

ELISHA MORELAND AND OTHERS.

[To accompany bill H. R. No. 450.]

JUNE 19, 1840.

Mr. HUBBARD, from the Committee on the Public Lands, made the following

REPORT:

*The Committee on the Public Lands, to whom was referred the petition of certain citizens of Madison county, Alabama, in behalf of Elisha Moreland, William M. Kennedy, Robert J. Kennedy, and Mason E. Lewis, asking some relief to said persons, on account of the loss of their improvements, and their right of pre-emption, as settlers on the public lands, under the act of 29th May, 1830, report :*

That it is represented by the said petition that the above-named individuals were, at the time of the passage of said pre-emption law, and for some years previous, settlers and occupants on that part of the public lands acquired from the Cherokee Indians by the treaties of 1817 and 1819, situated in said county, within the Huntsville land district. That they had each made valuable improvements on very fertile and productive land, and were entitled, under the provisions of said act, to a quarter section each, by pre-emption, at the minimum price, so as to include their improvements. It is further represented, that at the time these persons made their respective locations, the land was in a state of nature, wholly unimproved, and uninhabited by any Indian ; but that, by some imposition practised upon the agents of the Government by certain white men, whose object was to obtain for themselves, indirectly, the valuable lands these settlers had improved at so much labor and expense, a reservation was located on said land, being parts of sections 1, 2, 11, and 12, in township 3, range 2 east, in said district (so as to embrace the improvements of said settlers), under the provisions of said treaty authorizing a reservation of 640 acres for life, under certain restrictions, to each head of an Indian family, to be laid off so as to include the improvement or location of such Indian, as near the centre as practicable. It is stated that the Indian enrolled and designated, by the fraudulent practices aforesaid, as entitled to the reservation so laid out, was named Conaleskee, or Challenge, who, these petitioners represent, was not the head of any Indian family, and, of course, had no right to a reservation under said treaty. They state that said Indian was a stranger in that part of the country when said reservation was located ; had never lived there ; and that he had no color of claim to the reservation assigned him. It is represented that the several individuals for whom relief is now asked, immediately on ascertaining that the reservation for said Indian had been, by means aforesaid, located on their several settlements, and knowing that it

was fraudulently taken, and, if confirmed, would deprive them of their pre-emptions, determined to contest said claim; and for this purpose procured affidavits and proofs, showing that said Indian was not entitled to a reservation under said treaty, and especially to the one assigned him, where he had never lived, and which had not been settled; and forwarded said testimony to the proper officer, in order to have the claim examined, as other such spurious claims had been, and defeated: but, during the time this controversy was going on, certain individuals procured and sent on to Congress a petition, purporting to be in the name of said Indian, praying a special act relinquishing the interest of the United States in said reservation, confirming the otherwise fraudulent title of said Indian, and authorizing him to sell and convey it. Accordingly, a bill did pass, granting the prayer of the petition; consequently, all proceedings set on foot to show that the claim was groundless were defeated, and the several settlers prevented from obtaining their rightful pre-emptions. Soon after this law passed, the reservation was purchased from said Indian for a very inconsiderable consideration, and those who had been active in procuring the location, and the act confirming it, alone received the benefit of the grant, and not the Indian, for whom they pretended it was intended.

It is stated that the said occupants had no notice whatever of such a petition, or that such a bill was before Congress, until an act was passed. These facts appear by the representation of the said citizens, who are disinterested, as they allege; and the character of some of them is known to a portion of your committee, and they are entitled to full credit. By a letter from the Commissioner of the General Land Office, accompanying this report, and which your committee beg leave to make a part of it, it appears that, at the time the act passed, confirming the title of said Indian, affidavits had been forwarded and filed in that office to show that said claim was groundless; but that, after said act passed, all further investigation was rendered unnecessary.

From these facts, your committee conclude that, inasmuch as the said claimants had an unquestionable right to the benefits of the pre-emption act of 1830, provided the claim of said Indian to the reservation located upon their several improvements had been decided by the proper authorities to be fraudulent, which they were proceeding to establish when the act of confirmation passed, without notice to them; and as that act has put it out of their power to assert their claims, they have strong equitable grounds for relief. The petition asks that the act confirming the right of the Indian may be repealed; or, if not, such other relief as may appear reasonable. Your committee have no hesitation in saying that the right of the Indian, or the purchaser from him under the said act, is perfect, and no subsequent legislation can divest it: but the committee report a bill authorizing said settlers to enter each one quarter section of land in the same or any adjoining land district, not occupied by any other settler, in lieu of their several improvements, of which they have been deprived, by proving their respective rights to pre-emptions under the act of 1830 before the register and receiver of the land office where the application may be made, and paying therefor the then minimum price of Government lands.

GENERAL LAND OFFICE,  
January 16, 1837.

SIR: I have the honor to return the petition of Elisha Moreland and others, enclosed in your letter of the 9th instant; and, in reply to your inquiry, have to state, that, by reference to the plat of township three, of range two east, in the Huntsville district, it appears that a survey of a tract of 640 acres, as a reservation for Challenge, was made so as to include portions of sections 1, 2, 11, and 12, in that township, and the lines of the public surveys were connected with the lines of that reservation. When the Indian claim was surveyed, or under whose directions, is not known to this office; but from its not corresponding with the public surveys, it is presumed to have been made before they were executed.

The person for whom this reservation was made appears to be known by the name of Conalaskie as well as Challenge; and the only evidence in this office, going to show that such an individual was entitled to a reservation under the Cherokee treaty of 1819, consists of a printed list of persons entitled to reservations under that treaty, furnished by the office of Indian Affairs on the 19th of January, 1828, in reply to a resolution of the House of Representatives, in which, as number 82, "Kan-a-noo-lus-kah" is reported as a life-reservee.

Several affidavits have been forwarded to this office with a view of showing the fraudulent character of this reservation; but inasmuch as Congress, by the act of the 29th May, 1830 (laws, 1st session, 21st Congress, p. 126), relinquished to the reservee the reversionary interest of the United States in the land, and authorized him to dispose of it in the manner therein pointed out, this office was precluded from making any decision affecting the claim of the reservee.

I am, very respectfully, sir, your obedient servant,  
JAMES WHITCOMB,  
*Commissioner.*

Hon. R. CHAPMAN,  
*Committee on Public Lands, H. R.*