3-23-1897

Report : Mr. Pettigrew

55TH CONGRESS, 1st Session. } SENATE. { REPORT No. 12.

IN THE SENATE OF THE UNITED STATES.

MARCH 23, 1897.—Ordered to be printed.

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

REPORT.

[To accompany S. 361.]

The Committee on Public Lands, to whom was referred Senate bill 361, have had the same under consideration and report the same to the Senate with the recommendation that the same do pass with the following amendments: In line 8, section 1, after the word "States," insert the words "including California," and in line 10, after the word "heretofore," insert the words "or may hereafter be." As amended the bill will read as follows:

A BILL fixing the times when, regulating the manner in which, and declaring the character of the accounts between the United States and the several public-land States, relative to the net proceeds of the sales and other disposition of the public lands made and to be made therein by the United States, which shall hereafter be stated and certified to the Treasury Department for payment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That upon the passage of this Act, and thereafter during the first month of each and every fiscal year, the Commissioner of the General Land Office be, and he is hereby, directed to make and submit to the Secretary of the Interior a statement of an account between the United States and each of the several public-land States, including California, for five per centum of the net proceeds of the sales of the public lands in each of said States which have been heretofore or may hereafter be made by the United States and not already paid by the United States to said States, and upon such statements of accounts being made to the Secretary of the Interior he shall thereupon supervise, correct, and certify such statements of accounts to the Secretary of the Treasury for payment.

SEC. 2. That said accounts so stated shall include, embrace, and apply to all of said lands heretofore or which hereafter may be sold, located, or disposed of by the United States for cash or bounty-land warrants, or land scrip, or certificates of any kind, or agricultural college scrip, and to all lands allotted to Indians in severalty, exempt from taxation, and shall include all former and existing Indian, military, or other reservations in said States, which statements shall include and state the five per centum of the value of all such lands so disposed of, estimating the value thereof at one dollar and twenty-five cents per acre, the same as if said lands had been sold for that price in cash.

SEC. 3. That upon such stated accounts being duly certified to by the Secretary of the Interior and filed with the Secretary of the Treasury, the said Secretary of the Treasury shall thereupon, out of any money in the Treasury not otherwise appropriated, pay to said States, respectively, the amounts so found to be due and certified to as aforesaid.

In support of said bill your committee submit the following report:

The first section of this bill fixes a definite time when, establishes an uniform manner in which, and names the officers whose duties are

made mandatory, to hereafter annually state, supervise, and certify all accounts between the United States and each of the several public-land States, in reference to the 5 per cent of the cash sales and other disposition of the public lands made by the United States therein, respectively.

The third and last section of this bill recites when, by whom, and to whom said certified stated accounts are to be duly paid.

The second section of this bill declares that said accounts when so stated and certified shall include—

First. All lands embraced in Indian or other reservations, all lands allotted to Indians, and all lands located by Indian scrip, irrespective of area, and

Second. All lands disposed of for bounty-land warrants and scrip generally (other than Indian scrip), irrespective of the name, character, or area thereof.

By the 5 per cent Alabama act of March 2, 1855 (10 U. S. Stat. L., 630), an act entitled "An act to settle certain accounts between the United States and the State of Alabama," and by the 5 per cent Mississippi act of March 3, 1857 (11 U. S. Stat. L., 200), an act entitled "An act to settle certain accounts between the State of Mississippi and other States," Congress not only explained its own meaning and intention as to the 5 per cent grant, made to all the public-land States in the Union on March 3, 1857, but it declared a policy of uniformity and equality among the several public-land States, to wit, That when the proper officers of the United States were stating, certifying, and paying said 5 per cent accounts between the public-land States and the United States, they should not exclude from computation any lands which were embraced in any Indian reservations in any of the said public-land States, but enacted that all lands and all lands embraced in any Indian reservation established in any of said States should have a fixed legal value by estimate, to wit, $1.25 per acre, and that upon this legal value, so fixed by Congress, a computation should be based, in order to ascertain, determine, state, certify, and pay in money, said 5 per cent accounts for the amount of the net proceeds of the disposal of the public lands legally due from the United States to each of the several public-land States in the Union on March 3, 1857.

The habitations and homes of the various Indian tribes on March 3, 1857, and prior thereto, were such as to render it a matter of impossibility for the Government, in properly administering its Indian affairs, to establish Indian reservations equally and alike in area or otherwise in every one of the public-land States, and hence it was clearly inequitable and unfair to the public-land States in which valuable public lands were situate, when establishing Indian reservations therein, *exempt from all taxation;* for Congress to deprive such States of 5 per cent of the value of the lands embraced in such reservations, and at the same time to permit other public-land States, wherein similar areas were disposed of for cash, and *wherein no Indian reservations were established* to receive 5 per cent on all of said land sales, simply because they were sales made for cash.

There does not seem to be any doubt but that to equalize the several public-land States in said 5 per cent, in so far as lands embraced in Indian reservations, etc., were concerned, was the sole reason which impelled Congress to enact this equitable, and, as the Department of the Interior has said, this *beneficial* legislation, contained in the 5 per cent Mississippi act of March 3, 1857.

Soon after the passage of this 5 per cent Mississippi act of March 3,

1857, to wit, on June 19, 1857, the Secretary of the Interior, Hon. Jacob Thompson, of Mississippi, was called upon to construe the meaning and intent thereof, so as to determine whether said act did not embrace all public lands allotted in severalty to Indians, and apply to all lands located with Indian scrip, in the State of Mississippi.

While the particular case upon which the decision, which was rendered by said Secretary on March 20, 1858, arose in the State of Mississippi, yet his decision of that date was *general*, and by him it was declared that it should apply equally and alike to every other public-land State in the Union on March 3, 1857, and was to the effect that said 5 per cent Mississippi act of March 3, 1857, applied, and should be computed and paid not only on all lands embraced in any Indian reservation situate in any of the public-land States in the Union on March 3, 1857, but that it should also equally apply to all lands, irrespective of the areas thereof, in any of the public-land States, which were allotted to any Indians, or which were located by Indian scrip, irrespective of the name, kind, area, or nature of such Indian scrip.

A full copy of said Secretary's said decision of March 20, 1858, is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, March 20, 1858.

SIR: After mature consideration of the appeal of W. C. Smedes, esq., on behalf of the State of Mississippi, from your decision "that lands within that State located to satisfy scrip which had been issued under the act of August 23, 1842, can not be regarded as coming within the *beneficial* provisions of the act of 3d March, 1857, entitled 'An act to settle certain accounts between the United States and the State of Mississippi and other States,'" *I have decided to sustain the appeal.*

The acts of Congress of March 1, 1817, and March 2, 1819, guaranteed to the States of Mississippi and Alabama "5 per cent of the net proceeds of the lands lying within their limits, and which should be sold by Congress after certain specific dates."

The act of Congress of July 4, 1836, entitled "An act to carry into effect in the States of Mississippi and Alabama the existing compact with those States in regard to the 5 per cent fund," etc., admitted the claim of these States to 5 per cent of such sums of money as were equal to the avails of the sales of lands within their respective limits, then recently ceded by the Chickasaw Indians, *although the net proceeds of those sales were not realized by the United States Treasury.*

The principle was thus indicated, *that when lands within those States had been disposed of by the United States to satisfy stipulations of an Indian treaty, they should as respects the calculation and payment of the 5 per cent, be placed on the same footing as the lands sold by Congress.*

The act of March 3, 1855, "To settle certain accounts between the United States and the State of Alabama," *confirmed that principle* and declared its applicability to lands within Alabama, which had been reserved by the treaties with Chickasaws, Choctaws, and Creeks.

The same principle of adjustment *is reaffirmed in the act of March 3, 1857*, and is to be applied in the case of Mississippi as regards the several reservations under various treaties with the Chickasaws and Choctaw Indians within the limits of Mississippi.

In this connection the principle of adjustment established appears plainly to have been intended to *embrace all the lands within the State disposed of by the United States to satisfy the stipulations of the treaties with the Indian tribes named.*

Within this class the tracts taken to satisfy the scrip which had its foundation in the Choctaw treaty of 1830 are as plainly included as the tracts more directly selected by the Indians to satisfy their rights under the treaty.

This same principle of adjustment the second section of the act now under discussion extends to be applied in the settlements of the 5 per cent accounts of the other States.

Thus as regards justice and right, Alabama and Mississippi are entitled to a liberal construction of the acts of Congress of March 2, 1855, and March 3, 1857, and as a matter of equity between these two States as claimants as against these United States, and as between them and other States of the Union, *all are entitled to the same equal and liberal construction in carrying the act of 1857 into effect.*

I therefore decide that *the lands* within Mississippi *taken by locations* in satisfaction of *Choctaw scrip* issued under the acts of congress of August 23, 1842, and August 3, 1846, *in stating and adjusting the 5 per cent accounts of that State*, are to be regarded as constituting a portion of the "several reservations under the various treaties with the Choctaw and Chickasaw Indians."

The papers submitted with your report of the 19th of June (June 19, 1857), and others since filed here in this case, are now returned to your office.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

COMMISSIONER OF THE GENERAL LAND OFFICE.

Under these two supplemental 5 per cent acts of Congress of March 2, 1855, and March 3, 1857, and under said decision of the said Secretary of the Interior, construing and declaring the meaning and intention thereof, and under prior 5 per cent acts of Congress, the public-land States in the Union on March 3, 1857 (California excepted) have been paid sums of money, as recited in the table transmitted with the letter of the Commissioner of the General Land Office of May 25, 1892, as follows:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., May 25, 1892.

SIR: Replying to your communication of the 9th instant, I have the honor to transmit herewith a table showing the amounts which have been paid to the various States named in your letter on account of the grant of 5 per cent of the net proceeds from the sales of public lands therein, from their organization to the present time, excepting only the States of Georgia, Kentucky, and Tennessee. The United States has never sold or possessed any public lands in these States.

Very respectfully,

THOS. H. CARTER, *Commissioner.*

Hon. R. F. PETTIGREW, *United States Senate.*

Statement showing the amounts accrued and paid to the following-named States as 5 per cent of the net proceeds of the sales of public and Indian lands.

States.	Period embraced by adjustments.	Total amount paid.
Florida	Mar. 3, 1845, to June 30, 1891	$110,562.73
Alabama	Sept. 1, 1819, to June 30, 1891	1,065,555.53
Mississippi	Dec. 1, 1817, to June 30, 1888	1,048,316.18
Louisiana	Jan. 1, 1812, to June 30, 1889	435,433.59
Arkansas	July 1, 1836, to June 30, 1888	263,064.55
Missouri	Jan. 1, 1821, to June 30, 1891	1,028,574.73
Indiana	Dec. 1, 1816, to Dec. 31, 1871	1,040,255.26
Iowa	Dec. 28, 1846, to Dec. 31, 1873	633,638.10
Illinois	Jan. 1, 1819, to Dec. 31, 1860	1,187,908.89
Ohio	June 30, 1802, to Dec. 31, 1871	1,027,677.00
Minnesota	May 11, 1858, to June 30, 1889	322,695.35
Michigan	July 1, 1836, to June 30, 1891	562,055.60
Wisconsin	May 29, 1848, to June 30, 1891	566,716.38
Grand total		9,292,453.89

The sums of money recited in the aforesaid table are separate from and independent of the sum of $28,101,644.91 deposited with them and other States under the act of Congress of June 23, 1836 (5 U. S. Stats. 55), as recited in the table and letter of the Treasurer of the United States on May 13, 1892, as follows:

TREASURY DEPARTMENT, OFFICE OF THE TREASURER,
Washington, D. C., May 13, 1892.

SIR: I am in receipt of your letter of the 9th instant, asking to be informed what sums of money, if any, have been loaned to the various States in the Union by the General Government and afterwards donated to said States since the organization of the Government.

In reply I beg to say that the sum of $28,101,644.91 was deposited with the various States under the provisions of section 13 of the act of June 23, 1836, first session Twenty-fourth Congress, chapter 115, page 55, Volume V, Statutes United States, and these provisions do not seem to have been changed by any subsequent action of Congress. The records do not show that any moneys have been donated to any of the States.

The States with which deposits were made and the respective amounts deposited therewith are as follows:

Maine	$955,838.25
New Hampshire	669,086.79
Vermont	669,086.79
Massachusetts	1,338,173.58
Connecticut	764,670.60
Rhode Island	382,335.30
New York	4,014,520.71
Pennsylvania	2,867,514.78
New Jersey	764,670.60
Ohio	2,007,260.34
Indiana	860,254.44
Illinois	477,919.14
Michigan	286,751.49
Delaware	286,751.49
Maryland	955,838.25
Virginia	2,198,427.99
North Carolina	1,433,757.39
South Carolina	1,051,422.09
Georgia	1,051,422.09
Alabama	669,086.79
Louisiana	477,919.14
Mississippi	382,335.30
Tennessee	1,433,757.39
Kentucky	1,433,757.39
Missouri	382,335.30
Arkansas	286,751.49
Total	28,101,644.91

Respectfully, yours,

E. H. NEBEKER, *Treasurer United States.*

Hon. R. F. PETTIGREW,
United States Senate, Washington, D. C.

This bill (S. 474), therefore, in so far as the same relates to lands included in Indian reservations or allotted to Indians, or located by Indian scrip, simply extends to all the public-land States admitted into the Union *subsequent to March 3, 1857*, including California, the identical provisions which Congress and the Interior Department have so declared rightfully belonged to all the public-land States *which were in the Union on March 3, 1857.*

It would therefore seem to logically, properly, and clearly follow that if Congress, in the exercise of its unquestioned and unquestionable right to dispose of the public lands in any of the public-land States, in a manner so as to include any lands thereof in military or other public reservations, established in any public-land State for the general use and benefit of all the people of all of the States of the Union, and thereby excludes such public lands from sale for cash, that the same principle and rule of computation ought to be adopted by Congress to equally and equitably apply to all lands embraced in any public reservation the same as when included and embraced in any Indian reservation.

LANDS DISPOSED OF FOR BOUNTY LAND WARRANTS AND SCRIP.

Prior to March 22, 1852, up to which date all military bounty land warrants were located by the warrantees thereof, and prior to which date they were not assignable, the effect of said 5 per cent fund, by virtue of the location of the public lands by military bounty land warrants, was not perceived by nor seriously felt by any of the public-land States.

But on March 22, 1852 (10 U. S. Stats., 3), Congress made all bounty land warrants which theretofore had been, and all which might thereafter be, issued under any law of the United States, not only assignable, but also made equally assignable all valid locations of land which theretofore had been or thereafter might be made with any of said warrants. Not only that, but in its said act, an act entitled "An act to make land warrants assignable, and for other purposes," Congress specially provided "that any person entitled to preemption rights to any lands shall be entitled to use said land warrant in payment for the same at the rate of $1.25 per acre for the quantity of land therein specified;" and in that same act Congress further provided "that when said warrant shall be located on lands which are subject to entry at a greater minimum than $1.25 per acre, the locator of said warrant shall pay to the United States in cash the difference between the value of such warrant at $1.25 per acre and the tract of land located on."

On March 3, 1855 (10 U. S. Stats., 701), Congress passed an act entitled "An act in addition to certain acts granting bounty land to certain officers and soldiers who had been engaged in the military service of the United States." The issue of land warrants under this last act has substantially equaled in acreage the total acreage represented by all military bounty land warrants issued under all the other acts of Congress enacted prior to March 3, 1855; and because of the fact that under said act of March 22, 1852, all military bounty land warrants had been made negotiable, assignable, and receivable in payment of public lands the same as cash, and because, further, of the fixed money value of $1.25 per acre so given them by Congress in said act, said military bounty land warrants became, were, and still continue to be a land-office currency and a legal tender for paying for any public lands situate anywhere in the United States, subject to sale for cash, or enterable under the preemption and commuted homestead laws of the United States.

To the extent of their issue, military bounty land warrants have displaced all other kinds of money theretofore used in payment for the public lands, and became and in fact are preferable to other kinds of currency, and cheaper than money, because they were and are sold for less than $1.25 per acre, and pro tanto they diminish the sales of the public lands for cash in all the public-land States, and pro tanto diminish the 5 per cent fund, *in money*, in every public-land State in which they have been located.

By these acts of Congress which fixed the legal value of land warrants at $1.25 per acre and made them assignable, negotiable, and receivable and received in payment for public lands the same as cash, Congress in effect did agree to redeem, and in fact has redeemed, the same at said legal value of $1.25 per acre, and thereby has in fact liquidated the national debts, pro tanto, by said warrants in lieu of money, and to the financial detriment of all of the public-land States in which the public lands were so disposed of for military bounty land warrants.

Bounty land warrants, like Indian reservations, have also been located in nearly all of the public-land States, but not equally and alike, *as to area*, in any thereof, but, on the contrary, said locations have been very unequal in area, because large areas have been located therewith in some public-land States, while small areas only have been located therewith in other public-land States, and in consequence of reasons probably as numerous as the warrant location themselves.

Your committee here submit a letter from the General Land Office,

dated January 31, 1896, addressed to Hon. R. F. Pettigrew, reciting the total acreage of the public lands located with military bounty land warrants up to June 30, 1894, etc.:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 31, 1896.

SIR: I am in receipt of your letter of the 27th ultimo, requesting this office to give you "the number of acres of land granted to the various States as swamp lands; also the number of acres located with military bounty land warrants."

In reply I offer you the following observations:

The swamp-land grant is an indefinite grant, not one of quantity, like the agricultural college, university, and other State endowment grants. By its terms it embraces * * * "*the whole* of those swamp and overflowed lands which may be or are found unfit for cultivation" * * * and as no definite method of ascertaining what lands were indeed swamp from those that were not of that character at the date of the grant has been established, the acreage of lands granted has never been determined. The report of this office for the year 1891, pages 58–61 and 198–218, contains estimates and other data made at different times on this subject, and I respectfully refer you to the same. According to the report for the year 1895 (not published), the selections under the swamp-land grants up to June 30 last aggregate 80,591,304.39 acres, the approvals to 60,145,813.50 acres, and the patents to 57,785,553.69 acres.

A compilation made from the various annual reports of this office shows substantially the following relative to locations with military bounty land warrants, viz:

	Acres.
Located prior to September 28, 1850, date of swamp-land grant	7,214,600
Located between September 28, 1850, and March 3, 1857	28,760,030
Located between March 3, 1857, and June 30, 1894	20,268,714
Total	56,243,344

As locations with other scrips are also the basis of swamp-land indemnity, I will state that from the *public domain*, pages 219 and 288, it appears that agricultural college scrip has been issued to the several States to the amount of 7,830,000 acres, and various other scrips to the amount of 2,893,034 acres. It is believed that nearly all of these scrips have been located.

Very respectfully,

E. F. BEST, *Assistant Commissioner.*

Hon. R. F. PETTIGREW,
United States Senate Chamber, Washington, D. C.

The effect, therefore, of such unequal locations of the public lands with military bounty land warrants in the several public-land States, has been and is, that those public-land States in which were located the maximum acreage of the public lands, with military bounty land warrants, have received the minimum amount of money and per contra those public-land States, in which were located the minimum acreage of the public lands with military bounty land warrants, have received the maximum amount in money, on account of said 5 per cent grant, according and in proportion to the respective areas of the several public-land States.

A result like this surely is not equitable, and Congress certainly, with a full knowledge of such facts and of such results, can not intend to permit a system of administration of law to continue so inequitable to the several public-land States as this has been found and is now declared by your committee to be.

In view of the concessions made by each of the public-land States to the United States in consideration of and as an equivalent for the 5 per cent grant made them by Congress, equity and fair dealing alike suggest that when the accounts between the several public-land States and the United States for this 5 per cent grant are officially stated and properly certified for payment, that they should include and apply equally to all dispositions of lands sold, not only for cash, but also to those disposed of for bounty land warrants.

So, too, in the matter of scrip, in relation to which Congress, in its several acts authorizing its issue, has made all thereof, except Indian scrip, assignable, negotiable, and receivable in payment for the public lands, either from the scripees or their assignees, the same as money and has given the same a fixed legal value in money, to wit, $1.25 per acre, and has constituted such scrip another land-office currency, and a legal tender with which to pay for the public lands just the same as cash.

Your committee, therefore, declare that the same principle and rule of computation, in all equity and fair dealing with the public-land States, should equally apply to all lands disposed of for scrip and military bounty land warrants just the same as the public lands disposed of for cash, and that said 5 per cent accounts, when officially stated and properly certified for payment, should also include and apply to all dispositions of lands made for scrip and land warrants at their legal value, fixed by Congress at $1.25 per acre, and that said 5 per cent should be computed thereon.

This 5 per cent computation has been one of constant friction between the United States and the several public-land States of long standing and still exists, and has continued to exist from 1858 till now, increasing in degree and volume ever since the effect of the legislation of Congress making scrip and land warrants assignable, negotiable, and receivable as money has been felt by them, and because making said warrants and scrip a land-office currency and a legal tender in payment of the public lands, the same as cash, has worked a financial injury to them under the 5 per cent compacts.

The effect of said legislation has been felt in some States to a greater degree than in others, but it has been felt in all the public-land States, differing only in degree.

This subject-matter has been heretofore brought to the attention of Congress, by petition, by memorial, by the public-land States through their State officials, by their duly constituted authorities, by their Senators and Representatives in Congress, by bills and by reports from their proper committees, wherein the reasons have been fully recited and developed why some general legislation should be enacted by Congress whereby to equalize, as near as may be, the several public-land States of the Union in the 5 per cent of the net proceeds of the disposition of the public lands by the United States, whether made for cash, for land warrants, or for scrip, so that the apportionment of money to each thereof on account of said 5 per cent grant shall be in direct proportion to the area of the public lands so disposed of therein, respectively, by the United States for cash, or warrants, or scrip, the latter to be computed at their legal value of $1.25 per acre, as fixed by Congress.

This subject-matter was duly considered in the Fifty-third Congress, not only by your committee, but also by the Public Lands Committee in the House, and reports from each were favorably made to accompany similar substitute bills proposed by your committee, and also by the House Public Lands Committee, for sundry similar bills referred to, each respectively, as evidenced by Senate Report No. 1043, made from your committee to accompany substitute Senate bill 2803, and House Report No. 1522 to accompany substitute House bill 8405, both made during the third session of the Fifty-third Congress.

In addition thereto there has been submitted to your committee during this session of the Fifty-fourth Congress, on behalf of the States of California, Iowa, Indiana, Illinois, Minnesota, Oregon, Nevada, Kansas, Colorado, Alabama, Idaho, and South Dakota, a carefully prepared

statement reciting part of the history of the past efforts made to secure from Congress legislation to remove this friction, to adjust this matter upon a basis of fairness, and to terminate contentions constantly arising in the Interior Department between the United States and some of the several public-land States.

Said statement contains a copy of said Senate Report No. 1043 and House Report No. 1522, Fifty-third Congress, third session, and sundry other Senate and House reports made on the same subject in prior Congresses, and embodying as it does other matters of value, is submitted herewith, and made a part hereof as an appendix hereto.

In addition thereto, your committee call attention to a very clear exposition, illustrative of the equity due the several public-land States in these premises, contained in the very able House Report No. 1571, Fifty-second Congress, first session, made by Hon. Thomas C. McRae, of Arkansas, then chairman of the House Committee on the Public Lands, to accompany House bill No. 9072, "to finally adjust and settle the claims of Arkansas and other States, under the swamp grant, and for other purposes," copy of which report is contained in the appendix hereto.

In that report, made June 3, 1892, it appears that the claim of the State of Arkansas then made, and demand therefor by her insisted upon, was not only for a credit of 5 per cent of the legal value of all lands located in that State with military bounty-land warrants and scrip, but also for a credit of 5 per cent of the legal value of all lands entered in that State under the homestead laws of the United States; and, in fact, has insisted upon a credit of 5 per cent of the legal value of all lands undisposed of within her borders in 1836, valued at $1.25 per acre, aggregating a sum of $922,404.91, claimed by her to be then due her by the United States as her 5 per cent fund.

On page 9 of said report Mr. McRae recites the claim and demand of the State of Arkansas, as to lands located with warrants and scrip and entered under the homestead laws, in words following:

> The State (Arkansas) also insists that, as a matter of common fairness, she ought to be credited with 5 per cent on lands entered under the homestead laws and located with military bounty-land warrants and scrip, estimated at the minimum price for Government lands—$1.25 per acre. In 1836, when the State was admitted into the Union, there was no way of disposing of public lands except by cash sale or for warrants and scrip.
>
> The homestead law was not passed until 1862, and the State, with such a contract as it made, does not think it just that the General Government should be allowed to adopt a policy that will have the effect to diminish the fund upon which she had a right to rely for the payment of the debt in question.

Neither this bill (S. 474) nor any one of the several separate bills which were before your committee goes, or seeks to go, as far as Arkansas then made claim, and her demand therefor insisted upon, to wit, that she ought to be credited with 5 per cent of all lands entered under the homestead laws of the United States, computed at $1.25 per acre, etc.; but the principle for which Arkansas *then* contended and insisted upon is identical with that *now* contemplated in this general bill, in so far as the same relates to lands located with bounty-land warrants and scrip, Arkansas, under the provisions of the 5 per cent Mississippi act of March 3, 1857, and under the said decision of March 20, 1858, of Mr. Secretary Thompson, having become legally entitled to a credit of 5 per cent of all lands in Indian reservations, and also 5 per cent on all locations of lands by Indian scrip which may have been made in that State, estimated at their legal value of $1.25 per acre, provided any such Indian reservations then existed, or any locations of lands by Indian scrip were made therein.

It is proper to here state that Arkansas, having *then* made claim and insisted on her demand for a credit of 5 per cent of the legal value of all lands in that State located with military bounty land warrants and scrip, and also 5 per cent of the legal value of all lands therein entered under the homestead laws of the United States, and in fact for 5 per cent of the legal value of all lands undisposed of within her borders in 1836 valued at $1.25 per acre, and having officially set forth the exact value to her in money of the 5 per cent arising from each of said claims, respectively, as recited in detail in certain tables annexed as appendixes to said House Report No. 1571, Fifty-second Congress, first session, did, under the terms or words of indefinite or general classification of "*all other claims and demands of whatever nature or character*," agree *on February 23, 1895*, to relinquish, release, quitclaim, and surrender to the United States all claims so nonclassified, together with other claims classified or specifically named or valued or tabulated or described or made certain, as so many set-offs or counterclaims, for the purpose of securing from Congress, by way of compromise, a settlement of mutual claims and accounts alleged to have theretofore existed between the United States and the State of Arkansas, which compromise settlement, *if enacted into law*, would *then* leave the State of Arkansas without any pecuniary interest in this substitute bill.

Reference is made to this 5 per cent claim of the State of Arkansas against the United States, by her so preferred, explained, computed, insisted upon, and agreed to be adjusted by compromise, because this case clearly illustrates the fact that on account of the failure of Congress to heretofore enact general legislation, whereby a general adjustment of all these 5 per cent matters between the United States and the public-land States, respectively, might have been had, the State of Arkansas *separately* sought, and each of the other public-land States in turn will most likely *separately* seek, to secure from Congress *separate* settlements and *separate* adjustments for their *separate* 5 per cent claims in *separate* or special bills, unless Congress shall timely enact some general legislation in regard thereto, and thereby obviate the necessity of special legislation therefor.

Your committee think that it must be conceded that some legislation by Congress is needed on this subject, but they also think that it is wise and preferable for Congress to enact *general* legislation thereon, under and by which all matters in any wise relating thereto may be fully, carefully, and legally inquired into by the proper bureaus and Departments of the Government, in order that equity may be duly and fairly administered, not to any one State, but to each and all of the public-land States of the Union alike, and upon a plane of legislation not of difference, but one of absolute and perfect equality, as near as may be, between the United States and each and all of the several public-land States.

