

HEIRS OF DR. GEORGE YATES.

[To accompany Bill H. R. No. 244.]

MARCH 2, 1860.

Mr. JACKSON, from the Committee on Revolutionary Claims, made the following

REPORT.

*The Committee on Revolutionary Claims, to whom was referred the report of the Court of Claims in the case of the heirs of Dr. George Yates, have had the same under consideration, and beg leave to report:*

That this is a claim for commutation promised the officers of the revolution by the resolve of Congress of March 22, 1783. That resolve is in these words:

“*Resolved*, That such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the amount of five years’ full pay in money, or securities *on interest at six per cent.* per annum, as Congress shall find most convenient, instead of the half-pay promised for life by the resolution of the 21st of October, 1780; that all officers belonging to the *hospital* department, who are entitled to half-pay by the resolution of the 17th day of January, 1781, may collectively agree to accept or refuse the aforesaid commutation.”

Dr. George Yates was a “surgeon’s mate” in the Virginia line, and complied with all the requisitions of the law as to service. The only question at issue is, “Was a *surgeon’s mate* entitled to the commutation promised by Congress?” To determine this question properly it will be necessary to review briefly the previous legislation on the subject.

On the 30th September, 1780, the continental Congress say: “Whereas the late regulations for conducting the affairs of the general *hospital* are in many respects defective, &c.,

“*Resolved*, That the pay and establishment of the officers of the *hospital* department and medical staff be as follows,” &c. Then follow the pay-regulations for this class of medical officers, without, however, making any provision for them after they should retire from the service.—(Jour., vol. iii., 526.)

On the 21st October, 1780, “Congress resumed the consideration of the report of the committee on General Washington’s letter of the 11th October, and thereupon

“*Resolved*, That the several regiments of infantry requested from the respective States by a resolution of the 3d instant be augmented, and consist of one colonel, one lieutenant colonel, one major, nine captains, one surgeon, and one *surgeon's mate*,” &c.—(See Jour., vol. iii., p. 538.)

“*Resolved*, That the officers who shall continue in service to the end of the war shall also be entitled to half-pay during life,” &c.—(Ib.)

In these resolutions there is a clear recognition, *eo nomine*, of surgeons' mates as officers, and as such a promise to pay them “the half-pay during life.” But there being no similar provision under the resolve of September 30, 1780, for the hospital and staff officers, they remonstrated, and memorialized Congress; and on the 17th January, 1781, “Congress took into consideration the report of the committee on the letter of the 5th of November last from General Washington, enclosing a memorial from the officers in the *hospital* department, and thereupon came to the following resolutions:

“Whereas by the plan for conducting the *hospital* department passed in Congress the 30th September last, no proper establishment is provided for the officers of the medical staff after their reduction from the public service,” &c., &c.

“*Resolved*, That all officers of the *hospital* department and medical staff hereinafter mentioned, who shall continue in service to the end of the war, shall receive during life, in lieu of half-pay, the following allowances,” &c.—(Jour., vol. iii., p. 569.)

Such, your committee find, had been the legislation on this subject when the resolve first quoted was passed by Congress. The resolve of October 21, 1780, provided “half-pay for life” for the officers of the regiments about being called into service from the States, including by name, *surgeons' mates*. The resolve of January 17, 1781, went further, and embraced a class of officers not included in the resolution of October; the one applied to officers *in the line*, the other to officers in the *medical staff* and *hospital* department. These are entirely independent resolutions, having no necessary connexion whatever; and as it is shown by the official records that Dr. Yates was a surgeon's mate in the Virginia continental *line* of the army of the revolution, your committee find that he was legally entitled to commutation under the resolve of March 22, 1783.

It may be inquired why the Court of Claims did not allow this claim if just and legal. Your committee beg that the Court of Claims may speak for itself. Here is the opinion of the court:

#### IN THE COURT OF CLAIMS.

#### HEIRS OF DOCTOR GEORGE YATES *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

It is alleged that George Yates, the intestate, was surgeon's mate in the revolutionary army, and entitled to half-pay for life; and that, being so entitled, he is embraced by the resolve of Congress of March

22, 1783, by which commutation of five years' full pay is given to those revolutionary officers who are entitled to half-pay for life.

