

5-19-1856

On the Case of J. Kirby et al.

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IN THE SENATE OF THE UNITED STATES.

MAY 19, 1856.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 275.]

The Committee on Private Land Claims, to which was referred Senate bill No. 275, "A bill giving to Joshua Kirby and the widow of John McNary the right to enter the land covered by the life reserve of John McNary under the Cherokee treaties of 1817 and 1819," have had the same under consideration and submit the following report:

There is no evidence or papers before the committee which show that John McNary was entitled to a life reserve under the treaties with the Cherokees in 1817 and 1819.

The 8th article of the treaty of 1817 provides that "to each and every head of any Indian family residing on the east 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 reversion 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 3d article of this treaty: *Provided*, that if any of the heads of families, for whom reservations may be made, should remove therefrom, then, in that case, the right to revert to the United States."

The 2d article of the treaty of 1819 provides that "The United States * * * do agree to allow a reservation of six hundred and forty acres to each head of any Indian family residing within the ceded territory, those enrolled for the Arkansas excepted, who choose to become citizens of the United States, in the manner stipulated" in the treaty of 1817.

To have entitled John McNary to a life-estate under the said treaties, he must have been registered, and have complied with all the requisitions of the treaty of 1817, and whenever, under the treaty,

his life estate attached, the fee simple passed to his children with the reservation of dower to the widow.

If McNary, under the treaty, had a life estate in 640 acres of land up to the date of his death, then by the treaty the fee simple passed to his children, subject to the dower of the widow.

Granting, therefore, that McNary had complied with the provisions of the treaty, and possessed of a life-estate at the time of his death, the children had a vested right, which it is sought by this bill to annul, and transfer the right to enter these lands to a third party.

These lands belong either to the children of McNary or have reverted to the United States. If the fee simple has passed from the United States, then the government has no control over them; if in the United States, the proper application would be at the General Land Office; so that, in either case, Congress ought not to take any action in reference to the subject matter of the bill.

The committee report back the bill with a recommendation that it do not pass.