The present chairman of the House Committee on the Public Lands, Hon. John F. Lacey, in his able House Report No. 1522, presented to the House during the Fifty-third Congress, to accompany a *general* 5 per cent bill somewhat similar to this bill (S. 474), said in support thereof as follows:

> As each and all of the several public-land States, when admitted into the Union, duly surrendered to the United States similar concessions, so, too, the consideration to them therefor from the United States should be, and has been, intended to be similar equivalents, to be measured and meted out to them respectively in proportion to the area of the public lands in each, and irrespective of the dates of their admission into the Union.
>
> The equality of the several States of the Union, as near as may be, has always been one of the fundamental principles of our Government to be found running through

all the legislation of Congress, especially in reference to the public lands and to their disposition, a principle now so well established and universally recognized by Congress that it intends that each and all of the several public-land States shall be treated alike, and that none thereof shall be discriminated against, or, as was well said by the honorable chairman of this committee on August 11, 1894, in his speech delivered on the floor of the House (Congressional Record, August 17, 1894, p. 10076), referring to the equality of all the States of the Union:

"If you name one State, you should name them all; I am opposed to special legislation for one section of the country that does not apply to another."

This bill therefore applies alike to and embraces each and all of the several public-land States; and said accounts are intended to include all public lands therein, and said 5 per cent is to be estimated upon all thereof, whether said lands have been or may be sold for cash, or located with, or sold, or disposed of, for land scrip or certificates or bounty land warrants.

In view of the fact that all land scrip or certificates issued by the Interior Department have been made assignable and receivable by the United States as, or as equivalent to, so much cash in the disposition of the public lands, whether surrendered therefor by those to whom they were originally issued or by their assignees, there does not seem to exist any valid reason why each and all of the several public-land States should not receive the full benefit of said 5 per cent, based upon these classes of disposition of the public lands, estimated at the same rate at which such scrip or certificates or warrants have been so issued and so received by the United States in full payment thereof, to wit, at a valuation of $1.25 per acre.

Congress, in authorizing the issuance of said land scrip or certificates or warrants, and in making and declaring all thereof equivalent to and receivable as so much money in the disposition of the public lands, did thereby not only diminish and continues to diminish pro tanto the available area of the public lands to be disposed of for cash, and which otherwise would have been or would be disposed of for cash, and upon which said 5 per cent would have or would be so duly estimated; but in the hands of all holders thereof such land scrip or certificates became property, not only for safe investment, but even for profitable speculation, to an extent such as to render it a financial consideration to any person contemplating locating or purchasing any of the public lands locatable therewith to purchase and use same for that object, because such certificates or scrip for such land use are made cheaper than money, they being a full legal tender in payment for public lands, and received the same as cash.

A legal wrong and financial loss have therefore been and will continue to be inflicted upon all the public-land States unless said 5 per cent accounts include and be estimated upon these classes of the disposition of the public lands the same as upon actual cash sales.

This bill also applies to and embraces, and said accounts when so stated, certified, and paid are intended to include, all public land located with or disposed of for bounty-land warrants.

This provision of this bill was heretofore brought to the favorable attention of Congress in reports made from the Committees on the Public Lands in both the House and Senate, as recited in House Report No. 707, Forty-fifth Congress, second session, and in Senate Report No. 193, Forty-seventh Congress, first session, copies whereof are submitted herewith in an appendix hereto.

A Senate bill in harmony with the recommendations in said Senate report passed the Senate May 19, 1882, but upon a motion for reconsideration was recalled from the House, and does not seem to have been thereafter acted upon by either the Senate or the House.

Congress, in its act approved March 22, 1852, made all bounty-land warrants receivable from the warrantees as so much money in the location and disposition generally of the public lands subject to location and disposal therewith, and thereafter made the same assignable, and in the hands of such assignees made them also receivable and of the same value for a similar use as when surrendered by the warrantees themselves, to wit, as cash, at $1.25.

Hence, reasons similar to those hereinbefore recited, why said accounts between the United States and the several public-land States, when so stated, certified, and paid, should include all public lands disposed of by land scrip or certificates, should, in the opinion of your committee, apply equally well to all public lands which heretofore have been, or which hereafter may be, disposed of for bounty-land warrants surrendered in the payment or location thereof.

Attention is called to the fact that the Interior Department, in construing section 3480, United States Revised Statutes, regards and treats all claims for the issuance of bounty-land warrants tantamount to claims for the payment of so much money, and to an exteut such that it now refuses to issue bounty-land warrants to any persons by it believed to be under the ban of said section in so far as regards claims for payment of money are concerned, thus treating bounty-land warrants as equivalent to, in fact as so much money.

To remedy complaints made in said matter, this House, on October 17, 1893, passed a bill to repeal in part and to limit said section 3480, by excluding from its provision all matters relating to the issuance of bounty-land warrants.

Your committee concur in the reasons recited, conclusions reached, and recommendations contained in that report, and in Senate Report No. 1043, Fifty-third Congress, third session, made from your committee, and now confirm the same; and believing, as your committee does, that this bill (S. 474) will provide a remedy adequate for all the matters heretofore complained of by so many of the public-land States of the Union, now, therefore, recommend that said bill do pass.

APPENDIX.

Statement in support of Senate bills Nos. 49, 474, 1422, and House bills Nos. 295, 1208, 1240, and 3632, "fixing the times when, regulating the manner in which, and declaring the character of the accounts between the United States and the several public-land States, relative to the net proceeds of the sales and other disposition of the public lands made and to be made therein by the United States, which shall hereafter be stated and certified to the Treasury Department for payment." And House bills Nos. 33, 3269, and 3633, "granting 5 per cent of the land sales on military land warrants to the public-land States, and for other purposes, and to grant and settle with the public-land States 5 per cent of sales and warrant locations."

The Committee on the Public Lands, United States Senate and House of Representatives:

The title to each of said Senate bills No. 49, No. 474, No. 1422, and House bills No. 295, No. 1208, No. 1240, No. 3632, is the title given by your honorable Senate Committee on Public Lands to an original bill, to wit, Senate bill No. 2803, reported favorably therefrom, during the Fifty-third Congress by Hon. John Martin, Senator from Kansas, accompanied by Senate Report No. 1043, made by him to the Senate on March 2, 1895, and proposed by your Senate committee as a substitute proper to be adopted by the Senate for sundry other Senate bills referred to your Senate committee, all seeking to secure legislation in behalf of a measure then and theretofore pending before the Senate in sundry forms, submitted to it by Senators from public-land States, each and all seeking to secure a similar result, to wit:

To equalize the several public-land States of the Union, as near as may be, in the 5 per centum of the net proceeds of the sales, locations, and dispositions of the public lands, made therein respectively by the United States for cash, land warrants, scrip, etc., or by any of the other methods recited in any of said bills, the apportionment of money to each State being in direct proportion to the area of the public lands so disposed of therein by warrants, scrip, etc.

The title to each of said House bills No. 33, No. 3269, No. 3633, is substantially the title given by your House Committee on the Public Lands to an original bill, to wit, H. R. No. 8405, reported favorably therefrom during the Fifty-third Congress by Hon. John F. Lacey, now chairman of your House committee, accompanied by House Report No. 1552, made by him to the House January 8, 1895, proposed by your House committee as a substitute proper to be adopted by the House for sundry other House bills referred to your House committee, all seeking to secure legislation in behalf of a measure then and theretofore pending before the House in sundry forms, submitted to it by Representatives from public-land States, each and all seeking to secure a similar result, to wit:

To equalize the several public-land States of the Union, as near as may be, in the 5 per cent of the net proceeds of the sales, locations, and dispositions of the public lands made therein respectively by the United States for cash and for military-bounty land warrants, the apportionment of money to each State being in direct proportion to the area of the public lands so disposed of therein for land warrants, etc.

Substantial copies of all these Senate and House bills will be found printed on pages 10, 11, and 14 of said Senate Report No. 1043, Fifty-third Congress, third session.

It will, therefore, be readily perceived that Senate bills No. 49, No. 474, and No. 1422 and House bills No. 295, No. 1208, No. 1240, and No. 3632 embody, cover, and fully provide for all the matters recited in and contemplated by House bills No. 33, No. 3269, and No. 3633.

It has frequently been declared and always maintained that the public domain is a common possession of all the people of all the States of the Union, and that this domain and the proceeds thereof should be apportioned equally; or so that all the people of all the States may be enabled to enjoy the use and benefit of all thereof equally and alike.

Questions relating to the proper and equitable apportionment of the proceeds of the public lands, no less than those relating to the equitable and beneficent manner or method of the disposition of the lands themselves, have heretofore engaged the serious attention of Congress from April 30, 1802, the date of the admission of Ohio, the first public-land State, to January 4, 1896, the date of the admission of Utah, the last public-land State, into the Union.

But all these questions have had more serious attention in Congress, and by its committees on the public lands during the forty years last past, than ever theretofore.

When the public-land States were few in number, their population sparse, their representation in Congress small, and the disposition of the public lands for bounty land warrants or by methods other than for money or cash had not acquired the proportions as now shown by the public-land records they reached during the forty years last past, the 5 per cent fund to many of the public-land States, prior to 1855, was comparatively a mere bagatelle. Prior to 1855 no question of serious conflict, so far as we now know, seems to have arisen between any of the public-land States and the executive authorities of the United States as to the proper construction to be given to the 5 per cent grant made by Congress to the several public-land States, under and by virtue of their respective compacts or as contemplated in their acts of admission, respectively, into the Union, so far as the sales for cash were concerned.

But in 1855, when computing said 5 per cent grant, inuring to the public-land States, wherein large Indian reservations had been duly established, which reservations necessarily withdrew from sale for cash large areas of the most valuable portions of the public domain situate therein, and all easily disposable for cash, and wherein it was found that the Commissioner of the General Land Office, the Secretary of the Interior concurring therein, failed and refused to treat the lands embraced in said Indian reservations as "lands disposed of," upon which to compute and include said 5 per cent as inuring to said public-land States, and, as they alleged, was intended and contemplated by their said compacts and acts of admission into the Union, petition was duly made to Congress to provide a remedy in said premises, by a legislative enactment either to supplement or explain or legislatively declare the meaning of said 5 per cent grant, in so far as Indian resevations were concerned.

Alabama seems to have taken the lead in the column of States petitioning in these particular premises. Cognizance will be duly taken of the important fact that at the date when Alabama so petitioned Congress, to wit, January 15, 1855, the military bounty land warrant act of March 3, 1855 (10 U. S. Stat., 701), had not passed, and it was that act under which the issue of military bounty land warrants took place which in acreage far exceeded that of the total issue under all the military bounty land warrant acts of February 11, 1847, September 28, 1850, March 22, 1852, and which in fact quite equaled in acreage that of all the military bounty land warrants ever issued for services in the Revolutionary war under the act of September 16, 1776; act of February 18, 1801; act of March 3, 1803; and including those issued for services in the war of 1812 under the act of May 6, 1812; act of March 5, 1816; act of July 27, 1842; and also including those issued for services in the Mexican war under the aforesaid act of February 11, 1847; act of September 28, 1850; act of March 22, 1852.

So that Alabama (nor any of the public-land States), prior to March 3, 1855, had not seemingly any excessive complaint, if any, to make in reference to military bounty land warrants locations made therein.

In view of the fact that much time necessarily elapsed between the dates of actual issue and the dates of the acts authorizing the issue, and also between the dates of the issue and the dates of actual location of said land warrants, the effect of such location upon said 5 per cent fund in all the public-land States was slow in being perceived. The fact appears to be that the effect of warrant locations upon said 5 per cent fund was not actually perceived until about September 7, 1858, on which date the State of Iowa, through her then governor, Hon. R. P. Lowe, made the first complaint and the first application to the Interior Department to include in her 5 per cent grant and in a statement of an account therefor all land warrant locations theretofore made therein, and which application was denied by the Secretary of the Interior, Hon. J. Thompson, on September 20, 1858. While complaints in these special premises as to Indian reservations may possibly have been made to the executive authorities of the United States by some of the public-land States prior to 1855, yet the fact appears to be that complaint was made by Alabama to Congress in regard thereto as early as the second session of the Thirty-third Congress, to wit, on January 15, 1855, forty-one years ago, on which date Hon. C. C. Clay, then a Senator from the State of Alabama, introduced in the Senate, Senate bill No. 543, a bill "to settle certain accounts between the United States and the State of Alabama."

This bill was duly referred to your Senate Committee on Public Lands, from which, without amendment and without any written report, it was favorably reported by Hon. Robert W. Johnson, then a Senator from the State of Arkansas, passed the Senate on February 8, 1855, passed the House on February 28, 1855, was signed on March 2, 1855, and became, and since then has been and is now the well-known Alabama 5 per cent act of March 2, 1855 (10 U. S. Stats., 630), and is as follows, to wit: "An act entitled 'An act to settle certain accounts between the United States and the State of Alabama.'"

"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."

Senator Johnson, when reporting from your Senate committee said Senate bill No. 543, Thirty-third Congress, second session, said in reference thereto "it is in accordance with the opinion of the Commissioner of Public Lands," and upon that verbal statement, which constituted the only report made to the Senate thereon, said bill passed the Senate unanimously.

But the State of Mississippi, in so far as the same related to the Indian reservations therein, was in a condition quite identical with that of Alabama, due to causes similar to those of which Alabama complained, and sought and secured from Congress the remedy aforesaid.

Very soon after the passage of said Alabama 5 per cent act of March 2, 1855, in fact in the very next year, and in the next Congress, to wit, on February 4, 1856, and in the Thirty-fourth Congress the State of Mississippi also complained, and petitioned Congress in reference to a similar failure and refusal of the honorable Commissioner of General Land Office and the honorable Secretary of the Interior, to wit, that when computing and stating her 5 per cent account they failed to include therein the lands embraced within the Indian reservations in that State, and failed to treat the same as "lands disposed of" and upon which that State claimed that they should compute and state her 5 per cent account.

Wherefore, on February 4, 1856, Hon. Albert G. Brown, then a Senator from the State of Mississippi, introduced in the Senate the Senate bill No. 4, a bill "to settle certain accounts between the United States and the State of Mississippi," which bill was referred to your Senate Committee on Public Lands, from which on April 29, 1856, it was favorably reported by Hon. Charles E. Stuart, then a Senator from the State of Michigan, without any written report, but with a verbal statement that your Senate Committee on Public Lands recommended an amendment to said bill and also an amendment to the title thereto.

The bill itself was accordingly amended by adding thereto an additional section, to wit:

"SECTION 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 amounts as shall thus be found due, estimating all lands and permanent reservations at $1.25 per acre."

The title to said bill was also accordingly amended so as to read: "To settle certain accounts between the United States and the State of Mississippi *and other States*."

Said bill and the title thereto so amended passed the Senate on May 8, 1856, and thereafter duly passed the House (wherein a similar bill, to wit, H. R. No. 21, was then pending), became a law on March 3, 1857, and which law became and is now the well-known Mississippi 5 per cent act of March 3, 1857 (11 U. S. Stats., 200), and is as follows, to wit, an act entitled "An act to settle certain accounts between the United States and the State of Mississippi and other States.

"*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 five 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."

Under this legislation of Congress of March 2, 1855, and of March 3, 1857, supplementing, explaining, and declaring the meaning of its prior legislation relating to the 5 per cent grant made to the public-land States admitted into the Union prior to March 3, 1857, in so far as cash sales and Indian reservations were concerned, there have been credited to the States entitled thereto, California alone excepted, on the books of the Treasury Department up to June 30, 1891, and duly paid, an amount of money aggregating the sum of $9,292,453.80, as shown by a table, certified on May 25, 1892, by the Hon. Thomas H. Carter, then Commissioner of the General Land Office, now a Senator from Montana, and a member of your honorable Senate committee, and is as follows, to wit:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., May 25, 1892.

SIR: Replying to your communication of the 9th instant, I have the honor to transmit herewith a table showing the amounts which have been paid to the various States named in your letter on account of the grant of 5 per cent of the net proceeds from the sales of public lands therein, from their organization to the present time, excepting only the States of Georgia, Kentucky, and Tennessee. The United States has never sold or possessed any public lands in these States.

Very respectfully,

THOS. H. CARTER, *Commissioner.*

Hon. R. F. PETTIGREW,
United States Senate.

Statement showing the amounts accrued and paid to the following-named States as 5 per cent of the net proceeds of the sales of public and Indian lands.

State.	Period embraced by adjustments.	Total amount paid.
Florida	Mar. 3, 1845, to June 30, 1891	$110, 562. 73
Alabama	Sept. 1, 1819, to June 30, 1891	1, 065, 555. 53
Mississippi	Dec. 1, 1817, to June 30, 1888	1, 048, 316. 18
Louisiana	Jan. 1, 1812, to June 30, 1889	435, 433. 59
Arkansas	July 1, 1836, to June 30, 1888	263, 064. 55
Missouri	Jan. 1, 1821, to June 30, 1891	1, 028, 574. 73
Indiana	Dec. 1, 1816, to Dec. 31, 1871	1, 040, 255. 26
Iowa	Dec. 28, 1846, to Dec. 31, 1873	633, 638. 10
Illinois	Jan. 1, 1819, to Dec. 31, 1860	1, 187, 908. 89
Ohio	June 30, 1802, to Dec. 31, 1871	1, 027, 677. 00
Minnesota	May 11, 1858, to June 30, 1889	322, 695. 35
Michigan	July 1, 1836, to June 30, 1891	562, 055. 60
Wisconsin	May 29, 1848, to June 30, 1891	566, 716. 38
Grand total		9, 292, 453. 89

Other tables relating to this and to other branches of this same subject-matter are printed in an appendix hereto.

While Congress intended, no doubt, that its aforesaid legislation of March 3, 1857, should apply equally and alike to each and every public-land State in the Union on that date, in which public lands and Indian reservations were then situate, in so far as the public lands therein respectively had theretofore been disposed of by the United States for cash and by Indian reservations, and upon which 5 per cent could and after that date should be computed, yet the fact is that the honorable Commissioner of the General Land Office has ever heretofore made the State of California an exception to said general legislation, but wherein Congress did not make any exception whatsoever.

Therefore, from April 22, 1850, as recited in Senate Mis. Doc. 105, Thirty-first Congress, first session, being the ordinance of the convention assembled to form a constitution for the State of California prior to her admission into the Union down to the present time, California has been and still is a petitioner before Congress, asking either that the provisions of said 5 per cent Mississippi act or some similar act be extended to her, and that she be made no exception to this class of legislation by Congress, or that she may be placed upon the same plane of equality as that heretofore occupied and enjoyed or which hereafter may be occupied and enjoyed by all the other public-land States, as to said 5 per cent grant, from which plane California is to-day the only public-land State in the Union which has been heretofore excluded, *but done by Executive construction only.*

Upon the admission, therefore, of new public-land States into the Union, subsequent to March 3, 1857, efforts have been continuously made up to date, by the

delegations in Congress from such new public-land States, by bills introduced therefor, to have the provisions of said act of March 3, 1857, extended to California and to all new States admitted into the Union subsequent to March 3, 1857, but such efforts, though favorably recommended, have not borne any good results in that behalf up to the present time.

To illustrate this declaration, attention is called to the fact that even now there are pending before your Senate Committee on Public Lands at least three bills seeking to secure such a result, to wit, to explain or to extend the provisions of said 5 per cent Mississippi act to California and to all the public-land States admitted into the Union subsequent to March 3, 1857.

These bills are as follows, to wit: Senate bill No. 50, introduced by Senator Mitchell, of Oregon; Senate bill No. 407, introduced by Senator Teller, of Colorado; Senate bill No. 469, introduced by Senator Squire, of Washington, copies of which bills are as follows, to wit:

[S. 50. Fifty-fourth Congress, first session. In the Senate of the United States. December 3, 1895. Mr. Mitchell, of Oregon, introduced the following bill; which was read twice and referred to the Committee on Public Lands.]

[S. 407. In the Senate of the United States. December 4, 1895. Mr. Teller introduced the following bill; which was read twice and referred to the Committee on Public Lands.]

A BILL explanatory of an act entitled "An act to settle certain accounts between the United States and the State of Mississippi and other States," and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to settle certain accounts between the United States and the State of Mississippi and other States," approved March third, eighteen hundred and fifty-seven, shall be, and is hereby declared to be, applicable to California and to the States admitted into the Union since March third, eighteen hundred and fifty-seven, namely: Minnesota, Oregon, Kansas, Nebraska, Nevada, Colorado, South Dakota, North Dakota, Washington, Montana, Wyoming, and Idaho (and now Utah), the same as it applied to States previously admitted. The said act shall be construed as embracing all lands in former and present Indian reservations in each of said States, and the Commissioner of the General Land Office shall state an account between the United States and each of the said States, estimating all such lands and reservations at one dollar and twenty-five cents per acre, and shall certify the same to the Secretary of the Treasury for settlement, to be paid out of any money in the Treasury not otherwise appropriated.

[S. 469. Fifty-fourth Congress, first session. In the Senate of the United States. December 5, 1895. Mr. Squire introduced the following bill; which was read twice and referred to the Committee on Public Lands.]

A BILL granting to the State of Washington five per centum of the net proceeds of the sales of public lands in that State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is hereby, granted to the State of Washington five per centum of the net proceeds of the sales of public lands which have been made by the United States, or may hereafter be made, in said State. This act shall also embrace and apply to all lands in former and in present Indian and half-breed Indian reservations in said State; and the Commissioner of the General Land Office shall state an account between the United States and said State for the five per centum of the net proceeds of the cash sales of the public lands made therein, respectively, and in so doing he shall estimate all lands in all former and present Indian and half-breed Indian reservations in said State, and all lands sold for or located with bounty land warrants or Indian half-breed scrip, or granted to any Indian and exempt from taxation therein, at one dollar and twenty-five cents per acre; and he shall certify to the proper accounting officers of the Treasury for settlement the amounts so ascertained; and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, pay to said State the amount so found due, the same to be expended for or dedicated to such uses and purposes as the legislature thereof may hereafter designate.

In fact, Senator Squire's said bill No. 469 proposes to do exclusively for the State of Washington that which Senate bills No. 49, No. 474, No. 1422, No. 50, and No. 407, and said House bills No. 295, No. 1208, No. 1240, No. 3632 propose to do for each and all of the public-land States, including also the State of Washington.

There not being any questions at issue between the United States and any of the several public-land States (except those with the State of California) as to 5 per cent of the *cash sales* of the public lands made therein respectively by the United

States, and the foregoing recitals being deemed fully explanatory of the equity of all the public-land States admitted into the Union since March 3, 1857, including California, in so far as Indian, half-breed Indian, and other reservations and lands granted or allotted to Indians are concerned, leaves it now necessary only to refer in this statement to the equity of all the public-land States for 5 per cent of public lands sold, located, or disposed of by *bounty land warrants, land certificates, scrip, etc.*

SALES, LOCATIONS, AND DISPOSITIONS OF THE PUBLIC LANDS FOR BOUNTY LAND WARRANTS AND BOUNTY LAND CERTIFICATES.

So much has been heretofore said, so often said, so well said, and said far better by both of your own committees on this feature and on other features of all of these bills than we could probably now say it, that we prefer to reproduce your own language, contained in sundry reports made by your respective committees to the Senate and to the House in previous Congresses, upon bills, favorably recommending general legislation on this 5 per cent matter to be made applicable to each and all of the public-land States equally and alike, and without any exception whatever.

Wherefore we print in the appendix hereto copies of certain of your reports as follows, to wit:

Senate Report No. 121, Forty-sixth Congress, second session.
Senate Report No. 193, Forty-seventh Congress, first session.
Senate Report No. 775, Fifty-second Congress, first session.
Senate Report No. 1043, Fifty-third Congress, third session.
House Report No. 707, Forty-fifth Congress, second session.
House Report No. 345, Forty-seventh Congress, first session.
House Report No. 1552, Fifty-third Congress, third session.

Senate Report No. 121, Forty-sixth Congress, second session, being identical with Senate Report No. 193, Forty-seventh Congress, first session, wherefore copy of one only thereof appears in said appendix.

All the recitals in your said reports, in so far as the same relate to sales, locations, and dispositions of the public lands for *bounty land warrants*, have been in all things duly concurred in by Mr. Justice Miller and by Mr. Justice Field, of the United States Supreme Court, in the "Iowa and Illinois 5 per cent cases (110 U. S., 485)," in language so strong, so appropriate, so apposite to this statement, and made in support of equities similar to those contemplated by all these bills, that the force of their argument and the high character of the Judges who submitted same justify us to herein insert the whole thereof, as follows, to wit:

"Mr. Justice Miller, with whom concurred Mr. Justice Field, dissenting:

"I do not concur in the judgment of the court in this case, if that can be called a judgment in which the court, declining to consider the question of its jurisdiction, decides that if it had jurisdiction the petitioners make no case for relief.

"I doubt very much whether this court has jurisdiction in a suit by a State to establish an obligation of the United States to pay to the State a sum of money, by compelling one of the auditing officers of the United States to state an account under the direction of the court according to a rule which the court may prescribe to him.

"I discuss this matter no further, but to observe that if the court has no such jurisdiction its opinion is of no value beyond the force of its argument and the weight of character of the judges who concur in it.

"The opinion concedes that the acts of Congress under which the States of Illinois and Iowa were admitted into the Union, and the acceptance of their provisions, are compacts. If any less sanctity is due to these provisions by calling the matter a compact instead of a contract it is not perceptible to me. It is not denied that the State and the United States were capable of contracting. It is not denied in the opinion that they *did* contract. Taking the case of the State of Iowa, the sixth section of the act for her admission (5 Statutes, 789) says that, in lieu of the propositions submitted to Congress by the convention of the Territory, which are rejected, the following propositions are hereby offered to the legislature of the State of Iowa, which, if accepted, shall be obligatory on the United States. They were accepted. The propositions were the result of a negotiation, of items accepted and others rejected in that negotiation. It was a fair bargain between competent parties. The fifth item of this contract is as follows:

"'*Fifth.* That five per cent of the net proceeds of sales of all public lands lying within the said State, which have been or shall be sold by Congress, from and after the admission of said State, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said State, as the legislature may direct: *Provided*, That the five foregoing propositions herein offered are on the condition that the legislature of the said State, by virtue of the powers conferred upon it by the convention which framed the constitution of the said State,

shall provide by an ordinance, irrevocable without the consent of the United States, that the said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers thereof; and that no tax shall be imposed on lands the property of the United States, and in no case shall nonresident proprietors be taxed higher than residents; and that the bounty lands granted or hereafter to be granted for military services during the late war shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for the State, county, or township, or any other purpose, for the term of three years from and after the dates of the patents, respectively.

"'Approved March 3d, 1845.'

"The legal expression of this contract is that the State of Iowa has the right to tax all the lands of the Government as soon as the Government sells them. She may have other rights with regard to the disposal of these lands by the United States, as, for instance, in regard to title to aliens or corporations in perpetuity unacceptable to the State.

"Now, in consideration that she agrees to make no interference with the primary disposal of the soil or any regulations of Congress for that purpose, that she will tax no nonresident in regard to said lands higher than she does residents, that she will impose no tax on the property of the United States, and no tax on lands granted for military services for three years after the dates of the patents, either for State, county, or township purposes, there shall be paid to the State five per cent of the net proceeds of sales of all public lands lying within the State which have been or shall be sold by Congress from and after the admission of the State.

"The question raised here is whether the word *sales* in this act of Congress is limited to sales made for money, or whether lands used in payment for the services of her military and naval officers and soldiers are sold within the meaning of the statute.

"It seems probable that a false impression has been made by calling these latter bounties; and it is true that in some cases where, *after* the service has been rendered, Congress has granted lands as gratuity to the soldier or sailor, it is a bounty, and is not a sale in fact, or within the meaning of the statute. But the large body of these land warrants were issued under statutes, which, in calling the men into service and prescribing their compensation in advance, declared that for so many months' service they should, in addition to their monthly cash payment, receive so many acres of land, according to the length of their service.

"This was as much a part of the pay which the Government agreed to make for his services as the cash payment. And to show that the Government so considered it, a reference to the acts of 1847, to raise troops for the Mexican war, under which the largest part of the sales in Iowa was made, is all that is necessary.

"The 9th section of that act (9th Stat., 125) authorizes the soldier to receive, at his option, a land warrant for one hundred and sixty acres, to be located on any public lands, or Treasury scrip for $100; such scrip to be redeemable at the pleasure of the Government, and to bear interest at six per cent per annum until paid.

