

4-24-1850

Al Lo-Lah. (To accompany bill H.R. no. 256)

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Recommended Citation

H.R. Report No. 277, 31st Congress, 1st Sess. (1850)

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AL-LO-LAH.

[To accompany bill H. R. No. 256.]

APRIL 24, 1850.

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

REPORT:

The Committee on Indian Affairs, to whom was referred the petition of the heirs of Al-lo lah, an Indian, praying for the perfection of title to a certain tract of land, report:

That an examination of the case has satisfied the committee that the prayer of the petition is reasonable and just, and ought to be granted. The facts are fully disclosed in the accompanying papers, (A and B;) and it is not deemed necessary to repeat them here.

A bill is reported for the relief of the petitioners.

A.

WASHINGTON, January 25, 1850.

DEAR SIR: Enclosed are some papers, in relation to which I addressed you at Marion last October. The circumstances are such that I apprehend no obstacles will be interposed to prevent a mere act of justice; and unless speedy action be had, the innocent may be made to suffer from an error originally resting with the United States.

A concise statement of the case is this: By the treaty with the Miamies of November 6, 1838, a section of land was reserved to Mais-shei-gonin-mi-zah on Treaty creek, emptying into the Wabash opposite this place—the section to include “La Saline,” (a salt-lick.) This section was correctly located as reserve No. 20 of Indian grants. By the same treaty another section was reserved to Al-lo-lah, *above* and adjoining the section granted to Mais-shei-gonin-mi-zah, and on the same creek. This latter section was immediately; and before the location by the proper authority, occupied by the said Al-lo-lah, as he then believed; but, in fact, he had taken possession of the section *below* and adjoining the one granted to Majs-shei-gonin-mi-zah, and on the same creek. The consequence was, the commissioner who located Al-lo-lah’s reserve, (being No. 21 of Indian grants,) not noticing the language of the treaty, laid off the section occupied by Al-lo-lah, *below*, &c., and not *above*, &c., as he should have done. Thus was Al-lo-lah confirmed in the idea that he was the *bona fide* possessor and reservee of the section so occupied by him, and some improvements on the same. Before the issuing of the patent, Al-lo-lah

died, leaving Pe-mit-chin-wah, Wa-pin-guin-cat-taw, and Chap-paw-son-quah his only heirs-at-law. They then, on the 18th day of January, A. D. 1841, sold and conveyed their interest in the section granted to Al-lo-lah, using the language of the treaty in the conveyance, to Cot-te-se-pawn, (or Ma-cot te-se-pawn, as some write it.) By this deed Cot-te-se-pawn became possessed of the same rights as Al-lo-lah had in his lifetime. In full belief of his title under the deed of the said Al-lo-lah's heirs, Cot-te-se-pawn took possession of the same section previously occupied by Al-lo-lah and located as his reserve under the treaty, and so occupied the same until his death in 1849—about eight years—laying claim to no other land, and having his title disputed by none, making improvements worth from \$300 to \$400. Cot-te-se-pawn died, leaving a widow and three children with no other means or property but this land; and, it becoming necessary in the administration of his estate to sell a small portion of the land to pay his debts, it was discovered that there was the foregoing difficulty in the title; and, in order to make the sale valid, and also to secure the remainder of the property to the said Cot-te-se-pawn's heirs, I send you the enclosed proofs, and ask the passage of a law confirming the title of the heirs of said Cot-te-se-pawn to the section described as reserve No. 21.

