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Right of Way for Railroad Purposes

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IN THE SENATE OF THE UNITED STATES.

JANUARY 9, 1883.—Ordered to be printed.

Mr. COCKBELL, from the Committee on Military Affairs, submitted the following

R E P O R T :

[To accompany bill S. 2239.]

The Committee on Military Affairs, to whom was referred the bill (S. 2239) granting right of way for railroad purposes and telegraph line through the lands of the United States included in the Fort Smith Military Reservation at Fort Smith, Ark., respectfully submit the following report:

1st. By an act entitled "An act to provide for the disposition of useless military reservations" the custody and control of Fort Smith military reservation, along with other military reservations, were authorized to be transferred by the Secretary of War to the Secretary of the Interior, and the transfer, with the exception of the national cemetery within said reservation, was made as provided by said act. (See 16 Stat. at Large, pages 430, 431.)

2d. By an act entitled "An act granting to railroads the right of way through the public lands of the United States," approved March 3, 1875, supplement to Revised Statutes, vol. 1, p. 187, the right of way through the public lands is granted to any railroad company, duly organized under the laws of any State, &c., to the extent of 100 feet on each side of the central line.

But, as it might be said that the statute has reference to lands which had never been reserved, although the words of the act are sufficiently broad to cover this, as all other lands coming under the head of "the public lands of the United States," it was thought proper by the committee to communicate with the Secretary of the Interior as well as with the Secretary of War.

3d. The Secretary of the Interior, under date January 3, 1883, transmits the communication of the Commissioner of the General Land Office, in reply to the reference to him, in which, after stating the transfer, &c., of the reservation to the Interior Department, and the facts, &c., in respect to the application of the company described in the bill for the right of way, says on the point upon which the committee sought information:

In view of the foregoing opinions of this office and the department, I see no reason why the bill now before me (except so far as it relates to the cemetery reservation, relative to which I do not feel called upon to express an opinion,) should not be passed.

4th. The Secretary of War, replying under date 3d instant to the communication of Senator Maxey on behalf of the committee, says, in respect to the cemetery reservation being the only part under his control:

It further appears from said report—[being that of the Quartermaster-General to him]—that the right of way asked for, as indicated on the map presented by you, may be granted without injury to the cemetery, its inclosure or grounds.

Said map herewith accompanies this report, being the map indicating the right of way asked.

5th. The location of the reservation south of Fort Smith is on the natural route of the road to its terminal point through the Choctaw Nation, and stated by the engineer of the company to be the only practicable route in the direction of the destination of the road.

Wherefore, in view of the favorable reports of the Secretary of the Interior and Secretary of War, and that said company has the right of way through the Choctaw nation, to which this reservation is contiguous, granted by act of Congress, which requires said company to complete said road according to the terms of the act within two years from their acceptance thereof, to wit, October 28, 1882, and that the settlement of this question is necessary to make said right effective, the committee report said bill (S. 2239) back without amendment, and recommend that it do pass.