50TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 3945.

SUITS AGAINST THE UNITED STATES.

FEBRUARY 5, 1889.—Referred to the House Calendar and ordered to be printed.

Mr. ADAMS, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 8028.]

The Committee on the Judiciary, to which was referred the bill (H. R. 8028) to authorize the State of Illinois to prosecute suits in the United States Supreme Court against the United States, beg leave to submit the following report:

The committee recommend the passage of the bill with the following amendments:

Amend title by adding "s" to the word State, and inserting after Illinois the words "Indiana and Ohio."

By adding in line 4, section 1, "s" to the word State, and by adding after the word Illinois the words "Indiana and Ohio respectively."

By striking out in line 7, section 1, the last word, "an."

By adding in line 8, section 1, to the first word, "action," the letter "s."

By adding in line 10, section 1, to the first word, "State," the letter "s."

By adding in line 11, section 1, to the last word, "State," the letter "s."

By striking out in line 2, section 2, the word "under," and adding after the word "State" the letter "s."

By adding, in line 4, section 2, after the word "petition," the words "or petitions," and by adding to the word "State," in same line, the letter "s" and the word "respectively," and by striking out in same line the letters "ies," at the end of the word "relies," and inserting in lieu thereof the letter "y."

By inserting in line 7, in section 2, after the word "petition," the words "or petitions."

The purpose of this bill is to permit the States of Illinois, Indiana, and Ohio to have the United States Supreme Court to construe certain acts of Congress in reference to what is known as the 2 per cent. claim of those States.

Mr. Kerr, from the Committee on the Judiciary in the Forty-first Congress, made a favorable report on this same question, which your committee adopt *in extenso*.

The object of the resolution is to construe the second section of the act of March 3, 1857, entitled "An act to settle certain accounts between the United States and the State of Mississippi and other States." For the better understanding of the whole subject, the entire text of the act is here set out:

"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 of allowance and settlements prescribed in the "Act to settle certain accounts between

the United States and the State of Alabama," approved the second of March, eighteen hundred and fifty-five; and that he be required to include in said account the said 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 one dollar and twenty-five cents 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 one dollar and twenty-five cents per acre."

To indicate the "principles" referred to in the foregoing act, the text of the act of March 2, 1855, "to settle certain accounts between the United States and the State of Alabama," is here also fully embodied:

"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 sixth section of the act of March second, eighteen hundred and nineteen, 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 the said State five per centum thereon, as in case of other sales."

The policy of the Federal Government toward the States out of which these claims arose was adopted prior to 1802. It was based upon the agreement of all new States at the time of admission into the Union that they would waive and not exercise, for the period of five years after entry, their right to tax all lands within their respective limits purchased of the United States. This condition was imposed by the United States in aid of immigration and settlement, and was assented to by the States on condition that 5 per cent. of the proceeds of the sales of all public lands within their respective limits should be allowed and paid to the States respectively, or expended by Congress for their use and benefit. These agreements and conditions were not in all cases precisely the same; but their differences were not such as to impair or modify the general policy in which they had their origin. All the States embraced within that policy have, without a single exception, entirely refrained from taxing lands purchased of the United States until the period of five years had elapsed from the date of purchase. They have thus kept faith with the Federal Government, and thereby, whatever rights accrued to them, respectively, by reason of this policy, became vested, and, so far as they have not heretofore been, they ought now to be observed and protected. These rights have been in good faith fully recognized and awarded by the Federal Government in behalf of the States of Louisiana, Arkansas, Michigan, Wisconsin, Kansas, Iowa, Minnesota, Florida, Alabama, Mississippi, Missouri, Oregon, Nebraska, and Nevada, and in one form or another, as the result of arrangements satisfactory to both parties, each of them has had the full benefit of the reserved 5 per cent.

In the early history of the legislation on this subject, it will be found that the mode of payment, investment, or disposition of this fund was determined by laws applying to the several States separately. But, to avoid the frequently recurring necessity for such special enactments, the second section of the act of March 3, 1857, was passed. That section made it the duty of the Commissioner of the General Land Office to "state an account between the United States and each of the other States, upon the same principles, and to 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." This language is clear and specific, and its intent and purpose are too obvious to need argument. The "other States" are required to be settled with on the liberal and just principles on which the settlements were made with the States of Mississippi and Alabama. When settlements are to be made, it is declared to be the duty of the Department to allow and pay the amount so found to be due. There is nothing in this section which prescribes one rule for one State and a different rule for another in the adjustment of these accounts. No words in the act indicate any purpose or intent to charge any State with any set-off. No exception or restriction is made against any States.

