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Absentee Shawnee Lands in Kansas

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IN THE SENATE OF THE UNITED STATES.

OCTOBER 4, 1888.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 2407.]

By treaty with the Shawnee Indians, proclaimed November 2, 1854 (10 Stats., 1053), the Shawnee Indians ceded to the United States all their lands in Kansas, amounting to about 1,600,000 acres. By the same treaty the United States ceded to the Shawnees 200,000 acres of the land embraced in the treaty, to be selected within an area bounded on the east by the Missouri State line, and on the west by a line parallel thereto, 30 miles distant, except that such of the Shawnees as were already located on tribal land improved by them, lying west of said last-mentioned line, were authorized to remain there, making selections to include their improvements, which should be considered and treated as part of the 200,000 acres ceded the tribe as aforesaid.

About four sections of land lying east of the last-mentioned parallel line were reserved for missionary, educational, and cemetery purposes, which were also to be included as part of the 200,000 acres ceded as above. The disposal of the remainder of 200,000 acres was provided for as follows: All Shawnee Indians residing east of said last-mentioned parallel line were to be entitled to 200 acres each, to be selected under limitations provided in the treaty by disinterested persons appointed by the Shawnee council and approved by the United States agent. Exception was made in favor of the Black Bob and Long Tail bands and such others as might for the time being desire to retain their lands in common—the allotments in common to be made on the basis of 200 acres for each member. The treaty further provided:

After all the Shawnees, and other persons herein provided for, shall have received their shares of the 200,000 acres of land reserved, it is anticipated there will still be a residue; and as there are some Shawnees who have been five years separated from the tribe, it is agreed that whatever surplus remains, after provision is made for all present members of the tribe, shall be set apart, in one body of land, in compact form, under direction of the President of the United States; and all such Shawnees as return to and unite with the tribe, within five years from the proclamation of this instrument, shall be entitled to the same quantity of lands, out of said surplus, and in the same manner, and subject to the same limitations and provisions as are hereinbefore made for those now members of said tribe; and whatever portion of said surplus remains unassigned, after the expiration of said five years, shall be sold, as hereinafter provided; the proceeds of all such sales shall be retained in the Treasury of the United States, until the expiration of ten years from the proclamation of this instrument, after which time, should said absent Shawnees not have returned and united with the tribe, all the moneys then in the Treasury, or that may thereafter be received therein, as proceeds of the sales of such surplus lands shall be applied to, or invested for, such beneficial or benevolent objects among the Shawnees as the President of the United States, after consulting with the Shawnee Council shall determine, and should any such absent Shawnees return and unite with said tribe, after the expiration of the period of five years hereinbefore mentioned, and before the expiration of the said period of ten years, the proper portion of any of said residue of lands, that then may remain unsold,

shall be assigned to such persons; and if all said lands have been disposed of, an equitable payment in money shall be made to them out of the proceeds of the said sales. * * * And the said Indians hereby cede, relinquish, and convey to the United States all tracts or parcels of land which may be sold or are required to be sold in pursuance of any article of this instrument.

The provisions of the treaty in regard to selections, etc., were duly carried out, and in December, 1859, patents were duly issued by the United States to the individual Indians to whom selections had been approved. The Indians mainly, if not wholly, selected the lands upon which they were already located. Among the selections made and approved there were four duplicate allotments to the following persons:

(1) Lewis Noyes, No. 175, the northwest quarter and the northeast quarter of the southwest quarter of section 29, township 13, range 23 east; also, No. 180, the southwest quarter of the northwest quarter and the southwest quarter of section 8, township 13, range 22. This latter allotment, No. 180, upon discovering that two allotments had been made to him, was canceled.

(2) George Silcambus, No. 277, south half of southwest quarter section 5; east half of northwest quarter and the northwest quarter of the northwest quarter of section 8, township 13, range 22 east; and to George B. Sacoze, alias Lacoze, No. 203, the east half of northeast quarter, southwest quarter of northwest quarter of section 19, and the west half of the northwest quarter of section 20, township 13, range 21 east. After the issue of the patents it was ascertained that George Silcambus and George B. Sacoze or Lacoze was one and the same person, and that he was also known by the name of George Silcamburg and George Blue Jacket.

