

NEZ PERCÉ INDIAN RESERVATION IN IDAHO.

FEBRUARY 2, 1874.—Recommitted to the Committee on Indian Affairs and ordered to be printed.

Mr. BENJAMIN W. HARRIS, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 1753.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 226) authorizing the purchase of six hundred and forty acres of land for a Nez Percé Indian reservation, in the Territory of Idaho, beg leave to report:

That they find the facts bearing upon the question presented to be substantially these:

In November, 1836, Rev. H. H. Spalding and wife, missionaries to the Indians, who had left their home in New York in March of that year, under the patronage of the American Board of Commissioners for Foreign Missions, a religious corporation established under the laws of Massachusetts, and having its principal office in Boston, after an overland journey across the continent, in which they encountered great perils and endured great fatigue and suffering, arrived upon Lapwai Creek, in the now Territory of Idaho, and established their home and mission in the Lapwai Valley, about two and a half miles from the Clearwater River, and upon the land now drawn in question.

They found here a people entirely uncivilized, with not a hoe, a plow, or other implement of husbandry, with not a hoof of cattle, ignorant of letters and of agriculture, roaming at will over their wilderness country, with no permanent homes, feasting when the hunt was good, and starving upon a meager supply of fish and roots at all other seasons. This tribe had heard of the Bible, which they called the "book of heaven," and gladly welcomed the missionaries to their country, and were ready and anxious to be taught in the great mysteries of the white man's religion.

Mr. Spalding built him a log-house by the Lapwai, and soon the zealous teachers commenced the discharge of their duties, and faithfully instructed these untamed children of the forest not only in the Christian religion, but in reading and writing in the native language of the tribe, in the domestic arts, and in the art of agriculture, during the period of eleven years, and until the fall of 1847.

To the credit of this faithful Christian missionary, and his devoted, heroic wife, it should be told that during that period their settlement expanded and extended from the rude log-cottage by the Lapwai, until, in 1847, their improvements had reached to and occupied both sides of the Lapwai, at its confluence with the Clearwater River. They had planted orchards

and gardens, and cultivated fields, and had erected mills for grinding and sawing, a school-house, a boarding-house or houses, a printing-office, and store-houses and barns, and a church edifice of stone had been planned and begun. The missionaries had taken with them in the summer of 1836 a flock of twelve or fifteen cattle, and as many horses, seeds of fruit-trees, and grain for planting; and so rapid had been the progress of the Nez Percés under the teaching and example of Mr. Spalding and his wife, and their assistants, that they had numerous herds of cattle, sheep, and horses, and crops of wheat amounting to 15,000 to 30,000 bushels per annum. A church had been gathered, numbering nearly one hundred Indian communicants, and a school established at which pupils of all ages, numbering from one hundred to five hundred, attended.

The language of the tribe had been reduced by the missionaries to a written tongue, and a printing-press had been set up, a gift from the native church of the Sandwich Islands, on which had been printed, in the native language, the laws of the tribe, a small book of hymns, used by the Indians in their worship, and the book of Matthew.

The tribe had, moreover, been taught to respect the Americans, and that it was for their good to be at peace with them; and ever since, under all circumstances, they have been true to that teaching; have always abstained from violence; have never been drawn into any conspiracy against Americans, or made war upon the United States or its people.

The record of those eleven years is not only creditable to the Nez Percés as a tribe, but it speaks volumes in favor of Mr. Spalding and the society whose agent and representative he was. But for the folly, not to say crimes, of others, that missionary station would never have been broken up, and that tribe might to-day have become a much more civilized and enlightened people than they now are.

But on the 29th of November, 1847, just eleven years after Mr. Spalding reached the Lapwai, an Indian outbreak took place at Waiilatpu, a missionary station established by Dr. Marcus Whitman, who went out with Spalding in 1836 under the auspices of the American Board, on the Snake River, one hundred and twenty miles west from Lapwai, which resulted in the inhuman butchery of Dr. Whitman, his wife, and eleven other persons living at the station, and in the capture and dispersion among the Indians of about fifty persons who were at the time temporarily or permanently staying at the mission.