The States of Illinois, Indiana, and Ohio have severally enjoyed, under different laws, the benefit of the fund in question to the extent of 3 per cent., or three parts of 5 per cent. But the other 2 per cent. has been withheld. Should it be allowed and paid? The object of the joint resolution under consideration is to give an affirmative answer to this inquiry by construction of the act of March 3, 1857.

Ohio was the first State admitted, and from time to time there was paid to it three-fifths of this fund, to be expended under the direction of its legislature in making roads within the State. But the other two-fifths the Federal Government reserved the right to expend in making public roads leading from the navigable waters

emptying into the Atlantic to the State and through the same. (See acts of April 30, 1802, and March 3, 1803, relative to admission of Ohio.)

The State of Illinois, under like enactments, received three-fifths of this fund, to be expended in the advancement of its educational interests under the direction of its legislature. The other two-fifths of the fund were to be expended in making roads leading to the State. (See act of April 18, 1818, relative to admission of Illinois, and Brightly's Digest, p. 310, conditions 3 and 4, of section 3.)

The State of Indiana, under similar laws, enjoyed the use of three-fifths of the fund in making roads and canals therein. The other two-fifths were to be expended by Congress in the construction of a road or roads leading to that State. (See act of April 11, 1818, and Brightly's Digest, p. 416, and 3 Statutes at Large, p. 424.)

The United States never discharged their obligations, or performed their trust, toward these States in the expenditure of the two-fifths of this fund, unless, in the judgment of Congress, the futile attempt to lay out and construct a road, called in the laws on the subject the "Cumberland road," constitutes a performance of those duties. That road, as originally projected and subsequently extended, was intended to connect by a great national highway the East with the West, running through the capitals of Ohio, Indiana, and Illinois, and terminating at Jefferson City, in the State of Missouri. It will scarcely be contended by any person that the design of Congress in this respect was ever executed. It was not carried out to any such extent or in any such manner as even to constitute any just, equitable, or legal claim against those States. It cannot be said that it was a compliance in spirit or letter with the terms upon which the two-fifths were retained.

These views are very greatly fortified by the fact that, when the legislation of 1857 was enacted, that "Cumberland road" had been for long years abandoned; had been surrendered to the States through which it was projected without conditions; had ceased to be Federal property or under Federal control; had passed out of popular memory, and was remembered only in history. It can not, without a manifest stretch of imagination, be claimed to have been in the legislative mind when the act of 1857 was passed. The road was not referred to in any of those enactments. Its existence was not made the basis of any charges against those States. Neither was any condition imposed upon, or any charge made against, any of them when that road was surrendered to them, so far as it was within their respective limits. Besides, the parts of that road which were within the States of Maryland, Virginia, and Pennsylvania were given to those States respectively without any charge or claim or expectation of repayment in any way whatever, directly or indirectly.

It is further worthy of remark that, by reason of intrinsic difficulties in the subject, it would be impossible to make an account against any of those States for money expended in the partial construction of that road, except upon the most fanciful, if not absurd, principles of accounting. But why make any such claim against those States when none such was ever made, or ever will be made, against any other States? Why deny to these States equal consideration or equity, or even liberality, with any other States?

It is proper further to observe that the privilege of taxing the lands of their citizens for the period of five years after their purchase by the citizens from the Federal Government, which was so surrendered by the States, would have realized to them respectively, if it had not been so given up, very much more than the amount which they now claim. In other words, it was the surrender of a valuable right, the giving of a full equivalent by the States for the promised 5 per centum. So far as that fund has not been accounted for to these States, it remains in the custody of the United States as a sacred trust; and, in our judgment, its adjustment and payment ought not to be longer delayed. We might here refer at length to the numerous decisions in the past by committees of either House of Congress, by Commissioners of the General Land Office, and by competent and distinguished officials, maintaining the validity of the claims of these States. But it is deemed proper to let the subject abide upon its own merits in the judgment of the House.

The committee, in conclusion, recommend the passage of the following joint resolution as a substitute for the one referred to them:

JOINT RESOLUTION declaring the true construction of a statute.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the true intent and meaning of the second section of the act approved March three, eighteen hundred and fifty-seven, entitled "An act to settle certain accounts between the United States and the State of Mississippi and other States," is that all the other States, to wit, Ohio, Indiana, and Illinois, which have not received the full amount of their five per centum of the net proceeds of the sale of public lands lying within their respective limits, as mentioned in their several enabling acts, in money, shall have their accounts stated, both on the public lands and reservations, and such cash balance as has not been paid to said States allowed and paid.

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