"It was also enacted that those land warrants should be received at the land office in payment of any Congressional subdivision of the public land, at the rate of $1.25 per acre, the purchaser paying any balance above the value of the land warrant in cash. (9 Stat., 332.)

"And still later it was enacted that a person having a preemption right to a tract of land should be entitled to use any such land warrant in payment of the same, at the rate of $1.25 per acre.

"That they might be thus freely used in the purchase of the public lands, these warrants were by statute early made assignable, and it may be safely said that for years the largest part of the public lands sold by the land officers were paid for by these land warrants.

"Blackstone defines a sale to be 'a transmutation of property from one man to another in consideration of some price.' (2 Blackstone, 446.) And Kent says 'a sale is a contract for the transfer of property from one person to another for valuable consideration, and three things are requisite to its validity, viz: the thing sold, which is the object of the contract, the price, and the consent of the contracting parties.' (2 Kent, 468.) And though there is some controversy whether, in reference to personal property, the consideration is not to be paid in money, the use of the old phrase 'bargain and sale' in regard to land, never required that the consideration should be exclusively a money payment. (2 Bouvier's Law Dictionary, 494, clause 6, Sale.)

"But it surely was never contemplated in this compact between a State of the Union and the General Government that if the Government could dispose of her public lands and secure their full price in other valuable consideration than money,

the State should thus be *cheated* out of the five per cent of the value which she had a right to expect.

"The United States made these warrants the equivalent of money in purchase of these lands by the holders. They gave them the equivalent purchasing power of money and the quality of negotiability, and they gave the soldier the option of a Treasury draft or a land warrant when he had rendered the service.

"It is the *merest quibble* to say that where a man purchased a quarter section of the public lands with one of these warrants the Government had not sold him that land at a dollar and a quarter an acre.

"No importance can be attached to the previous construction of the Government. The amount in controversy attracted no attention until the location of the land warrants for service in the Mexican war, and the lands in the Territories were not subject to the five per cent. As early as 1858, when the locations under the Mexican war claims were thickest, Governor Lowe, of Iowa, asserted this right in a letter to Mr. Thompson, Secretary of the Interior. This was immediately after the act of 1857, making it the duty of the Land Commissioner to state these accounts. The claim has been urged by that State ever since, except during the disastrous period of the civil war; and the Senate of the United States passed a law recognizing the justice of the claim and that of other States and ordering their payment during the last Congress, but, on a motion to reconsider, it was tied up and has not been acted on since.

"I entertain no doubt of the legal as well as the moral obligation of the United States to pay to the States concerned the five per cent on these sales which they have thus far withheld.

"Mr. JUSTICE FIELD concurs with me in this opinion."

SALES, LOCATIONS, AND DISPOSITION OF THE PUBLIC LANDS FOR LAND SCRIP, CERTIFICATES, AGRICULTURAL SCRIP, ETC.

The word *scrip* is generic and of which genus Congress has by law heretofore duly authorized the issue of sundry species.

In this connection special attention is called to the important fact that on March 20, 1858, six months prior to the date, September 20, 1858, of his adverse decision upon the application of the governor of the State of Iowa, made to him to have her 5 per cent computed upon military bounty land warrant locations, etc., the Secretary of the Interior, Hon. Jacob Thompson, of Mississippi, held and decided that "all lands within the State of Mississippi taken by locations in satisfaction of *Choctaw scrip*, under the acts of Congress of August 23, 1842, and August 3, 1846, in adjusting the 5 per cent account of that State, are to be regarded as constituting a portion of the several Indian reservations under the various treaties with the Choctaw and Chickasaw Indians," and in said decision said Secretary further held that "other States of the Union are all entitled to the same equal and liberal construction in carrying the aforesaid 5 per cent Mississippi act of March 3, 1857, into effect." Based upon said 5 per cent Mississippi act of March 3, 1857, and upon said decision of March 20, 1858, of said Secretary, all the public-land States in the Union on March 3, 1857 (except California), had their 5 per cent accounts duly stated, so as to wholly include all Indian reservations and all locations of land made by Indian scrip therein, respectively, and all of same were fully paid to said States. These facts were called to the attention of the Secretary of the Interior, Hon. John W. Noble, on February 7, 1892, in a letter addressed him on that date by the Commissioner of the General Land Office, Hon. Thomas H. Carter, and printed in the appendix hereto.

The principle of including all Indian scrip locations in the statement of the 5 per cent accounts between the United States and the several public-land States in the Union, on March 3, 1857 (except California), and computing said 5 per cent thereon just the same as upon cash sales and lands actually within Indian reservations, having been declared to be the law of said 5 per cent Mississippi act of March 3, 1857, it is difficult to see why the same principle should not be now extended equally and alike to all public land States admitted into the Union subsequent to March 3, 1857, including California. And if to Indian scrip, why then should not said principle equally and alike be made also applicable to every other kind of scrip, for a distinction in name in this case does not involve any difference in principle.

The equity of the claim and demand of the several public-land States in all these premises become only emphasized when attention is called to the notorious fact that all scripees and warrantees, and their assignees, invariably hunt up and generally find the most desirable and choice portions of the public lands upon which to locate said scrip and warrants—lands which otherwise would readily sell for cash at $1.25 per acre.

All of said scrip, irrespective of the name and acreage thereof (except all said Indian and half-breed Indian scrip), like all military bounty land warrants, have by law been made assignable, transferable, receivable, and received by the United States land officers in full payment for public lands at the rate of $1.25 per acre, and

patents for all public lands disposed of by the United States therefor have been and are being patented by the United States the same as if said lands had been disposed of for cash.

Section No. 2238 of the United States Revised Statutes reads thus, to wit:

"Registers and receivers, in addition to their salaries, shall be allowed each the following fees and commissions, namely:

* * * * * * *

Fifth. For locating military bounty land warrants issued since the eleventh day of February, eighteen hundred and forty-seven, and for locating agricultural college land scrip, the same commission, to be paid by the holder or assignee of each warrant or scrip, as is allowed for *sales of the public lands for cash, at the rate of one dollar and twenty-five cents per acre.*

The principle contended for herein, therefore, is, that where the United States have by law agreed to dispose of the public lands, and in consideration and in full payment therefor has also at the same time agreed to receive and accept land warrants, land scrip, agricultural college and all other kinds of scrip, and certificates of deposit of its own issue, as money and in lieu of money, and thereby has, as it were, redeemed all such issue at the rate of $1.25 per acre, that in all such cases equity not only suggests but in fact demands that the United States should credit to the public-land States in which the public lands so disposed of are situate, 5 per cent of $1.25 for each and every acre so sold, located, or disposed of for said warrants, scrip, etc., and that is what is contended for in said bills.

Said bills, in fact, in effect and in intendment contemplate placing all sales, locations, and dispositions of the public lands, whether made for warrants or scrip, etc., on one and the same equal plane with those made for cash, by declaring the value of each acre thereof to be $1.25 per acre, and to credit each of the public-land States respectively, in which public lands are situated and so disposed of, with 5 per cent of said $1.25 per acre the same as if they were disposed of for cash.

Wherefore, in view of the compacts which the United States Supreme Court (110 U. S., 485) concedes exists between the United States and the several public-land States, and which compacts Mr. Justice Miller and Mr. Justice Field declared to be contracts, we respectfully submit that equity demands that if the United States in the exercise of its undoubted option as to the kind of payment it will receive for the sale of the public lands, when actually disposing of the same, prefers to accept warrants, scrip, etc., in full payment therefor, and in lieu or in the place of and as equivalent to money, and thereby in fact, in effect, and in intention redeems said warrants, scrip, etc., at the rate of $1.25 per acre, that therefore when computing and stating the 5 per cent accounts between the United States and the several public-land States, in which public lands so disposed of for warrants, scrip, etc., are situate, that the proper computing and accounting officers of the United States should also include in such statements of accounts all sales so made by warrants, scrip, etc., calculated at their legal value of $1.25 per acre therefor, and should credit such public-land States with 5 per cent of $1.25 per acre for all such sales so made for warrants, scrip, etc., and pay the same to the 5 per cent public-land States as in case of other sales made therein by the United States for cash.

These bills, therefore, provide for a measure in which all the States of the Union should be and in our opinion are equally interested—the public-land States, because it works in their behalf a present equity for past errors of construction and computation, as they now contend and for forty years last past have contended—*non*public-land States, because that where heretofore its citizens having floated their scrip, and their soldiers and sailors having floated and located their land warrants upon the public lands situate in the several public-land States and having acquired title by patent thereto, thereby heretofore depriving said public-land States from receiving 5 per cent of the legal value of said lands, to wit, $1.25 per acre; for which price in cash said lands could and would have been otherwise disposed of, and upon which they would have long since received in money their said 5 per cent, said *non*public-land States, therefore, *nunc pro tunc*, acquit themselves of an obligation so claimed to be long due by them to said public-land States.

These bills we therefore submit and respectfully maintain are intended to and do equalize, as near as may be, the several public-land States in the net proceeds of the sales, and other disposition of the public lands, made by the United States therein, respectively, fixes the exact times at which, provides an uniform method in which, the 5 per cent accounts of such proceeds shall be adjusted and stated by the honorable Commissioner General Land Office, places the whole subject-matter of said accounts between the United States and the several States legally interested therein under the direct supervision and control of the honorable Secretary of the Interior, who, by said bills, becomes alone charged with the obligation and responsibility of finally ascertaining the correctness of such 5 per cent statements and of certifying the same to the honorable Secretary of the Treasury, who, by these bills, becomes in turn charged with the duty and obligation to credit and pay said States the amounts of moneys so found due by said statements and not theretofore paid.

These bills, we therefore respectfully submit, are, in our opinion, entitled to the full and favorable consideration not only of both of your honorable committees, but of your respective Houses in Congress at this time, and which, if enacted into law, will finally terminate a contention and effectually remove a friction now existing between the United States and the several public-land States, and which has so existed for over a third of a century.

Respectfully submitted.

JOHN MULLAN,
A. H. GARLAND,
In behalf of the State of California.

EDSON A. LOWE,
WM. H. SELDEN,
In behalf of the State of Iowa.

WM. B. HORD,
L. T. MICHENER,
In behalf of the State of Indiana.

ISAAC R. HITT,
In behalf of the State of Illinois.

JOHN B. SANBORN,
J. J. NOAH,
In behalf of the State of Minnesota.

JOHN MULLAN,
In behalf of the States of Oregon and Nevada.

W. W. MARTIN,
E. J. TURNER,
In behalf of the State of Kansas.

C. C. CLEMENTS,
In behalf of the State of Colorado.

S. L. CRISSEY,
In behalf of the State of Alabama.

WM. B. MATTHEWS,
In behalf of the State of Idaho.

JOHN H. KING,
In behalf of the State of South Dakota.

[Senate Report No. 1043, 53d Congress, 3d session.]

[In the Senate of the United States. March 2, 1895.—Ordered to be printed. Mr. Martin, from the Committee on Public Lands, submitted the following report, to accompany S. 2803.]

Mr. Martin, from the Committee on Public Lands, submitted the following report, to accompany S. 2803, a substitute bill proposed by the committee for the bill S. 2169:

The Committee on Public Lands, to whom was referred the bill (S. 2169) fixing the times when, regulating the manner in which, and declaring the character of the accounts which shall be hereafter stated to the Treasury Department for settlement between the United States and the several public-land States relative to the net proceeds of the sales of the public lands, and to be made therein by the United States, and for other purposes, has had the same under consideration, and submit the following report:

The question of the just and proper disposition of the public lands of the United States and the proceeds thereof has engaged the attention of Congress in various forms from the beginning of the Government to the present time, and the result has been a steady, uniform, and favorable drifting in the direction of providing cheaper homes for the people of the United States.

One of the most important measures respecting the public lands was enacted June 23, 1836, first session of the Twenty-fourth Congress (U. S. Stats., ch. 115, p. 55). Under the provisions of this act the proceeds of the sale of the public lands in the Treasury at that time, amounting to $28,101,644.91, were distributed among the States under the pretense of a loan. No part of it has ever been returned to the United States and never will be. We herewith submit a letter from the Treasurer of the United States under date of May 13, 1892, to Hon. R. F. Pettigrew, a member of this committee, showing the amount of this money distributed among the several States under the act of June 23, 1836. The interests upon these several amounts, at the rate of 6 per cent per annum from the date of distribution to the present, would aggregate an enormous sum of money and undoubtedly the States receiving the benefits of this distribution would regard it as a great hardship and injustice if they

were now called upon to pay this debt or return the money with reasonable interest to the Government. As a matter of course, the repayment of the money will never occur, and it was never intended that it should. This letter is marked Exhibit A and submitted as part of this report.

Under various acts of Congress a large amount of the public lands have been granted to many of the States for educational and other like purposes, exclusive of railroad grants, as shown by the letters of the Commissioner of the General Land Office to the Secretary of the Interior, under date of May 25, 1892, which letter and the schedule thereto attached is herewith submitted as a part of this report and marked Exhibit B.

In addition to the foregoing grants and distribution of moneys there has been paid to a number of the States an amount aggregating nearly $10,000,000 under the several acts of Congress granting to the States 5 per cent of the net proceeds from the sales of the public lands therein respectively. The exact amount received by the several States therein named from their organization to May 25, 1892, is shown in the schedule attached to the letter written by the Commissioner of the General Land Office May 25, 1892, to Hon. R. F. Pettigrew, which letter and abstract is hereto attached and made a part of this report and marked Exhibit C.

The first section of the bill under consideration provides in substance that from and after the passage of this act the Commissioner of the General Land Office shall, under the supervision and direction of the Secretary of the Interior, state to the Treasury Department an account between the United States and each of the several public-land States respectively for 5 per cent of the net proceeds of the cash sales of the public lands in said States which may have been theretofore made therein, and that in all cases where these amounts have not been paid or otherwise adjusted by the Treasury Department that the Secretary of the Treasury shall pay said States the sums of money shown by said statement to be due to them respectively.

The second section of the bill provides that in stating and adjusting said accounts the Commissioner of the General Land Office and the Secretary of the Interior shall include and embrace 5 per cent of all former and present Indian and half-breed Indian reservations in said States; also all the land sold or located with bounty-land warrants, or with scrip of any kind, including United States Treasury certificates of deposit; also to all the lands granted to Indians in severalty which are exempt from taxation, rating the value of said lands at $1.20 per acre. The bill further provides that upon such adjustment the amount found to be due each State respectively shall be paid to said States in cash, or if the Secretary of the Treasury deem it expedient he may issue to the States in payment thereof bonds of the United States in the denomination of not less than $50 each, payable or redeemable by the United States at the end of five years from the date of the approval of this act at the discretion of the Secretary of the Treasury, and a copy of said bill marked Exhibit D is herewith submitted as a part of this report.

The provisions of this bill would apply to the following-named States: Alabama, Arkansas, California, Colorado, Florida, Idaho, Iowa, Illinois, Indiana, Kansas, Louisiana, Missouri, Mississippi, Michigan, Minnesota, Montana, Nebraska, Nevada, Ohio, Oregon, Washington, Wisconsin, and Wyoming, and without discrimination of any kind, places each and all of the public-land States upon an equal footing and upon the same plane as regards the 5 per cent of the net proceeds of the cash sales of the public lands made by the United States in each thereof, respectively.

While not disturbing any past adjustment of any of said accounts and settlements it contemplates reudering all the public-land States of the Union as nearly equal in all respects as possible, as all thereof were admitted and are now in the Union, not on a footing of difference, but one of perfect equality with each other so far as the 5 per cent grant or claim is concerned, wherein each of said States surrendered to the United States similar concessions in consideration of similar equivalents to be measured to them by the United States irrespective of the area of said public-land States or of the dates of their admission, respectively, into the Union.

The second section of this bill provides that when the said accounts of sales of the public lands are so stated and settled they shall include all lands in former and in present Indian and half-breed Indian reservations, and also lands granted or allotted to Indians, exempt from taxation, to be estimated at $1.25 per acre.

This provision of this bill is in accord with settled legislative precedents adopted and adhered to by Congress in the case of every other public-land State admitted into the Union prior to March 3, 1857.

It makes no concession other than or different from that made by Congress to every other public-land State admitted into the Union prior to March 3, 1857, but simply places all other public-land States upon an equal footing and upon the same plane in regard to existing laws that are and were intended to be applicable to each and all of the public-land States which were in the Union on March 3, 1857.

The act of March 2, 1855 (10 Stat. L., 630), required the Commissioner of the General Land Office to include in a statement of the 5 per cent due to the State of Alabama

"the several reservations under the various treaties with the Chickasaw, Choctaw, and Creek Indians within the limits of Alabama, and allow and pay to the said State 5 per cent thereon, as in case of other sales."

The act of March 3, 1857 (11 Stat. L., 200), in its first section required the Commissioner of the General Land Office to state an account between the United States and Mississippi upon the same principles of allowance and settlement as provided in the Alabama act of March 3, 1855, and 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 States 5 per cent thereon, as in case of other sales, estimating the lands at the value of $1.25 per acre, and in its second section extended the same principle of settlement to the other States, and provided for estimating all lands and permanent reservations at $1.25 per acre."

The provisions of the said act of 1857 were carried into effect as regards all the public-land States then in the Union wherein Indian reservations existed, except California, which State is now fully provided for in this bill.

With regard to the public-land States admitted into the Union since March 3, 1857, it has been held by the executive officers of the United States that the provisions of said act are not applicable to them. The equality of the several States has always been and is a fundamental principle of our Government, to be found running through all the legislation of Congress, and in reference to the subject of the public lands and of grants of lands and of the net proceeds of the sales thereof to the public-land States the principle is now well established that all the public-land States shall be treated alike, and that none thereof shall be discriminated against. One of the objects of this bill is to declare in effect that the purposes of said act of March 3, 1857 (11 U. S. Stats., 200), shall be made applicable to the State of California and to all the public-land States admitted into the Union subsequent to March 3, 1857, namely: Minnesota, Oregon, Kansas, Nebraska, Nevada, Colorado, South Dakota, North Dakota, Washington, Montana, Idaho, and Wyoming, the same as it applied to all the public-land States admitted into the Union previous to March 3, 1857.

The ownership of the lands constituting the public domain, embraced in cessions from Great Britain, France, Spain, and Mexico, and from certain individual States of the Union, were originally regarded as property to be disposed of for the common benefit of the States, and when the States within the limits of which the lands were situated were admitted into the Union, there were stipulations made in the acts of admission which were obligatory as contracts on the part of the several States and the United States, among which the grant of the 5 per cent was included.

This grant was for 5 per cent of the net proceeds of the sales of the public lands. At the foundation of this grant was the then established understanding that the lands were to be disposed of for the benefit of the common treasury, and the stipulation for 5 per cent of the proceeds as originally understood amounted to a grant of that percentage of the net proceeds of the sales of all the public lands, at such price as they would bring when so disposed of. This understanding was adhered to, substantially, with regard to the great bulk of the lands during the earlier portion of the history of the country, and the older States had the benefit thereof; but it has since been departed from, and in view of the repeal of the general laws for the sale of the public lands it is apparent that the States in which the lands lie will hereafter realize but little, if any, benefit from the 5 per cent grant for which the United States stipulated when they entered the Union, and in consideration of which the States renounced all right to tax the public domain, and bound themselves not to interfere with the primary disposal of the soil by the Federal Government.

But little land now remains subject to sale beyond what is embraced in the Indian reservations, the remainder of the public lands being, under the now established policy, set aside for the homes for the people, without price, and with no payment but nominal fees. From the foregoing considerations it appears only equitable and just that the newer States admitted into the Union since the 3d of March, 1857, should receive the benefit of the same principles that were applied in favor of the older States, previously admitted, in the adjustment of their claims under their 5 per cent grant, under the act of that date, so far as Indian lands and lands in Indian reservations were and are concerned.

In the laws heretofore enacted on the subject there is none that prescribes a rule for determining precisely what expenses are to be deducted from the gross receipts in ascertaining the net proceeds from the sales of the public lands, but this has been left to the varying opinions of the executive officers. But if the method heretofore obtaining of deducting all the expenses of making surveys, sustaining district land offices, the General Land Office, and the Interior Department, rendered necessary for carrying out the land laws generally, from the gross proceeds of the sales, should be continued in determining the net proceeds under this act, the aggregate thereof might absorb the total proceeds of such sales, or at least leave very little from which the State could realize its 5 per centum. It is due, therefore, to the States to be affected by this legislation that the Senate consider whether they should be compelled to

bear more than their share of the expenses, to be proportioned to the total expenses as is the number of acres sold, from which the gross proceeds arise, to the total number of acres disposed of in all the prescribed methods during the period for which the account is made up, and for which the total expenses are incurred, taking into the account the fact of the greater expenses incurred per acre in making disposals under the settlement laws, in comparison with the amount of money produced, than in cash sales.

This provision of this bill conforms to the views of the Commissioner of the General Land Office, as expressed in his reports on Senate bills Nos. 615 and 2394, Fifty-second Congress, first session, dated February 7, 1892, and March 18, 1892, and of the Secretary of the Interior, in his reports on the same bills, of March 4, 1892, and April 8, 1892, which are attached to this report as an appendix, being parts of Senate Report No. 775, Fifty-second Congress, first session.

The second section of this bill further provides that said accounts shall also include all lands sold for or located with scrip of any kind, including United States Treasury certificates of deposits, estimating the same at $1.25 per acre.

In view of the fact that all kinds of land scrip (except Indian half-breed scrip) heretofore issued by authority of Congress, including United States Treasury certificates of deposits issued under the authority of sections 2401, 2403, United States Revised Statutes, and amendments thereto, have been, by law, made assignable and receivable from the assignees, as so much cash in payment of public lands, there does not seem to exist any valid reason why the public-land States should not receive the full benefit of their 5 per cent arising under and from these classes of land sales, estimating all thereof at the rate of $1.25 per acre.

Congress, by authorizing the issuing of said scrip and United States Treasury certificates of deposits, and making same equivalent to cash in the location and sale of the public lands, not only thereby diminished, and continues to diminish, pro tanto the area of said lands which otherwise would be sold for cash, but in the hands of assignees said scrip and certificates become matters of speculation to an extent such as to make them profitable investments and a consideration to the locators or purchasers of public lands, by inducing them to buy and use such scrip and certificates in preference to money, because such scrip and certificates for such use are made cheaper to them than money itself, they being legal land-office money. It would inflict a legal wrong and a financial loss upon all the public-land States, unless their 5 per cent included or was estimated upon these classes of sales and locations of lands, all of which, in the opinion of your committee, was intended by Congress in its legislation in these premises.

The second section of this bill further provides that said accounts, when so stated, shall also include lands sold for or located with bounty-land warrants of all kinds.

This particular feature of this bill was heretofore brought to the attention of Congress in favorable reports made from this committee, and a bill including same passed the Senate on May 19, 1882, but upon a motion for reconsideration was recalled from the House, and does not seem to have been thereafter acted upon by the Senate.

In addition to the matters set forth in the reports, as follows, to wit, Senate Report No. 121, Forty-sixth Congress, second session; Senate Report No. 193, Forty-seventh Congress, first session; Senate Report No. 775, Fifty-second Congress, first session; House Report No. 707, Forty-fifth Congress, second session; which reports 193, 775, and 707 are made parts of the appendix hereto (reports Nos. 121 and 193 being identical in character), attention is called to the fact that Congress (acts August 14, 1848, and March 22, 1852) made all bounty-land warrants assignable and receivable as so much cash in the hands of assignees and warrantees in the payment for public lands, and hence reasons similar to those hereinbefore recited as to sales and locations of public lands by scrip and certificates received in payment thereof should, in the opinion of your committee, apply equally to sales and locations of public lands made by land warrants of all kinds.

Attention is also called to the fact that the Interior Department, construing section 3480, United States Revised Statutes, regards and treats bounty-land warrants as so much cash, or as equivalent to cash or money, to an extent such that it now fails and refuses to issue bounty-land warrants to any persons by it believed to be under the ban of said section.

To remedy this matter the present House of Representatives, on October 17, 1893, passed an act to repeal in part and limit said section 3480 in so far as military bounty-land warrants are concerned; copy of said act as same passed the House appears in the appendix hereto.

Your committee has carefully considered the "5 per cent cases" reported in 110 United States, 471, brought by the States of Iowa and Illinois in the United States Supreme Court by petition for a writ of mandamus, and decided March 3, 1884, by a divided court; and also the case of the State of Indiana *v.* The United States (148 U. S., 148), decided December 13, 1893, and find nothing existing in the opinion and dissenting opinion of said court therein constituting the obstacles to legislation proposed and contemplated by this bill.

The proviso to the second section of this bill recites an alternative method of payment by the Secretary of the Treasury to the several public land States of the sums of money which may be found due them under the accounts to be stated to his Department by the Department of the Interior.

Your committee is, however, of the opinion that a wise and wholesome policy would extend the provisions of this bill to every class of public lands in the State hereinafter mentioned; and in order to meet the case fully your committee have deemed it wise and proper, and submit a substitute for Senate bill 2169, and also omit the provision of the bill authorizing the Secretary of the Treasury to issue bonds of the United States in payment for the amount found to be due.

The first section of the substitute provides that upon the passage of this act, and thereafter in the first month of each fiscal year, the Commissioner of the General Land Office is directed to make and submit to the Secretary of the Interior a statement of the account between the United States and each of the public-land States for 5 per cent of the net proceeds of the sale of public land in each of said States which have been heretofore made with the United States and not already paid, and upon such statement of account being submitted to the Secretary of the Interior, he shall thereupon supervise and correct and certify such statement to the Secretary of the Treasury for payment.

The second section of the bill provides that said accounts shall include and apply to all of said lands heretofore or which may hereafter be sold, located, or disposed of by the United States for cash or bounty-land warrants, or land scrip, or certificates of any kind, of agricultural college scrip, to all lands allotted to Indians in severalty and exempt from taxation, and shall include all former and existing Indian, military, or other reservations in said States, estimating the value of such lands at $1.25 per acre.

The third section of the bill provides simply that upon such accounts being duly certified by the Secretary of the Interior with the Secretary of the Treasury, the said Secretary of the Treasury shall thereupon, out of any money in the Treasury not otherwise appropriated, pay to said States, respectively, the amounts so found to be due and certified as aforesaid.

A copy of said proposed substitute bill No. 2803 is herewith submitted and marked Exhibit E.

A bill similar in its provisions to Senate bill 2169 has been favorably considered by the Committee on the Public Lands in the House of Representatives, and a very able and valuable report submitted therewith by Mr. Lacey, from the Committee on the Public Lands, which report we herewith submit, marked Exhibit F, and make the same a part of our report herein.

In connection with the report from the public-lands committee in the House of Representatives, we submit reports No. 707, second session Forty-fifth Congress; No. 193, first session Forty-seventh Congress, and No. 775, first session Fifty-second Congress, and marked, respectively, G, H, and I, which reports contain valuable and important information to be considered in connection with this bill.

Your committee therefore recommend the indefinite postponement of Senate bill 2169, and we recommend the passage of the substitute herewith submitted.

Exhibit A.

Treasury Department, Office of the Treasurer,
Washington, D. C., May 13, 1892.

Sir: I am in receipt of your letter of the 9th instant, asking to be informed what sums of money, if any, have been loaned to the various States of the Union by the General Government and afterwards donated to said States since the organization of the Government.

In reply I beg to say that the sum of $28,101,644.91 was deposited with the various States under the provisions of section 13 of the act of June 23, 1836, first session Twenty-fourth Congress, chapter 115, page 55, Volume V, Statutes United States, and these provisions do not seem to have been changed by any subsequent action of Congress. The records do not show that any moneys have been donated to any of the States.

The States with which deposits were made and the respective amounts deposited therewith are as follows:

Maine	$955,838.25
New Hampshire	669,086.79
Vermont	669,086.79
Massachusetts	1,338,173.58
Connecticut	764,670.60

Rhode Island	$382,335.30
New York	4,014,520.71
Pennsylvania	2,867,514.78
New Jersey	764,670.60
Ohio	2,007,260.34
Indiana	860,254.44
Illinois	477,919.14
Michigan	286,751.49
Delaware	286,751.49
Maryland	955,838.25
Virginia	2,198,427.99
North Carolina	1,433,757.39
South Carolina	1,051,422.09
Georgia	1,051,422.09
Alabama	669,086.79
Louisiana	477,919.14
Mississippi	382,335.30
Tennessee	1,433,757.39
Kentucky	1,433,757.39
Missouri	382,335.30
Arkansas	286,751.49
Total	28,101,644.91

Respectfully, yours,

E. H. NEBKER, *Treasurer United States.*

Hon. R. F. PETTIGREW,
United States Senate, Washington, D. C.

