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Report : Memorial of J. and P. Faribault

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IN THE SENATE OF THE UNITED STATES.

JUNE 23, 1856.—Ordered to be printed.

Mr. JONES, of Tennessee, made the following

REPORT.

[To accompany Bill S. 349.]

The Committee on Military Affairs, to whom was referred the memorial of Jean Baptiste Faribault and Pelagie Faribault, his wife, having had the same under consideration, report:

The ninth section of the Indian appropriation act of the last session of Congress authorized the Secretary of War to pay to J. B. and P. Faribault \$12,000, in fulfilment of a contract entered into with them in 1839, for the purchase of an island at the confluence of the Mississippi and St. Peter's rivers, now a part of the military reserve at Fort Snelling, provided that he should be satisfied with the validity of their title, &c. The money thus appropriated has not been paid, because, as the Secretary states, they have produced no evidence of title in them. Hence it is again brought before Congress, and the committee have again examined it carefully, and here report the result of their investigation.

In 1820, while the memorialists were living upon this island as their home, the Sioux Indians, to which tribe Mrs. Faribault belonged, conveyed to the United States, for military purposes, a large tract of land between the Mississippi and St. Peter's rivers, and reserved to the memorialists the small island at the confluence of these rivers. The deed making this conveyance and reservation was executed in the most solemn manner, signed and sealed by twenty-five Indians, and witnessed by ten persons—Colonel Leavenworth being one of them—and it fully recognizes Mrs. Faribault's ownership of the island in question. In 1837 these same Indians more formally, by treaty, conveyed these lands to the United States, but as the treaty embraced the Faribault island the Indians refused to sign it until they were assured by the Secretary of War that Mrs. Faribault's claim to the island should not be prejudiced thereby, and in an official letter, dated August 12, 1840, Mr. Poinsett says:

WAR DEPARTMENT, *August 13, 1840.*

SIR: I have the honor to acknowledge the receipt of your letter from Lancaster of the 27th ultimo, and to assure you that the pressure

of business consequent upon the adjournment of Congress alone prevented my doing so earlier. I recollect perfectly what passed during the progress of the negotiation of the treaty with the Sioux, and that I assured you that the rights of Pelagie Faribault to the island in question should not be prejudiced by their not being inserted in the treaty.

These rights have always been considered as if they had been mentioned in that instrument, and you are aware that I signed a conditional contract, under the authority of Congress, to extinguish them on the payment by government of a certain sum, provided Congress sanctioned it. I subsequently addressed a letter to the committee of the Senate, setting forth my opinion of the value of the island and of its importance to the military post at Fort Snelling; in consequence of which a bill was introduced to provide for carrying the contract above mentioned into effect. I entertain no doubt of the passage of that bill, and believe it was delayed only for want of time. I therefore regard the contract as existing, and advise the parties to wait the further action of Congress.

With the very restricted means at its disposal, the department does not feel authorized to take the measures you propose in relation to the Sioux half breed lands this season.

J. R. POINSETT.

S. C. STAMBAUGH, Esq.
Lancaster, Pennsylvania.

On the 13th February, 1839, Congress passed a joint resolution authorizing the Secretary of War "to contract with J. B. and Pelagic Faribault for the purchase of the island at the confluence of St. Peter's and Mississippi rivers, and to report his proceedings to Congress, subject to their approbation or rejection." In compliance with the authority thus granted, the Secretary of War, on the 12th day of March, 1839, entered into an agreement in writing with the attorneys of the petitioners for the purchase of the island for the sum of \$12,000, and asked from Congress an appropriation for that amount to enable him to make the purchase, but the requisition was made too late for the action of Congress.

In January, 1840, the Secretary of War communicated to Congress the contract entered into with the representatives of the Faribaults, in conformity with the requirements of the joint resolution of February 13, 1839; and in July, 1840, in a letter addressed to the Senate military committee, the Secretary says: "In my opinion, the possession of the island at the confluence of the Mississippi and St. Peter's rivers is necessary to the police discipline and security of the post on the Upper Mississippi."

"From the testimony of disinterested persons, I consider the value of that island to be not less than ten thousand dollars, nor to exceed twelve thousand dollars."

