52D CONGRESS, 1st Session. } SENATE. { REPORT No. 775.

IN THE SENATE OF THE UNITED STATES.

MAY 9, 1892.—Ordered to be printed.

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

REPORT:

[To accompany S. 3086.]

The Committee on Public Lands, having had under consideration S. 615, S. 439, S. 1680, and S. 1945, bills granting to each of the several States, North Dakota, South Dakota, Wyoming, and Montana, in the order of the numbers above given, 5 per cent of the net proceeds of the sales of public lands therein; also S. 576 and S. 2394, bills explanatory of an act entitled "An act to settle certain accounts between the United States and the State of Mississippi and other States," report the same back to the Senate recommending their indefinite postponement, and present an original bill for a general law embracing the subject-matter of each and all of said bills, and recommend its passage. The title of said bill is as follows: "A bill 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," and will be numbered S. 3086.

It appears that Congress has, at different dates, beginning in 1802 in the case of Ohio, granted and allowed to the several States containing public lands, with the exception of California, 5 per cent upon the net proceeds of the sales of public lands therein.

The act of March 2, 1855 (10 Stats., 630), required the Commissioner of the General Land Office to include in a statement of the 5 per cent due to the State of Alabama "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 5 per cent thereon, as in case of other sales."

The act of March 3, 1857 (11 Stats, 200), in its first section, required the Commissioner of the General Land Office to state an account between the United States and Mississippi upon the same principles of allowance and settlement as provided in the Alabama act of March 3, 1855, and 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 States 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, and in its second section extended the same principle of settlement to the other States, and provided for estimating all lands and permanent reservations at one dollar and twenty-five cents per acre.

The provisions of the said acts of 1855 and 1857 were carried into effect as regards all the States then in the Union to which the 5 per

cent grant had been made and wherein Indian reservations existed. With regard to the States since admitted into the Union, it has been held by the executive officers that the provisions of said acts are not applicable. The equality of the States is a fundamental principle of the Government, and it may be found running through all the legislation on the subject of the public lands and grants to the States in connection therewith, as an established principle, that the States shall be treated alike, none being discriminated against. It is accordingly the object of said Senate bill No. 3086 to declare the said act of March 3, 1857, applicable to the States admitted into the Union since March 3, 1857, namely, Minnesota, Oregon, Kansas, Nebraska, Nevada, Colorado, South Dakota, North Dakota, Washington, Montana, Idaho, and Wyoming, the same as is applied to States previously admitted, and to provide that said act—

Shall be construed as embracing all lands in present Indian reservations in each of said States, and all lands of former Indian reservations within the United States to which the Indian title has been extinguished since the admission of said States, and which have been or shall be disposed of by the United States, for which it has or shall receive cash for the benefit of the Indians upon such reservations, and the Commissioner of the General Land Office shall state an account between the United States and each of the said States, estimating all such lands and reservations at one dollar and twenty-five cents per acre, and shall certify the same to the Secretary of the Treasury for settlement, to be paid out of any money in the Treasury not otherwise appropriated.

The ownership of the lands constituting the public domain, embraced in cessions from Great Britain, France, Spain, and Mexico, and from certain individual States of the Union, were originally regarded as property to be disposed of for the common benefit of the States, and when the States within the limits of which the lands were situated were admitted into the Union there were stipulations made in the acts of admission which were obligatory as contracts on the part of the several States and the United States among which the grant of the 5 per cent was included.

This grant was for 5 per cent of the net proceeds of the sales of the public lands. At the foundation of this grant was the then established understanding that the lands were to be disposed of for the benefit of the common treasury, and the stipulation for 5 per cent of the proceeds as originally understood amounted to a grant of that percentage of the net proceeds of the sales of all the public lands at such price as they would bring when so disposed of. This understanding was adhered to, substantially, with regard to the great bulk of the lands during the earlier portion of the history of the country, and the older States had the benefit thereof; but it has since been departed from, and in view of the repeal of the general laws for the sale of the public lands it is apparent that the States in which the lands lie will hereafter realize but little, if any, benefit from the 5 per cent grant for which the United States stipulated when they entered the Union, and in consideration of which the States renounced all right to tax the public domain and bound themselves not to interfere with the primary disposal of the soil by the Federal Goverment.

