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BY THE SENATE,

February 25th, 1860.

Read, and 200 copies ordered to be printed.

REPORT

OF THE

COMMITTEE ON FINANCE

IN RELATION TO THE CLAIM OF

HENRY M. FITZHUGH, ADMINISTRATOR OF
WILLIAM FITZHUGH.

REPORT.

The Committee on Finance to whom were referred the petitions and reports in the matter relating to the claim of Henry M. Fitzhugh, administrator of William Fitzhugh, report that it appears from the evidence before them that Col. William Fitzhugh had been an efficient officer in the English army in Maryland before the Revolutionary war, and had been rewarded by the British Government with a pension of a captain's half-pay.

That at the commencement of the war he took an active part in favor of the cause of freedom, threw up his commission in the British service, and resigned his pension of half-pay. Too old himself to join the American army, he placed two of his sons in the service of his country, and maintained them there out of his private means during the war. His own services were rendered to his State and country in the Legislature, in the council, in the committee of safety of his county, and in the convention which formed the first Constitution of Maryland.

By reason of this very strenuous opposition to the mother country when it expected of him, as an old officer of her army and as a holder of the very important place of Commissary General of the colony, at the commencement of the Revolution, a very different and more self-interested course, he was visited with all the wrongs and injuries which a vindictive enemy could inflict. His houses and property on his estate, at the mouth of the Patuxent, were burnt and plundered on two occasions, in the years 1780 and 1781, and forty-two of his most valuable slaves carried off by the British, who then had a predatory force in the lower waters of the Chesapeake bay. The losses thus inflicted upon him amounted, by the report of a commission appointed to ascertain the same at the time, by law, to the large sum, for the times, of £5,578.10, or about \$15,000. His valuable real estate thus left without the means of cultivation, became burdensome to him, and himself and family were driven from their home.

From 1783 until his death, in 1798, Col. Fitzhugh, year after year, memorialized the Legislature of Maryland for relief in consequence of his losses. The memorials which have been exhibited to your committee set forth these losses in a particular manner, and contemporary reports upon them from committees of the House of Delegates admit the losses and the justice of his claim to compensation from the State, but allege the present inability of the State at that time to pay them. One resolution No. 10, of November session, 1791, was passed directing the Treasurer to issue to him a certificate for the half-pay of a captain in the British establishment, to be computed by the Auditor from the 3d day of September, 1783, to the 1st November, 1791, bearing legal interest. But it is contended by the present administrator, Henry M. Fitzhugh, that his ancestor, Col. Fitzhugh, never received this certificate, and that it has never been paid by the State of Maryland, and it is for the payment of this amount so granted by the General Assembly of Maryland, that he is now petitioning the justice of the State.

Henry M. Fitzhugh, the administrator, first called the attention of the Legislature to this claim in the session of 1856, and the committee to whom his petition at that time was referred, reported favorably on the claim, but inasmuch as the amount of the claim depending upon the half-pay of a British captain could not be ascertained, they reported a resolution, which was passed, directing the Comptroller to state the account and to file it in the archives of his office.

In obedience to this resolution the Comptroller, by evidence derived from the Horse Guards, at London, reported to the Legislature on the 9th of February, 1858, that the principal of the claim is \$3,261 18, and the interest to 1st November, 1857, \$12,914 27, making the whole amount then due, \$16,175 45.

The administrator, Henry M. Fitzhugh, presented his second petition to the Legislature of 1858, reciting all the proceedings aforesaid, and praying that the report of the Comptroller might be corrected, so as to make the amount due to him under the resolution of 1791, \$17,958 67, and asking for an appropriation to that amount. The Legislature of that session, however, by act 1858, chap. 261, referred the matter to the Governor, Comptroller and Treasurer to investigate and report to the present session, whether any evidence exists that this claim has even been paid. In obedience to that law, the said officers on the — day of —, 1860, submitted the following report, that they examined the books of the Treasury and find under head of "Debts adjusted," that the Treasurer on the 20th of January, 1792, issued per resolution of the General Assembly, to W. Fitzhugh, a certificate for £1,241.53, but have found no evidence of the payment of said certificate.

They, however, deem it proper to state that they find certificates of the same character issued to other parties amounting to £43,386.15, for the payment of which, on cursory examination they find no evidence on the books.

It will be seen that though an entry of the certificate of 1791 has been found on the books of the Treasury, yet both Treasurer and Comptroller certify that no evidence whatever has been found of its payment, or that any account has been opened with William Fitzhugh on account of the same. The books of the Treasury show that accounts were opened with other persons to whom certificates were issued, to whom the principals of certificates were paid, and to whom interest was paid. The act of 1792, chapter 38, states, that all the certificates issued after 1785, are "titled and kept in the Treasury," so that this certificate would certainly be found there if it had ever been received by William Fitzhugh and paid to him.

