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Cadwallader Wallace.

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Recommended Citation
H.R. Rep. No. 118, 30th Cong., 2nd Sess. (1849)

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THIRTIETH CONGRESS—SECOND SESSION.

Report No. 118.

[To accompany bill S. No. 44.]

HOUSE OF REPRESENTATIVES.

CADWALLADER WALLACE.

February 27, 1849.

Mr. Willard P. Hall, from the Committee on Public Lands, made the following

REPORT:

The Committee on Public Lands, to whom was referred Senate bill No. 44, for the relief of Cadwallader Wallace, report:

The bill above mentioned proposes that the United States shall pay Cadwallader Wallace the sum of seventy-five thousand five hundred dollars for forty-one thousand and eighty acres of land, "located by said Wallace by virtue of Virginia military land warrants in the Virginia military district in the State of Ohio, and in that part of said district lying between Ludlow's and Roberts's lines in said district," upon certain conditions therein set forth. In order to understand the merits of the proposition it is necessary to know the date of Mr. Wallace's locations. Although the papers sent to your committee are most full and elaborate in vindication of the claimant's demand, yet, either through accident or design, they contain nothing but the most vague, indefinite and unsatisfactory statements as to the time of locating his warrants. Your committee have, therefore, been compelled to look elsewhere for information with regard to a fact most material to the subject submitted to their consideration. In House report No. 189, second session, 27th Congress—a report in relation to this same case—is found the following statement, which is believed to be correct:

"The claimant [Cadwallader Wallace] asks the United States compensation for 41,142$\frac{5}{6}$ acres of land, lying, as he contends, within the legal limits of the Virginia reservation, in the State of Ohio, but within that tract of country embraced within what is known as Ludlow's line, on the east, the Greenville treaty line, on

the north, and Roberts's line, on the west. It appears that the whole quantity of land in controversy, portions of which lie in six different townships and five different ranges, was sold by the land officers of the district of Cincinnati to some two hundred and fifty purchasers, between the years 1810 and 1832, or reserved for the use of schools, in the manner pointed out by laws, then in force, relating to the survey and sale of public lands; and that they are now held by or under such purchasers.

"The claim rests upon sixty-three land warrants, issued by the State of Virginia, for lands set apart to satisfy bounties promised by her to her officers and soldiers, on continental establishment, during the revolutionary war, 45 of which were issued in 1838, calling for 33,187 acres, for the services of three colonels, one lieutenant colonel, one major, eight captains, three lieutenants, two surgeons, one surgeon's mate, and one sergeant in the Virginia continental army. The rest are of an earlier date, and were issued to the representatives of sundry officers and soldiers, for similar services. Mr. Wallace claims, as the assignee of these warrants, having located them on the tract above mentioned, procured a survey, and returned them in the survey, which bears date January 14, 1839, into the General Land Office.

"The amount of the purchase money received by the United States for these lands has been ascertained at the Land Office, and is $75,551 56, which is the sum claimed by the petitioner. The Commissioner of the General Land Office refused to carry the survey into effect by issuing patents, and the claimant now asks the above amount by way of indemnity from the government."

The first point in relation to this claim, to which attention is called, is the law that was in force, with regard to Virginia military warrants, at the time Mr. Wallace made his location. The act of July 7, 1838, expressly provides that no locations of Virginia military warrants "shall be made on any lands lying upon the west side of Ludlow's line, and any patent which may, nevertheless, be obtained for land located contrary to the provisions of this act, hall be held and considered as null and void." Mr. Wallace's ocations having been made west of Ludlow's line, since the passage of the act of July 7, 1838, must be "held and considered as null and void," unless that act can be shown to be of no binding validity or effect. For the purpose of showing this, it is said that the act referred to is repugnant to the deed of cession made by Virginia of the territory northwest of the Ohio river. On referring to that deed your committee have not been able to discover any such repugnance between it and the act of Congress as the claimant alleges to exist. But as the provisions of the Virginia deed of cession, which relate to the matters under consideration, have received a construction from the Supreme Court of the United States, your committee feel that it would be a work of supererogation in them to go over ground already so ably examined. They, therefore, prefer answering the objections of Mr. Wallace in the language of that high judicial tribunal to advancing any arguments of their own.

In the case of Jackson *vs.* Clark, *et al*, 1 Pel. 628. The Supreme Court of the United States said: "Two points have been made by the counsel for the plaintiff. They contend, 1st, that Congress could not, rightfully, limit the time within which military warrants could be located and surveyed.

