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Report : Claim of Heirs of J. Beaubien

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IN THE SENATE OF THE UNITED STATES.

MAY 31, 1878.—Ordered to be printed.

Mr. BAYARD, from the Committee on Private Land-Claims, submitted the following

REPORT :

[To accompany bill S. 773.]

The Committee on Private Land-Claims, to whom was referred the bill (S. 773) making a pre-emption grant to the heirs of Jean Baptiste Beaubien, deceased, for a part of Fort Dearborn reservation at Chicago, Ill., and to confirm purchasers of other parts in their titles, and to convey to the city of Chicago the streets and alleys of said reservation, submit the following report :

The State of Virginia, by the act of March 1, 1784 (confirmed December 30, 1788), ceded the territories northwest of the river Ohio to the United States, and by the ordinance of July 13, 1787, it passed under the jurisdiction and became part of the domain of the United States.

By the treaty of Greenville, proclaimed August 30, 1795, made with certain Indian tribes, a quantity of land was ceded to the United States, which embraced within its limits the land described in the bill (S. 773) as the southwest fractional quarter of section No. 10, township 39 north, range 14 east of the third principal meridian in the city of Chicago.

In the year 1804 the United States established a military post on this land, and continued to occupy the same until August 16, 1812, when the troops of the United States were massacred, and the post captured by the Indians. In 1816 it was reoccupied, and some buildings erected upon it by the United States Government for the use of the Indian Department. The post was thus occupied by the troops of the United States until May, 1823, when it was evacuated by order of the government, and the post and property left in charge of the United States Indian agent at Chicago. In August, 1828, it was again occupied by the troops under an order of the Secretary of War, as one of the military posts of the United States, and in 1831 the troops were again withdrawn, but possession was not abandoned, the post being left in charge of an agent of the government, who authorized a person by the name of John Dole to occupy and keep it in repair, which he did. In June, 1832, the government again placed a garrison there under the command of an officer of the Army of the United States. From that time up to the commencement of the suit in ejectment brought by Jackson against Wilcox, an officer of the United States Army, in possession as such, it was continuously occupied by the government as a military post, and was so occupied at the time of the trial of that suit.

John Dean, an Army contractor at the post, sometime between 1804

and prior to 1817, built a house upon the land, around which house there was an inclosure used by Dean as a garden and field. In the year 1817 the said Dean sold the house which had been occupied by him to John B. Beaubien or Jean Baptiste Beaubien, as he was also called, for the sum of \$1,000. Beaubien then took possession and continued in possession from the time of his purchase until the year 1836, cultivating a part of the inclosure every year. The land was surveyed in 1821. After it was reoccupied in 1832 by the troops of the United States, and before May 1, 1834, the United States built a light-house on a part of the land, and also kept at least twenty acres of ground inclosed and cultivated for the use of the garrison.

In 1824 the Commissioner of the General Land Office, at the request of the Secretary of War, set apart this land for the use of the government, and directed the same to be withheld from sale and reserved for military purposes.

Afterward, in 1831, Beaubien made claim for pre-emption of the land in question at the land-office at Palestine, which claim was rejected, and the Commissioner of the Land Office, in answer to a letter from him in 1832, informed him that the land had been reserved for military purposes. In 1834 he again made a claim for the land at the Danville land-office, which claim was likewise rejected. In 1835 he applied at the land-office at Chicago, and succeeded in having his pre-emption claim allowed, paid the purchase-money, and obtained the register's receipt therefor.

Wilcox continued to remain in possession, acting under the orders of the Secretary of War. About the year 1836 Beaubien conveyed a part of this land, or assigned his interest in a portion of it, to Murray McConnell, and the latter brought an action of ejectment in the State court against Colonel Wilcox, then in command of the troops of the United States stationed at Fort Dearborn; he obtained a judgment for the lands in the circuit court, which judgment was affirmed by the supreme court of Illinois. The case was then removed to the Supreme Court of the United States, and the judgments of the courts below were reversed. The case is reported in 13 Peters, 498, and will be more fully referred to hereafter.

Afterward the United States filed a bill in the circuit court of the United States for the district of Illinois to set aside the register's receipt, and the court decreed that Beaubien should deliver up the receipt and certificate given him by the register and receiver, to be canceled, upon the receiver at Chicago tendering or refunding him his purchase-money; and on the 18th day of December, 1840, Beaubien gave to Eli S. Prescott, receiver of public money at Chicago, the following receipt:

RECEIVER'S OFFICE, CHICAGO, ILL., December 18, 1840.

Eli S. Prescott, receiver of public money at Chicago, has this day refunded to me the sum of \$94.61, being the amount paid by me for the southwest fractional section No. 10, in township No. 39 north, range No. 14 east of the third principal meridian, on the 28th day of May, A. D. 1835.

The entry of said land by myself being invalid in consequence of its being reserved for military purposes, as per letter from the Commissioner of the General Land Office.

JOHN B. BEAUBIEN.

This is, in brief, the history of the case. The Supreme Court of the United States, in *Wilcox vs. Jackson*, 13 Peters, 498, in construing the law of June 19, 1834, which was an act reviving the act of May 29, 1830, granting pre-emption rights to settlers on public lands, say that Beaubien never had acquired any title whatsoever to the land in question; that the tract was a military reservation of the United States at

the time he attempted to pre-empt it, and that it was legally and properly reserved by the Secretary of War under authority of law.

