7-11-1856

Claim of James M. Lindsay

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 219.

IN THE SENATE OF THE UNITED STATES.

[To accompany Bill S. 373.]

APRIL 2, 1856.—Received from the Court of Claims and referred to the Committe of Claims.
JULY 11, 1856.—Reported by Mr. BRODHEAD and ordered to be printed.

JAMES M. LINDSAY *vs.* THE UNITED STATES.

The opinion of the court was delivered by Chief Justice Gilchrist.

The prayer of the claimant in this case is, that Congress will pass a bill confirming his title to certain lands. The case comes before us by virtue of a resolution of the House of Representatives, and is submitted on the evidence referred to us.

The claimant alleges that, by the first article of the treaty of August 9, 1814, between the United States and the hostile Creek Indians, Samuel and David Hale, chiefs of the tribe, obtained a cession of land know as fractional section 21, township 6, range 5, west of Alabama river; that they occupied the land until the year 1826, when they sold it for a valuable consideration to one Adam Carson, assigning as a title their certificate of reservation; that in the year 1840 the land was levied upon as the property of Carson, and sold under a judgment rendered in Alabama by the sheriff of the county to the Hon. Lyman Gibbons, excepting one hundred acres on the south side of the location; that Gibbons sold it to Henry Center, who died in the undisputed possession of it; that Edward Center, his devisee and executor, conveyed it to the claimant, and that neither the possession nor the title of the various grantees has been questioned by any one. He presented his petition to Congress, and the Committee on Private Land Claims in the House made a favorable report thereon, accompanied by a bill for his relief, which was not acted on, and the case is submitted to us on the evidence laid before Congress.

The petition to Congress recites the above facts, and states, also, that when Carson purchased the land of the Hales, he supposed that he purchased a good and perfect title in fee, and that they supposed they had a right to sell and convey a perfect title; that he paid a valuable consideration for the land, and that the transaction was fair and *bona fide*; that Carson, after occupying the land for two years, removed to Mississippi, where he died, and that, after diligent search, he has been unable to obtain the original certificates granted to the Hales, and transferred to Carson; that all the subsequent purchasers took the title, believing it to be perfect and undoubted, and in every instance paid the full value of the land; that the petitioner purchased under the belief that his title was derived from the United States, and that he was not aware that they had, or could have, any claim to the

land, and that he paid the full value of the land, believing that the title was undoubted. He states also that he is informed that the courts of the country have decided that when an Indian reservee sells and conveys away the lands ceded to him it is an abandonment by the reservee, and the title reverts, *ipso facto*, to the United States; of these decisions he says he was unaware at the time he made the purchase, and has every reason to believe that all the purchasers were equally unaware of them.

In relation to the sale by the Hales to Carson, Andrew Ormon testifices that about the year 1826 they sold the land to Carson; that the purchase was made for the consideration of one thousand dollars, which sum was then a full and fair price for the land; that the money was honestly paid by Carson, and the transaction was, in all respects, *bona fide*—the venders believing that they had a right to sell and make a good title, and the vendee believing that he purchased a good title to the land; and that, after the sale, and after the money was paid, all the parties were entirely satisfied with it. To the same effect are the depositions of Isaac Thompson and James Daniel; and Daniel also says that the land was offered to him at the same price, but he declined purchasing it.

The claimant also introduces an office copy of a deed from Robert B. Parker, sheriff of Clarke county, Alabama, dated on the 6th day of July, 1840, conveying the premises in question to Lyman Gibbons, in consideration of $3,200, by virtue of a sale on a write of *fieri facias* issued upon a judgment recovered by Archibald Brown against Carson.

Also, an office copy of a deed from Gibbons to Henry Centre, dated on the 5th of June, 1841, releasing all the interest of Gibbons in the premises.

Also, an office copy of a deed releasing all the interest of Edward C. Center and his wife to the claimant, and dated on the 1st day of October, 1850.

The claimant proved by the affidavit of P. Phillips, esq., admitted as evidence by the assent of the solicitor, that Henry Center died previous to October, 1850, and introduced an attested copy of his will, dated on the 12th of March, 1835, constituting Edward Center his sole executor. Also, an authenticated copy of a certificate from the Commissioner of the General Land Office, dated on the 12th April, 1820, stating that the Hales had the right to occupy the land in question.

This first article of the treaty of August 9, 1814, (Stat. at Large, 120,) between the United States and the Creeks, cedes certain lands belonging to the Creeks to the United States. It also provides "that where any possession of any chief or warrior of the Creek nation who shall have been friendly to the United States during the war, and taken an active part therein, shall be within the territory ceded by these articles to the United States, every such person shall be entitled to a reservation of land within the said territory of one mile square, to include his improvements as near the centre thereof as may be, which shall enure to the said chief or warrior and his decendants as long as he or they shall continue to occupy the same, who shall be protected by and subject to the laws of the United States; but upon the voluntary abandonment thereof by such possessor or his descend-

ants, the right of occupancy or possession of said lands shall devolve to the United States, and be identified with the right of property ceded hereby."