(3) Nancy Whitestone, No. 325, the southwest quarter of the northeast quarter the east half of the northeast quarter and the east half of the southeast quarter of section 29, township 12, range 23, and to Martha Ann Long, now Martha Ann Shufeldt, No. 201, the southeast quarter of the northeast quarter section 20, and the northwest quarter of section 21, township 12, range 25 east. These names also were ascertained, after the issue of the patent, to represent one and the same person.

(4) Louisa McClane, No. 227, the northeast quarter and the southeast quarter of northwest quarter of section 11, township 12, range 23; and, No. 228, the northeast quarter and the northeast quarter of southeast quarter of section 19, township 13, range 25, east.

These tracts were patented in the name of the respective allottees and all were delivered, except that for Lewis Hayes, No. 150, which was never sent from the General Land Office, but it is of record there.

It will be observed that a surplus of lands after allotments to all Indians present was made was contemplated. This surplus was to be held for the benefit of such of the Indians as were absent, and after the lapse of a certain period the lands were to be sold and the proceeds held for their benefit. After the selections were made settlers went upon the surplus lands. On the 20th of March, 1863, the President directed that said surplus lands be publicly sold at the land office at Topeka, Kans., the sale to take place on the 3d day of August, 1863, but which sale was afterwards indefinitely postponed on account of the absence of a portion of said settlers from their homes in the Federal Army. Nothing further was done about the disposition of these surplus lands until 1869, when the following act of Congress was passed:

A resolution for the relief of settlers upon the absentee Shawnee lands in Kansas.

Whereas a large tract of lands set apart by a treaty with the Shawnee tribe of Indians, and proclaimed November second, Anno Domini eighteen hundred and fifty-four, for the benefit of certain absentees of the said Shawnee tribe, is now, and for

many years past has been occupied by a large number of white settlers, and citizens of the State of Kansas; and

Whereas the beneficial interest of the absentee Shawnees in said lands was and is absolutely forfeited by reason of their continued absence and non-affiliation with the said Shawnee tribe; and

Whereas the said lands were ordered to be publicly sold at the United States land office at Topeka, August third, eighteen hundred and sixty-three, by Abraham Lincoln, President, by his proclamation dated March twentieth, Anno Domini eighteen hundred and sixty-three, and by reason of the absence of large numbers of said settlers from their homes in the federal armies the same was indefinitely postponed: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That each bona fide settler now occupying said lands and having made improvements thereon, or the heirs at law of such, who is a citizen of the United States, or who has declared his intention to become such, shall be entitled to purchase the land so occupied and improved by him, not to exceed one hundred and sixty acres in each case, at the price of two dollars and fifty cents per acre, under such rules and regulations as the Secretary of the Interior shall prescribe: *Provided, however,* That the proceeds of said sales shall be applied in accordance with the provisions (of the treaty) between the United States and the said Shawnee Indians, proclaimed November second, Anno Domini eighteen hundred and fifty-four.

Approved April 7, 1869.

Under this act of Congress all the surplus lands except those hereinbefore described as covered by duplicate allotments were disposed of. The Secretary of the Interior, Hon. Jacob D. Cox, in issuing rules and regulations to carry into effect the act of March 3, 1859, above quoted, assumed that as to the lands covered by the double allotments above mentioned the title was still in the Shawnee Indians in common and subject to disposal by the Shawnee chiefs by deeds to be approved by him. In accordance with this theory the Shawnee chiefs sold by separate deeds the double allotted lands to Charles S. Wilder, Daniel S. McDougal, Z. A. Jackson, and S. A. Shepherd. The lands covered by the deed to Wilder were occupied by persons claiming as settlers under the above quoted resolution of Congress (16 Statutes, p. 53), who refused to relinquish possession. Wilder thereupon brought ejectment, but was defeated on the ground that his deed was invalid—the court holding, also, although *obiter dicta*, that the lands were not “surplus lands” within the meaning of the treaty.

They are outside the treaty. The status of the land became fixed by the selections as made and recorded, and the nearest that we can come to the spirit of the treaty is to hold them as allotted lands not taken by the allottees, and thus become the property of the Nation to be disposed of under the Government.