The resolutions, Nos. 7, 8 and 12, of 1797, show that until October of 1798, the State was not ready to pay to persons holding these certificates the money due thereon, and Col. Fitzhugh was dead many months before that time.

The act of 1799, chapter 80, section 19, required the State's agent to report to the Treasurer, and the Treasurer to the Legislature the certificates paid, &c., and many such reports are to be found among the votes and proceedings. The Annual Reports of the Treasurer to the Legislature required that that the payment of these certificates should be entered upon the books at the Treasury, in order to supply the required information of the true condition of the finances of the State. The only entry of this certificate is a charge on a general account, and that account is not credited with its payment or the payment of any part of its principal or interest. There are many circumstances attending this matter which reasonably account for this certificate never having been received by Col. William Fitzhugh, or paid by the State.

The certificate is not required to be paid at any particular period, and may not have, in fact, been payable until October, 1798, under the resolutions before referred to, and after Col. Fitzhugh's death. Col. Fitzhugh, in his memorials after the passage of the resolution of 1791, never accepted it as a satisfaction for his claim and urged that even for the loss of his pension, the resolution ought to have been dated back to the 25th of June, 1776, when he threw up his commission, and inasmuch as this looked to a correction of the certificate, and as the one granted was bearing interest and not payable at any time specified, he may have thought he was weakening his claim by withdrawing it from the Treasury, where it could not prejudice him in any manner to leave it.

In his will, made only a few days before his death, having all the force of dying declarations, Col. Fitzhugh requires his

executor to petition the Legislature year after year for redress for his great losses sustained in resisting the common enemy, showing that he regarded his claims on the justice of the State as not satisfied in any manner.

That there has been no payment of this claim since his death is shown by the inventory and other administration accounts and the certificates of the Register of Wills for Washington county, exhibited to your committee and filed among the papers in this case.

There is another view of this case which your committee conceive they are bound in justice to present. Col. Fitzhugh, among other things, claimed remuneration for \$15,000 worth of property destroyed by the enemy during the Revolutionary war, and further for the loss of his half-pay, a portion of which we have seen was intended to be repaid him by the resolution of 1791. He claimed that his losses ought to be paid out of large sums brought into the Treasury from the proceeds of the confiscated estates of the tories and British subjects, under the principles of the act of confiscation of 1780, chapter 45. But passing by this claim as seems to have been the policy of your predecessors, upon what ground was the claim for the pension for the whole period for which it was lost, overlooked and not satisfied? The resolution of 1791, No. 10, although it did not begin as early as it should have done, extended down to the period of its passage, and left to future legislation to make further provision for the remainder of Col. Fitzhugh's life. The principle of his being entitled to indemnity is clearly settled by the resolution of 1791, and your committee cannot see why the compensation should not be commensurate with the loss. Thus, then, admitting the principle of the resolution of 1791, there being twenty years from the time when the pension ceased to be paid by the British Government to the death of its former recipient, and the Legislature only providing for the half-pay during some eight years of that time, there remain fourteen years of half-pay still due, for which no provision has ever been made. The mere probability, therefore, of this certificate having been paid in the entire absence of any such proof should not prevent the payment of this claim as now presented; for, under no state of circumstances, does Maryland owe the heirs of Col. Fitzhugh less than this amount.

The lapse of time ought not to avail in bar of the payment of this claim if manifestly just. The State allows no such plea to her own claims against her citizens, and it would come with a peculiarly bad grace to urge such a reason from a State which has lately received a large sum from the General Government, composed of a principal sum of seventy-two thousand dollars with the legal interest thereon from the year 1790, the very period of the passage of the resolution on which the claim

herein discussed is based, your committee refer to the claim of the State for money advanced to the General Government to erect public buildings in the District of Columbia, which has been recognized and paid, and but for the advance of which to the United States at that moment the State might not have been under the necessity of issuing certificates of indebtedness to her creditors.

For these reasons, therefore, your committee think this claim is just and ought to be paid, and they therefore beg leave to report the accompanying bill, entitled "An act for the relief of Henry M. Fitzhugh, administrator of William Fitzhugh."

WASHINGTON DUVALL,

Chairman, pro tem.

THOMAS FRANKLIN,

COLEMAN YELLOTT.

February 22, 1860.

We were not present when the above claim was examined by the committee, but have since investigated the same, and fully concur in the views above presented.

HENRY H. GOLDSBOROUGH,

ANTHONY KIMMEL.

February 24, 1860.