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Black Bob Lands in Kansas

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IN THE SENATE OF THE UNITED STATES.

SEPTEMBER 20, 1888.—Ordered to be printed.

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

REPORT :

[To accompany bill H. R. 6364.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 6364) to provide for the sale of land allotted and patented to certain members of the Black Bob band of Shawnee Indians, and for other purposes, respectfully report the same to the Senate with a substitute, and recommend that the substitute do pass.

The original bill (H. R. 6364) provides that the Secretary of the Interior, "with the consent of the Indians severally to whom patents have been issued for lands assigned to them in what is designated Black Bob's settlement" under the treaty of May 10, 1854, with the Shawnees, is authorized to have appraised and sold in tracts not exceeding 200 acres the lands allotted and patented to said Indians "the title to which has not passed out of the patentee or his heirs, by deeds of conveyance approved by the Secretary of the Interior," or "the title to which has not passed by virtue of any decree heretofore rendered by the United States circuit court for the district of Kansas under the joint resolution of March 3, 1879."

The said bill further provides :

- (1) That the land is to be appraised at an average of not more than \$6 per acre.
- (2) That the Secretary is to offer it for sale in tracts not exceeding 200 acres.
- (3) That 200 acres is to be the limit of purchase by any one person.
- (4) That certain credits may be given for the purchase money.
- (5) That settlers in good faith who have put valuable improvements on the land may have preference in purchase of 200 acres at appraised value of 200 acres.
- (6) That other purchasers are to pay to settlers the appraised value of improvements.

And contains other provisions for effecting this general scheme of sale.

By section 3 of the House bill 6364 it is also provided as follows:

SEC. 3. That the net proceeds derived from the sale of the land herein authorized shall be placed in the Treasury to the credit of the Indians severally entitled thereto, and the Secretary of the Interior is hereby authorized to pay the same in cash to the original allottee and patentee, or the heirs at law or legal representatives of such: *Provided*, That the Secretary of the Interior shall pay to Thomas Carney, out of the proceeds of the sale of land described and set out therein, such sum or sums as he shall show, to the satisfaction of the Secretary of the Interior, he actually paid severally to the Indians from whom he obtained twenty-five several deeds of conveyance, which deeds have not been passed upon by the United States circuit court for the district of Kansas, nor received the approval of the Secretary of the Interior: *And provided further*, That the consideration named in the deeds shall not be taken as prima facie evidence of the sum so paid, but the grantee shall show by competent evidence the actual consideration paid.

The committee is of opinion that a final and equitable settlement of the controversies that remain unsettled respecting the lands referred to can be better obtained by putting the whole matter before a court of

competent jurisdiction, and they therefore recommend the accompanying substitute.

The original bill requires as the first step of procedure the consent of the Indian patentees or their heirs. This might be very inconvenient and difficult to obtain. The effort to obtain it would involve expense, trouble, and delay, and the methods exercised to influence such consent might be such as to give rise to the very questions of fraud, misrepresentation, and undue influence which now becloud the titles already obtained from the Indians. The bill, while providing for an assessment of the value of the lands, limits it to an average of \$6 per acre, which is purely arbitrary and might prove very unjust.

And without the elasticity of equitable principles, applied by a court, the whole machinery of procedure is stiff, cumbrous, arbitrary, and likely to prove unsatisfactory in the end.

The substitute is modeled upon the joint resolution approved March 3, 1879, entitled "Joint resolution instructing the Attorney-General to bring suit in the name of the United States to quiet and settle the titles of the Black Bob band of Shawnee Indians."

Under that resolution suit was brought and the titles to lands in many cases settled. The substitute bill is designed to apply the like method of settlement to cases not reached in that suit, and to phases of cases not presented in it; and is also designed to extend the plan adopted as to the Black Bob lands to other lands derived from the Indians and the titles to which are as yet unestablished.

By the substitute bill all parties interested may be brought into court, the rights of the Indians will be represented by the Attorney-General, the principles of law and equity are made applicable to the solution of controversy, and an end of it is made practicable.

