

CADWALLADER WALLACE.

FEBRUARY 9, 1842.

Read, and laid upon the table.

Mr. HOWARD, from the Committee on the Public Lands made the following

REPORT:

The Committee on the Public Lands, to whom was referred the petition of Cadwallader Wallace, report:

The claimant asks of the United States compensation for 41,142 $\frac{1}{2}$ acres of land, lying, as he contends, within the legal limits of the Virginia reservation, in the State of Ohio, but within that tract of country embraced within what is known as *Ludlow's line* on the east, the *Greenville treaty line* on the north, and *Roberts's line* on the west. It appears that the whole quantity of land in controversy, portions of which lie in six different townships and five different ranges, was sold by the land officers of the district of Cincinnati to some two hundred and fifty purchasers, between the years 1810 and 1832, or reserved for the use of schools, in the manner pointed out by laws, then in force, relating to the survey and sale of the public lands; and that they are now held by or under such purchasers.

The claim rests upon sixty-three land warrants, issued by the State of Virginia, for lands set apart to satisfy bounties promised by her to her officers and soldiers on continental establishment during the revolutionary war, 45 of which were issued in 1838, calling for 33,187 acres, for the services of 3 colonels, 1 lieutenant colonel, 1 major, 8 captains, 3 lieutenants, 2 surgeons, 1 surgeon's mate, and 1 sergeant, in the Virginia continental army. The rest are of an earlier date, and were issued to the representatives of sundry officers and soldiers, for similar services. Mr. Wallace claims as the assignee of these warrants, having located them on the tract above mentioned, procured a survey, and returned them, with the survey, which bears date the 14th of January, 1839, into the General Land Office.

The amount of purchase money received by the United States for these lands has been ascertained at the land office, and is \$75,551 56, which is the sum claimed by the petitioner. The Commissioner of the Land Office refused to carry the survey into effect by issuing patents, and the claimant now asks the above amount by way of indemnity from the Government.

As this claim is connected with that important branch of the legislation of Congress relating to revolutionary bounty lands; and has been a subject of the action of the House, one of whose committees, on a former occasion, recommended its allowance, an attentive examination of its merits would seem to be proper. It involves the duties of the Government under the

deed of cession by Virginia of the Northwestern Territory, dated March the 1st, 1784. The provision of that instrument under which the claim is urged is as follows:

“That in case the quantity of good lands on the southeast side of the Ohio, upon the waters of the Cumberland river, and between the Green river and Tennessee river, which have been reserved by law for the Virginia troops upon continental establishment, should, from the North Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to said troops in good lands, to be laid off between, the rivers Scioto and Little Miami, on the northwest side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia.”

In August, 1790, Congress passed an act declaring a deficiency of lands southeast of the Ohio, and authorizing the agents of those troops to locate, for their use, between the rivers Scioto and Little Miami, such a number of acres of good land as should, together with the lands already located there, and on the southeast side of the Ohio, be equal to the number of acres to which the Virginia continental line was entitled.

The western boundary of the lands in respect to which this special trust had thus been created not having been ascertained, the surveyor general, in carrying into effect the act of 10th of May, 1800, undertook to cause a line to be run between the sources of those two rivers. Proceeding northwardly, from the source of the Little Miami, into the Indian country, the surveyor, a Mr. Ludlow, was prevented from completing his surveys by the interference of the savages. He, however, run and marked what he supposed to be the true line between those points, as far northwardly as the southern boundary of the then Indian territory, known as the Greenville treaty line.

The act of Congress of 23d March, 1804, provides that this line, together with its course continued to the Scioto river, “should be considered and held as the westerly boundary line, north of the source of the Little Miami, of the territory reserved by the State of Virginia, between the Little Miami and Scioto rivers, for the use of the officers and soldiers of the continental line of that State: *Provided*, That the State of Virginia shall, within two years after the passing of this act, recognise the said line as the boundary of the said territory.” This provision has been very properly construed as being of no binding force, but a mere proposition to Virginia, to remove all cause of complaint on her part, in fixing the boundary.

But Virginia never saw fit to indicate such a recognition, nor, so far as is known, to take the proposition into consideration, although the necessity of fixing the boundary permanently was daily becoming more and more apparent and pressing, from the fact that the lands lying adjacent at the west were in the market, and purchases and settlements rapidly going on.

