

**REPORT OF THE HON. JOHN DAVIS, AGENT
FOR THE PROSECUTION OF THE CLAIM OF
MASSACHUSETTS UPON THE UNITED STATES
FOR
MILITIA SERVICES DURING THE LAST WAR, TO
HIS EXCELLENCY, LEVI LINCOLN, GOVERNOR
OF THE COMMONWEALTH. MAY 30, 1831**

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Report of the Hon. John Davis, Agent for the Prosecution of the Claim of Massachusetts upon the United States for Militia Services During the Last War, to his Excellency, Levi Lincoln, Governor of the Commonwealth. May 30, 1831 by John Davis

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JOHN DAVIS

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GOVERNOR OF THE COMMONWEALTH,

*Referred to in the Governor's Speech, and transmitted
by him to the Legislature, by Special Message,*

MAY 30, 1831.

Boston :
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.....
1831.

SENATE.....No. 2.

WORCESTER, APRIL 2d, 1831.

SIR,

In my letter of the 20th of November last, I gave you an account of my proceedings as the Agent of Massachusetts in settling her Claim upon the United States, for disbursements, during the late war, and at the same time communicated to you the correspondence, which had then taken place between me and the Secretary of War. I will now invite your attention to subsequent transactions. I left this place in the latter part of December for Washington, having previously requested the Secretary to inform me if my personal attention to the business would hasten its termination, and assured him, if such was the case, that I would at once repair to that city. I found on my arrival that no delay had been occasioned by my absence.

In order that the correspondence and documents to which I shall refer your Excellency may be understood, I will again state the condition of the claim, when it was taken up by me, as the agent of the Commonwealth, and the question which was pending between me and the Secretary of War, when I made my report in November last.

Before the passage of the act of Congress of May, 1830, which provided for the adjustment of the demand, the House of Representatives, by a resolution, had directed

the then Secretary of War, Mr. Barbour, to cause it to be examined for the purpose of ascertaining what was due, and in compliance with that resolution, the account with the vouchers were committed to the Third Auditor for that purpose. The whole underwent a rigid ex-parte examination, and his report to the Secretary was made in 1828, and laid before the House of Representatives without a re-examination or any alteration.

In this report the expenditures of the State were arranged under the following heads. 1. "*Guards*," which embrace the charges for such troops as were detached to watch the approach of danger and to transmit intelligence thereof. 2. "*Alarms*," or disbursement for troops who were called out on sudden emergencies to repel actual or threatened invasion, where the circumstances did not allow of delay. These troops were detached by orders which reposed discretionary authority in the commanders of Divisions for that purpose. 3. "*Executive Calls*," or the charges for troops taken into the service by order of the Governor, upon the representation of the inhabitants of the dangers to which they were exposed by an armed force upon the coast. Under these heads, nearly the whole claim is arranged, but there are several subordinate classes, which there is no occasion to enumerate.

So much of the report as presents a general analysis was printed by order of the House of Representatives in 1828, from which it appears, that the Auditor proceeded in his examination without reference to the controversy between the two governments, professing to allow or reject items on the same principles which had been applied to the settlement of like claims from other States. The whole amount demanded is \$

and the amount allowed is \$430,748 26. The principal items of charge are the pay of troops, their clothing, the use of arms, rations, hospital expenses, fortifications, hulks sunk or prepared to be sunk for the defence of harbors, barracks, transportation, &c. &c. The deductions, which constitute nearly one half, are arranged under several heads. 1. *Clothing*, which is said to be inadmissible, because allowances of that kind have not been made to the militia of any State. 2. *Use of arms*, for which the State allowed to each soldier fifty cents a month, is declared to be inadmissible for the same reason. 3. *Overpayments for rations*. The State allowed 20 and 25 cents for each ration, while the Auditor allowed but 17 cents, on the ground that the United States had a contract in this Military District to furnish all rations at that rate. On an early representation, however, to the President, Mr. Monroe, that the contractor could not supply them, he agreed that they should be estimated at 17 cents, and the balance should stand for further consideration. 4. *Overpayments*. The State, in making up the daily pay of the troops, averaged it upon 30 days for a month. The United States adopted a different rule, by averaging it upon the actual number of days in the month when the service was rendered. For example, the pay of a colonel is \$70 a month, and his daily pay, at this rate, in a month of 28 days, would be \$2,50; in a month of 30 days, \$2,33; and in a month of 31 days, \$2,25 $\frac{1}{2}$. The application of this rule caused considerable deduction. 5. *Excess of rations*. The Auditor alleges that in some instances a greater number of rations are charged than the troops were entitled to, and in others, that officers drew a greater number than their rank justified. The excess