Mr. Spalding narrowly escaped the fate of Dr. Whitman. He was on his way to pay Dr. Whitman a visit, and to get his daughter, who had been spending some time with the family of the latter, and was near at hand when the news of the slaughter met him, and a warning was given him of the fate awaiting him. He fled toward his home, pursued by hostile Indians. After six days of alternate flight and concealment, he reached his terrified family footsore and almost starving.

He found his residence at Lapwai no longer safe. Though the Nez Percés were friendly and resorted to no acts of violence, and, on the other hand, protected and guarded Mr. Spalding and family, yet they had become excited and their action uncertain, and were likely at any moment, for their own real or fancied safety, to be swept into the conspiracy then forming among the Indians against the Americans. Mr. Spalding and his household were held prisoners, and while the Indians would allow no harm to be done them, yet their lives depended upon his being able to prevent retaliation upon the Indians by Americans for the slaughter of Whitman. If any attempt had at that time been made by an American force to punish or make war upon the Cayuses or Waiilatpu Indians, who were the authors of that atrocity, and who were friendly

with the Nez Percés, Spalding and his family would been given over to slaughter.

The following letters will better represent the position of affairs at that time than, perhaps, any other statement could :

CLEARWATER, *December 10, 1847.*

REVEREND AND DEAR FRIEND: This hasty note may inform you that I am yet alive, through the astonishing mercy of God. The hand of our merciful God brought me to my family, after 6 days and nights from the time my dear friend furnished me with provisions, and I escaped from the Indians. My daughter is yet a captive, I fear, but in the hands of our kind Heavenly Father. Two Indians have gone for her.

My object in writing principally is to give information through you to the Cayuse that it is our wish to have peace; that we do not wish Americans to come from below to avenge the wrong. We hope the Cayuse and Americans will be on friendly terms; that Americans will no more come into their country, unless they wish it. As soon as these men return, I hope, if alive, to send them to the governor, to prevent Americans coming up to molest the Cayuse for what is done.

I know that you will do all in your power for the relief of the captive women and children at Waiilatpu; that you will spare no pains to appease and quiet the Indians. There are five Americans here, my wife and three children, one young woman, and two Frenchmen. We cannot leave the country without help. Our hope, under God, is in your hands and the hands of the H. B. Co. Can help come from that source? Please let this be known to the H. B. Co. Ask their advice, and let me know. I am certain that should Americans attempt to come, it would be likely to prove the ruin of us all, in this upper country, and would involve the country. God grant that they will not attempt. At this moment I have obtained permission of the Indians to write more, but have but a moment. Please send this, or copy, to Governor Abernethy. The Nez Percés held a meeting yesterday; they pledged to protect us from the Cayuse if we would prevent the Americans from coming up to avenge the murders. This we have pledged to do, and for this we beg, for the sake of our lives at this place and at Mr. Walker's. By all means keep quiet; send no war report; send nothing but proposals of peace. They say they have buried the death of the Walla-Walla chief's son, killed in California. They wish us to bury this offense. I hope to write soon direct to Governor Abernethy; but as yet the Indians are not willing, but are willing that I should send these hints through you. I hope you will send, by all means and with all speed, to keep quiet in Willamette. Could Mr. Grant come this way it would be a great favor to us, and do good to the Indians. I just learn that these Indians wish us to remain in this country as hostages of peace. They wish the communication for Americans to be kept open. We are willing to remain so if peace can be secured. It does not seem safe for us to attempt to leave the country in any way at present. May the God of Heaven protect us and finally bring peace. These two men go to make peace, and, when they return, if successful with the Cayuse, they will go to Willamette.

We have learned that one man escaped to Walla-Walla; was crossed over the river and went below; he would naturally suppose that all were killed; besides myself, another white man escaped, wounded, and reached my house three days before I did. Late Indian report says that no women, except Mrs. Whitman, or children, were killed, but all are in captivity. This people, if the Cayuse will consent, will bring them all to this place. I traveled only nights and hid myself days; most of the way on foot, as my horses escaped from me; suffered some from cold, hunger, and sore feet; had no shoes, as I threw my boots away, not being able to wear them; also left blanket. God in mercy brought me here. From the white man who escaped, and from Indians, we learn that an Indian from the States, who was in the employ of Dr. Whitman, was at the head of the bloody affair; helped to demolish the windows, and take the property. We think the Cayuse have been urged on to do the dreadful deed. God in his mercy forgive them, for they know not what they do.

