

7th CONGRESS.]

No. 160.

[2d SESSION.

JUDGES REMOVED FROM OFFICE BY LEGISLATION.

COMMUNICATED TO THE SENATE, JANUARY 28, 1803.

Mr. MORRIS, from the committee to whom was referred the memorials of Judges Richard Basset, Egbert Benson, Benjamin Bourne, William Griffith, Samuel Hitchcock, Philip B. Key, C. Magill, Jeremiah Smith, G. K. Taylor, William Tilghman, and Oliver Wolcott, made the following report:

That the petitioners were judges of certain courts, inferior to the Supreme Court, constituted by an act of the 13th of February, 1801, and duly commissioned to hold their offices during good behavior.

That while holding and exercising their offices, an act was passed on the 8th of March last, to repeal the said act of the 13th of February, 1801, and transfer the duties of the said judges from them to others.

That a question has arisen, whether by reason of the premises, the said petitioners be deprived of their offices.

That this question, depending on the construction of the laws and constitution of the United States, is not properly cognizable by the Senate.

Your committee, therefore, conceive it improper either to give reasons or express opinions. But they consider it as a question of high and serious import, and believe that a speedy investigation and final decision is of great moment to the commonwealth.

Wherefore they submit the following resolution:

Resolved, That the President of the United States be requested to cause an information, in the nature of a *quo warranto*, to be filed by the Attorney General against Richard Bassett, one of the said petitioners, for the purpose of deciding judicially on their claims.

To the honorable the Senate and House of Representatives of the United States, in Congress assembled: The undersigned most respectfully submit the following representation and memorial:

By an act of Congress, passed on the 13th day of February, in the year of our Lord one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the courts of the United States," certain judicial offices were created, and courts established, called circuit courts of the United States.

In virtue of appointments made under the constitution of the United States, the undersigned became vested with the offices so created, and received commissions authorizing them to hold the same, with the emoluments thereunto appertaining, during their good behavior.

During the last session, an act of Congress passed, by which the above-mentioned law was declared to be repealed; since which no law has been made for assigning to your memorialists the execution of any judicial functions, nor has any provision been made for the payment of their stipulated compensations.

Under these circumstances, and finding it expressly declared in the constitution of the United States, that "the judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office," the undersigned, after the most deliberate consideration, are compelled to represent it as their opinion, that the rights secured to them by the constitution, as members of the judicial department, have been impaired.

With this sincere conviction, and influenced by a sense of public duty, they most respectfully request of Congress to review the existing laws which respect the offices in question; and to define the duties to be performed by the undersigned, by such provisions as shall be consistent with the constitution, and the convenient administration of justice.

The right of the undersigned to their compensations they sincerely believe to be secured by the constitution, notwithstanding any modification of the judicial department, which, in the opinion of Congress, public convenience may recommend. This right, however, involving a personal interest, will cheerfully be submitted to judicial examination and decision, in such manner as the wisdom and impartiality of Congress may prescribe.

That judges should not be deprived of their offices or compensations, without misbehavior, appears to the undersigned to be among the first and best established principles in the American constitutions; and in the various reforms they have undergone it has been preserved and guarded with increased solicitude.

On this basis the constitution of the United States has laid the foundation of the judicial department, and expressed its meaning in terms equally plain and peremptory.

This being the deliberate and solemn opinion of the undersigned, the duty of their stations requires that they should declare it to the Legislative body. They regret the necessity which compels them to make the representation; and they confide that it will be attributed to a conviction that they ought not voluntarily to surrender rights and authorities intrusted to their protection, not for their personal advantage, but for the benefit of the community.

7th CONGRESS.]

No. 161.

[2d SESSION.

STATE OF OHIO.

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, FEBRUARY 2, 1803.

