3-2-1860

Charles Porterfield, deceased -- Legal rep's of. (To accompany bill H.R. no. 243.)

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 23.

CHARLES PORTERFIELD, DECEASED—LEGAL REP'S OF.

[To accompany Bill H. R. No. 243.]

MARCH 2, 1860.

Mr. JACKSON, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Charles Porterfield, deceased, having had the same under consideration, beg leave to submit the following report:

The parties claimant are the legal representatives of Charles Porterfield, who was one of the early patriots of the revolution, and a member of that famous band of soldiers who marched on foot as volunteers, in the space of three weeks, a distance of 600 miles, from the county of Jefferson, in the State of Virginia, to the relief of the city of Boston, in the summer of 1775.

As a sergeant in Daniel Morgan's company of Arnold's detachment against Quebec, he was the first man who mounted its walls, and being then taken prisoner of war, he remained as such from December, 1775, till the following September. Immediately upon being exchanged he returned home and obtained a captain's commission in the 11th Virginia regiment, or continental establishment, and with a command of seventy men marched in the spring of 1777 to join the American army, then in New Jersey. He brought on the action of Brandywine, was engaged in the battles of Germantown and Monmouth, and continued in active service till the winter of 1778–'79.

He then returned again to Virginia, and was appointed commander of one of her regiments, and afterwards quartermaster general of the State. But upon hearing of the siege of Charleston, he applied to Governor Jefferson for permission to go to its relief, and overcame the objection that his men were not bound to march beyond the limits of the State by inducing them voluntarily to unite their destiny with his, upon promising that he would apply his private fortune to their support. With the proceeds of the sale, as is alleged, of his large real and personal estate, he left home, and, as history states, was within a few days' march of Charleston when it surrendered. He then sought to join the forces under Colonel Buford, and was within one day's march of him when that officer was surprised and his regi-

ment cut to pieces. At his own expense he sustained his men until the ensuing August on the frontiers of South Carolina, when he placed his corps, on the day before the battle of Camden, under General Gates. In that battle he led the advance, and fell mortally wounded. About two-thirds of his men were killed, and, as your committee are informed, all of his effects, money, and papers fell into the hands of the enemy. At the request of his brother, Robert Porterfield, also a soldier, the means for his burial were generously loaned by Lord Rawdon.

As an inducement to such acts as these, at a very early period of the revolution the State of Virginia contracted to give to all who should engage in the service upon continental or State establishment, a liberal bounty in lands; and at every session of the legislature during the war, these assurances were renewed. Various acts passed setting apart certain districts or tracts of country for this purpose, and among other acts was one passed in November, 1781, appropriating to this object "all that tract of land included within the rivers Mississippi, Ohio, and Tennessee, and the Carolina boundary line," and which the legislature supposed they had, by their act of 1799, establishing a land office, &c., exempted from the location of land office treasury warrants.

As heir-at-law of Colonel Charles Porterfield, a warrant was issued to his brother, Robert Porterfield, for 6,000 acres in 1782, and as assignee of Thomas Quarles, a warrant was issued to him for 2,666⅔ acres in 1783. In pursuance of these warrants and under the authority of laws subsequently passed, the said Robert Porterfield, in August, 1784, made within the district above described five entries, amounting in all to 6,133⅓ acres; but the country was in the possession of the Indians, who were so much dissatisfied with the inroads into the country, and the location of so large an amount of these warrants, that an Indian war was apprehended. The governor of Virginia, on the 6th of January, 1785, under the direction of the legislature, issued a proclamation prohibiting those who had made entries of land within the said territory from proceeding further in taking possession of or surveying the land, and commanding the commissioners, surveyors, and all other persons to withdraw from the said lands. In consequence of this proclamation, the said Robert Porterfield was prevented from perfecting his entry by survey and patent. This proclamation continued in force until the United States, by treaties made in 1794 and 1795, with the Cherokee and Chickasaw Indians, guaranteed to them as a hunting-ground the country lying to the south of the Tennessee river, and all persons were prohibited from entering on or taking possession of the said territory.

The country remained in this situation until 1819, when the obstruction of the Indian title was removed by treaty; yet, Kentucky having in the meantime become a State, by various acts of her legislature retarded the rights of the military claimants, and it was not until 1824 that the said Porterfield procured his entries to be perfected by survey, and a patent to be issued to him from the governor of Kentucky, in pursuance of certain stipulations had between Virginia and Kentucky when the latter became a State.