Failing in this, Congress, by the act of 26th June, 1812, authorized the President to appoint three commissioners on the part of the United States, to act with such commissioners as might be appointed by Virginia, with a view to settle the position of the western line of the reservation; and gave to this joint commission “full power and authority to ascertain, survey, and mark, according to the true intent and meaning of the condition in the deed of cession, the westwardly boundary line of said reservation;” and declared, further, that “until the westwardly boundary line of said reservation should be finally established by the agreement and consent of

the United States and the State of Virginia, the boundary line designated by the act of 23d March, 1804, should be considered and held as the proper boundary line of the aforesaid reservation."

The commissioners were accordingly appointed. They met, and employed a Mr. Charles Roberts to survey and mark a line from the source of the Little Miami to that of the Scioto, having ascertained those two points. This is known as *Roberts's line*. The survey was executed and reported to the Executive. It was not, however, agreed to by the Virginia commissioners, who seemed suddenly to change their ground, and insisted that the true western boundary should be a straight line from the source of the Scioto to the *mouth* of the Little Miami, which would embrace within the reservation a large tract of land lying *west* of the last-mentioned stream. Such a claim could not with any show of reason or justice be admitted. It was incompatible with the rights of the other States, which had an equal interest with Virginia in the tract thus claimed.

Thus the matter stood until the passage of the act of 11th April, 1818, which declares that "from the source of the Little Miami to the Indian boundary line established by the treaty of Greenville, in 1795, the line designated as the westerly boundary line of the Virginia tract by the act of 23d March, 1804, shall be considered and held to be such until otherwise directed by law; and from the aforesaid Indian boundary line to the source of the Scioto river, the line run by Charles Roberts, in 1812, in pursuance of the instructions of the commissioners appointed on the part of the United States to establish the western boundary of said military tract, shall be considered and held to be the westerly boundary thereof; and that no patent shall be granted on any location and survey that has or may be made west of the aforesaid respective lines."

The act of 20th May, 1826, (sec. 3,) provides "that no location shall, after the passage of this act, be made on lands for which patents had previously been issued, or which had been previously surveyed; nor shall any location be made on lands lying west of Ludlow's line; and any patent which, nevertheless, may be obtained contrary to the provisions of this section, shall be null and void."

And the act of 31st March, 1832, declares "that the provisions of the third section of the act of 20th May, 1826, are hereby continued in force for seven years, from and after the first day of June, A. D. 1832;" and so late as the 7th July, 1838, only six months before the location in this case was made, Congress, by an act of that date, while the four last-recited prohibitions were in full force, declared that "no location as aforesaid [of military land warrants of the Virginia line on continental establishment] shall be made on any lands lying upon the west side of Ludlow's line;" and pronounces null and void all patents which may be obtained contrary to the provisions of the act.

Such is a brief, but, it is believed, a correct recital of the acts of Congress bearing upon this claim; and it is obvious that as this location was made in direct violation of a statutory provision, which has been in force since 1812, the claimant has acquired no title to the lands described in his survey, unless it can be shown that it was not competent for Congress to enact that provision.

It has been assumed, in favor of this claim, that the question of the boundary of the Virginia reservation has been conclusively settled by the Supreme Court of the United States, in the case of *Doddridge vs. Thompson*

and others, (9 Wheat. R., 477,) and in that of *Reynolds vs. McArthur*, (2 Peters's R., 417;) that the right of the claimant is fully established by these authorities, and that the only question is whether the lands sold and conveyed by the Government shall be left to be wrested from the purchasers by legal process, or the claimant under the revolutionary warrants be compensated in money, on condition of his releasing all claim to the land in question. The claim being thus put upon some rule of law or equity, which gives the claimant such an interest in the land as will enable him to eject the present tenants; and that rule being supposed to be established by the court, the decisions relied on should be carefully examined before a claim of such magnitude and threatening such consequences should be admitted.

Have, then, the court determined that a location of this description imparts to the warrant holder any interest in the land?