Mr. RANDOLPH, from the committee to whom were referred a letter from Edward Tiffin, president of the convention of the State of Ohio, and a letter from Thomas Worthington, special agent of the said State, enclosing the constitution thereof, together with sundry propositions in addition to, and in modification of, those contained in the act, entitled "An act to enable the people of the eastern division of the Territory northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," made the following report:

That the ordinance for ascertaining the mode of disposing of land in the Western Territory, passed by Congress on the 20th day of May, 1785, establishes the principle of reserving one thirty-sixth part of the lands sold for the use

of schools. That to this principle, equally liberal and wise, your committee believe it a sound policy to adhere, and to extend it wherever practicable. They are aware of the objection that the right of soil in the tract of country commonly called the Connecticut reserve, having been ceded by Congress without any valuable consideration, and no reservation having been made for the support of schools therein, the inhabitants of that portion of the State of Ohio have not equal claims on the bounty of Congress with those who, having purchased their lands of the United States, have contributed large sums to the public treasury. But if it be recollected that the actual settlers are not, generally, those that have been enriched by that *extraordinary* donation, but purchasers under them, and at prices, it is believed, not inferior to those received for the public lands, and that whilst they are burdened with their full proportion of their expense of the State Government, they are cut off from an equal participation of the benefits enjoyed by their fellow-citizens; when, moreover, it is considered that the provision for schools embraces not the emolument of individuals, but the interests of morality and learning, the committee are of opinion that Congress will perceive the propriety of acceding to a proposition, the tendency of which is to cherish and confirm our present happy political institutions and habits. This last consideration applies equally to the United States' military tract, to the military reservation of Virginia, and to lands which may hereafter be acquired from the Indian tribes.

No objection suggests itself, why the lands which are or may be appropriated for the use of schools within the State of Ohio should not be vested in the Legislature of that State, in trust for that purpose.

The appropriation offered in the third proposition of the act enabling the people within the limits of the present State of Ohio to become a co-equal member of the Union, originating in the belief that it would at once enhance the value of the public lands, and cement more strongly together the various interests of the confederacy, it is believed that these desirable objects will be equally promoted by applying a portion of the proceeds (so offered to be appropriated) to the opening and repairing roads within the State of Ohio.

The provision contained in the sixth section of the seventh article of the constitution of the State of Ohio, respecting the northern boundary of that State, depending on a fact not yet ascertained, and not being submitted in the shape of the other propositions from the convention to Congress, the committee have thought it unnecessary to take it at this time into consideration.

In relation to the grant to John Cleves Symmes and his associates, of one complete township, in trust, for the use of an academy and other seminaries of learning, the committee recommend the adoption of a plan suggested by the Secretary of the Treasury, in a letter hereto subjoined, to which they beg leave generally to refer; and they respectfully submit the following resolutions, in addition to, and in modification of, the propositions contained in the act entitled "An act to enable the people of the eastern division of the Territory northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," passed the 30th day of April, 1802:

1. *Resolved*, That a donation, equal to one thirty-sixth part of the amount of the lands in the United States' military tract, within the State of Ohio, be made for the support of schools within that tract.

2. *Resolved*, That a donation, equal to one thirty-sixth part of the county of Trumbull, be made out of the lands within the United States' military tract, for the support of schools within the said county of Trumbull.

3. *Resolved*, That a donation, equal to one thirty-sixth part of the Virginia reservation, so far as the unlocated lands within that reservation (after the warrants issued by that State shall have been first satisfied) will supply the same, be made for the support of schools in the district contained between the Scioto and Miami rivers.

4. *Resolved*, That a like provision for the use of schools be made out of any lands which may hereafter be acquired from the Indian tribes.

5. *Resolved*, That the lands which now are, or hereafter may be, appropriated to the use of schools within the State of Ohio, be vested in the Legislature thereof, in trust for that object.

6. *Resolved*, That not less than three-fifths of the sum offered to be appropriated by Congress for the opening of roads from the western to the Atlantic waters, shall be appropriated under the direction of the State of Ohio, for the laying out of roads within that State.

7. *Resolved*, That in lieu of the township proposed to be granted for the use of an academy, by the act passed the 5th day of May, 1792, there be granted to the State of Ohio, for the purposes described in that act, one other entire township within the district of Cincinnati: provided that the State of Ohio shall relinquish to the United States all their claim, under the act aforesaid, against the said John C. Symmes.

8. *Resolved*, That these propositions shall depend on the compliance by the State of Ohio with the provisions of the third proposition and second section of the aforesaid act, entitled "An act to enable the people of the eastern division of the Territory northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," passed the 30th day of April, 1802.

