

MAINE STATE LEGISLATURE

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RESOLVES

OF THE

TWELFTH LEGISLATURE

OF THE

STATE OF MAINE,

PASSED AT THE SESSION

WHICH COMMENCED ON THE FOURTH DAY OF JANUARY, AND ENDED ON
THE NINTH DAY OF MARCH, ONE THOUSAND EIGHT
HUNDRED AND THIRTY-TWO.

PUBLISHED AGREEABLY TO THE RESOLVE OF JUNE 28, 1820.

AUGUSTA:

I. BERRY & CO., PRINTERS TO THE STATE.

1832.

To the Senate and House of Representatives.

The Secretary of State will lay before you a copy of a communication from William King, the Agent appointed in pursuance of the Resolve for this purpose, to inquire into and to ascertain from the Government of Massachusetts, why the third part of the amount received from the United States on account of the claim for the services of the Militia during the last war with Great Britain has not been all paid over to the Treasury of this State, and also a copy of Mr. King's correspondence with the Governor of Massachusetts, and of the Report of the Executive Council of that Commonwealth in relation to the subject.

SAMUEL E. SMITH.

COUNCIL CHAMBER, }
Jan'y. 23, 1832. }

STATE OF MAINE.

IN SENATE, February 9, 1832.

The Committee of both branches of the Legislature, to which was referred the Governor's Message, of the 23d of January, with the communication of the Agent, appointed "to inquire and ascertain from the Government of Massachusetts, why the third part of the amount received from the United States on account of the services of the Militia during the late war with Great Britain, has not been all paid over to the Treasury of this State," and other accompanying documents, have had the same under consideration and respectfully report:—

That, by the act of separation, it is provided, that all money, stock, or other proceeds, derived from the United States, on account of the claim of the Commonwealth of Massachusetts, for disbursements made, and expenses incurred, for the defence of the State, during the late war with Great Britain, shall be received by that Commonwealth, and when received shall be divided between the two States, in the proportion of two thirds to that Commonwealth and one third to this State.

It appears that said Commonwealth, on the tenth day of March last, received from the United States, on account of said claim, the sum of four hundred and nineteen thousand seven hundred and forty eight dollars and twenty six cents. One third part of said sum, the proportion which this State, by the terms of said act, is entitled to receive, is one hundred and thirty nine thousand nine hundred and sixteen dollars and eight cents. There has been paid over to this State, however, only the sum of one hundred and thirty two thousand two hundred dollars, which leaves, in the Treasury of Massachusetts, a balance, belonging to Maine, of *seven thousand seven hundred and sixteen dollars and eight cents.*

The Legislature of Massachusetts, by a Resolve passed March 17, 1831, directed the payment to this State of one third part of the first mentioned sum, "first deducting from said sum of \$419,748 26, the expenses incurred by that State in prosecuting said claim." The Executive of Massachusetts, under the authority of said Resolve to deduct "expenses incurred in prosecuting said claim," retained, in the Treasury of that State, the sum of *twenty three thousand one hundred and forty eight dollars and twenty six cents*, which sum is composed of the following items; viz.

Amount of charges paid to the Agents of that State,	\$12,028 72
Interest on said amount to March 10, 1831,	4,599 38
And the further sum, reserved as a fund to meet the unliquidated claims for expenses incurred,	6,520 16
	\$23,148 26

The Governor of Massachusetts, in his communication to General King, who was appointed to ascertain why a third part of the sum received by Massachusetts, had not been all paid to this State, observes that the last sum of \$6,520 16, "was retained partly in respect to your services, and was intended to cover whatever might be allowed on that account by the Government of this Commonwealth, under the reference of your claim to compensation, made by the Legislature of Maine, for settlement here." Upon ascertaining the facts stated, and deeming it for the interests of Maine, that the two States should adjust and settle the accounts of their respective Agents, General King withdrew his claim, which had been referred for settlement to the government of Massachusetts, and thereby removed the reason for retaining any part of said balance, by that State, on account of the services of the Agent of Maine, in prosecuting the Militia Claims upon the United States.

