

University of Oklahoma College of Law

University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

2-16-1882

Report : Petition of I. Walker

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indigenous, Indian, and Aboriginal Law Commons](#)

Recommended Citation

S. Rep. No. 183, 47th Cong., 1st Sess. (1882)

This Senate Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact Law-LibraryDigitalCommons@ou.edu.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1882.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 398.]

The Committee on Indian Affairs, to whom was referred the bill (S. 398) for the relief of Isaiah Walker, having considered the same, submit the following report:

The bill authorizes and directs the Secretary of the Interior to ascertain and determine the costs and expenses necessarily incurred by the said Walker in defending his title to the ferry franchise purchased by him under the Wyandott treaty of January 31, 1855, and in procuring a patent for the same, and to pay to said Walker out of the sum of \$28,109.51, appropriated by act of March 3, 1881 (21 Statutes, 421), to be paid to the members of the Wyandott tribe of Indians *per capita*, such costs and expenses so ascertained, together with \$7,000 consideration paid by said Walker for said ferry franchise, and also interest on the same from the time of payment. The facts in the case are fully set out in the following letter from the Secretary of the Interior, of date February 2, 1882, to the chairman of the Committee on Indian Affairs, and its inclosure, being a letter addressed to him by the Commissioner of Indian Affairs, of date January 30, 1882:

DEPARTMENT OF THE INTERIOR,
Washington, February 2, 1882.

HON. HENRY L. DAWES,

Chairman Committee on Indian Affairs, U. S. Senate:

SIR: I have the honor to acknowledge the receipt, by your reference of the 19th ultimo, of Senate bill No. 398, Forty-seventh Congress, first session, "For the relief of Isaiah Walker," with request for an opinion upon the justice of the claim and upon the merits of the proposed measure from your committee.

The matter having been referred to the Commissioner of Indian Affairs for report, I respectfully invite your attention to the inclosed copy of reply from that officer under date of 30th instant, which, with the inclosures noted therein and inclosed herewith, contain, it is believed, all the information in the possession of this department or the Indian Office in relation to the case.

The bill under consideration proposes to take from the funds of the Wyandottes certain moneys to satisfy a claim of one Isaiah Walker, a Wyandott Indian, for the value of a ferry franchise purchased by him from the United States in 1856.

By the second article of the Wyandotte Treaty of January 31, 1855, proclaimed March 1, 1855, they ceded to the United States all their right, title, and interest in and to certain lands situated in the fork of the Missouri and Kansas rivers, therein further described; and the United States, in said article of said treaty, agreed to do certain things, among which was to reserve from the lands so ceded four acres at and adjoining the Wyandotte ferry across and near the mouth of the Kansas River, together with the rights of the Wyandottes in said ferry, which was to be sold *by the United States* to the highest bidder among the Wyandott people, and the proceeds

of sale paid over to the Wyandotts. "On the payment of the purchase money in full a good and sufficient title to be secured and conveyed to the purchaser by patent from the United States."

It is worthy of careful consideration whether, from the wording of this concluding clause, the Indian title did not pass out of the Wyandotts by the cession; whether the land that was theirs did not pass to the United States, who, and not the Wyandotts, was to make a good and sufficient title to the purchaser, and whether this does not effectually shield the Wyandotts from any after claim on the part of any one for damages growing out of any defect in the title. The United States accepted the cession and gave the title. Inasmuch, then, as the bill proposes to take from the moneys of the Wyandotts any portion thereof to satisfy such claim as may be found rightful on the part of Mr. Walker, they may claim with some force that such application of their money is not just. It should also be considered that, so far as appears, Walker is still the owner of the four acres of land covered by the patent, although he has lost the ferry right.

Upon the subject of the merits of Mr. Walker's claim, which is also presented in the letter of the committee, I can only say that he appears from the papers filed to have some claim for reimbursement for damages sustained by the loss of his ferry privilege; but there is not sufficient information in the possession of this department to determine whether or not he has neglected or exhausted his remedy or forfeited his rights by abandoning his case in the courts of last resort.