SIR:

The committee to whom were referred sundry propositions submitted by the convention of the State of Ohio, to the Congress of the United States, have instructed me to request of you information on the following points:

1. The gross amount of lands comprised within the United States' military tract.

2. Whether, through default of John Cleves Symmes, the intention of the United States to endow an academy or other public school with one entire township, hath been frustrated?

3. How far the purchasers under the aforesaid Symmes are bound to make good the said township, or the value thereof.

4. Whether the United States are bound to furnish an equivalent; and, if not,

5. How far it may be a matter of policy to comply with the proposition of the convention on that subject.

And such other information touching those propositions, generally, which the Secretary of the Treasury may deem expedient to lay before the committee.

With perfect consideration, I am, sir, yours,

JOHN RANDOLPH, JUN. *Chairman of the Committee.*

ALBERT GALLATIN, *Secretary of the Treasury.*

SIR:

TREASURY DEPARTMENT, *January 13, 1803.*

The gross amount of lands within the United States' military tract is computed at two million five hundred and thirty-nine thousand one hundred and ten acres; one thirty-sixth part of which, if appropriated for schools in conformity to the proposition of the convention of the State of Ohio, will amount to seventy thousand five hundred and thirty-one acres. The grants already made within that tract amount to one million eighty-one thousand

two hundred and seventy acres, which, supposing the school appropriation to take place, will leave one million three hundred and eighty-seven thousand three hundred and nine acres therein for the future disposition of Congress.

If the modifications proposed by the convention shall be acceded to, it will be necessary to define the manner in which the above-mentioned seventy thousand five hundred and thirty-one acres, as well as the sections to be given for the use of schools in those fractional townships containing less than three-fourths of an entire township, and in which the section No. 16 has been disposed of, shall be located. There are but thirty-seven such fractional townships in which that section did exist, and only twelve such sections have been sold. The mode of designating an equal number of sections in lieu thereof is not, therefore, material.

The seventy thousand five hundred and thirty-one acres in the military tract may be designated by directing that as many quarter-townships (which quarters in that tract contain four thousand acres each) as will make up the whole amount, shall be selected by lot; and the same mode may be extended to the designation of the lands which Congress may assign for the use of schools in the Connecticut reserve. But if it shall be thought proper to give an agency in the selection to the State, it will be necessary to limit the time within which that agency shall be exercised, and to provide, in case of failure on their part, for another mode of designating the land.

As the request made by the convention for certain lands in lieu of the township granted to J. C. Symmes and his associates for an academy, is no part of the modifications proposed to the original propositions of Congress, an immediate decision may not be necessary; and it seems proper and just that measures should, in the first place, be taken for the recovery of that township which was granted in trust to J. C. Symmes and his associates, and which, at all events, ought not to be applied to their private use since they did not pay for it. The difficulty, in this case, arises from the following circumstances:

J. C. Symmes had originally applied for two millions of acres, and it had then been contemplated to give him a township for the use of an academy. The contract was, however, made with the Board of Treasury, (in 1787,) by his attorneys Messrs. Dayton and March, for only one million of acres, and no grant or promise of an academy or college township was inserted in it.

In 1792, Congress directed that a township for that purpose should be included in the grant of lands to be made to said Symmes and his associates; and a patent accordingly issued, under date of 30th September, 1794, for a tract containing three hundred and eleven thousand six hundred and eighty-two acres, reserving five sections in each township for certain purposes; and further declaring, "that one complete township, or tract of land of six miles square, to be located with the approbation of the Governor for the time being of the Territory northwest of the river Ohio, and within the term of five years, as nearly as may be, in the centre of the tract herein granted, has been and is granted, and shall be holden in trust to and for the sole and exclusive intent and purpose of erecting and establishing therein an academy and other public schools and seminaries of learning, and endowing and supporting the same, and to and for no other use, intent, or purpose whatever."

