REPORT
OF
A COMMITTEE OF THE LEGISLATURE OF VIRGINIA,
on
The subject of outstanding Virginia land bounty warrants.

JANUARY 27, 1851.
Ordered to be printed.

The committee to whom was referred so much of the governor's message as relates to the subject of revolutionary claims, have had the same under consideration, and submit the following report:

From information derived from the land office of Virginia, and the General Land Office at Washington, they find that numerous warrants, granted as bounties for military service in the Revolution, are still outstanding and unsatisfied. The amount thus outstanding considerably exceeds half a million of acres.

These claims to bounty land, your committee believe, have the clearest foundation in law. By various acts of assembly, commencing early in the war of the Revolution and extending to its close, Virginia, holding immense tracts of unappropriated territory, and acting partly under the earnest recommendations of the continental congress, promised large bounties in land to those of her sons who should engage in the war of independence. And to make good her engagement out of the vast domain she then held, a specific fund was reserved, consisting of a "tract of country bounded by the Green river, the Cumberland mountains, the Carolina line, the Tennessee river, and the Ohio river." (See Hening's Statutes at Large, vol 10, pp. 55, 56.) And in the event of this reservation proving insufficient, it was provided that the "deficiency should be made up to the said troops, in good lands to be laid off between the rivers Scioto and Little Miami, on the northwest side of the Ohio river, in such proportions as had been engaged to them by the laws of Virginia." (See Hening's Statutes, vol. 10, p. 565.)

Thus, it will be seen, was the most solemn engagement made by Virginia to her revolutionary officers and soldiers, and a fund provided to meet the engagement.

But the fund reserved having, for various reasons hereafter to be enumerated, become unavailable, and the bounty of the State being thus frustrated, application was made, about the year 1830, to the federal government for appropriations to satisfy the outstanding warrants; and Congress, having succeeded to the proprietorship of the fund out of which
Virginia designed to make good the promised bounties, and acting on the equitable principle of substitution, responded to the application, by making several appropriations of scrip for the desired purpose, the last of which took place in the year 1835.

Since that time all further appropriations have been resisted, and the grounds of opposition, so far as your committee have been able to ascertain them, are as follow:

I. It is said that a “greater amount of land bounty has been allowed by the State of Virginia than the quantity of good claims which ever could have existed against her.”

If this were true, it would furnish strong reason against any further appropriations, but this objection has no foundation in fact.

To ascertain with precision the number of persons entitled to land bounty for revolutionary services is scarcely practicable, but an approximation may be made sufficient for all practical purposes.

According to the opinions of Colonel Porterfield and Chief Justice Marshall, (both of whom were officers in the Revolution,) there were at least 500 in each regiment entitled to bounty land. (See papers in appendix marked A and B, taken from report of Committee on Revolutionary Claims made at session 1834-'35.)

Now the regiments raised by Virginia were the following:

<table>
<thead>
<tr>
<th>Regiment</th>
<th>Number</th>
</tr>
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<tbody>
<tr>
<td>Continental regiments</td>
<td>15</td>
</tr>
<tr>
<td>Harrison’s regiment of artillery, which had 80 officers, and is considered equal to two infantry regiments</td>
<td>15</td>
</tr>
<tr>
<td>First State regiment</td>
<td>1</td>
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<tr>
<td>Second State regiment</td>
<td>1</td>
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<tr>
<td>Marshall’s artillery regiment</td>
<td>1</td>
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<tr>
<td>Illinois regiment, (Col. Clarke’s)</td>
<td>1</td>
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<tr>
<td>Crockett’s regiment</td>
<td>1</td>
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<tr>
<td>State garrison regiment</td>
<td>1</td>
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<tr>
<td>State cavalry</td>
<td>1</td>
</tr>
<tr>
<td>State navy, consisting of more than 25 vessels, and estimated as three regiments</td>
<td>3</td>
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<td></td>
<td>26</td>
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Besides these regular regiments, there were other and numerous classes that came within the provisions of the land bounty laws of Virginia. Among these are: 1. All Virginians in the service of Congress—(see vol. 10 Hening’s Statutes, pp. 467 and 539;) estimated in Hubbard’s report, 1st session 28th Congress, at five regiments.