Perhaps these men can bring my horses and things. Please give them all the particulars you have been able to learn, and what news has gone below. How do the women and children fare? How extensive is the war?

In giving this information, and by sending this letter below to Governor Abernethy, you will oblige your afflicted friend.

I would write directly to the governor, but the Indians wish me to rest till they return.

Yours in affliction, and with best wishes,

H. H. SPALDING.

To the BISHOP OF WALLA-WALLA,
or either of the Catholic Priests.

CLEARWATER, *December 10, 1847.*

MY DEAR SIR: Will you have the kindness to lend me four blankets. Give two of them to these men; one to each. The five you had the kindness to let me have were among the goods plundered at Wailatpu. Please to send also 10 shirts, 10 lbs. tobacco, 12 scalpers, and 20 awls. I am in great need of these things to pay for moving my property and family up the valley some 10 miles, where the Nez Percés are camped. I reached home on foot, travelling six nights, suffering from hunger, cold, and sore feet. Mr. Canfield escaped wounded, and reached this place three days before me. There are here 5 Americans, 2 Frenchmen, and my family, except my daughter, who is yet at Wailatpu. Please let me know about the women and children, and give other information. These people have pledged to protect us if we will do all we can to make peace—to prevent the Americans from coming up to avenge the late deaths. We have agreed to do so, and hope you will have the goodness to send to Governor Abernethy, and request, for sake of our lives, that they will keep quiet. Should the Americans come up, I think it would prove our ruin, and involve the country in war. We beg you to keep quiet. The Nez Percés wish to have peace continued. Could Mr. Grant come to see us, it would be a great relief.

May the God of peace protect us, and stay the work of blood.

Yours, in love,

H. H. SPALDING.

Mr. McBEAN.

While affairs stood thus, Governor Ogden, of the Hudson's Bay Company, came to the relief of the sufferers, and took up his station at Walla-Walla, from which place he opened communication with Mr. Spalding and with the Indians, as will more fully appear from the following correspondence:

FORT NEZ PERCÉ, *December 23, 1847.*

DEAR SIR: I have assembled all the chiefs, and addressed them in regard to the helpless condition of yourself and the rest at Wailatpu, and I have got them to consent to deliver them all to me, yourself, and those with you, save the Canadians, who are safe enough among the Indians, and have now to advise you to lose no time in joining me. At the same time bear in mind, sir, you have no promise to make them or payments to make. Once more, use all diligence possible to overtake me.

Yours truly,

P. S. OGDEN.

Rev. Mr. SPALDING.

Mr. Spalding returned by the messengers who brought the above the following reply:

CLEARWATER, *December 25, 1847.*

MY DEAR SIR: Your kind favor of the 23d instant came to hand this morning. It gives us great joy to learn that you are about to rescue the captives at Wailatpu. May the Lord enable you to land them safe at Vancouver. This people are unwilling that I should leave their country, and I have promised to return and live with them, provided the melancholy affair at Wailatpu can be settled, and the Nez Percés continue friendly to the whites and keep their hands clear from blood and plunder. I shall now make haste to collect my horses, pack up, and be off. God willing, I hope to be at Walla-Walla next Saturday. The two Frenchmen stop in the country. Our company will consist of Mrs. Spalding, myself, and three children, Miss Johnson, Misses Hart, Jackson, and Canfield. I hope our little daughter has recovered her health, and that through the interposing mercy of God we shall yet meet in the land of the living. Should you find it to be your duty to leave before we can arrive, I desire that she may remain at the fort.

Your obedient servant,

H. H. SPALDING.

PETER S. OGDEN, Esq.

P. S.—I have just learned from the two who returned that the Cayuse have resolved, should they learn that the Americans purpose to come up to avenge the death of those who have been massacred, that they will immediately fall upon myself and family and the other Americans in the country, and kill all. If it is possible for you to delay till we can arrive, it may be the means of saving our lives. Should you leave before, they may feel no restraint. Moreover, if a few of your men could come and meet us, we should deem it a great favor and it would be a great protection. We throw ourselves upon your good judgment.

May the God of peace protect and deliver us all in safety at your fort.

H. H. SPALDING.

PETER S. OGDEN, Esq.

