

PRE-EMPTION—LOTS IN PERRYSBURG

[To accompany bill H. R. No. 66.]

MARCH 3, 1840.

Mr. LINCOLN, from the Committee on the Public Lands, made the following

REPORT:

The Committee on the Public Lands, to whose consideration was referred the petition of numerous citizens of the town of Perrysburg, in the State of Ohio, asking the grant of a pre-emption right to certain lots in said town, report :

That the said petition, with all the documents and papers now accompanying the same, appear to have been referred to, and examined by, the Committee on the Public Lands of the last Congress, at the second session thereof; and that a special and particular report of the facts was thereupon made to the House of Representatives. The case having undergone a careful revision by the present committee, and the facts found conformable to that report, the committee adopt the same; and, concurring in the opinion that an act ought to pass for the relief of the petitioners, they herewith report a bill.

MAY 17, 1838.

The Committee on the Public Lands, to whom was referred the petition of sundry inhabitants of the town of Perrysburg, in the State of Ohio, praying for a right of pre-emption to certain lots in said town, report :

That it appears from the petition, from the public records, and a mass of documentary and other evidence in the case, that the said town of Perrysburg was laid out under the authority of an act of Congress passed on the 27th of April, 1816. Subsequently, in July, 1817, a public sale of the lots in said town was directed by the President of the United States, pursuant to the existing laws at that time, to be held in the town of Wooster, in the same State; and many of the lots were struck off and sold to the bidders therefor, upon the credit, terms, and conditions of sale. The purchasers afterwards failing to complete their payments for these lots, or most of them, according to the terms of sale, and within the period extended by subsequent acts of Congress to purchasers under the credit system, the lots reverted, or were relinquished, to the United States. The State of Ohio, claiming the right to tax these lots after five years from the date of the sale, in 1817 to the purchasers, notwithstanding the reversionary right in the

United States upon the non-payment of the purchase-money, proceeded to assess taxes upon them; and, in default of the payment thereof, caused the lots to be sold for the satisfaction of such taxes. It appears that the lots so sold are now in the possession of the purchasers at the tax sales, their heirs, or assignees; and many of them have been enhanced in value by expensive improvements, the loss of which, through a defect of title, would be greatly injurious, and, in some instances, might be ruinous to the tenants. The petitioners represent that they, or those under whom they claim, relied implicitly upon the known fact of the public sales in 1817 by the United States, and the assumed authority of the State of Ohio to tax the lands after five years from the date of those sales, for their assurances of an indefeasible title; and should that fail, and they now be dispossessed of their property therein, they would be without remedy for most grievous losses. They further represent, that the lots were sold by the United States under the advantages of the credit system, at a period of great excitement in land speculations, and at prices generally higher than the intrinsic value of the lands *then, or at any subsequent period*; and they now ask to be quieted in their possessions and improvements, by a right of pre-emption, on the payment of the amount to the Government of the sums for which the lots, respectively, were originally struck off. The committee find, however, upon reference to the General Land Office, that a claim to these lots has been interposed by the county commissioners of Wood county, in the State of Ohio, under the provisions of an act of Congress approved on the 7th of May, 1822, entitled "An act vesting in the commissioners of the counties of Wood and Sandusky the right to certain lots in the towns of Perrysburg and Croghansville, in the State of Ohio, for county purposes;" and that the State of Ohio also has set up a similar claim, under another act of Congress, passed on the 28th of February, 1823, granting to that State "a tract of land one hundred and twenty-five feet wide, together with a quantity of land equal to one mile on each side thereof, and adjoining thereto, for the purpose of constructing a road, to commence at the Miami rapids, and terminate at the western boundary of the Connecticut western reserve;" which road runs through the town of Perrysburg, and brings the lots which are the object of demand within the limits of one mile on either side of the road. But these pretensions of grant to *include* the lots in question have been repelled, on the part of the United States, by successive Commissioners of the General Land Office, upon arguments and for reasons which, in the opinion of this committee, are satisfactory; and no patents have ever been issued therefor. The committee believe that the legal title to the lots still remains with the United States, and that the property is subject to the disposition of the Government.

Upon a full view of all the circumstances in the case, the committee regard the prayer of the petitioners, who purchased under the tax sales by the State of Ohio, relying upon the right of the State to assess the lands after five years from the date of the public sales by the United States, notwithstanding the reversion by forfeiture for non-compliance with the terms of sale, as so far equitable and reasonable that they should now be permitted to acquire a release of the right of the United States thereto, by pre-emption; and the price at which the lands were struck off, at Wooster, in July, 1817, appearing to be the full amount of the value of the lots, exclusive of improvements, that sum should be the measure of consideration for the acquittance of the right and interest of the United States in the lots, respectively.

