the services "with one exception," were rendered independently of the authority of the United States, and that the Militia were withheld from the command of the officers of the United States.* In January 1823, measures were first taken for auditing the items of the claim, and in September of the same year, instructions were given under the direction of the President to the *Third Auditor* of the Treasury Department to report the amount which would have been due, according to the rules heretofore established "if the

troops had been in service under the authority of the General Government." In 1824, the subject of the Massachusetts claim was referred to Congress by message from the President, and the committee on Military Affairs in that year reported on the principles applicable to the claim; and the subject was again taken up and reported upon by a committee in 1826. This latter committee, say, in their report, "that the State of Massachusetts should receive compensation for services performed under the requisition of an officer of the General Government, or at his desire, in the exercise of a sound discretion, has never been denied, *however long even this may have been imperiously withheld.*" The subject was afterwards referred by Congress to the Secretary at War, with instructions to report to the House, "what classes and what amount of said claim may be allowed and paid upon the principles and rules, which have been applied to the adjustment of claims of other States, and to which the assumed authority of the Governor of that State to control the Militia and judge of the necessity of ordering them into service does not apply." In May, 1828, it appears from a report made by the Secretary at War, that the whole amount claimed is \$843,349 60
That the amount of this sum, reported admissible, is 430,748 26
That the amount of the same, reported inadmissible, 412,601 34

A bill has been presented and is now before Congress to provide for the payment of the amount allowed by the principles of this report.

It will be perceived that the amount reported as inadmissible by the Secretary at War, may have been so reported on two grounds, viz. either that the items of claim do not come within the "principles and rules which have been applied in the adjustment of the claims of other States," or that the items of claim otherwise admissible upon those principles and rules, are rejected because the service in which the items of claim arose are affected by the conduct of the Governor of Massachusetts, in "assuming an authority to control the Militia and to judge of the necessity of ordering them into service."

All of which is respectfully submitted by your committee, together with the accompanying Resolve.

WM. CLARK, *Per Order.*

CHAP. 41.

Resolve respecting the Massachusetts Claim.

Approved March 18, 1830.

RESOLVED, By the Senate and House of Representatives, that the people of this State entertain a deep sense of the justice of the claim made by the Commonwealth of Massachusetts, on the

Government of the United States, for the services of her Militia in defending that Commonwealth, then including the territory of this State, from invasion, as well as for the services rendered, on well founded apprehension of invasion during the last war.

RESOLVED, That the Senators and Representatives in Congress from this State, be, and they hereby are requested to use their best endeavors, to obtain an immediate provision by Congress, for the payment of such portion of the Massachusetts claim for the services rendered by the militia of that State, during the late war with Great Britain, as is now admitted to be due, upon the principles and rules, which have been applied to the adjustment of similar claims from other States.

RESOLVED, That the Governor be, and he hereby is requested to cause copies of these Resolutions to be furnished to each Senator, and each member of the House of Representatives in Congress from the State of Maine.

MESSAGE OF THE GOVERNOR.

To the Senate and House of Representatives :

I transmit for the consideration of the Legislature, a communication from the chairman of the committee, appointed by the Resolve of the third of March 1829, entitled, "Resolve appointing commissioners to settle with certain Land Agents."

JONATHAN G. HUNTON.

COUNCIL CHAMBER, }
February 24, 1830. }

CHAP. 42.

An additional Resolve appointing Commissioners to settle with certain Land Agents.

Approved March 18, 1830.

RESOLVED, That Jones Dyer jr. of Calais, be, and he hereby is appointed a commissioner with the Land Agent and Jabez Mowry, to perform certain duties as provided by the Resolve, passed the third day of March eighteen hundred and twenty-nine, to which this is additional, and a majority of said Commissioners shall be, and they hereby are authorized to perform the duties aforesaid.