47TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT 345, Part 2.

LANDS LOCATED WITH MILITARY LAND WARRANTS.

MARCH 8, 1882.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. DWIGHT, from the Committee on the Public Lands, submitted the following as the

VIEWS OF THE MINORITY:

[To accompany bill H. R. 277.]

The report of the majority of the committee on this bill (H. R. 277) is believed by the minority to be based upon a strange misconception of the entire question with which it deals. The people of the States claiming the benefit of the fund involved, prior to their admission, were not equal contracting parties. They were not in a condition to dictate terms. They were outside of the Union, and in the attitude of mere petitioners, asking for the privilege of admission as States. Congress had the right to admit them, or to refuse their admission. It had the right to prescribe just such terms and conditions of admission as it saw fit, and these embryo States had the option to accept or reject these conditions. If they saw fit to accept them in order to secure the advantage of admission they thereby acquired no peculiar equity as against the United States. It afforded them no ground for any latitudinarian construction of the terms of admission in their favor. All they could ask was a fair interpretation of the letter and spirit of the act, by which they became members of the Union.

The majority of the committee say that the terms of admission exacted from these States by Congress were "onerous," and they attempt to found an argument upon this allegation. What *are* these conditions? First, the new States are forbidden to interfere with the primary disposal of the soil within their borders. This is not an onerous requirement, for the simple reason that they had no right as States to do any such thing. It was simply a declaration that the unquestioned right of the United States should be respected; but the majority of the committee argue that this agreement of the States not to usurp powers belonging to the Union imposes upon them an onerous burden.

The new States are forbidden to tax the public lands within their limits for any purpose. This did not impose upon them an onerous burden, or a burden of any sort. It is true that the exemption of these lands from taxation greatly inured to the benefit of the United States, but it equally inured to the benefit of the States. The tax exemption created a motive in the emigrant to seek his home in the West, and greatly promoted the settlement and tillage of the public domain and the development of the productive wealth of these States as well as of the Union. There was no burden imposed upon them, because it was an obvious and simple mode of promoting the real welfare, both of the States and the nation. There is no evidence whatever that the States ever regarded this prohibition as a burden, or made the slightest objection to it at the time; and it has required more than half a century to invent the interpretation now insisted on with apparent seriousness.

Kindred observations apply to the stipulation that non-resident proprietors shall not be taxed more than the resident. Any other principle would be clearly impolitic and unjust. That such a prohibition should be construed as a burden upon the States is strange logic. To suppose that they desired so absurd a discrimination is to dishonor them. The taxing of non-residents more than residents would surely retard emigration and settlement, and hinder industrial development. It would have given these States a bad reputation as to the fairness of their method of raising the revenues required for carrying on the machinery of government; while the stipulation for equal taxation was in the interest both of the States and the general government. The remaining stipulation, that lands granted for military services in the war of 1812, "that may be located therein," shall not be taxed for three years from date of patent, invites similar observations. It was in honor of the country's defenders, and, like the other tax exemption already referred to, was quite as advantageous to the States themselves as to the country at large. It invited emigration and settlement while very properly honoring the soldier, and it cannot be reasonably presumed that these States objected to it, or even dreamed of it as a burden.

But it is further argued that the *five per cent.* claimed by these States is fairly their due, because Congress has disposed of a vast body of land for military bounties which otherwise would have been the subject of cash sales, and that this, being a violation of the compact of admission, entitles them to five per cent. of the aggregate sum which these lands would have sold for at $1.25 per acre. This argument is quite as fallacious as those already noticed. Certainly the compact under which these States were admitted did not, and could not, definitely fix the land policy of the government. It did not surrender the constitutional power of Congress over the public domain, or tie up the hands of the nation against the right at any time to do what might best conduce to the general welfare. Besides, when these States were admitted, the policy of the nation in dealing with its public lands was well understood to cover various methods of disposing of them. Congress had long been giving them away as military bounties, for educational objects, and a variety of other purposes. These Western States understood this perfectly, and the idea that they should now claim indemnity on the grounds claimed by the majority of the committee is a transparent afterthought.

The fallacy of the argument in question may be made still more palpable. It proves too much, and thereby destroys itself. If these States are entitled to "five per cent." of the proceeds "of these bounty lands, why are they not entitled to much more." They have apparently just as much right to claim five per cent. of the proceeds of about 70,000,000 acres of swamp lands granted to the several States in which they lie; the same per cent. of the proceeds of the vast domain granted to aid in the construction of railroads, canals, and other internal improvements, aggregating an area as large, perhaps, as the thirteen original colonies. The same reasoning will apply to the many grants made for educational purposes, and the conveyance of vast bodies of land to our various Indian tribes. The millions of acres granted in aid of agricultural colleges would also soon be taken into the account if these eighteen States are to be satisfied. The modest little fraction of their present claim, which they seem willing to accept now, can hardly be expected to satisfy them long if this is allowed.

Of course the homestead act of 1862 is another violation of the compact under which the States were admitted, and gives them an equal claim to indemnity. It is true their settlement and improvement have been greatly promoted by the homestead policy; but if they were en-

titled to five per cent. of the proceeds of these lands, they should ask for it, and receive it, if the argument of the majority report is sound. Besides, the disposition of the public domain for the construction of railroads and other internal improvements, for educational purposes, &c., has also proved of great advantage to these States as well as to the public. But it seems unnecessary to pursue this line of argument further; what has been said shows the unsoundness of the position of the majority report.