On the first day of January, 1848, Mr. Spalding and his company arrived at Walla-Walla, under the escort of fifty of his Nez Percés, and on the next day started down the river for Fort Vancouver, where they arrived on the eighth.

From this evidence it is apparent that this mission was not voluntarily abandoned or that the abandonment was expected at the time to be permanent; but that, on the contrary, Mr. Spalding left his home and the field of his great and successful labors only under compulsion, and as a matter of temporary necessity; and that, as he turned his face toward Walla-Walla, escorted and guarded by the warriors of his faithful tribe, he went intending, and promising, to return to them at the first moment when he could do so safely and with a promise of usefulness.

If the society had acquired any property in the land or any right to its occupancy either from the United States directly or by fair implication, or from the Indians, that right it still retained, and did no act which could work a forfeiture of that right. It would seem to be quite unfair to construe the departure of the faithful missionary from his home and mission, under such circumstances of danger and terror, into a voluntary abandonment and consequent forfeiture of all right. Should the United States adopt such a construction, it would be making a shabby return for great services rendered. Dr. Whitman and Mr. Spalding opened the way across the Rocky Mountains, through the South Pass, and led the emigration which peopled Oregon and Washington, and thus saved that vast region to the United States, which might otherwise by treaty have passed into British possession, and the Government will adopt no mean policy in reference to them or the society which they represent.

But we have other evidence of the cause which led to the abandonment for the time being of this mission and of the intent of Spalding as to his future return.

In the suit hereinafter named, the depositions of Mr. Spalding and of Mr. A. J. Cain, the first agent of the United States who occupied the land in question in 1859, after the Oregon war was over, were taken. In his deposition, Mr. Spalding says:

The missionaries left in 1847, by being taken away; the reasons cannot be fully stated; among the reasons, however, was the hostile conditions of, and trouble with, the Indians, the massacre of Dr. Whitman and thirteen others, and a letter from Governor Ogden, warning us and urging us to leave the country as the only safety for our lives. The Indian troubles were so severe, that all the Americans had to leave, all of which was at the instance and approval of Governor Ogden.

We did not leave with a view of abandoning the country, but intended all the time to return again. We never intended to abandon the station, but, as I have already said, we were urged and aided by Governor Ogden, and taken out of the country by his bounty. * * * My recollection is that the amount paid by Governor Ogden for my release and those with me was \$400, and for the fifty or more captives at Waiilatpu was \$700.

The subsequent conduct of the missionary will also illustrate the point as to voluntary abandonment.

Mr Spalding further says in his deposition:

We first attempted to return in June, 1848, and were prevented by Governor Abernethy, who ordered me not to go into the country, a duplicate of which order as addressed to the Catholic missionaries, of date June 15, 1848, signed H. A. G. Lee, is hereto annexed. Governor Abernethy's order was published officially in the Spectator, a newspaper published in Oregon City, Oreg., in July, 1848, and had been served on me personally. This official order closing the country against all missionaries was never open to my knowledge till the spring of 1859. During this time I took pains by inquiries of J. S. Griffin and D. R. Geary of the Indian Department, and others who had opportunities of knowing whether any order opening the country had been given. Immediately on learning that the country was open, which was about the time of the

ratification of the Stevens and Palmer treaty of 1859, I returned to resume possession, but was prevented by the agent, Mr. Cain.

In 1862, Mr. Ells, attorney for the board, and myself, attempted to get possession of the claim and survey it, giving written notice, but was prevented by Indian agent Hutchens. The agents have ever since then steadily refused to give possession. During periods of this time I have been there employed as a teacher in the Indian Department, employed by the Department, but they have always refused to recognize the right—right of the board, or my right—to occupy, under the board, the land claimed in dispute. I have never been able to get possession for the board.

The following is the order above mentioned :

FORT WASCO, June 15, 1848.

REVD. MESSIEURS: As superintendent of Indian affairs, it becomes my duty to inform you, with all due respect to your sacred calling, that it is desirable that no further missionary efforts should be made with any Indians east of the Cascade Mountains until the presence of a well organized and disciplined (force,) under command of United States officers, shall render such efforts safe and judicious. At present the relations between the whites and Indians are too precarious to allow missionary labors with the Indians to be either prudent or effective of good.

