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Sale of the Cherokee Reservation

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IN THE SENATE OF THE UNITED STATES.

APRIL 30, 1886.—Ordered to be printed.

Mr. JONES, of Arkansas, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 138.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 138) to provide for the sale of the Cherokee Reservation in the State of Arkansas, have had the same under consideration, and report as follows:

Mr. Walker, of Arkansas, in the Forty-eighth Congress, made a report to the Senate on this subject, which is as follows:

The Committee on Public Lands, to whom was referred the bill S. 1574, has considered the same, and with the amendments hereinafter proposed recommend its passage.

While this tract of land is called the Cherokee Reservation, it is not in a proper sense an Indian reservation, as its name indicates. At the time the treaty of 1828 was concluded, whereby an interchange of lands was made between that tribe and the United States, their agency was located upon the lands mentioned in this bill, and in said treaty the following provision is found:

"It is further agreed that the property and improvements connected with the agency shall be sold under the direction of the agent, and the proceeds of the same applied to aid in the erection, in the country to which the Cherokees are going, of a grist and saw mill for their use."

In the subsequent treaty of February 14, 1833, the following language is found:

"And said United States will cause to be erected on said lands, for the benefit of said Cherokees, eight patent railway corn-mills, to be erected according to the stipulations of the fourth article of said treaty of sixth of May, one thousand eight hundred and twenty-eight, from the avails of the old agency."

On June 23, 1834, Congress made an appropriation of \$1,600 for the purchase of the corn-mills for the Cherokees, and in 1844 eight patent railway corn-mills were purchased by the Indian agent and paid for by the United States, costing \$200 each. Prior to 1834 an effort had been made to sell the reservation, the agent selling the same becoming the purchaser, which pretended sale was canceled. Whether the patent railway corn-mills were erected or not, as provided by the stipulation above should be done, different Commissioners of Indian Affairs seem to differ in opinion. The Indians insist that seven of them were not erected.

The eighteenth article of the treaty of July 19, 1866, reads as follows:

"That any lands owned by the Cherokees in the State of Arkansas, and in the States east of the Mississippi, may be sold by the Cherokee Nation in such manner as their national council may prescribe, all such sales being first approved by the Secretary of the Interior."

In 1866 it appears that a memorial on the part of the Cherokee Indians was filed with the Interior Department, praying a patent for said lands, upon which the Commissioner of Indian Affairs, under date of August 3, 1866, reported to the effect that the lands in question were a part of the public domain, and that the Cherokees had no interest therein. On the 14th of August, 1866, the Secretary of the Interior instructed the Commissioner of the General Land Office "to take the proper steps to bring said land into market." For want of funds to make the necessary surveys the lands were not at that time placed upon the market.

On June 1, 1877, the Commissioner of the General Land Office addressed a letter to the Commissioner of Indian Affairs, stating that application had been made for a survey and sale of the lands, and asking whether the stipulations relative to said lands under the treaties of 1828 and 1833 had been complied with on the part of the United States, or whether those obligations remained in force. In it the further statement was made that the lands were claimed by the Indians under article 18 of the treaty of July 19, 1866.

Under date of February 18, 1878, the Commissioner of Indian Affairs reported to the Department, expressing the opinion that the treaty obligations of the United States had been complied with, and that the Indians had no title to the land. He also recommended that the Commissioner of the General Land Office be instructed to treat the same as a part of the public domain, and proceed to the survey and sale thereof, whenever such course might be deemed practicable and advisable. The Secretary of the Interior concurring in the opinion of the Commissioner of Indian Affairs, on June 27, 1878, transmitted his report to the Commissioner of the General Land Office, and referred the subject to him for action. The Commissioner of the General Land Office thereupon caused the lands embraced in the reservation to be surveyed, and instructed the register and receiver at Dardanelle, Ark., that the even-numbered sections fell within the grant to the Little Rock and Fort Smith Railroad Company, and that the odd-numbered sections were subject to entry under the pre-emption and homestead laws as unoffered public lands of the United States.