2. Corps credited to Virginia, as Bland’s regiment of cavalry, Lee’s legation, Armand’s corps, Stephenson’s rifle regiment—to which may be added Dabney’s legion, formed near the end of the war, equal in all to at least four regiments.

But, for greater safety of calculation, put down the two last mentioned classes as constituting together only four regiments, and we have thirty regiments at least that were in the service and pay of Virginia; and adopting then the estimate of Col. Porterfield and Judge Marshall, of 500 to each regiment entitled to land bounty, we have 15,000 as the number of persons so entitled.

But according to the report of the register of the land office, hereto
appended, (marked C,) only 6,819 who performed service have re-
ceived land bounty, which shows conclusively that the amount of good
claims has not been overgone, and that a large number are yet outstand-
ing; though, in consequence of the great lapse of time, few, if any, can
now be established.

The approximate accuracy of this calculation is confirmed by the report
of the First Auditor, (see appendix D,) from which it will be seen that
there are on the regular army rolls the names of 12,711 persons who set-
tled their depreciation at the end of the war. Besides these regular rolls,
there are others which may be denominated, in contradistinction, irreg-
ular—such as regimental pay-rolls, quartermasters' accounts, old day-books
and journals, papers found some years since in the attic story of the cap-
itel, &c., all which disclose numerous names not found on the regular
rolls. Moreover, the latter do not exhibit the names of that numerous
class that died in service, or were slain in battle, or of Virginians in
the service of Congress, or of those promoted into the line of other States.
Adding these deficient elements, there will be found a striking concord-
ance between the calculation just submitted and the data of the audi-
tor's report.

The general accuracy of your committee's estimate is further sustained
by the very numerous acts of assembly for the raising of troops for the
revolutionary service. They extend from July, 1776, to October, 1782, and
number thirty-seven. On reference to the number called for by these
several acts, it will be apparent that a very large number must have ac-
dquired title to land bounty, under the numerous and very liberal land
bounty laws of Virginia. (See abstract B, Rep. No. 57, 1st session 28th
Congress, p. 159.) There is no foundation, then, for the idea that the
amount of good claims has been exceeded.

II. It has been objected, further, that a larger number of officers have
received bounty land than ever could have been really entitled.
The number of 630 has been arbitrarily assumed as the highest that
could have been by possibility entitled, and the probable number has been
as arbitrarily set down at 500.

The fallacy of this estimate is conclusively demonstrated by the letter
of the register of the Virginia land office, (see Report No. 457 before re-
ferred to, p. 87,) which shows that up to 31st December, 1784, 812 officers
of the Virginia lines had received their land warrants. Now, as these
warrants could not have been well improvidently issued so soon after the
war, when the service was fresh and the proof of it readily accessible,
the conclusion is irresistible that the foregoing estimate is utterly incorrect.

But what is the true number entitled? An approximation is all that
can be attained.

According to the report of the Commissioner of the General Land Office,
made the 18th April, 1844, (see Report No. 457 before mentioned, page
167,) the number of officers in a Virginia revolutionary regiment is esti-
mated at 43; but his estimate includes neither the surgeon nor surgeon's
mate, nor chaplain, who must be added to the Commissioner's estimate—
say 46 to each regiment.

Now, taking 30 as the number of regiments (and there were more,) and
46 as the number of officers to each, and we have the number of 1,380; to
which add one commander-in-chief, two major-generals, 14 brigadiers,
and 34—being the excess in Harrison’s artillery regiment over the usual
complement of officers—and we have a total of 1,420. Increasing this aggregate by the number of those who died in service or were killed in battle, (and they were many,)—of those who retired after a service of three years, leaving their places to be supplied by others,—of those who from time to time retired as supernumeraries, and of those who were promoted from the line to the rank of officers, and who were entitled as officers, though they had not served three years as such,—taking these numerous classes into the estimate, and we have the best ground for assuming that Virginia had in service, at various periods in the Revolution, a much greater number of officers even than 1,420.

