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Frederick Hall. Petition of Frederick Hall, praying confirmation of title to certain land in the State of Michigan, under treaty stipulations

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Recommended Citation

H.R. Misc. Doc. No. 46, 40th Cong., 3rd Sess. (1869)

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FREDERICK HALL.

P E T I T I O N
OF
F R E D E R I C K H A L L,

PRAYING

Confirmation of title to certain land in the State of Michigan, under treaty stipulations.

JANUARY 7, 1869.—Referred to the Committee on the Public Lands.

FEBRUARY 10, 1869.—Reported from the Committee on the Public Lands, ordered to be printed, and recommitted.

To the honorable the Senate and House of Representatives in Congress assembled :

The petition of Frederick Hall, of Ionia, Michigan, respectfully represents, that he is entitled to patents to certain lands in the State of Michigan, and refers to the accompanying papers in support of the same, and prays Congress to take such action in the premises as in its wisdom justice and equity demands; and will ever pray.

FREDERICK HALL,
By his Attorney.

The case of Frederick Hall, praying confirmation of title to certain lands in the reservation of the Swan Creek and Black River tribe of the Chippewa Indians.

The facts of the case are as follows :

Frederick Hall purchased certain tracts of land of two Indians, Charles H. Rodd and Andrew J. Compeau, of the tribe of the Swan Creek and Black River Chippewas, which had been regularly entered agreeably to the treaty stipulations, made by the tribe of which they were members, with the United States on the 5th of August, 1855, for the term of ten years.

The provisions of the article, under the treaty by which these Indians were permitted to make entries of land within their reservation, will be found in the 11th vol. U. S. Stat., pages 621, 622, and 623, and is in the following words :

All the lands embraced within the tracts hereinbefore described, that shall not have been appropriated or selected within five years, shall remain the property of the United States, and the same shall thereafter for the further term of five years be subject to entry in the usual manner, and at the same rate per acre as other adjacent public lands are then held by Indians only, and all lands so purchased by Indians shall be sold without restriction, and certificates and patents shall be issued for the same in the usual form as in ordinary cases.

And by a subsequent article in said treaty it was provided that the tribal relations of said Indians, (the Chippewas of Saginaw, Swan Creek and Black River,) except so far as may be necessary to carry into effect this treaty, be dissolved.

Under the provisions of the former article of the treaty, these Indians made application to the local land office to enter certain lands in their reservation, but before the locations would be permitted, the register of the land office at Ionia wrote to the Commissioner of the General Land Office on the 5th of September, 1864, for information on the subject, and whether entries within the Indian reservation could be made.

The following is a copy of the register's letter:

LAND OFFICE, IONIA, MICHIGAN,
September 5, 1864.

SIR: Application has been made this day by an Indian, for the northwest quarter, northwest quarter, section 18, township 16 north, range 16 west, coming within the Indian reservation.

Not finding anything in the treaty applicable to Indians locating land in these cases, I ask for information before allowing the location.

Very respectfully, your obedient servant,

STEPHEN F. PAGE,
Register.

Hon. COMMISSIONER GENERAL LAND OFFICE,
Washington City, D. C.

In reply to this letter the Commissioner writes as follows:

GENERAL LAND OFFICE,
October 6, 1864.

GENTLEMEN: In reply to your letter of the 5th ultimo, in relation to the northwest quarter, northwest quarter, section 18, township 16 north, range 16 west, I have to state that said tract is within the Indian reservation under the treaty with the Ottawas and Chippewas, of July 31, 1855, and by reference to that treaty, article 1, you will observe that the lands in said reservation are now subject to entry by Indians only. You will accordingly allow the said tract to be entered by the Indians applying therefor, if no adverse right appears.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

REGISTER AND RECEIVER, Ionia, Michigan.

In obedience to these instructions the applicants were permitted to make the entries within said reservation, and paid the money for the same "as in ordinary cases" to the register, who issued his certificates for the land in question, and the amount so realized from the Indians from the sale of the land was paid into the treasury of the United States, where it now remains.

After these entries had been regularly and legally made, and the money paid into the treasury of the United States, and prior to the issue of patents, Frederick Hall, to whom the locators sold the land in good faith for a full and valuable consideration, applied for the same to the General Land Office, and surrendered the duplicate certificates of location which had been assigned to him; but notwithstanding the fact that the Commissioner had ordered the register and receiver at Ionia to "allow these entries," he now refuses to issue the patents.

Agreeably to the instructions from the General Land Office to the register and receiver at Ionia, viz: to permit the location of these lands, and when the parties made the entries in good faith, their rights under the treaty became absolute and without restriction, and which gave them full power and authority to sell and convey the land to others. Mr. Hall became the purchaser, and there is no authority of law to ignore his rights thus legally acquired.

