45TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 707.

LANDS LOCATED ON MILITARY WARRANTS IN CERTAIN STATES.

APRIL 30, 1878.—Recommitted to the Committee on the Public Lands and ordered to be printed.

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

REPORT:

[To accompany bill H. R. 4239.]

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, five 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, &c.

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 five 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 non-payment of the five 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 five 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 five 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 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 he title, whether it be merchandise, other property, or services. Sup-

pose 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 forty 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 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 five 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.

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 five 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 five per cent. should be paid in both cases or should not be paid

in either. But we wish to call especial attention to the provisions of the act with reference to Mississippi, as we think all ambiguity in respect to the question under consideration, if there be any, is removed by the language there used; for if Congress meant anything, it would seem the Commissioner, by that act, is required to do three things: First. He is to state an account between the United States and Mississippi and the other States, for the purpose of ascertaining what sum or sums of money are due to these States, heretofore unsettled, on account of public lands in said States. Second. He is to include two things in said account, which are, all lands and permanent reservations, estimating the same at $1.25 per acre; and, third. He is to pay five per cent. thereon as in cases of other sales. If Congress did not intend to include all lands upon which military land warrants had been located as well as permanent 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 five per cent. was still unsettled, as well as reservations. And by the express terms of the act, this necessarily includes the military locations, as these were a part of the public lands on which the five per cent. had not been paid. If these lands were not intended to be included, what lands does the act refer to? It cannot be the lands sold for cash, for there was no dispute about them. The government had faithfully complied with its obligations to the States as it respects these cash sales, and had paid the five per cent. on all the lands so sold. Neither can it refer to the reservations, for they were fully provided for by the first section of the act by name, and are to be paid for upon the same principles and allowance as those recognized and provided for in the case of the State of Alabama. And in addition to these reservations the government is to pay on account of all public lands in said State of Mississippi upon the same principles and allowance. So that both lands and reservations are clearly provided for in this first section, while the second section provides that the United States shall state an account with the other States upon the same principles, and shall allow and pay to them such amount as shall be found due on account of all lands and reservations, estimating the same at $1.25 per acre. 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 five 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 five 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 five 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 cannot 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 five 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 five per cent. agreed upon, where the land is given for and in consideration of military services, as it would be if the sale had been for cash? In other words, the contract presupposes that all the public lands will be so sold and disposed of that the States will realize the per cent. agreed upon; and that no disposition of them, to be made in such manner as to defeat the same, was contemplated at the time; and that such is the implication arising from the contract itself. Such was clearly the view taken by Congress of this question in the acts of March 2, 1855, and March 3, 1857. Hence the language used, "*All lands and permanent reservations*"; and as if not to be misunderstood the same are "*to be valued at* $1.25 *per acre.*" Not five per cent. of the proceeds from the cash sales, but five per cent. on all lands *disposed of in any other way*, estimating the same at $1.25 per acre. Any other view would defeat this legislation both in letter and in spirit, and would do violence to every rule of construction known to the law. It could not have been within the contemplation of the parties that Congress might defeat the payment of the five per cent. by some other disposition of the public lands than a sale of the same for cash; for if it had been, this privilege would have been reserved; and it is cleary evident no right whatever was reserved to make any disposition of the same that would relinquish the payment of this five 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 five 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 respect the payment of five per centum 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 five per centum 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 five 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 outsied of the States, or to withhold the payment of the five 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 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 five per centum 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, and draw interest, payable semi-annually, at the rate of three and sixty-five hundredths per centum 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.

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