Very respectfully,

S. J. KIRKWOOD,
Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 30, 1882.

The Honorable THE SECRETARY OF THE INTERIOR :

SIR: I have the honor to acknowledge the receipt, by your reference for report thereon, of a letter dated the 19th instant, from the Senate Committee on Indian Affairs, by its clerk, inclosing Senate bill No. 398, Forty-seventh Congress, first session, "For the relief of Isaiah Walker." This bill authorizes and directs the Secretary of the Interior to ascertain and determine the cost and expenses necessarily incurred by said Walker in defending his title to a ferry franchise purchased by him under the Wyandott treaty of January 31, 1855, and in procuring a patent for the same; after which the said Secretary is directed to pay to said Walker, or his legal representatives, out of the sum of \$28,109.50, appropriated by the act of March 3, 1881 (21 Stat., 421), to be paid to the members of the Wyandott tribe of Indians *per capita*, the costs and expenses so ascertained, together with the \$7,000 consideration paid by said Walker for said ferry franchise, and also interest at six per centum per annum upon the aggregate of said costs and expenses, from the time of the payment thereof, and also upon the said \$7,000 from the time of its payment. The facts in this case appear to be as follows, viz:

The Delaware Indians, by an agreement, dated December 14, 1843, ceded to the Wyandotts thirty-nine sections of the land ceded to the Delawares and defined by the treaty proclaimed March 24, 1831 (7 Stat., 327), in accordance with the second article of the treaty with the said Delawares of October 3, 1818. (7 Stat., 188.)

This agreement between the Delawares and Wyandotts was confirmed by a joint resolution of Congress, approved July 25, 1848. (9 Stat., 339.)

By the second article of the treaty with the Wyandott Nation of Indians, proclaimed March 1, 1855 (10 Stat., 1159), the said nation ceded and relinquished to the United States all their right, title, and interest in and to the tract of country situate in the fork of the Missouri and Kansas rivers, which was purchased by them of the Delaware Indians.

The object of the cession was that the lands should be subdivided, assigned, and reconveyed, by patent in fee-simple, in the manner therein provided for, to the individuals and members of the Wyandott Nation, in severalty. The last clause of this article provides that "Four acres at and adjoining the Wyandott ferry across and near the mouth of the Kansas River shall also be reserved, and, together with the rights of the Wyandotts in said ferry, shall be sold to the highest bidder among the Wyandott people, and the proceeds of sale paid over to the Wyandotts. On the payment of the purchase money in full, a good and sufficient title to be secured and conveyed to the purchaser, by patent from the United States."

In pursuance of the provisions of this clause, the four acres of land, with the ferry franchise, were sold in 1856, by B. F. Robinson, J. C. McCoy, and Robert J. Lawrence, commissioners, to Isaiah Walker, a member of the Wyandott Nation, for the sum of \$7,000, which was paid over to the Wyandotts.

In department letter of May 3, 1861 (copy herewith), in answer to office report of April 4, 1861, it was held that Walker acquired by his purchase not only the title to the four acres of land, but also the privilege of using the land on the south side of the river, belonging to the United States, so far as its use was necessary to the full enjoyment and use of the ferry.

H. G. Fant, on behalf of Walker, having presented to the department for consideration the patent issued to said Walker, August 28, 1861, for the four acres of land purchased by him under the second article of said Wyandott treaty of 1855, with the objection that said patent did not embrace the rights of the Wyandotts in the said ferry, but simply conveyed title to the four acres of land, the papers were transmitted to this office with department letter of September 6, 1861 (copy inclosed), in which it was decided that "A patent should be executed to Isaiah Walker conveying the land, and also the rights of the Wyandotts in said ferry across the Kansas River as they existed at the date of said treaty."

On the 7th of September, 1861, this office forwarded to the Commissioner of the General Land Office, the original patent issued to Walker for the four acres of land, as aforesaid, accompanied by a copy of department letter of September 6, 1861, above referred to.

On the 16th day of September, 1861, a new patent was issued to Walker by the Commissioner of the General Land Office, covering the four acres of land together with the ferry franchise, which was transmitted to this office the same day, and on the 19th of September, following, the same was delivered to H. G. Fant, esq.