Perhaps a nearer approximation is arrived at in the report of the Committee on Public Lands, made to the House of Representatives in May, 1844, an extract from which your committee beg leave to quote:

"That the estimate of the number of Virginia officers assumed in the report of the select committee is erroneous, will manifestly appear by a reference to the number and character of those officers who received land at the close of the war. These were, besides the commander in-chief, 2 major-generals and 11 brigadiers in the army, of whom 10 received land within a few months after the close of the war. Virginia had 39 colonels and 47 lieutenant colonels in all, of whom 62 received land within a year after the close of the war. Now the single fact that Virginia had 14 generals and 86 colonels and lieutenant-colonels, shows conclusively that her forces must have exceeded vastly the number estimated in the report of the committee; which estimate forms the basis of the speculative reasons and results exhibited in that document. It is not assumed, nor intended to be claimed, that Virginia had at any one time as many officers in actual service as are above estimated; some became supernumerary, and some resigned after three years’ service—all, nevertheless, entitled to Virginia land bounty. The same casualties apply to the inferior officers, whose numerical proportion to the colonels could not have been less than 40 to 1—estimating ten companies to a regiment, and four officers to each. In truth, the number of inferior officers, from greater exposure to hardship and danger, who were killed, died in service, invalids, prisoners, &c., was, it is fair to conclude, much beyond a mere numerical proportion compared with the generals and colonels; yet, if even this rule be adopted, and 43 be taken as the medium between colonels and lieutenant-colonels, and that number multiplied by 40, it exhibits 1,720 officers of the continental and State lines who would be entitled to land, independent of the navy, which had a larger number of officers in proportion to the men than the lines in the land service had, from the fact that the warrant officers in the navy, ranking with the subalterns on the land, were very numerous. These all were entitled to land."

The regular army rolls, too, show the number of 1,342 officers—(see auditor’s report, marked E.) The scattering rolls disclose a considerable addition. Besides, there are absent from the regular rolls the names of those who died in service; of those officers of other States who, by the resolves of Congress, were transferred to the Virginia line—of Virginians promoted into the line of other States, who were, nevertheless, entitled to bounty land from Virginia—of Virginians in the service of Congress, or of the officers credited to Virginia, as Lee’s legion, Stephenson’s rifle regiment, and the like. Taking these missing elements into the calcula-
tion, there is no substantial variance between the estimate last considered and the auditor’s report now here referred to.

Your committee conclude that the amount of officers’ claims has not been overdrawn, and that many even of this class are yet outstanding.

III. It is objected, also, that there has been too much laxity in the allowance of these claims to bounty land; that they have been passed on “loose and insufficient testimony”; that it is a most easy matter to obtain a land warrant, and that, accordingly, many spurious claims have been allowed.

This objection is at once met by the high character, personal and intellectual, of those whose business it is made by law to adjudicate the claims—the governor and council of Virginia. It involves indeed a gross indignity to the executive of Virginia, and through it to the whole State, and would not be now noticed by your committee but for the large interests involved, and the belief that there is undesigned misapprehension of the facts of the case.

These considerations alone induce them to say, what they now with the utmost confidence aver; that there is no foundation whatever, in point of fact, for the imputation just referred to. It is well known to all who have practical knowledge of the subject, that instead of a culpable laxity in the adjudication of these claims, the most rigid, nay, inexorable scrutiny, has been observed. No class of claims was ever harder dealt with. Your committee need furnish no further evidence of this than the report from the secretary of the commonwealth, annexed to this report, from which it appears that out of 3,348 claims presented, 2,085 were rejected, and only 1,263 allowed. (See paper marked E.)

IV. The antiquity of the claims is made ground of exception. Why, it has been asked, are so many recently brought forward and outstanding yet?

There are many answers: First. Early after the war, the warrants were of little value, being worth but a few cents per acre—owing to the fact that they were to be located in a wilderness country, inhabited almost exclusively by the wild beast and the savage; many, therefore, who were entitled did not choose to apply for their warrants.

Second. The expense and difficulty of location deterred many from making claim to their bounties.