At the time when the patent was granted there was, as Mr. Symmes states, but one entire township within its bounds; some sections having been sold in every other township because he had not contemplated such reservation, and that one entire township remained so, only because it had been reserved by Mr. Symmes for himself and his associates. He applied, in 1798, to Governor St. Clair, in order to obtain his approbation to the location of that township, in conformity to the words of the patent. Although there does not really appear to have existed any other unsold township at the time, the Governor refused his assent, because that offered was, in his opinion, of inferior quality, and not in the centre of the patent, and because a part of it was claimed by Elias Boudinot, one of Judge Symmes's associates. Since that time, it is understood that one half of that township has been sold under judgments obtained against Mr. Symmes; the other undivided half is said to be still claimed by Mr. Boudinot under articles of agreement, dated before the date of the contract of Mr. Symmes with the Board of Treasury; and by which the last-mentioned person agreed that he would, after he had received a title from the United States, convey to Mr. Boudinot, as his associate in the intended purchase, a part of the same.

As the patent is in the name of J. C. Symmes and his associates, it is not believed that the claim of any of the associates, as such, can affect the title of the public against them as trustees; but in what manner they shall be compelled to execute the trust is the question to be decided.

Perhaps Congress, at the same time that they shall direct legal measures to be taken for the recovery and due application of the land, might provide, that, if J. C. Symmes and his associates shall pay to the United States the original purchase money (two-thirds of a dollar per acre) for that township, with interest from the date of the patent, they shall be released from the execution of the trust, and the township confirmed to them for their own use; and they might also designate another entire township in the Cincinnati district, and as near to the Miami and Ohio as practicable, to be given in lieu of the other, in case either this should not be recovered, or J. C. Symmes and his associates should pay for it on the above-mentioned terms.

Permit me to suggest, here, the propriety of opening a land office for the sale of all the remaining lands in the military tract, and also to repeal those parts of the general land law which forbid the sales of certain sections throughout the whole extent of the lands of the United States, except so far as relates to the school sections and to the sections reserved for religious purposes in the lands sold prior to the law of the 18th May, 1796. The plan of reserving some sections in each township for the purpose of giving to the public a share in the increasing value of lands, originated at a time when lands were sold by the United States at a lower rate and in large tracts.

The present mode of disposing of the public lands, as under it none are sold until they have attained the value of two dollars per acre, effects the same object, and renders the reservation useless. No further precaution seems necessary in relation to that object, than to order a public sale of those reservations before they shall be offered on the usual terms.

The part of the military tract which shall remain for future disposition may be divided into sections and half-sections, and a land office opened at Zanesville, for the sale both of those lands and of those lying north of the Ohio Company purchase, which now belong to the Marietta district. The sales have been so inconsiderable in that district that little doubt remains that the place selected for the land office was not the most proper. It is, however, suggested that the sales would be eventually promoted in that and in all other districts, by permitting the sale of fractional sections, without being attached to the adjoining entire section.

There is another circumstance which, though of inferior importance, seems to merit some consideration.

The price at which Congress sell their lands is advantageous to the population and prosperity of the State of Ohio. It has effectually destroyed the monopoly of lands, and throws the land exclusively in the hands of actual settlers; yet it is considered as high; and, on that account, the payment of fees, in addition to the purchase money, is generally complained of. This objection should be removed, by giving to the registers a small salary or commission in lieu of their fees. About \$500 a year to each, that of Marietta excepted, would be, I believe, a sufficient compensation, in addition to the half per cent. commission which they receive on moneys entered.

I have the honor to be, very respectfully, sir, your obedient servant,

ALBERT GALLATIN.

The Hon. JOHN RANDOLPH, Esq.,

Chairman of the Committee to whom were referred the constitution and sundry propositions submitted by the State of Ohio.

HONORED SIR:

CHILICOTHE, (N. W. T.) *December 4, 1802.*

Enclosed you will receive an address from the convention lately convened at this place, for the purpose of forming a constitution and State Government, for the seventeenth State of United America, and which has been made my duty to enclose to you, to be communicated to the honorable body over which you preside.

With every sentiment of respect, I have the honor to be, sir, your most obedient servant,

EDWARD TIFFIN.

The Honorable the SPEAKER of the *House of Representatives of the United States.*

Address to the President and both Houses of Congress of the United States.

The convention of the State of Ohio, duly appreciating the importance of a free and independent State Government, and impressed with sentiments of gratitude to the Congress of the United States for the prompt and decisive measures taken at their last session, to enable the people of the Northwestern Territory to emerge from their Colonial Government, and to assume a rank among the sister States, beg leave to take the earliest opportunity of announcing to you this important event.

