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Public Lands

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 193.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 21, 1882.—Ordered to be printed.

Mr. PLUMB, from the Committee on Public Lands, submitted the following

REPORT:

[To accompany bill S. 67.]

The Committee on Public Lands, to whom was referred bill S. 67, report as follows:

The Government of the United States, in receiving the Western and Southern States into the Union, stipulated in their several acts of admission to pay them 5 per cent. upon the sales of the public lands situated therein. The consideration for the 5 per cent. so reserved is substantially the same in each of the enabling acts of said States; that is to say, Ohio and Indiana stipulate that the public lands therein shall remain exempt from all tax whatever for the term of five years from date of sale.

Iowa, in the compact, stipulates four things:

1st. That she will not interfere with the primary disposal of the soil.

2d. Nor tax for any purpose the public lands.

3d. That the non-resident proprietors shall not be taxed more than the resident; and

4th. That lands granted for military services in the war of 1812 that may be located therein shall not be taxed for three years from date of patent.

Illinois—same as Ohio, and the third and fourth stipulations of the Iowa compact.

Alabama and Mississippi—same as Ohio, and embracing the second and third stipulations of Iowa.

Missouri—same as Ohio, and including that of Iowa.

Michigan and Arkansas—same as Iowa.

Florida—same as the first and second stipulations of Iowa.

Wisconsin, Minnesota, and Oregon—same as the first three stipulations of Iowa.

Nebraska and Nevada—same as the second and third stipulations of Iowa.

Kansas—the same as the first and second of Iowa.

Louisiana—the same as Ohio and Indiana.

These stipulations were proposed to the people of the several States by Congress as the condition of Union, for their "free acceptance or rejection," and if accepted were to be obligatory on both parties thereto. They were duly accepted by the States, which have, also, faithfully observed them.

The binding effect of these compacts is specifically recognized and set forth in an opinion rendered by Hon. B. F. Butler, then Attorney-General of the United States, dated March 31, 1836, in passing upon the legal effect of the act for the admission of Alabama into the Union, as follows:

> This proposition, having been accepted by the convention, became and is obligatory on the United States; that is to say, the faith of the nation is pledged to execute it literally, provided the Government of the United States possesses or acquires the ability to do so. (3 O. A. G., 56.)

Since the admission of the several States referred to, in many of them the entire public domain has been disposed of, and within the limits of the others but a small portion remains unsold. The methods of disposition have been various: For cash; in settlement of obligations of the government to its soldiers, represented by military land-warrants; in aid of railroads and canals, and other works of internal improvement; and under the homestead law. The States have as yet made no claim for compensation on account of the lands disposed of in the last two named methods; the government has paid or is in process of paying 5 per cent. upon the cash sales, but up to the present time has made no payment to any of the States upon entries of public lands with military land-warrants, though demand has been made for the same.

The only ground known to your committee upon which this payment has been refused is that such disposition of the public domain was not "sales of the public lands" within the meaning of the enabling acts. The right of these States to the 5 per centum upon military locations depends, in the opinion of your committee. largely upon the fact whether, as between the government and the soldier, the lands disposed of formed a part of the consideration of his hire. Upon this point your committee have had little difficulty in arriving at the conclusion that such disposition did, in fact, enter into and become a part of the consideration for the enlistment and services of the soldiers to whom land-warrants were issued. The acts of Congress for the benefit of the recruiting service of the United States at the opening of the Revolutionary war are dated in August and September, 1776.

The Commonwealth of Virginia about the same time (October, 1776), for the purpose of raising her quota of men and meeting the exigencies of the coming war, also offered lands to her soldiers as part compensation for their military services. These lands thus offered by the legislature of Virginia were afterward patented by Congress to her soldiers agreeably to the terms of cession made by Virginia to the Federal Government of the Northwestern Territory March 1, 1784.

The several military grants for the war of 1812 are dated December 24, 1811, January 11, 1812, February 6, 1812, December 12, 1812, January 24, 1814, January 27, 1814, February 10, 1814, April 18, 1814, and December 14, 1814.

Those of the Mexican war are dated February 11, 1847, March 3, 1847, September 28, 1858.

It is clear from the language of these grants that they were designed to effect a future object, and in no sense did they relate to a past subject. The time when and the circumstances under which they were passed indicate but too manifestly the aim in view, namely: To facilitate and encourage enlistments, that the requisite numerical force of the Army might be enlarged as rapidly as possible, in order to meet the pressing necessities of each of the impending wars.

