

333

SENATE.....No. 36.

Commonwealth of Massachusetts.

IN SENATE, MARCH 23, 1832.

The Committee, to whom was referred the Message of His Excellency the Governor, communicating a Report and Sundry Resolutions adopted by the Legislature of the State of Maine, concerning the payment of a further sum on account of the money received of the General Government towards the payment of the Massachusetts Claim, have had the same under consideration, and respectfully submit the following

REPORT.

The Resolutions state, that the act, relating to the separation of Maine *most manifestly* provides that all money, stock, or other proceeds claimed from the United States on account of the Claim of the Commonwealth, shall be divided in the proportion of two thirds to Massachusetts and one third to Maine;—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 monies received on account of the Massachusetts Claim, without any deduction—that the Government of Massachusetts by refusing to pay over to Maine one third part of the whole amount received from the United States, without

556

any deduction, have not complied with the true intent and meaning of the Act of Separation, and the Governor of Maine is requested to transmit to the Executive of this Commonwealth the Report and Resolutions, and to request the Governor of this Commonwealth to cause to be paid over to the Treasurer of Maine the balance of \$7,716 08.

The resolutions were approved by the Governor of Maine, on the 5th instant, and the Committee regret that there was any delay in transmitting them to the Executive of this Commonwealth, not because there is not sufficient time to enable the Legislature to come to a correct and decided opinion on the subject, but because there is not an opportunity, at the very close of the session, for the Committee to notice particularly the reasons on which the resolutions are founded, as set forth in the Report. The Committee are surprised at this claim of the State of Maine, which in their opinion is wholly inadmissible. They are at a loss to conceive how the Legislature of that State can have come to the conclusion, that Maine is entitled to one third part of the money received by this Commonwealth, of the United States, without allowing the same proportion of the necessary expenses incurred in the prosecution of the claim. It seems to them that the demand of Maine is not justified by a fair construction of the Act of Separation ; that it could not have been the intention of the parties that one party, Massachusetts, should prosecute the claim on the United States, at her sole expense, and pay over one third of the gross proceeds to the State of Maine. And the conduct of both parties since the separation, confirms your Committee in the opinion that such was not their intention.

The following is the provision in the "Act of Separation," in relation to this subject: "Thirdly. All monies, stock, or other proceeds, hereafter obtained from the United States, on account of the claim of this Commonwealth, for disbursements made, and expenses incurred for the defence of the State, during the late war with Great Britain, shall be received by this Commonwealth, and when received, shall be divided between the two States, in the proportion of two-thirds to this Commonwealth, and one-third to the new State."

The question is, whether the State of Maine is entitled to one-third part of the whole sum received by this Commonwealth from the United States, or one-third of the *net proceeds*, or what has in fact been received, after the deduction of necessary charges and expenses?

The argument in the report rests principally on a literal construction of the phraseology of the Act of Separation, "that all monies, &c. obtained on account of the claim, shall be received by this Commonwealth, and when received, shall be divided between the two States, in the proportions stated," and on the circumstance, that no express authority is given to Massachusetts to incur expenses in the prosecution of the claim, and to charge them to the money recovered, as a general fund. This construction does not appear to the committee to be reasonable. It is too limited and literal for an instrument of this nature, *a convention or agreement between two States*. Reference should be had to the object of the compact between Massachusetts and Maine—the state of the "Massachusetts claim," so called, and to the authority conferred on

this Commonwealth, in relation to it. By this "Act," an arrangement was made as to all the property of the Commonwealth, including the then District of Maine, and its liabilities and obligations, and a proportion was agreed upon as to the real and personal estate, which was deemed to be just and equitable—the lands in Maine were to be divided equally between the States, and all personal property, and what might be recovered upon rights of action, &c. in the proportions of one-third to Maine, and two-thirds to Massachusetts.

Massachusetts was in effect made the agent of the parties jointly interested in the claim with power to prosecute it on their joint account, to recover and receive the money, and by implication was authorized to take such measures and incur such reasonable expenses, on the joint account, as might be considered necessary to its successful prosecution, and it would seem to follow, that, on the recovery of the money, the expenses incurred, even if not distinctly contemplated at the time of separation, should be deducted before the division of the proceeds. This is the only reasonable construction of the contract. Unless the expenses are to be first deducted, the division will not be in the proportion stated in the act of separation: for, if one third of the whole amount, or gross proceeds is to be paid to Maine, that state will receive more than one third, and this less than two thirds of the avails of the claim. What are the proceeds of this claim? What has been obtained by Massachusetts on that account? Clearly, the amount remaining, after deducting the expenses incurred in good faith by this Commonwealth. This must have been the intention of the parties. The basis, the *principle*, of the division is one third to Maine, and two

thirds to this state. To this we must look in order to ascertain the true meaning of the agreement, and, in the opinion of the Committee, a fair construction of the Act of Separation requires, that the expenses should be borne by the two States, in the proportion in which they are beneficially interested in the subject of the expenses. It would otherwise be wholly uncertain what proportion of the claim Massachusetts would receive, as it would depend on the expenses which have been considerable, and are still accruing.

