

CHARLES S. WILDER.

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DECEMBER 13, 1878.—Committed to the Committee of the Whole House and ordered to be printed.

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MR. WARNER, from the Committee of Claims, submitted the following

REPORT:

[To accompany bill H. R. 5517.]

*The Committee of Claims, to whom was referred the bill for relief of Charles S. Wilder, having had the same under consideration, respectfully report:*

That under the treaty made with the Shawnee Indians May 10, 1854 (10 Stats., page 1053), the United States ceded to said Indians 100,000 acres of lands in Kansas. Under said treaty certain portions of said lands were allotted in severalty to 697 persons of said tribe; and of these allotments there was allotted to Lewis Hayes and George Silcambur the south half of the southwest quarter of section 5 and the west half of section 8, in township 13, range 22 east, for which lands patents thereafter issued to them, according to the provisions of section 11 of the act making appropriations for the expenses of the government for the year ending June 30, 1860. (11 Stats., page 430.)

July 23, 1869, Hon. J. D. Cox, Secretary of the Interior, under the power granted to him by act of Congress approved March 3, 1869, issued certain rules and regulations to be observed in the conveyance of lands held in severalty by members of the Shawnee tribe. The 5th rule provides that in case of allotment to which the allottee shall not be entitled the chiefs of the Shawnee tribe may convey the lands by deed, the purchase-money to be paid into the hands of the Indian agent, to be held subject to the order of the Secretary of the Interior.

It was subsequently discovered that the allotments to Lewis Hayes and George Silcambur were invalid, because the same were double allotments, and said allotments were canceled on the records of the Office of Indian Affairs. Under the 5th rule, above referred to, the chiefs of said tribe, on the 15th day of September, 1869, by their deed of that date, purported to convey, and intended to convey to said Wilder, in consideration of the sum of \$2,000, the west half of section 8 and the south half of southwest quarter of section 5, in township 13 south, range 22 east.

This conveyance received the approval of the Secretary of the Interior, and would have conveyed the title to said lands if the said chiefs of the Shawnees had possessed the right to convey *these* lands under said 5th rule. The Shawnees have had the benefit of the consideration paid by said Wilder for said lands.

Prior to the execution of this deed by the Shawnee chiefs the lands mentioned in said deed had been settled upon by William Hale, David Wessinger, J. P. Woodward, and John Weekim, who claimed the same under the joint resolution of Congress for the relief of settlers upon the

absentee Shawnee lands in Kansas, approved April 7, 1869. Against these parties Wilder brought an action of ejectment in the district court of Johnson County, Kans., for the recovery of these lands. He obtained judgment in said court, and the defendants appealed. The case was decided at the July term, 1871, of the supreme court of Kansas, and is fully reported in *Hale et al. vs. Wilder*, 8 Kansas, 545. In the final decision of said cause the court, after discussing the provisions of the treaty, say:

The different selections and lists of lands were required to be made out within certain periods designated in the treaty, and were so made out, and thus the status of the land became established. The absentee lands were set apart by the President as surplus lands, in compact form, as the treaty required. The land in controversy is seven or eight miles from that body, and never could, under the provisions of that treaty, have been made a part of the "surplus," because the surplus was to be in one body, in compact form. The surplus was more than sufficient to meet the requirements of the absentees, leaving a large residue to be disposed of for the benefit of the Shawnee Nation. The tract in dispute belongs to the nation, but not as "surplus lands" under the treaty. No provision is made, under the treaty, for double allotment. They are outside of the treaty. The status of the land became fixed by the selection 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 that they thus become the property of the nation, to be disposed of under the direction of the government.

The court then discuss the right of the chiefs of the nation to dispose of these lands with the assent of the Secretary of the Interior, and conclude as follows:

If the foregoing propositions are correct, then neither of the parties to this action has any right to these lands. They still remain the property of the Shawnee tribe of Indians, to be held, or disposed of, as the government and the Shawnees may agree. They are not a part of the surplus, and therefore not covered by the joint resolution of Congress referred to; and for this reason the plaintiffs in error have no right to the lands. The title of the defendant in error is not such as the court can recognize, and therefore he could not recover.

It will be observed that the court holds that these lands were not surplus lands, and therefore could not be conveyed under the 5th rule above recited; also, that these lands belong to the Shawnee Nation, under the treaty, to be held by them, or disposed of, as they may elect; the government approving of any sale made by them. Accepting the decision of the supreme court of Kansas, your committee find that the claimant, Charles S. Wilder, acquired no title by his deed to the land described in his bill, and that he is entitled to relief. He asks to be paid out of the Treasury of the United States the amount paid for said lands with interest from the date of his payment.

It appears, from a communication addressed to your committee by the Commissioner of the General Land Office, dated March 30, 1878, that no application has been made for any part of these lands, and that they are still unsold. The price fixed for these lands is \$2.50 per acre, and the claimant paid \$5 per acre for them, a better price for them than can now be obtained for them if sold under the act of 1869 or the act of 1875.

The Shawnees having received the full value of the lands upon the pretended conveyance thereof by them to Mr. Wilder, and the equities of the said Wilder being at least equal to those of any settlers who may now be upon said lands, and in view of the *laches* of such settlers in availing themselves of the benefits of the act of 1875 to acquire a title to said lands, the committee are of opinion that said Wilder has the best equitable claim to said lands, and that the conveyance by said Shawnee chiefs to him should be confirmed by Congress. This view of the case is in accordance with the views and recommendations of the Secretary of the Interior. Your committee, therefore, report a substitute for the original bill, and recommend that it do pass.