The proofs are full and satisfactory as to the main facts of the case, and show, also, that *now* it is out of the power of the United States to do justice to all parties in any other way, as the section *above*, &c., is now held and owned by purchase from the United States by actual settlers. The heirs of Cot-te-se-pawn could, it is true, eject these subsequent purchasers from the United States from the section *above*, &c.; but this they do not desire, although the land is in fact more valuable. If they can get a title to the section occupied by them, and by them so long believed to be actually theirs, it is all they wish. It is, therefore, but a mere act of justice, and I do not apprehend there will be a moment's hesitation in granting this relief. You are probably acquainted with most of the affiants. McClure lives in your own town; A. Haas is a merchant of first-rate standing in Wabash; Mr. Hoover is a freeholder and estimable citizen of this county, well acquainted with the situation of the lands referred to; J. B. Fulwiler is at this time the county clerk of Miami county; and E. A. Godfroy is a well-known citizen of that county. Of the character of these persons I speak with entire confidence from personal knowledge. A reference to the description given in the treaty, and to the map of Indian grants, showing where reserve No. 21 is located, will show at once the existence of a mistake; and all we wish is to remedy the difficulty.

I enclose a form that embodies about the substance of the relief prayed for, which you can modify, if necessary, to effect the purpose, not omitting the saving clause.

In conclusion, if it can be done, it would be right and just for the United States to pay the expenses of this proceeding, as the estate has no other assets but the land aforesaid. An allowance of \$45 would cover all. Put this matter through without delay, and let me know the result immediately. Please enlist Mr. Whitcomb's assistance to speed it through the Senate, as the necessity of the case demands expedition.

With much respect, I am yours truly,

J. M. WHEELER.

HON. ANDREW J. HARLAN.

B.

STATE OF INDIANA, *Grant county, ss:*

This 9th day of October, A. D. 1849, personally appeared before the undersigned, a justice of the peace in and for said county, Samuel McClure, to me known to be a person who is entitled to credit, and, being first duly sworn, upon his oath deposes and says: That he was personally and intimately acquainted, during his lifetime, with Al-lo-lah and his family connexions and relatives; that the said Al-lo-lah was a Miami Indian, and was the same Al-lo-lah named as the reservee of a section of land *above* and adjoining a section also reserved to Mais-shei-gonin-mi-zah by the provisions of a treaty concluded between the United States and the Miami tribe of Indians on the 6th day of November, A. D. 1838; that subsequently to said treaty, the said Al-lo-lah occupied and improved a section of land *below* and adjoining the said reserved section of Mais-shei-gonin-mi-zah, and claimed the same as his reserve; that that was the only section so claimed and occupied by him in his lifetime, and is the same now occupied by the widow and heirs of Ma-cot-te-se-pawn; that, being so occupied by the said Al-lo-lah, the same was in fact located by the commissioner appointed for that purpose *below* and not *above* the section reserved to Mais-shei-gonin-mi-zah, and is described as reserve number twenty-one (21) on the map of Indian grants reported on the 2d of September, 1840, by the surveyor general, and deposited in the General Land Office of the United States, and that, subsequently to such location and survey, the same was patented to said Al-lo-lah, April 22, A. D. 1843, and is described in said patent as reserve number twenty-one, in addition to the description of said reserve as given in the treaty aforesaid, thereby making a manifestly inconsistent description; that he verily believes the said Al-lo-lah in his lifetime, and his heirs after his death, were ignorant that they were occupying the wrong section, and that the same had been erroneously located, but made valuable improvements, in good faith, under the belief that their title was good and perfect. This affiant further swears, that, at the death of the said Al-lo-lah, he left Pe-mit-chin-wah, Wa-pin-guin-cat-taw, and Chap-paw-son-quah, (his brother and sisters,) his only and sole heirs-at-law, having no children, and neither father nor mother surviving him; that, after the death of the said Al-lo-lah, the said heirs sold and conveyed, by their proper deed, to Ma-cot-te-se-pawn (who was the son of one of said heirs) their title and interest in said section, as this affiant is informed and believes—a copy of which deed is hereto attached. And this affiant knows that, from and after such purchase, the said Ma-cot-te-se-pawn took peaceable and quiet possession of the same section before that occupied by the said Al-lo-lah, being the identical reserve No. 21 aforesaid, and that he has ever since (until his death, about the month of January, A. D. 1849) continued in the undisturbed and peaceable possession of the same, and laying claim to no other tract or section whatever; that, owing to the erroneous location of said section, and their ignorance of the same, no steps have been heretofore taken to rectify the same, and that now it would be impossible so to do, as the section *above* and adjoining the said reserve of Mais-shei-gonin mi-zah has been since sold and patented to purchasers from the United States, as this affiant is informed and believes. This affiant further swears, that he is informed by the heirs of said Ma-cot-te-se-pawn that, having made large

