42D CONGRESS, 2d Session. } SENATE. { REPORT No. 61.

IN THE SENATE OF THE UNITED STATES.

MARCH 5, 1872.—Ordered to be printed.

Mr. BLAIR made the following

REPORT:

[To accompany bill S. 749.]

The Committee on Private Land Claims report upon the memorial of John M. Scott and others, praying relief and the issue of land-scrip to them, in lieu of lands confirmed to their ancestors by Governor St. Clair and Governor Harrison, while governors of the Northwest and Indiana Territories, which lands were afterward sold through the General Land Office to other parties: That they have examined the memorial and certified copies of governors' patents, and surveys made under them, which have been presented to the committee, and the diagrams of the surveys, showing from the General Land-Office that the lands have been sold to other parties, and chiefly at $2 per acre. These claims rest their foundation upon confirmations made by the governors of the Northwest and Indiana Territories, under various resolutions and acts of Congress prior to 1792.

Governor St. Clair, in his report to the Senate of the United States, February 21, 1799, (1 vol. American State Papers, page 80,) says that: "Early in 1790 he proceeded to the Illinois country, in order to organize the government in that quarter, and to carry into effect the resolutions of Congress of the 20th of June and 28th of August, 1788. That in pursuance of the resolution of the 20th of June, the inhabitants were directed to exhibit their titles and claims to lands they held and claimed, that they might be examined and confirmed. A great many claims were exhibited, examined, and orders of survey issued, which was necessary before patents of confirmation could be made out. That there have been only twenty-one patents of confirmation issued, and according to the form herewith transmitted." So the Senate of the United States was officially advised in 1799, that the governor was confirming and patenting lands, and no objection to the exercise of this power appears to have ever been made. Governor Harrison, as governor of the Indiana Territory, succeeded to his powers, and confirmed and patented to Robert Reynolds the three lots in the memorial named. By the act of Congress passed March 3, 1805, (2 vol. Stat. at Large, p. 344,) it is enacted, by the 4th section: "That the lands lying within the districts of Vincennes, Kaskaskia, and Detroit, which are claimed by virtue of French or British grants, legally and fully executed, or by virtue of grants issued under the authority of any former act of Congress, *by either of the governors of the Northwest or Indiana Territories*, and which had already been surveyed by a person authorized to execute such surveys, shall, whenever it shall be found necessary to survey the

same, for the purpose of *ascertaining the adjacent vacant lands*, be surveyed at the expense of the United States."

The above act recognizes power of governors to make confirmations, and provides for their survey, not to locate them, but to determine "adjacent vacant land."

The 2d section of an act of Congress passed April 24, 1806, (2d vol. U. S. Stat., page 395,) recognizes the power of the governors to confirm and patent lands, and provides for their locations, where governors' patents have not already located them. By the act of Congress, approved December 28, 1809, for the relief of Wm. and Elias Rector, (6 vol. Stat. at Large, page 87,) the same recognition of the power and right of governors of the Northwest and Indiana Territory, to confirm lands and order their survey, is recognized.

Thus, up to January, 1810, there appears to have been a continuous recognition by the legislative department of the validity of claims confirmed by the governors of the Northwestern and Indiana Territory.

On the 20th February, 1812, Congress passed an act clothing the commissioners at Kaskaskia, in Illinois, with authority to examine and revise the confirmations made by Governors St. Clair and Harrison. (See 2 vol. U. S. Stat., page 677.) Under this law, commissioners reported adversely to the claims of memorialists and many others. Congress accepted their report, and the claims to land which had heretofore been confirmed to the claimants by the governors, and which were afterward reported by the commissioners as "unsupported by proof before them," were rejected, and afterward surveyed, and sold as part of the public domain, among them the claims of the memorialists, of which 1,070 acres, as shown by the diagrams from the General Land Office, furnished to the committee, were sold at $2 per acre. Upon claims so situated, which embrace, as far as your committee can determine, all the rejected confirmations of the governors, two titles exist, each deriving their source in a certain import from the United States.

