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Robert Graham

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ROBERT GRAHAM.

FEBRUARY 25, 1845.

Read, and laid upon the table.

Mr. W. J. BROWN, from the Committee on Private Land Claims, made the following

REPORT:

The Committee on Private Land Claims, to whom was referred the petition of Robert Graham, having examined the petition and accompanying evidence, report:

That this claim is founded on an allegation of the petitioner that he is entitled to compensation for 9,958 acres of land, which he claims in right of John Murray St. Clair, and which he avers the government has sold without regarding his claim. It appears by the evidence, that the original grant was made in 1769, by Lieutenant Colonel John Wilkins, then commanding the British forces in Illinois, to Baynton, Morgan, & Wharton, three merchants, who represent themselves as residing in Philadelphia, but whose occupations were Indian traders, with their headquarters at Kaskaskia. For several reasons, your committee deem it unnecessary to trace the chain of title from the original grantees to the present claimants. By the admission of Colonel Wilkins, it appears that this grant, and others of the same character, being grants for large tracts of land, were "null and void until confirmed by the general" commanding, or the British government. There is no evidence that this important condition, upon which rests the validity of the claim, was ever complied with; and Wilkins, immediately after making this grant, became interested in one-sixth part of the claim; and it is very probable that the whole transaction was founded in fraud, for it appears by the proclamation of the King of Great Britain, dated October 7, 1763, that such grants were expressly forbidden. As an evidence that the lands were not considered valuable, or that the title was regarded as doubtful, John Murray St. Clair, on the 11th of June, 1790, for and in consideration of one horse and phaeton, valued at \$200, purchased the entire tract of near 10,000 acres. But the principal link in the chain of title, upon which the claimant relies with much confidence, is a patent executed on the 12th day of August, 1800, by Arthur St. Clair, then governor of the Territory northwest of the Ohio river, to John Edgar and John Murray St. Clair. If Governor St. Clair was fully authorized to confirm this grant and issue a patent, your committee would deem it conclusive. But, in the first place, it appears to be extremely doubtful whether Congress ever intended to invest the gov-

ernor of the Territory with power to confirm such large grants—a power extremely dangerous, and one which he seems to have exercised liberally for the benefit of his own children, as this and other cases abundantly prove. But if such power was ever vested in him, it had certainly ceased at the time of the execution of the deed. By act of Congress dated May 7, 1800, the Northwestern Territory was divided, and the Indiana Territory (including all the country lying west of the present western boundary of the State of Ohio) was formed. By the provision of the 5th section of that act, it was enacted, “That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the Territory of the United States northwest of the Ohio river, further than to prohibit the exercise thereof within the Indiana Territory from and after the aforesaid 4th day of July next.” On the 13th of May, 1800, William Henry Harrison was appointed governor; and it appears by the records of the territorial government that the territorial government commenced on the 4th of July, 1800; and on the 22d of July, the secretary, by the authority of law, in the absence of the governor, proceeded to make sundry appointments; and by the patent of confirmation granted to John Edgar and John M. St. Clair, it appears that Governor St. Clair was still attempting to exercise his authority in confirming land titles as late as the 12th of August in the same year. Here the two governments were evidently brought into conflict, and the acts of both could not be binding; and as, by express provision of law, all the authority of the governor of the Northwest Territory ceased on the 4th of July, your committee are clearly of opinion that the deed of confirmation in this case, having issued after all his functions as governor had ceased in the territory where the land was situated, the deed of confirmation is null and void, and ought not now to be legalized by Congress. It appears that this claim was presented in 1813 to the “commissioners appointed for the purpose of examining the claims of persons claiming lands in the Kaskaskia land district;” and in their report they say:

“This claim is derived from a confirmation made by Governor St. Clair to said John Edgar and John Murray St. Clair; which confirmation is grounded on a concession made in the year 1769 by John Wilkins, styling himself lieutenant colonel in his majesty’s 18th royal Irish regiment, and commandant in Illinois, to a company then trading in the country under the firm of Baynton, Wharton, & Morgan; from whom, it would seem, it came by sundry transfers to John Edgar. All the documents, together with a report relative to this claim, have been transmitted by the former board to the government, to which we beg leave to refer. It is only necessary further to remark, that the patent was issued after the powers of Governor St. Clair had ceased to exist in the Indiana Territory. And, from a view of all the facts, the commissioners are of opinion that the grant was a speculative one, the patent a nullity, and that the claim is neither founded in law nor equity; and therefore ought not to be confirmed.”—*American State Papers—Public Lands, volume 2, page 116.*

The first commissioners, appointed under the same authority, speaking of this case, say: “Two things in this case are observable: first, that this, on the part of Col. Wilkins, was a speculating concession (see an entry of an agreement on the part of Baynton, Wharton, & Morgan, to whom the said concession was made) to re-convey to the said Wilkins a portion of this land, if the title should be confirmed by the British government, in document annexed; and, secondly, that this patent, although it calls for 13,986

acres, does, in fact, (the land being described by certain natural boundaries,) cover near 30,000 acres. The truth seems to be, that Edgar, previous to the issuing of the patent, (which has never been, as usual, countersigned by the secretary,) employed a certain Daniel McCann (then surveyor under the governor's appointment, and who, from his own letter on our files, we pronounce not to have been more honest than he ought to be) to survey this tract. Knowing, as it seems, the quantity of land meant to be confirmed, he ran his lines to a certain distance, and stopped; Edgar urged him to proceed farther; he refused. Edgar employed a certain Richard Lord, whose name is notorious on our records, to complete the survey; and said McCann was, it seems, afterwards induced to certify it."

Your committee therefore recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

The Committee on Appropriations, to whom was referred the petition of Richard M. Livingston, Auditor and administrator of the State Lands, praying for relief, do report:

That the petitioner, after having paid the services of his medical attendant, James Livingston, of the New York Continental Line, says Col. Livingston is entitled to the next year's full pay which was due to him prior to the termination of the war.

In support of the accompanying list of these claims, the petitioner exhibits records in his office, showing Col. James Livingston's services during the war.

The committee therefore recommend that the year's pay be granted.

Very respectfully,

SEN: In reply to the petition of your friend Mr. ... making inquiry whether Col. James Livingston, of the New York Continental Line, was entitled to ... I have the honor to inform the committee ... of Richard M. Livingston, and in view of the ... of the office show Col. James Livingston is ...

With great respect, your obedient servant,

PETER HAYDEN, Auditor

Charles D. ...
House of Representatives