EXHIBIT B.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., May 25, 1892.

SIR: I have to acknowledge the receipt, by reference from the Department for report, of a letter from R. F. Pettigrew, dated May 9, 1892, and asking that information be furnished him showing the number of acres of every class of lands donated to the States of Florida, Alabama, Mississippi, Louisiana, Arkansas, Missouri, Indiana, Iowa, Illinois, Georgia, Ohio, Kentucky, Tennessee, Minnesota, Michigan, and Wisconsin. The States of Georgia, Kentucky, and Tennessee are not public-land States, and no lands have been given them; but under the agricultural act they received scrip for 270,000, 330,000, and 360,000 acres, respectively.

The information desired as to lands conveyed to the remaining States for railroad, canal, and river purposes, is given in tables printed on pages 174 and 175 of the annual report of this office for 1891, up to June 30, 1891, and since June 30, 1891, there have been conveyed to the State of Minnesota 1,810.86 acres.

The railroad grants to said States have not all been finally adjusted, and certain certified lands will be recovered by the United States from some of the companies, while to others further lands must be conveyed in satisfaction of grants. It is believed that the quantities which will be recovered and those which must be conveyed will practically offset each other. As to the lands granted as swamp to the public-land States mentioned, the information has been tabulated and will be found on pages 198 and 199 of said report.

One table gives the number of acres selected by each State, a second gives the number of acres approved, and a third the number patented up to June 30, 1891.

I inclose a table showing the number of acres of land granted each of said public-land States for educational, internal improvement, and other purposes, and I also inclose a copy of office report of 1891, and invite attention to pages 174, 175, 198, and 199 thereof above mentioned.

If all the information desired is not found in the papers herewith transmitted any further data required will be furnished when called for.

Very respectfully,

THOS. H. CARTER, *Commissioner.*

The SECRETARY OF THE INTERIOR.

Grants by Congress to the several States mentioned below.

States.	For schools in each township.	Seminary or university.	Agricultural college.	Internal improvement.	Salt springs.	Public buildings.
		Acres.	*Acres.*	*Acres.*	*Acres.*	*Acres.*
Alabama	1 section	46,080	240,000	500,000	23,040	1,620
Arkansas	do	46,080	150,000	500,000	46,080	9,600
Florida	do	92,160	90,000	500,000	None.	5,120
Georgia	None	None.	270,000	None.	None.	None.
Illinois	1 section	46,080	480,000	500,000	46,080	2,560
Indiana	do	46,080	390,000	500,000	23,040	2,560
Iowa	do	46,080	240,000	500,000	46,080	3,200
Kentucky	None	None.	330,000	None.	None.	None.
Louisiana	1 section	46,080	210,000	500,000	None.	None.
Michigan	do	46,080	240,000	500,000	46,080	3,200
Minnesota	2 sections	82,640	120,000	500,000	46,080	6,400
Mississippi	1 section	46,080	210,000	500,000	None.	1,280
Missouri	do	46,080	330,000	500,000	46,080	2,560
Ohio	do	69,120	630,000	500,000	46,080	None.
Wisconsin	do	92,160	240,000	500,000	46,080	6,400
Tennessee	None	None.	360,000	None.	None.	None.

EXHIBIT C.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., May 25, 1892.

SIR: Replying to your communication of the 9th instant, I have the honor to transmit herewith a table showing the amounts which have been paid to the various States named in your letter on account of the grant of 5 per cent of the net proceeds from the sales of public lands therein, from their organization to the present time, excepting only the States of Georgia, Kentucky, and Tennessee. The United States has never sold or possessed any public lands in these States.

Very respectfully,

THOS. H. CARTER, *Commissioner.*

Hon. R. F. PETTIGREW, *United States Senate.*

Statement showing the amounts accrued and paid to the following-named States as 5 per cent of the net proceeds of the sales of public and Indian lands.

States.	Period embraced by adjustments.	Total amount paid.
Florida	Mar. 3, 1845, to June 30, 1891	$110,562.73
Alabama	Sept. 1, 1819, to June 30, 1891	1,065,555.53
Mississippi	Dec. 1, 1817, to June 30, 1888	1,048,316.18
Louisiana	Jan. 1, 1812, to June 30, 1889	435,433.59
Arkansas	July 1, 1836, to June 30, 1888	263,064.55
Missouri	Jan. 1, 1821, to June 30, 1891	1,028,574.73
Indiana	Dec. 8, 1816, to Dec. 31, 1871	1,040,255.26
Iowa	Dec. 28, 1846, to Dec. 31, 1873	633,638.10
Illinois	Jan. 1, 1819, to Dec. 31, 1860	1,187,908.89
Ohio	June 30, 1802, to Dec. 31, 1871	1,027,677.00
Minnesota	May 11, 1858, to June 30, 1889	322,695.35
Michigan	July 1, 1836, to June 30, 1891	562,055.60
Wisconsin	May 29, 1848, to June 30, 1891	566,716.38
Grand total		9,292,453.89

EXHIBIT D.

[S. 2169. Fifty-third Congress, second session.]

A BILL fixing the times when, regulating the manner in which, and declaring the character of the accounts which shall be hereafter stated to the Treasury Department for settlement between the United States and the several public land States relative to the net proceeds of the sales of the public lands made and to be made therein by the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That upon the passage of this act, and thereafter during the first month of each and every fiscal year, the Commissioner of the General Land Office, under the supervision and direction of the Secretary of the Interior, shall state to the Treasury Department an account between the United States and each

and every one of the several public-land States, respectively, for five per centum of the net proceeds of the cash sales of the public lands in said States which may have been theretofore made therein by the United States; and in all cases where the same has not heretofore been paid or otherwise adjusted, the Secretary of the Treasury shall pay to said States the sums of money shown by said statements to be so found due to said States, respectively.

SEC. 2. That this act shall also include, embrace, and apply to all lands in former and in present Indian and half-breed Indian reservations in said States; and the Commissioner of the General Land Office, when stating said accounts between the United States and said States for the five per centum of the net proceeds of the cash sales of the public lands made therein, respectively, shall also estimate all lands in all former and in all present Indian and half-breed Indian reservations in said States, and also all lands sold for or located with bounty-land warrants or scrip of any kind, including United States Treasury certificates of deposits, or granted to any Indian, and exempt from taxation therein, at one dollar and twenty-five cents per acre; and he shall certify to the proper accounting officers of the Treasury for settlement the amount so ascertained; and in all cases where the same has not heretofore been paid or otherwise adjusted, the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, pay to said States the amounts so found due, the same to be expended for or dedicated to such uses and purposes as the legislatures thereof may hereafter designate: *Provided*, That for the payment of any and all matters recited in, or in anywise provided for in this act, the Secretary of the Treasury, if he deem it expedient, may issue to the aforesaid States, or to any of them, bonds of the United States, of a denomination of not less than fifty dollars each, which shall not bear any interest whatsoever, and which bonds shall be redeemed at the end of five years from and after the date of the approval of this act, but all or any of which bonds shall be redeemable at any time within said five years, at the discretion of the Secretary of the Treasury.

EXHIBIT E.

[S. 2803, Fifty-third Congress, third session.]

A BILL fixing times when, regulating the manner in which, and declaring the character of the accounts between the United States and the several public-land States, relative to the net proceeds of the sales and other disposition of the public lands made and to be made therein by the United States, which shall hereafter be stated and certified to the Treasury Department for payment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That upon the passage of this act, and thereafter during the first month of each and every fiscal year, the Commissioner of the General Land Office be, and he is hereby, directed to make and submit to the Secretary of the Interior statements of the accounts between the United States and each of the several public-land States for five per centum of the net proceeds of the sales of the public lands in each of said States which have been heretofore made by the United States and not already paid by the United States to said States, and upon such statements of accounts being submitted to the Secretary of the Interior he shall thereupon supervise, correct, and certify such statements of accounts to the Secretary of the Treasury for payment.

SEC. 2. That said accounts so stated shall include, embrace, and apply to all of said lands heretofore or which hereafter may be sold, located, or disposed of by the United States for cash or bounty-land warrants, or land scrip, or certificates of any kind, or agricultural college scrip, and to all lands allotted to Indians in severalty, exempt from taxation, and shall include all former and existing Indian, military, or other reservations in said States, which statements shall include and state the five per centum of the net proceeds of the value of all such lands so disposed of, estimating the value thereof at one dollar and twenty-five cents per acre.

SEC. 3. That upon such stated accounts being duly certified to by the Secretary of the Interior and filed with the Secretary of the Treasury, the said Secretary of the Treasury shall thereupon, out of any money in the Treasury not otherwise appropriated, pay to said States, respectively, the amounts so found to be due and certified to as aforesaid.

EXHIBIT F.

[House Report No. 1522, Fifty-third Congress, third session.]

The Committee on the Public Lands, to whom was referred the bills (H. R. 7650 and H. R. 7327) for fixing the times when, regulating the manner in which, and declaring the character of the accounts which shall be hereafter stated to the Treasury Depart-

ment for settlement between the United States and the several public-land States relative to the net proceeds of the sales of the public lands made and to be made therein by the United States, and for other purposes, having had the same under consideration, do now report it back with a substitute therefor, with the recommendation that the substitute do pass, and submit a report thereon as follows:

This bill, as reported, fixes a definite time when, establishes an uniform manner in which, and the names of the officers by whom it is made mandatory to hereafter state, supervise, certify, and pay all accounts between the United States and each of the several public-land States in reference to the sales and other disposition of the public lands, situate therein respectively, by providing that all of said accounts shall be stated by the Commissioner of the General Land Office to the Secretary of the Interior, who shall thereupon supervise and certify the same to the Secretary of the Treasury for payment.

While this bill does not in anywise disturb any past adjustment or former settlement of any of said accounts between the United States and any of said States, it recognizes the fact that each and all of the several public-land States are in the Union upon one and the same plane, as each and all of said States were admitted into the Union on a footing, not of difference, but on one of absolute and perfect equality, the one with the other.

As each and all of the several public-land States, when admitted into the Union, duly surrendered to the United States similar concessions, so, too, the consideration to them therefor from the United States should be, and has been, intended to be similar equivalents, to be measured and meted out to them respectively and in proportion to the area of the public lands in each and irrespective of the dates of their admission into the Union.

The equality of the several States of the Union, as near as may be, has always been one of the fundamental principles of our Government to be found running through all the legislation of Congress, especially in reference to the public lands and to their disposition, a principle now so well established and universally recognized by Congress that it intends that each and all of the several public-land States shall be treated alike, and that none thereof shall be discriminated against, or, as was well said by the honorable chairman of this committee on August 11, 1894, in his speech delivered on the floor of the House (Congressional Record, August 17, 1894, p. 10076), referring to the equality of all the States in the Union:

"If you name one State you should name them all; I am opposed to special legislation for one section of the country that does not apply to another."

This bill therefore applies alike to and embraces each and all of the several public-land States; and said accounts are intended to include all public lands therein, and said 5 per cent is to be estimated upon all thereof, whether said lands have been or may be sold for cash, or located with, or sold, or disposed of, for land scrip or certificates or bounty land warrants.

In view of the fact that all land scrip or certificates issued by the Interior Department have been made assignable and receivable by the United States as or as equivalent to so much cash in the disposition of the public lands, whether surrendered therefor by those to whom they were originally issued or by their assignees, there does not seem to exist any valid reason why each and all of the several public-land States should not receive the full benefit of said 5 per cent, based upon these classes of disposition of the public lands, estimated at the same rate at which such scrip or certificates or warrants have been so issued and so received by the United States in full payment thereof, to wit, at a valuation of $1.25 per acre.

Congress, in authorizing the issuance of said land scrip or certificates or warrants, and in making and declaring all thereof equivalent to and receivable as so much money in the disposition of the public lands, did thereby not only diminish and continue to diminish pro tanto the available area of the public lands to be disposed of for cash, and which otherwise would have been or would be disposed of for cash, and upon which said 5 per cent would have or would be so duly estimated; but in the hands of all holders thereof such land scrip or certificates became property, not only for safe investment, but even for profitable speculation, to an extent such as to render it a financial consideration to any person contemplating locating or purchasing any of the public lands locatable therewith to purchase and use same for that object, because such certificates or scrip for such land use are made cheaper than money, they being a full legal tender in payment for public lands, and received the same as cash.

A legal wrong and financial loss have therefore been and will continue to be inflicted upon all the public-land States unless said 5 per cent accounts include and be estimated upon these classes of the disposition of the public lands the same as upon actual cash sales.

This bill also applies to and embraces, and said accounts when so stated, certified, and paid are intended to include, all public lands located with or disposed of for bounty-land warrants.

This provision of this bill was heretofore brought to the favorable attention of Congress in reports made from the Committees on the Public Lands in both the House and Senate, as recited in the House Report No. 707, Forty-fifth Congress, second session, and in Senate Report No. 193, Forty-seventh Congress, first session, copies whereof are submitted herewith in an appendix hereto.

A Senate bill in harmony with the recommendations in said Senate report passed the Senate May 19, 1882, but upon a motion for reconsideration was recalled from the House, and does not seem to have been thereafter acted upon by either the Senate or the House.

Congress in its acts approved August 14, 1848, and March 22, 1852, made all bounty-land warrants receivable from the warrantees as so much money in the location and disposition generally of the public lands subject to location and disposal therewith, and thereafter made the same assignable, and in the hands of such assignees made them also receivable and of the same value for a similar use as when surrendered by the warrantees themselves, to wit, as cash, at $1.25.

Hence, reasons similar to those hereinbefore recited why said accounts between the United States and the several public-land States, when so stated, certified, and paid, should include all public lands disposed of by land scrip or certificates, should, in the opinion of your committee, apply equally well to all public lands which heretofore have been, or which hereafter may be, disposed of for bounty-land warrants surrendered in the payment or location thereof.

Attention is called to the fact that the Interior Department, in construing section 3480, United States Revised Statutes, regards and treats all claims for the issuance of bounty land warrants tantamount to claims for the payment of so much money, and to an extent such that it now refuses to issue bounty-land warrants to any persons by it believed to be under the ban of said section in so far as regards claims for payment of money are concerned, thus treating bounty-land warrants as equivalent to, in fact as so much money.

To remedy complaints made in said matter this House, on October 17, 1893, passed a bill to repeal in part and to limit said section 3480, by excluding from its provision all matters relating to the issuance of bounty-land warrants.

Copy of said bill H. R. 3130, Fifty-third Congress, second session, is attached to the appendix hereto. We also attach in the appendix copies of reports and laws bearing on the subject of this report.

In the appendix we also embrace the acts of admission of the various public-land States in which a provision of exemption from taxation of public lands is provided for, and the exemption extends from three to five years after the lands have been patented by the Government. This surrender of local taxation in most States would equal the 5 per cent of the entry value of the land, and forms a full consideration for the payment of the 5 per cent fund.

Your committee has carefully considered the "5 per cent cases," reported in 110 United States Reports, page 471, brought in the United States Supreme Court by the petitions of the States of Iowa and Illinois for writs of mandamus, etc., and decided by a divided court on March 3, 1884; and also the case of the State of Indiana *v.* The United States (148 U. S. Reports, p. 148), decided December 13, 1893, but do not find anything existing in the opinion of said court in either of said cases constituting obstacles to the enactment of the legislation contemplated by this substitute bill, which your committee recommend do pass, and that the title thereof shall read as therein set forth, and that H. R. 7327 and H. R. 7650 be laid upon the table.

The substitute proposed by the committee is as follows:

A BILL granting five per centum of the land sales on military land warrants to the public-land States.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That upon the passage of this act and thereafter during each and every fiscal year, at the times of stating the account of the five per centum due to the various public-land States as sales of lands, the Commissioner of the General Land Office be, and he is hereby, directed to state to the Secretary of the Interior, who shall thereupon supervise and certify them to the Secretary of the Treasury for settlement, accounts between the United States and each of the several public-land States for five per centum of the net proceeds of the sales of the public lands in said States which have been theretofore made by the United States and not already paid.

SEC. 2. Said accounts shall embrace and apply to all of said lands heretofore, or which may hereafter be sold, or located, or disposed of for cash or bounty land warrants, and shall include and state the 5 per centum of the net proceeds of all of said lands so disposed of, estimating all lands so disposed of for said warrants at $1.25 per acre.

SEC. 3. That the Secretary of the Treasury shall thereupon, out of any money in the Treasury not otherwise appropriated, pay to the said States respectively the amounts so found due.

APPENDIX.

[H. R. 3130. Fifty-third Congress, second session.]

AN ACT to repeal in part and to limit section thirty-four hundred and eighty of the Revised Statutes of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section thirty-four hundred and eighty of the Revised Statutes of the United States be, and the same is hereby, so far, and no further, modified and repealed as to dispense with proof of loyalty during the late war of the rebellion as a prerequisite in any application for bounty land where the proof otherwise shows that the applicant is entitled thereto.

Passed the House of Representatives October 17, 1893.

Attest: JAMES KERR, *Clerk.*

[House Report No. 345, Forty-seventh Congress, first session.]

The Committee on Public Lands, to whom was referred the bill H. R. 277, having had the same under consideration, make the following report:

This bill was very fully considered by this committee during the Forty-sixth Congress, and was made the subject of an able report to the House recommending its passage, which report is adopted, with slight modifications, by this committee, as follows:

The bill provides for the payment by the General Government to the States of Ohio, Indiana, Illinois, Missouri, Michigan, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Arkansas, Louisiana, Alabama, Mississippi, Florida, Oregon, Nevada, and Colorado, 5 per cent on the military locations of lands therein, estimating the same at $1.25 per acre. Heretofore the 5 per cent upon this class of lands has been withheld as not falling within the purview and intent of the stipulations contained in the several acts admitting these States into the Union, to the effect that the General Government would pay the percentages in question on the proceeds of the sales of the public lands for and on account of certain designated conditions therein specified, which were to be binding upon and observed by the States as members of the Union. The nature of these considerations may be stated, summarily, to be a concession not to tax the public lands; not to tax private lands for the space of five years after date of entry in some seven of these States; in others not to tax lands granted for military services in the war of 1812 for three years from date of patent; not to interfere with the primary disposal of the soil, nor to tax the nonresident proprietor more than the resident, etc.

This compact, made at the time these States were admitted into the Union, has been observed and kept on their part in good faith, and they claim the observance of like good faith on the part of the General Government in fulfilling part of the contract—namely, the payment of the 5 per cent, being the stipulated consideration that induced the States to enter into and perform their part of the contract. That the Government has done so on all sales of public lands for cash is not disputed. But the nonpayment of the 5 per cent on all lands upon which military land warrants have been located is not denied, and it is claimed that the Government is under no obligations to pay the same, it being insisted upon that the lands so taken up do not fall within the compact, while the States interested maintain that the Government is obliged to pay this 5 per cent on all lands on which these military warrants have been located, and the bill under consideration is for the purpose of requiring such payment to be made. It has been contended that the 5 per cent to be paid to these States has reference to cash sales of the public lands, and none other. The States interested maintain that this is not a sound interpretation of the obligations assumed by the Government, and some of the reasons for this claim will be stated.

The several grants of land for military services rendered in the three great wars of this country, namely, the Revolutionary war, the war of 1812, and the Mexican war, were not bounties merely; they were not mere gratuities given by the Government out of a spirit of generosity to the soldiers who served in these wars; they were not granted or received in this spirit, but were, by the very terms of most of the acts authorizing the same, given in part payment for military services. They entered into and formed a part of the contract of enlistment. The object of these grants was to facilitate and encourage enlistments. In order to fill up the rank and file of the Army rapidly Congress offered in advance, besides specified monthly wages in money, an additional inducement or consideration in lands—not for past services, but for services thereafter to be rendered. The land warrant to be received was as much a part of the stipulated compensation provided for by the law under which the enlistment was made and entered into the contract just as fully between the soldier and the Government as his monthly pay did. If these grants had all been made after the rendition of the military services it might be otherwise; but they

were not. They were offered as a part of the compensation that would be paid for such services. Whatever differences of opinion exist as to whether these grants were sales or not may, to a great extent, be attributed to a misunderstanding of the term "bounty," as applied to this kind of reward for military services. It is not used in its popular sense as importing a gratuity, but in the technical sense of a gross sum or quantity, given in addition to the monthly stipend, but given like the latter in consideration of and as payment for services to be rendered. Thus in the late war, in order to stimulate enlistments, a pecuniary "bounty"—that is, a gross sum in addition to the monthly wages—was offered by the Government to all who would enlist in the military service; and in numerous 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 so completely constituted contracts with the parties enlisting under them that in repeated instances fulfillment thereof has been enforced by the courts. These pecuniary "bounties," by which enlistments were so largely procured during the late rebellion, occupy precisely the same attitude as respects the question now under consideration as the so-called bounty-land warrants do. Both really were simply extra allowances offered for the same purpose, and when accepted and enlistments made thereunder they became ipso facto contracts which any court would recognize and enforce. In this way the public lands were made available as a resource for defraying the national burdens just as effectually as if they had been converted into money, and the money used in paying the enlisted men. It was an exchange of one valuable thing for another, which in law makes it a case of sale, to constitute which it is enough that the title to property is parted with for a valuable consideration. It is not necessary that there be a moneyed consideration in order to constitute a sale. Any other valuable consideration will be as effectual in supporting a contract and in making a sale which will pass the title, whether it be merchandise, other property, or services. Suppose one man employs another to work for a given period of time, under an agreement to pay him monthly wages at a given price per month and 40 acres of land, to be conveyed when the period of service expires, it must be conceded that when the services are rendered the party would be as much entitled to the land as he would be to the stipulated sum per month, and this would as clearly be a sale of the land as if the consideration therefor had been money. The principle involved in the case supposed is precisely the same as in the one under consideration. And if it is a sale in the one case it is difficult to see why it would not be in the other. But let us examine this character or mode of disposing of lands by the United States, as constituting a "sale," when it is viewed as a transaction between the Government and the party locating the warrant. Instead of patenting specific land to the soldier entitled thereto, in virtue of his military services, the Government issued to him its written obligation, payable in the agreed quantity of land, to be selected by him from the whole body of lands open for sale and entry throughout the country. These obligations, or "warrants," were made assignable by law, and subject to sale and transfer in the market, from hand to hand, by mere delivery. In this way they became practically a species of Government scrip or currency, and persons desirous of becoming land proprietors could and did go into the market and purchase the same, and with them buy the land they wanted; and in this way large quantities of the public lands were disposed of wherever the same was subject to sale and entry at the different land offices. Now, it is claimed to be against reason and common usage to say that these lands are not sold because the Government receives in payment for them, instead of cash, its own obligations, payable in land. 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, while the latter is limited to 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 services, 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. The motive or consideration that induced or authorized the issuing of the same would not affect the question whether lands entered and paid for with such bonds ought to be considered as sold or not. In both cases the Government would have received in such disposition of its lands its own valid outstanding obligations, for the fulfillment of which its faith was pledged, and the surrender of which by the holder would constitute an ample consideration, both 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, for it is immaterial to the character of this transaction for what consideration such obligation was issued. Its legal capability of assignment has practically imparted to the land warrant a negotiable quality. It has become part of the general mass of securities passing from hand to hand in the market. The purchaser buys it relying on the faith of the United States for the fulfillment of the agreement embodied in it, and without inquiry as to the consideration in which it originated. In this connection it is proper to state that Congress has treated these warrants for military services as money, both by receiving them in payment for large tracts of land or by authorizing their conversion into scrip, and then receiving this scrip in payment for any public land, wherever situate. This scrip, so issued in lieu of land warrants or in redemption of the same, has always been treated as money by the Government. It has always been received in payment for land just the same as money, and when lands have been taken up by this scrip, representing the land warrants, the Government has paid the 5 per cent to the States where it was situate, while the per cent has been withheld where the land has been taken up by the warrants themselves. We think no good reason can be assigned for this distinction. The land absorbed by either class of paper is precisely the same in effect, so far as the Government is concerned, and both alike discharge its obligations, and for that very reason the land so absorbed by both classes of paper should be treated as having been sold.

It may not be inappropriate to state in this connection that in March, 1855 and 1857, Congress passed acts to settle certain accounts between the United States and the States of Alabama and Mississippi, in which, among other things, the Commissioner of the General Land Office was authorized to allow and pay to said States 5 per cent on the several reservations of land described in the various treaties with Chickasaw, Choctaw, and Creek Indians, as in case of other sales, estimating the lands at the value of $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 granted 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 alike.

It is further insisted by these States that if the General Government is not obligated to pay the 5 per cent on the lands in dispute by the terms of the contract with these States, fairly construed, it would be within the power of the Government to convey all the public lands in any State for military services, and in that way defeat any benefit they were to derive under the contract. It is claimed by these States that as they were to have 5 per cent of the proceeds of the sales of public lands they were to be disposed of only in such manner as would enable them to get this sum therefrom, and that any other disposition of these lands defeats the consideration that induced them to enter into the stipulations provided for on their part. We think there are strong reasons for this position, and that the Government in all justice can not dispose of the public lands in these States for military services and then refuse to pay to them the per cent provided for by the compact. Suppose that A agrees with B that he will pay him a commission of 5 per cent for selling a section of land at a given price, and after making this agreement he directs B to take a given quantity of merchandise for the same, which B does, can there be any doubt that B is entitled to the commission agreed upon for making the sale because the mode of paying for the same is changed by A from cash to merchandise? And, if not, is not the Government as much bound under its contract with these States to pay the 5 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. It could not have been within the contemplation of the parties that Congress might defeat the payment of the 5 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 5 per cent. Such being the contract, what is the duty of Congress in respect to this claim made by these States? On this subject Chancellor Kent says:

"That a law embodying a contract duly passed and promulgated thenceforward

becomes the law of the land, and that is as binding upon Congress as upon the people, or any other branch of the Government, or as any other contract would be binding upon the Government executed under the authority of law."

The obligations imposed upon these States were onerous. The loss of revenue in not being allowed to exercise the power of taxation, as above referred to, would in a number of the States exceed in value the amount that will be gained by them if the 5 per cent is paid on all public lands, including cash sales and those exchanged for military services. After careful consideration and much deliberation your committee have reached the following conclusions:

First. That the several enabling acts admitting the new States into the Union, as it respects the payment of 5 per cent on the sales of the public lands, do embody the elements of a legal and binding contract between said States and the National Government which both parties are entitled to have carried into effect in the same manner and on the same principles as contracts are between individuals.

Second. That the agreement to pay the 5 per cent has a sufficient consideration in the concessions made by these States in the acts of admission into the Union, in the surrender of revenue, and otherwise, and that it was not within the contemplation of the parties that Congress might defeat the rights of States to the 5 per cent on sales by adopting a policy of disposing of the public lands in some other form than for money, and as a matter of fact the Government did not reserve the right to give away the public lands for objects and uses outside of the States, or to withhold the payment of the 5 per cent on lands granted for military purposes; and, third, that the several grants of lands for military services rendered in the three great wars of this country, namely, the Revolutionary war, the war of 1812, and the Mexican war, were sales in the sense of the law and the meaning of the compact between these States and the National Government.

Your committee feel the more strongly inclined to recommend the passage of this bill from the fact that in nearly all the States the revenue arising from this source has been set apart for educational purposes, in which the nation and the States are alike interested.

Your committee further recommend that the title of said bill (H. R. 277) be amended by inserting after the word "therein" the following words: "and directing the payment of 5 per cent thereon."

[House Report No. 707, Forty-fifth Congress, second session.]

