

2-24-1847

School fund in Alabama and Mississippi. (To accompany bill H.R. no. 684).

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

H.R. Rep. No. 85, 29th Cong., 2nd Sess. (1847)

This House Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

SCHOOL FUND IN ALABAMA AND MISSISSIPPI.

[To accompany bill H. R. No. 684]

FEBRUARY 24, 1847.

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

REPORT :

The Committee on Public Lands, to whom was referred the petition of George S. Houston, of the State of Alabama, praying Congress to reimburse the inhabitants of certain townships in that State for certain school lands disposed of by the United States otherwise than according to the provisions of the act for the admission of the State of Alabama into the Union, have had the same under consideration, and respectfully report :

The committee cannot better explain the general grounds and history of this case, than by incorporating the following communication as a part of their report :

HOUSE OF REPRESENTATIVES,
January, 1847.

SIR: I had the honor, a few days since, of referring to your committee a letter and petition in relation to the sixteenth sections of which the several townships lying within the limits of the Chickasaw cession, were deprived under the treaty between this government and the Chickasaw Indians. I trust that I shall not be considered obtrusive or importunate in offering, through you, to the committee over which you have the honor to preside, a hasty narration of the facts connected with the subject, in order to exhibit the positive justice of the claim, and to show the great importance of prompt and immediate action in reference thereto.

Under the compact between the general government and the State of Alabama, (as between this government and all the new States,) every sixteenth section in each township was set apart for purposes of education. In attempting to make a treaty with the Chickasaw Indians, the general government met with much difficulty; and finally, in order to effect a treaty at all, it had to agree with that tribe to sell the entire extent of lands within their limits, (excepting Indian reservations, &c.) and out of the proceeds establish a Chickasaw fund for the benefit of the said tribe; so that, under the provisions of the treaty thus formed, the sixteenth sections, which, by virtue of the compact with the State, belonged to the State, or the several townships within the limits before mentioned, were sold, and the proceeds thereof put in to aid in constituting the said Chickasaw fund.

The present governor of Alabama, who represented the district which I now have the honor to represent, succeeded in getting a law passed on the 4th July, 1836, (see 5th volume Little & Brown's edition of the laws,) authorizing other lands to be selected, of equal quantity, which were to be received in lieu of the sixteenth sections of which the aforesaid townships had been deprived. That law, however, confined the new selections to the contiguous land district in the State of Alabama, which restriction rendered the provisions of the said law totally useless and nugatory; for there were no public lands within the limits of that district of any value, and consequently the townships declined receiving them. In 1845, February 5th, (see 5th volume Little & Brown, page 727,) that law was amended so as to extend the area in which selections might be made to any portions of the public lands lying within the States of Alabama and Mississippi. I indulged a hope that, under the law thus amended, land of the requisite extent and adequate quality might be obtained in the States designated. In that hope, however, I find myself totally disappointed; for, after a thorough examination by competent commissioners, the report is, that no lands of sufficient value to induce the said townships to accept them can be found within the proposed limits, and subject to their selection. Hence it is that I now apply, in behalf of the people interested in the said sixteenth sections, for that redress to which they are evidently and unquestionably entitled. Under the compact, the valuable lands composing the original sixteenth sections rightfully belonged to the townships. Those lands were set apart for one of the highest and most interesting purposes; a purpose which lies near and dear to every parent's heart; a purpose which the importance of education and intelligence among the rising generation of our country renders almost sacred. It was to constitute a school fund for the education of children within the townships in which the lands were located. The benefits which the original grants, if left undisturbed, would have conferred upon the people of the said townships, have been lost; not by any act of theirs, but by the act of this government, and as their representative I present their claim for the prompt and favorable consideration of Congress.

There is now no hope or prospect of finding, within reach, any public lands that will answer the purpose of creating an adequate school fund. None can be found which this government ought to wish those townships to receive. The fund growing out of the valuable original sixteenth sections was a sacred one, and the people interested should not be spoiled of it by the fault of the general government. The whole extent of the original sixteenth sections was _____ acres. Much of it, being of the first quality of soil, would now bring a high price in the market; and I do most earnestly hope that your committee will well and faithfully consider all the facts and circumstances herein stated, and that they may promptly do what, in their sense of justice, they may think the nature of the case demands. I respectfully suggest a compensation or substitution in money, at such an amount per acre as may be deemed just and proper. To delay it longer would be only to add to a loss already great. The benefits of the fund have already been lost to the townships for more than ten years; long enough for the interest almost to have amounted to as much as the principal. It should be borne in mind, that during the suspension of this fund there are many children of indigent parents in those townships, who are growing up without receiving the benefits of that educa-

tion to which they are entitled, and consequently are not so well prepared to fill their places in society, or to meet their high obligations to their country, as they otherwise would be.