It appears that Silas Armstrong (also a Wyandotte Indian), by virtue of an act of the legislature of the Territory of Kansas, passed in 1855, became vested with the sole power and exclusive authority to operate a ferry at the mouth of the Kansas River, and for two miles up said river (upon complying with the terms of the act). Armstrong commenced a suit in chancery against Walker and others, in the district court of the second judicial district of the Territory of Kansas, and on the 16th day of June, 1862, he filed his amended petition, praying an injunction to restrain the defendants from encroaching upon the ferry franchise claimed by him under the act of the territorial legislature, above referred to, and the case having been disposed of as to the other defendants, the issues between Armstrong and Walker were tried and a decree rendered perpetually enjoining Walker, which decree was taken to the supreme court of the State of Kansas, by petition in error for review, and in which case decision was rendered at the October term, 1863. (*Walker v. Armstrong*, 2 Kansas, 198.)

The court, after reviewing the facts, held that the Wyandotts had no right of ferrage good against a franchise granted by the legislature, and that Walker could get no greater rights than they had to sell and that the "United States acting in aid of the Wyandotts in transferring their property to a purchaser, and conveying in the clearest terms only the rights of the Wyandotts in said ferry," did not thereby convey to Walker any interest or easement in their own lands afterwards conveyed to Armstrong.

On the ground of the insufficiency of the evidence as to the filing of the bond by Armstrong, as required by the act of the legislature, the decree of the district court was reversed, with costs to the plaintiff, and the cause "remanded for the allowance of such amendment of pleadings as may be deemed proper and consistent with the laws of chancery practice in force when the suit was commenced and a new trial."

On the 31st of March, 1881, Walker filed his claim in the department, accompanied by a petition setting out the facts in connection therewith (copy of letter and petition herewith), and praying for the payment of said claim out of the funds belonging to the Wyandotts, or by the government.

On the 5th day of April these papers were referred to this office for report, and with letter of April 23d, following, they were returned to the department, in which letter a full statement of the facts in the case was set out, and in which it was held, without discussing the merits of Walker's claim, that the funds appropriated by the deficiency act of March 3, 1881 (21 Stat., 421), were appropriated for a specific purpose, and could not be diverted therefrom without express authority of law, and that there were no other funds belonging to the Wyandotts out of which said claim could be paid. It was also stated in said letter that if Mr. Walker's claim was just and equitable, his only remedy was to apply to Congress for relief.

On the 27th of July, 1881, the department referred to this office a letter from Messrs. Shellabarger and Wilson, attorneys for Walker, dated the 25th of the same month (copy inclosed), requesting that there be retained out of the sum of \$28,109.51, appropriated by the act of March 3, 1881, above referred to, the sum claimed, and that the same be paid to said Walker; or if that be refused, that it be retained until the facts could be presented to Congress for its action regarding the claim of Walker to be reimbursed the amount of his claim out of the sum of the said appropriation, and stating that Walker would claim in the courts and in Congress, that the *United States are liable to him therefor*.

To this communication this office replied, under date of November 16, 1881, stating

that the first request could not be complied with for the reasons stated in office report of April 23, 1881, and the question as to whether the second request was sufficient to warrant the withholding of the payment to the Wyandotts, until final action was had on the claim, was submitted for decision of the department.

Messrs. Shellabarger and Wilson in their letter also alleged that the Wyandott Indians were indebted to the United States in the amount of Walker's claim, and that it was the right and duty of the executive officer of the United States having charge of the matter to withhold the said moneys (as demanded by them) under the provisions of the act of Congress approved March 3, 1875. (18 Stat., 481.)

In letter to the department of November 19, 1881, this office expressed the opinion that, as the United States had no legally established claim of indebtedness against the Wyandott tribe of Indians, the provisions of the statute referred to could not be applied to the case under consideration.

