

## Pension Application for Christian Guthrie

B.L.Wt 1915-1

No. 145.

In Assembly

February 10, 1831.

Report. Of the Committee on two-third bills on the bill entitled, "An act amendatory of the 'Act of the relief of the heirs of Christian Guthrie,'" with the amendments of the Senate thereto.

Mr. Fillmore, from the committee on two-third bills, to whom was referred the bill entitled, "An act amendatory of the 'Act for the relief of the heirs of Christian Guthrie,'" with the amendments of the Senate thereto,

Reported:

That they have had said bill under consideration, and that the facts, so far as your committee deem them necessary to a right understanding of the question, are briefly as follows: Christian Guthrie was a soldier in the New-Your line in the revolutionary war, and was killed in battle in July , 1778. He was returned as a dead soldier by the name of Christian *Gutrick*; and a patent was issued to him by the name of *Gutrick*, for lot No. 90, in Milton. That in the year 1820, said lot of land escheated to the people of this state; but whether such escheat was occasioned by the mistake in the name of the patentee, the inability of the heirs of Buthrie to show that he was the person intended in the patent, or an entire ignorance that any patent had ever been issued, your committee have no means of determining. But from the papers before them, they are induced to believe that they had no knowledge that a patent had ever been issued until after the land had escheated. In the year 1829, an act was passed directing the Commissioners of the Land-Office to cause letters patent to be issued to the *heirs* of Christian Guthrie for two hundred acres of land, on condition that they released to the state all their interest to lot No. 90, in Milton. (See sess. 1829, p. 104.)

This act, it appears, has been inoperative, on account of the inability of those heirs to establish the fact of sole and exclusive heir-ship; and although the act itself is indefinite as to the *time* when this shall be done, yet, by a provision of the Revised Statutes (vol. 1. P. 205, sections 44 and 45,) this must be done within one year, or the authority of the commissioners expires, and the act becomes a dead letter. The act now under consideration proposes to extend the time for complying with the provisions of the act of 1829, or in other words, proposes to revive that act and continue it in force, with some slight modifications, for one year from the passage of this act. It is also conceived, that the proposed amendments from the senate, so far as they involve the question as to whether this bill requires two-thirds of all the members elected to each branch of the Legislature to concur in its final passage, in order that it may become a law, are substantially the same as the original bill.

This bill having the effect to revive the act of 1829, so far as that act *appropriates* the property of this state, it must be clear that if the passage of that act required the constitutional vote of two-thirds of each House, then this does; but if that did not, then it is equally clear that this does not.

The words of the constitution of this clause of the constitution, it appears have been settled, by repeated decisions of the Legislature, that the payment of a claim, or the fulfillment of an obligation or contract on the part of the state, which if the state had been liable to persecution, might have been enforced in a court of law or equity, is not an appropriation to private purposes within the meaning of this clause of the constitution.

This rule being established, the next inquiry is, whether the act of 1829, authorizing the conveyance of two hundred acres of land to the *heirs* of Christian Guthrie, is the mere bounty of the state, which they are morally, but not legally, bout to bestow; or whether it is the

fulfillment of a contract or the performance of an obligation, which they were legally bound to perform.

In the first place, this act authorizes this conveyance, on condition that the *heirs* of Guthrie, to whom this conveyance is to be made, release all "their estate and interest in lot No. 90, Milton, to this state." Now these *heirs* either have, or have not, an interest in that lot. If they have an interest, (and it would seem from the release being required, that they have,) then it is but passing a law, authorizing the exchange of lands in Stirling for lands in Milton. A law to effect this cannot be within this clause of the constitution. It is no more an appropriation to private purposes, than the payment of money for the purchase of land on which the capitol is erected, or for the materials of labor for the state the penitentiaries. But admitting that they never had any title to Lot No. 90, it would be very questionable, in the minds of your committee, whether an agreement on the part of the state to convey, if these heirs would procure these releases to be executed, would not be an agreement founded on a sufficient consideration to be enforced in a court of law against an individual standing in the same situation.

