

5-8-1874

On the Relief of Settlers on the Absentee Shawnee Lands in Kansas

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IN THE SENATE OF THE UNITED STATES.

MAY 8, 1874.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill S. 650.]

The Committee on Indian Affairs, to whom was referred the bill (S. 650) explanatory of the resolution entitled "A resolution for the relief of settlers upon the Absentee Shawnee lands in Kansas," having had the same under consideration, report:

That, by the amended second article of the treaty with the Shawnee Indians, proclaimed November 2, 1854, (Stat. at L., vol. 10, p. 1054,) the Shawnees reserved 200,000 acres of land between the Missouri State line and a line parallel thereto, thirty miles west of the same. The same article, after prescribing how the said land shall be selected and set apart to individual Indians, to communities, and societies therein named, further provides that, inasmuch "as there are some Shawnees who have been for years separated from the tribe, it is agreed that *whatever surplus* of said 200,000 acres remains, after provision is made for all present members of the tribe, shall be set apart in one body of land, in compact form," for the benefit of such absentees as shall return and unite with the tribe within five years. The Indian Bureau, under direction of the President, proceeded to appropriate the 200,000 acres to the purposes named in the said article, and, on the 8th of October, 1857, the Commissioner forwarded to the Secretary of the Interior a statement of the manner in which the provisions of the treaty had been executed, from which it appears that there were allotted—

To individual Indians and societies.....	142, 468. 82
To Black Bob's settlement, in common.....	33, 392. 87
Surplus to Absentee Shawnees	24, 138. 31
	<hr/>
Making a total of.....	200, 000. 00

It was then believed that the provisions of the second article of the treaty had been fully carried into effect, and that the residue, after all "present members of the tribe" had been provided for, was 24,138.31 acres. *Subsequently* it was ascertained that four persons who had been enrolled as individuals entitled to separate selections had, under different names, selected 200 acres each *in excess* of the quantity they were entitled to hold.

These duplicate selections were not discovered until after the 24,138.31 acres had been set apart for the absentees. Had the error been previously discovered, the 800 acres embraced in the duplicate selections

would have been added to the Absentee tract, double allotments not being recognized by the treaty.

The second was invalid, and *should have been treated as though it had not been made, and dealt with as a part of the "surplus."* But the late Secretary of the Interior (Mr. Cox) viewed the matter differently; and on the 23d of July, 1869, issued rules and regulations by which the chiefs of the Shawnee Nation were authorized to sell "*allotments of land to which the allottee was not entitled.*"

Under this authority the chiefs of the tribe conveyed the land in question, which conveyance will be found fully described in House Executive Document No. 65, second session Forty-second Congress. The grantees not being occupants of the land, and the validity of the title conferred upon them having been questioned by the *bona-fide* settlers and occupants of the same, the supreme court of the State of Kansas, in the case of Charles S. Wilder *vs.* William Hale *et al.*, in ejectment, to recover certain tracts of the land in question, decided that the treaty conveyed no such power or authority upon the tribe or the chiefs to sell the land, and that the Secretary had no authority, by treaty or law, to authorize the sale; that the deed so made conferred no title.

As early as 1860, in pursuance of article 5 of the treaty, these tracts were marked on the plats of the General Land-Office as "public lands," and as late as December 22, 1869, the Commissioner of the General Land-Office, in speaking of these lands in a letter to Hon. W. E. Niblack, stated that they were then "open to entry under the homestead or pre-emption laws." The Commissioner of Indian Affairs and the Commissioner of the General Land-Office declared them to be *public lands*, and they were settled upon under the declaration of the Commissioner of the General Land-Office that they were a part of the public domain.

The committee, therefore, conclude that the sales made by the chiefs are illegal and void, and that the lands in question are a part of the residue of the aforementioned 200,000 acres, and come within the provisions of the act of April 7, 1869, "for the relief of settlers on the Absentee Shawnee lands." (Pamphlet Laws 1st sess. 41st Cong., 53.)

It may be claimed that, inasmuch as the land in question lies in separate tracts, it cannot properly be considered as part of the "surplus," the treaty requiring the residue to be set apart in one body of land in compact form. The treaty, however, permitted individual selections to be made anywhere within the limits of the 200,000 acres, and it was impossible to declare the precise quantity of the surplus, or in what shape it would be left. The treaty provides that "whatever surplus" remained should inure to the benefit of the Absentees, while the treaty provided that the surplus should be "set apart in one body of land in compact form," the nature and character of its provisions permitting selections anywhere within the reservation, except in Black Bob's settlement, rendered a "compact surplus" of land impossible. The residue finally set apart was not a compact body of land. One tract is entirely disconnected and cut off from any other portion of the surplus lands, hundreds of acres are completely surrounded by "surplus" lands, while other portions of the "surplus" tracts only come together, and are practically, as well as by the express terms of the treaty, dissevered.

The "selections" run nearly across the surplus land, east and west, and in no sense can it be considered a "compact body of land." It was certainly not intended by the parties to the treaty that, in case the surplus could not be assigned and set off in "compact form," the Absentees should be deprived of their rights to it. The treaty contemplated a surplus, and provided that "*whatever surplus*" might be found to exist

should inure to the benefit of the Absentee Indians. No other way of disposing of the surplus is provided, and in none of its provisions does the treaty recognize the right of the tribe to any portion of the surplus, or to hold any lands as the common property of the tribe.

Notwithstanding the heads of the Indian and Land Bureaus encouraged the settlement of the lands in question, they were sold by the chiefs without notice to the settlers who were legally in possession of the same, and the committee, therefore, recommend the passage of the bill.

