4-3-1854

Report : Memorial of C. Wallace

33d CONGRESS, 1st Session. [SENATE.] REP. COM. No. 194.

IN THE SENATE OF THE UNITED STATES.

APRIL 3, 1854.—Ordered to be printed.

Mr. STUART made the following

REPORT.

The Committee on Public Lands, to whom was referred the memorial of Cadwallader Wallace, praying compensation for certain Virginia military bounty land warrants, the lands appropriated for satisfying such warrants having been sold by the United States, report,

That it appears by the memorial that the warrants for which compensation is claimed were located in 1839, between Ludlow's and Roberts' line, on the reservation between the rivers Scioto and Little Miami on the northwest side of the river Ohio, laid off for the purpose of satisfying Virginia bounty land warrants. And from the memorial it also appears, that before the memorialist located his warrants, the lands on which he located them had been *sold* and *patented* by the United States; that they had become immensely valuable, "on parts of which many towns and villages were erected, including Bellefontaine, the county seat of Logan."

And the memorialist bases his claim for compensation on the ground that Roberts' line, and not Ludlow's, has been determined by the Supreme Court of the United States, in the cases of Doddridge *vs.* Thompson and others, 9th Wheaton, 469, and Reynolds *vs.* McArthur, 2d Peters, 417, to be the true western boundary line of the said reservation.

Without going into the history of this reservation, and the attempts made by the United States and Virginia to establish the western line thereof, it will be sufficient for the purposes of this case to state, that the true line never was established by the joint action of Virginia and the United States. The several efforts to thus establish it having failed, Congress, by an act approved April 11, 1818, declared Ludlow's line, from the source of the Little Miami river to the Indian boundary line, established by the treaty of Greenville, to be the western boundary of said reservation, &c. The same act *prohibited the location of warrants on lands which had theretofore been patented by the United States.*

Since the passage of the act aforesaid, Congress has passed several others, extending the time for locating Virginia bounty land warrants, but in each one of them will be found *this same prohibition*, and all patents which may be issued for locations on lands already patented are by each of said statutes declared null and void.

Your committee are well satisfied that the true western line of said

reservation is the one denominated Roberts' line; and that any location of Virginia bounty land warrants east of that line, upon lands to which the Indian title was extinguished, and which had not already been patented by the United States would be a valid location, and would entitle the person thus locating to a patent for them. But your committee are also satisfied, that any such location made upon lands already patented by the United States was expressly prohibited by the several acts of Congress above referred to, and if Congress possessed the power to make such prohibitions, then the locations by this memorialist, being by his own showing on lands already patented and "immensely valuable, &c.," were within the prohibition and consequently void.

The efforts successively made by the United States to establish jointly with Virginia the true western boundary, having proved fruitless, Congress, in the opinion of your committe, possessed the power, and it was their duty to enact the necessary laws to quiet and protect the titles of bona fide purchasers of public lands on said reservation. Without this power the United States would be compelled to keep said military reserve out of market an indefinite length of time, to meet the mere whim or caprice of the holders of these Virginia warrants, and thus very materially injure the settlement and growth of the country.

And although the Supreme Court of the United States, in the cases referred to, declare Roberts' line to be the true western boundary line of said reservation, and sustain the locations in those cases, yet your committee think they also decide with equal clearness, that a location made upon lands already patented, after the enactment of the prohibition by Congress, would be void, though one made before the prohibition would not be, on the ground that the prohibitory acts have no retroactive effect.

In the case of Doddridge *vs.* Thompson, above referred to, the court, after stating the history of the case somewhat, and the purpose for which the United States held the lands ceded by Virginia, say: "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 Congress*, the court will proceed," &c.

And again, in the same case, while speaking of the act of Congress of June 26, 1812, which declares Ludlow's line to be the true boundary of said reserve, the court say: "Had the plaintiff's title been acquired subsequent to the passage of this act, there would be much force in the objection to it, but it was acquired before this act passed, and cannot, we think, be affected by it."

In the case of Reynolds *vs.* McArthur, the court, in considering the aforesaid acts of Congress of 1812 and 1818, after determining that they have no such retroactive effect as to destroy titles acquired before they were passed, say: "That in the state of things which existed in 1812 and 1818, Congress might establish the western boundary of the military reserve, *so as to effect titles thereafter to be acquired, is not questioned.*

Congress might fix a reasonable time within which titles should be asserted, *and might annex conditions to the extension of this time.*"

This language of Chief Justice Marshall, your committee think, is conclusive as to the validity of the several laws of Congress which prohibit the location of Virginia bounty-land warrants on lands already patented, though within the reservation originally made for their satisfaction.