It will be seen, that in the case of *Doddridge vs. Thompson*, the plaintiff's title (which prevailed) was founded upon a Virginia military land warrant, which had been located previously to the passage of the act of 26th June, 1812; that, in the case of *Reynolds vs. McArthur*, the title of the defendant in error rested upon a location under a similar warrant, before the same period; both being secured under the act of June 9, 1794, which authorized the officers and soldiers of the Virginia continental line, entitled to bounty lands, "included in the terms of the cession," to make their entries and surveys, and to receive patents. In the former case it was agreed by the parties, and in the latter ascertained by an officer of the court in Ohio, that Roberts's line was the true western boundary contemplated by the deed of cession; but we look in vain for any intimation, in the opinion given by the Supreme Court, in either case, that the Virginia deed vests in the warrant holders any beneficial interest, without the consent of Congress, much less in open violation of its enactments. The same court have decided (6 Peters, 666) that the fee simple of the reservation passed by the deed to the United States, under whose authority alone legal titles can emanate. It is true, indeed, that in the case of *Doddridge vs. Thompson*, the court, in construing the deed of cession, held that "the territory lying between the two rivers is the whole country from their sources to their mouths;" and that a straight line drawn from the source of the one to the source of the other was considered as furnishing the western boundary of the lands lying between them. The same doctrine is held in the case of *Reynolds vs. McArthur*; and in construing the deed of cession there is no occasion to dissent from this principle. Such a line was manifestly intended by that instrument, as the boundary beyond which bounty lands could not be claimed or allowed.

But the court in those cases, so far from denying to Congress the power of *altering* that boundary, expressly assert the contrary, and yield to that body not only the power to limit the time of locating the warrants, but the extent of the reservation itself. In the case of *Doddridge vs. Thompson*, decided in 1824, the court, (per Chief Justice Marshall,) commenting on the act of 26th June, 1812, say: "Had the plaintiff's title been acquired subsequent to the passage of this act, there would be much force in the objection to it; but it was acquired *before* this act was passed, and cannot, we think, be affected by it." And in the same case the court hold the following language: "Congress, therefore, found it necessary to provide for the sale of the territory not included within the reserve; and its laws made for this purpose

may control, and have controlled, the original rights of the military claimants, and have established a line between the sources of the Scioto and Little Miami, different from that for which the plaintiff contends. *Without questioning the power of the Government*, the court will proceed to inquire whether Congress has passed any law contracting the military reserve within narrower limits than are prescribed by the deed of cession as herein construed, or has made any provision which in any manner affects the plaintiff's grant." The plaintiff's grant had emanated before the defendant's purchase was made, and was clearly within the provisions of the act of 1785, which declared "that no part of the reserve should be alienated before enough should be laid off to satisfy the legal bounty warrants." The land in controversy lay between Ludlow's line and a straight line running between the sources of the two rivers; and both parties claimed in virtue of entries made prior to the act of 1812. The decision was of course against the defendant, whose claim was clearly within the prohibition of the act of 1785.

In the case of *Reynolds vs. McArthur*, decided in 1829, the court reassert the same principle. They say "that, in the state of things which existed in 1812 and 1818, Congress might establish the western boundary of the military reserve, so as to affect titles thereafter to be acquired, *is not questioned*. Congress might fix a reasonable time within which titles should be asserted, and might annex conditions to the extension of this time."

It must therefore be considered as settled, that the several prohibitory acts above cited are fully within the constitutional powers of Congress; and that any title claimed in opposition to them is void. Mr. Wallace can, therefore, assert no interest whatever in the lands mentioned in his survey; and all the formalities of locating his warrants and making return to the General Land Office are merely nugatory, performed with a full knowledge that they were a violation of existing laws.

But it may be said that Congress was bound, in equity and justice, to subject the whole of the reservation, as described in the deed of cession, to military warrants; and that, by exempting that part lying west of Ludlow's line, it has disabled the claimant to satisfy his warrants where he legally might, but for such legislation.

The reply is, that, for wise and substantial reasons, Congress has thought fit to prevent, by sundry acts, running through a long series of years, the location of any Virginia warrant west of this line; and that any act of an individual, which wantonly violates a law of the land, cannot and ought not to be treated, least of all by Congress, as the foundation of any just claim. To assert the contrary is not only to encourage but to reward disobedience to the laws; and, in this case, to give the delinquent a sort of priority of payment for being in advance of others in the violation. He stands upon a level with other holders of Virginia military warrants, issued for continental services; his location and survey are as if they had never been made; and, while it is well known that the number of warrant holders is still considerable, and the number of acres required under them forty times greater than is embraced in his warrants, there is no reason whatever why he should be singled out as entitled to "compensation," and that to the full value of the lands in his survey, while others, equally entitled, but less willing to violate the laws, are, by the very act of granting his request, forever deprived of all benefit under their warrants. Whether

Congress, after a lapse of more than half a century, within which the location of this class of warrants has been going on, can now be justly called upon to assume the payment of all that are and all that may hereafter be outstanding, having no power to check their issue by Virginia, is a question in which the other States of the Union are too deeply interested to be settled by the precedent which the allowance of this claim would establish. By suffering the mode and amount of evidence going to establish a claim to such warrants to be determined by agents not responsible to this Government, the United States, it is believed, have already been called upon to satisfy a much larger amount of warrants than was originally supposed to be due. And if the present claim, seeking the full value of the lands surveyed, "in a state of nature, or the sum received therefor by the United States," be allowed the claimant, who, as has been shown, has no real claim aside from his bare warrants, why should not all other holders be placed upon an equality with him?

