

3-17-1858

Report : Mr. Wilson

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IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1858.—Ordered to be printed.

Mr. WILSON made the following

REPORT.

[To accompany Bill S. 203.]

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 adopt a former report made at the last session of Congress, by Mr. Evans, which is as follows, to wit :

“ 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 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 2,666 $\frac{2}{3}$ 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 6,133 $\frac{1}{3}$ 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 1794, 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 para-

mount; 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."