

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1863.—Ordered to be printed.

Mr. POMEROY submitted the following

REPORT.

[To accompany joint resolution H. R. No. 84.]

The Committee on Claims, to whom was referred a joint resolution for the relief of the State of Wisconsin, having considered the same, ask leave to report :

By the "Act to enable the people of Wisconsin Territory to form a constitution," &c., approved August 6, 1846, Congress offered to the people of that State five per cent. of the net proceeds of the public lands within its limits, and certain other equivalents, in consideration that the State should adopt an ordinance such as was indicated by the act aforesaid.

The convention which framed the constitution of Wisconsin formally accepted that offer and framed the required ordinance, which the people of the State adopted.

Nevertheless, it seems the government has only paid a portion of that five per cent. fund. The balance remaining unpaid on the 31st of December, 1861, amounted, according to the statement of the Commissioner of the General Land Office, to \$249,768 70.

The reason assigned for the non-payment of that balance is, that the government has a claim against the State of Wisconsin for the proceeds of certain lands granted to the Territory of Wisconsin to aid in the construction of a canal to connect the waters of Lake Michigan with those of Rock river.

The history of that claim is briefly as follows:

The Territory of Wisconsin was organized under an act of Congress approved April 20, 1836. Her legislature could pass no act without submitting it to the Congress of the United States, and if disapproved by Congress the act was null.

On the 18th of June, 1837, Congress passed an act providing for the construction of a canal between Lake Michigan and Rock river.

The United States owned the lands on the line of the proposed canal, and desired to sell them. They were offered to all the world at one dollar and twenty-five cents per acre, but had not been sold.

Congress believed the construction of the canal would double the value and quicken the sale of the lands.

For the purpose of building the canal Congress made the Lake Michigan and Rock River Canal Company its agent and the Territory of Wisconsin its trustee. But the Territory was a mere naked trustee, without any interest, vested or contingent. It never could derive any pecuniary advantage from the grant. It could only sell the lands, but the proceeds it was compelled to invest in the stock of the canal company.

The stock it could hold only as trustee either for the company or the public. All revenues derived from the stock it was compelled to invest in the purchase of stock held by private stockholders, and when the proceeds of the lands and the revenues of the canal should have defrayed the whole cost of construction, the work was to be thrown open to the public without other charge for its use than a sum sufficient to keep it in repair.

Thus it seems neither the Territory nor the State of Wisconsin could in any contingency derive any pecuniary advantage from the grant. They were the instrumentalities through which Congress undertook to provide a free canal for the use of the people of the United States, expecting, as it did, that the improvement of the public lands along the line of the canal would reimburse the cost of the work.

But the canal was not completed in ten years, and, it seems, never has been completed. Hence, it seems to have been thought the State of Wisconsin ought to pay for the lands granted in aid of it. The act making the grant did declare that in case the canal was not commenced within three years, and completed within ten years, from the date of the act, the United States should be entitled to receive back the money for which any of said lands might have been previously sold. And it further declares, the State of Wisconsin should be held responsible for the payment thereof. But the same act also declares that, "in order to render effectual the provisions of this act, the legislature of the State to be erected or admitted out of the territory, now comprised in Wisconsin Territory, east of the Mississippi, shall give their assent to the same by act to be duly passed."

Your committee do not understand that any such assent has ever been given on the part of the State, and they do not think it just or equitable to charge upon that State the whole loss consequent upon the failure to build the canal, and for these reasons:

Because the State never undertook to build the canal.

Because it never asked for a grant to aid the building of it.

Because it never could have derived any profit from the use of it.

Because it had no control over the company, which was specially charged by Congress with the duty of building the canal.

Because her judgment was never consulted, nor her assent asked to the project of building it.

Your committee also think it unjust and illegal to charge that loss upon the State, because, as before stated, Congress expressly enacted that the State should not be bound by the terms of the grant unless her assent was formally obtained; and because, whatever obligation might have devolved upon the State to complete the canal under the terms of the grant, yet those obligations were waived by Congress in

the act admitting Wisconsin into the Union. In that act Congress diverted so much of the grant as remained unsold from the construction of the canal, and disposed of it to the State of Wisconsin as a part of the five hundred thousand acres offered to that State in the act of August 6, 1846, hereinbefore referred to; and it does not seem right to divert the fund dedicated to the building of the canal, and still compel the State to complete the work.

Your committee are informed, by the Commissioner of the General Land Office, that the State has been charged with the whole quantity of land disposed of before the admission of the State into the Union, amounting to $125,431\frac{82}{100}$ acres, at two dollars and fifty cents per acre.

But your committee are clearly of the opinion, there is no just reason for charging more than one dollar and twenty-five cents per acre for those lands. That was the price at which the lands were offered to all the world at the time of the grant. Congress evidently supposed that the building of the canal would double their value; and so doubtless it would, but the canal was not built. The sole consideration for charging two dollars and fifty cents per acre thereby failed. Congress recognized the fact, and reduced the price of the reserved sections to one dollar and twenty-five cents per acre. Your committee can see no just reason for demanding of the State two dollars and twenty-five cents for the granted sections, and selling the reserve sections, lying right by their side, for half that price.

To insist upon that rule would enable the government to speculate out of the failure of its own agent. If the canal company had completed the canal, the government would have received two dollars and fifty cents for half the lands and nothing for the balance, which would be an average of one dollar and twenty-five cents for the whole. But if the State is made to pay the enhanced price by reason of the failure of the canal company to complete the work, then the government receives one dollar and twenty-five cents per acre for half the lands and twice that sum for the other half, which is an average of one dollar and eighty-seven and one-half cents for the whole.

Your committee are also of the opinion that the State should not be held accountable for so much of the proceeds of that grant as was paid over to the canal company by the Territory.

All such payments were made in pursuance of the express directions of Congress. They were in execution of the very purpose for which the grant was made. If the company misused those funds, it was in no sense the fault of the Territory, which did not select the beneficiary, and much less the fault of the State, which never saw the funds.

Your committee are also of the opinion that if any portions of such proceeds were disbursed to defray expenses of the territorial government, which, by law, were chargeable upon the treasury of the United States, the State should not be held accountable for such portion.

To that extent the United States, and not the State, have been the recipients of the grant; and the former, and not the latter, should

stand charged, leaving the State to account, as for money had and received, for so much of the grant only as was appropriated to her own use.

Upon these principles your committee recommend a settlement of the account with the State, and for that purpose they report back the joint resolution, with an amendment, and recommend its passage.