The department returned the papers in the case to this office with letter of December 6 last, declining to consider the application for payment of the claim, or for the withholding of the moneys with that end in view. The letter transmitting the aforesaid bill, requests an expression of opinion upon the justice of the claim of said Walker, and upon the merits of the proposed measure for his relief.

As to Mr. Walker having a claim with respect to this ferry franchise against the Wyandott Indians, either legal or equitable, I am of opinion that he has none whatever.

As before seen, the Wyandotts by the treaty of 1855, ceded and relinquished to the United States all their right, title, and interest in and to their lands; the United States agreeing to assign the lands in severalty to the Indians, and to reconvey the title to individuals to whom assignments were to be made (i. e., to so much as might be assigned under the provisions of the treaty).

It is hardly necessary to say that all the right, title, or interest in and to the four acres of land in question, including whatever rights the Wyandotts may have had in the ferry franchise passed to the United States by that cession. The exceptions and reservations as to certain tracts of land contained in the concluding portion of article two of the treaty, were exceptions and reservations of the lands from subdivision, assignment, and reconveyance, and not from out the cession. The government, however, agreed to dispose of this tract of land together with the rights of the Wyandotts in the ferry, the proceeds of the sale to be paid over to the Indians.

This was one of the considerations for the cession made by the Indians of all their lands. The government agreed and undertook to carry out for the Indians this beneficial provision of the treaty. The Indians after the cession had no further right or interest in the land or the ferry. They were entitled to what would be realized from the sale thereof, and no less. They carried out their part of the contract and if the purchaser did not get a title sufficient to protect his interests it was no fault of the Indians. By the treaty the government agreed that, on payment of the purchase money in full, "a good and sufficient title" was to be "secured and conveyed to the purchaser by patent from the United States." If the United States failed to "secure" and convey to the purchaser "a good and sufficient title," it was the fault of the government, and not of the Indians and they should not be held accountable. It certainly would be a very great injustice to require these Indians to pay this claim, because, as alleged, the government failed to carry out its part of the contract.

As to whether Walker has a claim against the United States in respect of the ferry franchise in question, I have to say that while the court held in the case above cited, that if the Wyandotts had a right of ferriage, it was a common right with all others, and that such right would continue only until by the legislature an exclusive right of ferriage at that point was granted to another, and his right perfected by performance on his part; and that the Wyandotts had no right of ferriage good against a franchise granted by the legislature, and that Walker could get by his purchase from them no greater rights than they had to sell, yet the decree of the lower court, granting a perpetual injunction restraining Walker from interfering with the rights of Armstrong, was reversed and the cause remanded for the allowance of amendment of pleadings and a new trial, and, consequently, the injunction was dissolved, and the parties, as to their respective rights, were in the same position as before the suit was brought in the lower court.

There is no evidence submitted to show that Armstrong ever complied with the requirements of the act of the legislature and perfected his claim to the franchise, and without such compliance he had no better rights under the act than Walker or any one else. No evidence is submitted that a new trial was ever had and a decree entered against Walker, or that any final order was ever issued by any court. I can find no reference in the reports of the supreme court of the State of Kansas to any further legal proceedings in the case. There is nothing of record in this office to show any attempt on the part of Walker to carry the case to any Federal tribunal, appellate or otherwise, although a construction of a Federal treaty was clearly involved.

It may be contended that, under the provisions of the treaty, the United States were bound to defend Walker in his title. To this I would say that there is nothing to show

that Walker ever called upon or requested the government to defend his title, which it was clearly his duty to do.

I conclude, therefore, that Walker has no claim against the Indians, and while he has as yet no legally established claim against the government, yet it would seem if he can establish the fact that he has actually, without fault or negligence on his part, been deprived of the use of the ferry franchise as alleged, that he is equitably entitled to be reimbursed by the United States the \$7,000, purchase money paid by him, with interest thereon from the date of such deprivation, less the value of the four acres of land, and also less any benefits derived from the use of said ferry from the date of purchase to the time he was deprived of the use thereof.

The letter of the Senate committee with accompanying bill, is herewith returned.

