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On the Relief of Heirs of W. Stevens

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IN THE SENATE OF THE UNITED STATES.

JULY 1, 1876.—Ordered to be printed.

Mr. CHRISTIANCY submitted the following

REPORT:

[To accompany bill H. R. 719.]

The Committee on Private Land-Claims, to whom was referred the bill (H. R. 719) for the relief of the heirs of William Stevens, report :

That they find the material facts of the case substantially as set forth by the House Committee on Private Land-Claims, as follows:

The Committee on Private Land-Claims, to whom was referred the bill (H. R. 719) entitled "A bill for the relief of the heirs of William Stevens," having considered the same, report the same with a favorable recommendation.

The evidence before the committee shows—

That the said William Stevens, in about the month of August, A. D. 1858, took up and settled upon a tract of land in Dakota Territory, being the same land described in the said bill, and that the land in the vicinity, including the said tract, was not at that time surveyed, but was surveyed in the following year, (1859.)

Soon after the survey, the said Stevens, in order to secure his right, filed a notice of his claim with the surveyor-general, (Hill, since dead,) and paid him the fees, and was told by the surveyor-general that it was all right. In the course of the fall of 1858 he built upon the said tract of land a small stone house, in which he resided, and soon after a log stable, and fenced and cultivated about five acres of land, and continued to live in the house and to make it his exclusive home until the autumn of 1862, when the Sioux Indians attacked the settlement and drove all the settlers away. Continued hostilities with the Indians prevented the settlers from returning until 1867. In January, 1867, the land in question, under order of the President, was included in the reservation of Fort Dakota, and continued so reserved till June 10, 1869. In the spring of 1869 Stevens returned and took possession of said land, repaired the house, put in a crop upon the five acres previously cultivated, and continued to live in the house until the autumn of that year, till within a few days of his death, in November, 1869, having been removed to a neighbor's shortly before his death, for better care. The land in question was not open for entry or purchase, under the pre-emption or homestead laws, until July, 1870, eight months after the death of said Stevens.

The land in question is one-fourth of section sixteen, (16,) which is designated and appropriated for school purposes, but the other three-fourths of the section have been already purchased of the Government, and other land must be or has been substituted therefor for schools.

As to citizenship, and occupancy or ownership of other land under the pre-emption laws or otherwise in any State or Territory, the said Stevens in all things conformed to the requirement of laws.

Upon proof of the foregoing facts, in the fall of 1873 or beginning of 1874 application was made on behalf of said Stevens's heirs at the district land-office for permission to purchase the land in question under the pre-emption laws, but said application, on being referred to the Commissioner of the General Land-Office, was refused by the Commissioner on the ground that said Stevens had not filed a declaratory statement as required by law, and that the statement alleged to have been filed with the surveyor-general was not authorized by law.

The township-plats of survey were filed in the district land-office July 16, 1862. By act of May 30, 1862, the claimant had three months from the date of filing the plats to

file his declaratory statement. But Stevens had filed his statement with the surveyor-general in 1859, and, whether legal or not, it is fairly to be presumed, from the fact that he thought it sufficient and all that was necessary.

It does not appear that there are any intervening rights or conflicting claims that can or could be affected by the failure of said Stevens to file the formal declaratory statement required by the statute.

From all the evidence before them, the committee conclude, as matter of fact, that said Stevens did go upon and improve said land, and continue and follow up the possession and occupancy of the same, with the *bona fide* intention of obtaining a title for the same under the pre-emption laws, and to appropriate it to his own exclusive use and benefit; and, further, that the equities of the case entitle the claimants to the privilege of purchasing the said tract as provided in the said bill.

Your committee will add, that though there was no law, at the time, authorizing the declaratory statement to be filed with the surveyor-general, yet a law was soon after passed permitting this to be done, (see 14 Stat. at Large, p. 541,) thereby showing that the want of such a law had been felt.

Again, in a case very similar to this, where lands had been reserved for Fort Atkinson, it was expressly provided in the act abandoning the reservation, and subjecting the land to private entry, that no such declaratory statement should be required of settlers, (12 Stat. at Large, p. 28.) The omission, therefore, to file such statement in the local land-office, while it defeats the strictly legal rights of Mr. Stevens, can hardly be said to affect his equitable right.

It has been the policy of the Government for years—and a wise and just policy—to encourage settlement upon the public lands in the Territories and to favor pre-emption claims. And in pursuance of this policy we think it unwise and unjust to defeat the equitable rights of a pioneer settler upon any narrow or technical ground in a case like the present.

Your committee are compelled by the facts of the case to recognize a clear and strong equity in favor of Mr. Stevens, the settler; an equity which had attached to the land before its survey and before the settler could be aware that it would fall within a school-section. And under the act of February 26, 1859, (Stat. at Large, vol. 11, p. 385, Rev. Stat., sec. 2275,) your committee think it competent for the United States to recognize this equity, and to allow the territorial government of Dakota to select other lands for school purposes in place of this.

Your committee, therefore, recommend the passage of the bill which the House has passed.