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Ellen Duvall

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ELLEN DUVALL.

MARCH 1, 1843.

Read, and laid upon the table.

Mr. BIRDSEYE, from the Committee on Private Land Claims, made the following

REPORT:

The Committee on Private Land Claims, to whom was referred the petition of Ellen Duvall, respectfully report:

That the committee have carefully examined the subject referred to them. The petitioner represents herself to be the widow of S. W. Duvall, deceased, late Cherokee agent west, and she addresses Congress in behalf of the heirs, to wit: William J. Duvall, Marcellus Duvall, Gabriel B. Duvall, and Octavia Duvall. She represents, that, by the purchase of the Cherokee reservation by her husband, S. W. Duvall, in conformity to the treaty of May 6, 1828, with the Cherokee Indians west, he being the highest bidder, at the sum of \$2,050, he became legally entitled to said reservation, payment being made therefor on the day of sale to the auctioneer, and by him paid over to S. W. Duvall as agent; which amount, as she says, was ultimately charged to S. W. Duvall on the debtor side of the Second Auditor's books, and consequently the legality of the sale, and of the purchase, acknowledged by the administration. She further represents that said S. W. Duvall died seized and possessed of said property; and that, after his decease, a subsequent officer overruled the act of the former one, vacated the sale, and disallowed the petitioner's claim to the land. She further states that authority was given to a Mr. Vashon, the succeeding agent, to make sale of said property, and that it was consequently advertised; but, either owing to the authority being revoked or to the protest of the agent for the heirs, the said property was never sold, and the perfection of the petitioner's title has been and is still delayed, to their great damage. She further states, that, at the decease of S. W. Duvall, all the lands and tenements of said reservation aforesaid, as described in advertisement, were in good condition, but that now (when she petitions) a large part of the then cleared land is grown wild again, the gin-house is gone to pieces, the storehouse is untenantable, and the log houses rolled down and totally destroyed. She further claims that the heirs of said Duvall have never released or quit-claimed their right or title to said reservation, and that they could not do so, as no legal guardian has been appointed to dispose of any real estate to which they might be legally or equitably entitled; and that any act or acts for relief of administrators they do not consider so, nor should they, invalidate their claims. She claims that, in consequence of the delay or refusal

of the General Government to perfect said title, the heirs have, by the dilapidation of the tenements, the destruction of fences, and the loss of crops, sustained great damage; that exertions have been made, from time to time, to adjust the affair, but have been met by the Government with continued procrastination; and they therefore petition Congress to perfect the title of said reservation to the heirs aforesaid, or afford such other relief as Congress shall think the nature of the case demands.

Such is the substance of the petition. It is without date, and is not verified. By the endorsement, it would seem to have been presented on the 29th December, 1841; to have been reported against on the 22d August, 1842; and to have been again referred to this committee on the 19th December, 1842.

It may be remarked of this claim, that it does not appear, by the petition or any accompanying paper, what is the quantity of land embraced by the claim, or what its present value, or what the value at the time it was sold.

There is a deposition before the committee in support of the claim, from Nimrod Menifee, showing that about the year 1830 he was called on by Mr. Duvall, then agent for the Cherokees west, to act as auctioneer in selling the reservation; that Duvall was active in trying to procure the attendance and bidding of bidders; and that he, Duvall, became the purchaser at \$2,050, as the highest bidder; that he paid him the money, and that he immediately repaid the money to Duvall, as the agent of the Government; and that he thinks he executed to him a writing, stating the terms of the sale. If he did, that will show the bargain.

The letter of the Second Auditor states "that the amount in question, \$2,050, was debited to Mr. Duvall in a settlement of his accounts on the 27th of April, 1831; but that, in a subsequent settlement, on the 26th of April, 1832, he received a credit for the same by the direction of the Secretary of War, as his endorsement of a paper on file in relation to the sale of said reservation, in the following words, will show: '*I consider the within sale invalid, and the purchase money heretofore charged to Mr. Duvall will be credited to his account. L. C.*'"

It has been suggested to the committee that the heirs only desire or expect to secure a pre-emption right to the premises in question.

We infer that although it seems to be claimed that the purchase money, being charged to Duvall on account, was conclusive upon the Government, and the withholding of the title complained of as oppressive, yet it is not denied that, on further examination, the charge on account to Duvall was corrected by a subsequent equivalent credit, on the ground that the sale was invalid. There is no evidence before the committee that the \$2,050, or any part of it, was paid by Duvall at the time it was charged to him, nor that any dissent was shown by him, if alive when it was recredited.