On the 13th March, 1840, submitting the whole subject to the judgment of Congress, the Secretary says: "If the committees of both Houses, to which it has been referred, are of the opinion that the Indian title is rightly vested in the claimants, I beg that an appro-

priation may be asked for to carry into effect the contract, for I regard the continued possession of the property as highly important to the interest of the service and of the country." And the Committee on Military Affairs of the Senate, after a thorough and satisfactory investigation of the title, asked for the appropriation of \$12,000 for the purchase of the island, but it was, after passing the Senate, lost in the House of Representatives, with several other amendments to the appropriation bill on the last days of the session.

On the 2d of September, 1842, Secretary of War, (Bell,) writing to the Speaker of the House of Representatives, says: "All the testimony was submitted to the Senate military committee. The committee decided in favor of the claim, and I am induced to recommend it to the favorable consideration of Congress, and to ask that an appropriation be made for the sum of \$12,000, for the purpose of paying for the island, in fulfilment of the contract of March 12, 1839, as there was a pledge given by the government to these claimants, in consequence of which it is understood that a successful negotiation was made with the nation to which they belong for a tract of country estimated to contain six millions of acres."

The objection now made to the "validity" of Faribault's title is, that the island was ceded to the United States in 1805 by the Pike treaty. It does appear that General Pike made an arrangement in 1805 with two Sioux Indians for the purchase of the lands of that tribe, including the Faribault island, but there is no evidence that this agreement, to which there is not even a witness, and in which no consideration was named, was ever considered binding upon the Indians, or that they ever yielded up the possession of their lands under it. Certain it is, that it was not ratified until three years afterwards, (in 1808,) when the consideration of \$2,000 was introduced into it, to which the other contracting parties never did assent; but it was never promulgated, nor can it be now found upon the statute books, like any other treaty—if indeed a treaty it may be called—nor were its stipulations ever complied with on the part of the United States.

Governor Doty states that General Leavenworth did not consider Pike's treaty as binding upon either the government or upon the Indians, and that such was the opinion of General Cass. That the Faribaults had rendered essential services to the United States, and hence it was that General Leavenworth had consented to the reservation of this island to them, as by the permanent residence of that family at that place he expected to derive and did derive the greatest advantages from their efforts to establish and maintain friendly relations between the Indians and the whites.

Honorable H. H. Sibly says, that in 1819 the island was transferred by the Sioux to Pelagie Faribault, an Indian woman of their own tribe; that gifts of this kind were at that time very common with the Indians; that Mrs. Faribault was then living upon the island and so continued until 1821, when Colonel Snelling, who succeeded Colonel Leavenworth and changed the original site of the fort, ordered her to remove, and he refers also to the pledge given by the Secretary of War to the Sioux at the treaty of 1837, that Mrs. Faribault's claims should not be prejudiced by their being omitted in the treaty, and

adds, that the husband and sons of Mrs. Faribault were most active in promoting the views of the government in the Sioux negotiation.

The Commissioner of Indian Affairs, in a letter to the Secretary of War of the date of the 28th February, 1839, says :

“As a principal of general observance, the United States, in my judgment, cannot recognize such grants. This case, however, occupies a position of its own. The island is wanted for the purposes of the government, and, to avoid delay, difficulty, and controversy, it may be judicious to purchase it. I therefore think, under all the circumstances, that an appropriation should be asked for, and the negotiation for the purchase opened, &c.

“T. HARTLEY CRAWFORD.”

In 1825 the Sioux, Chippewas, and other tribes made a treaty, and in defining their boundary lines they say in the 10th article: “It being well understood that the reservations at Fever river, at the Ouisconsin, and at St. Peter’s, and the lands properly belonging thereto, are not claimed by either of said tribes.” Thus it seems to be universally conceded that the island in question was and is the property of Mrs. Faribault, and that her (Indian) title thereto has not been extinguished by the United States.

The committee are unanimously of the opinion that long delayed justice ought now to be done to the memorialists, and they therefore again report the bill authorizing the payment to them of \$12,000, with interest from the date of the contract, and recommend its passage.