2d. "That the act of Congress, prohibiting locations on lands already surveyed, and declaring any patents which should be issued on such survey void, does not comprehend the survey in this case."

"The first point to be considered is the objection to the limitation of the time prescribed by Congress, within which the military warrants, granted by Virginia, should be located. The plaintiff contends that no limitation can be fixed."

"In the October session of 1783, the legislature of Virginia passed an act ceding to Congress the territory claimed by that State, lying northwest of the river Ohio, under certain reservations and conditions in the act mentioned; one of these was: "That in case the quantity of good land on the southeast side of the Ohio, upon the waters of the Cumberland river, and between the Green river and the Tennessee, which has been reserved by law for the Virginia troops on the continental establishment, should, from the North Carolina line, bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops in good lands to be laid off between the rivers Scioto and Little Miami, on the northwest side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia."

"This is not a reservation of the whole tract of country lying between the rivers Scioto and Little Miami. It is a reservation of only so much of it as may be necessary to make up the deficiency of good lands in the country set apart for the officers and soldiers of the Virginia line on the continental establishment, on the southeast side of the Ohio. The reservation is made in terms which indicate some doubt respecting the existence of the deficiency, and an opinion that it will not be very considerable. Subsequent resolutions of the Virginia legislature have added very much to the amount of these bounties. 'The residue of the lands are ceded to the United States, for the benefit of the said States,' to be considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the confederation or federal alliance of the said States, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatever."

"The government of the United States then received this territory in trust, *not only for the Virginia troops on the continental establishment, but also for the use and benefit of the members of the confederation;* and this trust is to be executed by a faithful and bona fide disposition of the lands for that purpose." "We cannot take a retrospective view of the situation of the United States, without perceiving the importance which must have been attached

to this part of the trust. A heavy foreign and domestic debt, part of the price paid for independence, pressed upon the government, and the vacant lands constituted the only certain fund for its discharge. Although, then, the military rights constituted the primary claim on the trust, that claim was, according to the intention of the parties so to be satisfied, *as still to keep in view that other object which was also of vital importance. This was to be effected only by prescribing the time in which the lands to be appropriated by these claimants should be separated from the general mass*, so as to enable the government to apply the residue, which it was then supposed would be considerable, to the other purposes of the trust. The time ought certainly to be liberal. But unless some time might be prescribed, the other purposes of the trust would be totally defeated, and the surplus land remain a wilderness. This reasonable, and we think necessary construction has met with general acquiescence. Congress has acted upon it, and has acted in such manner as not to excite complaints, either in the State of Virginia, or the holders of military warrants."

"If the right existed to prescribe a time within which the military warrants should be located, the right to annex conditions to its extension follows as a necessary consequence. The conditions annexed by Congress has been calculated for the sole purpose of preserving the peace and quiet of the inhabitants, by securing titles previously acquired."

By the opinion just quoted, the Supreme Court of the United States most distinctly and emphatically affirms: *First*, that it is competent to Congress to fix a time within which Virginia military land warrants must be located, and *Secondly*, that in an act extending the time in which such locations may be made, Congress have the right, *under the Virginia deed of cession*, to prescribe such conditions as, in their opinion, are just and expedient. Now, the act of 7th July, 1838, is an act to extend the time for locating Virginia military warrants. The proviso to that act, therefore, which prohibits all locations west of Ludlow's line, is constitutional and valid. What, then, becomes of Mr. Wallace's locations made west of that line in the year 1839? They are, most manifestly absolutely null and void, being made in open and palpable violation of an existing law. It should be borne in mind, that the judgment in the case of Jackson *vs.* Clarke, was rendered in the year 1828. There is good reason to believe that Mr. Wallace was acquainted with that judgment and the decision which accompanied it, at the time they were pronounced. Consequently he knew, and he well knew, at the period of making the locations he now claims to be paid for, that he was violating and setting at defiance an act passed by Congress in the faithful discharge of a high duty which they owed to the country. "It is plain, from the above statements," (to use the language of a previous committee of the House on a kindred subject,) "that Mr. Wallace was actually prohibited, by a statute of the United States, from making these locations, and that by the same statute his locations are nullities; and it is upon grounds like these that the government is now importuned by him to pay

the value of lands which he has thus endeavored to wrest from the United States, or rather from purchasers under them, in direct violation of law. It would have been far more respectful in him to have presented his claim to Congress, before thus attempting to trample the law under foot, and to have asked them to pay him the full value of his warrants."