It further appears to your committee that, in the year 1829, an action of ejectment was decided in the supreme court of Illinois, (see Breese's Reports, 236,) in which Samuel Hill, a patentee from the General Land Office, claimed 320 acres of land, part of a certain claim No. 1,800, which was confirmed and duly patented by Arthur St. Clair, in 1799, under the seal of said Territory, to one Nicholas Jarrot, under whom defendants claimed; and further, that the board of commissioners at Kaskaskia, under the act of February 20, 1812, had rejected said claim, and that Hill had been allowed to enter the land, which was subsequently patented to him through the General Land Office. The supreme court of that State held that the governor's confirmation was good against the United States, and that as to it, sale by the General Land Office of the land, and subsequent patent, was void. The next step your committee have been able to discern touching these claims is, that Congress, by an act passed August 11, 1842, (6 vol. U. S. Stat., page 860,) refunded to Hill's heirs $640 out of the United States Treasury for the land they had lost, alleging that Hill, the patentee, had been ejected "under a confirmation and patent made to Nicholas Jarrot by General Arthur St. Clair, then governor of the territory northwest of the Ohio River, on the 12th February, 1799."

On the 2d day of July, 1836, Congress passed an act (see 6 vol. U. S. Stat., page 670) confirming to executors of James O'Harra, of Pittsburgh, Pennsylvania, 6,600 acres, to cover a like amount of his "rejected" governor's confirmations.

Also, that by an act of Congress passed December 31, 1848, (9 vol.

United States Stat., p. 749,) Robert Morrison, Nicholas Jarrot, and Jean F. Perrey, of Illinois, and Josiah Bleakley, of Montreal, Canada, were confirmed in 4,600 acres of like claims.

And that by a further act of Congress, passed August 4, 1854, (10 vol. United States Stat., p. 820,) Geo. W. Jones, of Iowa, and legal representatives of John Rice Jones, were confirmed in 3,485 acres of rejected governor's confirmations. The above is the legislative action your committee have been enabled to find relating to the class of cases in question, and brought under their review by the memorial of John M. Scott and others.

In the year 1864, an ejectment suit was decided by the supreme court of the State of Illinois, in which one Sebastian Richart was plaintiff *vs.* Michael Felps *et al.*, (33 vol. Illinois Reports, page 433.) This was founded upon patents issued in 1838 and 1839, by the General Land Office, to certain lands embraced within the limits of claim No. 1,800, which had been passed upon by the supreme court of Illinois, as referred to above in Breese's Reports. For some reason, which does not appear to the committee, defendants relied upon a certified copy of the patent, which lacked the territorial seal. The supreme court of Illinois sustained the certified copy, notwithstanding the absence of the evidence of a seal to it, and on the 439th page of 33 Illinois Reports, uses this language:

> We do not consider it of any importance whatever, whether the governor's act of confirmation assumed the form of a patent, or of a deed under seal. Under the acts of Congress giving this power to the governor, he was not required to issue a patent or execute a deed under seal. Any written evidence of it, if it amounted to no more than an entry made by him in a memorandum-book of his act of confirmation, would have been a sufficient execution of the power under the law. The governor, however, issued an instrument of writing to the confirmee in the form of a patent, containing words of confirmation, with express reference to the acts of Congress of June 20 and August 28, 1788. The effect of this writing is a declaration by the United States, through their authorized agent, that they had no claim to the land. It was not a grant by the United States, because the land was not in them. One of the objects of the acts of Congress and instructions to the governor was, to ascertain the public lands, to find out what portions of the domain ceded by Virginia passed by the cession, and that was easily ascertained by first establishing the claims of the settlers. The residuum only belonged to the Government.