Upon appeal to the Secretary of the Interior, that officer sustained the action of the General Land Office, and instructed the Commissioner to cancel the entries, and ordered a return of the money to the Indians, assigning as a reason that a new treaty had been made with them on the 18th of October, 1864, in which they had relinquished the right of entry under the treaty of 1855, and had taken other lands in a new reservation in lieu thereof, and that the new treaty related back to the date of its execution.

The entries in question were made on the 10th, 26th, and 31st of October, and 3d of November, 1864, under the letter of instructions of the General Land Office of the 6th of October, 1864, to the register and receiver at Ionia, Michigan, above referred to.

The letter of instructions to the register and receiver, countermanding the instructions of the General Land Office of the 6th of October, is dated December 6, more than a month after the entries had been made agreeably to instructions, and after the rights of innocent purchasers without notice had attached to the land, notifying them that "no further sales be allowed" to the Indians, &c., &c. :

DEPARTMENT OF THE INTERIOR,
General Land Office, December 6, 1864.

GENTS: Your letter of the 18th ultimo, in reference to sales made in the Indian reservation in Isabella county, Michigan, is received, and I have to state in reply that in connection with my letter to you on the same subject, dated the 2d instant, that the Secretary of the Interior has instructed this office to notify you that no further sales be allowed to Indians or others within said reservation, and those already made will be cancelled. You will therefore act accordingly, and give notice at once to all purchasers of lands within said reservation of the action of the department, and to make application for return of purchase money.

Very respectfully, your obedient servant,

JOS. S. WILSON, *Commissioner.*

REGISTER AND RECEIVER, *Ionia, Michigan.*

The Indians having entered these lands agreeable to the treaty stipulations, and under the instructions of the Commissioner of the General Land Office, pursuant thereto, of the 6th October, and having paid the government price for them, there is no authority of law to justify the cancellation of the entries.

The latter treaty was not ratified until June, 1866, and not then until it had undergone in the Senate of the United States various *material alterations and amendments*, so much so as to require a re-execution of it on the part of the Indians, *after its ratification*.

The re-execution and acknowledgment was not made until June, 1866, more than 18 months after the rights of the parties had been acquired to the land in question.

If it be admitted that the true rule of law is that a treaty relates back to the date of its execution, this case is embraced within it. This treaty had to be *executed anew*, and it was, therefore, not a treaty that could bind the Indians until its re-execution, hence no one will question when this treaty was made binding on their part, (if its execution be essential to its validity,) so that the principle of relating back to its execution makes the treaty effective from June, 1866, instead of October, 1864.

It may be also worthy of remark that the treaty of 1855 was considered operative for all its purposes, to wit, the payment of annuities, and all other subjects embraced within its provisions, until the new treaty became effective.

It will scarcely be contended that there were two treaties operative at one and the same time, and especially as there were provisions in each antagonistic to the other; therefore, the only practical conclusion must be, that if the execution or re-execution of the treaty was essential to its

validity, the validity of the new treaty must commence then, and therefore relates back to the time of its *final execution* and *no further*, as without this last act of execution there was no *new treaty* for any purpose.

There is another consideration in connection with this subject, which should not be omitted. Article VI of the treaty of 1855 is in the following words :

The tribal organizations of said Indians, except so far as may be necessary for the purpose of carrying into effect the provisions of this agreement, is hereby dissolved.

Under the provisions of this "article" it may be seriously questioned whether any new treaty affecting their rights, or the rights of others acquired under it, could be made legally, consistently with the enlightened condition of these Indians, and their status as to citizenship.

They had become so far advanced in civilization and education as to have acquired a knowledge of, and practiced all the arts of civilized life, voting and assuming the usual duties of citizenship until completely assimilated and identified with the white race.

They no longer needed treaty stipulations for their guidance, nor to be protected from unscrupulous whites, having so completely lost their tribal character, and become merged into the community of whites as to form a part and parcel of the citizens of the State, and by the above treaty stipulations citizens of the United States.

This tribal relation once being dissolved, and they recognized as citizens, both State and national, there is no form known to our laws by which a person once a citizen, who retains his domicile with us, can be treated with as an alien ; then, as citizens, how can the government treat with them as aliens and citizens at one and the same time? A waiver on the part of one or both will scarcely be construed into such a right in their case as differs from that of any other citizens of the republic.