Third. On the 6th January, 1785, the surveys of the military reserve, in consequence of the apprehension of Indian warfare and violence, were, by proclamation of the governor of Virginia, suspended, and location of course prevented. (See Hening’s Statutes, vol. II, p. 447.) This inhibition, originating in State authority, was continued by the treaty of Hopewell, (federal authority,) until the year 1818, when the Indian title was extinguished; and then Kentucky interposed and forbade further locations in the Kentucky reserve. So that the holders of State line warrants had no opportunity for locating them after the year 1785; and those who had not at that time taken them out, had no inducement to do so until the State or Congress should provide a new fund for their satisfaction. In the mean time all the “good lands” in the northwestern or Ohio reserve had been exhausted by the laying down of continental warrants. Of necessity, therefore, (a necessity unavoidable, so far as claimants are concerned,) there must be many claims to land bounty for revolutionary services still due and unpaid. So far as the State line warrants
are concerned, the holders had but three years within which to make
their locations.

_Fourth._ The discovery in 1832 of a large mass of documents relating
to the army and navy of Virginia in the war of the Revolution has
brought to light numerous claims of this character, which otherwise had
never been even preferred. These documents, of themselves, established
numerous claims.

_Fifth._ The large amount absorbed in Virginia land bounties has been
made the subject of assault. A large amount, it is admitted, has been so
absorbed, but it is not because the claims are not sound and valid, but in
consequence of the large amount of bounty granted by Virginia to each
of her officers—a liberality she could well afford, because she had the most
abundant means for its dispensation. The average quantity allowed each
officer by Virginia was 6,751 acres, just fourteen times as much as was
allowed by Congress to officers of the United States. (See letter of Com-
missioner of General Land Office, report No. 457, 1st session 28th Con-
gress, p. 169.) The very large aggregate, then, of lands consumed by
Virginia bounties, need not excite surprise nor form cause of exception to
the general validity of the claims.

_Sixth._ It has been further objected that Virginia, in 1815, adopted a
new rule of evidence in the allowance of land bounties; that is, allowed
them whenever "satisfactory evidence" was adduced to the executive that
the party was entitled." This is true, and it was the just and reasonable
rule—just that which Congress itself adopted immediately after the war,
for the Secretary of War was instructed to allow land bounty to all who
showed themselves entitled by the evidence of the army returns in his
office, or "such other sufficient evidence as the nature of the case might ad-
mit." A rule, surely, which was adopted by the federal government in
1785, and which it has practised on to the present hour, cannot be wrong
when adopted by Virginia thirty years thereafter.

Your committee conclude that the claims to land bounties are founded
on the most solemn engagements of Virginia to her officers and soldiers,
and are nothing invalidated by the objections usually taken to them.

The only pertinent inquiry is, who should discharge those that are
unpaid? Your committee think there is the clearest obligation on Con-
gress to make the payment.

There cannot be a doubt that Virginia, in making to the United States
the cession of her magnificent domain, designed to make the amply
reservation for the bounties she had promised the patriot band that had
fought the battles of her own and the continental liberties. She could
have had no other design, unless it were her purpose to make engage-
ments just to repudiate them. If, therefore, by mistake, accident, or other
cause, the intended reservation has proved insufficient, it becomes the
federal government, on every principle of equity and every consideration
of honor, to make good the deficiency to the utmost acre. Having re-
ceived at the hands of Virginia an empire of territory, subject to a lien for
the benefit of her officers and soldiers, and having urged upon Virginia
and the other proprietor States the policy of making liberal donations of
land to those who should aid in the struggle for independence, Congress
is now called on, by the highest equity and by good faith, to "step into the
shoes" of Virginia, and satisfy every land warrant which the latter en-
gaged to pay, and which, through her constituted tribunals, she has recognised as valid.

But the obligation of the United States to satisfy the outstanding warrants rests upon higher grounds than mere equity. It is strictly legal; as much so as the obligation of one who receives the money of another, to make it good to him for whom it was "had and received."

By the treaties of Hopewell, concluded between the United States and the Cherokee and Chickasaw Indians, November 28, 1785, and January 10, 1786, the very tract of country which Virginia had reserved and set apart for bounties to her troops was wrested from her possession by the government of the United States, for the benefit of the Cherokees and Chickasaws, (then in actual occupancy.)

The 4th article of the last treaty of Hopewell is in the following words: "If any citizen of the United States or other person, not being an Indian, shall attempt to settle on any of the lands hereby allotted to the Chickasaws, to live and hunt on, such person shall forfeit the protection of the United States, and the Chickasaws may punish him or not, as they please." A similar provision in behalf of the Cherokees is to be found in the first treaty of Hopewell. (See volume 7 United States Statutes at Large, pp. 24 and 25.)