The Committee on the Public Lands, to whom was referred the bill H. R. No. 4239, having had the same under consideration, do make the following report thereon:

The bill provides for the payment by the General Government to the States of Ohio, Indiana, Illinois, Missouri, Michigan, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Arkansas, Louisiana, Alabama, Mississippi, Florida, Oregon, Nevada, and Colorado 5 per centum on the military locations of lands therein, estimating the same at $1.25 per acre. Heretofore the 5 per centum upon this class of lands has been withheld as not falling within the purview and intent of the stipulations contained in the several acts admitting these States into the Union, to the effect that the General Government would pay the percentage in question on the proceeds of the sales of the public lands for and on account of certain designated conditions therein specified, which were to be binding upon and observed by the States as members of the Union. The nature of these considerations may be stated, summarily, to be a concession not to tax the public lands; not to tax private lands for the space of five years after date of entry in some seven of these States; in others not to tax lands granted for military services in the war of 1812 for three years from date of patent; not to interfere with the primary disposal of the soil, nor to tax the non-resident proprietor more than the resident, etc.

This compact, made at the time these States were admitted into the Union, has been observed and kept on their part in good faith, and they claim the observance of like good faith on the part of the General Government in fulfilling its part of the contract, namely, the payment of the 5 per cent, being the stipulated consideration that induced the States to enter into and perform their part of the contract. That the Government has done so on all sales of public lands for cash is not disputed. But the nonpayment of the 5 per cent on all lands upon which military land warrants have been located is not denied, and it is claimed that the Government is under no obligations to pay the same, it being insisted upon that the lands so taken up do not fall within the compact; while the States interested maintain that the Government is obliged to pay this 5 per cent on all lands on which these military warrants have been located, and the bill under consideration is for the purpose of requiring such payment to be made. It has been contended that the 5 per cent to be paid to these States has reference to cash sales of the public lands, and none other. The States interested maintain that this is not a sound interpretation of the obligations assumed by the Government; and some of the reasons for this claim will be stated.

The several grants of land for military services rendered in the three great wars of this country, namely, the Revolutionary war, the war of 1812, and the Mexican war, were not bounties merely; they were not mere gratuities given by the Government out of a spirit of generosity to the soldiers who served in these wars; they were not granted or received in this spirit, but were by the very terms of most of the acts authorizing the same, given in part payment for military services. They entered into and formed a part of the contract of enlistment. The object of these grants was to facilitate and encourage enlistments. In order to fill up the rank and file of the Army rapidly, Congress offered in advance, besides specified monthly wages in money, an additional inducement or consideration in lands, not for past services, but for services thereafter to be rendered. The land warrant to be received was as much a part of the stipulated compensation provided for by the law under which the enlistment was made, and entered into the contract just as fully between the soldier and the Government as his monthly pay did. If these grants had all been made after the rendition of the military services, it might be otherwise; but they were not. They were offered as a part of the compensation that would be paid for such services. Whatever differences of opinion exists as to whether these grants were sales or not, may to a great extent be attributed to a misunderstanding of the term "bounty," as applied to this kind of reward for military services. It is not used in its popular sense as importing a gratuity, but in the technical sense of a gross sum or quantity, given in addition to the monthly stipend, but given, like the latter, in consideration of and as payment for services to be rendered. Thus, in the late war, in order to stimulate enlistments, a pecuniary "bounty" that is—a gross sum in addition to the monthly wages—was offered by the Government to all who would enlist in the military service; and in numerous 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, so completely constituted contracts with the parties enlisting under them that in repeated instances fulfillment thereof has been enforced by the courts. These pecuniary "bounties," by which enlistments were so largely procured during the late rebellion, occupy precisely the same attitude as respects the question now under consideration as the so-called bounty-land warrants do. Both really were simple extra allowances offered for the same purpose, and when accepted and enlistments made thereunder they became ipso facto contracts which any court would recognize and enforce. In this way the public lands were made available as a resource for defraying the national burdens just as effectually as if they had been converted into money, and the money used in paying the enlisted men. It was an exchange of one valuable thing for another, which in law makes it a case of sale, to constitute which it is enough that the title to property is parted with for a valuable consideration. It is not necessary that there be a moneyed consideration in order to constitute a sale. Any other valuable consideration will be as effectual in supporting a contract and in making a sale which will pass the title, whether it be merchandise, other property, or services. Suppose one man employs another to work for a given period of time under an agreement to pay him monthly wages at a given price per month and 40 acres of land, to be conveyed when the period of service expires, it must be conceded that when the services are rendered the party would be as much entitled to the land as he would be to the stipulated sum per month, and this would as clearly be a sale of land as if the consideration therefor had been money. The principle involved in the case supposed is precisely the same as in the one under consideration. And if it is a sale in the one case, it is difficult to see why it would not be in the other. But let us examine this character or mode of disposing of lands by the United States as constituting a "sale" when it is viewed as a transaction between the Government and the party locating the warrant. Instead of patenting specific land to the soldier entitled thereto, in virtue of his military services, the Government issued to him its written obligation, payable in the agreed quantity of land, to be selected by him from the whole body of lands open for sale and entry throughout the country. These obligations or "warrants" were made assignable by law, and subject to sale and transfer in the market, from hand to hand, by mere delivery. In this way they became practically a species of Government scrip or currency, and persons desirous of becoming land proprietors could and did go into the market and purchase the same, and with them buy the land they wanted; and in this way large quantities of the public lands were disposed of wherever the same were subject to sale and entry at the different land offices. Now, it is claimed to be against reason and common usage to say that these lands are not sold because the Government receives in payment for them instead of cash its own obligations, payable in land. Can it be considered less a case of sale that the purchaser instead of paying for his lands 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, while the latter is limited to 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 services, 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. The motive or consideration that induced or authorized the issuing of the same would not affect the question whether lands entered and paid for with such bonds ought to be considered as sold or not. In both cases the Government would have received in such disposition of its lands its own valid outstanding obligations, for the fulfillment of which its faith was pledged, and the surrender of which by the holder would constitute an ample consideration, both 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. For it is immaterial to the character of this transaction for what consideration such obligation was issued. Its legal capability of assignment has practically imparted to the land warrant a negotiable quality. It has become part of the general mass of securities passing from hand to hand in the market. The purchaser buys it relying on the faith of the United States for the fulfillment of the agreement embodied in it, and without inquiry as to the consideration in which it originated. In this connection it is proper to state that Congress has treated these warrants for military services as money, both by receiving them in payment for large tracts of land or by authorizing their conversion into scrip and then receiving this scrip in payment for any public land, wherever situate. This scrip so issued in lieu of land warrants or in redemption of the same has always been treated as money by the Government. It has always been received in payment for land just the same as money, and when lands have been taken up by this scrip representing the land warrants the Government has paid the 5 per cent to the States where it was situate, while the per cent has been withheld where the land has been taken by the warrants themselves. We think no good reason can be assigned for this distinction. The land absorbed by either class of paper is precisely the same in effect so far as the Government is concerned, and both alike discharge its obligations, and for that very reason the land so absorbed by both classes of paper should be treated as having been sold.

Again, 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 five 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 the 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 five 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 the Government. It was no cash sale of the lands to the Indians. So the military land warrants were granted

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 5 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 reservation, 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 5 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 5 per cent had not been paid. If these lands were not intended to be included, what lands does the act refer to? It can not 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 5 per cent on all the lands so sold. Neither can it refer to the reservation, 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. So that other lands than those sold for cash and reservations must be referred to by this act in order to give its provisions force and effect. Indeed, we think that a proper construction of the scope and meaning of this act of Congress would include all lands in these States disposed of by the Government for any purpose other than to the State itself or by the consent of the State. That it is broad enough to, and does, include the lands in question we think is beyond controversy. And to avoid all question hereafter as to its including all lands disposed of by the General Government, and confining it to cash sales, and lands located for military warrants, your committee recommend that the bill be amended to that effect, and that the several States named be required, through their legislatures, to relinquish all claims to the 5 per cent, excepting cash sales and those on which land warrants have been and shall be located. It is further insisted by these States that if the General Government is not obligated to pay the 5 per cent on the lands in dispute by the terms of the contract with these States fairly construed, it would be within the power of the Government to convey all the public lands, in any State, for military services, and in that way defeat any benefit they were to derive under the contract. It is claimed by these States that as they were to have 5 per cent of the proceeds of the sales of public lands, they were to be disposed of only in such manner as would enable them to get this sum therefrom, and that any other disposition of these lands defeats the consideration that induced them to enter into the stipulations provided for on their part. We think there are strong reasons for this position, and that the Government, in all justice, can not dispose of the public lands in these States for military services and then refuse to pay to them the per cent provided for by the compact. Suppose that A agrees with B that he will pay him a commission of 5 per cent for selling a section of land at a given price, and after making this agreement he directs B to take a given quantity of merchandise for the same, which B does, can there be any doubt that B is entitled to the commission agreed upon for making the sale because the mode of paying for the same is changed by A from cash to merchandise? And if not, is not the Government as much bound under its contract with the States to pay the 5 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 5 per cent of the proceeds from the cash sales, but 5 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 5 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 5 per cent. Such being the contract, what is the duty of Congress in respect to this claim made by these States? On this subject Chancellor Kent says:

"That a law embodying a contract duly passed and promulgated, thenceforward becomes the law of the land, and that is as binding upon Congress as upon the people, or any other branch of the Government, or as any other contract would be binding upon the Government executed under the authority of law."

The obligations imposed upon these States were onerous. The loss of revenue in not being allowed to exercise the power of taxation alone would far exceed in value the amount that will be gained by them if the 5 per cent is paid on all public lands, including cash sales and those exchanged for military services. After careful consideration and much deliberation, your committee have reached the following conclusions:

First. That the several enabling acts admitting the new States into the Union, as it respects the payment of 5 per cent on the sales of the public lands, do embody the elements of a legal and binding contract between said States and the National Government, which both parties are entitled to have carried into effect in the same manner and on the same principles as contracts are between individuals.

Second. That the agreement to pay the 5 per cent has a sufficient consideration in the concessions made by these States in the acts of admission into the Union, in the surrender of revenue and otherwise, and that it was not within the contemplation of the parties that Congress might defeat the right of the States to the 5 per cent on sales by adopting a policy of disposing of the public lands in some other form than for money, and, as a matter of fact, the Government did not reserve the right to give away the public lands for objects and uses outside of the States; or to withhold the payment of the 5 per cent on lands granted for military purposes; and third, that the several grants of land for military services rendered in the three great wars of this country, namely, the Revolutionary war, the war of 1812, and the Mexican war, were sales in the sense of the law and the meaning of the compact between these States and the National Government.

Your committee would, therefore, recommend that the bill under consideration be amended by providing, first, that no certificates provided for by the bill shall be issued to any State until said State, by its legislature, shall relinquish or release all further claims against the United States for 5 per cent of the net proceeds of the sales of public lands other than cash sales and locations by military land warrants; and second, that whatever amount may be found due the State of Alabama under the provisions of this act shall, when paid to said State, be held in trust for the use and benefit of the university of said State, and may be disposed of by the legislature thereof in such manner as may be deemed for the best interests of said university; and that after it has been so amended it pass. It may be proper to add that the mode of adjustment and settlement provided for by the bill does not make it burdensome, but easy to the Government, as no money is required to be paid out of the Treasury for that purpose. The bill provides that the Secretary of the Treasury shall be authorized to issue and deliver to the governors of the States named, or their agents, United States certificates of indebtedness of the denominations of $100, $500, and $1,000 each, as the Secretary may direct, each of which is to run twenty years from its date, to draw interest, payable semiannually, at the rate of 3.65 per cent per annum.

It is believed that a sum far in excess of what will be necessary to meet the payment of these certificates will be realized by the time they mature from the sales of the public lands belonging to the Government yet remaining undisposed of. Your committee feel the more strongly inclined to recommend the passage of this bill from the fact that in nearly all the States the revenue arising from this source has been set apart for educational purposes, in which the nation and the States are alike interested.

[Senate Report No. 193, Forty-seventh Congress, first session.]

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:

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

(2) Nor tax for any purpose the public lands.

(3) That the nonresident proprietors shall not be taxed more than the resident; and

(4) 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 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 cent 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 afterwards 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, Congress 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 services, but for services thereafter to be rendered. The colonial government of Virginia did the same thing, and her engagement to pay in land was afterwards 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 can not 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 can not 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, second 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 citizens great liberality should be observed, more especially 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 preemption 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 granted 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 5 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 5 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 5 per cent had not been paid. If these lands were not intended to be included, what lands does the act refer to? It can not 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 5 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 5 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 5 per cent of the proceeds from cash sales, but 5 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 5 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 5 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 Gov-

ernment 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 enlistment."

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 the 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 nonresident proprietors more than residents, etc.

The rights surrendered by the States were of great material consequence 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 5 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 $1.25 per acre. This has been the minimum price for the Government lands ever since there was a public domain. The price fixed can not, 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 $200. 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.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., September 1, 1893.

SIR: In reply to your letter of the 25th ultimo I have the honor to inclose herewith statement showing the number of acres located with military bounty land warrants in the several States named in your letter of the 14th ultimo up to and including June 30, 1893, and would say that in the adjustment of the 5 per cent fund accounts between the United States and the several States that 5 per cent of the net proceeds of cash sales only have been allowed and paid.

Very respectfully,

S. W. LAMOREUX, *Commissioner.*

Hon. JOHN H. GEAR,
House of Representatives, Washington, D. C.

The following is a statement furnished to Mr. Gear:

Statement of the total number of acres located with bounty land warrants under the various acts to June 30, 1893.

States.	Located to June 30, 1881.	1882.	1883.	1884.	1885.	1886.	1887.
	Acres.	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*
Alabama	1,159,691.17	200	----------	478.51	160	758.56	917.86
Arkansas	2,261,306.92	400	400	240	320	400	160
California	815,273.24	880	1,600	2,560	1,160	1,680	1,199.68
Colorado	195,920	480	760	677,39	160	520	440
Florida	470,843.24	1,349.89	839.92	1,399.23	1,218.54	1,079.94	----------
Iowa	14,099,945.77	----------	----------	----------	----------	----------	----------
Illinois	9,533,853	----------	----------	----------	----------	----------	----------
Indiana	1,312,436.65	----------	----------	----------	----------	----------	----------
Kansas	4,345,059.95	716.47	680	915.09	1,320	2,213.51	4,509.51
Louisiana	1,160,922.50	1,159.33	240	159.92	758.06	1,400.86	477.51
Michigan	4,410,915.78	80,440	30,125.76	10,219.50	7,339.74	5,555.01	4,360
Minnesota	5,994,851.81	640	440	----------	280	80	600
Missouri	6,819,148.89	----------	280	160	----------	80	200
Mississippi	385,097.73	----------	----------	1,876.4	----------	----------	----------
Nebraska	1,942,718.05	2,160	520	1,120	999.87	2,118.56	2,040
Nevada	10,740	----------	----------	----------	----------	----------	----------
Ohio	1,817,501.99	----------	----------	----------	----------	----------	----------
Oregon	80,349.14	560	400	280	560	639.72	240
Wisconsin	6,466,081.82	960	160	----------	120	40	150.71
Total	63,282,657.65	39,945.69	36,445.68	20,086.04	14,236.21	16,566.16	15,295.27

Statement of the total number of acres located with military bounty land warrants under various acts to June 30, 1893.*

States.	1888.	1889.	1890.	1891.	1892.	1893.	Total.
	Acres.	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*	*Acres.*
Alabama	761.08	280	.....	400	39.96	.....	1,163,487.18
Arkansas	320	.....	80	.....	.....	.....	2,263,626.92
California	3,540	5,386.47	4,239.52	2,359.16 6,520	120 6,355.75	120 799.94	851,194.60
Colorado	920	1,840	1,320	800 4,417.49	871.76	320 477.82	208,804.47
Florida	679.44	.....	155	240	233.89	.....	473,039
Iowa	.....	80	.....	120	.....	.....	14,100,025.77
Illinois	.....	.....	.....	.....	.....	.....	9,533,853
Indiana	.....	.....	.....	.....	.....	.....	1,312,436.65
Kansas	2,999.98	3,100	600	80 880	560	160 448.80	4,364,003.03
Louisiana	905.10	.....	440	159.72	.....	.....	1,166,463.28
Michigan	4,119.54	2,799.85	2,080	943.25 5,555.56	1,874.76	920	4,516,305.50
Minnesota	785.54	520	120	160	837.74	280 479.52	5,999,794.61
Missouri	.....	160	240	360	800	280	6,821,708.89
Mississippi	.....	.....	.....	80	.....	280	387,254.13
Nebraska	1,039.40	2,079.70	3,440	200 320	160	.....	1,958,715.58
Nevada	.....	.....	.....	.....	.....	.....	10,740
Ohio	.....	.....	.....	.....	.....	.....	1,817,501.99
Oregon	480	80	1,080	554.13	280	320	85,822.99
Wisconsin	.....	.....	.....	.....	80	40	6,647,632.53
Total	16,550.08	16,326.02	13,794.52	19,407.18	12,053.90	4,046.09	63,507,410.49

*July 27, 1842; February 11, 1847; September 28, 1850; March 22, 1852; March 3, 1855.

NOTE.—The areas in black figures are not included in the aggregates, having been previously accounted for.

PUBLIC-LAND STATES.

Dates of admission to the Union.

State.	Date.	United States Statutes.
Ohio	Apr. 30, 1802	Vol. 2, p. 175
Louisiana	Feb. 20, 1811	2, 641
Indiana	Apr. 19, 1816	3, 290
Mississippi	July 4, 1836 Mar. 3, 1857	3, 349
Illinois	Apr. 18, 1818	3, 430
Alabama	Mar. 2, 1819 Mar. 2, 1855	3, 389
Missouri	Mar. 6, 1820	3, 545
Arkansas	June 23, 1836	5, 58
Michigan	.....do.....	5, 59
Iowa	Mar. 3, 1845	5, 790
Florida	.....do.....	5, 790
Wisconsin	Aug. 6, 1846	9, 58
Minnesota	Feb. 26, 1857	11, 167
Oregon	Feb. 14, 1859	11, 384
Kansas	May 4, 1858	12, 127
Nevada	Mar. 16, 1864	13, 30
Nebraska	Apr. 19, 1864	13, 47
Colorado	Mar. 3, 1875	13, 34
California	Sept. 9, 1850	9, 453

OHIO.

[5 per cent.]

* * * * * * *

SEC. 7. 3d. That one-twentieth part of the net proceeds of the lands lying within the said State sold by Congress, from and after the thirtieth day of June next, after deducting all expenses incident to the same, shall be applied to the laying out and making public roads leading from the navigable waters emptying into the Atlantic, to the Ohio, to the said State, and through the same, such roads to be laid out under

the authority of Congress, with the consent of the several States through which the road shall pass.

Provided, always, That the three foregoing propositions herein offered are on the conditions that the convention of the said State shall provide by an ordinance irrevocable without the consent of the United States, *that every and each tract of land sold by Congress* from and after the thirtieth day of June next, *shall be and remain exempt from any tax* laid by order or under authority of the State, whether for State, county, township, or any other purpose whatever, for the term of five years from and after the day of sale. (U. S. Stats., vol. 2, p. 175.)

LOUISIANA.

[5 per cent.]

* * * * * * *

SEC. 5. *And be it further enacted,* That five per centum of the net proceeds of the sales of the lands of the United States, after the first day of January, shall be applied to laying out and constructing public roads and levees in the said State, as the legislature thereof may direct.

SEC. 3. * * * *And provided also,* That the said convention shall provide by an ordinance, irrevocable without the consent of the United States, that the people inhabiting the said territory do agree and declare that they forever disclaim all right or title to the waste or unappropriated lands lying within the said territory; and that the same shall be and remain at the sole and entire disposition of the United States; and, moreover, that each and every tract of land sold by Congress *shall be* and *remain exempt* from *any tax* laid by the order or under the authority of the State, whether for State, county, township, parish, or for any other purpose whatever, for the term of five years from and after the respective days of the sales thereof; and that the lands belonging to citizens of the United States residing without the said State, shall never be taxed higher than the lands belonging to persons residing therein; and that *no taxes shall be imposed on lands the property of the United States;* and that the river Mississippi and the navigable rivers and waters leading into the same or into the Gulf of Mexico shall be common highways and forever free, as well to the inhabitants of the said State as to other citizens of the United States, without any tax, duty, impost, or toll therefor imposed by the said State. (U. S. Stats., vol. 2, p. 641.)

INDIANA.

[5 per cent.]

* * * * * * *

SEC. 6. 3d. That five per cent of the net proceeds of the lands lying within the said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said State, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said State, under the direction of Congress.

FIFTH. * * * *And provided, always,* That the five foregoing provisions herein offered are on the conditions that the convention of the said State shall provide, by an ordinance irrevocable without the consent of the United States, that every and each tract of land sold by the United States from and after the first day of December next shall be and *remain exempt from any tax* laid by order or under any authority of the State, whether for State, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale. (U. S. Stats., vol. 3, p. 290.)

MISSISSIPPI.

[5 per cent.]

SEC. 5. *And be it further enacted,* That five per cent of the net proceeds of the lands lying within the said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said State, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said State, under the direction of Congress.

SEC. 4. * * * *And provided, also,* That the said convention shall provide, by an ordinance irrevocable without the consent of the United States, that the people inhabiting the said territory do agree and declare that they forever disclaim all right or title to the waste or unappropriated lands lying within the said territory,

and that the same shall be and remain at the sole and entire disposition of the United States; and moreover, that each and every tract of land sold by Congress shall be and *remain exempt from any tax* laid by the order or under the authority of the State, whether for State, county, township, parish, or any other purpose whatever, for the term of five years from and after the respective days of the sales thereof, and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to persons residing therein; and that *no taxes* shall be *imposed on lands the property of the United States*, and that the river Mississippi, and the navigable rivers and waters leading into the same, or into the Gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of the said State as to other citizens of the United States, without any tax, duty, impost, or toll therefor imposed by the said State. (U. S. Stats., vol. 3, p. 349.)

ILLINOIS.

[5 per cent.]

* * * * * * *

SEC. 6. 3d. That five per cent of the net proceeds of the lands lying within such State, and which shall be sold by Congress from and after the first day of January, one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz: Two-fifths to be disbursed, under the direction of Congress, in making roads leading to the State, the residue to be appropriated by the legislature of the State for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university.

FOURTH. * * * *Provided, always*, That the four foregoing propositions herein offered are on the conditions that the convention of the said State shall provide, by an ordinance irrevocable without the consent of the United States, that every and each tract of land sold by the United States from and after the first day of January, one thousand eight hundred and nineteen, shall *remain exempt from any tax laid* by order or under any authority of the State, whether for State, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale: *And further*, That the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt, as aforesaid, from all taxes for the term of three years from and after the date of the patents, respectively; and that all the lands belonging to the citizens of the United States residing without the said State shall never be taxed higher than lands belonging to persons residing therein. (U. S. Stats., vol. 3, p. 430.)

ALABAMA.

[5 per cent.]

* * * * * * *

SEC. 6. 3d. That five per cent of the net proceeds of the lands lying within the said Territory, and which shall be sold by Congress from and after the first day of September, in the year one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for making public roads, canals, and improving the navigation of rivers, of which three-fifths shall be applied to those objects within the said State, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said State, under the direction of Congress.

4th. * * * *And provided always*, That the said convention shall provide by an ordinance, irrevocable without the consent of the United States, that the people inhabiting the said Territory do agree and declare that they forever disclaim all right and title to the waste or unappropriated lands lying within the said Territory; and that the same shall be and remain at the sole and entire disposition of the United States; and, moreover, that each and every tract of land sold by the United States after the first day of September, in the year one thousand eight hundred and nineteen, *shall be* and *remain exempt from any tax* laid by the order or under the authority of the State, county, township, parish, or any other purpose whatever, for the term of five years from and after the respective days of the sales thereof; and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to persons residing therein; *and that no tax shall be imposed on lands the property of the United States;* and that all navigable waters within the said State shall forever remain public highways, free to all citizens of said State and of the United States, without any tax, duty, impost, or toll therefor imposed by the said State. (U. S. Stats., vol. 3, p. 489.)

MISSOURI.

[5 per cent.]

* * * * * * *

SEC. 6. 3d. That five per cent of the net proceeds of the sale of lands lying within the said Territory or State, and which shall be sold by Congress, from and after the first day of January next, after deducting all expenses incident to the same shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the State, under the direction of the legislature thereof, and the other two-fifths in defraying, under the direction of Congress, the expenses to be incurred in making of a road or roads, canal or canals leading to the said State.

FIFTH. * * * *Provided*, That the five foregoing propositions herein offered are on the condition that the convention of the said State shall provide by an ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by the United States from and after the first day of January next shall *remain exempt from any tax* laid by order or under the authority of the State, whether for State, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale: *And further*, That the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees, or their heirs, remain exempt as aforesaid from taxation for the term of three years from and after the date of the patents respectively. (U. S. Stats., vol. 3, p. 545.)

ARKANSAS.

[5 per cent.]

* * * * * * *

THIRD. That five per cent of the net proceeds of the sale of lands lying within said State, and which shall be sold by Congress from and after the first day of July next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals within the said State, under the direction of the general assembly thereof.

FIFTH. * * * *Provided*, That the five foregoing propositions herein offered are on the condition that the general assembly or legislature of the said State by virtue of the powers conferred upon it by the convention which framed the constitution of said State, shall provide, by an ordinance, irrevocable without the consent of the United States, that the said general assembly of said State shall *never interfere with the primary disposal of the soil within the same by the United States*, nor with any regulations Congress may find necessary for securing the title of such soil to the *bona fide* purchasers thereof; and that *no tax shall be imposed on lands the property of the United States*, and that, in no case, shall nonresident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, whilst they continue to be held by the patentees or their heirs, remain *exempt from any tax* laid by order or under the authority of the State, county, township, or any other purpose for the term of three years from and after the date of the patents respectively. (U. S. Stats., vol. 5, p. 58.)

MICHIGAN.

[5 per cent.]

* * * * * * *

FIFTH. That five per cent of the net proceeds of the sales of all public lands lying within the said State which have been or shall be sold by Congress from and after the first day of July, eighteen hundred and thirty-six, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said State, as the legislature may direct: *Provided*, That the five foregoing propositions herein offered are on the condition that the legislature of the said State, by virtue of the powers conferred upon it by the convention which framed the constitution of the said State, shall provide, by an ordinance, irrevocable without the consent of the United States, that the said State shall *never interfere with the primary disposal of the soil within the same by the United States*, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona-fide* purchasers thereof; and that *no tax shall be imposed on lands the property of the United States;* and that in no case shall nonresident proprietors be taxed higher than residents, and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, whilst they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents respectively. (U. S. Stats., vol. 5, p. 59.)

IOWA AND FLORIDA.

[5 per cent.]

* * * * * * *

5th. That five per cent of the net proceeds of sales of all public lands lying within the said State which have been or shall be sold by Congress from and after the admission of said State, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said State, as the legislature may direct: *Provided*, That the five foregoing propositions herein offered are on the condition that the legislature of the said State, by virtue of the powers conferred upon it by the convention which framed the constitution of the said State, shall provide, by an ordinance, irrevocable without the consent of the United States, that the said State *shall never interfere with the primary disposal of the soil within the same by the United States*, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona-fide* purchasers thereof; and that *no tax shall be imposed on lands the property of the United States;* and that in no case shall the nonresident proprietors be taxed higher than residents, and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents, respectively. (U. S. Stats., vol. 5, p. 790.)

WISCONSIN.

[5 per cent.]

* * * * * * *

FIFTH. That five per cent of the net proceeds of sales of all public lands lying within the said State, which have been or shall be sold by Congress from and after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State for the purpose of making public roads and canals in the same, as the legislature shall direct: *Provided*, That the foregoing propositions herein offered are on the conditions that the said convention which shall form the constitution of said State shall provide, by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, *that said State shall never interfere with the primary disposal of the soil within the same by the United States*, nor with any regulations Congress may find necessary for securing the title in such soil to *bona fide* purchasers thereof; *and that no tax shall be imposed on lands the property of the United States;* and that in no case shall nonresident proprietors be taxed higher than residents. (U. S. Stats., vol. 9, p. 58.)

MINNESOTA.

[5 per cent.]