If the contingent interest of the United States depended merely upon the construction of the words "voluntary abandonment," it might, perhaps, be a proper subject of inquiry whether the sale of the right of the reservee, *bona fide* and for a valuable consideration, would be such a voluntary abandonment as is contemplated by the treaty, in order that the right of the reservee should devolve to the United States. But the evident intention of the treaty is not to give to the reservee an estate in fee simple in the land, but merely a right of occupancy, as the reservee and his descendants are entitled to the land only "so long as he or they shall continue to occupy the same." The first section of the act of March 3, 1817, (3 Stat. at Large, 380,) designates the manner in which the chiefs and warriors of the Creek nation who are entitled to a reservation shall locate their reservations, and then provides "that the lands so selected shall enure to such chief or warrior so long only as he shall continue to occupy and cultivate the same, and, in case he shall not have abandoned the possession, shall, on his decease, descend to and vest in his heirs in fee simple, reserving to the widow of such chief or warrior the use and occupation of one-third part of said lands during her natural life." This act, which appears to have been intended as declaratory of the meaning of the treaty, states with distinctness the interest which the reservees have in the land.

We cannot adjudge, in this state of things, that the petitioner has any legal cause of action against the United States, and that they are bound to release to him their interest in the lands in question. The case does not present a claim founded upon any law of Congress, or any regulation of an executive department, or npon any contract, express or implied, with the government of the United States. It comes before us by a resolution of the House. Our construction of the act constituting the court is, that we have no authority to determine that a party has a legal claim against the United States, unless it comes within one of the classes specified, or is founded on some legal right. We are authorized to examine any case referred to us by either House of Congress, to report our opinion upon the law, and to state the facts as we find them to be proved; but in relation to matters which address themselves particularly to the sound discretion and liberality of Congress, we do not feel ourselves authorized to recommend any legislation. In such cases the intelligence and sense of equity and right in Congress do not require any aid from us.

In the present case, our opinion as to the law is, that the claimant has no legal cause of action against the United States, and that they are not bound to convey to him their interest in the lands in question.

As to the facts, we find that the sale by the original reservees to Carson was made without fraud, in good faith, and for a valuable consideration; and such was, also, the case with the subsequent conveyances, including that to the petitioner.

There are some considerations of an equitable character which may properly be considered by Congress. The reservation was intended

for the benefit of the Indians. They received, and Carson and the subsequent grantees paid, not merely the value of the life estate of the reservees, but the value of the fee simple of the land. The reservees considered it more for their interest to sell the lands than to occupy them. They might have retained the possession during their lives, in which event the fee would have descended to their heirs. It can make no difference to the United States whether the fee is in the heirs of the reservees or in the petitioner; and there would seem to be no necessity that, in a matter so important to the petitioner, and so unimportant to the United States, they should avail themselves of what is a strict legal right. If, in consequence of the sale of the lands, the position of the United States had been in any way affected for the worse, the case would present a different aspect. But the effect of the sale is to give the United States a legal right to the land which they had not before the sale; and it is for Congress to say whether, under the circumstances, they will take advantage of such right.

It may be added that on the 23d of February, 1855, the Committee on Private Land Claims in the House made a report in favor of the petitioner, accompanied by a bill for his relief. At this late period of the session the bill was not acted upon, but the case was referred to this court. There is a precedent for such action as the petitioner asks to be found in the act of February 19, 1849.—(9 Stat. at Large, 346, 762.) This act relinquishes to Stephen Steele and James Daniel the reversionary interest of the United States in a certain Indian reservation in the State of Alabama, provided they have fairly in good faith, and for a valuable and adequate consideration, and by authentic and valid deeds, purchased the land; all which conditions we find have been complied with in the present case.

If the omissions in the evidence shall be supplied which we have referred to, we shall submit to Congress a bill for the relief of the petitioner, for such action as may be deemed proper.

There are also precedents to be found in an act in favor of occupants under the treaty of Fort Jackson, (6 Stat. at Large, 323;) acts in favor of Samuel Brashears and of William Hollinger, (6 Stat. at Large, 342.) Also the act of 29th May, 1830, (6 Stat. at Large, 441;) act of 14th July, 1832, (6 Stat. at Large, 519,) and the act of 15th June, 1844, (6 Stat. at Large, 916.)

We submit, herewith, a bill to Congress for the relief of the petitioner, for such action as may be deemed proper.