is disallowed. 6. *Payments by the State for Servants.* These items are in all instances disallowed, where the servants do not appear by the rolls to have been regularly mustered. 7. *Forage.* It is, perhaps in most instances, rejected, because the officers have not certified according to the army regulations, that the horses were actually employed in the service. 8. Many of the charges for *fuel* and *rooms*, instead of barracks, are deducted, because the evidence which supports them is informal or unsatisfactory. 9. *Fortifications.* All charges for the erection of fortifications and batteries are alleged to be inadmissible, on the ground that such expenses are never allowed. Other objections are made to many of the expenditures which appear at large in certain manuscript documents of the Auditor called "Rough Notes," but there is no occasion to enter more into detail. In all cases where the evidence in support of the charges was considered informal or insufficient, the charges are suspended for further proofs and explanations, but where they are such as had not been allowed to other States, they were noted as inadmissible. There are charges, also, to a large amount, which, by the established usage of the Department, fall within the discretion of the Secretary to allow or reject, as he thinks proper, upon a view of all the circumstances. Such charges were left by the Auditor for the decision of the Secretary, but Mr. Barbour made none, and none has since been made; so they stand at present as rejected.

From all this, it is obvious that the sum allowed consists of monthly pay, fuel, forage, hospital expenses, servants, travel, rations, &c., embracing nearly every kind of expenditure, which has, under the usage of the government, been allowed to militia in the public ser-

vice ; and that the greater part of the sum disallowed consists of similar charges, which either require further proof or explanation, or await the decision of the Secretary where they depend on his discretion.

When the business was intrusted to my care, as agent of the Commonwealth, I found the claim in this condition. I considered the adjustment, as it stood in the report, as substantially *ex-parte*, for if I am rightly informed, the State had no one present at that time to furnish additional evidence, or to afford any explanations. I need not inform your Excellency, that in such examinations a most scrupulous regard to the interests of the United States, is observed, all items being rejected which are not sustained by proofs which agree in *form* as well as *substance* with the rules of the Department. This is but the natural result of a debtor's holding power to settle with his creditor according to his own pleasure.

Under these circumstances, as you are apprised, a proposition was made soon after the passage of the law of 1830, to the Secretary of War, to pay to the State the balance found due by the report of the auditor, amounting to \$430,748,26. He was invited to take this course because it was believed the provisions of the act of Congress, were broad enough to cover this entire sum, and as advances had been made to other States, while their demands were in a course of settlement, it seemed to be manifestly unjust to withhold this sum from Massachusetts, until a final and complete adjustment should take place. The first question which arose upon this proposition, was, whether any further auditing was necessary as to that sum, and the Secretary early came to the conclusion that it was not. The next question was,

whether the terms of the act were broad enough to cover this sum, being made up, as it was, of the services and expenditures of every corps of troops called out by the authority of the State during the war.

This question, as you are aware, was agitated during my residence at Washington, in the month of October and November last, and was left undecided. The discussion was resumed on my return in December, following, and continued from time to time, until the 20th of January, 1831, when I received a note from the Secretary covering his decision, made then as you will perceive in a confidential manner, but which, by subsequent transactions has necessarily become public. Both documents are hereunto annexed and marked (A). In reference to the authority conferred on him by the Act of Congress, about which the Secretary seemed at one time to entertain doubts; he observes in making his decision. "In discharging the trust given to me under this act, I have not felt myself called upon to consider the claim in reference to the objections which were originally made, but simply to determine under the provisions of the act, if at the time these claims arose, and when the militia were called out, there was 'an actual invasion or well founded apprehension of invasion,' and also whether 'the numbers were in undue proportion to the exigency.' To determine these is all I feel myself called upon or required to do." I ought here to observe, that he was not only solicited to make this payment upon the strength of the Auditor's report, but when that was done to proceed to a re-examination of the suspended items.

In coming to a decision upon the above principles, the Secretary as you will perceive rejected all the disburs-