Your committee will further state that, in their opinion, no injustice will be done the memorialist, by adhering to this view of the case, as he is, by the law of Congress, approved August 31, 1852, authorized to surrender his said warrants, and receive others which he may locate on any of the public lands of the United States, subject to private entry.

And, in conclusion, your committee report the following resolution for the consideration of the Senate:

Resolved, That the memorialist in this case, for the reasons stated in the foregoing report, is not entitled to the relief prayed for.

Your committee also append a communication from the Commissioner of the General Land Office, which they adopt as a part of this report.

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GENERAL LAND OFFICE,
February 8, 1854.

SIR: I have the honor to acknowledge the receipt of your communication of the 25th ultimo, enclosing, with another document, Senate report, No. 205, 1st session, 32d Congress, on the petition of Cadwallader Wallace, and in accordance with your request beg leave to submit the following views of that subject.

On reading that report, one on the same subject from this office, of the 10th of March, 1840, and the able argument of Hon. Samuel F. Vinton, I was of the opinion that Mr. Wallace was entitled to relief; a thorough examination of the subject, however, has satisfied me that that opinion was erroneous, that Mr. Wallace has neither legal nor equitable right to the lands claimed by him, and that existing provisions of law will yield him all the relief to which he is entitled.

To a full and clear understanding of this case a very brief history of the matter will be given.

The United States in accepting from Virginia the cession of her territory northwest of the river Ohio, made under the act of the legislature of that commonwealth of October, 1783, did so as a two-fold trust—First. "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 river, which have been reserved by law for the Virginia tooops 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 Sciota and Little Miami."

Second. "That all the lands within the territory so ceded to the United States, and not reserved for, or appropriated to, any of the before mentioned purposes, or disposed of in bounties to the officers

and soldiers of the American army, shall be considered 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."

To enable the United States faithfully to discharge these several trusts, it was necessary that a boundary should be fixed between the military lands and those held for survey and sale.

In May, 1785, Congress passed "an ordinance for ascertaining the mode of granting lands in the western territory," in which, for the purpose of securing to the officers and soldiers of the Virginia line, on continental establishment, the bounties granted them by that State, it is ordained "that no part of the land between the rivers called the Little Miami and Sciota, on the northwest side of the river Ohio, be sold or in any manner alienated until there shall first have been laid off and appropriated for the said officers and soldiers, and persons claiming under them, the lands they are entitled to, agreeably to the said deed of cession, and an act of Congress accepting the same.

In May, 1796, Congress passed an act for the survey and sale of the public lands, directing the appointment of a surveyor general, and the survey of the lands, excluding among others those which had been previously, or might be, during the then session of Congress, appropriated for satisfying military bounties. This exclusion evidently applies to the lands between the Little Miami and Sciota rivers.

In May, 1800, Congress passed an act providing further for the sale of those lands, and established four land offices for the purpose, neither of which comprehended the lands between the Little Miami and Sciota rivers. In the execution of this act, the surveyor general caused a line to be run from the source of the Little Miami towards what he supposed to be the source of the Sciota, designated as Ludlow's line, which he evidently designed as the bounday between the military reserve and the public lands, as he caused the lands west of that line to be surveyed into sections, as required by law.

In March, 1804, Congress passed an act adopting Ludlow's line as the western boundary of the military reserve, provided Virginia, within two years after the passage of that act, should so recognize it. Virginia did not do so, and hence it was not so established.

On the 26th of June, 1812, Congress passed an act authorizing the President to appoint commissioners to act with such commissioners as might be appointed by Virginia, with authority to ascertain, survey, and mark the western boundary of this military reservation according to the true intent and meaning of the condition touching said reservation in the deed of cession, with authority to employ a skillful surveyor, &c., and enacting, in the fourth section: "That until the westwardly boundary line of the said reservation shall finally be established by the agreement and consent of the United States and the State of Virginia, the boundary line designated by an act of Congress, passed on the 23d day of March, 1804, (Ludlow's line,) shall be considered and held as the proper boundary line of the aforesaid reservation."

The commissioners met, appointed Mr. Roberts as the surveyor, who, in accordance with the directions of the United States commissioners, ran a line between the Little Miami and Sciota rivers, known as Roberts' line; but as the commissioners on the part of Virginia refused to recognise it, it could not be established as the boundary, and hence Ludlow's line, under the act, remained the boundary, and has so continued, south of the Greenville treaty line, and so far as this question is concerned, to the present time.

This act, in conjunction with the act of 1804, extended the authority of the surveyor general and the Cincinnati land district to Ludlow's line.