The immense grants made in aid of railroads, canals, wagon-roads, improvement of rivers and levees, for educational purposes, and the millions of acres turned over by the government to these States as swamp lands may very properly be remembered in dealing with the claim now urged; while it should not be forgotten that these same States had their share of the honor and glory which pertains to the common government in rewarding its defenders by bounties in land.

The majority report further argues that the land bounties given by Congress to the soldiers of our various wars were a part of ther compensation, and being offered as an inducement to enlist is a sale of the land, and thus entitles these States to claim five per cent. on their proceeds at $1.25 per acre. The majority admit that if the grants had been made *after* the rendition of the military service the rule might be otherwise. This admission gives their case away. More than 60,000,000 acres of the public lands have been granted as bounties for the soldiers of the Mexican war alone, and these cover nearly the entire aggregate of all land bounties from the beginning of the government to the late rebellion. The first land bounty act in behalf of the soldiers of the Mexican war was passed February 11, 1847, when the war was nearly over, and very few soldiers, if any, could have been stimulated by it to enlist, if they had needed any such stimulus. The other acts were, respectively, passed September, 28, 1850; March 22, 1852; and March 3, 1855—all years after the war had ended.

The grant by Congress of these bounty lands was not a sale at all, and cannot be made such. It was a pure bounty or gratuity for military service, and even if offered before the service it would constitute no sale of the land. Congress agreed to give "*five per centum of the proceeds of the sales* of the public lands," which shall be sold by the United States after deducting all the expenses of sale. What is a sale? Chancellor Kent says it is "an agreement by which one of two contracting parties, called the seller, gives a thing and passes the title to it in exchange for a certain price *in current money* to the other party, who is called the buyer, who on his part agrees to pay such price." This definition is accepted by courts and lawyers everywhere. A sale differs from a barter or exchange in this: That in the latter the price or consideration, instead of being in money, is paid in goods or merchandise susceptible of a valuation. There can be no sale at all where the price or consideration is not a sum of money, and this is believed to be a complete answer to the argument of the majority. It settles the question; for it is shown that there is nothing in the stipulations under which these States were admitted which entitles them to any unreasonable or far-fetched interpretation of their terms. If the bounties had been offered to the soldier prior to his performance of the service as an inducement to enlist, it might and would have some semblance of a *contract* between him and the government, but a contract is not a sale unless the consideration is a payment of money which the government actually receives; nor is the case at all altered by the fact that the warrants were made assignable or convertible into scrip. That was a

matter for the convenience of the soldier, but it put no money into the Treasury of the government.

This argument is apparently conclusive when we refer to the phrase "*five per cent. of the net proceeds of sales.*" What were the proceeds of the sales of these lands? In other words, what was the consideration which the United States received for the warrants issued to the soldier? When he received his warrant for 160 acres of land, did the government get $200 for it? It is possible that he may have sold it for that sum; but if so, the money went into his own pocket. The government got nothing but his services. He gave his toil, and sweat, and privation, and suffering in the prosecution of a great war which resulted in the triumph of our arms, and vast territorial acquisitions. He may have lost an arm or a leg in the service, or returned home a physical wreck. But how shall we coin all this into $200 in cash so that these States may get their five per cent.? How can they get their "pound of flesh"? They want five per cent. of the net proceeds. Have the advocates or the agents of this bill any divining-rod by which they can find it, or any art by which the valor and sacrifice of the soldier may be transmuted into cash? If the term "net proceeds" does not relate to money, words have lost their meaning.

But the claim of these States is invalid even if all that is said thus far is fallacious. The five per cent. already received by them on the cash sales of the public lands was not an absolute gift, but *a trust*. The money did not go into the treasury of these States for their absolute disposal, but was given in aid of internal improvements, and for educational purposes, in which the whole country was interested in common with these States. If, therefore, the contract between the soldier and the government could be construed as a sale, the bill now before Congress would be wholly unwarranted by the legislation on which it professes to be based. All that the States would have the right to ask would be five per cent. of the fund claimed by them *as trustees*, to be disbursed by them in the construction of roads, canals, or other internal improvements or for educational purposes.

There is still another difficulty in their way. They have not kept faith with the government in the disposition of the proceeds of the cash sales which came into their custody. They cannot come before Congress with "clean hands." In seeking equity they are bound to do equity, and not having done this, they have no standing in the court to which they appeal.

Finally, it may be remarked, that the staleness of the claim now set up condemns it. That so many great commonwealths should have slept upon their rights for so long a period of time is very remarkable. The presumption that they would have done so as to valid claims against the government, involving millions of dollars, is a violent one, and rouses at once the strongest apprehension that they have no confidence in the justice of the claim. Our various statutes of limitation are founded upon a wise and wholesome public policy, and should be applied to States as well as to individuals, unless some paramount reason can be assigned for making them an exception, which is not apparent in this case. But it is unnecessary to dwell upon this point, as this measure is utterly condemned by other and overwhelming considerations.

This bill, considered in the light of the circumstances surrounding it, is subject to the suspicion that the great States making this extraordinary demand yielded to the sophistry of greedy attorneys and claim agents who originated the proposition embodied in the pending bill.

J. W. DWIGHT.