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Willis Stephens

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WILLIS STEPHENS.

JANUARY 15, 1846.

Read, and laid upon the table.

Mr. BENTON, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, having in charge the petition and papers of Willis Stephens, asking Congress to grant him in fee simple a tract of land in which he claims a life reservation allowed him under the treaty of 1817 and 1819, between the United States and the Cherokee Indians east of the Mississippi, make report :

It appears that in 1819 a tract of land was surveyed as a reservation for Catharine Stephens, under the Cherokee treaty of the 8th of July, 1817, consisting of 640 acres, embracing fractional section 15, and 390 acres from the south end of section 10, township 7, range 2 east, in the Huntsville land district of Alabama. The petitioner claims a life estate reservation in this tract in right of his wife Catharine, now deceased, and prays that said tract of land may be granted to him by Congress in fee simple.

By the 8th article of the treaty of 1817, it is provided: "And to each and every head of an 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 six hundred and forty 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 reservation in fee simple to their children, reserving to the widow her dower, the register of whose names is to be filed in the office of the Cherokee agent, which shall be kept open until the census is taken, as stipulated in the third article of this treaty: *Provided*, That if any of the heads of families for whom reservations may be made, should remove therefrom, then and in that case the right to revert to the United States," &c.

The petitioner predicates his claim upon the following alleged facts, which are avouched by the deposition of Lawrence Dogget and Jefferson Bean, on the 24th day of November, 1843: That said Willis Stephens, in the year 1816, married Caty or Catharine, a native of the Cherokee nation of Indians; that after such marriage, he settled upon the land he now (in 1843) occupies, and that the United States surveyor laid off this reservation under the treaty of 1817, '18, or '19; that Stephens and Catharine lived together as man and wife until her death; that she died without children, and that said Stephens has had possession of said reservation, and is still living on the same.

The committee do not feel it incumbent upon them to scrutinize the allegation of the applicant, nor yet to express an opinion as to the validity of the reversionary interest of Stephens to the lands above mentioned.

Treaties with the Cherokee nation subsequent to that of 1817, recognise the reservations made under its provisions until the final cession by that nation in the treaty of New Echota in 1835-'6. By that treaty, provision was made :

First. To pay for all the reservations which a board of commissioners, to be appointed, pursuant to said treaty, by the President of the United States, would allow as valid under any former treaties with the United States, and which reservations might have been sold by the United States.

Second. To confirm to the reservees who have complied with the requisitions of the treaty, and who may be desirous of remaining and becoming citizens of the United States; and

Third. To compensate such of the reservees as were obliged, by the laws of the States in which their reservations were situated, to abandon the same.

The 17th article of the last mentioned treaty authorizes the appointment of a commission by the President to settle all claims arising under or provided for in the several articles thereof, whose decision should be final.

To the tribunal thus constituted, Willis Stephens thought proper to submit his claim for the value of his reservation. To that tribunal, he, it must be supposed, voluntarily presented his allegations and proofs, which have already been in substance stated.

It appears, from the decree of the commissioners, that the following evidence against his claim was adduced on the hearing of Stephens's case before them :

"William Chisholm swears that he has been acquainted with Willis Stephens since the year 1819; does not know that he was the head of an Indian family; that Stephens did not on the 1st of January, 1820, reside on the reservation claimed by him, nor did he at any other time.

"Isaac Morrow swears that he knew Stephens 21 or 22 years ago, and that he knew Stephens was then living on a place called Wade's reservation, and that he has never resided on the reservation now claimed by him since that time. When he first knew Stephens, he had an old Indian woman named Kate whom he claimed as a wife, but who left him previous to his entering his reservation. Stephens then married a white woman; but, at the date of registration, he had prevailed on the old woman to return, but immediately thereafter old Kate again left him, and returned to the Cherokee country, where she died. They had no children."

After reciting the evidence, the decree goes on to say: "From all the testimony, it appears to the commissioners that claimant, although cultivating some of the land taken by him as a reservation, was not domiciled thereon on the 1st of January, 1820, nor at any other time, and that he had fraudulently procured his name to be registered, having been at that time lawfully married to a white woman, with whom he was residing. And for the purpose of effecting the obtainment of a reservation, he had prevailed upon Catharine, a Cherokee woman, whom he had once claimed as a wife, but whom he had long before repudiated, but in whose right only he could be entitled to a reservation, to return and live with him;

and when his object was effected, he again repudiated her, and she left him and afterwards lived and died in the country reserved by the Cherokees. It is therefore ordered and decreed that the claim of Willis Stephens be, and the same is hereby, *disallowed.*"

Without assuming that the petitioner has been precluded by his own voluntary submission of his claim to the aforesaid commissioners, the committee do not find, in the facts and considerations presented in the papers before them, sufficient grounds to justify the favorable interposition of Congress, and they therefore recommend that the application be denied.