At the time the resolution of September 16, 1776, was adopted, Con-

gress owned no land, but expected by conquest to become entitled to all the land which England had acquired by discovery. Anticipating, therefore, the acquisition of large landed possessions, and expecting to have more land than money, Congress, in order to fill up the rank and file of the Army, and to raise and complete a regularly-organized military establishment, offered in advance, besides specified monthly wages in money, an additional *consideration in land*, not for past, but for services thereafter to be rendered. The colonial government of Virginia did the same thing, and her engagement to pay in land was afterward assumed and fulfilled by Congress, by setting apart for that purpose a section of country lying between the Little Miami and Scioto Rivers in Ohio.

The military grants for the war of 1812 and the Mexican war are of the same character, enacted at or near the commencement of each, wholly prospective in their operation, and are their own best expositors; their meaning and purpose cannot be misinterpreted. In effect, they said to the party whose military prowess the government so much needed at the time, "Enlist, and serve your country a given period, and you shall have as a reward therefor a quarter-section of land in addition to your monthly pay." The land thus offered in advance of, and as an inducement to, the engagement formed as much a part of the contract of enlistment as did the money compensation. One cannot with any show of reason be designated a gratuity any more than the other; both alike constituted the consideration for which the services were to be rendered. It follows, therefore, that these grants of land for military service in the three great wars of this country are essentially in the nature of contracts; and as such become the foundation of the claim which the Western and Southern States now make for the 5 per cent. thereon, according to the terms of the compact contained in their several enabling acts; for, if they have the elements of a contract, it follows that the lands located thereunder are *sales* in legal contemplation, and not bounties in any just sense of that term. It involves no other or different principle than if one man should say to another, "Work for me twelve months and I will pay you at the rate of $15 per month and eighty acres of land for such service." Could he, in law, discharge his obligation by making the money payment and withholding the land, upon the pretext of a bounty to be paid or not at his own pleasure?

That this is the proper construction of the military land-warrant acts of 1847 is abundantly shown by the debate thereon at the time of their passage. When the act of February 11, 1847, came to the Senate from the House where it originated, an amendment was proposed giving, in addition to the monthly pay and allowances and the money bounty, a grant of land to the soldiers whose enlistment was then sought. The subject was debated at considerable length, and the result was the statute referred to. In the course of the debate Mr. Cameron, the mover of the original amendment, said: "He was desirous that those of our fellow-citizens who intended to join the Army might know what they had to expect. The soldier who fought the battles of his country was deserving of reward, and as this government possessed abundance of lands he thought no better disposition could be made of a portion of them than in rewarding the bravery and patriotism of the soldiers." Congressional Globe, 2d session Twenty-ninth Congress, p. 171.

Mr. Allen, of Ohio, while objecting to the proposition as not sufficiently guarded and specific, expressed his assent to the principles involved. He said he "was one of those who believed that, as between the government and the citizen great liberality should be observed, more es-

pecially as regarded the uncultivated soil of this country. He knew of no better use that could be made of the public domain than to reward the brave and patriotic men who had volunteered to serve in this war." *Ibid.*, p. 172.

Mr. Clayton said: "While graduation bills and pre-emption bills, and other projects for giving away and breaking up the public domain, were in vogue, while the land was going, he preferred to see it given to the citizen-soldiers and the regular soldiers of the United States Army; he preferred giving the lands to the soldiers as an inducement to fight the battles of the country rather than give them to the paupers of Europe." *Ibid.*, p. 173.

Mr. Corwin said: "It was a proposition to grant to every soldier who actually served, and to the heirs of every soldier who died in service, an amount equal to $200, which should pass current in any land office for the purchase of land. Instead of paying them in advance, it was paying him at the end of his service this amount. * * * A soldier's service was the hardest that any patriot could be called upon to perform, and he thought that they were entitled to receive at the hands of the government this much at least." *Ibid.*

Mr. Badger said: "If we are to call upon American citizens to enlist in the Army for the prosecution of this indefinite war—to enlist not merely for a certain period, but during the existence of the war, * * * was it not important that they should throw out strong inducements to the people to peril their happiness, their persons, and their lives? He saw in this very circumstance strong reasons why this bill should not be passed without a direct 'pledge' of future bounty on the part of the government to induce men, whether as volunteers or regular soldiers, to make these sacrifices. He desired that every man should see on the face of the law under which the government required the sacrifice from him, the bounty at which the country estimates his service." *Ibid.*, p. 178.

