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[Basil Moreland]

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S. Rep. No. 575, 46th Cong., 2nd Sess. (1880)

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IN THE SENATE OF THE UNITED STATES.

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MAY 6, 1880.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 1152.]

*The Committee on Indian Affairs, to whom was referred the bill for the relief of Basil Moreland, report as follows:*

In March, 1854, Basil Moreland settled upon the unsurveyed public lands in the Territory of Minnesota, on Blue Earth River. He built a good house and fenced and cultivated a considerable portion of said land. At the time of this settlement no right of pre-emption as to the unsurveyed public lands existed, but in that same year, August 4, 1854, Congress passed an act authorizing such pre-emption. On the 17th March, 1856, Moreland, having continued to reside on and cultivate said land, went to the land-office with his witnesses to prove his settlement and right of pre-emption and offered to pay the money, which was refused by the register of the land-office upon the ground that this land was embraced in a boundary recently set apart as a home reservation for the Winnebago Indians, in accordance with a treaty of February 27, 1855. He continued to reside upon and cultivate said land until the fall of 1856, when he was evicted by the agent of said Indian tribe. In the fall of 1861, the Indians having been removed to another reservation, he returned to said farm, and continued to reside on and cultivate the same until it was sold for the benefit of the Winnebagoes for \$1,212 in 1863.

The treaty with the Winnebagoes did not locate the reservation, but provided it should be on Blue Earth River, and it was surveyed and located so as to include Moreland's land, after Moreland's settlement, and after the passage of the act of August 4, 1854, by which he acquired a clear vested right to pre-empt said land, and of which his expulsion could not divest him; and when he returned to it in 1861 his rights were as complete as when he was forcibly expelled from it.

He made another effort to perfect his title by an appeal to the Secretary of the Interior, Hon. Caleb Smith, and offered to locate the land with a military land-warrant. The secretary, after a full examination of the case, in April, 1862, decided that Moreland was entitled to pre-empt said land, and directed the Commissioner of the Land Office to allow him to perfect his title by locating the same with a military land-warrant; which was done and the patent actually issued, dated April 10, 1863, but was arrested in its transmission by order of Secretary of the Interior J. P. Usher, who had succeeded Caleb Smith in the Department of the Interior.

The entry was canceled and the land-warrant returned on the ground that the treaty with the Indians was the supreme law of the land. The reasoning of the Secretary is not satisfactory, but admitting its force as a matter of law, it does not affect Moreland's equitable claim for damages. There can be no doubt of his right to pre-empt said land, and that he did all the law required of him to perfect his title, but lost his land and improvements and has never been paid for either.

An act of Congress of July 14, 1862, directed the Secretary of the Interior to examine and audit the claims of persons damaged by the treaty with the Winnebagoes. Then pre-emptors to the number of 20 presented the claims which were allowed by the Secretary, and have all been paid except Moreland (see letter of Secretary Usher to Commissioner of Indian Affairs of date April 22, 1865).

The land sold for \$1,224, the improvements were valued at \$1,200, and the committee believe that Moreland is justly entitled to this sum less the value of the land-warrant, which was returned to him, say, \$200; and they therefore recommend that the bill be amended by striking out the words \$5,500, and inserting \$2,212, in full satisfaction of all claim of said Moreland in this behalf.