

4-28-1852

Report : Petition of C. Wallace

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IN THE SENATE OF THE UNITED STATES.

APRIL 28, 1852.
Ordered to be printed.

Mr. UNDERWOOD made the following

REPORT:

[To accompany bill S. No. 401.]

The Committee on Public Lands, to whom was referred the petition of Cadwallader Wallace, have had the same under consideration, and beg leave to report a bill for his relief.

To enable the Senate to understand the petitioner's claim to relief, the committee submit the following brief statement of facts:

Virginia, prior to her cession to the United States of the counties northwest of the Ohio river, had promised certain land bounties to her troops on a continental establishment, and had set apart a district of country within the limits of the present State of Kentucky for their satisfaction. At the time of the cession a doubt was entertained, whether the country appropriated for that object contained good lands enough to satisfy these bounties. To make provision for any deficiency that might subsequently be found to exist, a clause was inserted into the deed of cession reserving the country between the rivers Scioto and Little Miami, in the present State of Ohio, for such bounties as could not be satisfied in Kentucky. The reservation reads in these words: "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 Tennessee, which has been reserved by law for the Virginia troops on 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 shall be made up to 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 a reservation in trust for a contingent object, and it is plain from a bare reading of the clause, that if it should thereafter be found that there was enough good land in the Kentucky military district to satisfy all the bounties, the whole reservation in Ohio would belong to the United States, and fall into the common mass of public land. If there was not enough in Kentucky, but the deficiency should prove less in quantity than the amount of *good land* reserved in Ohio, then the surplus land, and that only, would belong to the United States, and fall into the common mass. But if the deficiency should be found equal to, or greater than the whole quantity of *good land* in the reservation, then the entire territory reserved would belong to the bounty land claimants, and could not be taken from them for

the use of the United States or appropriated to any other object, without a plain breach of trust. It is a fact now established past controversy, that the deficiency exceeds all the good lands in the reservation.

The country lying west of the military reservation was ceded absolutely to the United States. Congress took early measures to survey and sell the lands west of the reservation. To do this, it was necessary to run the boundary line between the reservation and the government lands west of it. A United States surveyor, by the name of Ludlow, was sent out to run this line. Beginning at the source of the Little Miami, one terminus of the boundary, he ran a line towards what he supposed to be the source of the Scioto, the other terminus. A part of the country between the sources of these rivers then belonged to the Indians, and when he arrived at their territory they arrested his further progress, and the running of the line was never completed. This line is called Ludlow's line. The United States surveys extended to this line, and the land west of it was afterwards sold at the Cincinnati land office as public land. The State of Virginia questioned the correctness of this line, and claimed that its bearing was too far east, and thus interfered with the military reservation. Subsequently, commissioners were sent out by Virginia and the United States to run this line. They explored the Little Miami and found its source to be at the point where Ludlow began his line. They then explored the Scioto and found its source; when, under their direction, a surveyor by the name of Roberts ran a line from the source of one river to the source of the other. This is called Roberts's line. Beginning at the same point with Ludlow's line, it runs west of it, leaving a narrow strip or gore of land between the two lines. The Virginia military claimants entered their warrants on the land between them, and as far west as Roberts's line. This brought about a conflict between the military claimants and those who had purchased of the United States. The question of boundary was brought by these conflicting claimants into the Supreme Court of the United States, which decided that Roberts's line was the true western boundary of the military reservation, and that, consequently, it embraced all the lands between the two lines. This decision was had in the case of *Doddridge's Lessee vs. Thompson and Wright*; and that boundary was again confirmed by the same court, in the subsequent case of *Reynolds vs. McArthur*. The United States then paid the military claimants for the lands on which they had before that time laid their warrants, between the two lines, on their conveying their title to the United States, and thus the purchasers of the government were quieted in their possessions. Since then other military warrants have been laid by Cadwallader Wallace, on the residue of the lands between these lines. The proof is conclusive, that at the time he laid his warrants on those lands there were no other *good lands* in the military reservations out of which he could satisfy them, all the good lands having been previously appropriated by other claimants of land bounties.

These facts demonstrate that by reason of the error in Ludlow's line, the United States have sold lands which did not belong to the government, and which cannot be withheld from the military claimants without a plain breach of trust. The bill directs the President to pay over to Wallace the money received by the United States from the sale of the lands on which he laid his warrants, on his conveying his title to the United States, which will quiet the government purchasers in their possessions.

It is clear the government ought to yield up the money or the lands to the military claimants. The latter would be an act of great hardship and injustice to the purchasers of the government, who are entitled to look to their vendor for protection. In the cases heretofore compensated—for the military claimants were paid the value of their lands, exclusive of improvements—Wallace asks that the same rule may be extended to him; but as that would probably amount to a much larger sum than the money received by the government from their sale, the latter has been adopted as the rule of compensation in this case.