and valuable improvements on said section so occupied by them, they are only desirous to have their title to the same confirmed as effectually as if their original location had been correct. This affiant further states, that the names of the children and only heirs-at-law of said Ma-cot-te-se-pawn are: Sho-pen-na-maw, Po-kung-yah, and Ching-wah; and that, by a memorandum on said patent, the same appears to be recorded in vol. 9, pages 265 and 266, of the General Land Office. This affiant further states, that he is conversant with the language of the Miami Indians, and that Wa-pin-guin-cat-taw, the only survivor of said grantors, (who was the mother of said Ma-cot-te-se-pawn,) informed him, since the death of said Ma-cot-te-se-pawn, that she was desirous that the title should be confirmed to his heirs, his children aforesaid.

SAMUEL McCLURE.

Subscribed and sworn to before me, this the 9th day of October, A. D. 1849.

WM. GREGGORY, [L. s.]
Justice of the Peace.

STATE OF INDIANA, *Miami county, ss:*

Before me, the undersigned, a notary public within and for said county, this day personally came E. Alex. Godfroy, of said county, who, being by me duly sworn, upon his oath, states that he signed his name to a deed of conveyance made by Pe-mit-chin-wah, Wa-pin-guin-cat-taw, and Chap-paw son-quah, to Cot-te-se-pawn, as a subscribing witness thereto, said deed bearing date January 18, 1841, and acknowledged before J. B. Fulwiler, a justice of the peace of said county of Miami; that he saw the said several grantors make their respective marks, which purport to have been made by them respectively at the execution of said deed; that said deed was carefully read over to them, the said grantors, before they executed the same, and fully explained at the same time. This affiant further states, that he understands the Miami language, and acted as interpreter at the time said deed was given, and that he faithfully interpreted the contents thereof to each of said grantors. This affiant further states, that one thousand dollars was the *bona fide* consideration of said conveyance; that he saw a portion of the money paid by the grantee at the time, and he fully believes the whole transaction to have been *bona fide* and in good faith between both parties thereto. This affiant further states, that he never was at the land so conveyed; that he was, however, well acquainted with the grantee, Cot-te-se-pawn, and has often heard him state that he was living upon the land, and that he also stated it was the same which was reserved to Al-lo-lah in the treaty. And further this affiant saith not.

E. ALEX. GODFROY.

Also, at the same time and place, came personally before me, the undersigned, a notary as aforesaid, J. B. Fulwiler, of said county, who, being duly sworn, upon his oath, states that he signed his name as a subscribing witness to the deed described in the above foregoing affidavit of E. Alex. Godfroy; that he was present at the execution thereof, and saw the

grantors respectively named in said deed execute the same; that he was also at the same time an acting justice of the peace in said county of Miami, and that he took the acknowledgment of the said grantors thereto, as now fully appears in the certificate attached to said deed. And further this affiant saith not.

JAMES B. FULWILER.

STATE OF INDIANA, *Miami county*, ss:

I, E. P. Loveland, a notary public within and for said county by authority of law duly commissioned and qualified, do hereby certify that the above-named E. Alex. Godfroy and James B. Fulwiler, whose names appear to the foregoing affidavits, came personally before me and respectively subscribed the same, and at the same time made oath before me that said affidavits, by them respectively subscribed, were just and true, as they verily believed.

In testimony whereof, I have hereunto set my hand and made [SEAL.] the impress of my official seal, at Peru, in said county, this 24th day of January, A. D. 1850.