The committee, therefore, herewith report a bill for the relief of the petitioners.

GENERAL LAND OFFICE, *March 15, 1838.*

SIR: I herewith return the papers which accompanied your letter of the 10th instant, on the subject of the lots in the town of Perrysburg, and transmit, herewith, a copy of various letters of correspondence on the same subject; from which you will be enabled to see the state of the case, and the opinions of my predecessors respecting those lots, and the bearing which past legislation has had on them.

In the present involved state of this subject, there being adverse claims set up to these lots, (which will be perceived from the correspondence,) I see no better course to be adopted by the Legislature of the United States than that proposed in the bill introduced by the honorable Mr. Kennon, in the House of Representatives, (No. 130,) January 12, 1836, which amounts to a quit-claim, so far as the United States are concerned, in favor of those purchasers, their heirs and assigns, who hold under tax titles derived from the State of Ohio, who shall enter and pay for them within two years from the passage of the act, at the price originally paid, and providing that the rights of third persons to any such lot or lots shall not be affected thereby.

In all cases where original purchasers of such lots forfeited the same, by reason of non-compliance with the terms of the purchase, there is provision of law for their receiving a certificate of stock for the amount paid and forfeited in each case; which stock is receivable in payment of public lands.

I have the honor to remain, very respectfully, sir, your obedient servant,
JAMES WHITCOMB,

Commissioner.

Hon. P. G. GOODE, *House of Representatives.*

GENERAL LAND OFFICE, *May 4, 1832.*

SIR: In reply to your communication of the 18th March, 1830, recently received from the honorable Mr. Ewing, stating the grounds on which the commissioners of Wood county rest their claims to the relinquished and reverted in-lots and out-lots of the town of Perrysburg, under the act of the 7th of May, 1822, I have to state that the grant under that act to the commissioners of Wood county, of the right to all unsold town-lots and out-lots in the town of Perrysburg, did not extend to the in-lots and out-lots sold at the date of the act, and which have subsequently reverted and been relinquished to the United States. Such lots, at the date of the act, were not possessed by the United States, nor in any way under their control; and if Congress intended to make a grant covering the possibility of their reversion or relinquishment, the language of the act would have expressed that intention.

The same objection applies to the claims of the State of Ohio, under the act of the 28th of February, 1823, granting to that State "a tract of land one hundred and twenty-five feet wide, together with a quantity of land

equal to one mile on each side thereof, and adjoining thereto, &c.; to commence at the Miami rapids, and terminate at the western boundary of the Connecticut western reserve."

These lots were first offered for sale at Delaware, under the proclamation of the President of the United States of the 12th of March, 1827, of "lands relinquished," and for the "sale of certain lands in the reservation at the rapids of the Miami of Lake Erie, relinquished at Wooster, and situate within the limits of the Delaware district;" and those of them which have, subsequently to the date of that proclamation, reverted or been relinquished to the United States, were offered on the third Monday in December, 1829, under proclamation dated the 30th of September, 1829, at Tiffin, and are now subject to private entry at that office.

The late Commissioner, on the representations of Ralph Osborne, Esq., instructed the register and receiver at Delaware, on the 24th of July, 1827, to refund all moneys paid for lots sold by them, on the ground that the title to these lots was vested in the State of Ohio or the commissioners of Wood county. I do not perceive any reasons or law for such instructions, and am unable to understand why they were issued. These lots were properly sold by the register and receiver at Delaware, and the sales made by the State of Ohio are not valid; and believing that the late Commissioner has acted under an erroneous construction of the law, by setting aside good and legal sales, I have instructed the register and receiver at Tiffin to give notice to such purchasers that the sales were valid, and that they have a priority of right to purchase the same, and to give them a reasonable time to renew their purchase and to pay the money which was, by the instructions of the late Commissioner, refunded to them.

I am, &c.,

E. HAYWARD.

F. W. POWELL, Esq., *Perrysburg, Ohio.*

GENERAL LAND OFFICE, *September 14, 1836.*

SIR: Your letter of the 7th instant, in behalf of the commissioners of Wood county, and advocating their claim to lots in the town of Perrysburg, that have reverted or have been relinquished to the United States since the passage of the act of Congress of the 7th of May, 1822, was received this morning.

I have perused your letter carefully, without becoming convinced by your arguments that the act in question warrants the claim you advance for the commissioners to those lots in Perrysburg that became forfeited for non-payment of the purchase-money, or were relinquished to the United States after the passage of that act.

I am, &c.,

ETHAN A. BROWN,
Commissioner.

F. W. POWELL, Esq., *Delaware, Ohio.*