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Report : Claim of Soldiers of Virginia

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IN SENATE OF THE UNITED STATES.

FEBRUARY 25, 1850.

Submitted, and ordered to be printed.

Mr. UNDERWOOD made the following

REPORT:

[To accompany bill S. No. 29.]

The Committee of Claims, to whom was referred a bill to provide for the unpaid claims of the officers and soldiers of the Virginia State and continental lines of the revolutionary army, report:

That they have so modified the bill referred to them as to provide for the payment of all military lands situated in the State of Kentucky, west of the Tennessee river, covered by Virginia treasury warrant claims, and likewise all unsatisfied outstanding Virginia military land warrants issued prior to the 1st of May, 1792. The committee selected this date because it was the time fixed in the compact between Virginia and Kentucky prior to which any military land warrant issued by the commonwealth of Virginia might have been located within the latter State, upon the lands reserved for their satisfaction by the former, and because there is no reason to suppose that any warrants issued before that time were improperly procured. Since that date many warrants have been issued by the State of Virginia, which will be excluded under the provisions of this bill, and which the committee are of opinion should be separately considered.

There remain, according to the report of the Commissioner of the General Land Office, herewith submitted, 65,000 acres, a per centage not satisfied by the appropriation made for that purpose by the second section of an act of Congress, approved 3d of March, 1835, (4th volume Laws U. S., page 771.) Besides these, all the warrants granted by the governor of Virginia since the collection of the outstanding warrants, under the provisions of the said act of Congress, remain unsatisfied. The letter of S. H. Parker, register of the land office of the State of Virginia, herewith submitted, shows that the whole number of warrants issued since the 1st of September, 1835, is 815, and that the aggregate amount of acres granted is 551,087 acres. Of this the quantity of 221,241 acres have been granted by warrants for services rendered in the State line, and these warrants cannot be located in the reservation between the Scioto and Little Miami rivers, in the State of Ohio.

The first section of the bill now reported is based upon the following considerations: In the year 1779, the commonwealth of Virginia, for the purpose of "creating a sinking fund in aid of the annual taxes to discharge the public debt," (see 1 vol. Littell's Laws, page 408,) authorized the sale of her waste and unappropriated lands, at the rate of forty pounds

per one hundred acres. Upon the payment of the money into the treasury the register of the land office was required to issue a land warrant, specifying the number of acres the party was entitled to, and authorizing any surveyor, duly qualified, to lay off and survey the same. The warrants thus issued were denominated "treasury warrants," and by that name became known in subsequent legislation and judicial decisions. By the laws of Virginia, her officers and soldiers engaged in the war of the Revolution were entitled to certain bounties in land, for which land warrants were also issued by the register of the land office; and these, to distinguish them from "treasury warrants," were called "*military warrants.*" There were several other classes of claims under the laws of Virginia, for which land warrants were issued, having appropriate names, but which need not be particularly mentioned, as doing so would throw no light on the subject of the present bill.

All persons holding land warrants, no matter on what account a right issued, and being desirous of locating the same "on any particular waste and unappropriated lands," were required to lodge their warrants with the surveyor of the county in which lands about to be appropriated, or the greater part, were situated, and "to direct the location thereof so specially and precisely as that others may be enabled, with certainty, to locate other warrants on the adjacent residuum." The location which the party was thus required to give, was to be entered by the surveyor in a book to be kept by him for that purpose. The locations so made and entered upon the surveyor's book obtained the technical name of "*entries,*" and gave an equitable right to the land described from their date. The construction of these entries, the proper mode of surveying them, and when they were possessed of such specialty and precision as to enable others to locate with certainty the adjacent residuum, became questions of great importance and difficulty in the jurisprudence of Kentucky, and involved the people and courts in litigation which, but for the statutes of limitation, threatened to be interminable. The effect was disastrous in every respect. The same land was covered by the claims of two, three, or more persons; and as there could be but one valid claim, the proprietors of those adjudged to be invalid not only lost the original consideration paid for their warrants, but, in innumerable instances, spent much time and money in unavailing efforts to establish their claims. The bill under consideration proposes to compensate the holders of military warrants, who have sustained loss, or as yet have received nothing in the several cases stated and provided for. The committee will proceed to consider each class, and to give the facts upon which each section of the bill is based.

And first, in relation to the military claims covered by paramount treasury warrant claims.