On the 11th April, 1818, Congress passed an act extending the time for locating Virginia military warrants, the third section of which fixes Ludlow's line south of the Greenville treaty line, as the western boundary of the reservation, until otherwise directed by law, and from the Greenville treaty line, north to the source of the Sciota, Robert's line was fixed as the western boundary. The lands north of the Greenville treaty line are not embraced in Mr. Wallace's claim. The same section provides, that no patent shall be granted on any location and survey that has or may be made, west of the aforesaid respective lines.

The second section of this act provides, "that no location aforesaid, in virtue of this or the preceding section of this act, shall be made on tracts of land for which patents had been previously issued, or which had been previously surveyed."

A similar provision was made by the act of March, 1807, but it was referred to in its chronological order, because the Supreme Court did not think it comprehended the lands previously surveyed by the surveyor general. So far as the mere survey of those lands were concerned, and that is the only point touched by the court, I concur in that opinion, but have no doubt it applied to such of those lands as had been surveyed and patented.

So much for the law of the case. Now for the facts.

Mr. Wallace, in January, 1839, attempted to locate his warrants between Ludlow's and Roberts' line, upon lands which had been sold between the years 1802 and 1831, and patented between 1804 and 1833, amounting to upwards of 41,142 acres, in total disregard of the acts of 1812 and 1818, fixing Ludlow's line as the existing boundary of the military reserve, and of the acts of 1807 and 1818, forbidding the location of patented lands; and the cases of Dodridge vs. Thompson and others, 9 Wheaton 469, and John Reynolds tenant, the United States, plaintiff, vs. Duncan McArthur's, defendant, 2 Peters, 417, are cited as authorities for sustaining these attempted locations. The cases are not at all parallel, except that they are all located between Ludlow's, and Roberts' line. In the case of Doddrige vs. Thompson, it is set out that the plaintiff claimed under a military warrant issued to one of the officers of the Virginia line, or continental establishment, and the defendant under a purchase made from the United States, subsequent to the emanation of the plaintiff's title. In deciding this cause the court say (Chief Justice Marshall delivering the opinion) "that had the plaintiff's letter been acquainted subsequent to the passage of

this act (of 1812) there would be much force in the objection to it, but it was acquired before this act passed, and cannot, we think, be affected by it; Congress cannot have intended to annul by a legislative act a title which was valid at the time, and a law which does not express that intention ought not to have that effect given to it by construction."

There is no meaning in those expressions, unless they convey the idea that the plaintiff's title would have been annulled, if it had been acquired subsequent to the act of 1812; and as Mr. Wallace's claim was acquired subsequent to that act, it must be regarded as annulled by it.

In the case of Reynolds *vs.* McArthur, the latter claimed the land under a patent from the United States, bearing date October 12, 1812, founded on entry and survey in 1810, on a warrant granted for services in the Virginia line on continental establishment, during the war of the revolution. Reynolds claimed as assignee of Henry Van Metre, who, in 1805, entered the land in the Cincinnati land office. It reverted to the United States in the year 1813, for non-payment of the purchase money, and during the same year it was entered again by Van Metre, and the certificate of entry assigned by him to Reynolds.

The land having reverted to the United States in this case, under the first sale, that entry was void, and the second entry was not made until after the issue of McArthur's patent.

In both these cases the decision turned, and the argumeuts were based upon the single point, whether the warrants for services in the Virginia line on continental establishment could be located west of Ludlow's line; and in both the opposing claims were junior titles. The court held that they could be so located, prior to the act of 1812, because Roberts' line indicated the lands between the Little Miami and Sciota, set apart in the deed of cession, all of which failing, good lands elsewhere were subject to such location, till restricted by the act of 1812 to the lands east of Ludlow's line. Mr. Wallace's surveys were located subsequent to the act of 1812, west of Ludlow's line, and of course are invalid under that law; the provisions of the act of 1818 would also exclude them, because they were located on lands that had been previously patented.

Mr. Wallace then has no legal claim. He certainly has none in equity, because he knew that the lands located, or attempted to be located by him, had been previously sold and patented by the government. He is then, simply the owner of these Virginia continental warrants, which have not been satisfied, and for which scrip can be issued under the "act of August 31, 1852."

If, on examination, the committee should not agree with me in these opinions, I will, with pleasure, on being advised of the fact, prepare the bill requested by your letter.

The papers in the case are returned.

I have, sir, the honor to be, your very obedient servant,

JOHN WILSON, *Commissioner.*

Hon. C. E. STUART,
United States Senate.