It will be observed that as the law stands approval by the Secretary of the Interior of the deed of an Indian patentee to the grantee is necessary to its validity.

When the Secretary refuses such approval the status of the land is left under a cloud, and there is nowhere competent jurisdiction to remove it.

The Indian patentee has formally parted with the title by an unapproved deed; but no one would like to buy of him when another grantee claimed it.

The grantee under such unapproved deed has no means of recovering back his money or of enforcing a good title to the land. The land itself is put on mortmain, and grantor, grantee, and settler, and all conflicting claimants are without means of relief.

Such conditions impede progress and lead to infinite embarrassments on all sides.

The substitute bill affords the general and complete relief which the court of equity is competent to administer. It is framed substantially upon the plan of the substitute for H. R. 6364, offered by Senator Plumb, of Kansas, and in the judgment of the committee meets the necessities of the situation.

For convenient reference the report of the House Committee on Indian Affairs on the bill (H. R. 6364) is hereto appended.

[House Report No. 181, Fiftieth Congress, first session.]

This proposed legislation pertains to what are popularly called the Black Bob lands in Johnson County, Kansas.

By the amended second article of the treaty with the Shawnee Indians, concluded May 10, 1854 (10 Stats., 1854), the United States ceded to that tribe "200,000 acres of land to be selected between the Missouri State line and a line parallel thereto and west of the same, 30 miles distant." The same article further provides that—

"All Shawnees residing east of said parallel line shall be entitled to, out of the residue of said 200,000 acres, if a single person, 200 acres, and if the head of a family, a quantity equal to 200 acres for each member of his or her family."

It also contains the following clause:

"In the settlement known as Black Bob's settlement, in which he has an improvement whereon he resides, and in that known as Long Tail's settlement, in which he has an improvement whereon he resides, there are a number of Shawnees who desire to hold their lands in common; it is therefore agreed that all Shawnees * * * who reside in said settlements respectively, and all who shall, within sixty days after the approval of the surveys hereinafter provided for, signify to the United States agent their election to join either of said communities and reside with them, shall have a quantity of land assigned and set off to them in a compact body at each of the settlements aforesaid, equal to 200 acres to every individual in each of said communities."

On the 1st day of February, 1856, instructions were issued by the Indian Office directing the United States Indian agent for the Shawnees to take a census of all members of the tribe, and to call a council of the Shawnees with a view to the selection and assignment of lands as provided in the treaty.

From such census it appears there were 167 Indians located at Black Bob's settlement, who held their lands in common, and for them there were selected 33,392 acres and a fraction of land, and which selection was approved by the Interior Department November 2, 1857.

Article 4 of the treaty provides that—

"Those of the Shawnees who may elect to live in common shall hereafter be permitted, if they so desire, to make separate selections within the bounds of the tract which may have been assigned to them in common, and such selections shall be made in all respects in conformity with the rules herein provided to govern those who shall in the first instance make separate selections."

Article 9 declares that Congress "may hereafter provide for the issuing to such of the Shawnees as may make separate selections patents for the same, with such guards and restrictions as may seem advisable for their protection therein."

Afterwards Congress, by an act approved March 3, 1859 (11 Stats., 430), made provision for the issue of patents to certain Indians residing within the Territory of Kansas, as follows:

"That in all cases where, by the terms of any Indian treaty in Kansas Territory, said Indians are entitled to separate selections of land, and to a patent therefor, under guards, restrictions, or conditions for their benefit, the Secretary of the Interior is hereby authorized to cause patents therefor to issue to such Indian or Indians and their heirs, upon such conditions and limitation, and under such guards or restrictions, as may be prescribed by said Secretary."

In the course of time sixty-nine members of Black Bob's band made, under the direction of the United States agent for the tribe, separate selections of land, a list of which was reported by said agent, and upon the recommendation of this office, dated May 14, 1867, the Department directed the issue of patents to the individuals named therein, which was done June 10, 1867.