Impressed, as I am, with a belief that Congress will meet its high obligations in the premises when the subject shall have been fully presented for its action, I respectfully urge upon your committee to take such steps as will open the way for a full and speedy redress of the grievances of which my people complain.

To facilitate your investigations, and to lighten your labors in the examination of the subject, I have given you reference to the laws, as well as the treaties, bearing upon the case.

I have the honor to be your obedient servant,

GEO. S. HOUSTON.

HON. JOHN A. McCLERNAND,

Chairman of the Committee on Public Lands.

For the purpose of affording more definite information, the committee have felt themselves called upon to refer specifically to the acts of Congress upon this subject. The act to admit the State of Alabama into the Union, approved March 2, 1819, provides, in the sixth section—

“That the section numbered sixteen in every township, and when such section has been sold, granted, or disposed of, other lands *equivalent* thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of schools.”

Under this clause the State of Alabama claims, and rightfully claims, for the inhabitants of each township, for the use of schools, section numbered sixteen in each township, or *equivalent* lands most contiguous thereto. This provision, it may be assumed, was incorporated for the purpose of securing to the State something like an equivalent or consideration (although it has proved quite inadequate) for the disclaimer of the State of all right to interfere with the primary disposal of the soil, or to tax the same before and for five years after sale, and therefore the provision becomes a part of a contract, and *vests* a corresponding right in the inhabitants of the State. Without enlarging upon this point, the next inquiry which presents itself is, whether this contract has been fulfilled? It is not denied that the State has fulfilled it so far as its engagements extend; but have Congress? By the third article of the treaty with the Chickasaw nation, ratified on the first day of March, 1833, it is provided—

“As a full compensation to the Chickasaw nation for the country thus ceded, the United States agree to pay over to the Chickasaw nation all money arising from the sale of the land which may be received from time to time, after deducting therefrom the whole cost and expenses of surveying and selling the land, including every expense attending the same.”

It is clear, then, that the engagement of the government under the same contract has not been fulfilled to the extent of the school lands comprised within so much of the Chickasaw cession as is situated within the borders of the State of Alabama. An entirely different appropriation has been made of them, and under the solemn provisions of a treaty. What, now, has been done by Congress to reimburse the inhabitants of the townships comprehended within the cession for the school lands thus withheld from them? As early as 1836 Congress passed a law upon the sub-

ject. That law, after providing for reimbursing the State for the five per cent. fund due out of the sales of this cession to the State, proceeds to vest in the State a quantity of land equal to the entire extent of the sixteen sections comprised within the limits of the cession, to be located in tracts not less than quarter sections, in any land district in the State contiguous to the cession. The material enactment is in these words:

“Which said lands, so selected as aforesaid, the same shall vest in the State of Alabama, for the use of schools within said” cession. (Vide Laws of the United States, volume 9, page 543.)

In 1845 another act was passed upon the same subject, which extends the right of locating the selections authorized by the previous act, upon any lands subject to private entry in the States of Alabama and Mississippi, provided the locations should be made within two years after the passage of the act.

It appears that these lands have not been yet located; or if any portion of them is located, it is only a comparatively small quantity. The objection on the part of the State to accepting the locations authorized by the foregoing acts is based upon what is stated as a fact—that no lands of equivalent value to the sixteenth sections in the Chickasaw cession, or near it, can be found among the lands now subject to entry in the States of Alabama and Mississippi.

The following is an extract from a letter from the governor of the State of Alabama, bearing date January 12, 1847, addressed to the petitioner upon this point:

“The commissioners have made their report, in which they state, in substance, that their best efforts to find valuable lands have utterly failed; that the lands selected are barren, and of very little value. From a conversation which I had with the commissioners, I am satisfied that these selections are not worth twenty-five cents per acre.”

It appears, from a communication from the acting Commissioner of the General Land Office, before the committee, that the area of the Chickasaw cession within Alabama is 434,589. $\frac{4}{16}$ acres, of which the quantity comprised in the sixteenth sections, being one thirty-sixth part of the whole, is 12,071 acres. The committee, upon such information as they have been able to obtain, feel themselves authorized to recommend the passage of a law to recompense the inhabitants of the townships within the cession, for the quantity of school lands withheld from them, by authorizing the State of Alabama to locate an equal quantity of lands, subject to entry, in any of the States or Territories.