But little land now remains subject to sale, beyond what is embraced in the Indian reservations, the remainder of the public lands being, under the now established policy, set aside for homes for the people, without price, and with no payment but nominal fees. From the foregoing considerations it appears only equitable and just that the newer States admitted into the Union since the 3d of March, 1857, should receive the benefit of the same principles that were applied in favor of

the older States, previously admitted, under the act of that date, in the adjustment of their claims under the 5 per cent grant, so far as lands embraced in Indian reservations shall be sold and the proceeds realized and applied for the purposes of the Federal Government, whether in furtherance of its Indian policy or for any other purpose to which they may be applied.

In the laws heretofore enacted on the subject there is none that prescribes a rule for determining precisely what expenses are to be deducted from the gross receipts in ascertaining the net proceeds from the sales of the public lands, but this has been left to the varying opinions of the Executive officers. But if the method heretofore obtaining of deducting all the expenses of making surveys, sustaining district land offices, the General Land Office, and the Interior Department, rendered necessary for carrying out the land laws generally, from the gross proceeds of the sales, should be continued, in determining the net proceeds under this act, the aggregate thereof might absorb the total proceeds of such sales, or at least leave very little from which the State could realize its 5 per centum. It is due, therefore, to the States to be affected by this legislation that the Senate consider whether they should be compelled to bear more than their share of the expenses, to be proportioned to the total expenses as is the number of acres sold, from which the gross proceeds arise, to the total number of acres disposed of in all the prescribed methods during the period for which the account is made up, and for which the total expenses are incurred, taking into the account the fact of the greater expenses incurred per acre in making disposals under the settlement laws, in comparison with the amount of money produced, than in cash sales.

Your committee therefore recommends the passage of the bill, reserving the right to present hereafter an amendment thereto prescribing a more definite and favorable rule for determining the net proceeds from said sales.

This bill has been formulated so as to conform to the views of the Commissioner of the General Land Office as expressed in his reports on Senate bills Nos. 615 and 2394, dated February 7, 1892, and March 18, 1892, and of the Secretary of the Interior in his reports on the same bills of March 4, 1892, and April 8, 1892, which are attached to this report.

DEPARTMENT OF THE INTERIOR,
Washington, March 4, 1892.

SIR: I am in receipt by reference from you of Senate bill No. 615, entitled "A bill granting to the State of North Dakota 5 per cent of the net proceeds of the sales of public lands in that State."

I herewith transmit the report of the Commissioner of the General Land Office on said bill, to which your attention is respectfully called.

The claim of the State of North Dakota for a per centum on lands embraced in Indian reservations, is based upon the same principle as that recognized in the act of March 3, 1857, and upon which an adjustment was made with the public-land States at that date.

Owing to the fact that so large a quantity of the available public land in North Dakota, outside the Indian reservation, was disposed of by the Government prior to the admission of the State into the Union, and owing to the further important fact that by the repeal of the preëmption law the chief source of income from cash sales is destroyed, it is probable that the amount actually received by the State as a per centum of the cash sales will be a very limited sum.

Therefore, in reply to your request for an expression of opinion on the bill, I would say that in my opinion there is no objection to the passage of the bill. I would, however, recommend that the bill be amended as follows: Strike out the provision

for including in the account to be stated the allowance for land located by military bounty land warrants, or Indian half-breed script, or granted to any Indian; also provide that in case any of the lands included in the Indian reservations for which a per centum is allowed shall hereafter be sold by the United States no per centum shall be allowed for the same.

The reasons for the proposed amendments are:

First, in location by bounty land warrants and scrip, no purchase money is paid into the Treasury, and I do not think it has been the theory of past legislation that a per centum on the value of the land disposed of otherwise than for cash should be paid the State except in cases of lands embraced in Indian reservations;

Second, it is possible that the lands embraced in the reservations may hereafter be sold for cash by the Government, and if a per centum of the value of the land is now granted to the State no further allowance should be made except by an express act of Congress.

Very respectfully,

JOHN W. NOBLE,
Secretary.

Hon. J. N. DOLPH,
Chairman Committee on Public Lands, United States Senate.

DEPARTMENT OF THE INTERIOR,
Washington, April 8, 1892.

SIR: I am in receipt, by reference from you, of Senate bill No. 2394, entitled "A bill 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," with a request for an expression of the views of this Department on the same.

I herewith transmit the report of the Commissioner of the General Land Office on said bill.

In my report dated March 4, 1892, on Senate bill No. 615, which contained the same general principles involved in this bill, I called attention to the advisability of inserting a proviso to the effect that, if the Indian reservations were subsequently sold for cash, 5 per cent of the cash sales should not go to the State.