E. P. LOVELAND, J. P. M. C.

STATE OF INDIANA, *Wabash county*, ss:

Personally appeared before me, the undersigned, clerk of the circuit court of said county, John Hoover, who, being duly sworn, upon his oath, testifies that he is acquainted with the reserve granted to Mais-shei gonim-zah, by the treaty of November 6, A. D. 1838, between the United States and Miami Indians; that he is also acquainted with the section of land above and adjoining it upon the south and upon the same creek, which said creek runs northwardly; that the said latter section has been sold by the United States to divers individuals as follows, to wit:

At receiver's office, at Fort Wayne, Indiana, May 5, 1848, (number of duplicate illegible,) to Reuben Robinson, the north half of southwest quarter section 6, township 26 north, of range 7 east, 59.60 acres.

Duplicate 26,581. Fort Wayne, February 24, 1848, to Jacob Nohlga-muth, the southeast quarter of section 6, township 26 north, of range 7 east, 160 acres.

Duplicate 26,713. Fort Wayne, March 30, 1848, to John Cornell, northwest fractional quarter of section 6, township 26 north, of range 7 east, 119.56 acres.

Duplicate 26,063. Fort Wayne, June 30, 1847, to William J. Tyler, the northeast quarter of section 6, township 26 north, of range 7 east, 160 acres.

Duplicate 27,341. Fort Wayne, June 7, 1848, to William Kent, the south half of the southwest quarter of section 6, township 26 north, of range 7 east, 59.48 acres.

The foregoing duplicates being all issued by Isaac D. G. Nelson, the proper receiver of the said land office. This affiant further says, that the section so sold by the United States is the identical section reserved to Al-lo-lah by the provisions of said treaty, but which was never occupied or

claimed by said Al-lo-lah in his lifetime, or his heirs since his death; but that the said Al-lo-lah did, in fact, occupy and improve a section *below* the one reserved to Mais-shei-gonin-mi-zah, and on the same creek, and claim the same as his reserve under the treaty aforesaid, and which was, in fact, located as his reserve, and described as number 21 on the map of Indian grants in the General Land Office of the United States, and which was, after the death of said Al-lo-lah, purchased of his sole heirs by Ma-cot-te-se-pawn, who has lived upon and improved the same for five or six years last past, and laying claim to no other section or reserve whatever; and that, in consequence of the said erroneous location, an injury is likely to result to the heirs of the said Ma-cot-te-se-pawn, unless the title be confirmed to them; that the said heirs do not desire any other land than that which they have so long occupied and believed to be theirs; and further says not.

JOHN HOOVER.

Subscribed and sworn to before me, John C. Sivey, clerk of the Wabash circuit court, this — day of December, A. D. 1849. Witness my hand and the seal of said court.

JOHN C. SIVEY,
Clerk Wabash Circuit Court.

STATE OF INDIANA, *Wabash county, ss:*

Personally appeared before the undersigned, justice of the peace in and for the county of Wabash aforesaid, Adam Haas, to me known to be a person entitled to credit, who, being duly sworn, upon his oath, says that he is a resident of Wabashtown, in said county, and was intimately acquainted with the pecuniary circumstances and condition in life of Ma-cot-te-se-pawn, late of said county, deceased, (a Miami Indian,) and with the family of said deceased since his death; that, by the decease of the said Ma-cot-te-se-pawn, his said family, consisting of his widow and three small children, have been left in circumstances of destitution, except the small amount of produce they may raise upon the improvement made upon reserve No. 21, occupied by them; that, unless the title of the heirs of said Ma-cot-te-se-pawn to said reserve can be confirmed at the present session of Congress, they must become dependent upon the charity of their friends or of the county aforesaid; that their possession of said reserve, under the deed from the heirs of Al-lo-lah to said decedent, has been quiet and uninterrupted by any adverse claim whatever; and that the improvements thereon made by said decedent are worth \$350; and that the creek runs through said reserve and adjoining lands in a direction nearly northward; that the section *above* the one reserved to Mais-shei-gonin-mi-zah is now occupied by *bona fide* purchasers from the United States; and this affiant further says not.

ADAM HAAS.

Sworn and subscribed before me, this 23d day of January, A. D. 1850.
WILLIAM JAMES, J. P. [L. s]

Copy of deed to Cot-te-se-pawn.

