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Perrysburg, Ohio – claimants to town lots

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PERRYSBURG, OHIO—CLAIMANTS TO TOWN LOTS.

[To accompany bill H. R. No. 106.]

FEBRUARY 9, 1842.

Mr. HOWARD, from the Committee on the Public Lands, made the following

REPORT:

The Committee on the Public Lands, to whom was referred the petition of claimants to town lots in the town of Perrysburg, report:

By the act of 27th April, 1816, the surveyor general was directed to lay off into town lots, streets, and avenues, and into out lots, two entire sections of the tract of land of twelve miles square, near the foot of the rapids of the Miami of the Lake, ceded by certain Indian tribes at the treaty of Greenville, in 1795, and to return a copy of the plan of the town to the Commissioner of the General Land Office. The same act directs the register and receiver of the land office at Wooster, Ohio, to offer these town lots and out lots for sale at public auction, on the "same terms and conditions as had been, or might be, by law, provided for the lands sold north of the Ohio river, and above the mouth of the Kentucky river."

In pursuance of this act, the town of Perrysburg was laid out; and in July, 1817, in pursuance of a proclamation of the President of the United States, a considerable number of the lots were offered for sale at public auction, at the land office at Wooster, and struck off to bidders upon the terms prescribed by existing laws. By these terms the purchasers were allowed a *credit*; but, in case of non-payment within the time limited, the lots reverted to the United States. Under subsequent acts of Congress, the period thus limited was extended; but most of the purchasers neglecting to comply with the requirements of the law, their lots reverted or were relinquished to the United States. These forfeitures and relinquishments took place chiefly in 1824 and 1829; and the authorities of the State of Ohio claiming, under the terms of the admission of that State into the Union, a right to tax these lots after five years from the date of the sale in 1817, taxes were accordingly assessed upon them by the county of Wood; and, not being paid, the lots were sold in pursuance of the laws of the State applicable to such cases. The purchasers at these sales went into possession, and, in many cases, made expensive improvements, supposing, without doubt, that their titles, thus derived, were perfect.

Another question, however, arose, as to the title of these lots, out of two acts of Congress—the one approved May 7th, 1822, the other February 28th, 1823. By the former it is provided, "that the right to all the *unsold* town lots and out lots in the town of Perrysburg be, and the same is hereby, vested in the commissioners of the county of Wood, in the State of Ohio," on the condition that said commissioners should permanently locate the seat of justice for that county at the town of Perrysburg. By the lat-

ter, the State of Ohio is "authorized to lay out, open, and construct a road from the lower rapids of the Miami of Lake Erie to the western boundary of the Connecticut Western Reserve;" and the act provides "that, in order to enable the State of Ohio to open and construct said road, a tract of land, one hundred and twenty feet wide, whereon to locate the same, together with a quantity of land equal to one mile on each side thereof, and adjoining thereto, to defray the expenses of making said road, is hereby granted to said State, to commence at the Miami rapids, and to terminate at the western boundary of the Connecticut Western Reserve;" with power to sell and apply the proceeds to that object.

It is understood that this road, as laid out, running through the town of Perrysburg, brings most if not all of these lots within one mile on each of its sides; and for this reason the State claims them, as appurtenant to the road, and as included in the grant. The commissioners also claim them for county purposes, as being included among the "unsold town lots and out lots" granted by the former act.

By the laws in force at the time of the sale in 1817, the right of forfeiture and reversion to the United States was plainly declared. It was coeval with and constituted a part of the contract of sale; and whatever right may have been possessed by Ohio to tax the property of her citizens, it was clearly in subordination to this paramount right of the Union. Even if it be admitted that the non-payment of the tax would justify her in transferring all the interest of the purchaser to a third person, for its satisfaction, that interest must pass, subject to the same rule; and the question as to the right of a State to impose a tax upon lands belonging to the United States does not, therefore, properly arise in this case.

If this view of the subject be correct, (and it is thought to be such,) it matters not at what time the taxes on these lots were assessed. They became the absolute property of the United States whenever a breach of the conditions of sale gave effect to the law declaring the forfeiture or reversion, notwithstanding the imposition of the tax.

The grant to the commissioners of Wood county being made before any of these lands became forfeited, it cannot be pretended that the grant included these lots, which were already conditionally sold, unless Congress clearly expressed its intention to transfer to them its uncertain interest in them. But the act contains no such intimation, but simply grants the "unsold lots," establishing the obvious distinction between those which had been sold and those which remained for sale. The intention was to grant a certain and undoubted title, such as would be of present positive advantage to the county; not one which was uncertain, and might be utterly useless.

Nor is there any intention expressed in the act of 1823 to transfer this uncertain interest to the State, for the benefit of the Miami road. In this case, as in the other, the grant was made while the United States stood in the relation of a warrantor of title to the individual purchasers, and when it *could* not, if such had been its desire, have passed the title of the lots to Ohio. The act ought to receive no such violent construction; and the committee are happy to concur with a former Commissioner of the General Land Office, that the title to these lots is still in the United States; and they deem it the duty of the Government to interpose and settle a controversy so injurious to the growth and prosperity of the town.

The petitioners are purchasers, and heirs or assigns of purchasers, under