The number of bills submitted containing provisions for the payment to States of 5 per cent of cash sales of public lands is evidence of a desire to arrive at some plan of adjustment which will place the various States on an equal footing in respect to this donation. Without discussing the question involved, which is one so entirely within the province of Congress to determine, I would simply call attention to the facts connected with the disposal of so much of the available lands situated in North Dakota, South Dakota, Washington, Montana, Wyoming, and Idaho, prior to their admission into the Union, and to the further fact of the repeal of the preëmption law, the chief source of income from the sale of public lands.

Very respectfully,

JOHN W. NOBLE,
Secretary.

Hon. J. N. DOLPH,
Chairman Committee on Public Lands, United States Senate.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., February 7, 1892.

SIR: I have received by reference from the Hon. George Chandler, First Assistant Secretary, of the 11th ultimo, Senate bill No. 615, entitled "A bill granting to the State of North Dakota 5 per cent of the net proceeds of the sales of public lands in that State," submitted by Hon. J. N. Dolph, chairman of the Senate Committee on Public Lands, and referred to me as above for report in duplicate.

This bill provides as follows:

"That there be, and is hereby, granted to the State of North Dakota five per centum of the net proceeds of the sales of public lands which have been made by the United States, or may hereafter be made, in said State. This act shall also embrace and apply to all lands in former and in present Indian and half-breed Indian reservations in said State; and the Commissioner of the General Land Office shall state an account between the United States and said State for the five per centum of the net proceeds of the cash sales of the public lands made therein, respectively, and in so doing he shall estimate all lands in all former and present Indian and half-breed In-

dian reservations in said State, and all lands sold for or located with bounty land warrants or Indian half-breed scrip, or granted to any Indian and exempt from taxation therein, if within the land grant or indemnity limits of any railroad at two dollars and fifty cents per acre, and otherwise at one dollar and twenty-five cents per acre, and he shall certify to the proper accounting officers of the Treasury for settlement the amounts so ascertained, and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, pay to said State the amount so found due; the same to be expended for or dedicated to such uses and purposes as the legislature thereof may hereafter designate."

The States of North and South Dakota were admitted into the Union November 2, 1889, under act of Congress approved February 22, 1889. (25 Stats., 680.) Section 13 of said act provides—

"That five per centum of the proceeds of the sales of public lands lying within said States shall be sold by the United States subsequent to the admission of said States into the Union, after deducting all expenses incident to the same, shall be paid to said States."

Under this section accounts have been stated in favor of the States of North and South Dakota, but not including any percentage on the sales of Indian lands, or upon an estimated value of lands embraced in warrant or half-breed Indian scrip locations, or allotments or grants to Indians, or of any other lands than those for which the United States received payment under the various laws for the disposal thereof, by preëmption, desert, or timber entry, or homestead commutation.

The act of March 2, 1855, required the Commissioner of the General Land Office to include in a statement of the 5 per centum due to the State of Alabama "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 5 per centum thereon, as in case of other sales." (10 Stats., p. 630.)

The act of March 3, 1857, required the Commissioner of the General Land Office to state an account in favor of Mississippi "upon the same principles of allowance and settlement as provided in the Alabama act of March 2, 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 5 per centum thereon, as in case of other sales, estimating the lands at the value of $1.25 per acre." Section 2 of said last-named act extended the same principle of settlement to the other States and provided for "estimating all lands and permanent reservations at $1.25 per acre" (11 Stats., p. 200.)

In the decision of the honorable Secretary of the Interior (Jacob Thompson) dated March 20, 1858, it was held "that the lands within Mississippi, taken by locations in satisfaction of Choctaw scrip under the act of Congress of 23d August, 1842, and 3d August, 1846, in adjusting the 5 per cent account of the State, are to be regarded as constituting a portion of 'the several reservations under the various treaties with the Choctaw and Chickasaw Indians.'" In the same decision it was also held that "other States of the Union are all entitled to the same equal and liberal construction in carrying the act of 1857 into effect."

Under the acts and ruling quoted adjustments were made of 5 per cent on the value of Indian lands and Indian scrip locations in favor of the several States as follows:

Alabama	$128,336.42
Mississippi	167,686.17
Ohio	850.73
Indiana	6,333.73
Illinois	2,609.66
Iowa	7,562.94
Michigan	18,479.86
Wisconsin	41,647.13

No accounts were stated in favor of Louisiana, Missouri, Arkansas, Florida, or California under the act of March 3, 1857, probably because there were no Indian reservations at that time within the limits of those States, excepting the latter-named State, which was not included in the 5 per cent grant.