Your Committee have not been able to discover any thing, in the terms and conditions of the act of separation, which will, in their opinion, warrant or justify the detention, by Massachusetts of the balance, or of any part of the balance, of *seven thousand seven hundred and sixteen dollars*. It is believed that the act of separation does not contemplate the expenditures, for the payment of which, said sum is retained by that State. No intimation is found in that act, that Massachusetts should have the right to appoint Agents to prosecute the Militia Claims, at the common charge of the two States; and much less that she should be at liberty to appoint as many Agents as she might judge proper, and make such expenditures as she might deem expedient; yet without consulting Maine, further than merely to invite her co-operation, and without obtaining her consent to the incurring of the expenses of Agents to prosecute these claims, at the joint charge of the two States, Massachusetts has thought proper to employ Agents and make expenditures to the

ascertained amount of \$12,028, and now *claims* to charge Maine, with one third part of that sum, together with *interest* on the same, and also retains the further sum of \$6,520 26, as a fund to meet unliquidated claims for similar expenses. The Governor of Massachusetts, as before noticed, states that the last mentioned sum, was retained partly in respect to the services of the Agent of Maine; but that Agent having withdrawn his claims for services, as against that State, the reason, assigned for retaining said sum, it is apparent, does not now exist.

As the act of separation is silent on the subject, it is to be presumed, that no such expenses were expected to be incurred, but that the claims upon the United States would be prosecuted by the members in Congress from the two States. If such expenses had been contemplated, it is not to be doubted, that provision would have been made in the act of separation, in relation to them, and for the appointment of Agents. The Committee are the more strongly confirmed in this opinion from an examination of that act.

Among other terms and conditions of the act, it is provided that "all rights of action for, or entry into lands, and of actions upon bonds, for the breach of the performance of the condition of settling duties, so called, which have accrued, or may accrue, shall remain in Massachusetts, to be enforced, commuted, released or otherwise disposed of, in such manner as that Commonwealth should determine," with the provision, that whatever should be received by Massachusetts on account thereof, should, "after deducting all reasonable charges relating thereto," be divided one third part thereof to Maine and two third parts to that Commonwealth. And in that part of the act, which relates to the division of the public lands, provision is made for the appointment of Commissioners and for their compensation.

If it had been intended that Massachusetts should alone determine the mode and the means of prosecuting the claims of the two States upon the general government for military services, and to make expenditures for that purpose, to any amount, which that State should adjudge proper, and be allowed *interest* on that amount, it must be regarded as a most extraordinary omission, that provision was not made, in the act of separation, to that effect; or that there is not, at least, a clause in that act, from which *such intention* might be clearly inferred. From the circumstance, that no such provision is expressed in said act, in respect to the militia claims, but is particularly and carefully expressed in relation to the debts to be collected and the lands to be divided, all presumption of any such intention seems, by implication, to be clearly negatived.

Since in the act, which authorizes Massachusetts to receive whatever shall be derived from the United States, on account of the militia claims, and which *requires* that State to pay over to Maine one third part of the amount so received, nothing is

found to warrant Massachusetts in making expenditures, at her discretion *alone*, in prosecuting said claims, and in charging Maine with a portion of such expenses, it would seem reasonable to infer, that at the time of the separation, it was intended these claims upon the United States should be prosecuted, and an adjustment of them obtained, as before intimated, by the instrumentality and co-operation of the members in Congress from the two States.

If this mode of prosecuting the claims, and obtaining payment was not the *only* one in contemplation, when the act of separation passed, it is difficult to perceive, why provision was not made for the expenses to be incurred in *this* case, as well as in cases of minor importance, and in cases too, where the probable amount of expenditures would be less. The fact that Massachusetts, through her Executive in 1822, invited Maine to co-operate with that State in the prosecution of said claims, evinces that Massachusetts did not, at that time, feel herself authorized to make expenditures, for that purpose, at the charge of this State; and it also supports the inference, drawn by the Committee, from the omission, in the act of separation, of any provision respecting such expenditures.

Massachusetts, entertaining the opinion, that measures other than the exertions of the members in Congress from the two States, whose attention was engaged with numerous other important subjects, were necessary to obtain an early and successful adjustment and settlement of these claims; being convinced, that she was not authorized, at her discretion, to employ other means, at the expense of Maine, but believing it would be just for Maine, as she was interested in the claims, to aid in their prosecution, invited her to co-operation. At that time, if the two States had intended to make the expenses, which might be incurred, a *joint* and *proportionate* charge, they would, it is believed, have entered into a stipulation, in respect to those expenses; but no such stipulation is found to exist.