It is, however, contended on the part of Mr. Wallace that there are other decisions of the Supreme Court, particularly those in the cases of Doddridge *vs.* Thompson & Wright, (9 Wheat. Rep., 477,) and of Reynolds *vs.* McArthur, (2 Peters's Rep., 417,) which establish the justness of his claim. A reference to the books will furnish the best answer to this assumption of the claimant. The titles which prevailed in those cases were founded upon locations of Virginia military warrants, west of Ludlow's line and east of Roberts's line, prior to the year 1812. The court sustained those titles, on the ground that such locations, prior to the year 1812, were in accordance with the then existing laws, and, consequently, valid. But so far from declaring, as has been alleged on behalf of the claimant, that such locations subsequent to the year 1812 are good, they expressly decide the reverse. Chief Justice Marshall, in delivering the opinion of the court in the case of Doddridge *vs.* Thompson & Wright, said: "It has been very truly observed, that while the government of the Union is to be considered as holding the territory ceded by Virginia in trust for the officers and soldiers of the Virginia line, so far as the reservation for their benefit extends, it is also to be considered as holding the lands not reserved in trust for the nation; and as being bound by its high duties to execute that trust. Congress, therefore, found it necessary to provide for the sale of the territory not included within the reserve, and its laws made for this purpose may control and have controlled the original rights of the military claimants, and have established a line between the sources of the Scioto and the Little Miami different from that for which the plaintiff contends."

"Without questioning the power of the government, the court will proceed to inquire whether Congress has passed any law contracting the military reserve within narrower limits than are prescribed by the deed of cession, as herein construed, or has made any provision which in any manner affects the plaintiff's grant." In another place the court said: "This demand presented an agreement establishing Roberts's line; and as the act of June, 1812, provisionally designated Ludlow's line as the western boundary of the reserve, until one should be finally established, with the consent of Virginia, it remains the boundary for the present."

In the case of Reynolds *vs.* McArthur the court said: "That, in the state of things which existed in 1812 and 1818, Congress might establish the western boundary of the reserve, so as to affect titles thereafter to be acquired, is not questioned. Congress might fix a reasonable time within which titles should be asserted, and might affix conditions to the extension of this time."

These are the opinions of the Supreme Court, as contained in the decisions above mentioned. Those decisions, instead of affirming

the right of Mr. Wallace to the lands he claims, situated west of Ludlow's line, utterly explode it, and affirm substantially, though not in terms, that all the formalities observed by him in locating his warrants and in returning his surveys to the General Land Office are mere formalities, in direct conflict with a constitutional and proper act of Congress. Your committee cannot but feel astonished that a claimant should pretend that a judicial decision, affirming one title to be valid because it is in accordance with law, is to be taken as affirming another title to be valid which is in violation of law. The views now presented by your committee receive no little confirmation from the language heretofore used by Mr. Wallace himself.

In a memorial to the Senate and House of Representatives of the Congress of the United States, dated December 13, 1824, signed by Cadwallader Wallace and others, and found in House document No. 34, of the 1st vol. of reports of committees, 2d session of the 18th Congress, are found the following very sound and correct observations:

"The right to make locations, by virtue of Virginia military continental land warrants, on the lands between the Little Miami and Scioto rivers, is clearly dependant upon the will of the national legislature, as settled by the opinion of the Supreme Court in the aforesaid cause. But the government acted, in the exercise of this right, with great moderation and fairness; for before Ludlow's line was run and marked, the then surveyor general, by virtue of instructions from the Secretary of the Treasury, requested information from General McArthur and Mr. Lucas Sullivant, the two military surveyors, who had the best knowledge of the northerly part of the Virginia military district, to enable him to have a true line run and marked between the sources of these two rivers, that of the Scioto being in the country of the Indian tribes. Upon their information the line was run by Israel Ludlow from the source of the easternmost fork of the Little Miami river, north 20° west, to the Greenville treaty line, and there ended; as it was not thought to be good policy to excite the jealousy of the Indian tribes by extending it through their country to the Scioto river."

