44TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 766.

LANDS LOCATED UNDER MILITARY WARRANTS IN CERTAIN STATES.

JULY 19, 1876.—Recommitted to the Committee on the Public Lands and ordered to be printed.

Mr. GOODIN, from the Committee on the Public Lands, by unanimous consent, submitted the following

REPORT:

[To accompany bill H. R. 600.]

The Committee on the Public Lands, to whom was referred the bill (H. R. No. 600) having had the same under consideration, do make the following report thereon:

The bill provides for the payment, by the General Government, to some seventeen of the Western and Southwestern States, namely, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Kansas, Arkansas, Louisiana, Mississippi, Alabama, Florida, Nebraska, Nevada, and Oregon, 5 per centum on the military locations of land therein, estimating the same at the value of $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 summarily may be stated 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.

It is believed and insisted that the forbearance of these things has been strictly observed on the part of the States, and they claim the observance of like good faith on the part of the Government in fulfilling its part of the contract, namely, the payment of the 5 per cent., being the stipulated consideration therefor. That this has been done on all cash sales of public lands is not denied. But the non-payment thereof on military locations of land is conceded. The States interested maintain the obligation to pay the same on this last class of entries on the following general grounds:

1st. The several enabling acts admitting the new States into the Union, as it respects the payment of five per centum on the sales of the public lands, embody the elements of a legal and binding contract be

tween 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 between individuals are enforced.

2d. It is claimed that the agreement to pay this 5 per centum has a sufficient consideration in the concession of the States not to tax the public lands, and in a number of the States not to tax the lands which the Government might sell for five years from date of sale. This was a surrender of a revenue value far in excess of the 5 per cent. on military locations, which is easily demonstrated. Hence, it follows that it could not have been 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 these States or to withhold the payment of the 5 per cent. on lands granted for military purposes.

3d. It is insisted that the several grants of land for military services rendered during 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 referred to in the acts of admission. This is a plain proposition deducible from the purpose and circumstances under which they were made. In the first place these grants were designed to effect a future object; as they antedated, so they necessarily entered into and formed a part of the contract of enlistment. In the revolutionary war the grant is dated September 16, 1776, soon after the Declaration of Independence. In the war of 1812, the grants are dated in the months of January and February of that year, the war being declared in June following. In the Mexican war the grant is dated 11th February, 1847, shortly after the war had begun. Thus it follows that these grants of lands, for military services in the three great wars of this country, are essentially in the nature of contracts; and having 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 the term. This popular error of designating them bounties when an acknowledged consideration in services had been paid for them cannot alter or change the rights of the parties to a solemn compact. The objects of these grants were to facilitate and encourage enlistments; and 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 land*, not for past, but for services thereafter to be rendered. The colonial government of Virginia did the same thing, and her engagement to pay in lands was afterward assumed and fulfilled by the General Government. 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 consideration. One cannot with any show of reason be designated a gratuity any more than the other, and both alike constituted the consideration for which the services were to be rendered.

Thus it is claimed that the several acts of Congress granting lands to the soldiers serving in the three great wars of this country were not, as a matter of fact gratuities, or in the nature of gratuities for the rendition of *past services*, but a part of the stipulated compensation provided for by the law under which the enlistment was made, and just as fully entering into the contract between the soldier and the Government as his monthly pay.

The term "bounty," as applied to this kind of reward for military serv-

ices, is apt to be misleading. 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 should enlist in the 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 commodity 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.

But the character of this mode of disposing of land by the United States as constituting a "*sale*," is put in a still stronger light when it is viewed as a transaction between the Government and the actual locater of 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 to 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 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. 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 a 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 which it embodies, 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 of large tracts of lands or by authorizing their conversion into scrip and then receiving this scrip in payment of any public land wherever situate. Now, singularly enough, on the lands taken up by this scrip, representing the land-warrants, the percentage has been paid by the proper Government department, while the five per cent. on the lands located under the warrants themselves has been withheld. There certainly can be no sensible reason assigned for this distinction; for, to the Government the effect is precisely the same, inasmuch as both alike discharge its obligation, and for that very reason the land absorbed by either class of paper should be considered as having been purchased.

Again, on the 3d of March, 1857, Congress passed an act to settle certain accounts between the United States and the State of Mississippi and other States. Among other things, this act directed the Commissioner of the General Land-Office to allow and pay to the State of Mississippi 5 per cent. on the several Indian reservations therein, as on other sales, estimating the sum at the value of $1.25 per acre. Here is a clear recognition of the principle contended for. The fee in these reservations was granted to the Indians, either out of good will, and to propitiate friendly relations, or in part consideration of the extinguishment of their possessory right to large tracts of country; it was no cash sale to them.

So the military lands 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 analogous in principle, and both are equally entitled to the percentage under the compact; and as Congress has directed the one to be paid, why not the other?

Such, in substance, are some of the grounds urged by the representatives of some of the States named why the General Government should recognize and pay the percentage in question. To the mind of your committee, they are not without their force; and in their judgment, they are entitled to the very grave consideration of Congress. Believing that they are in the main sound and not readily to be answered, your committee would recommend the passage of the accompanying bill, by which it will be perceived that the percentage referred to, amounting, perhaps, in the aggregate to three and a half millions, more or less, may be paid in five annual installments, during which time, in all probability, that amount will have been realized from the sales of the public land

upon which the same is a charge. They feel the more inclined to make this recommendation from the fact that a number of these States have already dedicated the fund arising from this scource to the support and maintenance of a system of common schools, an object in which the national and State governments are alike interested.

Mr. FULLER, from the same committee, dissents from the foregoing recommendation of the committee.