

7-18-1856

Additional papers in case of Joshua Kirby and Mrs. John McNary

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IN THE SENATE OF THE UNITED STATES.

JULY 18, 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 reconsidered their former action upon the same, and submit the following report:

Additional papers have been filed in this case, showing that John McNary, a Cherokee, was entitled to a reserve of 640 acres of land under the Cherokee treaties of 1817 and 1819.

It is alleged that said McNary continued to reside upon the said reservation, from the date of the treaty of 1817 up to the date of his death, which occurred in 1841.

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 640 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 640 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.

Under the above treaties, upon the conditions being complied with, there was an absolute grant of a life estate to John McNary, with the remainder in fee to his children, subject to the dower of his widow.

It is alleged that John McNary and his wife, in the year 1825, sold and conveyed by deed all their right and interest in the one half, or 320 acres of the said reservation to Joshua Kirby; and that the heir-at-law and only child of said McNary and her husband, (she then being a married woman,) executed a title bond, conditioned that they would convey the fee simple of the said one half of said reservation to the said Kirby upon the death of the said John McNary, which it is alleged never was done.

The said Kirby, therefore, holds only an equitable title to the one-half of said reservation.

It appears that said Kirby, and those claiming under him, have been in uninterrupted possession of certain lots numbered 2, 3, 4, 5, 6, 7 and 8, within the said reservation, from the year 1825 up to the present time.

The committee are of opinion that no injustice will be done the government or the parties concerned, by authorizing a patent to be issued to the said Joshua Kirby for the one-half of the said reservation, which he holds by equitable title; they, therefore, report the accompanying bill as a substitute for said Senate bill No. 205, guarded so as to protect the rights of the government and third persons, and respectfully recommend its passage.