After having thus perfected his title, the said Robert Porterfield took possession of his land, and by an agent granted leases to several persons whom he found living on it; but these tenants were subsequently evicted and turned out of possession, under writs of forcible entry and detainer, by persons claiming title to the same land, under a grant of an older date, to George R. Clark.

To the understanding of this it is necessary to state some facts.

In May, 1779, the legislature of Virginia passed an act establishing a land office for ascertaining the terms and manner of granting waste and unappropriated lands. Under this act any person might procure from the treasury, on paying a certain price, a warrant to locate, and obtain a patent for, any waste or unappropriated land, with a proviso that no entry or location should be admitted within the country and limits of the Cherokee Indians, or on the north side of the Ohio river, or on lands reserved for any particular nation or tribe of Indians, &c. The warrants under this act were called treasury warrants. Under certain warrants of this character, the said George R. Clark made entries of two tracts of land, one for 36,962 acres, and another for 37,000 acres, within the district of country which the legislature of Virginia had set apart for military land warrants by the act of November, 1781. These entries were made in 1780 and 1781, prior to the passage of the act of November, 1781. The phraseology of which last-mentioned act, together with others, goes to show that the legislature of Virginia was ignorant of the fact that any of these lands had been or were subject to the location of treasury warrants; the board of superintending officers were equally ignorant of this, as was Porterfield. Whereupon, he being then of an advanced age, and incompetent to the labor and exertion required for contesting the matter, presented a petition to the 24th Congress asking indemnity for his 6,133⅓ acres of land involved in Clark's location; but he was advised, as your committee are informed, by the late B. Watkins Leigh, then a senator in Congress, that such would likely be refused until it should be decided by the courts that Clark's title was permanent, especially as the property had become of great magnitude, the town of Paducah having been built upon it; and the said Leigh expressed the opinion, as did other eminent lawyers, that the entry of Clark was void, being within "the country and limits of the Cherokee Indians," which were excepted from entry by the act of May, 1778. Under this advice, a bill was filed in the circuit court of the United States for the Kentucky district, on the 18th of July, 1836, against Meriwether L. Clark and others, who claimed under the grant to George R. Clark.

In the prosecution of this suit much time and money were expended. Many witnesses were examined, and a large amount of testimony as to the right of the Indians to this tract of country was procured from the colonial office, in England. After various continuances the case was finally brought to a hearing on the 13th of November, 1841, when the bill was dismissed with costs. An appeal was taken to the Supreme Court, where the appeal was dismissed.

Under these circumstances, your committee are of opinion that as the Virginia grant of the land was in pursuance of a contract made

with her officers, she would be bound to reimburse to her grantee the land which he lost by the uncertainty of her own laws; and, that as she has given to the United States an immense extent of territory, and by this cession has not now the means of complying with the contract, the United States ought to do what Virginia would now do if she had the power; especially as they have on various occasions recognized their liability for the debts incurred by the several States in the war of the revolution, and as there is still remaining a large part of the 2,500,000 acres set apart for the satisfaction of Virginia military land warrants by the act approved August 31, 1852.

And in further consideration of the large expenditures made in the lifetime of the gallant young soldier, of which no account can now be rendered, and of which nothing has been paid, and of the heavy costs entailed upon his representatives in seeking the inheritance won by his services, suffering, and death, your committee are constrained to report a bill, herewith, granting them from the unappropriated public domain the number of acres of which they were divested, in the manner in said bill described.

IN THE SENATE OF THE UNITED STATES, *February* 4, 1857.

Mr. Evans made the following report:

The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Charles Porterfield, deceased, having had the same under consideration, submit the following report:

In May, 1799, the legislature of Virginia passed an act establishing a land office for ascertaining the terms and manner of granting waste and unappropriated lands.

Under this act, any person might procure from the treasury, on paying a certain price, a warrant to locate and obtain a patent for any waste or unappropriated land, with a proviso that no entry or location of land shall be admitted within the country and limits of the Cherokee Indians, or on the north side of the Ohio river, or on lands reserved for any particular nation or tribe of Indians, &c. The warrants under this act were called treasury warrants.

It having been ascertained by an extension of the dividing line between Virginia and North Carolina that a considerable part of the land previously set apart by Virginia for the discharge of her promises to her officers and soldiers of her State and continental line lay within the State of North Carolina, Virginia, by an act passed in November, 1781, enacted that all that tract of land included within the rivers Mississippi, Ohio, and Tennessee, and the North Carolina line, shall be, and the same is hereby, substituted in lieu of such land so fallen into the State of North Carolina, to be in the same manner subject to the claims of said officers and soldiers.