* * * * * * *

SEC. 5. 5th. That five per cent of the net proceeds of sales of all public lands lying within said State, which shall be sold by Congress after the admission of the said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State for the purpose of making public roads and internal improvements, as the legislature shall direct: *Provided*, The foregoing propositions herein offered are on the condition that the said convention which shall form the constitution of said State shall provide, by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, that *said State shall never interfere with the primary disposal of the soil within the same by the United States*, or with any regulations Congress may find necessary for securing the title in said soil to *bona fide* purchasers thereof; *and that no tax shall be imposed on lands belonging to the United States;* and that in no case shall nonresident proprietors be taxed higher than residents. (U. S. Stats., vol. 11, p. 167.)

OREGON.

[5 per cent.]

* * * * * *

SEC. 4. 5th. That five per centum of the net proceeds of sales of all public lands lying within said State which shall be sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State for the purpose of making public roads and internal improvements, as the legislature shall direct: *Provided*, That the foregoing propositions hereinbefore offered are on the condition that the people of Oregon shall provide by an ordinance, irrevocable without the consent of the United States, *that said State shall never*

interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to *bona fide* purchasers thereof; and that in no case shall nonresident proprietors be taxed higher than residents.

6th. And that the said State shall never tax the lands or the property of the United States in said State. (U. S. Stats., vol. 11, p. 384.)

KANSAS.

[5 per cent.]

* * * * * * *

SEC. 3. 5th. That five per centum of the net proceeds of sales of all public lands lying within said State which shall be sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State for the purpose of making public roads and internal improvements, or for other purposes, as the legislature may direct: *Provided,* That the foregoing propositions hereinbefore offered are on the condition that the people of Kansas shall provide by an ordinance, irrevocable without the consent of the United States, that *said State shall never interfere with the primary disposal of the soil within the same by the United States,* or with any regulations Congress may find necessary for securing the title in the soil to *bona fide* purchasers thereof.

6th. And that the *said State shall never tax the lands* or the *property of the United States in said State.* (U. S. Stats., vol. 12, p. 127.)

NEVADA.

[5 per cent.]

* * * * * * *

SEC. 10. * * * That five per centum of the proceeds of the sales of all public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State for the purpose of making and improving public roads, constructing ditches or canals, to effect a general system of irrigation of the agricultural land in the State, as the legislature shall direct.

SEC. 4. 3rd. That the people inhabiting said Territory do agree and declare that they forever *disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States;* and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the land belonging to the residents thereof; and that no *taxes shall be imposed by said State on lands or property therein belonging to, or which may hereafter be purchased by, the United States.* (U. S. Stats., vol. 13, p. 30.)

NEBRASKA.

[5 per cent.]

* * * * * * *

SEC. 12. * * * That five per centum of the proceeds of the sales of all public lands lying within said State which have been or shall be sold by the United States prior or subsequent to the admission of said State into the Union, after deducting all expenses incident to the same, shall be paid to the said State for the support of common schools.

SEC. 4. 3rd. That the people inhabiting said Territory do agree and declare that they forever *disclaim all right and title to the unappropriated public lands lying within said Territory* and that *the same shall be and remain at the sole and entire disposition of the United States,* and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to residents thereof; and that *no taxes shall be imposed by said State on lands or property therein belonging to, or which may hereafter be purchased by, the United States.* (U. S. Stats., vol. 13, p. 47.)

COLORADO.

[5 per cent.]

* * * * * * *

SEC. 10. * * * That five per centum of the proceeds of the sales of all public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all expenses incident to the same, shall be paid to the said State for the purpose of making and improving

public roads, constructing ditches or canals, to effect a general system of irrigation of the agricultural land of the State, as the legislature shall direct.

SEC. 3rd. That the people inhabiting said Territory do agree and declare that they *forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States,* and that the land belonging to citizens of the United States residing without the said State shall never be taxed higher than the land belonging to residents thereof; and that *no taxes shall be imposed by said State on lands or property therein belonging to, or which may hereafter be purchased by, the United States.* (U. S. Stats., vol. 13, p. 34.)

CALIFORNIA.

[5 per cent.]

* * * * * * *

Be it enacted, * * * That the State of California shall be one, and is hereby declared to be one, of the United States of America, and *admitted into the Union on an equal footing with the original States in all respects whatever.*

SEC. 3. * * * That the State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, *shall never interefere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned; and that they shall never lay any tax or assessment of any description whatsoever upon the public domain of the United States;* and in no case shall nonresident proprietors who are citizens of the United States be taxed higher than residents; and that all the navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost, or duty therefor. (U. S. Stats., vol. 9, p. 453.)

NORTH DAKOTA, SOUTH DAKOTA, MONTANA, AND WASHINGTON.

[February 22, 1889, 25 Stats., sec. 18, p. 676.]

IDAHO.

[July 3, 1890, 26 Stats., sec. 7, p. 215.]

WYOMING.

[July 10, 1890, 26 Stats., sec. 7, p. 222.]

* * * That five per centum of the proceeds of the sales of public lands lying within said States, which shall be sold by the United States subsequent to the admission of said States into the Union, after deducting all the expenses incident to the same, shall be paid to the said States to be used as a permanent fund, the interest of which only shall be expended for the purpose of common schools within said States, respectively.

EXHIBIT I.

[Senate Report No. 775, Fifty-second Congress, first session.]

The Committee on Public Lands having had under consideration S. 615, S. 439, S. 1680, and S. 1945, bills granting to each of the several States, North Dakota, South Dakota, Wyoming, and Montana, in the order of the numbers above given, 5 per cent of the net proceeds of the sales of public lands therein; also S. 576 and S. 2394, bills explanatory of an act entitled "An Act to settle certain accounts between the United States and the State of Mississippi and other States," report the same back to the Senate recommending their indefinite postponement, and present an original bill for a general law embracing the subject-matter of each and all of said bills, and recommend its passage. The title of said bill is as follows: "A bill explanatory of an act entitled 'An act to settle certain accounts between the United States and the State of Mississippi and other States,' and for other purposes," and will be numbered S. 3086.

It appears that Congress has, at different dates, beginning in 1802 in the case of Ohio, granted and allowed to the several States containing public lands, with the exception of California, 5 per cent upon the net proceeds of the sales of public lands therein.

The act of March 2, 1855 (10 Stat., 630), required the Commissioner of the General Land Office to include in a statement of the 5 per cent due to the State of Alabama "the several reservations under the various treaties with the Chickasaw, Choctaw, and Creek Indians within the limits of Alabama, and allow and pay to the said State 5 per cent thereon, as in case of other sales."

The act of March 3, 1857 (11 Stat., 200), in its first section required the Commissioner of the General Land Office to state an account between the United States and Mississippi upon the same principles of allowance and settlement as provided in the Alabama act of March 3, 1855, and 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 States five per centum thereon, as in case of other sales, estimating the lands at the value of one dollar and twenty-five cents per acre, and in the second section extended the same principle of settlement to the other States, and provided for estimating all lands and permanent reservations at one dollar and twenty-five cents per acre."

The provisions of the said acts of 1855 and 1857 were carried into effect as regards all the States then in the Union to which the 5 per cent grant had been made and wherein Indian reservations existed. With regard to the States since admitted into the Union it has been held by the executive officers that the provisions of said acts are not applicable. The equality of the States is a fundamental principle of the Government, and it may be found running through all the legislation on the subject of the public lands and grants to the States in connection therewith, as an established principle, that the States shall be treated alike, none being discriminated against. It is accordingly the object of said Senate bill (No. 3086) to declare the said act of March 3, 1857, applicable to the States admitted into the Union since March 3, 1857, namely, Minnesota, Oregon, Kansas, Nebraska, Nevada, Colorado, South Dakota, North Dakota, Washington, Montana, Idaho, and Wyoming, the same as is applied to States previously admitted, and to provide that said act "shall be construed as embracing all lands in present Indian reservations in each of said States, and all lands of former Indian reservations within the United States to which the Indian title has been extinguished since the admission of said States, and which have or shall be disposed of by the United States, for which it has or shall receive cash for the benefit of the Indians upon such reservations; and the Commissioner of the General Land Office shall state an account between the United States and each of the said States, estimating all such lands and reservations at $1.25 per acre, and shall certify the same to the Secretary of the Treasury for settlement, to be paid out of any money in the Treasury not otherwise appropriated."

The ownership of the lands constituting the public domain, embraced in cessions from Great Britain, France, Spain, and Mexico, and from certain individual States of the Union, were originally regarded as property to be disposed of for the common benefit of the States, and when the States within the limits of which the lands were situated were admitted into the Union there were stipulations made in the acts of admission which were obligatory as contracts on the part of the several States and the United States, among which the grant of the 5 per cent was included.

This grant was for 5 per cent of the net proceeds of the sales of the public lands. At the foundation of this grant was the then established understanding that the lands were to be disposed of for the benefit of the common treasury, and the stipulation for 5 per cent of the proceeds as originally understood amounted to a grant of that percentage of the net proceeds of the sales of all the public lands at such price as they would bring when so disposed of. This understanding was adhered to substantially with regard to the great bulk of the lands during the earlier portion of the history of the country, and the older States had the benefit thereof; but it has since been departed from, and in view of the repeal of the general laws for the sale of the public lands it is apparent that the States in which the lands lie will hereafter realize but little, if any, benefit from the 5 per cent grant for which the United States stipulated when they entered the Union, and in consideration of which the States renounced all right to tax the public domain and bound themselves not to interfere with the primary disposal of the soil by the Federal Government.

But little land now remains subject to sale beyond what is embraced in the Indian reservations, the remainder of the public lands being, under the now established policy, set aside for homes for the people, without price, and with no payment but nominal fees. From the foregoing considerations it appears only equitable and just that the newer States admitted into the Union since the 3d of March, 1857, should receive the benefit of the same principles that were applied in favor of the older States, previously admitted under the act of that date, in the adjustment of their claims under the 5 per cent grant, so far as lands embraced in Indian reservations shall be sold and the proceeds realized and applied for the purposes of the Federal Government, whether in furtherance of its Indian policy or for any other purpose to which they may be applied.

In the laws heretofore enacted on the subject there is none that prescribes a rule

for determining precisely what expenses are to be deducted from the gross receipts in ascertaining the net proceeds from the sales of the public lands, but this has been left to the varying opinions of the executive officers. But if the method heretofore obtaining of deducting all the expenses of making surveys, sustaining district land offices, the General Land Office, and the Interior Department, rendered necessary for carrying out the land laws generally, from the gross proceeds of the sales should be continued, in determining the net proceeds under this act, the aggregate thereof might absorb the total proceeds of such sales, or at least leave very little from which the State could realize its 5 per cent. It is due therefore to the States to be affected by this legislation that the Senate consider whether they should be compelled to bear more than their share of the expenses, to be proportioned to the total expenses as is the number of acres sold, from which the gross proceeds arise, to the total number of acres disposed of in all the prescribed methods during the period for which the account is made up, and for which the total expenses are incurred, taking into account the fact of the greater expenses incurred per acre in making disposals under the settlement laws, in comparison with the amount of money produced, than in cash sales.

Your committee therefore recommends the passage of the bill, reserving the right to present hereafter an amendment thereto prescribing a more definite and favorable rule for determining the net proceeds from said sales.

This bill has been formulated so as to conform to the views of the Commissioner of the General Land Office as expressed in his reports on Senate bills Nos. 615 and 2394, dated February 7, 1892, and March 18, 1892, and of the Secretary of the Interior in his reports on the same bills of March 4, 1892, and April 8, 1892, which are attached to this report.

DEPARTMENT OF THE INTERIOR,
Washington, March 4, 1892.

SIR: I am in receipt, by reference from you, of Senate bill No. 615, entitled "A bill granting to the State of North Dakota 5 per cent of the net proceeds of the sales of public lands in that State."

I herewith transmit the report of the Commissioner of the General Land Office on said bill, to which your attention is respectfully called.

The claim of the State of North Dakota for a per centum on lands embraced in Indian reservations is based upon the same principle as that recognized in the act of March 3, 1857, and upon which an adjustment was made with the public-land States at that date.

Owing to the fact that so large a quantity of the available public land in North Dakota, outside the Indian reservation, was disposed of by the Government prior to the admission of the State into the Union, and owing to the further important fact that by the repeal of the preemption law the chief source of income from cash sales is destroyed, it is probable that the amount actually received by the State as a per centum of the cash sales will be a very limited sum.

Therefore, in reply to your request for an expression of opinion on the bill, I would say that in my opinion there is no objection to the passage of the bill. I would, however, recommend that the bill be amended as follows: Strike out the provision for including in the account to be stated the allowance for land located by military bounty-land warrants or Indian half-breed scrip, or granted to any Indian; also provide that in case any of the lands included in the Indian reservations for which a per centum is allowed shall hereafter be sold by the United States, no per centum shall be allowed for the same.

The reasons for the proposed amendments are:

First. In location by bounty-land warrants and scrip no purchase money is paid into the Treasury, and I do not think it has been the theory of past legislation that a per centum on the value of the land disposed of otherwise than for cash should be paid the State except in cases of lands embraced in Indian reservations.

Second. It is possible that the lands embraced in the reservations may hereafter be sold for cash by the Government, and if a per centum of the value of the land is now granted to the State no further allowance should be made except by an express act of Congress.

Very respectfully,

JOHN W. NOBLE, *Secretary.*

Hon. J. N. DOLPH,
Chairman Committee on Public Lands, United States Senate.

DEPARTMENT OF THE INTERIOR,
Washington, April 8, 1892.

SIR: I am in receipt, by reference from you, of Senate bill No. 2394, entitled "A bill explanatory of an act entitled 'An act to settle certain accounts between the United States and the State of Mississippi and other States,' and for other purposes," with a request for an expression of the views of this Department on the same.

I herewith transmit the report of the Commissioner of the General Land Office on said bill.

In my report dated March 4, 1892, on Senate bill No. 615, which contained the same general principles involved in this bill, I called attention to the advisability of inserting a proviso to the effect that if the Indian reservations were subsequently sold for cash, 5 per cent of the cash sales should not go to the State.

The number of bills submitted containing provisions for the payment to States of 5 per cent of cash sales of public lands is evidence of a desire to arrive at some plan of adjustment which will place the various States on an equal footing in respect to this donation. Without discussing the question involved, which is one so entirely within the province of Congress to determine, I would simply call attention to the facts connected with the disposal of so much of the available lands situated in North Dakota, South Dakota, Washington, Montana, Wyoming, and Idaho prior to their admission into the Union, and to the further fact of the repeal of the preemption law, the chief source of income from the sale of public lands.

Very respectfully,

JOHN W. NOBLE, *Secretary.*

Hon. J. N. DOLPH,
Chairman Committee on Public Lands, United States Senate.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., February 7, 1892.

SIR: I have received by reference from the honorable George Chandler, First Assistant Secretary, of the 11th ultimo, Senate bill No. 615, entitled "A bill granting the State of North Dakota 5 per cent of the net proceeds of the sales of public lands in that State," submitted by Hon. J. N. Dolph, chairman of the Senate Committee on Public Lands, and referred to me as above for report in duplicate.

This bill provides as follows:

"That there be, and is hereby, granted to the State of North Dakota five per centum of the net proceeds of the sales of public lands which have been made by the United States, or may hereafter be made, in said State. This act shall also embrace and apply to all lands in former and in present Indian and half-breed Indian reservations in said State; and the Commissioner of the General Land Office shall state an account between the United States and said State for the five per centum of the net proceeds of the cash sales of the public lands made therein, respectively, and in so doing he shall estimate all lands in all former and present Indian and half-breed Indian reservations in said State, and all lands sold for or located with bounty land warrants or Indian half-breed scrip, or granted to any Indian and exempt from taxation therein, if within the land grant or indemnity limits of any railroad at two dollars and fifty cents per acre, and otherwise at one dollar and twenty-five cents per acre, and he shall certify to the proper accounting officers of the Treasury for settlement the amounts so ascertained, and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, pay to said State the amount so found due; the same to be expended for or dedicated to such uses and purposes as the legislature thereof may hereafter designate."

The States of North and South Dakota were admitted into the Union November 2, 1889, under act of Congress approved February 22, 1889. (25 Stats., 680.) Section 13 of said act provides—

"That 5 per cent of the proceeds of the sales of public lands lying within said States shall be sold by the United States subsequent to the admission of said States into the Union after deducting all expenses incident to the same, shall be paid to said States."

Under this section accounts have been stated in favor of the States of North and South Dakota, but not including any percentage on the sales of Indian lands, or upon an estimated value of lands embraced in warrant or half-breed Indian scrip or locations, or allotments, or grants to Indians, or of any other lands than those for which the United States received payment under the various laws for the disposal thereof, by preemption, desert, or timber entry, or homestead commutation.

The act of March 2, 1855, required the Commissioner of the General Land Office to include in a statement of the 5 per cent due to the State of Alabama "the several reservations under the various treaties with the Chickasaw, Choctaw, and Creek Indians within the limits of Alabama, and allow and pay to the said State 5 per cent thereon, as in case of other sales. (10 Stats., p. 630.)

The act of March 3, 1857, required the Commissioner of the General Land Office to state an account in favor of Mississippi "upon the same principles of allowance and settlement as provided in the Alabama act of March 2, 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 cent thereon as in case of other sales, estimating the lands at the value of $1.25 per acre." Section 2 of said last-named act extended the same principle of settlement to the other States and provided for "estimating all lands and permanent reservations at $1.25 per acre." (11 Stats., p. 200.)

In the decision of the honorable Secretary of the Interior (Jacob Thompson) dated March 20, 1858, it was held "that the lands within Mississippi, taken by locations in satisfaction of Choctaw scrip under the act of Congress of 23d August, 1842, and 3d August, 1846, in adjusting the 5 per cent account of the State, are to be regarded as constituting a portion of "the several reservations under the various treaties with the Choctaw and Chickasaw Indians." In the same decision it was also held that "other States of the Union are all entitled to the same equal and liberal construction in carrying the act of 1857 into effect.

Under the acts and ruling quoted adjustments were made of 5 per cent on the value of Indian land and Indian scrip locations in favor of the several States, as follows:

Alabama	$128,336.42
Mississippi	167,686.17
Ohio	850.73
Indiana	6,333.73
Illinois	2,609.66
Iowa	7,562.94
Michigan	18,947.86
Wisconsin	41,647.13

No accounts were stated in favor of Louisiana, Missouri, Arkansas, Florida, or California under the act of March 3, 1857, probably because there were no Indian reservations at that time within the limits of those States, excepting the latter-named State, which was not included in the 5 per cent grant.

The total area of lands embraced within Indian reservations in North Dakota at the date of admission into the Union was 5,861,120 acres. The estimated value of such reservations, at $1.25 per acre, is $7,326,400, which, under this bill, would give the State $366,320. This amount would be further increased by the double minimum valuation proposed for lands lying "within the land grant or indemnity limits of any railroad."

The areas covered by warrant and scrip locations, Indian allotments and grants, and lands sold for Indians have not been computed.

That portion of the present bill having reference to giving 5 per cent on the computed value of the Indian reservations is so general in the language employed that it might possibly be open to question whether it be the intention that it should apply to permanent final reservations in the form of allotments to Indians in severalty, according to the present policy of the Government, alone, or in addition to the large tribal reservations formerly or at present existing, and if the latter, which have been or are likely before a great while to be relinquished by the tribes and alloted to individual Indians in severalty or otherwise, to be disposed of by the United States, whether or not, after such 5 per cent is paid on the computed value of the reservation lands, an additional 5 per cent on the net proceeds of the disposals of the lands, when so disposed of, is intended to be donated to the State.

In regard to the proposed grant of 5 per cent on the estimated value of lands embraced in locations of bounty-land warrants and Indian half-breed scrip, I would refer to the decision of the Supreme Court in the 5 per cent cases (110 U. S., 471), in which the States of Iowa and Illinois prayed for a writ of mandamus against the Commissioner of the General Land Office to require him to state an account under the 5 per cent grant to said States, to include 5 per cent of the value computed at $1.25 per acre of lands taken up in said States under United States military bounty-land warrants, whereby the court held that the grant made to these States did not include the amount so claimed. It would appear, therefore, that the grant proposed in this bill, so far as regards lands embraced in such locations, goes beyond what was granted to other States as included in the 5 per cent grant according to the judgment of the executive officers, sustained by that of the Supreme Court.

I would add that I find in the records of this office no obstacle to the contemplated legislation, should Congress see proper to make the proposed addition to its donations to the State.

The said bill is herewith returned.

Very respectfully,

THOS. H. CARTER, *Commissioner.*

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., March 18, 1892.

SIR: I have received by reference from the Honorable George Chandler, First Assistant Secretary, of the 7th instant, Senate bill No. 2394, entitled "A bill explanatory of an act entitled 'An act to settle certain accounts between the United States and the State of Mississippi and other States,' and for other purposes," submitted by Hon. J. N. Dolph, chairman of the Senate Committee on Public Lands, and referred to me as above for report in duplicate.

This bill provides as follows:

"That the act entitled 'An act to settle certain accounts between the United States and the State of Mississippi and other States,' approved March third, eighteen hundred and fifty-seven, shall be, and is hereby declared to be, applicable to the States admitted into the Union since March third, eighteen hundred and fifty-seven, namely, Minnesota, Oregon, Kansas, Nebraska, Nevada, Colorado, South Dakota, North Dakota, Washington, and Montana, the same as it applied to States previously admitted. The said act shall be construed as embracing all lands in former and present Indian reservations in each of said States, and the Commissioner of the General Land Office shall state an account between the United States and each of the said States, estimating all such lands and reservations at one dollar and twenty-five cents per acre, and certify the same to the Secretary of the Treasury for settlement, to be paid out of any money in the Treasury not otherwise appropriated."

In reply, I have the honor to state that the general principle involved in this bill is also embodied in several other bills already reported upon by me to the present Congress, among which are Senate bills No. 615, No. 439, and No. 1945; and I beg leave to invite attention to reports so made (especially that upon Senate bill No. 615) in connection with the bill now under consideration. The proposition to grant the States 5 per cent upon the estimated value of all former as well as upon present Indian lands is substantially the same in this bill as in those above mentioned, and seems to be such a departure from the course of former legislation as should doubtless receive the most careful consideration before adoption by legislative enactment.

The 5 per cent grant upon bounty-land warrants and scrip locations, etc., provided for in other similar bills heretofore considered is omitted in this, by so much removing objections that might be urged against its passage.

I have nothing further to add respecting this bill to what was said in my report of the 7th ultimo upon Senate bill No. 615.

Senate bill No. 2394 is herewith returned.

Very respectfully,

THOS. H. CARTER, *Commissioner.*

The SECRETARY OF THE INTERIOR.

Acts of Congress granting to the several States of the Union a certain per cent of the net proceeds of the cash sales of the public lands.

States.	Grant.		United States Statutes.	
	Per cent.	Date.	Volume.	Page.
Alabama	2	Sept. 4, 1841	5	457
Do	3	Mar. 2, 1819	3	489
Do	3	May 3, 1822	3	674
Do	3	July 4, 1836	5	116
Do	5	May 2, 1855	10	630
Do	10	Sept. 4, 1841	5	453
Arizona	5	Dec. 15, 1893 H. R. 4393.		
Arkansas	5	June 23, 1836	5	58
Do	10	Sept. 4, 1841	5	453
Colorado	5	Mar. 3, 1875	18	476
Florida	5	Mar. 3, 1845	5	742
Do	5	.....do	5	788
Idaho	5	July 3, 1890	26	215
Iowa	5	Mar. 3, 1845	5	742
Do	5	.....do	5	789
Do	5	Dec. 28, 1846	9	117
Do	5	Mar. 2, 1849	9	349
Illinois	5	Apr. 18, 1818	3	430
Do	10	Sept. 4, 1841	5	453
Indiana	3	Apr. 11, 1818	3	424
Do	5	Apr. 19, 1816	3	290
Do	10	Sept. 4, 1841	5	453

Acts of Congress granting to the several States of the Union a certain per cent of the net proceeds of the cash sales of the public lands—Continued.

States.	Grant.		United States Statutes.	
	Per cent.	Date.	Volume.	Page.
Kansas	5	May 4, 1858	11	270
Louisiana	5	Feb. 20, 1811	2	643
Do	10	Sept. 4, 1841	5	453
Missouri	2	Feb. 28, 1859	11	388
Do	3	May 3, 1822	3	674
Do	5	Mar. 6, 1820	3	547
Do	10	Sept. 4, 1841	5	453
Mississippi	2	....do	5	457
Do	3	Mar. 1, 1817	3	348
Do	3	May 3, 1822	3	674
Do	5	July 4, 1836	5	116
Do	5	Mar. 3, 1857	11	200
Do	10	Sept. 4, 1841	5	453
Michigan	5	June 23, 1836	5	60
Do	10	Sept. 4, 1841	5	453
Minnesota	5	Feb. 26, 1857	11	167
Do	5	May 11, 1858	11	285
Montana	5	Feb. 22, 1889	25	676
Nebraska	5	Apr. 19, 1864	13	49
Nevada	5	Mar. 16, 1864	13	32
New Mexico	5	June 28, 1894, H. R. 393.	.....	.....
North Dakota	5	Feb. 22, 1889	25	676
Ohio	3	Mar. 3. 1803	2	226
Do	5	Apr. 30, 1802	2	175
Do	10	Sept. 4, 1841	5	453
Oklahoma	.....	S. B. No. 2512, Fifty-third Congress, third session.	.....	.....
Oregon	5	Feb. 14, 1859	11	384
South Dakota	5	Feb. 2, 1889	25	676
Utah	5	July 16, 1894	28	107
Washington	5	Feb. 22, 1889	25	676
Wisconsin	5	Aug. 6, 1846	9	58
Do	5	May 29, 1848	9	233
Wyoming	5	July 10, 1890	26	222
New Hampshire	10	Sept. 4, 1841	5	453
Massachusetts	10	.....do	5	453
Rhode Island	10	.....do	5	453
Connecticut	10	.....do	5	453
New York	10	.....do	5	453
New Jersey	10	.....do	5	453
Pennsylvania	10	.....do	5	453
Delaware	10	.....do	5	453
Maryland	10	.....do	5	453
Virginia	10	.....do	5	453
North Carolina	10	.....do	5	453
South Carolina	10	.....do	5	453
Georgia	10	.....do	5	453
Kentucky	10	.....do	5	453
Vermont	10	.....do	5	453
Tennessee	10	.....do	5	453
Maine	10	.....do	5	453
District of Columbia	10	.....do	5	453

NOTE.—California is the only State not mentioned in this table.
See also pages 30 to 36 of Senate Report No. 1043, Fifty-third Congress, third session.

[House Report, No. 1571, Fifty-second Congress, first session.]

[June 2, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed. Mr. McRae, from the Committee on the Public Lands submitted the following report to accompany H. R. 9072.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 9072) to finally adjust and settle the claim of Arkansas and other States under the swamp land grants, and for other purposes, report the same back to the House with recommendation that it do pass.

The act approved March 2, 1849 (9 Stat. L., 352), granted to the State of Louisiana the whole of the swamp and overflowed lands in said State found unfit for culti-

vation, with the exception of those tracts fronting on rivers, creeks, bayous, etc., surveyed into lots or tracts under the acts of March 31, 1811, and May 24, 1824. (See Appendix A.)

The act of September 28, 1850 (9 Stat. L., 519), (see Appendix B), granted to the public-land States then in the Union the whole of the swamp and overflowed lands remaining unsold within their limits made unfit thereby for cultivation, and the Secretary of the Interior was by the second section of said act plainly directed to make out accurate lists and plats of the swamp lands and transmit the same to the governors of the States interested. He failed to make such selections and segregation of the lands granted. This failure or neglect has been the source of a great deal of controversy between the States and the Interior Department, and also of much vexatious and expensive litigation between those claiming under the grant and those adverse to it.

The Secretary of the Interior, instead of doing what the law intended he should, allowed the States the option of adopting one of two methods, as follows:

(1) The field notes of Government survey to be taken as the basis of selections, and all lands shown by them to be swamp or overflowed within the meaning of the granting act to be placed in the lists to be reported to the General Land Office.