Your committee cannot refrain from quoting, on this point, the following extracts from the speech of Benjamin Watkins Leigh, commissioner from Virginia, on the subject of the military land claims, delivered before the legislature of Kentucky, in the year 1822:

"When the superintendents came to Kentucky, in 1794, to lay out and survey the lands according to the act of October, 1783, they found that all the lands on the Tennessee, and between that river and the Mississippi, were claimed by the Indians, and in their possession. They called in vain for the military aid they were authorized to require of their fellow-citizens of Kentucky. Men could not leave their homes and their families defenceless; exposed to the devastation, the extermination, and all the nameless horrors of savage warfare. Their excuse was founded on an imperious necessity which no authority could control; yet, without such aid, it was utterly impracticable to explore the country below the Tennessee, and thus acquire that information of its topography so essential to certainty of location. All was done, however, that could be done—the warrants were numbered; and in virtue of part of them, during the summer of 1784, entries were made for the State line, of lands lying below the Tennessee, to the amount of about 261,000 acres, according to such vague information as the superintendents and surveyors possessed, or could collect. A large portion of warrants were never located at all. To survey was impracticable, and it was never attempted. Even the process of location was soon suspended. In October, 1784, the legislature, upon the recommendation of the governor, supported by information previously received and then communicated by him, of the danger of provoking Indian hostilities all along the western frontier of the United States, authorized the executive to suspend the surveying and taking possession of the land reserved for military bounties northwest of the Ohio, and on this side below the Tennessee. But at the same session, while it was required that all other entries made in the county surveyors' books should be surveyed, and the surveys returned on or before the 1st of February, 1786, and that all future surveys should be made and the
surveys returned within one year from the date of the entry, the entries made in virtue of claims for military services were cautiously excepted out of this provision. They were not straitened by any limitation of time.

"A proclamation was promptly issued by the executive, suspending the operations of the military claimants, their superintendents and surveyors, in both the specified tracts of country; and, though this inhibition was revoked in 1787, so far as it regarded the country beyond the Ohio, yet it never was revoked as to the country below the Tennessee, on this side. For, in the mean time the whole of this tract was allotted by the treaty of Hopewell, of January, 1786, to the Chickasaws and Cherokees, to live and hunt in; and the possession of it guarantied to them by a provision, that if any of our citizens should encroach upon it, they should forfeit the protection of the United States, and the Indians might punish them or not, as they pleased. Nor was the Indian title ever extinguished until the year 1818.

"Thus, then, at the time of the separation of Kentucky from Virginia, the tract of country below the Tennessee stood reserved by law for military bounties—assigned, by consent, for the bounties of the State line; only a small part of it located—none surveyed; the exact location probably imperfect; many warrants not located at all, and the claimants prevented, as well by the law of Virginia as by the treaty of Hopewell, from making surveys and further locations, but (as was most just) restricted by no limit of time, and free to proceed whenever the impediment should be removed."

Thus it seems that by the act of the United States government itself, a large portion of the Virginia military reserve southeast of the Ohio river, nearly the whole of it, was forcibly (we may say) wrested from the true owner, and diverted from the sacred object for which it was by that owner designed. Upon what principle of law or honesty the general government is not bound to make up to Virginia, in "other good lands," the full amount thus taken from her, your committee are utterly at a loss to conceive. For, if the lands set apart by Virginia west of the Tennessee river, but taken from her by the treaties of Hopewell, had been added to the reserve between the Miami and Scioto rivers, the fund would have been ample to satisfy all the engagements of Virginia to all her troops.

As it is, no ample equivalent has been made, nor will it have been, until Congress shall satisfy every Virginia military land warrant outstanding.

It has been attempted, it is true, to invalidate this legal claim upon the general government, by denying that Virginia ever had any real title to the lands which she ceded to that government. It is a conclusive reply to this objection, that the title of Virginia to these lands has been solemnly settled by the highest judicial tribunals of the land. (See Johnson and Graham's lessee vs. McIntosh, 8 Wheaton's Rep., and Wallace vs. Parker, 6 Pet. Rep.) In the latter case, the Supreme Court said: "Congress, by accepting the cession by Virginia, admitted the right to make it, and that right has never since been drawn into question."