Mr. Butler said: "The great object of giving bounty-lands to soldiers was to encourage enlistments." *Ibid.*, p. 207.

Mr. Webster said: "The object was to obtain the service of the private soldier in the ranks of the Army and in the volunteer corps. * * * The precise point they aimed at was to fill the ranks of the regiments for the efficient defense of the country—the present urgent defense of the country. They asked, therefore, for something which would be an inducement to soldiers to enlist." *Ibid.*

In addition to this we submit that the validity of the claims set up and insisted upon by these States in the bill under consideration has received legislative recognition in at least two acts of the Congress of the United States, one in respect to the State of Alabama, the other in respect to the State of Mississippi, both of which acts we propose briefly to consider.

On March 2, 1855, Congress passed an act entitled "An act to settle certain accounts between the United States and the State of Alabama." This act provides:

> That the Commissioner of the General Land Office be, and he is hereby, required to state an account between the United States and the State of Alabama, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled under the act of March 2, 1819, for the admission of Alabama into the Union, and that he be required to include in said account the several reservations under the various treaties with the Chickasaw, Choctaw, and Creek Indians within the limits of Alabama, and allow and pay to said State 5 per cent. thereon, as in case of other sales.

Subsequently to this, Congress passed an act entitled "An act to settle certain accounts between the United States and State of Mississippi and other States," which was approved March 3, 1857, and is as follows:

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That the Commissioner of the General Land Office be, and he is hereby, required to state an account between the United States and the State of Mississippi, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled, on account of the public lands in said State, and upon the same principles and allowance as prescribed in the "Act to settle certain accounts between the United States and the State of Alabama," approved the 2d of March, 1855; and that he be required to include in said account the several reservations under the various treaties with the Chickasaw and Choctaw Indians within the limits of Mississippi, and allow and pay to the said State 5 per centum thereon, as in case of other sales, estimating the lands at the value of $1.25 per acre.

SEC. 2. *And be it further enacted*, That the said Commissioner shall also state an account between the United States and each of the other States upon the same principles; and shall allow and pay to each State such amount as shall thus be found due, estimating all lands and permanent reservations at $1.25 per acre.

The settlements authorized and required by these acts between the government and the States of Alabama and Mississippi, and the payment of the 5 per cent. for these reservations, estimating the land at $1.25 per acre, are a clear recognition of the principle contended for by the States named in the bill under consideration. The fee to the land in these reservations was granted to the Indians, either out of good-will and to encourage friendly relations, or in part consideration of their possessory right to large tracts of this country surrendered to government. It was no cash sale of the lands to the Indians. So the military land-warrants were ganted to the soldiers either as a grateful acknowledgment of their services or in part payment of the same; and whether one or the other, the two cases are the same in principle; and the 5 per cent. should be paid in both cases or should not be paid in either. But we wish to call especial attention to the provisions of the act with reference to Mississippi, as we think all ambiguity in respect to the question under consideration, if there be any, is removed by the language there used; for if Congress meant anything it would seem the Commissioner, by that act, is required to do three things: First. He is to state an account between the United States and Mississippi and the other States, for the purpose of ascertaining what sum or sums of money are due to these States, heretofore unsettled, on account of public lands in said States. Second. He is to include two things in said account, which are all lands and permanent reservations, estimating the same at $1.25 per acre; and, third. He is to pay five per cent. thereon as in cases of other sales. If Congress did not intend to include all lands upon which military land-warrants had been located as well as permanent reservations, we are unable to see what was intended by the language employed in this act. We think it must be admitted that this account was to include all public lands on which the five per cent. was still unsettled, as well as reservations. And by the express terms of the act, this necessarily includes the military locations, as these were a part of the public lands on which the five per cent. had not been paid. If these lands were not intended to be included, what lands does the act refer to? It cannot be the lands sold for cash, for there was no dispute about them. The government had faithfully complied with its obligations to the States as it respects these cash sales, and had paid the five per cent. on all the lands so sold. Neither can it refer to the reservations, for they were fully provided for by the first section of the act by name, and are to be paid for upon the same principles and allowance as those recognized and provided for in

the case of the State of Alabama. And in addition to these reservations the government is to pay on account of all public lands in said State of Mississippi upon the same principles and allowance. So that both lands and reservations are clearly provided for in this first section, while the second section provides that the United States shall state an account with the other States upon the same principles, and shall allow and pay to them such amount as shall be found due on account of all lands and reservations, estimating the same at $1.25 per acre. And reservations must be referred to by this act in order to give its provisions force and effect.