This is the very language used by the claimant a few years ago. The cause alluded to in the foregoing extract is that of Doddrige *vs.* Thompson and Wright. So that the case which Mr. Wallace quoted in 1824 as establishing the doctrine that "the right to make locations, by virtue of Virginia military continental land warrants, on the lands between the Little Miami and the Scioto rivers, *is clearly dependant on the will of the national legislature*," is the case he now refers to as settling the principle that all interference with that right, on the part of Congress, is unconstitutional and void. And this not only, but the act—the establishment of Ludlow's line as the western boundary of the Virginia reserve, which the claimant proclaimed in the above mentioned memorial to be one of great moderation and fairness on the part of the United States—he now denounces as most unjust and iniquitous! It is still fur-

ther urged by Mr. Wallace that his demand is equitable if not legal, and should, therefore, be recognized by Congress. Your committee cannot agree with that opinion. On reference to the statute book, it is found that as long ago as the year 1804 Congress passed an act limiting the time of entering Virginia military warrants to a period not exceeding three years from the date of the act. As a matter of favor to the holders of such warrants, Congress has continually prolonged the time for the locating and surveying those warrants from year to year until the present period. But in the year 1812, Ludlow's line was fixed as the western boundary of the Virginia reservation, and all subsequent acts relating to the same subject have absolutely prohibited the location of any Virginia military warrants west of said line. The right in Congress to establish Ludlow's line, as stated, has been repeatedly recognized by the Supreme Court. With the full knowledge of all these facts, Mr. Wallace purchased the warrants which he has located west of Ludlow's line. And your committee feel assured that it being the general understanding that Ludlow's line was to be adhered to, enabled Mr. Wallace to procure his warrants at a much less rate than he could have done had it been supposed that Congress would, at this late day, sanction any location west of that line. The justice of now sanctioning those locations, and thus giving the claimant—in this instance a speculator—an advantage which for nearly forty years has been steadily refused to the original holders of Virginia warrants, cannot be perceived.

There is still another view of this subject, to which your committee ask attention. The only obligation that any one can contend was incurred by Congress in the establishment of Ludlow's line, was to give to the owners of Virginia military land warrants an equivalent for the land thereby cut off from the Virginia reservation. The whole amount ever claimed to have been thus cut off is 51,916 acres. And yet what has Congress done? By the acts of 30th of May, 1830, 13th of July, 1832, 2d of March, 1833, and 3d of March, 1835, Congress appropriated 1,410,000 acres of public land, outside of the Virginia reservation, for the satisfaction of Virginia land warrants. It is true that a part of these lands was to be applied to the satisfaction of warrants issued for services in the Virginia *State* line and navy, but it is believed that much more than a moiety have been absorbed by the Virginia continental warrants. How, then, stands the account? On the one side, Congress has (allowing the statement of the claimant to be correct) taken away from the Virginia reservation 51,916 acres of land; on the other side, it appears that Congress has appropriated nearly or quite one million more acres of land to the satisfaction of Virginia military warrants in the continental line, than the United States were under obligation to do by the Virginia deed of cession. If, therefore, Congress did wrong by the establishment of Ludlow's line, most liberally have they atoned for their error by subsequent legislation.

Another objection to the bill of the Senate is set forth in the fol-

lowing extract from a report made by Mr. Howard, from the Committee on Public Lands of the House, on the 9th of February, 1842:

"For wise and substantial reasons, Congress has thought fit to prevent, by sundry acts, running through a long series of years, the location of any Virginia warrant west of this (Ludlow's) line; and any act of an individual, which wantonly violates a law of the land, cannot and ought not to be treated, least of all by Congress, as the foundation of a just claim. To assert the contrary is not only to encourage but to reward disobedience to the laws; and, in this case, to give the delinquent a sort of priority of payment for being in advance of others in the violation. He stands upon a level with other holders of Virginia military warrants issued for continental services; his location and survey are as if they had never been made; and while it is well known that the number of warrant holders is still considerable, and the number of acres required under them forty times greater than is embraced in his warrants, there is no reason whatever why he should be singled out as entitled 'to compensation,' and that to the full value of the lands in his survey, whilst others equally entitled, but less willing to violate the laws, are, by the very act of granting his request, forever deprived of all benefit under their warrants. Whether Congress, after a lapse of more than half a century, within which the location of this class of warrants has been going on, can now be justly called upon to assume the payment of all that are and all that may be hereafter outstanding, having no power to check their issue by Virginia, is a question in which the other States of this Union are too deeply interested to be settled by the precedent which the allowance of this claim would establish. By suffering the mode and amount of evidence going to establish a claim to such warrants to be determined by agents not responsible to this government, the United States, it is believed, have already been called upon to satisfy a much larger amount of warrants than was originally supposed to be due. And if the present claim, seeking the full value of the lands surveyed 'in a state of nature, or the sum received therefor by the United States' be allowed the claimant, who, as has been shewn, has no real claim aside from his bare warrants, why should not all other holders be placed upon an equality with him? * * * * * * When, therefore, it shall be made to appear to Congress what amount of military bounty warrants are unsatisfied, and it shall have declared its intention to recognize no more of them, and when it shall have ascertained by its own agents the quantity of land originally set apart to the use of the Virginia line, and not already transferred for that object, it will be time to make up an account between the United States and this class of claimants, and to declare his just dividend to each."