Very respectfully your obedient servant,

H. PRICE,
Commissioner.

The committee also refer to, and make a part of their report, as a further history of the case, a letter of a former Secretary of the Interior, Hon. Caleb B. Smith, of date May 3, 1861, addressed to the then Commissioner of Indian Affairs, William P. Dole, esq.; also, a letter of the same Secretary addressed to Charles E. Mix, esq., acting Commissioner of Indian Affairs, of date September 6, 1861:

DEPARTMENT OF THE INTERIOR,
May 3, 1861.

SIR: I return herewith the papers in the matter of the claim of Isaiah Walker to the right of ferry across the Kansas River near its junction with the Missouri River, which accompanied your report of the 4th ultimo in relation to the subject.

On the 14th day of December, 1843, the Delaware tribe of Indians, being then the owners of a tract of country on the north side of the Kansas River, and adjoining the Missouri, ceded twenty-nine sections of the tract to the Wyandott Indians for certain considerations specified in the agreement of cession. This agreement was ratified by a joint resolution of Congress approved July 25, 1848.

On the 31st January, 1855, a treaty was made between the United States and the Wyandott Indians, by which the latter ceded to the United States "all their right, title, and interest in and to the tract of country situate in the fork of the Missouri and Kansas Rivers, which was purchased by them of the Delaware Indians" except certain reservations; one of these reservations is described as follows, to wit: "Four acres at and adjoining the Wyandott ferry, across and near the mouth of the Kansas River shall also be reserved, and, together with the rights of the Wyandotts in said ferry, shall be sold to the highest bidder among the Wyandott people, and the proceeds of said sale paid over to the Wyandotts on the payment of the purchase money in full, or good and sufficient title to be secured and conveyed to the purchaser by patent from the United States."

The third article of the treaty provided for the appointment of three commissioners—one by the United States, and two by the Wyandott council—to make partition of the lands in accordance with the treaty.

The commissioners appointed in accordance with the treaty filed in the Indian Office a certificate stating that they had "set apart and assigned as the Wyandott ferry tract," certain land which is described by metes and bounds, containing four acres, and which they certified was done in pursuance of the third article of the treaty between the United States and the Wyandotts. This certificate bears no date.

On the 24th April, 1858, the same commissioners filed with the Commissioner of Indian Affairs a certificate stating that, in accordance with the provisions of the treaty, they "did lay off and allot four acres of land at and adjoining the Wyandott ferry, across and near the mouth of the Kansas River; and which allotment of four acres, together with the rights of the Wyandotts in said ferry, they caused to be sold at public sale, among the Wyandott people after due notice and advertisement, for the sum of seven thousand dollars, to Isaiah Walker, one of said Wyandotts." They also certified that full payment of the purchase money had been made by said Walker to the Wyandott council, and that he was entitled to a patent for the same from the United States.

In March, 1859, Walker addressed a letter to the Commissioner of Indian Affairs requesting that his rights to the ferry should be clearly defined previous to the issue of a patent for the four acres.

In answer to this communication the Commissioner decided that Walker by his purchase had acquired such rights as the treaty vested in the Indians, and that "their control over the ferry extended to the exterior boundary in the river of the four acres of land claimed by them and now claimed by Walker, and no farther."

This decision of the Commissioner has been brought before me by an appeal.

It is shown by the evidence on file that for several years prior to the treaty of 1855 the Wyandotts kept in operation a ferry running from the four acres of land in question, on the north side of the Kansas River, to the land owned by the United States on the opposite side. It is alleged by the Commissioner that there is no evidence in the Indian Bureau to show that the United States had ever authorized their agent to grant the privileges of a ferry from the land owned by them on the south side of the river. It seems that such an authority was asserted by the agent, and whether given by the United States or not, the privileges granted by the agent, under such assumed authority, were exercised and enjoyed for several years with the acquiescence of the government, and without any attempt to prohibit or restrict them. From these facts the authority of the agent to grant the franchise might well be implied, but in addition to these facts it is shown that the ferry was in operation at the time the treaty of 1855 was negotiated, and the Wyandotts were then in the full use and enjoyment of the franchise.