The act of Virginia, of 1779, already referred to, declared, that "no entry or location of land shall be admitted within the country and limits of the Cherokee Indians, or on the northwest side of the Ohio river, or on the lands reserved by act of assembly for any particular nation or tribe of Indians, or on the lands granted by law to Richard Henderson & Company, or on that tract of country reserved, by resolution of the general assembly, for the benefit of the troops serving in the present war, and bounded by the Green river and southeast coast, from the head thereof to the Cumberland mountains, with the said mountains to the Carolina line, with the Carolina line to the Cherokee or Tennessee river, with the said

river to the Ohio river, and with the said Ohio river to the said Green river, until the further order of the general assembly." The lands mentioned in the foregoing extract were excepted, and not liable to be appropriated by treasury warrants. All other portions of the vacant domain of Virginia might be.

In 1781, (page 432,) the legislature of Virginia, reciting that a considerable part of the tract of country allotted for the officers and soldiers hath, upon the extension of the boundary line between this State and North Carolina, fallen into that State, therefore enacted, "that all that tract of land included within the rivers Mississippi, Ohio, and Tennessee, and the Carolina boundary line, shall be, and the same is hereby, substituted in lieu of such lands so fallen into the State of North Carolina, to be, in the same manner, subject to be claimed by the said officers and soldiers."

At the October session, 1783, of the Virginia legislature, an act was passed (page 442) appointing and authorizing Major General Peter Muhlenburg, and other officers of the continental line, and Brigadier General George Rogers Clark, and other officers of the State line, in behalf of their respective lines, to make arrangements for surveying the lands appropriated by law as bounties for the officers and soldiers.

The action of the board of officers thus appointed resulted in constituting a part of them as superintendents, and in the election of two principal surveyors, one for each line, and in the division of the country set apart, by law, for the satisfaction of the bounties. By this division of the country included within the following boundary, beginning at the mouth of Green river, thence up the same to the mouth of Big Barren river, thence up the same to within (6) six miles of the Carolina (now Tennessee) State line, thence west to the dividing ridge between the Cumberland and Tennessee rivers, thence with that ridge to the Ohio river, and up the same to the beginning, was allotted to the continental line, and the residue to the State line. Of course the country west of the Tennessee river was thus set apart for the satisfaction of the State line military warrants.

By the act of Virginia, passed at the session of the legislature which commenced on the 20th of October, 1783, authorizing the cession of the country northwest of the Ohio river to the United States, and executed by deed dated the 1st of March, 1784, and entered into on the part of Virginia, by her commissioners, it was provided, "that in case the quantity of good land on the southeast side of the Ohio, upon the waters of Cumberland river, and between the Green river and Tennessee river, which have been reserved by law for the Virginia troops upon *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." In this provision it may be perceived that the *State line*, or establishment, was omitted. Whether through mistake or design it cannot be important to inquire. So it is, the troops exclusively in the service of Virginia were excluded from all participation in the lands reserved northwest of the Ohio, to make up for any deficiency in good lands in the country on the south side of Green river.

In 1784, the superintending officers commenced their labors, and many entries for lands were made upon the rivers Mississippi and Ohio, below

the mouth of the Tennessee, in satisfaction of State line military warrants. The superintending officers explored the country; but their operations were likely to excite Indian hostilities, and in consequence thereof the Virginia legislature, at their October session, 1784, (page 451 of Littell, 1st vol.,) passed an act authorizing the governor to suspend, with the advice of the council, the surveying and taking possession of those lands. This was accordingly done, and the lands remained unsurveyed and unpatented until after the extinguishment of the Indian title, by the treaty with the Chickasaw Indians, dated 19th October, 1818. (See 7 vol. United States Statutes at Large, page 192.)

Before the country west of the Tennessee river was set apart by the act of 1781, to satisfy military bounties, General George Rogers Clark, and others, had located many treasury warrants thereon. These claims were surveyed and carried into grant. The quantity of land appropriated by those treasury warrants exceeds 100,000 acres. One of the members of the committee has procured a map, which exhibits the position of those treasury warrant claims, and the military surveys covered by them, and which is here referred to as part of this report. By an act of the general assembly of Kentucky, passed in 1820, the country west of the Tennessee river was laid off into townships and sections, and the map herewith exhibited has been prepared from the map and information compiled by Mr. Henderson, who was appointed to execute the work, in pursuance of the laws of Kentucky.

It will be seen by inspecting the map, that Robert Porterfield's military claim covers the town of Paducah, and lies within Clark's treasury warrant claim. Paducah was laid out and sold under the title based upon the treasury warrant claim. Porterfield's representatives (the proper being of immense value) instituted suit to recover it. The military claimants have, probably, from 1784 down to the final settlement of the controversy in January, 1844, by the Supreme Court, contended that the country west of the Tennessee river was included within the country and limits of the Cherokee Indians; and, consequently, that it was illegal, under the act of 1779, to locate treasury warrants within that boundary. The superintending officers, therefore, under the act of 1781, proceeded to locate their military warrants without respect to the previous treasury warrant claims. This assumption has been settled against them. The result is, that the military claims, embracing in all about 80,000 acres, which were located upon the prior treasury warrant claims, have been lost. The decision of the Supreme Court, which goes elaborately into the consideration of the whole subject, is to be found in Howard's Reports, 2 vol., page 76. The first section of the bill proposes to make compensation for these losses.