It is never considered essential to the sufficiency of a consideration in law, to render a contract binding, that the act to be performed should be beneficial to the contractor; it is sufficient that it occasions some damage or expense to the party performing it. The procuring of these releases must put these heirs to some expense and inconvenience, and though the procuring them to be executed, should result in no benefit to the State, yet your committee can see no reason why it is not a fair and obligatory contract on the part of the State, to convey these 200 acres of land, if these releases are procured for lot No. 90, in Milton. It will be recollected that the *amount* of the consideration cannot vary the principle, as to the validity of the contract, or the vote that it will require to pass the bill. It can hardly, however, be conceived that the State would require these releases unless they expected to derive some advantage from them. It is onto to be presumed that they would wantonly impose this burthen [sic] upon the heirs of this object of their bounty, merely for the purpose of injuring them without benefitting the state. But without giving a definite opinion, whether these considerations would render the villa majority bill or not, your committee deem it necessary to take a view of the original obligation, on the part of the State to Guthrie, and inquire whether that has ever been discharged. If it has not, then this is but the performance of an obligation too long delayed; if it has, then this bill is but to dispense the charities of the State, and will require a vote of two-thirds to pass it.

That there was a legal and just obligation on the part of the State, to give to the heirs of Guthrie, 500 acres of land, is fully established by the reports of several committees, and is further evidenced by an attempt, on the part of the State, to perform that obligation. But did they ever perform it? They patented 500 acres of land to Christian *Gutrick*. That they were under obligation to convey it to *Guthrie*. This was most clearly not a performance of that obligation. Neither Guthrie nor his heirs could make out a title to this land under that patent, without resorting to other proof than such as was contained in the patent. It might be questionable whether he would even have been permitted to prove by parol, that Gutrick in the patent, was intended for Guthrie. The effect of this evidence, if admitted, would again depend on other circumstances. For, a decision of the Supreme Court, if there was in fact a person by the name of *Gutrick*, who was capable of taking this land, they would not hear evidence to show that Guthrie, and not Gutrick, was the man intended.

In a case decided in the 12<sup>th</sup> Johnsons' Reports, where a patent for military bounty lands was issued to man by the name of *Houseman*, when ought to have issued to *Hosmer*, and persons claiming under Hosmer offered to shew that he was the person intended, and that

Houseman was never entitled to any bounty lands, the court refused to hear the evidence. But without attempting to decide how far this patent to *Gutrick* was capable of explanation by other proof, or what effect such proof might have in a court of justice on the question as to the title of said lot, your committee are decidedly of opinion, that as between Guthrie and the State, the State had not discharged its obligation to him, by conveying his quota of land to *Gutrick*. That he had a right to insist on a conveyance that should vest in him and his heirs the title, without the risk and expense of proving by patrol testimony, that a patent in which Christian *Gutrick* was named as grantee, was in fact intended for Christian *Guthrie*. That he has done no act, waiving this right to insist on the State's performing its contract according to the spirit and meaning of that contract; and as it is not pretended that this contract has been subsequently discharged, it therefore follows that the passage of the bill in question would be but another attempt to perform that same contract, and could only require the vote of a majority of this House to pass said bill.

It is not without some diffidence that your committee have come to this conclusion, after hearing the opinion of so able a committee as the committee on claims, that the committee on claims would probably have come to the same conclusion, had they reasoned from the same facts.

Your committee, however, are confirmed in the conclusion at which they have arrived, by observing that the act of 1829 underwent a discussion on this subject, and was decided to be a majority bill only, and passed this House as such. (See Assembly Journals, 1829, p. 301.)

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Your committee therefore beg leave to recommend the adoption of the following resolution:

*Resolved*, That the assent of two-thirds of all the members elected to each Branch of the Legislature is not necessary for the passage of the bill entitled "An act amendatory of the 'Act for the relief of the heirs of Christian Guthrie.'" "