And is not the government as much bound under its contract with these States to pay the five per cent. agreed upon, where the land is given for and in consideration of military services, as it would be if the sale had been for cash? In other words, the contract presupposes that all the public lands will be so sold and disposed of that the States will realize the per cent. agreed upon; and that no disposition of them, to be made in such manner as to defeat the same, was contemplated at the time; and that such is the implication arising from the contract itself. Such was clearly the view taken by Congress of this question in the acts of March 2, 1855, and March 3, 1857. Hence the language used, "*All lands and permanent reservations*"; and as if not to be misunderstood the same are "*to be valued at* $1.25 *per acre.*" Not five per cent. of the proceeds from cash sales, but five per cent. on all lands *disposed of in any other way*, estimating the same at $1.25 per acre. Any other view would defeat this legislation both in letter and in spirit, and would do violence to every rule of construction known to the law. It could not have been within the contemplation of the parties that Congress might defeat the payment of the five per cent. by some other disposition of the public lands than a sale of the same for cash; for if it had been, this privilege would have been reserved; and it is clearly evident no right whatever was reserved to make any disposition of the same that would relinquish the payment of this five per cent.

The land-warrants issued in pursuance of the several acts named were certainly in the nature of evidences of indebtedness. The public lands were made available for meeting the demands of the general government in the payment of its soldiery just as effectually by the warrant system as if the lands were first converted into money and the money used in liquidating these demands. Instead of patenting a specified tract of land to the soldier entitled thereto, the government issued to him its written *obligation*, payable in the agreed quantity of land, to be selected from the whole body of the public domain. And these obligations, or "warrants," as they are called, were by law made assignable, and were subjected to sale and transfer. In this way they became a species of government scrip, or currency, and persons desirous of purchasing could go into the market and buy the same, and with it secure title to tracts of the public lands whenever the same were subject to sale and entry.

Can it be considered less a case of sale that the purchaser, instead of paying for his land in greenbacks, does so with the government's own paper obligations? The chief difference in the two descriptions of paper is that the first is available for purchasing all commodities indiscriminately, whilst the latter is limited to the purchase of land only. Suppose the United States had issued pecuniary obligations, *i. e.*, bonds payable to bearer at a future day, or payable like greenbacks, whenever the government should find itself able, but with the proviso that they should be receivable at par in payment for public lands—how would the case of

lands paid for with such bonds differ from the present case? The bonds might have been issued like land-warrants, for military service, or for any other consideration, or for no consideration. They might have been regarded by Congress strictly as a gratuity to parties thought to have for any reason deserved well of their country.

This would not affect the question whether lands entered and paid for with such bonds ought to be considered as sold. In either case the government would have received for thus disposing of its lands its own valid outstanding obligations, for the fulfillment of which its faith was plighted, and the surrender of which by the holder would constitute an ample consideration, legal and equitable, for the conveyance. These considerations apply to the fullest extent to the case of entries of land by means of land-warrants.

To your committee it seems that the true solution of the question whether or not land entered by the location of warrants should be considered as *sold* by the government is to be found in the nature of the transaction at the time of the warrant location, and not in that of its issue.

No land is sold or disposed of in any way by the mere issue of a warrant. That conveys no title whatever to the holder of the warrant for any specific land. The warrant is a mere executory promise or contract, calling for a given quantity of land, to be selected from the body of the public lands. It is not until the specific tract is ascertained, segregated, and the warrant surrendered in exchange for a certificate of location for a particularly described tract or parcel of land, which is to ripen into a full legal title upon the issuance of a patent, that any land can be said to have been disposed of by the government; but when the warrant is *located*, this, to all intents and purposes, is a *sale*.