Colonel Charles Porterfield, of the Virginia State line, was mortally wounded at Gates' defeat, near Camden, in August, 1780, and soon after died of the wounds, leaving neither wife nor children. His

brother, Robert Porterfield, as his heir-at-law, received from the State of Virginia, under the laws of that State, a warrant for 6,000 acres (for three years' service) in December, 1782. He also was entitled, by purchase, to a warrant issued to Thomas Quarles, for three years' service as lieutenant in the State line, for 2,666⅔ acres, dated the 12th of June, 1783.

In pursuance of these warrants, and under the authority of laws subsequently passed, appointing a surveyor and a board of officers, the said Robert Porterfield, in August, 1784, made within the district above described five entries, amounting in all to 6,133⅓ acres; but the country was in the possession of the Indians, who were so much dissatisfied with the inroads into their country, and the location of so large an amount of these warrants, that an Indian war was apprehended. The governor of Virginia, on the 6th of January, 1785, under the direction of the legislature, issued a proclamation prohibiting those who had made entries of land within the said territory from proceeding further in taking possession or surveying the land, and commanding the commissioners, surveyors, and all persons to withdraw from the said land. In consequence of this proclamation, the said Robert Porterfield was prevented from perfecting his entry by survey and patent. This proclamation continued in force until the United States, by treaties made subsequently, in 1794 and 1795, with the Cherokee and Chickasaw Indians, the country lying to the south of the Tennessee river was guaranteed to them as a hunting-ground, and all persons were prohibited from entering on or taking possession of the said territory.

The country remained in this situation until 1819, when the obstruction of the Indian title was removed by treaty; and in convenient time afterwards, to wit, in 1824, the said Robert Porterfield procured his entries to be perfected by survey, and a patent issued to him from the governor of Kentucky, which had, in the meantime, become a State, in pursuance of certain stipulations between Virginia and Kentucky when the latter became a separate State.

After having thus perfected his title, the said Robert Porterfield took possession of his said land, and by an agent granted leases to several persons whom he found living on the land; but these tenants were subsequently evicted and turned out of possession, under indictments of forcible entry and detainer, by persons claiming title to the same land, under a grant to George R. Clark of an older date. To the understanding of this claim it is necessary to state some facts.

Under certain treasury land warrants, the said George R. Clark made entries of two tracts of land—one for 36,962 acres, and another for 37,000 acres—within the district of country which the legislature of Virginia had set apart for military land warrants by the act of November, 1781. These entries were made in 1780 and 1781, prior to the passage of the act of November, 1781. The surveys were made in 1784, before the date of the proclamation of the governor of Virginia, and patents were issued in September, 1795.

The said patents being the oldest, the said Robert Porterfield was disposed to give up his claim, and to ask Congress to give him other lands in lieu of that of which he had been deprived. He accordingly

presented a petition to the 24th Congress; but, as is alleged in this petition, he was advised by the late B. Watkins Leigh, then a senator of Virginia in Congress, that his claim would be likely to be refused until it had been decided by the courts; that Clark's title was paramount; and the said Leigh expressed the opinion, as did other eminent lawyers, that the entry and patent of the said Clark was void, being within "the country and limits of the Cherokee Indians," which were excepted from entry by act of May, 1778. Under this advice, he filed a bill in the circuit court of the United States for the Kentucky district, against Meriwether L. Clark and others, who claimed under the said grants to George R. Clark, on the 18th of July, 1836.

In the prosecution of this suit much time and money were expended. Many witnesses were examined, and a large amount of testimony as to the right of the Indians to this tract of country was procured from the colonial office in England. After various continuances, the case was finally brought to a hearing on the 13th November, 1841, when the bill was dismissed with costs. An appeal was taken to the Supreme Court, where the appeal was dismissed.

Under these circumstances, your committee are of opinion that as the Virginia grant of the land was in pursuance of a contract made with her officers, she would be bound to reimburse to her grantee the land which he lost by the uncertainty of her own laws. And as Virginia, by her cession of all her lands to the United States, has not now the means of complying with the contract, the United States ought to do for them what Virginia would now do if she had the power; and as there is still remaining a large part of the 2,500,000 acres set apart for the satisfaction of Virginia military land warrants by the act approved August 31, 1852, a bill is herewith reported for their relief.