In 1820, the legislature of Kentucky authorized the surveying of the military entries made by the superintendents in 1784; but provided, that if any other land was surveyed than that covered by the original entry, the patent which might issue should be void, so far as it embraced land not covered by the original entry. This rule operated with considerable hardship. The entries had been made in a wilderness about forty years before they were to be surveyed. Those who made them were dead. The names of the water-courses, licks, and other objects called for, could not now be identified. What were the claimants to do? They had their surveys made upon land that was vacant, avoiding other military claims,

hoping that the State would not suffer them to be molested, although it could not be shown that they had surveyed the identical land covered by their entries. In this, however, some of them have been disappointed. Persons claiming under purchases made from the State have succeeded against military claimants, upon the ground that the entries of the latter did not cover the land surveyed. These cases are not numerous. The case of Crutchfield, &c., against Ray, in the federal court for the district of Kentucky, is one of this class, and the only one known to any member of the committee. As there are but few of those cases, the committee have deemed it best to leave them to be provided for by special legislation, as they may be presented to the consideration of Congress.

To carry out the views of the committee, they herewith present a bill as a substitute for that referred to them.

GENERAL LAND OFFICE, *May 16, 1848.*

SIR: In answer to your letter of the 15th instant, I have the honor to state that the second section of the act entitled "An act making appropriations for the civil and diplomatic expenses of government for the year one thousand eight hundred and thirty-five," appropriated the quantity of 650,000 acres of land for the satisfaction of Virginia land warrants, issued for services performed in the continental and State lines and State navy. The said section provided, "that no scrip shall be issued until the first day of September next, and warrants shall be received in the General Land Office until that day; and immediately thereafter, if the amount filed exceed 650,000 acres, the Commissioner of the General Land Office shall apportion the said 650,000 acres of land among the warrants which may then be on file, in full satisfaction thereof."

On the 1st of September following the date of the act, the amount in warrants filed was found to exceed the amount appropriated by 10 per cent., which was accordingly deducted, the claimants receiving 90 per cent. on each warrant.

The exact amount deducted from each class of warrants cannot be furnished without an examination of all the cases filed under the act, which, as the warrants were filed and satisfied promiscuously, would consume more time than is at present at command. From a partial examination, however, the proportion of the 65,000 acres deducted from the whole amount of warrants appears to have been nearly equal between the State line and State navy warrants as one class, and the continental warrants as the other; perhaps the amount deducted from the former exceeds by about one-tenth that deducted from the latter.

I am, very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

Hon. J. R. UNDERWOOD, *Senate.*

VIRGINIA LAND OFFICE,
Richmond, June 21, 1848.

SIR: Yours of the 16th instant, requesting me to transmit to you "the number of land warrants and the number of acres in the aggregate, which

have issued for military services rendered in the war of the Revolution, since the 1st day of September, 1835," was received on the 17th instant. In conformity with your request I send you the following statement, viz:

Number of warrants issued since September 1, 1835, in the continental line, is 530.

The aggregate amount of acres embraced in said warrants, is 329,846 acres.

Number of warrants in State line and navy for same period, is 285.

Aggregate amount of acres contained in said State line warrants, 221,241 acres.

Sum total of continental and State line warrants, 815.

Aggregate amount of acres in both lines, 551,087 acres.

Teste:

S. H. PARKER,
Register Land Office,

You will observe, that, although 815 warrants have issued since the 1st of September, 1835, (exclusive of duplicates and exchange warrants,) yet the number of allowances is much less, for in many cases from ten to twenty warrants are founded on *one certificate of allowance*; the quantity allowed being distributed among *several* heirs, according to their respective rights.

The foregoing warrants were founded on Executive allowances made partly before and partly since the 1st of September, 1835. Several of these warrants issued for *additional services*.

Very few allowances have been made within the last five years. It is believed that very few, if any, cases exist, sustained by testimony strong enough to satisfy the Executive of their justness. Some years ago a large parcel of papers was accidentally found in the attic story of the capitol, which being examined by Commissioner John Smith, brought to light many claims which were due, but of which the parties entitled thereto were totally ignorant. This discovery caused the allowances upon which most of the warrants referred to have been issued.

I am, sir, very respectfully, your obedient servant,

S. H. PARKER.

HON. J. R. UNDERWOOD.