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Report : Claim of Virginia Soldiers

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IN THE SENATE OF THE UNITED STATES.

JANUARY 2, 1852.

Submitted, and ordered to be printed.

Mr. UNDERWOOD made the following

REPORT :

[To accompany bill S. 53.]

The Committee on Public Lands, 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.

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 vol. 1, 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 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 the 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 whether they were possessed of such speciality 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 cases stated and provided for.

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 north-west 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 south-east course, 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, 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 north-west of the Ohio river to the United States, and which was executed by deed dated the 1st of March, 1784, as entered into on the part of Virginia, by the commissioners, it was provided, "that in case the quantity of good land on the south-east 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 north-west 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 State 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 north-west 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 Liffell, 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 vol. 7, 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 one hundred thousand 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 property 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 Jan-

uary, 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. 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, vol. 2, page 76. The bill proposes to make compensation for these losses.