For a more full and particular statement of the facts of this claim and the considerations connected therewith, your committee refer to House Doc. No. 34, 2d session 18th Congress; House Doc. No. 189, 2d session 27th Congress; House Doc. No. 175, 3d session

27th Congress; and House Doc. No. 79, 1st session 27th Congress.
In conclusion your committee offer the following resolution:

Resolved, That Senate bill No. 44, entitled "An act for the relief of Cadwallader Wallace," ought not to pass.

MINORITY REPORT.

Mr. Garnett Duncan submitted the following as the views of a minority of said committee.

Dissenting from the opinion of a majority of the committee, this report might be allowed to pass, if a report had not been made at the last session involving the same subject. It is my decided opinion that the United States are bound in equity, and that they rest under a sacred obligation to discharge in land, not only the demand of this claimant, but also, all others holding similar demands against Virginia. It is due to the persons holding those warrants, as well as to myself, not to allow this report to pass without stating that opinion.

The duty was imposed on me last session of carefully examining the statutes of Virginia during the revolution, to enable the committee to dispose of the petition of Colonel Laughery's heirs. In the report No. 605, of the last session, will be found a correct statement of the promises made by Virginia to her officers, seamen, and soldiers, and of the means used by Virginia to reduce to possession and defend her chartered limits.

By the act of November, 1781, (10 Henning, 467,) the officers and seamen of the navy of Virginia were placed on the footing of those engaged in the continental line. By a resolution of December 19, 1778, (10 Henning, 55) the right was given to the officers and soldiers of Virginia to locate their bounty land not only south of Green River, but also, as declared by the second resolve, "*on any other vacant and ungranted land within this commonwealth.*" By the act of October session, 1780, there was allowed "to all the officers of this State *on continental or State establishment*, or to the legal representatives of such officers, according to their respective ranks, an additional bounty in land in the proportion of one-third of any former bounty heretofore granted. It will be borne in mind that bounty land was not given to the militia or volunteers called out for short periods; and that Virginia by such forces mainly vindicated her right to her chartered limits, and reduced the country northwest of the Ohio into actual possession before the peace of 1783. I am aware that some efforts have been made to slur the title of Virginia to all this northwest territory; but I am satisfied that this right on her part can be justly and properly maintained; and that the United States cannot deny it.

By the revolution the United States did not acquire territory as a nation. On the contrary, the rights acquired by the royal charters remained in full force. Authorities bearing on these propositions may be found, I think, in 4 Wheaton, 651; 8 Wheaton, 584; 12 Wheaton, 527; and 7 Cranch, 604, 619.

Unfortunately the land system which has since been established did not prevail in Virginia. She sent out her officers and soldiers, at their peril, to locate, enter, and survey these lands, with no other rule than that *they must so locate that others might know how to locate the adjacent residuum.* They were bound to locate with reference to known objects, and with great certainty. The consequence was that her rich lands in the Kentucky district were shingled over with titles, and they had granted more land in many counties than there were acres in them; sometimes a dozen grants covering the same land.

