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Report on Issue of Certain Land Patents

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IN SENATE OF THE UNITED STATES.

MARCH 19, 1838.

Submitted, and ordered to be printed.

Mr. SEVIER submitted the following

REPORT :

[To accompany Senate bill No. 267.]

The Committee on Private Land Claims, to which was referred Senate bill, No. 267, to authorize the President of the United States to issue patents to the persons and for the land therein mentioned, report :

That the bill under consideration proposes to authorize the President of the United States to issue patents for the reservations to O-ca-chee, for one section of land, and to Be-si-ah for four sections of land, which appears to have been reserved to them by the second article of the treaty of the 27th October, 1832, out of the country ceded by the Pottawatamie Indians to the United States. The committee have examined the treaty, and find, by the second article of it, that the land for which patents are desired, never was ceded to the United States, but, on the contrary, was reserved; and as the United States never owned the land in question, exempt from the Indian title, the committee are unwilling to authorize the President to issue a patent for the land which the United States never owned. The titles to the reservations to O-ca-chee and Be-si-ah, and all others enumerated in the second article of the treaty, are merely possessory, and are in nowise distinguishable from the ordinary tenures by which the Indians hold their lands; and being emphatically *reservations* in a cession of their country, the Indians maintained have all the right to the reservations they ever had, because they never parted with their right to them, but, on the contrary, *expressly reserved their rights*, and therefore no patents can or ought to issue.

In support of the view taken by the committee, they offer the opinion of the Attorney General of the United States, which was officially given in cases nearly analogous.

GENERAL LAND OFFICE,
March 17, 1838.

SIR: In compliance with your verbal request, I have the honor to enclose, herewith, a copy of the Attorney General's opinion of the 20th September, 1833, in reference to Indian reservations, under the Pottawatamie treaty of the 20th October, 1832.

In reference to your inquiry at this office yesterday, I have to inform you that on inquiry it appears that Mr. Butler, the Attorney General, is not at this time in Washington.

With great respect,

Your obedient servant,

JAS. WHITCOMB

Commissioner

The Hon. A. H. SEVIER,
Senate of the United States.

ATTORNEY GENERAL'S OFFICE,
September 20, 1833.

SIR: In answer to the question you put to me upon the nature of the title held by the Indians of the tribe of the Pottawatamies of the Prairie, in whose favor certain reservations of land were made by the treaty of the 20th of October, 1832, I have the honor to state that in my opinion the original Indian title in their reservations was not extinguished on the ratification of the treaty. It ceded by the first article a certain tract of country to the United States, and by the second article reserved from the cession large quantities of lands in favor of certain Indians named. These reservations are excepted out of the grant made by the treaty, and did not, therefore, pass by it. Consequently the title remains as it was before the treaty, that is to say, the lands reserved are still held under the original Indian title.

The character of the title to these portions could not be affected by a grant which did not embrace them, and from the operation of which they are in express terms excepted. And as they are still held under the original Indian title, the Indian occupants cannot convey them to individuals, and no valid cession can be made of their interest, but to the United States.

I am, sir, very respectfully,

Your obedient servant,

R. B. TANEY

The honorable the SECRETARY OF WAR.

The committee recommend the rejection of the bill.