Afterwards sixty-five additional selections of land were made by members of Black Bob's band, a list of which was forwarded by the Indian agent for the tribe, in December, 1868, to the Indian Office, and on the 16th of March, 1869, the list was submitted to the Department, with the recommendation that individual patents issue therefor. On October 6, 1869, the Department directed the Commissioner of the General Land Office to cause patents to be issued, which was done on January 10, 1870. All patents issued to members of said Black Bob band were with the condition that the lands embraced therein were not to be sold or in any manner alienated without the consent of the Secretary of the Interior.

The United States Senate, by a resolution passed December 13, 1869, directed the Department to report for the information of that body copies of all papers on file relating to the disposal of the Black Bob lands, and requested a suspension of proceedings in the premises until Congressional action could be had in relation thereto. In compliance with said resolution, the Department, on January 15, 1870, transmitted to the Senate copies of the records and correspondence of this office pertinent to the history and status of the Black Bob Shawnee lands, and relative to sales of the same. (See Senate Ex. Doc. 40, Forty-first Congress, first session.)

The sixty-five patents were therefore not delivered, and subsequently, by the provisions of section 14 of the act of Congress approved July 15, 1870 (16 Stats., 310), the Department was "directed to withhold patents for any portion of the lands known as the Black Bob Indian lands in Kansas," and also to withhold approval "of all transfers of said lands and to permit peaceable occupancy by all settlers or Indians

now residing thereon, until further action of Congress in relation thereto, without prejudice to existing rights."

This legislation was caused by the fact that all the lands of the Black Bob band were occupied by white settlers, a large number of whom it is claimed had been led to locate thereon by a letter from D. A. Cooley, then Commissioner of Indian Affairs, dated January 20, 1866, addressed to Hon. Sidney Clarke, House of Representatives, in which Mr. Cooley stated that—

"By a treaty recently negotiated with the Black Bob band of the Shawnee tribe (of Indians) what is deemed a just provision has been made for the protection of the rights of settlers, upon payment of a fair price for the land they respectively occupy, and a similar provision will be made in any negotiations which may hereafter be made."

It does not seem that any treaty of the character referred to by Mr. Cooley was ever ratified, and the statement was doubtless an unintentional mistake, caused by the fact that the subject of providing by treaty for the settlers upon the Black Bob tract had been freely discussed.

Under the legislation above referred to the undelivered patents remained in this office, together with numerous deeds of conveyance by the Indians, unapproved, until Congress again took action in the matter by a joint resolution approved March 3, 1879 (20 Stats., 488), by which the Attorney-General of the United States was instructed to cause a suit in equity to be brought in the name of the United States in the circuit court for the district of Kansas, to quiet and finally settle the titles to the lands claimed by or under said Black Bob band in Kansas or adversely to said titles.

On June 11, 1879, Hon. Charles Devens, as Attorney-General of the United States, appointed John Hutchings, esq., of Lawrence, Kans., to appear for, present, and protect the rights of said band of Indians in said suit, and on the 8th of August, 1882, a former special assistant United States attorney, appointed for that purpose, having resigned, W. J. Buchan, esq., of Wyandotte, Kans., was appointed by Mr. Brewster, then Attorney-General, special United States attorney to conduct said suit on behalf of the United States.

Suit was brought in accordance with the resolution of Congress, and on March 29, 1884, a decree was rendered by said circuit court, affirming the validity of the 134 patents issued as hereinbefore stated.

Many conveyances had been made by the Indians of the lands patented to them, and these conveyances were confirmed by the court and subsequently approved by the Secretary of the Interior.

Thirteen additional selections of lands by members of the band that had not been approved by the Department were held valid by the court, and accordingly, except in one case, patents were issued, making 146 patents in all, covering 29,043 acres.