But it is said that Congress is equitably bound to appropriate the moneys it has received for lands west of Ludlow's line to the satisfaction of these warrants, inasmuch as the Virginia deed intended the lands for the military claimants; and that a court of equity would enforce the trust by compelling a compensation. This, however, is not the ground on which the petitioner rests his claim. He asks full compensation, and relies upon the location which he has made as giving him a right to demand a liquidated sum; and it is not known that he would accept less. That a court of equity would enforce the trust in this sense, were it a case between private litigants, cannot for a moment be admitted. Its regard for *equality* among those equally entitled would create an insuperable objection, and, without showing what the amount of the party's distributive share would be, it could not interfere.

It should not be forgotten that Congress has already far exceeded the authority contained in the deed of cession, in satisfying the claims for services in the Virginia continental line. Not only has it, with the trifling exception above stated, granted for that purpose the whole reservation, (which as late as 1806 was supposed to be much more than sufficient,) but it has from time to time, since 1830, made direct appropriations of the public domain, lying elsewhere, for the satisfaction of these constantly accumulating warrants. Fifty thousand acres were granted in 1830, directly to that object; and, by three subsequent acts of Congress, 1,150,000 acres have been granted to satisfy these, together with warrants for services in the Virginia *State* line and *navy*, two-thirds of which have probably been applied upon the continental warrants; showing that the Government has already paid, on account of these warrants, about \$1,033,000 more than it was in any manner bound to pay under the deed of cession. It is idle, then, to pretend that the Government has acted sordidly towards these claimants; or has sought to deprive them of their just and equitable rights.

When, therefore, it shall be made to appear to Congress what amount of military bounty warrants are unsatisfied, and it shall have declared its intention to recognise no more of them, and when it shall have ascertained by its own agents the quantity of land originally set apart to the use of the Virginia line, and not already transferred for that object, it will be time to make up an account between the United States and this class of claimants, and to declare his just dividend to each.

Meanwhile it seems incumbent on Congress to pass some act with a

view to quiet the titles of those persons holding lands between the two lines, as *bona fide* purchasers under grants from the United States, who, or whose grantors, have innocently paid their money at the Cincinnati land office, under the belief that they were legally included in that district—a belief in which the land officers shared. It is not apprehended that the proceedings of the present petitioner can affect their titles or disturb their possession, without the removal of the existing prohibition; yet such has been the course of legislation as to leave it doubtful whether, as against the United States, they have a valid title; and, as the Government has received a full consideration for their lands, it would seem to be but an act of justice to protect their rights, or at least that the existing prohibition should not be removed.

No better disposition can be made of the claim than to give the petitioner leave to withdraw it. The petitioner has an undoubted right to withdraw his warrants from the General Land Office, and to use them in any other manner he may see fit.

Resolved, That the petitioner is not entitled to relief, and that he have leave to withdraw his claim.

Witness my hand and seal, at the City of Washington, this 15th day of August, 1850.

This is a claim for reimbursement from the Government for the loss of \$1000, and it has been stated from the post office in the city of Baltimore.

The petitioner's name is Samuel Anderson, residing at Harper's Ferry, in the State of Virginia, all of which were taken in the year 1850, and deposited in the post office at Harper's Ferry, a letter, addressed to the postmaster, containing the sum of \$1000, and was taken by the post office at the Baltimore post office but was never delivered.

The petitioner further states that the letter was given to the office by the postmaster, and that the postmaster is therefore liable to make up the money given, in a cash bill, but that the want of legal authority to do so has rendered him unable to recover the amount from the postmaster. When he first made his application to the Government for reimbursement.

There is no authority to sustain any of these allegations. The money was not given by Anderson to evidence, it would be the hands of the committee, and the Government, as they are entirely unable to do so, and will feel it equitable to provide the Government can be paid upon a receipt by any individual, which he acknowledges, he has a good right of action against another to pay or, simply because he fails to produce sufficient legal testimony to sustain his claim.

The committee are of opinion, that to set the precedent which would follow by allowing his claim would be unjust, and of most pernicious tendency.

Therefore, they are to be discharged from the further consideration of the subject.