The term "bounty," as applied to this kind of compensation for military services, seems to be inapt. It certainly is not used in its popular sense as importing a gratuity, because in the several acts of Congress granting lands to the soldiers in the three great wars of this country the "warrants" were not issued in consideration of *past services*, but must be fairly understood as a part of the stipulated compensation provided for by the law under which the enlistment was made for services *thereafter to be performed*.

This is made most manifest by the debate above quoted. The object is there stated explicitly as being to "encourage enlistments."

In the late war of the rebellion, in order to stimulate enlistments, a pecuniary "bounty"—that is, a gross sum in addition to the periodical pay—was offered by the government instead of land-warrants to all who should enlist in the service, and in many instances further "bounties" of the same kind were offered and paid by counties and cities in order to induce enlistments to fill up their respective quotas of men. Such offers, when accepted and acted upon, have, in repeated instances, been declared by the courts to be valid contracts and have been enforced accordingly.

It will not be contended, as the committee believe, that the agreement to pay the 5 per cent. on the sales of the public lands does not find a sufficient consideration in the stipulations of the several States not to interfere with the primary disposal of the soil; not to tax government land; in some States not to tax lands which the government might sell for five years; in other States not to tax for three years a class of lands in the hands of certain patentees; not to tax non-resident proprietors more than residents, &c.

The rights surrendered by the States were of great material conse-

quence to them. The right of taxation inheres in the sovereign power of a State, and is extended over all subjects and descriptions of property within its jurisdiction. In the relinquishment of the right of taxation the States have lost a very large revenue, far in excess of the 5 per cent. upon all the public lands, whether the same be computed cash sales or upon lands disposed of in payment for military services, or both.

By disposing of the public lands in the manner named, the United States discharged an obligation which was of binding force upon all the States as component parts of the common confederacy. Aside from the legal liability of the government to pay the percentage claimed to the States within whose limits the lands were purchased with military warrants, it may be suggested that it would be palpably inequitable that a few States should be called upon to contribute so largely in the discharge of the nation's indebtedness. But when it is considered that the general government and the eighteen States claiming relief under the bill submitted for the consideration of your committee entered into a solemn compact, partaking of the mutuality of a legal contract; that the States, in order to secure the 5 per cent. on the disposal of the public lands, agreed to surrender rights indisputable and of great value to them if retained, and that in good faith this agreement has, in every respect, been faithfully kept on the part of the States, there seems to be no good and sufficient reason, in the judgment of the committee, why the United States should be relieved of its obligation to pay the claims which the States have presented for adjustment.

The payment by the general government to the several States of five per cent. upon the cash sales made during a period of over seventy years, would seem to be conclusive against the government upon the question of consideration.

The bill under consideration proposes to capitalize the lands taken up by the location of military land warrants, at one dollar and twenty-five cents per acre. This has been the minimum price of the government lands ever since there was a public domain. The price fixed cannot, therefore, be considered unfair to the government. It will also be noted that in the debate quoted upon the act of 1847 Mr. Corwin stated the value of the 160 acres proposed to be offered as a consideration for enlistments at two hundred dollars; the market value of the warrants issued under the act also tends to fix the value of the land.

Your committee has also been pressed to consider the obligations of the government to the several States on account of lands granted for the purpose of aiding in the construction of railroads, and other works of internal improvement, and also for lands disposed of under the homestead law.

The grants for railroads and other internal improvements were in nearly or every instance made to the States direct for the use of the enterprise to be aided. In accepting these grants the States fairly waived the right to the 5 per cent. compensation upon such lands, and the grants were, besides, generally of great special benefit to the States to which the grants were made. Besides, no consideration except the one affecting the growth and general prosperity of the country passed to the general government.

The lands disposed of under the homestead law stand upon a different footing. Their disposition in that particular manner was undertaken without the consent of the States, and while nominally a gift to the settlers, the fees exacted are such as result in a considerable profit to the government over and above the costs of selling and patenting. As, however, the passage of the homestead law worked a radical and

beneficent change in the public-land system of the government, and one much more beneficial to the States whose limits then embraced public lands than the one theretofore prevailing, the obligation against the government on account of lands thus disposed of is not very strong if at all existing.

The committee, therefore, propose to so amend the bill as to exclude from consideration hereafter the question of compensation for these two classes of lands, and make the acceptance of the compensation provided for by this act a waiver of all claim on account of the disposition of lands for internal improvements and under the homestead law.

And with these amendments, the committee recommend the passage of the bill.

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