The second section of the treaty of January 31, 1855, reserved "four acres at and adjoining the Wyandott ferry," and directs that the land "together with the rights of the Wyandotts in said ferry shall be sold," &c.

The seventh section of the same treaty provides that "the amount which shall be realized from the disposition of the ferry and the land connected therewith, the sale of which is provided for in the second article of the agreement, shall be paid over to the Wyandott council."

These provisions of the treaty expressly admit the existence of a ferry at that point. It is a well established principle of law that a grantor is estopped to deny the recitals contained in this deed. The principle applies as well to a treaty, which is a contract of the most imposing character, as to a deed, and is equally binding upon the government as upon an individual.

The fact that the ferry existed is distinctly admitted, and it is not competent for the government to deny the recital thus made by its agents and duly ratified by the President and the Senate.

In order to determine the extent of this admission and the obligation imposed by it on the government, it is necessary to ascertain the legal signification of the term "ferry." This is well defined in a late case decided by the supreme court of the State of Maine, in which it was held that "a ferry is a liberty to have a boat for passage upon a river for the carriage of horses and men for a reasonable toll. Its purpose necessarily requires such privileges as will make it effectual. Passengers, with their horses, carriages, &c., which may be transported, may be received and landed at the margin of the water upon the shore at all times of the tide and in all states of the river, without obligation to pay damages to a riparian proprietor, and without hinderance. The limits of the ferry are high-water mark on each side of the river." (Stat. vs. Wilson, 42 Maine Rep. 9.)

According to this definition of a ferry, the admission of the United States in the treaty that the ferry existed, was an admission of the full extent of the franchise, embracing not only the right of passage across the river, but the right of landing and of passage on both banks of the river.

The United States being at the time the owner of the land upon the south side of the river could not afterwards deny the existence of the right to the use of their land so far as its use was essential to the enjoyment of the franchise thus admitted to exist.

The provision of the second article of the treaty that "the rights of the Wyandotts in said ferry should be sold" with the four acres of land, cannot be construed as seems to have been supposed by the Commissioner as a limitation upon the extent of the ferry. To decide that "their control over the ferry extended only to the exterior boundary in the river, of the four acres of land claimed by them, and no further," would be to decide that there was no ferry, in direct contradiction of the express terms of the treaty; because if there was no right beyond the limits of the land on the north side of the river there was no ferry.

There could be no ferry without a right to the use of the land on both sides of the river as far as it was necessary for the purposes of transporting persons and property from one shore to the other.

The expression used in the treaty, "together with the rights of the Wyandotts in said ferry," can only be construed to mean the extent of the interest or ownership of the Wyandotts in the ferry. As no claim has been asserted by any other person to the ferry, and as the Wyandotts were then in the undisputed enjoyment of the franchise, the existence of which is clearly admitted in the treaty, the conclusion seems irresistible that "the rights of the Wyandotts in said ferry" amounted to a full and complete ownership. It must have been so understood when the four acres of land and the ferry were sold in accordance with the terms of the treaty. The evidence in the case shows that the four acres of land were not worth more than sixty-five dollars at the time of the sale. Walker paid for the land and the ferry seven thousand dollars, a sum

which it can hardly be supposed he would have paid for the barren right of crossing the river with his boats without the privilege of landing on the south side.

Walker, by his purchase, acquired not only a title to the four acres of land, but also the privilege of using the land on the south side of the river belonging to the United States, so far as it was necessary to the full enjoyment and use of the ferry. But the United States has since sold the land on the south side of the river, and it is claimed that they should repay to Walker the amount paid by him for the ferry. This position would doubtless be correct if, by the sale of the land, Walker had been deprived of his franchise, but such is not the case. The franchise which Walker held was an incorporeal hereditament which could not be destroyed by the sale of the land.

The purchaser of the land from the United States took his title subject to the rights of Walker growing out of the treaty and the sale, and Walker has the right to the use of the land on the south bank of the river for the purposes of the ferry notwithstanding the sale.

Very respectfully, your obedient servant,

CALEB B. SMITH,

Secretary.