After the lands south of Green river had been specially set apart for these military men, the State of Virginia, by legislative act, proposed certain defined terms on which her district of Kentucky might, with the assent of Congress, become an independent State. The act provided for a convention. Under it the people met, deliberated, and decided that the conditions were too onerous, and that it was not expedient for the people of Kentucky to accept a separate State organization on the terms proposed. This led to a subsequent act of Virginia, making new propositions. The people of her then district of Kentucky met in convention, accepted the terms thus offered her, framed a constitution which was presented to Congress, and Kentucky was admitted as a State upon that compact made by Virginia and Kentucky with the express approbation of the United States. It is sometimes said that Kentucky would not allow these lands to be entered according to the rights vested in the soldiers, and those unacquainted with the history of the transactions alluded to have sometimes supposed that the people of Kentucky violated the rights of these soldiers. Nothing is further from the truth than that Kentucky ever opposed any improper resistance to the rights of these soldiers. As one of the conditions of the compact into which Virginia entered, with the assent of the United States, it was expressly provided, in consideration of the burthens assumed by Kentucky, that all the land in Kentucky that was vacant and unappropriated on the 1st of May, 1792, should belong to the State of Kentucky.

As I have before said, the whole of the lands of Virginia were pledged when Virginia owned and had the actual possession of the northwest territory, then called the Illinois county of Virginia. Down to 1st May, 1792, the lands south of Green river were open to entry, and a large portion of it was entered. After 1st May, 1792, Virginia and the United States agreed to have those bounty land obligations settled elsewhere, and to guarantee the remainder of the lands south of Green river to Kentucky.

Virginia, with a magnanimity and noble generosity, at the close of the revolution, was willing to do anything in reason for the peace and harmony of the Union. In that spirit she yielded up to Pennsylvania a large tract of country, which had been subject to conflicting jurisdictions of those two States, leaving to Virginia the counties of Brooke, Ohio, and Marshall, between the Ohio river and Pennsylvania, as Virginia allowed the boundary to be demarked by that line which has since become so famous as Ma-

son's and Dixon's line. It was in that same spirit that she ceded to the United States all her territory northwest of the Ohio, which would of itself make a rich empire, and the sales of which would thrice, at least, if not ten times over, have paid all her debts incurred during the revolution.

Years before the compact with Kentucky, Virginia had made this cession to the United States. These bounty lands remained unpaid and unsatisfied. Her officers, &c., had an equitable lien on the whole of her lands; and when Virginia and the United States had expressly relinquished to Kentucky the lands south of Green river, it is clear to me that, upon every principle of equity and justice, the United States were left bound in duty to see that those old soldiers' rights should be satisfied out of the lands which Virginia had so generously given to the United States to promote the peace and harmony of the Union.

The lien existed; the United States had full notice of their equitable and paramount lien; for in the cession there was an express reference to, and recognition of, all these obligations of Virginia. A small tract, compared with the whole, was expressly reserved in the cession to pay these liens, solemnly recognised by Virginia in the cession itself. It was then hoped and expected that this tract would be sufficient; but it has proved insufficient.

If the United States could be sued in a court of equity, I do not doubt that she would, as the proprietor of the northwest territory, be compelled, by any enlightened chancellor, to discharge all these land bounties, if it required the whole of the ceded territory to discharge them.

The claims of Virginia on the justice of the United States were presented to Congress. A report was made by Hall, which has been often quoted, and which has been too much relied on. He was not familiar with the Virginia laws, and it was natural for a stranger to her laws to have fallen into errors. I cannot allow myself to enter into an analysis of that report in the haste in which I am obliged to draw this dissent; but I will say that, in my judgment, his premises are not correct, and that his conclusions are erroneous. The legislature of Virginia afterwards caused her claims to be presented by Mr. Gilmore, which produced a report from John S. Barbour in January, 1832, and may be found in volume 1st of reports of 1st session 22d Congress, numbered 191. That report contains the opinion of a learned judge of Virginia, showing on what grounds Virginia was bound to pay the half pay for life to the officers of her army and navy.

The United States have by repeated acts recognised and admitted her obligation to discharge these claims. The report of Mr. Barbour was accompanied by a bill that passed both houses, and was approved 5th July, 1832. The regiments of Colonel George Gibson, Colonels Dabney and Brent, Nelson's corps of cavalry, Colonel Marshall's artillery, and Colonel Muter's regiments were State regiments; but they served in the continental army, and by Virginia laws and resolutions, had an equitable lien on all the lands of Virginia prior to the cession to the United States. George R.

