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Daniel S. McDougall and Charles S. Wilder

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DANIEL S. McDougall AND CHARLES S. WILDER.

APRIL 6, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DEERING, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5632.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 1193) for the relief of Daniel S. McDougall, having had the same under consideration, would respectfully report as follows:

The records of the Interior Department and other evidence submitted to the committee show the following facts:

By the second article of the Shawnee treaty of May 10, 1854 (10 Stat., p. 1053), the United States ceded to said Indians 200,000 acres of land in Kansas. A portion of these lands was to be set aside for school and church purposes; a portion was allotted in severalty to 697 persons of the tribe; other portions for other specified purposes; and the residue was "to be set aside in one body, in compact form, under the direction of the President," out of which all absentee Shawnee Indians, who should return within five years from the proclamation of the treaty (November 2, 1854), should be entitled to an allotment of 200 acres each, the balance remaining at the expiration of said five years to be sold for the benefit of said tribe.

The ninth article of said treaty authorized Congress to provide for the issuing of patents to such Shawnees as made separate selections under article 2 of the treaty and act of March 3, 1859 (11 Stat., p. 430), and Congress conferred this power upon the Secretary of the Interior.

Most of the lands were disposed of in accordance with treaty stipulations, and "the Shawnees selected, to be held in one body, in compact form, for absentees, 24,138.31 acres." These dispositions were approved of by the Secretary of the Interior, November 2, 1857, and on the 20th December, 1859, patents were issued to Shawnees to whom allotments had been made. It was subsequently discovered, however, that in some instances double allotments had been made, and in such cases selections were canceled on the records of the Interior Department.

The Hon. J. D. Cox, Secretary of the Interior, under the authority granted by act of March 3, 1869, issued certain rules and regulations to be observed in the execution of conveyances of lands held in severalty by members of the Shawnee tribe, a copy of which is now in possession of the committee.

The fifth rule provides that in cases of allotment to which the allottee was not entitled the chiefs of the Shawnee tribe may convey the lands by deed. In conformity with these rules conveyances of lands errone-

ously allotted were made by Graham Rogers and Charles Tucker, chiefs of the Shawnee Indians, and approved under the rules of the Secretary of the Interior, to Charles S. Wilder, December 15, 1869, for the consideration of \$2,000, the west half of section 8 and the south half of southwest quarter, section 5, in township 13 south, range 22 east, approved January 6, 1870, being lands double allotted to Lewis Hayes and George Seleambus; and to Daniel S. McDougall, September 30, 1869, for consideration of \$960, the east half of northeast quarter and southwest quarter of northeast quarter of section 29, township 12, range 23, approved March 19, 1870, being land double allotted to Mary Whitestone. And said Shawnees have had the benefit of the consideration above stated.

Prior to the execution of these deeds certain persons claim to have settled on the lands covered by the deeds to Wilder and McDougall, and, subsequent to their purchase claimed the same.

Wilder brought an action of ejectment against said parties in the district court of Johnson County, Kansas, to recover possession of the land. The case was tried at the April term, 1871, and judgment rendered for the plaintiff. An appeal was taken by defendant, and the case was heard and decided by the supreme court at the July term, 1871. The decision is fully reported in *Hale et al. vs. Wilder* (8 Kansas, 545).

Under this decision of the court it will be observed that inasmuch as these were not "surplus lands" they could not be conveyed under the fifth rule, to which reference has been made, and that they still belong to the Shawnee Nation, to be disposed of or retained under the direction of the government.

As has been already recited the Shawnees have received full value of these lands, and the same money invested in bonds is now to their credit and held in trust by the government. (See report of Commissioner of Indian Affairs, 1879, p. 203.)

In view of these facts, the committee are of the opinion that Wilder and McDougall are entitled to relief, and they therefore report a substitute for the bill and recommend that it pass.