WILLIAM P. DOLE, Esq.,
Commissioner of Indian Affairs.

From these letters the character of the claim, and the position of the Interior Department in respect to the same, sufficiently appear.

It is provided in the treaty of April 1, 1855, that money for which the ferry rights of the Wyandotts and the four acres of land, mentioned in the preceding letters, should be sold, was to be "paid over to the Wyandott council, and expended by regular appropriation of the legislative committee of the Wyandott Nation for the support of schools, and for other purposes of a strictly national or public character."

The proceeds of the sale have, therefore, gone for the education of the Wyandott tribe of Indians, and for other purposes thus indicated, and are beyond the reach of this bill or any other claim. The money appropriated in the act of March 3, 1881, a portion of which this bill undertakes to divert to the reimbursement of Isaiah Walker, was to be "in full payment of their claim under the treaty of February 23, 1867."

It appears, therefore, that this sum of \$28,109.51 is a sum of money due the Wyandotts by virtue of another treaty, and it is required by that treaty that it be distributed per capita among those Indians. Whatever may be the justice of the claim of Isaiah Walker upon either the United States or the Wyandott Indians, this sum of money seems to have been appropriated for a specific purpose, in fulfillment of other treaty stipulations with the Wyandotts, and there does not appear to be any power over it remaining in the United States to divert it in any manner from the application of it per capita among the remaining members of the tribe of Wyandott Indians in pursuance of such treaty stipulations. This of itself would seem to be a complete answer to the bill. The committee, however, are of opinion that Isaiah Walker is not in a situation to make a claim, upon either the Wyandotts or the United States, to have any portion of the money claimed in this bill paid over to him. He has not shown that he has been deprived by any judgment of court, of the enjoyment in full of all the United States undertook to convey to him—of the four acres of land, and the rights of the Wyandotts in the ferry mentioned in the foregoing papers. It is not disputed but what he still has the title to the four acres of land. It does not appear that any judgment of the supreme court of Kansas has dislodged him from the enjoyment of all the rights to the ferry which the Wyandott Indians ever owned. Proceedings in the courts of Kansas cited in the foregoing papers, do not show any final judgment of the court against him. At most they contain only an opinion of the court which would seem to be adverse to his title. That opinion, so far as anything appears, never went into the form of a judgment against him. If it had, the

remedy was still open to him to set aside any such judgment in the Supreme Court of the United States.

It appears to have been the opinion of Hon. Caleb B. Smith, the former Secretary, under whose administration the patent was issued to him, that the United States had not only conveyed to him four acres of land by metes and bounds, on one side of the river, along with the ferry rights of the Wyandott Indians, but had also, by necessary implication, conveyed to him the right to use so much of their own land then owned by them on the other side of the river, as was necessary for the enjoyment of those rights; and that it was not in the power of the United States, by any subsequent grant, to deprive him of such use of their land on the other side of the river. If that be a correct conclusion he still owns the right to use the land which he purchased of the United States on both sides of the river for all purposes connected with a ferry, and all the rights which the Wyandott Indians ever had to a ferry at that point. It does not appear that the United States contemplated in their sale to Isaiah Walker of these rights, conveyed to them, by treaty, from the Wyandotts, for that purpose, to guarantee to him their enjoyment against the power of the State of Kansas, by statute, to establish another ferry in proximity to this. The use of such a ferry might very much impair, if not destroy, the value of the ferry conveyed to Walker by his grant from the United States, but there is not only no express grant, but there could not be by implication any grant to Walker of the exclusive use of the land of the United States for ferry purposes. It was, at most, a grant of a use of the land of the United States necessary for the purposes of the Wyandott ferry, leaving the State of Kansas to judge for itself of the justice or necessity of establishing another ferry in that vicinity which might, in fact, deprive Walker of any profitable use of his. He must be considered to have taken his grant subject to this liability of unfriendly legislation on the part of the State of Kansas. The committee see no reason to doubt the legal conclusions arrived at by Mr. Secretary Smith in the letter which is made part of this report. For this reason the committee have come to the conclusion to recommend that the bill do not pass.

○