On this occasion, the convention cannot help expressing their unequivocal approbation of the measures pursued by the present administration of the General Government and of both Houses of Congress, in diminishing the public burdens, cultivating peace with all nations, and promoting the happiness and prosperity of our country.

Resolved, That the president of this convention do enclose to the President of the United States, to the President of the Senate, and to the Speaker of the House of Representatives of the United States, the foregoing address.

Done in convention, at Chillicothe, the 27th day of November, 1802.

EDWARD TIFFIN, *President of the Convention.*
THOMAS SCOTT, *Secretary.*

PROPOSITIONS, &c.

We, the representatives of the people of the eastern division of the Territory northwest of the river Ohio, being assembled in convention pursuant to an act of Congress, entitled "An act to enable the people of the eastern division of the Territory northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes:" and, having had under our consideration the propositions offered by the said act, for our free acceptance or rejection, do resolve to accept of the said propositions, provided the following addition to and modification of the said propositions shall be agreed to by the Congress of the United States, viz:

That, in addition to the first proposition, securing the section No. 16, in every township within certain tracts, to the inhabitants thereof, for the use of schools, a like donation, equal to the one thirty-sixth part of the amount of the lands in the United States' military tract, shall be made for the support of schools within that tract; and that the like provision shall be made for the support of schools in the Virginia reservation, so far as the unlocated lands in that tract will supply the proportion aforesaid, after the warrants issued from said State have been satisfied; and, also, that a donation of the same kind, or such provision as Congress shall deem expedient, shall be made to the inhabitants of the Connecticut reserve.

That all the lands which may hereafter be purchased of the Indian tribes by the United States, and lying within the State of Ohio, the one thirty-sixth part shall be given, as aforesaid, for the support of public schools.

That all lands before mentioned to be appropriated by the United States for the support of schools shall be vested in the Legislature of this State, in trust, for said purpose.

That not less than three per cent. of the nett proceeds of the lands of the United States lying within the limits of the State of Ohio, sold and to be sold after the 30th day of June last, shall be applied in laying out roads within the State, under the direction of the Legislature thereof.

And if the Congress of the United States shall agree to the above addition to and modification of the said propositions, it is hereby declared and ordained, that every and each tract of land sold or to be sold by Congress, from and after the 30th day of June last, shall be and remain exempt from any tax laid by order or under the authority of this State, whether for State, county, township, or any other purpose whatever, for the term of five years after the day of sale, to be reckoned from the date of certificate of the first quarterly payment.

That whereas Congress, by a law entitled "An act authorizing the grant and conveyance of certain lands to John Cleves Symmes and his associates," passed the 5th day of May, 1792, did authorize the President of the United States to convey, by letters patent, unto the said John Cleves Symmes and his associates, their heirs and assigns, a certain tract of land therein described; and did further authorize the President, by the act aforesaid, to grant and convey unto the said John Cleves Symmes and his associates, their heirs and assigns, in trust, for the purpose of establishing an academy and other public schools and seminaries of learning, one complete township, to be included and located within such limits and lines of boundary as the President may judge expedient; and, in pursuance thereof, the President did convey unto the said John Cleves Symmes and his associates, their heirs and assigns, by his letters patent, the aforesaid one complete township, to be located and accepted by the Governor of the Territory northwest of the river Ohio; and, inasmuch as the township aforesaid has never been located and accepted, agreeable to the provision of the said act:

The convention recommend the following propositions to Congress, as an equivalent for the one complete township aforesaid, to wit: The lots numbered 8, 11, and 26, reserved in the several townships for the future disposition of Congress, or so many of the said lots as will amount to the number contained in the aforesaid complete township, to be vested in the Legislature, in trust, to and for the purposes for which the said township was originally intended to be designated by the Legislature of this State.

Resolved, That Thomas Worthington be appointed a special agent to lay the aforesaid resolution and propositions before Congress; and that said agent do endeavor to procure the assent of Congress thereto.

Passed in convention, at Chillicothe, the 29th day of November, 1802.

EDWARD TIFFIN, *President of the Convention.*
THOMAS SCOTT, *Secretary.*