Know all men, that Pe mit-chin-wah, brother of Al-lo-lah, deceased, hereinafter mentioned, Wa-pin-guin-cat-taw, full sister of said Al-lo-lah, and Chap-paw-son-quah, half-sister of said Al-lo-lah, Miami Indians, of the county of Miami, and State of Indiana, in consideration of the sum of one thousand dollars, in hand paid by Cot-te-se-pawn, a Miami Indian, of the county aforesaid, have bargained and sold, and do hereby grant, bargain, sell, and convey unto the said Cot-te-se-pawn, his heirs and assigns forever, the following premises, situate in the county of Wabash, in the State of Indiana, as follows: One section of land above and adjoining the section granted to Mais-shei-gonin-mi-zah, and on the same creek, as the same is stated in the treaty between the United States of North America and the Miami nation or tribe of Indians, concluded November 6, 1838, and ratified February 8, 1839, being the same section granted to Al lo-lah—the language above being the description of said section, which section descended, at the death of said Al-lo-lah, to the above-named Pe-mit-chin-wah, Wa-pin-guin-cat-taw, and Chap-paw-son-quah, being the legal heirs of said Al-lo-lah's estate, to have and to hold said premises, with the appurtenances, unto the said Cot-te-se-pawn, his heirs and assigns forever. And the said Pe-mit-chin-wah, Wa-pin-guin-cat-taw, and Chap-paw-son-quah, for themselves and heirs, do hereby covenant with said Cot-te-se-pawn, his heirs and assigns, that they are lawfully seized of the premises aforesaid, and that the premises are free and clear from all incumbrances whatever; and that they will forever warrant and defend the same, with the appurtenances, unto the said Cot-te-se-pawn, his heirs and assigns, against the lawful claims of all persons whomsoever.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals, this eighteenth day of January, in the year of our Lord one thousand eight hundred and forty-one.

PE-MIT-CHIN-WAH, his × mark, [L. S.]
 WA-PIN-GUIN-CAT-TAW, his × mark, [L. S.]
 CHAP-PAW-SON-QUAH, his × mark, [L. S.]

Signed, sealed, and acknowledged in presence of—

J. B. FULWILER,
 J. M. WILSON,
 E. A. GODFROY,
 POGNA GODFROY, his × mark.

THE STATE OF INDIANA, *Miami county, ss:*

Before me, the subscriber, J. B. Fulwiler, a justice of the peace in and for said county, personally appeared the above-named parties of the first part, and acknowledged the signing and sealing of the above conveyance to be their voluntary act and deed, for the purposes therein named, this eighteenth day of January, A. D. 1841.

J. B. FULWILER, J. P. [L. S.]

Copy of patent to Al-lo-lah.

THE UNITED STATES OF AMERICA—*To all to whom these things shall come, greeting :*

Whereas, by the 12th article of the treaty between the United States of America and the Miami tribe of Indians, made and concluded at the Forks of the Wabash, in the State of Indiana, on the sixth day of November, one thousand eight hundred and thirty-eight, as ratified on the eighth day of February, one thousand eight hundred and thirty-nine, the United States agreed to grant to "Al-lo-lah one section of land above and adjoining the section granted to Maïs-shei-gonin-mi-zah, and on the same creek," which reserve is situate in township twenty-seven north, of range seven east of the second meridian, Indiana, and has been surveyed and designated as survey number twenty-one, containing six hundred and forty acres, according to the map of Indian grants certified by the Surveyor General on the 2d September, 1840, and deposited in the General Land Office of the United States:

Now know ye, that there is, therefore, granted by the United States unto the said Al-lo-lah, and to the heirs of the same, the tract of land above described, to have and to hold the said tract, with the appurtenances, unto the said Al-lo-lah, and to the heirs and assigns forever of the said Al-lo-lah.

In testimony whereof, I, John Tyler, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-second day of April, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-seventh.

By the President:

J. TYLER.

Recorded in volume 9, pages 265 and 266.

J. WILLIAMSON,
Recorder of the General Land Office.