After the rendition of this judgment Congress, at the request of the Shawnee chiefs, made an appropriation of money out of the Shawnee funds to repay to Wilder and McDougal the amount of money which they had paid to the Indians for the land.

All the lands which were unallotted became undeniably “surplus” lands within the meaning of the treaty, even though they were not “set apart in one body of land in compact form.” The purpose of the treaty, as thoroughly expressed, was that all lands not allotted to Shawnees should be held for a time for the purpose of the location thereon of such Shawnees then absent as might return; if they did not return the lands were to be sold and the proceeds retained for their benefit. The fact that the President failed to set apart these lands in a particular form, or that by reason of an accidental circumstance he was unable to do so, could not be held to change the title of the land or to defeat one of the main purposes of the treaty.

But if the Kansas supreme court is right, according to the opinion quoted, and the land “still remains the property of the Shawnee tribe of Indians, to be held or disposed of as the Government and the Shaw-

nees may agree," the proper conditions exist to make proper the proposed legislation. By the treaty the Shawnees ceded all their lands to the United States. As to the lands not allotted to Shawnees who were present, the Government was to hold as trustee, with power of sale. The power to sell is without restriction as to price. The United States has already, by appropriate legislation, disposed of the other surplus lands; these lands are occupied by settlers who went upon them in good faith, supposing existing legislation sufficient to enable them to obtain title, and in addition the Shawnee council has requested that the settlers be permitted to purchase as proposed in this bill. The proceedings of the council are as follows:

Be it remembered that at a meeting of the head chiefs and council of the Shawnee tribe of Indians, who met in council at White Oak, Cooweeskoowe district, in the Cherokee Nation, in the Indian Territory, on the 12th day of September, 1883, the following proceedings were had:

Whereas the Senate and House of Representatives of the United States by a resolution and act approved January 11, 1875, enacted "that the terms of the resolution approved April 7, 1869, for the relief of the settlers upon the "Absentee" Shawnee lands in Kansas, should be extended to the settlers who now occupy and have improved tracts of land known and described as the east half of the northeast quarter and the southwest quarter of the northeast quarter of section 29, in township 12 of range 23 east of the sixth principal meridian; the south half of the southwest quarter, of section 5, the south half of the southwest quarter, the north half of the southwest quarter and the north west quarter of section 8, in township 13 of range 22 east of the sixth principal meridian, all located in the State of Kansas, within the boundaries of the tract ceded to the Shawnees by the treaty proclaimed on the 2d day of November, 1854; approved January 11, 1875; and

Whereas we understand that certain persons have heretofore settled upon the lands described in said resolution and have made valuable and lasting improvements thereon, and now occupy said lands under the impression that they would be entitled to buy the several tracts so occupied by them under the joint resolution of April 7, 1869; and

Whereas the act of January 11, 1875, was passed to enable said settlers to purchase said lands described in said last mentioned act upon the same terms as the settler on the Absentee land under said former act; and

Whereas we are informed that certain of the settlers upon the lands described in the act of January 11, 1875, by the permission of the Secretary of the Interior, are about to make application to purchase the several tracts so occupied by them at the price of \$2.50 per acre: Now, therefore, be it

Resolved by said Shawnee Council, That we hereby consent to and request that said settlers may be permitted to buy the several tracts so occupied by them at said price, and that the proceeds of said sales be appropriated to the use of our said tribe in accordance to the provisions of the second article of the treaty of 1854.

Witness our hands this 12th day of September, 1883.

CHARLES TUCKER,

Head Chief.

HENRY F. A. ROGERS,

Assistant Chief.

THOMAS DOUGHERTY.

C. C. IRONSIDE.

CHARLES BLUEJACKET.

JONATHAN (his x mark) BLACKFEATHER.

Witness:

SAMUEL M. CORNATZER,
Council Clerk.

True copy:

F. J. PARKE,

These lands have been occupied by settlers for the past twenty-five years. The bill under consideration provides for their sale to these settlers. It has the approval of the Interior Department, and the committee recommend its passage with certain verbal corrections.