This decision, which seems to establish the doctrine that a confirmation by the governor did not operate a grant, but only a separation of the land confirmed from the body of the public domain, was appealed by Richart to the Supreme Court of the United States, which affirmed the decision of the supreme court of Illinois in 1867, (see Wallace's Rep., page 171.) Justice Greer, in delivering the judgment of the court, uses this language:

> The objection that the patent from the governor was without a seal, ought not to have been made. The act of Congress giving power to the governor did not require him to execute instruments under seal; any written evidence of his confirmation would have been an execution of the power. All that was necessary was an authentic declaration by the United States, through their authorized agent, that they had no claim to land. It was not a grant by the United States, because the title was not in them.

Thus is shown that the claims of the memorialists for nearly three-quarters of a century have been recognized by every Department of the Government as valid, with the exception of the action of the Kaskaskia commissioners, authorized by act of Congress in 1812 to revise those governors' confirmations. Of it the Supreme Court of the United States, in the same case, says:

> Congress is bound to regard the public treaties, and it had no power to organize a board of revision to nullify titles confirmed many years before by the authorized agents of the Government. And Congress became afterward so well satisfied itself of this, that it passed an act returning to the purchasers the money which they had paid for titles obtained upon the assumption of such right.

This decision nullifies the action of the commissioners under the act of 1812, but does not save the memorialists, who have lost the land confirmed to their ancestors by its subsequent sale by the Government. The act of 1812, creating commissioners, (2 vol. U. S. Stat., page 678,) declares:

> They are hereby authorized to examine and inquire into the validity of claims to land in the district of Kaskaskia, which are derived from confirmations made or pretended to have been made by the governors of the Northwest or Indian Territory respectively. And they shall report to the Secretary of the Treasury, to be by him aid before Congress at their next session, their opinion on each of the claims aforesaid.

It seems that, understanding their commission to be to revise and affirm, or "reject" said claims, they rejected many, among them claims under review, but it does not appear that their report was ever acted upon by Congress. Your committee refer to the action of the Committee on Public Lands, reported to the House of Representatives in 1818 (3 vol. Am. State Papers, page 394) by Mr. Robertson. This report was made upon claims of John Rice Jones, based upon two "French grants" confirmed by Governor Harrison, amounting to 3,485 acres. Commissioners rejected them on the ground of "forgery." Of their conclusions the committee say:

> From the reasoning of the petitioner, the report of the commissioners in his case, to which the committee have had access, and the evidence of the Hon. N. Edwards, who detailed the facts before the committee, it appears very clear that the petitioner's claim ought not to have been rejected, and that every position taken by the commissioners in support of their opinion is indefensible.

Facts were detailed to the committee which not only destroyed entirely the reasoning of the commissioners, and showed conclusively that their arguments were fallacious, and the facts on which they predicated them misconceived, but satisfied every member of the committee that there was no ground for a suspicion of "forgery." They recommended relief, which was finally granted to the descendants of petitioner in 1854. The report of Mr. Anderson to the House, January 27, 1820, (3 vol. Am. State Papers, page 427,) takes the same grounds as to the action of commissioners, but seems to draw a distinction between claims founded upon acts of Congress and those resting upon "ancient grants," while the report of the first committee was made in favor of confirmations of two "ancient grants." Since the decision of the Supreme Court of the United States, as reported in 6 Wallace, this distinction, if it ever really existed in determining the merits of claimants, has been solved, and all the confirmations of the governor appear to be on same footing, as the action of the Supreme Court was upon a grant for 778 acres, and not upon a "donation" or "improvement right" of 400 acres. It will be observed that the action of the committee above referred to took place within seven years after the report of commissioners was made, and consequently have been allowed due weight with your committee in coming to the conclusions reached by them.

In view of all the circumstances, your committee think the claims of memorialists well founded, and that they are entitled to relief prayed; and inasmuch as other parties, standing in the same relation to the Government as the memorialists, have appeared before the committee and asked that like relief be extended to them, your committee, in view of the fact that the true legal status of governors' confirmation was never authoritatively fixed as against subsequent patentees by the authorities of the Government until the decision of the Supreme Court of the United States in 1867, and as the Government has long since sold and disposed of all the lands covered by such claims, in order to do justice to the claimants, and avoid further appeals to Congress, ask leave to report a general law concerning this class of claims.

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