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Cedar Rapids, Iowa Falls and Northwestern Railroad Company.

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CEDAR RAPIDS, IOWA FALLS AND NORTHWESTERN
RAILWAY COMPANY.

JULY 12, 1888.—Committed to the Committee of the Whole House and ordered to be
printed.

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

REPORT:

[To accompany bill H. R. 10766.]'

Your committee, having in charge a bill (H. R. 10766) granting a right of way to the Cedar Rapids, Iowa Falls and Northwestern Railway Company, over and across the "Pipe Stone Reservation," in the State of Minnesota, beg leave to report:

The said railway company constructed, in 1884, its road under the general act granting railways the right of way over public lands; that at the time of constructing said road the owners thereof were not aware that the tract of land known as the "Pipe Stone Reservation" was different in character from any other public lands.

Your committee find that the road has been constructed and in operation nearly four years across the said reservation, occupying a strip 100 feet in width and 5,372 feet in length, and that said road in no way interferes with the treaty rights of the Indians in regard to said Pipe Stone Reservation. They therefore recommend the passage of the bill.

BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY,
LEGAL DEPARTMENT,
Cedar Rapids, Iowa, July 2, 1888.

MY DEAR SIR: At the suggestion of Mr. Ives, president and general manager of this railway company, I write you in relation to the following subject:

In August, 1884, the Cedar Rapids, Iowa Falls and Northwestern Railway Company, now leased and operated by the Burlington, Cedar Rapids and Northern Railway Company, was built through Pipe Stone County, Minn. The right of way passed over some public lands in that county, and all the requirements of Congress in relation thereto were met, such as filing a map in the office of the Commissioner of the General Land Office, etc., excepting, as it now appears the Government had reserved in that county a tract of land, known as the red pipe stone quarry, for some Indians to dig pipe stone from. This company's right of way passes over this reservation of the Indians, a distance of 5,372 feet, with a width of right of way of 100 feet.

Now, what is desired is to make application to Congress for a grant of the right of way to the Cedar Rapids, Iowa Falls and Northwestern Railway Company of its track over this Pipe Stone Reservation as now located. The right of way in no manner interferes with the purposes of the reservation to the Indians for digging pipestone, and the land is worthless for any other purpose. Now, will you introduce such a bill as is necessary for us in this matter, or advise us who to apply to carry out this purpose.

I attach hereto a copy of a letter from the Hon. A. B. Upshaw, Acting Commissioner in reference to the subject, and you will see therefrom the exact situation of affairs.

Yours, truly,

S. K. TRACY,
General Solicitor.

Hon. JOHN H. GEAR,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, June 22, 1888.

SIR: Referring to your letter of the 17th January last, relative to the construction of the Cedar Rapids, Iowa Falls and Northwestern Railway (of which the Burlington, Cedar Rapids and Northern Railway Company is lessee) over the red pipe stone quarry Indian reservation, in Pipe Stone County, Minn., I have inquired of the Commissioner of the General Land Office, and find that a map showing the definite location of said company's road from a point in the south line of section 32, township 106 north, range 45, to a point in the west line of section 26, township 108, range 47, Minnesota, and passing through the reservation named, was approved by the honorable Secretary of the Interior December 30, 1884, under the provisions of the general right-of-way act of March 3, 1875, and that said map was duly approved "as to such portions as fall outside the limits of said reservation."

I do not find that said map was ever referred to this office for action as to that portion of the road which runs through the reservation, and, indeed, this office was not aware that the road had been so constructed until its attention was called to the fact by Agent Kinney.

The eighth article of the treaty with the Yankton tribe of Sioux of April 19, 1858 (11 Stat., 746), stipulates that the Yankton Indians shall "be secured in the free and unrestricted use of the quarry," or so much thereof as they have been accustomed to frequent and use for the purpose of procuring stone for pipes," and the United States agree to be surveyed and marked so much thereof as should be "necessary and proper for that purpose and retain the same, and keep it free for the Indians to visit and procure stone for pipes so long as they shall desire."

In the execution of their agreement the United States caused so much of the quarry as appeared to be necessary and proper for the purpose of the reservation provided for to be surveyed and marked. A diagram and the field-notes of the survey were duly returned, filed, and recorded in the General Land Office and in the office of the surveyor-general of Minnesota. In February, 1860, copies of them were transmitted by the Commissioner of the General Land Office to the surveyor-general of the United States for that State, with instructions to "lay the same down" on the map of the State in his office, and to respect them when the public surveys reached this locality by closing their lines on the reservation. At this time the land included in the reservation was not surveyed; but afterwards, for some unexplained reason and in violation of the instructions, it was surveyed with other public lands in its vicinity. In July, 1872, after this survey, the Commissioner directed the surveyor-general to locate the reservation on the official plat in his office, from the field-notes and plats of the original survey, and to transmit authentic copies to the general and local land offices. If it should be impossible to locate it from these data, to direct a resurvey of the tract, so that it might be located and described upon the official plats, and its boundaries respected in accordance with the treaty.

In pursuance of these instructions the surveyor-general caused a resurvey of the quarry reserve and immediately marked it upon the official plats in his office. Its boundaries, as resurveyed, correspond and are substantially coincident with the lines of the original survey (see history of reservation in United States vs. Carpenter, 111 U. S. R., page 447, etc.).

As the general right of way act has no application in the present instance, it will be necessary for your company, should it desire to maintain its road through the reservation, to apply to Congress for a grant of a right of way. The importance of such action to the company you will not fail to perceive.

Very respectfully,

A. B. UPSHAW,
Acting Commissioner.

SAMUEL K. TRACY, Esq.,
General Solicitor, Burlington, Cedar Rapids and Northern
Railway Company, Cedar Rapids, Iowa.