(2) The States to make the selections by their own agents and at their own cost, and report the same to the surveyor-general with the proof of the swampy character of the land.

Alabama, Arkansas, Indiana, Louisiana, Michigan, Minnesota, Mississippi, Ohio, and Wisconsin have adopted method No. 1 and agreed to settle by the field notes.

Florida, Iowa, Illinois, and Missouri have adopted method No. 2 and make selections in the field.

The act approved March 12, 1860, extended the grant of September 28, 1850, to the States of Minnesota and Oregon. California, by the act approved July 23, 1866, was granted the same character of lands within her limits, but the method of selecting was much simplified in that act, and the adjustment has been much easier than in the other fourteen swamp-land States.

The act of September 28, 1850, granted the whole of the swamp and overflowed lands made thereby unfit for cultivation and unsold at that time to the States. It was an unconditional grant *in præsenti* and conveyed to the respective States all such lands. Although the language of the grant is perfectly plain and unambiguous, yet it has been the subject of consideration and construction in various courts, both State and national. The scope and tenor of the decisions will clearly appear from the following quotation from the decision of the Supreme Court of the United States in the case of Railroad Company *v.* Smith (9 Wall., 95):

"The act of September 28, 1850, was a present grant by Congress of certain lands to the States within which they lie, but by a description which requires something more than a mere reference to their townships, ranges, and sections to identify them as coming within it. * * *

"By the second section of the act of 1850 it was made the duty of the Secretary of the Interior to ascertain this fact, namely, what tracts were so swampy, overflowed, and wet as that the major parts thereof were unfit for cultivation, and furnish the State with the evidence of it. Must the State lose the lands, though clearly swamp land, because that officer has neglected to do this? The right of the State did not depend on his action, but on the act of Congress, and though the State might be embarrassed in the assertion of this right by the delay or failure of the Secretary to ascertain and make out lists of these lands, the right of the State to them could not be defeated by that delay."

Again, in the case of French *v.* Fyan et al. (3 Otto, 169), the court said:

"This court has decided more than once that the swamp-land act was a grant *in præsenti*, by which the title to those lands passed at once to the State in which they lay, except as to States admitted to the Union after its passage."

See, also, in the same line and to the same effect the following cases: Railroad Company *v.* Fremont County (9 Wallace, 89); Martin *v.* Marks (7 Otto, 345); decisions of Secretary of the Interior, December 23, 1851 (1 Lester's L. L., 549); April 25, 1862, and opinion of Attorney-General, November 10, 1850 (1 Lester's L. L., 564).

Such have been the decisions of the courts without exception, the latest decision being the case of the United States against Louisiana (127 U. S., 182).

The following quotations are from the able and exhaustive opinion of Justice Field in the case of Wright *v.* Roseberry (121 U. S., 488):

The object of the grant, as stated in the act, was to enable the several States to which it was made to construct the necessary levees and drains to reclaim the lands; and the act required the proceeds from them, whether from their sale or other disposition, to be used, so far as necessary, exclusively for that purpose. The early reclamation of the lands was of great importance to the States, not only on account of their extraordinary fertility when once reclaimed, but for the reason that until then they were the cause of malarial fevers and diseases in the neighborhood.

The language of the first section of the act indicates a grant *in præsenti* to each State of lands within its limits of the character described. Its words "shall be and are hereby granted" import an immediate transfer of interest, not a promise of a transfer in the future. It was only when the other sections of the act were read that a doubt was raised as to the immediate operation of the act. On the one hand, it was contended that these sections postponed the vesting of title in the State until the lands granted were identified and a patent of the United States for them was issued. On the other hand, it was insisted that effect must be given to the clear words of the granting clause of the first section, which, *ex vi termini*, import the passing of a present interest, and that in consistency with them the other provisions of the act should be regarded as simply providing the mode of identifying the lands and furnishing documentary evidence of their identification, and not as a limitation upon vesting the right to them in the State, as this would make the investiture dependent upon the request of the governor, and not upon the act of Congress. It was also urged that identification of the lands could be made in a majority of instances from simple examination of them, and that no policy of the Government could be advanced by postponing the passing of the title until the identification by the Secretary of the Interior; and that the clause providing that upon the issue of the patent the fee should pass, was merely declaratory of the nature of the title, the patent operating merely by way of further assurance.

The question thus brought to the attention of the Department, under whose supervision the act was to be carried into effect, was one upon which men might very well differ, but after its solution had been reached, and the conclusion was acted upon, necessarily affecting titles to immense tracts of lands, there should be the clearest evidence of error, as well as the strongest reasons of policy and justice controlling, before a departure from it should be sanctioned.

* * * * * * *

It is plain that the difficulty of identifying the swamp and overflowed lands could not defeat or impair the effect of the granting clause, by whomsoever such identification was required to be made. When identified, the title would become perfect, as of the date of the act. The patent would be evidence of such identification and declaratory of the title conveyed. It would establish definitely the extent and boundaries of the swamp and overflowed lands in any township, and thus render it unnecessary to resort to oral evidence on that subject. It would settle what otherwise might always be a mooted point, whether the greater part of any legal subdivision was so wet and unfit for cultivation as to carry the whole subdivision into the list. The determination of the Secretary upon these matters, as shown by the patent, would be conclusive as against any collateral attacks, he being the officer to whose supervision and control the matter is especially confided. The patent would thus be an invaluable muniment of title and a source of quiet and peace to its possessor. But the right of the State under the first section would not be enlarged by the action of the Secretary, except as to land, not swamp or overflowed, contained in a legal subdivision, as mentioned in the fourth section; nor could it be defeated, in regard to the swamp and overflowed lands, by his refusal to have the required list made out, or the patent issued, notwithstanding the delays and embarrassments which might ensue.

The conclusion which the Land Department reached upon its examination of the character of the grant soon after the passage of the act was that the title passed to the State at the date of the act. In a communication to the Commissioner of the General Land Office, under date of December 23, 1851, Mr. Stuart, then Secretary of the Interior, referring to the act of 1850 and the act of 1849 to aid Louisiana to drain her swamp lands, and stating that the first question involved was as to the period when the grants took effect—whether at the date of the law or at the date of the approval of the selections by the Secretary—said: "In each case, the granting clause is in the first section, and the words employed, viz, 'are hereby granted,' seem to me to import a grant *in præsenti*. They confer the right to the land, though other proceedings are necessary to perfect the title. When the selections are made and approved, or the patent issued, the title therefor becomes perfect, and has relation back to the date of the grant." And, further, "As the grants are regarded as taking effect from the date of the laws making them, respectively, and as vesting the inchoate title in the States, it follows that any subsequent sale or location of swamp or overflowed lands must be held to be illegal and the purchase money refunded, or a change of location ordered." (Lester's Land Laws, 549, No. 578.)

This construction of the grant has been followed by the Secretary's successors to this day. In a communication to the Commissioner of the General Land Office, April 19, 1877, Secretary Schurz said: "The legal character of this grant (of 1850) has often been passed upon by the courts, and it has been uniformly held that the act was a present grant, vesting in the State, *proprio vigore*, from the day of its date, title to all the land of the particular description therein designated, wanting nothing but the definition of the boundaries to make it perfect." And, therefore, he held

that swampy lands were not, in March, 1853, when the preemption laws were extended to California, public lands, and for that reason could not be entered and sold under those laws. "The act of September 28, 1850," he added, "was notice to the world that all of the swampy lands in California were thereby granted *in præsenti* to the State, and were not subject to preemption, entry, or sale thereafter; and the person who files a declaratory statement on lands actually swampy does so with full notice that they are not public lands and that he can not obtain any right thereby." (Copp's Public Land Laws, vol. 2, p. 1048.)

In a communication to the Commissioner, of February 25, 1886, Secretary Lamar said: "The principle has been formerly established by the decisions of the courts and of this Department that the grant of swamp lands made to the several States was a grant *in præsenti*, and conferred a present vested right to such lands as of the date of the grant, and that the field notes of survey may be taken as a basis in determining the character of the land if the State so selects." (Decisions of Department of Interior, vol. 4, 415.)

A similar construction of the grant was given by Attorney-General Black in an official communication to the Secretary of the Interior, under date of November 10, 1858. In February, 1853, Congress had made a grant of land to the States of Arkansas and Missouri to aid in the construction of a railroad, and under this grant a part of the lands previously granted to the State of Arkansas by the act of September 28, 1850, under the designation of swamp lands, was included; and the question asked of the Attorney-General was, which of the two acts gave the better title. In reply, he said: "Where there is a conflict between two titles derived from the same source, either of which would be good if the other were out of the way, the older one must always prevail; *prior in tempore potior est in jure*. This difficulty, therefore, is solved if the mere grant [of 1850], as you call it, gave the State a right to the land from the day of its date. That it did so there can be no doubt. In an opinion which I sent you on the 7th of June, 1857, concerning one of the same laws now under consideration, I said that a grant by Congress does of itself, *proprio vigore*, pass to the grantee all the estate which the United States had in the subject-matter of the grant, except what is expressly excepted. I refer you to that opinion for the reasons and authorities upon which the principle is grounded. It is not necessary that the patent should issue before the title vests in the State under the act of 1850. The act of Congress was itself a present grant, wanting nothing but a definition of boundaries to make it perfect, and to attain that object the Secretary of the Interior was directed to make out an accurate list and plat of the lands and cause a patent to be issued therefor. But when a party is authorized to demand a patent for land his title is vested as much as if he had the patent itself, which is but evidence of his title." (9 Opinions Attorneys-General, 254.)

The same view of the act as a present grant, vesting in the State from its date the title to all the land within its limits of the particular description designated, wanting only a definition of boundaries to render the title perfect, was taken at an early period by the highest courts of several States within which swamp and overflowed lands existed. It was so held by the supreme court of Arkansas in 1859, in Fletcher *v.* Pool, 20 Ark., 100; in 1866 in Branch *v.* Mitchell, 24 Ark., 431, 444, and in 1874 in Ringo's Executor *v.* Rotans's Heirs, 29 Ark., 56.

In Fletcher *vs.* Pool the court said: "That the act was a present grant vesting in the State, *proprio vigore*, from the day of its date, title to all the land of the particular description therein designated, wanting nothing but the definition of boundaries to make it perfect, no doubts can be entertained. The object of the second section was not to postpone the vestiture of title in the State until a patent should issue, but was to provide for the ascertainment of boundaries and to prevent a premature interference with the lands by the State legislature before they were so designated as to avoid mistake and confusion."

In Branch *vs.* Mitchell the court said: "We continue satisfied with the decisions heretofore made; and again hold that all the lands in the State, which were really and in fact swamp and overflowed, and thereby unfit for cultivation, passed to and vested in the State on the 28th of September, 1850. The case is the same as if the grant had been of all the prairie land, or all the woodland, or all the alluvial land, in the State; the difficulty of ascertainment of its character not affecting the question. The words of grant, the operative words, are direct and positive: 'Shall be and the same are hereby granted to the State;' and the provision of the second section, that the Secretary of the Interior should make out and transmit to the governor a list and plats of the land described, and at the request of the governor cause a patent to issue to the State; and that 'on that patent the fee simple to said lands shall vest in the said State,' can no more be held to limit the effect of the present grant in the first section, than if, in a deed, after immediate and express conveyance of lands by some general description, it should be provided that when the numbers should be ascertained another deed should be made, 'on which the fee simple should vest.' This would make the title of the State to any of the land depend on the

request of the governor for a patent. The words of the second section must be held to be simply a definition of the *nature* of the title which the State took under the grant, and not a postponement of the period at which the title should vest." (Arkansas Rep., vol. 24, p. 444-5.)

And in Ringo's Executor *v.* Rotan's Heirs the court held that the title of the State to the swamp and overflowed lands granted to her by the act of September 28, 1850, accrued from the date of the act, and that a title derived from the State took precedence over a grant by the United States subsequent to that time.

The same view was held by the supreme court of California in 1858, in Owens *v.* Jackson, 9 Cal., 322; and in Dickinson *v.* Somers, *ibid.*, 554; and in 1864 in Kernan *v.* Griffith, 27 Cal., 87; and in 1882 was assumed to be the correct view in Sacramento Valley Reclamation Company *v.* Cook, 61 Cal., 342. In the first of these cases, which was an action for the possession of swamp and overflowed land held under a patent of the State, the defendant demurred to the complaint, on the ground that it did not show that the land had been surveyed and patented to the State. The demurrer was sustained in the court below, but the supreme court reversed the decision, holding that the State had the right to dispose of lands of that character granted to her by the act of 1850, prior to the patent of the United States. "The act of Congress," said the court, "describes the land, not by specific boundaries, but by its quality, and is a legislative grant of all the public lands within the State of the quality mentioned. The patent is matter of evidence and description by metes and bounds. The office of the patent is to make the description of the lands definite and conclusive as between the United States and the State." The same conclusion was reached in 1861 by the supreme court of Iowa, in Allison *v.* Halfacre, 11 Iowa, 450, which was subsequently followed in all its decisions on the subject.

At a later day the supreme courts of Missouri and Oregon held the same doctrine. (Clarkson *v.* Buchanan, 53 Mo., 563; Campbell *v.* Wortman, 58 *id.*, 258; Gaston *v.* Stott, 5 Oregon, 48.) The supreme court of Illinois, in 1863, expressed the same view in Supervisors *v.* State's Attorney, 31 Ill., 68; then receded from it in Grantham *v.* Atkins, 63 Ill., 259; and, in 1873, in Thompson *v.* Prince, 67 Ill., 281; but returned to its first conclusion, in 1875, in Keller *v.* Brickey, 78 Ill., 133.

* * * * * * *

The result of these decisions is that the grant of 1850 is one *in præsenti*, passing the title to the lands as of its date, but requiring identification of the lands to render the title perfect; that the action of the Secretary in identifying them is conclusive against collateral attack, as the judgment of a special tribunal to which the determination of the matter is intrusted; but when that officer has neglected or failed to make the identification, it is competent for the grantees of the State, to prevent their rights from being defeated, to identify the lands in any other appropriate mode which will effect that object. A resort to such mode of identification would also seem to be permissible, where the Secretary declares his inability to certify the lands to the State for any cause other than a consideration of their character.

The legislation of Congress subsequent to the act of 1850, for the purpose of giving it effect, has been in consonance with the view stated of the nature of the grant. It has uniformly recognized the paramount character of the State's title, and has endeavored to correct the evils which in many cases followed from the delay of the Secretary of the Interior in identifying the lands and furnishing to the State the required lists and plats. The legislatures of the several States in which such lands existed very generally themselves undertook to identify the lands and to dispose of them, and for that purpose passed appropriate legislation for their survey and sale and the issue of patents to the purchasers. Much inconvenience, and in many instances conflicts of title, arose between those claiming under the State and those claiming directly from the United States. To obviate this, on the 2d of March, 1855, Congress passed an act "for the relief of purchasers and locators of swamp and overflowed lands." (10 Stats., 634, chap. 147.) The act provided that the President of the United States should cause patents to be issued to purchasers and locators who had made entries of the public lands claimed as swamp and overflowed lands with cash or land warrants, or scrip, prior to the issue of patents to States under the act of 1850, "provided, that in all cases where any State through its constituted authorities may have sold or disposed of any tract or tracts of such land to any individual or individuals, and prior to the entry, sale, or location of the same under the preemption or other laws of the United States, no patent shall be issued by the President for such tract or tracts until such State through its constituted authorities shall release its claim thereto in such form as shall be prescribed by the Secretary of the Interior."

The act also provided "that upon due proof by the authorized agent of the State or States, before the Commissioner of the General Land Office, that any of the lands purchased were swamp lands within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to said State or States, and when the lands have been located by warrant or scrip, the said State or States shall be author-

ized to locate a quantity of like land upon any of the public lands subject to entry at $1.25 an acre, or less, and patents shall issue therefor upon the terms and conditions enumerated in the act aforesaid."

There is here a plain recognition of the prior right of the State to the swamp lands within her limits, by the declaration that no patent of the United States shall be issued to purchasers from them of such lands without a release from the State, and that, in case of completed purchases from them, the purchase money shall be paid to the State, or if the purchase was made by warrant or in scrip, the State may locate an equal quantity of land upon any other public lands subject to entry. By act of March 3, 1857 (11 Stats., 251, chap. 117), "to confirm to the several States the swamp and overflowed lands selected under the act of September 28, 1850, and the act of March 2, 1849," the act of March 2, 1855, was continued in force and extended to all entries and locations of lands claimed as swamp, made since its passage.

While the act did not by legal subdivisions describe the land so that it could be located, the third section fixed a criterion by which it could be easily ascertained and found, to wit: "All legal subdivisions, the greater part of which is [September 28, 1850] wet and unfit for cultivation." To all such lands the title passed as of the date of the grant.

The failure of the Secretary of the Interior to make the lists and plats, and his action in allowing the local land officers to continue to dispose of the lands granted, became such a grievance that Congress passed two remedial acts referred to by Justice Field. The first of these was approved March 2, 1855 (10 Stat., 634), and granted relief to the purchasers and locators of swamp and overflowed lands by giving the States the purchase money for all such lands theretofore sold, and allowing dry lands of like quantity for such as had been otherwise disposed of. This act was not made prospective and continuing, as it ought to have been. (See Appendix C.)

Other difficulties arose about the selections made by the States, and so Congress again, on March 3, 1857 (11 Stat., 251), passed an act declaring that the selection of swamp and overflowed lands granted to the States by the act of September 28, 1850, theretofore made and reported to the General Land Office, so far as the same remained vacant and unappropriated and not interfered with by actual settlement under existing laws of the United States, were confirmed and approved for patent, and it in express terms extended and continued in force until that time the provisions of the act of March 2, 1855. (See Appendix D.)

The status of the grant as it now exists and is construed by the Department may be stated as follows:

(1) The swamp-land States to which the grant applies are entitled to all the swamp and overflowed lands situated therein, as defined in the grant, not disposed of prior to September 28, 1850, the date of the grant.

(2) The said States are entitled to the purchase money for all such swamp lands as were sold by the United States for cash from the date of the grant to March 3, 1857, the date of the last indemnity act.

(3) They are entitled to have dry lands as indemnity for all such swamp lands as were disposed of otherwise than by sale prior to March 3, 1857.

(4) No indemnity either in land or money is now allowed the States for swamp lands that may have been erroneously sold or disposed of by the United States since the act of March 3, 1857. In all such cases the purchasers from the United States or settlers under the public land laws, as the case may be, must lose the land or buy in the title from the State or its grantee. All the Government can do is to refund the purchase money without interest. When such purchasers or settlers are evicted, as they often are, they come to Congress for relief or accept a return of the purchase money they have paid, which may be refunded under section 2362 of the Revised Statutes. This bill, if it becomes a law, would give the purchase money to the State whose land was erroneously sold and at the same time confirm the title to the grantee of the United States, and thus end all trouble and litigation.

This is but simple justice to the purchaser and settler, and costs the United States nothing. If the States are willing to make this settlement the United States certainly ought not to object.

The purpose of the committee is to end this matter, and they have therefore adopted the suggestion of the Commissioner and fixed a limitation of one year as the time within which all claims shall be presented. Heretofore there has been no limitation. New claims are being presented every year. Last year a large number were presented and allowed, and they still continue to come in. In view of the fact that no lands can be selected under this act that could not have been selected at any time since the original grant, this limitation does not appear to be unreasonably short. Here is what the Commissioner of the General Land Office said in his last report upon this point:

"For more than a decade the Government has, at great expense, employed special agents to examine land selected in the manner indicated by the States and counties upon which land or cash indemnity has been claimed. Notwithstanding the great expense incurred, it does not appear that the task is nearing completion. Under the law as it is the work seems interminable. The Department is without authority to

prescribe any rule barring these claims by limitation. As long as agents can be secured, with the powerful incentive of a very large contingent fee to stimulate their efforts, claims will continue to be presented, unless Congress passes a law fixing a date beyond which such claims shall not be recognized by the Government. Unless such an act is passed, the present force of examiners in the field and the clerical force in the General Land Office employed on swamp-land indemnity must be continued from year to year for an indefinite period of time.

"While a statute of limitation as to the time for selecting swamp land in place might not stand the test of judicial scrutiny, I am satisfied that Congress has the power to pass a statute of limitation with reference to indemnity, whether in land or in cash.

"Considering the fact that about thirty-five years have passed during which these cash and land indemnity claims might have been presented, it appears that the period of three years more would be ample time within which all legitimate claims could be filed. I therefore earnestly urge that this matter be presented to Congress, with the recommendation that an act be passed forever barring all claims for cash, lands, or other indemnity under the swamp-land laws, after three years from the passage of the act."

The recommendation of the Commissioner was approved by the Secretary of the Interior, who in his last report called attention to the necessity for the adjustment of these grants in the following language:

"The Commissioner is of the opinion that within a period of three years all legitimate claims could be filed, and recommends legislation forever barring all claims for cash, land, or other indemnity under the swamp-land laws, not presented within three years from the date of the passage of such an act. As this privilege has existed since 1858 the period of limitation suggested would give ample time for the assertion of any claims not heretofore filed. There is necessity for Congressional action in the matter of the adjustment of these grants, and it is recommended that the matter be specially called to the attention of Congress."

On the 31st day of May, 1892, the Commissioner of the General Land Office, in a report to the Secretary of the Interior upon this subject, in responding to the following inquiry: "The sum of $1,581,852.10 being the total amount of cash indemnity paid under the acts of March 2, 1855, and March 3, 1857, to date; and your knowledge of amount the pending indemnity claims will aggregate, all of which are under the said acts, together with the experience of the States in making recent claims, what in your judgment would be a fair estimate for the amount required to settle all claims that might come before you under an act extending the provisions of the act of March 2, 1855, to date, with a proviso limiting the time within which such claims might be filed, to two years from the date of the act?"—made the following answer:

"It would in my judgment be impossible to submit any estimate of the amount required which would be anything more than an unreliable approximation or a mere conjecture. It may be suggested, however, as of the first importance to avoid opening the door to a multitude of ungrounded claims against the Government, that, in any measure for adjusting the claims of the States for swamp-land indemnity, the following principles should be established, viz:

"(1) That under no circumstances shall more than $2,000,000 be paid therefor, and if that sum should be found inadequate to pay all the claims allowed, that sum shall be allowed to the several States pro rata according to the amount of the claims allowed.

"(2) That all claims shall be presented for consideration within one year; all not presented within same period to be barred.

"(3) That all the costs of examining and passing upon claims based on lands not found to be swamp or overflowed shall be taxed by the Department to the States presenting such claims, and deducted from any amount allowed to them as indemnity."

In view of the cash already paid as indemnity under the acts of March 2, 1855, and March 3, 1857 (viz, $1,581,852.10), it would seem that the amount fixed by the Commissioner ($2,000,000) would be more than enough to satisfy all the just and legal indemnity claims that may be made for swamp lands disposed of by the Government since March 3, 1857. This limitation as to amount will, as the Commissioner suggests, operate to prevent the filing of any claims other than such as are valid and just.

The third recommendation by the Commissioner, of requiring the States to pay the costs of examining all fraudulent or erroneous claims, which is embodied in the proviso to section 4 of the bill, will protect the interests of the Government still further against the filing of any but legal and just claims.

The fifth section authorizes the special agents charged with the investigation of swamp-land claims to administer oaths and provides a punishment for false swearing.

THE ARKANSAS SETTLEMENT.

The first section of the bill relates alone to the State of Arkansas.

The debt due from the State of Arkansas, as well as her claims against the United States, are of long standing, and to some extent complicated and confused. In the

year 1838 the State borrowed the sum of $538,000 of the Smithsonian trust fund, and issued five hundred $1,000 bonds, redeemable October 26, 1861, and thirty-eight of such bonds redeemable January 1, 1868. These and eighty-seven $1,000 other bonds, held for the Indian trust fund, making in all the sum of $625,000, are now owned by the United States, having been paid by appropriations for that purpose.

The Treasurer of the United States, in addition to the said bonds owned by the United States, holds for the Secretary of the Interior, trustee of the Indian trust fund, one hundred and sixty-eight $1,000 bonds issued December 13, 1872, redeemable January 1, 1900. (See Appendix E.) All sums that have accrued to the State from all sources whatever since 1844, have been sequestered under section 3481, Revised Statutes, to be applied on the said bonds of the State.

The State authorities insist that the sums thus retained, with what is fairly and equitably due on the unadjusted swamp-land claim of the State, will more than pay what she owes on the bonds. (See Appendix F.) Estimating the amount for the fiscal years 1889, 1890, 1891, and 1892, there has accrued to the State from time to time, as shown by the statement of the General Land Office from the records of adjusted accounts furnished the committee and printed with this report, the sum of $264,564.55 on account of 5 per cent of the net proceeds of the sale of public lands. (See Appendix G.)

The State is entitled to the sum of $10,307.80 for keeping United States prisoners in the State prison under the order of President Johnson, dated February 5, 1867. A copy of the order, and the correspondence explaining how this sum accrued, has been furnished the committee and, together with the letters, is printed as Appendix H to this report. There were two installments found due, but never paid, to the State under the distribution act of September 5, 1841; one June 30, 1842, for the sum of $4,482.79, and the other July 1, 1842, for $529.37, making a total of $5,012.16, also held and should be applied on the bonds of the State.

The State claims and is entitled to a large amount of indemnity under the acts approved March 2, 1855, and March 3, 1857. Nothing has ever been allowed or credited to her on this account. The Interior Department admits that the State has a large claim, but the amount has never been officially determined and credited on her debt.

From a statement furnished the Committee on Public Lands by the Commissioner of the General Land Office during the Fiftieth Congress, it appears that the Government of the United States has sold 200,750 acres of swamp land, the property of the State, for which it received the sum of $196,990, and has also disposed of, for land warrants, scrip, and homestead, 162,080 acres other lands, worth, at $1.25 per acre, the sum of $202,600. The State insists that she should be credited with the sums so received, as of the years in which the sales were made and allowed, $1.25 per acre for such lands as were otherwise disposed of, making a total claim on this account of $399,590. (See Appendix I.)

The committee do not find that the items used to make up this sum have been allowed by the Department, but it does insist that when the claim is compared with the sums allowed to other States on the same account, that it appears to be a very fair and reasonable estimate.

The State made its selections properly and promptly, and yet there are still pending before the Interior Department claims for over 1,000,000 acres of land, besides the said claim for indemnity. The State also insists that as a matter of common fairness she ought to be credited with 5 per cent on lands entered under the homestead laws and located with military bounty land warrants and scrip, estimated, at the minimum price for Government lands, $1.25 per acre. In 1836, when the State was admitted into the Union, there was no way of disposing of public lands except by cash sale or for warrants and scrip. The homestead law was not passed until 1862, and the State, with such a contract as it made, does not think it just that the General Government should be allowed to adopt a policy that will have the effect to diminish the fund upon which she had a right to rely for the payment of the debt in question.

The greater part of all lands disposed of in Arkansas within the last thirty years have been entered under the homestead law. Up to June 30, 1887, as shown by the letter of the Commissioner, the aggregate of such lands taken as homesteads and with bounty warrants and scrip was 7,795,451.02 acres. (See Appendix J.) For this land the Government received as fees the sum of $502,085. (See Appendix K.) Estimating these lands at the minimum price then and now fixed by law, the State, if her claim should be allowed, would be entitled to the sum of $487,215.65 more than has been allowed on this account—nearly twice as much as she has been allowed on sales under the present rulings. She is certainly entitled at least to 5 per cent of the fees received by the Government for lands disposed of in the State.

The committee are aware that the Supreme Court, in the 5 per cent cases in 110 United States Reports, 471, has decided that the States are not entitled to the percentage on the value of lands disposed of by the United States in satisfaction of military land warrants; but in view of the very able dissenting opinion of Justice Miller, concurred in by Justice Field, and of the fact that the question of jurisdic-

tion was not passed upon by the court at that time, the State does not regard that case as finally settling the matter. The claim for such a percentage on homesteads has never been before the court, and besides, the personnel of the court has very much changed since that decision was rendered.

But whether the decision will be adhered to or not, is it right and just in a matter of contract like this for the United States as one of the parties to insist upon so radical a change in the disposition of the lands, and against the right and objection of the State, the other party, rely upon such a strict construction made by their own courts? The Government can afford to be fair with a State in matters of contract and account like this.

