

IN SENATE OF THE UNITED STATES.

JANUARY 21, 1839.

Submitted, and ordered to be printed.

Mr. WILLIAMS, of Mississippi, made the following

REPORT :

[To accompany Senate bill No. 227.]

*The Committee on Revolutionary Claims, to which was referred the petition of the widow, children, and legatees of Gustavus B. Horner, deceased, reports :*

That the petitioners represent that the said Gustavus B. Horner was a surgeon's mate in the revolutionary army, and that he served till the end of the war ; and they claim commutation of five years' full pay of a surgeon, in lieu of half-pay for life, as justly due to the estate of Dr. Horner, under the resolution of Congress of the 17th January, 1781, making provision for the officers of the hospital department and medical staff.

It is clearly proved that Dr. Horner was a surgeon's mate of the general hospital of the middle district, in the army of the United States, and that he received pay as such to the 15th May, 1781, and thenceforth till the end of the war. It is probable he was not engaged in actual service, but it appears, from the evidence filed with the petition, that he did not resign his commission, but only retired as a supernumerary, ready for service whenever he should be required ; for, in addition to the other parol evidence to that purpose, it appears that he held his commission till the end of the war, and the commission itself, left by him among his papers, is now produced by the petitioners. The committee is satisfied by the proofs, that though he may have been supernumerary from May, 1781, till the end of the war, he continued in commission, and therefore was entitled to commutation of five years' full pay, in lieu of half-pay for life, if surgeon's mates were entitled to such compensation under the before mentioned resolution of Congress of the 17th January, 1781.

That resolution is as follows :

" Whereas by the plan for conducting the hospital department, passed in Congress the 30th day of September last, no proper establishment is provided for the officers of the medical staff after their dismissal from public service, which, considering the customs of other nations, and the late provisions made for the officers of the army after the conclusion of the war, they appear to have a just claim to ; for remedy whereof, and also for amending the several parts of the above mentioned plan, *Resolved*, That all

officers in the hospital department and medical staff hereinafter mentioned, who shall continue in service to the end of the war, or be reduced before that time as supernumeraries, shall be entitled to, and receive during life, in lieu of half-pay, the following allowance, viz: The directors of the hospital, equal to half-pay for a lieutenant colonel; chief physicians and surgeons of the army, and hospital physicians and surgeons, purveyor, apothecary, and regimental surgeons, each equal to half-pay of a captain; that there be allowed to the purveyor, apothecary, and assistant purveyor, each, forage for one horse; that the power given in the before mentioned plan to the chief physicians and surgeons of the army, to remove regimental surgeons and mates, in case of absence without leave, shall in future extend no further than a power of suspension, until such delinquent shall be reported to a proper officer for bringing him to trial by a court martial."

This resolution does not, indeed, make any provision of half-pay for life for surgeon's mates, *eo nomine*; the provision is, in its terms, for surgeons, chief surgeons of the army, hospital surgeons, regimental surgeons, and it puts them all on the same footing; that is, the half-pay of a captain is given to each and all of them, without discrimination of rank, their duties being, in truth, nearly or exactly the same. The committee is of opinion that surgeon's mates, in an army or hospital, are surgeons, and generally so regarded, and that the word surgeons was used in the resolution as a generic phrase, and comprehended, and was intended to comprehend, all surgeons of whatever rank, and surgeon's mates among the rest; especially as surgeon's mates are recognised as officers of the army, amenable to a court martial by this very resolution; and the committee cannot see any reason why Congress should have excluded surgeon's mates from the benefit of a provision which it extended to apothecaries and purveyors, whose services exposed them to little or no hardship or danger.

Therefore, the committee is of opinion that the petitioners are justly entitled to the relief they pray, and reports a bill for their relief accordingly.

Under the resolution of Congress, passed on the 17th January, 1781, the petitioners received pay as such to the 15th May, 1781, and thenceforth till the end of the war. It is probable he was not engaged in actual service, but it appears from the evidence filed with the petition that he did not resign his commission, but only retired as a supernumerary, ready for service when ever he should be required; for, in addition to the other paper evidence to that purpose, it appears that he held his commission till the end of the war, and the commission itself, left by him among his papers is now produced by the petitioners. The committee is satisfied by the proofs that though he may have been supernumerary from May, 1781, till the end of the war, he continued in commission, and therefore was entitled to continuation of his year's full pay in lieu of half-pay for life. If surgeon's mates were entitled to such compensation under the before mentioned resolution of Congress of the 17th January, 1781.

The resolution is as follows:

Whereas by the plan for conducting the hospital department, passed in Congress the 30th day of September last, no proper establishment is provided for the officers of the medical staff after their dismissal from public service, which, considering the customs of other nations, and the late provisions made for the officers of the army after the conclusion of the war, they appear to have a just claim to; for remedy whereof, and also for amending the several parts of the above mentioned plan, Resolved, That all