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HEIRS OF JAMES CALLER, ASSIGNEE OF JOSEPH ANDERSON.

JANUARY 25, 1838.

Read, and laid upon the table.

Mr. HARLAN, from the Committee on Private Land Claims, made the following

REPORT:

The Committee on Private Land Claims, to which was referred the petition of the heirs of James Caller, assignee of Joseph Anderson, report:

The petitioners claim remuneration for 640 acres of land, to which they allege they were entitled, and which the Government sold.

Their claim is founded on the act of the 3d March, 1803, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" and the act in addition thereto, approved 21st of April, 1806.

The original act provides for three classes of cases:

1st. Any person or persons, being the head of a family, or over twenty-one years of age, who were resident of the Mississippi Territory on the 27th October, 1795, and who had prior to that day obtained from the British Government of West Florida, or from the Spanish Government, any warrant, or order of survey for lands in said Territory, to which the Indian title was extinguished, and which were on that day actually inhabited or cultivated by such person or persons, or by others for their use, shall be confirmed in their claims, in the same manner as if said title had been completed.

2d. Every such person, who, on the 27th October, 1797, did actually reside on and cultivate any tract not claimed under the first class, or by the State of Georgia, shall be entitled thereto as a *donation*; but only one tract of 640 acres was allowed to any one person, nor to any person who claimed any other tract in said Territory under a British or Spanish grant or order of survey.

3d. Every person, being the head of a family, or above the age of twenty-one years, who at the passage of the act was in the actual possession or cultivation of any tract in said Territory not claimed under either of the preceding classes, was entitled to have the preference in becoming the purchaser from the United States of such tract of land; or, in other words, a pre-emptive right.

By the 4th section of the amendatory act above referred to of the 21st April, 1806, it is provided that, whenever it shall appear to the register and receiver of the district east of Pearl river that a settlement and occupancy, by virtue of which a pre-emption certificate had been granted by the commissioners, had been made and taken place prior to the 30th of March, 1798, they (register and receiver) shall be authorized to grant to the party a *donation certificate*, in lieu of such pre-emption certificate; provided, that application shall be made for such an exchange, and evidence produced of the date of such settlement and occupancy, on or before the 31st of December, 1806.

The petitioners claim under a deed executed by Seth Dean, who purchased from one Joseph Anderson, who it is alleged was the original occupant of the land claimed.

The ancestor of the petitioners presented a claim for the land embraced in the petition to the commissioners appointed by law to adjudicate in such cases, and, after a full and thorough investigation of the claim, it was rejected by them the 29th June, 1804, as being unsupported by evidence; but the commissioners were of opinion that the claimant was entitled to a pre-emptive right, and a certificate was granted to him accordingly. It does not appear that Caller, to whom this certificate was granted, availed himself of it in virtue of the act under which it was granted; but an effort was made by him to change it into a *donation certificate* under the 4th section of the act of 21st April, 1806, before referred to. From copies of the records of the land office at St. Stephen's, it appears that, on the 31st of December, 1806, the last day allowed for making such applications, Caller presented his case to the register and receiver, but no decision was had thereon, so far as the committee have been informed.

The petitioners now insist that the proof then exhibited authorized a favorable decision, and, as the Government afterwards sold the land which they claimed, they ask Congress to pass a law to indemnify them.

The committee are disinclined, after such a lapse of time, to recommend a supervision of the decisions given by officers appointed by Government for the express purpose of adjudicating upon and settling such claims.

The act under which the claim originated was intended by the Government for the benefit of the *actual bonafide settlers*. This claim passed into the hands of a man, who was an extensive speculator in such claims, more than thirty-five years since. He presented the claim to the commissioners, in person, upon his own testimony, taken *ex parte*, as early as 1804, and it was *rejected* by them. He failed to avail himself of the pre-emption certificate then given him, but made an effort to change it into a donation claim; and having failed in that, his heirs now ask to review these decisions, and grant them an equal quantity of land elsewhere. In the opinion of the committee, this ought not to be done.

The following resolution is therefore submitted:

Resolved, That the prayer of the petitioners ought to be rejected.