The total area of lands embraced within Indian reservations in North Dakota at the date of admission into the Union was 5,861,120 acres. The estimated value of such reservations, at $1.25 per acre, is $7,326,400, which, under this bill, would give the State $366,320. This amount would be further increased by the double-minimum valuation proposed for lands lying "within the land grant or indemnity limits of any railroad."

The areas covered by warrant and scrip locations, Indian allotments and grants, and lands sold for Indians have not been computed.

That portion of the present bill having reference to giving 5 per cent on the computed value of the Indian reservations is so general in the language employed that it might possibly be open to question whether it be the intention that it should apply to permanent final reservations in the form of allotments to Indians in severalty,

according to the present policy of the Government alone, or in addition to the large tribal reservations formerly or at present existing, and if the latter, which have been or are likely before a great while to be relinquished by the tribes and allotted to individual Indians in severalty or otherwise, to be disposed of by the United States, whether or not, after such 5 per cent is paid on the computed value of the reservation lands, an additional 5 per cent on the net proceeds of the disposals of the lands, when so disposed of, is intended to be donoted to the State.

In regard to the proposed grant of 5 per cent on the estimated value of lands embraced in locations of bounty land warrants and Indian half-breed scrip, I would refer to the decision of the Supreme Court in the 5 per cent cases (110 U. S., 471), in which the States of Iowa and Illinois prayed for a writ of mandamus against the Commissioner of the General Land Office to require him to state an account under the 5 per cent grant to said States, to include 5 per cent of the value computed at $1.25 per acre of lands taken up in said States under United States military bounty land warrants, whereby the court held that the grant made to these States did not include the amount so claimed. It would appear, therefore, that the grant proposed in this bill, so far as regards lands embraced in such locations, goes beyond what was granted to other States as included in the 5 per cent grant according to the judgment of the executive officers, sustained by that of the Supreme Court.

I would add that I find in the records of this office no obstacle to the contemplated legislation, should Congress see proper to make the proposed addition to its donations to the State.

The said bill is herewith returned.

Very respectfully,

THOS. H. CARTER,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., March 18, 1892.

SIR: I have received by reference from the Hon. George Chandler, First Assistant Secretary, of the 7th instant, Senate bill No. 2394, entitled "A bill 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," submitted by Hon. J. N. Dolph, chairman of the Senate Committee on Public Lands, and referred to me as above for report in duplicate.

This bill provides as follows:

"That the act entitled 'An act to settle certain accounts between the United States and the State of Mississippi and other States,' approved March third, eighteen hundred and fifty-seven, shall be, and is hereby declared to be, applicable to the States admitted into the Union since March third, eighteen hundred and fifty-seven, namely, Minnesota, Oregon, Kansas, Nebraska, Nevada, Colorado, South Dakota, North Dakota, Washington, and Montana, the same as it applied to States previously admitted. The said act shall be construed as embracing all lands in former and present Indian reservations in each of said States, and the Commissioner of the General Land Office shall state an account between the United States and each of the said States, estimating all such lands and reservations at one dollar and twenty-five cents per acre, and certify the same to the Secretary of the Treasury for settlement, to be paid out of any money in the Treasury not otherwise appropriated."

In reply I have the honor to state that the general principle involved in this bill is also embodied in several other bills already reported upon by me to the present Congress, among which are Senate bills No. 615, No. 439, and No. 1945; and I beg leave to invite attention to reports so made (especially that upon Senate bill No. 615) in connection with the bill now under consideration. The proposition to grant the States 5 per cent upon the estimated value of all former as well as upon present Indian lands is substantially the same in this bill as in those above mentioned, and seems to be such a departure from the course of former legislation as should doubtless receive the most careful consideration before adoption by legislative enactment.

The 5 per cent grant upon bounty land warrants and scrip locations, etc., provided for in other similar bills heretofore considered is omitted in this, by so much removing objections that might be urged against its passage.

I have nothing further to add respecting this bill to what was said in my report of the 7th ultimo upon Senate bill No. 615.

Senate bill No. 2394 is herewith returned.

Very respectfully,

THOS. H. CARTER,
Commissioner.

The SECRETARY OF THE INTERIOR.

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