But such technicalities need not be applied, even if strictly correct, in a case like the present. Whatever of lands within this reservation the Indians acquired by virtue of the treaty of 1855, under the instructions from the Interior Department, it left only so much the less land in the reservation under the new treaty ; and as this is a mere question of the severance of the title from the government for lands bought and paid for at the usual government price, for the "adjacent lands," no injustice can be done the government by permitting the patents to issue to the bona-fide purchaser, who acquired thus a legal title to the land in question ; and if he be denied this plain and palpable right by the government, whose agents have misled him, he is without remedy so far as being reimbursed by these Indians. But even supposing them capable of restitution in money, this has long since ceased to be an equivalent, and whether so or not it should not deprive Mr. Hall of a right, legally and equitably acquired, under competent authority from the government, and the enforcement of which inflicts wrong upon no one.

If it had been the intention of the Interior Department to refuse the issue of patents for any lands sold after the first signing of the treaty, it should have withdrawn them from sale at once ; but this it did not do until the 6th of December after.

Failing to do this, and innocent persons having made purchases in good faith previously thereto, the department cannot now set up its own wrong to defeat a vested right, thus acquired by them.

The following conclusions are clearly deducible from the facts in the case :

1. That even under the most rigid construction, these lands were not withdrawn from sale to the Indians until the instructions of the Interior Department of December 6th had been issued, superseding those of the 6th of October previous.

2. That the entry of these lands by the Indians on the 10th, 26th, and 31st October, and 3d November, 1864, was in accordance with the provisions of the treaty of 1855, and the instructions of the General Land Office of the 6th of October, 1864, to the register and receiver at Ionia, Michigan.

3. That the government having received the money from the Indians for these lands, and they having conveyed them to Frederick Hall, in good faith, for a valuable consideration, there can be no question as to his legal and equitable title to the same, the land having been regularly acquired by him, and the entries made agreeably to an existing provision of law, and the specific instructions of the Commissioner of the General Land Office authorizing them to be made, and to rule that he is not entitled to the patents after his right to the same has absolutely vested is *ex post facto* in its effect, and repugnant to every rule of law and principle of justice.

Reference is also respectfully asked by your petitioner to copies of the correspondence relating to the land in question, appended to the petition herewith.

Respectfully submitted:

FREDERICK HALL,
By his Attorney.

LAND OFFICE, IONIA, MICHIGAN,
September 5, 1864.

SIR: Application has been made this day by an Indian for the northwest quarter of northwest quarter, section 18, township 16 north, range 16 west, coming within the Indian reservation. Not finding anything in the treaty applicable to Indians locating lands as in this case, I ask for information before allowing the location.

Very respectfully, your obedient servant,
STEPHEN F. PAGE,
Register.

Hon. COMMISSIONER GENERAL LAND OFFICE,
Washington City, D. C.

GENERAL LAND OFFICE,
October 6, 1864.

GENTLEMEN: In reply to your letter of the 5th ultimo, relative to the northwest fraction quarter, section 18, township 16 north, range 16 west, I have to state that said tract is within the Indian reservation under the treaty with the Ottawas and Chippewas of July 31, 1855, and by reference to that treaty, article I, you will observe that the lands in said reservation are now subject to entry by the Indians only.

You will accordingly allow the said tract to be entered by the Indian applying therefor, if no prior adverse right appears.

Very respectfully, your obedient servant,
J. M. EDMUNDS,
Commissioner.

REGISTER AND RECEIVER,
Ionia, Michigan.

LAND OFFICE, IONIA, MICHIGAN,
November 28, 1864.

SIR: A few days since Hon. D. C. Leach, Indian agent, called at this office for the purpose of investigating as to the locations allowed last month in Isabella county, by Charles H. Rodd and Andrew Y. Compeau, (being a portion of these lands within the Indian reservation on which the Indians are allowed to locate by paying for the same.) After the investigation Mr. Leach said that he was satisfied that they had the privilege of locating the lands, and that under the law the locations were valid, and that the balance of the vacant lands within the said Indian reservation can at any time be located by any of the Indians belonging to said tribes.

Mr. Leach requested us to write to you on the subject, and it is his wish, if it can be done, that the balance of the vacant lands within the said Indian reservation be withheld from market, or from sale to Indians, until Congress meets again. He further states that there has been a treaty made with other Indians, with a view of giving them some of the vacant lands within the Indian reservation in Isabella county, for other land that they now hold; hence the reason of asking that no more lands be sold within the said reservation in Isabella county. It was the request of Mr. Leach that we should not allow any more locations by the Indians on the reservation. We informed him that we could not refuse any applications unless so directed by the Commissioner of the General Land Office. We shall continue allowing locations when called for until we hear from you.