Here is the contract which the Supreme Court in the said decision calls a compact:

"The act of June 23, 1836, for the admission of Arkansas (5 Stats., p. 58), says that in lieu of the propositions submitted to Congress by the Territorial convention, which are rejected, the following propositions are hereby offered to the general assembly of the State of Arkansas for their free acceptance or rejection, which, if accepted, shall be obligatory upon the United States. They were formally accepted by the general assembly. So the propositions were the result of a negotiation. It was a fair contract, entered into between parties authorized to contract. The third item of the contract is as follows:

"'*Third.* That 5 per cent of the net proceeds of the sale of lands lying within the said State, and which shall be sold by Congress, from and after the 1st day of July next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals within the said State, under the direction of the general assembly thereof, * * * *Provided*, That the five foregoing propositions herein offered are on the condition that the general assembly or legislature of the said State, by virtue of the power conferred upon it by the convention which framed the constitution of the said State, shall provide by an ordinance, irrevocable without the consent of the United States, that the said general assembly of said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall nonresident proprietors be taxed higher than residents; and that the bounty land granted, or hereafter to be granted, for military services during the late war shall, whilst they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents respectively.'

"It would appear from this that the State has the right to tax all the lands of the Government as soon as disposed of and has other rights as to the disposal, but in consideration that she would agree by an ordinance, irrevocable without the consent of the United States, not to interfere with the primary disposal. nor tax nonresidents higher than residents, nor to tax the property of the United States, nor lands granted for military services for three years after the date of the patents, either for State, county, or township purposes, there shall be paid to the State 5 per cent of the net proceeds of the sale of lands lying within the said State, and which shall be sold by Congress from and after the 1st day of July, 1836.

"Land warrants were receivable for public lands at $1.25 per acre. The homestead was granted to all settlers who are qualified, upon the payment of certain fees and five years' continuous residence and cultivation upon the lands. This was a wise and proper policy for Congress, but the same necessity for public roads exists in a country settled under the homestead law as one settled under the preemption or graduation laws. It is now admitted that it is the best disposition to make of public lands, but the State should not be cheated out of the 5 per cent of the value which she had contracted for and had a right to expect. Many of the Western States settled prior to the passage of the homestead law, or principally under the preemption law, have received large sums on such sales."

Exclusive of the 5 per cent on lands disposed of otherwise than by cash sales, the claim of the State may be stated as follows:

Five per cent fund	$264,564.55
Cash indemnity for lands sold	196,990.00
Land indemnity, at $1.25 per acre	202,600.00
Keeping United States prisoners	10,377.80
Due under distribution act	5,012.16
Five per cent on $520,085, fees for lands entered	26,004.22
Total	705,548.76

This statement does not include anything for the 1,000,000 acres of land selected and claimed, nor for 5 per cent on the valuation of homesteads, or land located with warrants and scrip. (See Appendix L.)

APPENDIX A.

AN ACT to aid the State of Louisiana in draining the swamp lands therein.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, which may be or are found unfit for cultivation, shall be, and the same are hereby, granted to that State.

SEC. 2. *And be it further enacted,* That as soon as the Secretary of the Treasury shall be advised by the governor of Louisiana that that State has made the necessary preparation to defray the expenses thereof, he shall cause a personal examination to be made under the direction of the surveyor-general thereof, by experienced and faithful deputies, of all the swamp lands therein which are subject to overflow and unfit for cultivation; and a list of the same to be made out and certified by the deputies and surveyor-general to the Secretary of the Treasury, who shall approve the same, so far as they are not claimed or held by individuals, and on that approval the fee simple to said lands shall vest in the said State of Louisiana, subject to the disposal of the legislature thereof: *Provided, however,* That the proceeds of said lands shall be applied exclusively, as far as necessary, to the construction of the levees and drains aforesaid.

SEC. 3. *And be it further enacted,* That in making out a list of these swamp lands subject to overflow and unfit for cultivation, all legal subdivisions, the greater part of which is of that character, shall be included in said list; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom: *Provided, however,* That the provisions of this act shall not apply to any lands fronting on rivers, creeks, bayous, water courses, etc., which have been surveyed into lots or tracts under the acts of third March, eighteen hundred and eleven, and twenty-fourth May, eighteen hundred and twenty-four: *And provided further,* That the United States shall in no manner be liable for any expense incurred in selecting these lands and making out the list thereof, or for making any surveys that may be required to carry out the provisions of this act.

Approved, March 2, 1849.

APPENDIX B.

AN ACT to enable the State of Arkansas and other States to reclaim the "swamp lands" within their limits.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State.

SEC. 2. *And be it further enacted,* That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described aforesaid, and transmit the same to the governor of the State of Arkansas, and at the request of said governor cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the legislature thereof: *Provided, however,* That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, so far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

SEC. 3. *And be it further enacted,* That in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

SEC. 4. *And be it further enacted,* That the provisions of this act be extended to, and their benefits be conferred upon, each of the other States of the Union in which such swamp and overflowed lands, known as designated as aforesaid, may be situated.

Approved, September 28, 1850.

APPENDIX C.

AN ACT for the relief of purchasers and locators of swamp and overflowed lands.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States cause patents

to be issued, as soon as practicable, to the purchaser or purchasers, locator or locators, who have made entries of the public lands, claimed as swamp lands, either with cash, or with land warrants, or with scrip, prior to the issue of patents to the State or States, as provided for by the second section of the act approved September twenty-eight, eighteen hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," any decision of the Secretary of the Interior or other officer of the Government of the United States to the contrary notwithstanding: *Provided*, That in all cases where any State, through its constituted authorities, may have sold or disposed of any tract or tracts of land, to any individual or individuals, prior to the entry, sale, or location of the same, under the preemption or other laws of the United States, no patent shall be issued by the President for such tract or tracts of land, until such State, through its constituted authorities, shall release its claim thereto, in such form as shall be prescribed by the Secretary of the Interior: *And provided further*, That if such State shall not, within ninety days from the passage of this act, through its constituted authorities, return to the General Land Office of the United States a list of all the lands sold as aforesaid, together with the dates of such sale, and the names of the purchasers, the patents shall be issued immediately thereafter, as directed in the foregoing section

SEC. 11. *And be it further enacted*, That upon due proof, by the authorized agent of the State or States, before the Commissioner of the General Land Office, that any of the lands purchased were swamp lands, within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to the State or States; and where the lands have been located by warrant or scrip, the said State or States shall be authorized to locate a quantity of like amount upon any of the public lands subject to entry, at one dollar and a quarter per acre, or less, and patents shall issue therefor, upon the terms and conditions enumerated in the act aforesaid; *Provided, however*, That the said decisions of the Commissioner of the General Land Office shall be approved by the Secretary of the Interior.

Approved, March 2, 1855.

APPENDIX D.

AN ACT to confirm to the several States the swamp and overflowed lands selected under the act of September 28, 1850, and act of March 2, 1849.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the selection of swamp and overflowed lands granted to the several States by the act of Congress approved September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," and the act of March 2, 1849, entitled "An act to aid the State of Louisiana in draining the swamp lands therein," heretofore made and reported to the Commissioner of the General Land Office, so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States, be, and the same are hereby, confirmed, and shall be approved and patented to the said several States, in conformity with the provisions of the act aforesaid, as soon as may be practicable after the passage of this law: *Provided, however*, That nothing in this act contained shall interfere with the provisions of the act of Congress entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," approved March 2, 1855, which shall be, and is hereby, continued in force, and extended to all entries and locations of lands claimed as swamp lands made since its passage.

Approved March 3, 1857.

APPENDIX E.

Bonds of the State of Arkansas in custody of the Treasury of the United States.

Date of bond.	Kind.	Rate of interest.	Title of loan.	Under act of—
		Per cent.		
December 13, 1872	Coupon	6	Funded debt	Apr. 6, 1869
Do	do	6	do	Do.
January 1, 1838	Registered	5	Arkansas State bond.	Nov. 2, 1836
Do	Coupon	6	do	Oct. 20, and Dec. 10, 1837
Do	do	6	do	
Do	do	6	do	Dec. 18, 1837
Do	do	6	do	Do.
Do	do	6	do	Do.

Bonds of the State of Arkansas in custody of the Treasury of the United States—Cont'd.

Redeemable.	Numbers.	Par value.	Amount.
January 1, 1900	2099 to 2266	$1,000	*$168,000
Do	2267 to 2350	1,000	†84,000
January 1, 1887	99, 100, 115	1,000	†3,000
October 26, 1861	1 to 200	1,000	‡200,000
Do	201 to 500	1,000	‡300,000
January 1, 1868	282 to 294	1,000	‡13,000
Do	359 to 373	1,000	‡15,000
Do	401 to 410	1,000	‡10,000
Total			793,000

* Held for Indian trust fund.
† Held for United States. Formerly belonged to Indian trust fund.
‡ Held for United States. Formerly belonged to Smithsonian Institution.

APPENDIX F.

HON. W. H. HALLIBURTON'S STATEMENT OF THE CLAIMS OF THE STATE OF ARKANSAS AGAINST THE UNITED STATES.

By virtue of the compact entered into between the United States and the State of Arkansas under act of Congress approved 23d of June, 1836, the State of Arkansas to receive "5 per cent of the net proceeds of the sale of lands lying within the said State," on condition that said State should "never interfere with the primary disposal of the soil within the same by the United States, nor with any regulation Congress may find necessary for securing title in such soil to the bona fide purchasers thereof, etc."

The total land surface of the State of Arkansas, according to the report of the Land Department of the United States, as shown on page 1190 of History of the Public Domain, is 53,045 square miles, equal to 33,948,800 acres.

Of these lands the United States has, by sales, grants, donations, etc., disposed of 16,258,813.63 acres, leaving a balance of 17,689,986.37 acres, from which balance deduct 1,013,528.52 acres for swamp lands claimed by the State, as hereinafter shown, and we have 16,676,465.85 acres, on which the State claims 5 per cent of the net proceeds of sales thereof.

At the date of the compact the minimum price of all the lands in the State was $1.25 per acre, and by an act of Congress approved March 3, 1857, as quoted and referred to on page 724 of History of the Public Domain, it was made the duty of the Commissioner of the General Land Office in stating accounts between the United States and the States entitled to this fund "to allow and pay to each State such amount as should thus be found due, estimating all lands and permanent reservations at $1.25 per acre.

Estimating the 16,676,465.85 acres at $1.25 per acre, we have the sum of $20,845,582.31, less expenses of surveying and selling the same, on which to claim the 5 per cent under the compact.

By reference to page 192, History of the Public Domain, it will be seen that the average cost of "surveys and disposition from 1785 to 1880" of the public lands is 6.2 cents per acre; this gives the sum of $1,033,940.80 as total cost of surveying and selling the 16,676,465.85 acres, which sum deducted from the sum of $20,845,582.31, the estimated value of the lands, leaves the sum of $19,811,641.43, on which the State claims 5 per cent.

This gives the State the sum of $990,582.07. Of this sum the State has received $68,177.16, leaving balance due the State on the 5 per cent fund the sum of $922,404.91. To the foregoing must be added the sum of $5,012.16, under the distribution act of Congress, approved the 4th of September, 1841, and the sum of $10,377.80 due the State for keeping United States prisoners in the State prison, under Executive order dated 5th of February, 1867.

SWAMP LANDS.

By virtue of the provisions of section 1 of the act of Congress, 28th of September, 1850, commonly known as the swamp-land act, Congress granted to the State of Arkansas "the whole of the swamp and overflowed lands made unfit for cultivation" then remaining unsold in the State, to be selected and reported to the Land Department of the United States under the direction and supervision of the Department of the Interior.

Under this act and instructions from the General Land Office, the constituted authorities of the State of Arkansas, prior to the 5th of October, 1854, selected and reported to the General Land Office 10,324,915.75 acres. (See report of swamp land commissioners of October 5, 1854, page 9.) Of these lands the Commissioner of the General Land Office acknowledges the receipt and filing of lists containing 8,652,472.93 acres, and has approved for confirmation and patents 7,638,944.41 acres, leaving a balance of 1,013,528.52 acres acknowledged as having been received by the Department, as shown on page 697 of History of Public Domain.

The difference between the number of acres reported by the State authorities and acknowledged by the United States is 1,672,442.62 acres. And that between the number of acres reported and approved is 2,685,971.34 acres.

The cause of this difference the State has no means of knowing, but her authorities are advised that several lists of swamp lands, embracing a large number of acres, are now among the archives of the General Land Office and have been for years, but failing to have any official evidence of receipt and filing indorsed on them, are rejected.

A large number of acres embraced in the list selected and reported to the General Land Office, and suspended, has been sold by the United States for cash, land scrip, and military land warrants, for which the State of Arkansas claims indemnity under acts of Congress 2d March, 1855, and 3d March, 1857.

Accepting the acreage suspended (1,013,528.52), or the value thereof, as all that is coming to the State under the swamp-land grants, she will be entitled to a credit of $1,266,910.65, valuing the lands at $1.25 per acre, that being the minimum price of the lands.

To this must be added the sum of $8,947.72 for 7,158.18 acres of seminary, internal improvements, and public building lands, at the value of $1.25 per acre, yet due the State under the various grants.

RECAPITULATION OF CREDITS.

Amount claimed by the State on account of the 5 per cent fund	$922,404.91
Amount due under distribution act	5,012.16
For keeping convicts in the State's prison	10,377.80
Amount claimed for swamp lands	1,266,910.65
	2,104,705.42
Table showing the number of acres in the State of Arkansas and disposition of same:	
Total land surface, square miles	53,045
Total number of acres	33,948,800
See Public Domain, page 1190.	
Number of acres on which the State is not allowed 5 per cent, as shown by the following, viz:	
Cash sales prior to July, 1836	1,871,283.87
Military service	2,258,146.92
Commissioner's Report, 1867, page 186.	
Swamp lands approved to June 30, 1882:	
Public Domain (page 1249)	7,639,794.39
Internal improvements	500,000.00
Public Domain (page 255):	
Sixteenth section, Public Domain, page 228	886,460.00
Seminary (72 sections), Public Domain, page 228	46,080.00
Indian scrip	275,972.64
Commissioner's Report for 1867, page 188.	
Public buildings (Commissioner's Report for 1867, p. 189)	10,600.00
Grants to individuals and companies (Commissioner's Report for 1867, p. 189)	139,366.25
Private land claims (see Commissioner's Report for 1867, p. 189)	118,451.12
Deaf and Dumb Asylum of Kentucky (see Commissioner's Report for 1867, p. 189)	2,097.43
Railroad grants to June 30, 1882 (see Commissioner's Report for 1886, p. 292)	2,517,718.69
	16,265,971.81
Less the number of acres due the State for seminary, internal improvement, and public building lands	7,158.18
	16,258,813.63
Swamp lands selected and reported to the Commissioner of the General Land Office yet due the State	1,013,528.52
See Public Domain, p. —.	
Number of acres on which 5 per cent is claimed	16,676,465.85

Swamp lands:	
Number of acres reported by the State authorities to 5th of October, 1854 (see report of swamp land commissioners October 5, 1854, p. 9)	$10,324,915.75
Number of acres approved	7,638,944.41
Balance	2,685,971.34
Number of acres selected and reported as acknowledged by General Land Office	8,652,472.93
Number of acres approved (see History of Public Domain, p. 697)	7,638,944.41
	1,013,528.52

The following table will show the claim of the State, allowing the same rate of interest as the bonds bear, calculated from the year the sales were made:

Amount cash indemnity	$195,290.00
Interest on same	389,121.30
Five per cent fund	188,775.02
Interest on same	846,683.64
Amount land indemnity	202,600.00
Interest on same	290,464.84
United States prisoners	10,377.80
Sixteen years' interest on same	9,962.68
Under distribution act	5,012.16
Forty-six years' interest on same	13,833.55
Seminary lands	8,947.72
Total	2,161,067.71

APPENDIX G.

Statement of the amount accruing to the State of Arkansas on account of 5 per cent of the net proceeds of the sales of public lands in said State from July 1, 1836, to June 30, 1887, as appears from the record of adjusted accounts in the General Land Office; also the estimated amount accruing for the fiscal year 1888 not adjusted.

No. of report.	Dates covering time of adjustment.	Amount.
4464	July 1, 1836, to December 31, 1839	$53,459.16
4902	January 1, 1840, to December 31, 1840	6,311.68
5293	January 1, 1841, to June 30, 1842	3,634.21
5711	July 1, 1842, to June 30, 1843	1,830.72
5828	July 1, 1843, to December 31, 1843	1,019.78
6086	January 1, 1844, to June 30, 1844	1,132.85
6208	July 1, 1844, to December 31, 1844	1,788.76
6474	January 1, 1845, to December 31, 1845	870.62
7152	January 1, 1846, to December 31, 1846	2,609.28
7774	January 1, 1847, to December 31, 1848	10,196.73
8475	January 1, 1849, to December 31, 1849	3,009.71
9227	January 1, 1850, to December 31, 1850	3,617.06
10099	January 1, 1851, to December 31, 1851	8,941.60
11115	January 1, 1852, to December 31, 1852	3,271.60
11528	January 1, 1853, to December 31, 1853	10,188.69
11982	January 1, 1854, to December 31, 1854	8,313.15
13468	January 1, 1855, to December 31, 1856	18,700.79
16045	January 1, 1857, to December 31, 1859	65,941.81
17727	January 1, 1860, to December 31, 1860	19,634.75
29746	January 1, 1861, to December 31, 1861	1,789.43
32485	January 1, 1862, to June 30, 1880	485.41
33063	July 1, 1880, to June 30, 1881	1,592.13
34025	July 1, 1881, to June 30, 1882	3,280.15
36010	July 1, 1882, to June 30, 1883	6,293.56
41837	July 1, 1883, to June 30, 1884	2,852.89
41837	July 1, 1884, to June 30, 1885	1,575.53
41837	July 1, 1885, to June 30, 1886	1,581.63
42543	July 1, 1886, to June 30, 1887	13,943.60
45227	July 1, 1887, to June 30, 1888	5,197.07
	Estimate of amount due for fiscal years 1889 to 1892	1,500.00
	Total	264,564.55

DIVISION OF ACCOUNTS, GENERAL LAND OFFICE, *June 1, 1888.*

APPENDIX H.

FOR KEEPING MILITARY PRISONERS.

DEPARTMENT OF JUSTICE,
Washington, August 17, 1888.

SIR: Referring to your letter of the 1st of May last, herewith is inclosed a copy of a letter from the Second Auditor of the Treasury, dated the 10th instant, respecting the support of military prisoners since July 1, 1867.

Very respectfully,

G. A. JENKS, *Acting Attorney-General.*

Hon. THOMAS C. MCRAE,
House of Representatives.

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,
Washington, D. C., August 20, 1888.

SIR: Referring to your verbal inquiry as to payments made by the United States for keeping military prisoners in the Arkansas State penitentiary, I have the honor to inform you that on further examination I find that the sum of $10,800, being the aggregate of seven accounts for keeping prisoners from July 1, 1871, to March 31, 1873, was not paid to the State of Arkansas or to the authorities of the penitentiary, but was disposed of as follows:

Paid to the Treasurer of the United States and deposited in the Treasury as a payment by the State of Arkansas on account of interest due on certain bonds guaranteed by it and held in trust by the United States for the benefit of the Chickasaw Indian Nation	$10,377.80
Paid to C. Delano, Secretary of the Interior, being amount due on the funding of 90 bonds of the State of Arkansas	422.20
Total	10,800.00

* * * * * * *

I also inclose for your information a copy of the Executive order designating the State penitentiary of Arkansas as a place of confinement for military prisoners.

Respectfully, yours,

J. B. CALDWELL, *Acting Auditor.*

Hon. THOMAS C. MCRAE,
House of Representatives.

EXECUTIVE MANSION,
Washington, D. C., February 5, 1867.

The State penitentiary of Arkansas, at Little Rock, Ark., is designated as a prison for military prisoners sentenced to the penitentiary or to be kept in confinement.

ANDREW JOHNSON.

APPENDIX I.

HOUSE OF REPRESENTATIVES, UNITED STATES,
Washington, D. C., October 12, 1888.

SIR: Please give me memoranda showing the quantity of lands disposed of by the United States in the State of Arkansas for each year since the act of September 28, 1850, that is claimed by the said State, as shown by the several selection lists made under said act, giving the amount of cash sales as well as the area of the lands otherwise disposed of.

Respectfully,

THO. C. MCRAE.

Hon. S. M. STOCKSLAGER,
Commissioner, etc., Washington, D. C.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 24, 1889.

SIR: Pursuant to your request of October 12, 1888, I transmit herewith a memorandum showing, approximately, the quantity of land disposed of by the United States since September 28, 1850, which is claimed by the State of Arkansas under the act of Congress of that date granting swamp and overflowed lands to said State. This memorandum was made after a somewhat careful examination of the records, and, while it approximates the amount disposed of, it is not intended as an accurate statement of the amount of land involved.

Very respectfully,

S. M. STOCKSLAGER, *Commissioner.*

Hon. THOMAS C. MCRAE,
House of Representatives.

GENERAL LAND OFFICE,
Washington, D. C., January 24, 1889.

Statement showing the number of acres of selected swamp lands in the State of Arkansas sold by the United States, the amount of cash received therefor, the number of acres located with warrants and scrip each year since September 28, 1850, and the number of acres embraced in homesteads.

Year.	Acres of land.	Cash received.	Acres located with warrants and scrip.	Acres embraced in homesteads.
1850	5,240	$6,650	5,420	.....
1851	41,900	50,745	36,720	.....
1852	9,640	12,260	26,060	.....
1853	6,120	7,600	7,920	.....
1854	12,120	9,810	2,720	.....
1855	18,220	12,605	1,520	.....
1856	28,480	21,270	9,560	.....
1857	36,210	34,915	8,640	.....
1858	9,080	8,395	1,560	.....
1859	13,100	13,160	2,240	.....
1860	16,880	15,570	3,400	.....
1861	2,400	2,310	800	.....
	199,390	195,290	106,560	.....
From 1868 to 1887	1,360	1,700	.....	55,529
Total	200,750	196,990	106,560	55,529

APPENDIX J.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 24, 1888.

SIR: In reply to your letter of this date relative to the 5 per cent fund due the State of Arkansas, in accordance with the acts of June 15, 1836, and March 3, 1857, you are informed that the State of Arkansas has been allowed by accounts adjusted in this office 5 per cent of all net receipts from the sales of public lands within her borders from the date of her admission to the Union to June 30, 1886, amounting to $244,009.58.

The total receipts from such sales from the admission of the State to the 30th of June, 1886, have been $5,506,980.39, while the net receipts therefrom, after the deduction from the gross receipts of expenses incident to the sales of these lands, and of repayments made for lands erroneously sold, have been $4,880,165.44. With the exception of the comparatively small amounts of land sold under the graduation act of August 4, 1854, all these sales have been at the rate of $1.25 per acre or more.

Lands entered under the homestead and timber-culture laws or located with scrip or military bounty-land warrants are not included in the area embraced by the term "sales of public lands," and the fees received from such entries or locations are not included in the above aggregate of receipts.

Very respectfully,

S. M. STOCKSLAGER, *Acting Commissioner.*

Hon. THOMAS C. MCRAE,
House of Representatives, Washington, D. C.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., May 9, 1888.

SIR: I am in receipt of your letter of the 28th ultimo, asking to be informed of the area of lands in Arkansas entered under the homestead laws and located with military bounty-land warrants and scrip since the admission of the State into the Union, and in reply you are informed that the areas of public lands thus disposed of to June 30, 1887, are as follows:

	Acres.
Area of original homestead entries	5,531,344.10
Area of military bounty land-warrant locations	2,263,226.92
Area of scrip locations	880.00
Total	7,795,451.02

Very respectfully,

T. J. ANDERSON, *Assistant Commissioner.*

Hon. T. C. MCRAE,
House of Representatives.

APPENDIX K.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 28, 1889.

SIR: I am in receipt of your letter of the 10th ultimo, requesting to be informed of the amount received as fees upon public lands entered in the State of Arkansas, and in reply thereto you are informed that the amount of money so received to June 30, 1888, is $502,085.

The figures above given are approximately correct.

Very respectfully,

T. J. ANDERSON, *Assistant Commissioner.*

HON. T. C. MCRAE,
House of Representatives.

APPENDIX L.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 25, 1888.

SIR: In reply to your letter of the 24th instant I have the honor to advise you that the lands selected by the State of Arkansas under the swamp grant of September 28, 1850, amount to 8,655,210.10 acres. Notice of these selections was given the local officers for the district in which the lands were situated as soon as practicable after the surveyor-general approved the selection, and the instructions given required that said lands be withheld from sale or entry; but in many cases lands were sold or entered before notice of the State's claim reached the local office, and in a number of other cases the lands selected have been found not to be swamp or overflowed within the meaning of the grant, and the claim of the State rejected and the lands opened to settlement and entry, so that the amount of land now withheld from disposition is not known and could not be ascertained without a detailed examination of the records of both this and the several local offices in the State, which would require several months.

Of the lands selected and reported to this office, 7,659,619.13 acres have been approved by the Secretary of the Interior, and 7,503,196.13 acres have been patented to the State under the grant. The difference between the amount selected and the amount patented to the State (1,152,013.97 acres) is not the actual amount of land now in dispute. It embraces many duplicate selections; all the lands for which the claim of the State has been rejected; many tracts disposed of both before and after the date of the swamp grant by sales, or locations of warrants and scrip, or under other grants to the State, and numerous tracts covered by claims adverse to the State, yet to be determined, as well as for those for which the question of title between the State and United States only remains to be decided. Separate records of these different classes have never been made up, so that the amount of land already selected to which the State is entitled can not even be estimated.

Under date of November 2, 1850, a circular (see Lester's Land Laws, vol. 1, p. 543) setting forth the provisions of the grant of September 20, 1850, with instructions thereunder, and allowing the States to elect which of two methods they would adopt

for the purpose of designating the swamp lands, was sent to the governors of the States to which the grant applied. These methods are:

First. The field notes of Government survey to be taken as the basis for selections, and the lands shown by them to be swamp or overflowed within the meaning of the act, which were vacant and unappropriated September 28, 1850, would pass to the State.

Second. The selections to be made by State agents and reported to the United States surveyor-general for the district, with proof of the character of the lands.

By an act approved January 6, 1851, the legislature of the State of Arkansas provided for making selections according to the second method, which has since formed the basis of selections in said State.

Recently the State authorities sought to have the method of adjusting the claims of the State under the swamp-land acts changed, but so far they have not met the requirements of the Department in the matter. (See 4 L. D., 295–297 and 5 Id., 636.)

The regulations governing the adjustment of cases where persons seek to file claims for or enter lands claimed as swamp which have not been approved and certified to the States are contained in the inclosed circular of December 13, 1886. After such approval and certification the State's claim can only be contested upon a showing that the approval was the result of fraud or mistake, unless the applicant alleges some right under the public land laws acquired prior to the approval.

Under the acts of Congress approved March 2, 1855 (10 Stat., 634), and March 3, 1857 (11 Stat., 251), indemnity is allowed for lands entered with cash or located with warrants or scrip between September 28, 1850, and March 3, 1857, upon proof by the State that such lands were swamp or overflowed within the meaning of the grant of 1850. If the land was entered with cash the purchase money is paid over to the State, except in cases where more than $1.25 per acre was received. In such cases the rule is to allow only $1.25 per acre. Where the land was located with warrants or scrip, certificates issue authorizing the location of a like amount of public land, subject to entry at $1.25 per acre, within the limits of the State. In case of those States in which there are no public lands subject to entry at the price aforesaid this office has for a number of years refused to issue such certificates.

There is no authority of law for allowing indemnity for swamp lands sold or located after March 3, 1857, or for lands entered under the homestead or other later laws.

The State of Arkansas has received no indemnity, either in money or land, and has submitted no proof with a view to obtaining indemnity to swamp lands.

Very respectfully,

S. M. STOCKSLAGER, *Acting Commissioner.*

Hon. THOMAS C. MCRAE,
House of Representatives.