The court on November 22, 1886, rendered a supplemental decree covering a few additional cases. On the 27th of October, 1884, Mr. Hutchings, special counsel for the Black Bob Indians in the suit referred to, transmitted an additional list of seven selections made by members of the band, and on the 4th of December, 1884, the Department held the allotments were authorized. In December of that year W. H. Robb, esq., then a United States special Indian agent, was instructed to ascertain whether said seven selections and sixteen others of the band were properly made, and, if so, to submit a schedule thereof for the action of the Department.

Mr. Robb was also instructed to make a valuation of the lands so allotted and of the improvements thereon for the information and future guidance of the Department.

Mr. Robb submitted his report, placing the land at from \$2 to \$15 per acre, and finding the improvements which had been put there by the settlers who were in occupation of the land to range in value from \$25 to \$2,000, he suggested that some arrangement be made whereby the settlers could obtain title from the Indians at the average value of \$5 per acre. The Indian Office approved the schedule of allotments, and patents subsequently issued to twenty-one of the allottees. Since that time deeds have been filed in the Indian Office from many of these Indians, or their descendants, for approval, conveying the lands thus allotted to them to purchasers; and, with others, Thomas Carney, of Kansas, presented twenty-five deeds for approval. Representations were made to the Indian Office that the price paid by Mr. Carney was greatly inadequate, and for such reason Special Indian Agent Eugene E. White was sent to Kansas to investigate the merits of the several conveyances as to the sufficiency of the consideration named in each case and the circumstances attending the transaction, that the Indian Office might act understandingly. In April, 1866, Agent White submitted his report, in which he finds the consideration paid for the land by Carney wholly inadequate and unfair, and he reports much evidence to sustain him in his findings, and he also reports that deception and fraud were practiced to secure the deeds.

Upon the strength of this report the Interior Department has refused to approve the deeds to Carney, but has approved all the deeds presented the validity of which was established by the decree of the court of March 29, 1884.

All the lands that were patented to the said Black Bob band of Indians have been occupied by settlers for many years, some for more than thirty years, and they have built dwellings, erected school-houses and churches, and made valuable improvements on the land; and while it may be claimed that these settlers entered upon the lands as intruders and without legal right, yet in consequence of their improvements and continued occupancy, and the circumstances attending their settlement thereon, they have equities and claims which should not be overlooked by the Department or by Congress; and as there has been contention for years between these hardy pioneers and the Indians, and as the lands are now valuable and are sought by speculators, it seems to your committee that there should be some legislation fair and satisfactory to the Indians, and yet such as will enable the Department to protect the settlers in their homes and in the labor that for years they have been expending upon these lands.

Hence, as to the lands covered by the deeds to Thomas Carney, and all other lands patented to the members of the said band, conveyances of which by the Indians have not been declared valid by decree of said circuit court, or the title to which has not passed by approval of the Secretary of the Interior, it is proposed, in justice to all, that they be sold under the direction of the Secretary of the Interior in the manner provided in the bill reported by your committee herewith. This proposed legislation is simple in its provisions, and has the sanction of the Indian Office and the Interior Department, and in fact was recommended to Congress in Senate Ex. Doc. No. 111, Forty-ninth Congress, second session, and much of the data given herein is taken from the letter of the honorable Commissioner of Indian Affairs contained in such Executive Document.

As will be seen from the provisions of the bill, the land is to be appraised by disinterested parties before it is sold, and no action can be taken except where the consent of the individual Indian is obtained to the sale of the piece allotted or owned by him, and the committee is of the opinion that the bill is carefully guarded in its provisions, so that full and exact justice may be done to all.

The honorable United States district attorney for the district of Kansas, to whom was referred the question as to whether fraud and deception were practiced by Thomas Carney when securing the deeds from the Indians, as found by Agent White, entirely relieves and exonerates him from such imputations and accusations, and for such reason your committee is of the opinion that the money actually paid by him for such lands should be returned by the Secretary of the Interior from the proceeds arising from the sales provided for by the bill reported herewith.

The lands are near to Kansas City, and during the last few years have increased rapidly in value; and your committee recommend the passage of the bill.

S. Rep. 2265—2