Respectfully, your obedient servants,

STEPHEN F. PAGE, *Register.*

JOHN C. DEXTER, *Receiver.*

Hon. COMMISSIONER GENERAL LAND OFFICE,

Washington, D. C.

DEPARTMENT OF THE INTERIOR,
General Land Office, December 2, 1864.

GENTLEMEN: Referring to your returns for last month, I have to state that townships Nos. 15 and 16, of range 3 west, township No. 15, 4 west, and townships Nos. 14 and 15, range 5 west, in your district, were reserved for Indian purposes under the treaty of August 2, 1855, (Statutes at Large, volume 11, page 633,) and are not subject to private sale or location. According to the above treaty, one year was allowed for making up lists of claimants, and five years thereafter allowed said claimants in which to make their selections and locations. After completing said selections, the lands remaining unappropriated within said reservation belong to the United States, and for the term of five years thereafter subject to entry by Indians only.

It is observed from your October returns that a considerable number of sales have been made within the above reservation without proof of the Indian character of the parties, or their legal rights under said treaty.

You are doubtless aware that a treaty was made the 18th of October last, at Isabella, with the Indians entitled under said treaty of 1855, by H. J. Alvord and D. C. Leach, commissioners on the part of the United States, under instructions from the Secretary of the Interior, by the terms of which they, the Indians, relinquish all right to enter land in

said reservation under the treaty of 1855, and the United States transfers to them all the unappropriated public lands within said reservation. In view of the treaty of October last you should not have allowed the entries referred to, and they will be suspended by this office until said treaty shall be disposed of, and you are requested to notify the parties accordingly.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

REGISTER AND RECEIVER,
Ionia, Michigan.

DEPARTMENT OF THE INTERIOR,
General Land Office, December 6, 1864.

GENTS: Your letter of the 28th ultimo, in reference to sales made in the Indian reservation in Isabella county, Michigan, is received, and I have to state in reply, and in connection with my letter to you on the same subject, dated the 2d instant, that the Secretary of the Interior has instructed this office to notify you that no further sales be allowed to Indians or others within the said reservation, and that those already made will be cancelled.

You will therefore act accordingly and give notice at once to all purchasers of lands within said reservation of the action of the department, and to make application for return of purchase money.

Very respectfully, your obedient servant,

JOS. S. WILSON,
Commissioner.

REGISTER AND RECEIVER,
Ionia, Michigan.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., December 2, 1864.

SIR: I transmit herewith a communication from the Commissioner of Indian Affairs of the 30th ultimo, enclosing copy of a letter from Agent D. C. Leach, in relation to the sale of pine lands embraced in the reservation set apart for the Chippewas of Saginaw, in Isabella county, Michigan.

I also enclose a letter from George Bradley, esq., of Isabella, and accompanying minutes of a council with the Swan Creek and Black River Chippewas, to which he was invited, upon the same subject.

In view of the facts presented in the papers referred to, you are hereby instructed to direct the local land officers in the State of Michigan to deny all applications for the purchase of any of the lands embraced in the reservation of the Chippewas, and you will suspend the issuing of patents for any of said lands that may have been sold, as is alleged, or cancel the sales.

In view of the contemplated treaty with the Chippewas of Michigan, having for its object their removal to the Grand and Little Traverse reservations in that State, it is important that none of the surplus lands within those reservations be disposed of, and you are therefore instructed

to notify the proper local land officers to withhold from sale all such lands, either to Indians or other parties.

Very respectfully, your obedient servant,

J. P. USHER, *Secretary.*

JAS. M. EDMUNDS, Esq.,

Commissioner General Land Office.

GRAND HAVEN, MICHIGAN,

November 23, 1864.

SIR: I am here on my way to Oceana county to pay to the Grand river Ottawas their cash annuities for the present year, and since I left Detroit I have learned of the sale of certain pine lands embraced in the reservation set apart for the Chippewas of Saginaw, Isabella county, in this State. I called at the Ionia land office on my way here, and found that some 10,000 acres had been purchased by two Indians under the provisions of the treaty of August 2, 1855, for the use and benefit, I think, of white persons.

As these lands are embraced in the recent treaty made by Doctor Alvord and myself with the Chippewas of Saginaw, I have respectfully to ask that you will request the Commissioner of the General Land Office to suspend further sales of the lands referred to, until I am further heard from upon the subject, and that instructions be issued to the land office at Ionia accordingly, and without delay.

Very respectfully, your obedient servant,

D. C. LEACH, *Indian Agent.*

Hon. W. P. DOLE,

Commissioner of Indian Affairs, Washington City.