It is for such commutation that this suit is brought.

The said resolve of 1783 gives the commutation to those officers who were entitled to half-pay for life under the resolve of Congress of October 21, 1780, or that of January 17, 1781, and we must therefore inquire whether surgeons' mates were entitled to half-pay for life under either of the two last mentioned resolves.

The resolve of the 21st October, 1780, says that the officers who shall continue in the service to the end of the war shall also be entitled to half-pay during life, to commence from the time of their reduction. General Washington, in a letter to Congress of the 5th of November, 1780, says, among other things, "that in the British army, from whence most of our rules and customs are derived, and in which long experience and improvement has brought their system as near perfection as in any other service, the surgeons of the hospital and regimental surgeons are, upon reduction, entitled to half-pay. The mates in both, I believe, are not." Congress soon afterwards, having considered that letter, passed the aforesaid resolve on the 17th January, 1781. That resolve provides that certain half-pay for life should be paid to the officers therein mentioned of the hospital department and medical staff, who should serve to the end of the war, or become supernumerary. But surgeons' mates are not mentioned.

Our opinion is, that the resolves of 1780 and 1781, together constitute one system, and are to be construed as if passed at the same time; and that they do not embrace surgeons' mates; and we cannot, therefore, consider them entitled to commutation under the resolve of 1783. It is stated by the Committee on Revolutionary Claims, in 1838, that the board of war, in 1784, decided that said resolve of 1783 was not applicable to surgeons' mates; and the committee state, also, that the Continental Congress was of the same opinion.—(Book of Rev. Claims, 462.)

We think that the claimants have no cause of action.

The court here gravely assigns two reasons for rejecting this claim :

1. Because Washington, in a letter, "says that in the *British* army" surgeons' mates are not entitled to half-pay; and

2. That the resolutions of 1780 and 1781, taken together, constitute a system, and are to be construed as if passed at the same time; and that thus tacked they would not embrace surgeons' mates.

Your committee are at a loss to perceive how the custom of the British army can, in any way, affect the legal rights of American citizens, or control the interpretation of our congressional statutes. The second reason assigned by the court is, in the opinion of your committee, equally forced, not to say absurd. It has already been shown that there was no connexion whatever between these two resolutions. They provided for different classes of officers. The one supplied a deficiency in the other. If the resolve of 1780 vested legal rights in the officers of *the line*, no subsequent legislation, even if so designed, could have deprived them of those rights. This is too clear for argument.

Having shown that Dr. Yates was entitled to half-pay for life under

the resolve of 1780, and as a necessary consequence of five years' full pay, as provided in the resolution of 1783, it may be well to refer to the action of Congress in similar cases, and your committee would respectfully cite the following :

Dr. Samuel J. Axson, of South Carolina, surgeon's mate, United States Statutes at Large, vol. 6, p. 494; Dr. Joseph Prescott, of South Carolina, surgeon's mate, *ib.*, p. 732; Dr. William Cogswell, of Massachusetts, surgeon's mate, *ib.*, p. 718; and the case of Dr. Joseph Savage, of Virginia, surgeon's mate, passed 2d day of March, 1855. In this last cited case the committee say, "the case is within the strict letter of the resolve of Congress."

The question, then, being settled that the claimants are entitled to the principal, your committee would call attention to the wording of the resolution of March 22, 1783. This resolution says the officers shall receive "five years' full pay in *money*, or securities on *interest at six per. cent. per annum.*" This interest is specially stipulated to be paid, as much so as the interest on your treasury notes or government bonds now issued at the present day. Your committee conceive the one as much due as the other, and they report a bill accordingly, and recommend its passage.

This report was made too late for action at the last session of Congress. The case is therefore again before your committee for consideration, and an early report is respectfully solicited.