The facts, that the two States did, by common consent, co-operate by means of Agents; that they appointed Agents, each a number *proportioned* to its respective interests in the claims, and that they did not enter into any stipulations respecting any expenses which might be incurred, fully satisfy your Committee that they then expected *severally* to settle and pay the amount of the expenses and compensation of their respective Agents, and that they did not contemplate any expenditures, which were to be made "a charge upon the common fund." It should be remarked, that the Governor of Massachusetts does not in his communication, to which reference has been made, mention any condition in the act of separation, or any stipulations since made between the two States, by virtue of which the sum of \$16,628 10, being the amount advanced by Massachusetts to her Agents, with interest thereon, "is claimed as a *certain* and *rightful* charge upon the common fund;" but simply states that it is so *claimed*. It is to be regretted, that the ground, upon

which the claim is expected to be *maintained*, was not disclosed. It is believed no argument, in support of this claim, set up by Massachusetts, can be legitimately drawn from the circumstance, that the act of separation requires all money, derived from the United States, on account of the claims for military services, to be first received by Massachusetts. That State has also the right, by the act, to receive certain debts, and whatever she shall receive, on account of those debts, is required to be divided "one third part thereof to the new State, and two third parts thereof to that Commonwealth; but there is *special* provision, that the division shall be made, "*after deducting all reasonable charges relating thereto.*" Why, it may be asked, was not the *deduction* of "all reasonable charges," relating to the Militia Claims, also *expressly* authorized by the act, if such deduction had been intended?

A recurrence to the history of the Militia Claims will show, that the provision, in the act of separation, requiring whatever should be received from the United States, on account of those claims, to be first received by Massachusetts, was made at the instance and for the benefit of that State. On the part of Maine, it was proposed to sever the claims upon the United States, to assign to the two States their respective portions thereof, and to authorize them, independently of each other, to settle and adjust their *several* parts with the General Government; but this arrangement was opposed, on the part of Massachusetts. And a recurrence to their history, since the separation, will also show, that Maine has rendered aid as *valuable* and *effectual*, in procuring the allowance of said claims, as that rendered by Massachusetts. The Agent of the former advocated them upon the principles, on which they were finally allowed; but the Agents of the latter advocated them upon principles, which were, by the United States, deemed inadmissible.

Your Committee are not aware of any principle of justice or equity, which demands that Maine should relinquish any portion of the one third part of the amount received by Massachusetts from the United States, on account of said claims, and which is *expressly required* by the act of separation, to be paid to Maine. They believe the balance of seven thousand seven hundred and sixteen dollars and eight cents, retained by Massachusetts, ought to be immediately paid into the Treasury of this State. The *obligation*, on the part of Massachusetts, to *pay* over to Maine one third part of the *whole* amount received, being as clearly and imperatively expressed, in the act of separation, as is the *right* of that Commonwealth to receive the same; and they, therefore, recommend the passage of the Resolutions, which are herewith respectfully submitted.

JOHN L. MEGQUIER, CHAIRMAN.

Chapter 60.

Resolve respecting the Massachusetts Claims.

Approved March 5, 1832.

Resolved, That the act relating to the separation of the District of Maine from Massachusetts, most manifestly provides that all money, stock, or other proceeds, derived from the United States on account of the claim of the Commonwealth, for disbursements made, and expenses incurred for the defence of the State, during the late war with Great Britain, shall be divided between the two States in the proportion of two thirds to Massachusetts and one third to Maine.

Resolved, That the Commonwealth of Massachusetts by the terms of the act aforesaid is bound to pay over to the authorities of the State of Maine one third part of all moneys received on account of the Massachusetts Claim without any deduction whatever.

Resolved, That this Legislature deeply regret the circumstances which call upon them to declare that the Government of Massachusetts by refusing to pay over to this State the full sum of one hundred and thirty nine thousand nine hundred and sixteen dollars and eight cents being the one third part of moneys already received by that Commonwealth from the United States on account of the Massachusetts Claim, have not complied with the true intent and meaning of the Act of Separation.

Resolved, That the Governor be requested to transmit to the Executive of Massachusetts a copy of the foregoing Report and these Resolutions and also to request the Government of Massachusetts to cause to be paid over to the Treasurer of this State the balance of seven thousand seven hundred and sixteen dollars and eight cents.

Chapter 61.

Resolve for the payment of Contingent Expenses.

Approved March 5, 1832.

Resolved, That there be, and is hereby appropriated the sum of five hundred dollars for the payment of contingent expenses of the current political year, to be placed at the disposal of the Governor, and for the expenditure of which, he is to be accountable.