5-17-1836

Edward Duval, administrators of

24th CONGRESS, 1st Session. [Rep. No. 685.] HO. OF REPS.

EDWARD DUVAL, ADMINISTRATORS OF.

[To accompany bill, H. R. No. 646.]

MAY 17, 1836.

Mr. TALIAFERRO, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to which the petition of Edward W. Duval's administrator was referred, report:

That, by a communication made to the committee by Elbert Herring, Esq. superintendent of the Indian Bureau, which communication is responsive to certain inquiries addressed by the committee to the Secretary of War, on the subject matter of the said petition, and which accompanies this report, it appears that, by a treaty made on the 6th day of May, 1828, between the United States and the Cherokee Indians, of Arkansas, one stipulation of the said treaty was, "that the property and improvements of the then agency shall be sold, under the direction of the agent, and the proceeds of the same applied to aid in the erection, in the country to which the Cherokees are going, of a grist and saw-mill for their use." At a sale made by the agent, (E. W. Duval, who was also the agent to negotiate the treaty aforesaid,) in pursuance to the above provision in the treaty, the said Duval became the purchaser of the land, improvements, &c. &c. which constituted the agency to be sold, and referred to in the treaty.

It does not appear that Duval, in his lifetime, rendered any account to the Department of the amount of this sale, or to show who made the purchase. A Mr. Murray, agent for the administrator of Duval, made known to the Department that Duval was the purchaser, and at the price of two thousand and fifty dollars. And in pursuance of this information, the Superintendent of the Indian Bureau addressed an inquiry to the Secretary of War, "whether Duval, the purchaser of this reservation, was responsible to the Government of the United States or to the Indians for the purchase money?" The answer of the Secretary of War, bearing date 1st of April, 1831, was, "Certainly, the agent must account to the Government; this is a fund applicable to erect the mills, as far as it will go."

Accordingly, this sum of $2,050 was, on the 27th day of April, 1831, charged to Duval on the books of the auditor.

On the 26th of April, 1832, the present Secretary of War reversed the decision of his predecessor in office, and says: "I consider the within sale, (meaning the sale aforesaid to Duval,) invalid, and the purchase money

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heretofore charged to Duval, will be credited to his use." The reasons assigned for this decision were, that Duval, being the agent of the Government to sell this property, he had no right to become the purchaser; and that, as the proceeds of this sale, by treaty with the Cherokees, were to be applied towards the erection of a grist and saw-mill, for their use, Duval being at the time indebted to the Government, had no authority to increase that debt, by having the purchase money charged to himself by the Government, and thereby diverting the proceeds of the sale from the object specified by the treaty." In pursuance of this decision, the Government took possession of, and still holds, the property purchased aforesaid by Duval; and the administrator of Duval claims remuneration for the buildings and other improvements effected by Duval on the said premises, subsequent to his purchase, and prior to the entry thereon by the Government. The sum claimed on this account is $1,427 75, and satisfactory evidence is adduced by the petitioner to show that buildings, and other improvements, to the aforesaid amount, were put on the said premises by Duval, in manner aforesaid.

It further appears, that after the death of Duval, by a statement of his account with the Government, made out by his administrator, there was due to him a balance of between three and four thousand dollars, while by a statement of the same account by the officer of the Government, a balance of $11,538 54 was claimed to be due from Duval to the Government. To recover this balance in behalf of the Government, a suit was instituted against the administrator, on the final trial of which a verdict was rendered against the administrator for the sum of $349 28. On the trial of this suit, the jury admitted to the credit of Duval, contrary to the instruction of the court, two items, amounting to $736; for which cause the attorney for the United States made his motion for a new trial. To avoid the heavy costs, even though successful, in a controversy with the Government, the administrator agreed to add the $736 to the verdict rendered, so as to make the sum recovered by the United States $1,085 28, which was accepted, and judgment entered for that sum. And it is the difference between the $1,427 75 claimed by the petitioner, and the $1,085 28 aforesaid, say $342 27, for which the petitioner asks remuneration, in addition to relief from the force and effect of the said judgment. And this is the only point presented to the committee on which to decide, that is: whether, in the final adjustment of the accounts and transactions of E. W. Duval with the Government, he shall be allowed a credit for the sum of $1,427 75, claimed by him for improvements put by him, as aforesaid, on the reservation, during his occupancy of it, in pursuance of his purchase thereof, as aforesaid. It is the opinion of the committee that the decision of the Secretary of War, in April, 1831, in pursuance of which E. W. Duval was, on the 27th of the same month, charged, on the books of the Treasury, with the amount of the purchase money to be paid by him for the said reservation, was a confirmation of that purchase; and that the decision of the Secretary of War in April, 1832, declaring the said purchase by Duval invalid and void, ought to have been followed not only by a credit for the purchase money to Duval, but compensation ought to have been allowed to Duval for the fair and full value of the improvements made by him on the vacated premises, during his tenure thereof, as purchaser from the Government. The Secretary of War, in April, 1832, decided, in behalf of the Government, to abrogate the sale of this land to Duval, which had been sanctioned

as aforesaid, by his predecessor, in April, 1831, and to take the land as it then was, including improvements, for the future use and benefit of the Government. It is held, and believed to be a correct principle in relation to contracts, that where either party to a contract abrogates, or fails to carry into effect, a contract, the party so abrogating or failing is, both in law and equity, bound to place the other party in as good a situation, in relation to the premises, as though the contract had not been entered into.

The application of this principle to the circumstances of this case is too obvious to require illustration. The committee therefore adopt the following resolution:

Resolved, That the accounting officers of the Treasury may, in the settlement of the accounts of E. W. Duval, pass to the credit of the said Duval the sum of $1,427 75, the same to be credited on the 26th day of April, 1832, and after deducting therefrom $1,085 28, the amount of the judgment aforesaid; and the balance of $342 27 to be paid to the administrator of E. W. Duval. For which purpose a bill is reported.