Nor is Congress less bound by the principle and spirit of the general assumption act of 1790 to satisfy these claims. That act provided for the payment of the revolutionary debts of the several States, which "accrued for the general or particular defence during the war;" and the bounties
engaged by Virginia to her officers and soldiers being a “debt for the particular and general defence,“ Congress is bound to pay it, unless a debt contracted to be paid in land is less meritorious and obligatory than one contracted to be paid in money.

On every ground, then, the government of the United States ought to provide for these claims by further appropriations of scrip.

And as there is a considerable quantity of refuse lands in the military district in Ohio, which will not be taken up in land bounties, because they are not “good lands,“ and as they never can be made available for any purpose, either by the federal government or the State of Ohio, until relieved of the lien which Virginia now holds upon them, your committee advise that, in the event of a further appropriation of scrip, to satisfy the outstanding bounties, a surrender be made of these refuse lands to the national government, or to the State of Ohio, whichever may be deemed most advisable.

Your committee recommend the adoption of the following resolutions:

1. Resolved, That our senators in Congress be instructed, and our representatives requested, to use their best efforts for the passage of a law making a further appropriation of scrip for the satisfaction of the outstanding Virginia land bounty warrants for military services in the war of the Revolution.

2. Resolved, That in the event of such appropriation, Virginia ought to cede to the United States the refuse lands in the military district between the Scioto and Miami rivers in the State of Ohio; and that on the happening of such event, the governor of this commonwealth be required to execute the proper deeds of cession.

3. Resolved, That the governor of this commonwealth be requested to transmit to each of our senators and representatives in Congress a copy of this report and accompanying resolutions and documents.

APPENDIX.

A.

Taking into consideration the number of officers and soldiers who died in the service, and thereby became entitled to bounty land from Virginia, the number who served three years, and thereby became entitled; and the number who were entitled for services to the end of the war, I think it probable there were a thousand to each regiment who were so entitled; but I state the opinion, with confidence, that there were at least five hundred.

ROBERT PORTERFIELD.

September 16, 1822.
hundred. I allude to the regiments actually raised in the Virginia line on continental establishment.

J. MARSHALL.

December 8, 1834.

C.

VIRGINIA LAND OFFICE, RICHMOND,
December 28, 1850.

Sir: In compliance with a resolution adopted by the house of delegates on the 17th instant, requiring the register of the land office to furnish to the house the number of persons to whom land warrants have been issued, for services by them performed in the war of the Revolution, I have the honor to report that nine thousand two hundred and sixty-three (9,263) land office military warrants (exclusive of duplicates and exchange warrants) have been issued from this office, in pursuance of certificates of allowance of bounty land for services rendered by six thousand eight hundred and nineteen (6,819) officers and soldiers in the Virginia line on continental establishment, and in the Virginia State line, including the navy, during the war of independence.

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

S. H. PARKER,
Register Virginia Land Office
The Honorable Speaker of the House of Delegates.

D.

First Auditor's Statement.

Number of persons whose names are recorded on the army lists, usually termed "the depreciation pay lists," on file in the auditor's office; prepared in compliance with a resolution adopted by the house of delegates on the 5th December, 1850.

Commissioned officers in the continental line - - - - - - - - 925
Non-commissioned officers and privates in the continental line - - - - - - - - 8,440

Total - - - - - - - - - - - - 9,365

Commissioned officers in the State line - - - - - - - - - - - - 417
Non-commissioned officers and privates in the State line - - - - - - - - - - 2,929

Total - - - - - - - - - - - - 3,346

Total - - - - - - - - - - - - 12,711

RO. JOHNSTON,
First Auditor.

January 10, 1851
Sir: In obedience to a resolution of the house of delegates, I have the honor to report that from the year 1830, inclusive, to this date, it appears that twelve hundred and sixty-three claims for land bounty have been allowed, and two thousand and eighty-five claims rejected, by the executive.

Very respectfully, your obedient servant,
WM. H. RICHARDSON,
Secretary Commonwealth.

To the Honorable Speaker of the House of Delegates.