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Lewis Benedict

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H.R. Rep. No. 68, 33d Cong., 2nd Sess. (1855)

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LEWIS BENEDICT.

[To accompany bill H. R. No. 722.]

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FEBRUARY 2, 1855.
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Mr. HILLYER, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the memorial of Lewis Benedict, report :

That a bill was reported by the Committee on Private Land Claims of the House at the 1st session of the 30th Congress, and passed the House at that session, went to the Senate, and was reported on favorably by a committee of that body. The report which accompanied that bill is approved of by this committee, and is adopted by them. The report reads:

“That it appears from the memorial and accompanying papers presented before the committee, that by a treaty entered into between the United States and the Pottawatomie tribe of Indians of the Prairie, and Kankakee, made at Tippecanoe on the 20th of October, 1832, a section of land situated ‘below the State line on the Kankakee river,’ was reserved to an Indian chief called Ab-be-le-ke-zhic.

“That on the 20th day of August, 1835, the said chief sold the section of land so reserved to one Samuel P. Brady, for the sum of one thousand dollars, as appears by the original deed from the said chief, presented before the committee, duly executed and acknowledged before a justice of the peace of Cook county, Illinois, through a sworn interpreter.

“That on the 26th day of August, 1836, the said Brady and wife conveyed the same section of land to the claimant for the sum of one thousand and three hundred dollars, as by the original deed, duly executed and acknowledged by the grantors, and produced before the committee, also appears, and the affidavit of the grantor, S. P. Brady, shows that the claimant has actually paid to him the consideration money expressed in such deed. That the claimant afterwards, together with his wife, conveyed the same premises to Joseph Roby, who afterwards, and on the 8th day of February, 1847, reconveyed the same to the claimant; that the consideration in the deed from claimant to Roby was the sum of two thousand five hundred dollars.

“It also appears, by the affidavit of Mr. Roby, that while he was the owner of said section, he made application to the surveyor general

of the State of Illinois, to have a surveyor appointed to locate and survey said section of land; that such application was renewed by said Roby, or his agents, on different occasions, but, for reasons in said affidavit set forth, such application was unsuccessful, and that such failure was not attributable to said Roby, and that, at this time, all the lands available for agricultural purposes on the Kankakee river have been located, so that there is none left upon which the said reservation can be located. While Mr. Roby was the owner of said claim, he made an application to Congress for leave to locate said reservation, which application, in the Senate, was referred to the Committee on Public Lands, which committee, in June, 1842, made a report adverse to the claimant, in which the equity of the claim was conceded; but the adverse report was predicated on the lack of proof to establish some of the allegations in the application, giving to the claimant leave to renew the same, and establish the facts on which it was based. The further proof, required by the Senate committee, was afterwards furnished; and in February, 1843, a bill was reported for the relief of Mr. Roby, which, as your committee are advised, failed for want of time to consider the same."

In discussing the general merits of the claim, the Senate committee in their report of June, 1842, use the following words:

"Another difficulty has presented itself. In 1833, the Attorney General of the United States gave an opinion, that the reservations made under the aforesaid treaty 'were excepted out of the grant made by the treaty, and therefore did not pass by it;' in other words, that the lands thus reserved are to be deemed still held under the original Indian title, and cannot be alienated, except to the United States.

"Some members of the committee subscribe to this opinion. Others think differently. They think that when a particular space of ground is excepted from the operation of the treaty, and set apart and reserved to a particular individual, designated by name, it is equivalent to a donation or grant of such tract to the individual; and the tract thus reserved becomes, by the joint consent of the Indian tribe and the United States, separated from the public domain; that it is equivalent to a surrender by the Indian tribe of their right of occupancy, and of the United States of their ultimate title; that the public right is therefore extinguished, and the grantee acquires a perfect and complete title, and consequently the right of alienation.

"The government itself has uniformly acted on this principle in its negotiations with the Indian tribes. In most of the treaties containing reservations like the present, a clause has been inserted either restricting or absolutely prohibiting the alienation of the land. It is obvious that such a clause would have been superfluous if the lands thus reserved were to be considered as still held under the original Indian title, and consequently not subject to alienation except to the United States. In fact, by the original *Indian title*, no individual of a tribe has any right to any specified portion of territory, but one undivided interest in the whole territory is vested in the whole tribe, and it cannot readily be perceived how the Indian title can, with propriety, be said to subsist in a piece of land designated by metes and bounds, and allotted to a particular individual, without any words of

limitation as to his right of property. If the reservation had been made in favor of a white man, no doubt would have existed that he had acquired a complete title, and the circumstance that it was in favor of an Indian ought not, it would seem, to affect the question.

“If it had been shown that the consideration expressed in the deed was actually and bona fide paid by Brady, and the other facts mentioned in the memorial had been established, the committee are of opinion that the case of the claimant would be recommended by strong equitable considerations; but as he has failed to establish these facts, they recommend that the prayer of his petition be not granted, reserving to him the right to renew it, and establish hereafter the facts on which it is based.”

The committee report a bill for his relief.