The attorney for the heirs of Beaubien, in his brief read in support of this bill before your committee, says (p. 11) :

We concede that by the entry and receipt of Beaubien, under the 1834 law, the subject of controversy in the 13th Peters case, and called in that case Beaubien's purchase, Beaubien acquired no title in law or equity whatever, the entry having been void; that that court was not invested with jurisdiction to hear or determine any other question than under that entry and so-called purchase, and did not attempt to, and had it attempted to, what it would have done would have been a nullity; therefore the case falls back as to what were Beaubien's rights in the land when reserved, then in abeyance, and now revived and to be respected.

It being thus conceded that Beaubien acquired no right or title whatever, either at law or in equity, under the 1834 law, the only other inquiry that can arise is, did Beaubien acquire rights under any prior law? He claims that he did under the law of 1813, which is as follows :

That every person, or legal representative of every person, who has actually inhabited and cultivated a tract of land lying in either of the districts established for the sale of public lands in the Illinois Territory, which tract is not rightfully claimed by any other person, and who shall not have removed from said Territory; every such person and his legal representatives shall be entitled to a preference in becoming the purchaser from the United States of such tract of land at private sale, at the same price and on the same terms and conditions, in every respect, as are or may be provided by law for the sale of other lands sold at private sale in said Territory at the time of making said purchase: *Provided*, That no more than one quarter-section of land shall be sold to any one individual in virtue of this act, and the same shall be bounded by the sectional and divisional lines run, or to be run, under the direction of the surveyor-general for the division of public lands: *Provided also*, That no lands reserved from sale by former acts, or lands which have been directed to be sold in town lots, and out lots, shall be sold under this act.

SEC. 2. That every person claiming a preference in becoming the purchaser of a tract of land, in virtue of this act, shall make known his claim, by delivering a notice in writing to the register of the land-office for the district in which the land may lie, wherein he shall particularly designate the quarter-section he claims, which notice the register shall file in his office on receiving twenty-five cents from the person delivering the same; and in every case where it shall appear to the satisfaction of the register and receiver of public moneys of the land-office that any person who has delivered his notice of claim is entitled, according to the provisions of this act, to a preference in becoming the purchaser of a quarter-section of land, such person so entitled shall have a right to enter the same with the register of the land-office on producing his receipt from the receiver of public moneys for at least one-twentieth part of the purchase-money, as in case of other public lands sold at private sale: *Provided*, That all lands to be sold under this act shall be entered with the register at least two weeks before the time of the commencement of public sales, in the district wherein the land lies; and every person having a right of preference in becoming the purchaser of a tract of land who shall fail so to make his entry with the register within the time prescribed, his right shall be forfeited, and the land by him claimed shall be offered at public sale, with the other public lands in the district to which it belongs. (2 Stats., 797.)

He says that by his settlement and cultivation he acquired an equitable title in the land, which still exists, because, as he says, it was to last without entry at the land-office until within two weeks of the time that the tract could be sold at public sale; that before such public sale could be made the land must have been proclaimed for sale through the Land Department; that the land never was so proclaimed, and, as a consequence, the right to obtain the legal title at \$1.25 per acre, as to any land of which the government still retains the legal right, still exists.

The act of May 3, 1798, after making an appropriation for the purpose, uses this language: " * * to make and complete, at the discretion of the President of the United States, the fortifications heretofore directed for certain forts and harbors, and to erect fortifications in any other place or places as the public safety shall require, in the opinion of

the President of the United States ; and which other fortifications he is hereby *authorized to cause to be erected*, under his direction, from time to time, as he shall judge necessary." Again, by the act of April 21, 1806, the President was authorized to establish trading-houses at such posts and places on the frontier or in the Indian country as he should judge most convenient for trading with the Indians; and by act of June 14, 1809, he was authorized to erect such fortifications as might, in his opinion, be necessary for the protection of the northern and western frontiers.

A careful reading of these statutes leaves no room for doubt that it was in the power of the United States to reserve for its military purposes any portion of the public domain, as might seem necessary or convenient. That there was a reservation and appropriation of the land for government uses now claimed by the heirs of Beaubien there can be no doubt, and that it was occupied by the troops of the United States in 1804, and that they continued in possession with some brief intervals, and never releasing possession at any time, for many years, at least as late as 1859, when the Secretary of War directed the sale of portions of the reservation. This occupation being an appropriation, authorized by law, it follows that Beaubien and all other persons on the land were there at the sufferance and under the jurisdiction and permission of the United States, and, as a consequence, clearly could acquire no rights of settlement or pre-emption adverse to the government, or in any manner prejudice the United States as to the manner in which the lands should be disposed of after the reservation should become useless for its purposes. This disposes of any right to make pre-emption claim to the land by reason of settlement and cultivation during the military occupation of the post by the United States.

A further ground urged is that, even if the occupation and appropriation was valid, the United States lost all the rights they may have had, because from 1812 until 1816 they abandoned the post. It must be remembered, however, that this abandonment was not voluntary, but was caused by the compulsion of war, the troops having been driven out, overtaken, and massacred by the Indians when they had retreated but a short distance—about two miles—and not a man suffered to escape. Should this public disaster be allowed to constitute a valid basis for a pre-emption claim it would establish a precedent unknown heretofore in history, that a citizen could take advantage of the misfortunes of his government as a means to deprive it of its lawful domain and property without its consent.

Such a proposition cannot be entertained.

"Whenever a tract of land is legally occupied or appropriated by the government, it becomes from that moment separated from the mass of the public lands, and no subsequent law or proclamation can be construed to embrace it or operate upon it, although no other reservation were made of it."—(*Wilcox vs. Jackson*, 13 Pet., 498.)

"The right of pre-emption was a bounty extended to settlers and occupants of the public domain. This bounty it cannot be supposed was designed to be extended to the sacrifice of public establishments or of great public interests."—(*Idem.*)

For these and other considerations your committee report adversely upon the bill, and recommend that it be indefinitely postponed.