The State of Maine, as a party interested, has no doubt a right to inquire into these expenses, both as to the amount, and the circumstances under which they arose.

The Massachusetts Claim is a fund belonging to the two States, in certain proportions, and even if it was supposed at the time of the separation of Maine, that it would be collected without expense, yet as Massachusetts has incurred expense in prosecuting the demand, which she was bound to do, under the Act of Separation; it might have been expected that the State of Maine, so lately a part of this Commonwealth, would have proposed to contribute her proportion of the expenses if her obligation to do it were doubtful, instead of insisting that this State should bear them all.

At the time of the Separation of Maine, our claim had been pending several years, it had received the attention of successive Legislatures, had been referred to the care of our Senators and Representatives in Congress, and special agents had been appointed. It was necessary that it should be prosecuted by this Commonwealth. The documentary evidence was here. It was

one claim ; it arose here. Massachusetts was the party known to the general Government, as the claimant. It could not be divided, and presented, examined, and enforced by the two States in proportion to their respective interests. Great attention had at all times been paid to it by the Executive of the Commonwealth. In 1823, special agents were appointed, by authority of the Legislature ; they went to Washington for the purpose of forwarding the claim. This demand on the General Government has at all times received the attention from every branch of this government, due to its importance. It has often been presented to the consideration of the Legislature, by the Governors of the Commonwealth, and has been made the subject of elaborate reports. It has not only occasioned great expenditures of money, but has required much time and great labor, in every department of the government, and of course much expense has been incurred, which will never be remunerated. Massachusetts has had the sole care of this claim, under the Act of Separation, and it surely is neither reasonable nor equitable, that in addition to all the labor and time bestowed upon it, she alone should bear the burthen of the expenses.

And your Committee are of opinion, that Maine has acquiesced in the manner in which the claim has been conducted. No objection on her part has at any time been made, to the measures adopted. During all this time, and until since the receipt of the money from the general government, and the payment over to Maine of one third part, deducting from the joint fund the expenses paid on the joint account, and a sum for unliquidated demands and future charges—the strict construction of the act of separation now contended for, was not

suggested ; on the contrary, it must have been the expectation of the government of Maine, that all expenses were to be a charge on the general fund. The committee are of opinion with His Excellency the Governor, that the demand now made is the more unexpected, from the fact that the Legislature of Maine, on the 8th of March, 1831, passed a resolve, authorizing the Governor and Council of *Massachusetts*, to examine and settle the claim of Gen. King, for services rendered by the appointment of the government of Maine, and to *pay the same from the general fund*. Why was Gen. King referred to the Executive of this Commonwealth for payment out of the general fund, if it was supposed that the State of Maine was entitled to one third of the gross amount received ? It must then have been understood by Maine, that the money received from the general government, was a joint fund, out of which the charges were first to be paid and deducted, and the remainder to be divided between the States. This is according to a fundamental principle of law and equity, that persons jointly interested in property, must bear their proportion of the expenses attending its recovery or preservation, according to their respective interests, unless otherwise regulated by special agreement. The voluntary withdrawal of his demand from the examination of the Governor and Council here, by Gen. King, can have no influence on the question under consideration. Other views have occurred to the Committee, in respect to different parts of the act of separation, all of which tend to confirm them in their opinion ; but they have not time to state and discuss them, and they will not enlarge.

The Committee cannot but express their regret, that any difference of opinion should now arise, as to the

rights of either state under the Act of Separation. The ancient and long-continued connexion between Massachusetts and Maine, under a common government was at all times harmonious, and with mutual confidence. The important measure of separation was accomplished in the most amicable spirit, and great interests have been adjusted without any misunderstanding, and to the entire satisfaction of both parties. The two states have still important interests in common, and it is very desirable that nothing should occur to disturb the good understanding that has hitherto existed between them. The Committee indulge the belief, that the Legislature of Maine will not adhere to the demand contained in their late Resolutions, that they will not continue to claim one third of the money received from the United States, without being willing to allow the same proportion of the expenses necessarily incurred by this Commonwealth in obtaining it—that they will admit it to be a reasonable construction of the Act of Separation, that as Massachusetts was authorized to demand, collect and receive the claim on the General Government for the joint benefit of the two States, it should be done at their joint expense.

Under these circumstances, the Committee respectfully Report, that the further consideration of the subject be referred to the next Legislature; and that his Excellency the Governor, be requested to cause a copy of this report to be transmitted to His Excellency the Governor of Maine—all which is respectfully submitted by

LEVERETT SALTONSTALL,

For the Committee.