Clarke, Colonel Crockett's regiment, Captain Rogers's troop of cavalry, and the officers of the navy, all these forces, and others, *as well as the continental line*, had liens on all the land of Virginia, and were, I apprehend, included in the terms of the cession, and were intended to be provided for by Virginia and the United States in the deed of cession, so far as they had not been paid. When Virginia and the United States agreed upon certain equivalents to exempt the Kentucky lands from their burthen, the lien became, by equitable principles, charged on the land which Virginia ceded to the United States; all her other land having been granted by Virginia.

The act of February, 1809, appointing a surveyor for the military district northwest of the Ohio, and extending time for location, recognised the duty of the United States in good faith to satisfy these claims. On the 30th May, 1830, the United States again recognised the obligation by issuing scrip to discharge claims on Virginia for bounty land. And various acts have passed from time to time giving additional scrip and extending time for locations. At the last session additional time was given. A remnant of these claims is left unsatisfied, owing in part to the difficulties attending the locations, and in part to a want of attention on the part of the United States of these sacred obligations. In my judgment it is not compatible with the honor and good faith of the United States that any of the holders of these obligations against Virginia should be left unsatisfied; and, in this view of the matter, it seems to me that, independently of the locations and of any question about Ludlow's line, this Senate bill ought to be passed, and that in addition thereto, a law should be passed to discharge all similar obligations in lands in the northwest territory. I have not considered it necessary to examine into the right of the petitioner in a conflict with the patentees under the government, because I think there is an original inherent and paramount equity against the United States, which demands the satisfaction of all these warrants.

The majority of the committee have come to the conclusion that the entries on this part of the reserved land cut off by Ludlow's line were illegal, and that, therefore, the petitioner has no just claim. I concede that the United States, as a trustee, fixing a line by solemn act of Congress, and selling the lands outside of this line and granting patents, may have given the legal title with equal equity to persons not tainted with fraud, and that those bona fide purchasers may hold as against the mere equity of the warrant holders who had not located prior to the act establishing the Ludlow line. But the question to my mind is a very different one as against the trustee. All the land between the Scioto and the Little Miami was expressly reserved in the cession to satisfy warrants from Virginia. The trustee ran a line. The trustee established that line, now confessed to be an erroneous line, and by this act, founded in error, *cut off a part of the land expressly reserved for their military claims.*

The United States sold it and put the money in the treasury; and now it is asserted that the United States had expressly prohibited

locations on the land belonging to the trust, and abstracted from the trust, and appropriated by the trustee. Concede all this, and still it is clear that the reason why this land was not subject to entry, was the error or wrong of the trustee. This land was expressly reserved in the cession, and no military warrants have taken it, and many of them are unsatisfied. It seems to me that there is no principle of equity clearer than that the United States could not, *without responsibility on her part*, sell this land and put the proceeds in her treasury, although, by this violation of the trust, she may have given an indefeasible title to her vendees.

I concur with the majority in the opinion, that the party entering the land belonging to the reservation after the act establishing wrongfully Ludlow's line, cannot prevail either in a court of law or a court of equity against those who have got the patents. If they could, the United States would be bound, in good faith, to protect her vendees; and, in that aspect, it might cost her twenty times as much as the value of the land by which she could now satisfy the obligations. I take it to be clear that the claimant cannot hold the land entered, and that it is plain that the reason why he cannot, is only to be found in acts of the United States, which were wrongful and in direct conflict with the trust and reservation in the deed of cession.

Nor can I concur in the argument that the United States should not give this claimant other land, because the land which the United States as a trustee has, in violation of the trust, appropriated to her own use, belongs to all these military warrants, and not to this particular claimant alone. The argument on its face concedes the obligation to pay all, and, therefore, admits the right of this claimant to relief.

I have not omitted to look at the transactions under the act of Congress passed in 1790, providing for the funding the debts due the States for the extra burthens borne by some of them during the revolution. Virginia bore greatly more than her share, and I think it can be demonstrated that she never was fully paid, even under the special provisions of that act which said: "Nor shall the claim of any citizen be admitted as a charge against the United States, in the account of any State, unless the same was allowed by such State before the 24th September, 1788." It was not till years after that many of these claims were settled, and Virginia suffered very greatly in that adjustment; and, in fact, many just claims against her, such for instance as a large part of the expenses of George Roger Clarke's expedition, which reduced the country to the actual possession of Virginia prior to the p ace of 1783, never have been paid to this day, either by Virginia or the United States.

In every view that I can give this Senate bill, it seems to me that it ought to pass, and that provision ought to be made for all those warrants.

GAR ETT DUNCAN.