Homestead entries were at once made by settlers upon the odd-numbered sections. On the 27th August, 1879, a party made application at the local land office for a homestead entry on an even-numbered section of the reservation, which was refused, and he appealed. The Commissioner of the General Land Office decided the case upon appeal, March 8, 1881, and in an elaborate opinion recites the action hereinbefore mentioned, as well as the further fact that the Commissioner of Indian Affairs, as late as August 23, 1879, adhered to his opinion of February 18, 1878, that the corn-mills had been erected. The Commissioner of the General Land Office approvingly quotes from his report of that date the following language:

"But even if the Government were in default in the full performance of its part of said agreement, such fact would not impair the *validity of the cession*. It could only, at most, give a claim to money compensation for non-fulfilled treaty obligations. *The Indian title was fully extinguished by the cession, and no failure to pay the price agreed could restore or revive it.*"

The Indians, it will be remembered, claimed title because, as they say, the corn-mills had not been erected. His conclusions were that the title is unquestionably in the United States, but that the Indian Office, the Secretary of the Interior, and all hands had overlooked the reserved condition of the lands; that, because of their reserved state, the railroad company had no interest in them whatever; and for the same reason homestead entries had been prematurely allowed, an act of Congress being necessary to relieve them from their reserved condition, and to open them to entry.

The following language is used by him in the concluding portion of his opinion:

"The action of this Department in 1866, in erroneously treating the reservation as unreserved public lands, and proposing to bring the same into market, was tantamount to an official permission to settlers to enter upon the land with a view to acquiring title under the settlement laws of the United States. The later action of this Department in 1878, and the instructions issued by this office thereunder, allowed homestead and pre-emption entries to be made upon odd-numbered sections.

"It is thus seen that settlers have been led by the acts of the Executive Department to establish themselves upon this land, and to invest their means and labor in its improvement.

"The reservation embraces 3,343.41 acres, and is situated on the Arkansas River, along the line of the Little Rock and Fort Smith Railroad, and near the town of Dardanelle.

"In 1878 there were, according to official reports, some thirty settlements on the reservation, covering about 600 acres. Other settlements may have since been made.

"The occupants who have already filed their homestead applications have done so under the authority of this Department; they have complied with all the forms of law in respect to such applications, and have paid the legal fees and commissions, which moneys have been duly accounted for and covered into the Treasury.

"Those who have been prevented from making homestead or pre-emption entries, in consequence of the instructions of this office, that the land in even-numbered sections inured to the railroad company, have scarcely less equitable rights than those who have been permitted to formally file their claims.

"As to either class of settlers it would, I think, be a hardship that ought to be avoided, if possible, to require the lands to be appraised at their present value, and thus compel the occupants to pay for their own improvements, when they have en-

tered upon and improved such lands under the authority, expressed or implied, of the Land Department of the Government.

"Besides, it is quite likely to be true that many of those now in possession would be unable to pay even the sum of \$200 or \$400 for the 160 acres upon which their homes have thus been established.

"I would, therefore, respectfully recommend that, in whatever course may be pursued for extinguishing the legal reservation, the rights of the present actual occupants should be recognized and protected, and to this end that recommendation be made to Congress for the confirmation of the homestead entries which have been allowed by the local officers, under their instructions from this Department, and for permitting other present actual settlers to prove their claims and to make entries under the homestead and pre-emption laws of the lands occupied and improved by them, the remainder of the lands to be brought into market in the usual manner."

This opinion was approved by the Secretary of the Interior March 19, 1881. There can be no question, in the opinion of your committee, as to the correctness of these conclusions.

This bill, as presented, meets with the approbation of the Commissioner of the General Land Office.

He suggests an amendment in line 17 of section 3: after the words "pre-emption laws," to add the words "or their applications under the homestead laws." To this your committee have no objections, and with this amendment recommend the passage of the bill.

This committee adopt the above report, and recommend the passage of the bill.

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