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James Brown and John Brown

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JAMES BROWN AND JOHN BROWN.

[To accompany bill H. R. No. 292.]

FEBRUARY 5, 1836.

Mr. H. EVERETT, from the Committee on Indian Affairs, made the following

REPORT :

The Committee on Indian Affairs, to which the petitions of John Brown and James Brown were recommitted, having reconsidered the same, report :

That the petitioners, reserves under the 3d article of the Cherokee treaty of 27th February, 1819, claim compensation for improvements not included in their reservations, under the 2d article of said treaty. That article is as follows : " Art. 2. The United States agree to pay, according to the stipulations contained in the treaty of 8th July, 1817, for all improvements on land lying within the country ceded by the Cherokees, which add real value to the land."

It appears that the petitioners had each several improvements, and so far distant that they could not have been included in one reservation, laid out according to the requirement of the treaty. The 3d article is as follows : " Art. 3d. It is also understood and agreed by the contracting parties, that a reservation, in fee simple, of six hundred and forty acres square, to include their improvements, and which are to be as near the centre as possible, shall be made to each of the persons whose names are inscribed on the certified list annexed to this treaty, all of whom are believed to be persons of industry, and capable of managing their property, and have, with few exceptions, made considerable improvements on the tracts reserved. The reservations are made on the condition, that those for whom they were intended, shall notify in writing the agent of the Cherokee nation, within six months after the ratification of the treaty, that it is their intention to reside permanently on the land reserved." In the list are the names of the petitioners, and against the name of James Brown is a note, that his reservation was " to include his field by the long pond."

The committee based their former report on the principle, that those Indians only who left the ceded territory were entitled to compensation for improvements; that the taking reservations to include improvements, whether it included all their improvements or not, was all the benefit provided for those who did not remain in the ceded territory, and chose to become citizens of the United States. On a further examination of the subject, the committee are satisfied that the principle assumed is contrary to the equitable construction of the treaty.

The treaty of 1819, was made in execution of the act of 1817, and is to be considered as supplemental thereto. The rights of the reserves under both to compensation for improvements are the same. Under the treaty of 1817, the reservations were made to heads of families; under that of 1819, to persons named in a list; under the first, the reservation was of an estate for life, with a reversion to their children; under the second, the reservation was in fee. The only object of the article relating to the persons named in the list, was to change the tenure of the reservations, (not to grant them,) and the motive assigned, is their industry and capacity to manage their property. Each was entitled to a reservation of the same quantity, as a head of a family, but for life only, under the provision of the 8th article extending the right to all lands that should *thereafter* be surrendered to the United States; and all other heads of families within the country ceded by the treaty of 1819, were equally, by the same provisions, entitled to reservations, but for life only. The rights of the petitioners, therefore, are to be determined by the construction of the treaty of 1817.

The treaty of 1817 provided for two classes of persons: 1st. For those who should emigrate west of the Mississippi, from the Cherokee nation; and 2d. For those within the territory ceded. For the first class, the 6th article, after providing for the poor warriors, provides, "and to those *emigrants* whose improvements add real value to their lands, the United States agree to pay a full value for the same, which is to be ascertained by a commissioner appointed by the President of the United States for that purpose, and paid for as soon after the ratification of this treaty as practicable." This article does not in terms limit the provisions to emigrants from the remaining territory of the Cherokee nation. Yet the provision in the next article would have been useless if it was not intended to be limited. The 7th and 8th articles provide for the second class, viz: for those who then resided on the ceded territory; the 7th article, for those who chose to return into the Cherokee nation; and the 8th, for those who chose to become citizens of the United States.

The 7th article is as follows: "Art. 7. And for all improvements which add real value to the lands lying within the boundary ceded to the United States by the first and second articles of this treaty, the United States do agree to pay for at the time, and to be valued in the same manner as stipulated in the sixth article of this treaty; or, in *lieu thereof, to give in exchange improvements of equal value, which the emigrants may leave, and for which they are to receive pay, &c.*" It is obvious from the last clause, that this section was intended to apply only to those residing on the ceded territory, who chose to return to the Cherokee nation; to them only could the exchange be of value, The property given in exchange being within the Cherokee nation, could not have been intended to be proposed as an equivalent to those who were to remain on their reservations.

The 8th section is as follows: "And to each head of any Indian family, residing on the east side of the Mississippi river, on the lands that are now, or may hereafter be, surrendered to the United States, who may wish to become citizens of the United States, the United States do agree to give a reservation of 640 acres of land, in a square to include their improvements, which are to be as near the centre thereof as practicable, in which they will have a life estate, with a reversion in fee simple to their children, &c." It is obvious that this article did not contemplate a case where the reservee had more than one improvement. He was entitled only to one reservation.

and that so laid out as place his improvements as near the centre as practicable ; and it is equally obvious, that for the improvements he was entitled to no compensation. On a strict construction of the treaty, the petitioners are not entitled to relief. The committee, however, think that the literal construction should not be adhered to contrary to the equity of the case. The object of the 7th article was to give an adequate compensation for all improvements which added real value to the land, and of which the United States should be able to avail itself, by its being abandoned by the occupant. And to them it was not ascertained on what account it was abandoned, unless they paid value for the abandonment. It was the interest of the United States, and not of the Indians, that induced the provision that the reservee should include the improvement. In the present cases they were abandoned of necessity ; because it was impossible to include all the improvements within a mile square. The United States have had the benefit of the improvements, and out of this benefit on the one side, and the necessity of the case on the other, arises the equity which entitles the petitioners to relief.

The improvements were not valued at the time by the commissioner appointed by the President ; this is accounted for by the fact that the commissioner did not go into that section of the country, nor within forty miles of it. The circumstance, however, that the claim was suffered to rest so long (until 1830,) has led the committee to require decisive evidence of the facts. The value of the improvements have been proved by the testimony of three witnesses, who are certified to be credible persons and competent judges of the subject matter, resident at the time in the vicinity. The value of the improvement of James Brown is, on this testimony, found to be six hundred and forty-seven dollars. And of the improvement of John Brown, three hundred and thirty dollars ; for which the committee report the accompanying bill.