The committee conclude that the debit of the purchase money in account to Duvall did not preclude the Government from questioning the validity of the sale; nor do they rely upon the inference which might be drawn that Duvall is precluded by the presumed acquiescence in the recredit.

If the sale was in fact invalid, and the purchase money once charged to him has been recredited, we cannot perceive what equity there may be in his heirs to have the sale fulfilled by the perfection of the title or to acquire a pre-emption right.

If the sale was set aside upon the ground that Duvall, as the agent of the Government, was charged with effecting the sale of the property, and there-

fore could not himself be the purchaser, we hold that it was correctly set aside; the committee, understanding it to be the general rule of law, that where a guardian trustee, as agent, is empowered to sell the property of his principal, and becomes himself the purchaser, that the purchase inures to the benefit of his principal, and that the agent, so purchasing for himself, acquires no equitable or legal rights against his principal.

Although the Secretary of War would have been justified, in the opinion of the committee, in setting aside the sale upon the general ground above indicated, yet it is, perhaps, charitable to suppose that he would not have done it, had he believed the sale to have been fair, and for a just compensation. The committee have therefore deemed it material to ascertain the quantity of land embraced within the claim, and what was its appraised value at the time of the sale; and, for that purpose, addressed a letter of inquiry to the head of the Indian bureau, under which the sale must have been had, to ascertain these points, and on what ground the sale was set aside. To that letter no answer has been received. Not deeming it proper longer to delay a report, the committee present, as the result of their conclusions, that they can discover, upon the case as presented to them on these papers, no sufficient ground to warrant the interference of the Government, either to grant the title claimed by the petition or to confer a pre-emption right, as suggested.

After drawing the foregoing report, the information which had been requested of the Indian bureau was in part communicated, and is herewith presented. By that answer, and the *report and act* therein referred to, the following facts appear:

1st. That the quantity of land is believed to be between 2,900 and 3,000 acres; that about 500 acres is of superior quality and valuable, and the rest inferior; that about 45 acres are cleared up and improved, but the appraised value of the tract, and which the treaty required to be had, has not been communicated.

2d. It is to be inferred that E. W. Duvall was dead when the price of this land was charged to him; that he was then indebted to the Government, aside from this charge; and that, when one year after the price was re-credited to him, he remained still in debt—the amount of which indebtedness, as ascertained by suit and the admission of his administrators, exceeded one thousand dollars.

3d. That he died in possession of this land as early as 1830 or 1831; and that, in 1839, his heirs, by their tenants, still held possession and received the profits of the land.

4th. That, in 1838, Congress, upon the application of the administrators of Duvall, granted relief for this claim to the extent of \$—, by directing their debit against his estate, to the amount of \$—, to be cancelled, and the balance to be paid.

The committee understand that such grant must have been made by Congress upon the assumption that the charge of the purchase money to Duvall was an affirmation of the sale conclusive upon the Government, and the subsequent recredit was a rescinding of the contract, which entitled Duvall's representatives to damages for the breach of the contract. We find no ground to infer that Duvall ever paid any part of the purchase money.

From the view of the case afforded by this additional information, the committee can discover no ground for receding from their former opinion.

The act of 1838, for the relief of the administrator of Duvall, would imply that the Congress had then considered the Government liable as for damages for breach of the contract ; but it is more probable that it passed through inadvertence than upon the deliberate judgment of Congress that the facts here stated constituted any valid claim upon the Government. While we are compelled to believe that this grant to the administrator of Duvall for upwards of \$1,400 must have been passed under misapprehension or from mistaken sympathy, we can discover in this fact no ground for making a similar grant, in another form, to the heirs.

If it be supposed that this claim relating to real estate descended to the heirs, and not to the administrators, it would, in their hands, have been liable to the claims of the Government for the debt due from their ancestor. The administrators are but trustees for the heirs. The act of 1838, cancelling the debt, and ordering a balance to be paid to the administrators, has, in both respects, inured to the benefit of the heirs. We refer to a report at the present session, from the Judiciary Committee of the House, in the case of the United States *vs.* Williamson Smith, No. 177. The facts in that case are analogous to those on which this claim is founded, although presenting a much stronger equity in behalf of the claim; and yet the Judiciary Committee have rejected the claim.

We recommend that the House adopt the following resolution :

Resolved, That this claim ought not to be granted.