50TH CONGRESS, 1st Session. SENATE. REPORT No. 1680.

IN THE SENATE OF THE UNITED STATES.

JULY 2, 1888.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 2430.]

The Committee on Public Lands, to whom was referred the bill (S. 2430) entitled "An act 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," submit the following report:

The acts of Congress admitting the several public-land States into the Union guarantied to each of said States 5 per cent. of the net proceeds of sales of all public lands therein, and the act of March 3, 1857, granted to the said States an amount equal to 5 per cent. on all lands in Indian reservations in said States, estimating said lands at $1.25 per acre.

The said act of 1857, which the accompanying bill makes applicable to the States of Minnesota, Oregon, Kansas, Nebraska, Nevada, and Colorado, is as follows:

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 settlement as prescribed in the act to settle certain accounts between the United States and the State of Alabama, approved March second, eighteen hundred and fifty-five, 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 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. (11 Stats., p. 200.)

In pursuance of this act the States of Mississippi, Louisiana, Ohio, Indiana, Illinois, Michigan, Wisconsin, Iowa, Missouri, Arkansas, and Florida were paid the said 5 per cent. on all Indian lands and permanent reservations therein, estimating said lands and reservations at $1.25 per acre. And under the said act and the acts of admission the States of Minnesota, Oregon, Kansas, Nebraska, and Nevada, in pursuance of a decision of the Commissioner of the General Land Office and the First Comptroller of the Treasury, were also paid in part the said 5 per cent. on such lands until June 30, 1885, when said payments were suspended by the Department of the Interior.

In deciding the question as to the right of one of the last-named States (Kansas) to the said 5 per cent. the Comptroller says:

The grant of 5 per cent. having been made, it could not afterwards be revoked. The right of the State became by the grant a vested right, which Congress could not recall.

By treaties made, after the admission of the State, with the several tribes who occupied these lands it was stipulated that the net proceeds of the sales of all but one of the reservations, viz, the Kansas trust, should be invested by the United States for the benefit of the respective tribes.

Without doubt these treaties, together with subsequent acts of Congress, passed to carry out their provisions, entitle these tribes to a sum equal to these net proceeds, but they did not destroy the antecedent right of the State of Kansas to the 5 per cent. which had been granted when the United States, holding the fee in said lands, had capacity to make the grant, and made it without provision for any subsequent limitation.

The disposition of Congress with respect to lands lying within the States, the primary disposal of which belonged to the United States, seeems to have grown more and more liberal as new States have been admitted. * * * In the light of this legislation and of the clear provisions of the act for admitting Kansas, it would appear to be doing violence to the terms of the act and to the policy of Congress to construe the 5 per cent. clause to be applicable only to lands to which the Indian title had been extinguished prior to the admission of the State.

Again, in the same decision, while referring to the said act of 1857, the Comptroller says:

By an act passed March 2, 1855, entitled "An act to settle certain accounts between the United States and the State of Alabama," the Commissioner of the General Land Office was required to include in the accounts the several reservations under the various treaties with the Chickasaw, Choctaw, and Creek Indians within the limits of Alabama, and allow and pay to that State 5 per cent. thereof, as in case of sales; and by an act of March 3, 1857, the Commissioner was also directed 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 should thus be found due, estimating all lands and permanent reservations at $1.25 an acre.

Not only were the reservations mentioned in this act treated as public lands, but a policy seems to have been adopted by Congress of paying to States in which public lands were situate 5 per cent. of the estimated value of such as were contained in reservations, where a considerable period might be expected to elapse before the Indian titles would be extinguished.

Lands, therefore, held by Indians in reservations by the common Indian title are public lands. A grant to a State by Congress of 5 per cent. of the proceeds of sales of the public lands within the State will be held to include 5 per cent. of the proceeds of sales of lands by Indians by the common Indian title.

From this it will be observed that the Comptroller was of the opinion that the said States were lawfully entitled to the 5 per cent. under the acts of admission, and also under the said act of 1857, above quoted.

Again, on January 22, 1866, the Commissioner of the General Land Office rendered a decision relative to Indian lands in Colorado, wherein he said:

As to the claim of the State to 5 per cent. upon the net proceeds of the sales of lands heretofore embraced within the limits of Indian reservations, that is not disputed, and in the adjustment of the State-fund accounts the claim of said State to 5 per cent. upon the net proceeds of the sales of agricultural lands within the limits of the late Ute Indian Reservation will be recognized and paid.

This decision was approved and promulgated by the Secretary of the Interior, but no account thereunder has ever been stated.

About the same time a similar claim in all respects on behalf of the State of Kansas, which, as already stated, had previously been decided in favor of the State by a former Commissioner, and the First Comptroller and sanctioned by Congress, was suspended in the General Land Office and referred to the Secretary of the Interior for his decision, and the Secretary, entertaining doubts in regard to the matter, referred the case to the Attorney-General, who on the 5th instant rendered an opin-

ion adverse to the decision of the Commissioner of the General Land Office and First Comptroller in said case, and also the reverse of the decision of the Commissioner and Secretary in the Colorado case above quoted.

In view of these conflicting opinions and decisions and the manifest injustice occasioned thereby to the States admitted into the Union since March 3, 1857, your committee are of the opinion that legislative action is necessary, in order to place the States on an equal footing, as guarantied by Congress in the several acts of admission, and therefore report the bill (S. 2430) back and recommend its passage.