So soon as circumstances will allow, I shall take much pleasure in throwing wide the door of missionary labor among the natives, to all Christian missionaries; at present prudence demands that it be closed to all.

With much respect, I have the honor to be, your obedient servant,

H. A. G. LEE,

Superintendent of Indian Affairs.

To Messieur BLANCHETTE.

The following extracts from the deposition of Mr. A. J. Cain are also pertinent:

I have no personal knowledge of the abandonment. My knowledge of Indian affairs, from being connected with the Indian service from 1855 to 1861, and common report among both whites and Indians, satisfies my mind that he (H. H. Spalding) was *compelled* to leave the Nez Percé country. And, as late as the year 1859, I, of my own knowledge, know that it was unsafe for Mr. Spalding to attempt to occupy the mission claim, which he desired to do. Mr. Spalding visited me at Walla-Walla Valley in the year 1859, explaining to me that he desired to return and occupy the mission claim. I informed him that it would be unsafe for him to do so, in view of the then existing state of feelings among the Indians; that influential men among and of the Nez Percé tribe were claiming this mission claim as their own property, having appropriated it to themselves, and they objected to its being occupied by any white man, in view of their rights as they understood them.* I objected myself, as an Indian agent, to the occupation of the land as a missionary station, until I was officially notified that the rights of the missionary board were recognized by the Government, (this land being included in the Indian reservation,) and a more satisfactory state of feeling secured among the Indians themselves.

In the year 1862 the Rev. Mr. Ells showed me a power of attorney to him from the American Board of Missions, authorizing him to look after the mission claim known in this country as the * * * * * Lapwai mission claim. The Lapwai mission not being excepted in the reservation of land for the Nez Percé Indians, I informed him that, without instructions from my superior officers, I could make no official recognition of the claim of the missionary board to the land in question.

When the missionaries took possession of this land in 1836, they had authority for doing so, which amounted in fact to license to occupy, and by implication possibly may be construed into a promise of land enough for a permanent home. They had the following letter, followed up by the consent of the Indians themselves, and eleven years of peaceful, undisturbed occupation :

WAR DEPARTMENT, OFFICE OF INDIAN AFFAIRS,

March 2, 1836.

SIR: At the request of the Rev. Mr. Greene, of Boston, Massachusetts, I inclose to you a permit for yourself and Doctor Marcus Whitman to reside in the Indian country, among the Flathead and Nez Percé Indians.

Very respectfully, your humble servant,

ALBERT HERRING.

Rev. H. H. SPALDING,
Saint Louis, Missouri.

* The treaty setting off the reservation has just gone into effect.

The American Board of Foreign Missions have apprised the Department that they have appointed Doctor Marcus Whitman and Rev. Henry H. Spalding, both of the State of New York, to be missionaries and teachers to reside in the Indian country, among the Flathead and Nez Percé Indians.

Approving the designs of said board, these gentlemen are permitted to reside in the country indicated, and I recommend them to the officers of the Army of the United States, to the Indian agents, and to the citizens generally, and request for them such attentions and aid as will facilitate the accomplishment of their object, and protection, should circumstances require it.

Given under my hand and the seal of the War Department this 1st day of March, 1836.

LEWIS CASS.

But the title to the lands in question must be determined by the statutes of the United States.

On the 14th of August, 1848, seven and a half months after the missionaries had been thus driven out, Congress passed the act organizing a territorial government in Oregon, in the first section of which is found the following language :

And provided also : That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, and improvements thereon, be confirmed and established in the several religious societies to which said missionary stations respectively belong.

We think that, upon the state of facts before recited, it may be safely asserted as a sound legal proposition that when this law passed the American Board of Commissioners for Foreign Missions were in legal possession of the Lapwai mission lands; that the same *was then occupied as a missionary station among the Indians*, and that, therefore, said society took an absolute title to six hundred and forty acres of land, or so much thereof as would be embraced in lines including the whole of said missionary station.

The station was there, and all the buildings and improvements, the property of said missionaries, and the absence of the missionaries by constraint can make no legal difference.

But that there should be no doubt about the intention of the Government toward those missionaries and others in the same or similar situations, Congress, on the second day of March, 1853, passed the law organizing a territorial government for the Territory of Washington, (in which this was included,) the first section of which is as follows :

Provided further, That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, or that may have been so occupied, as missionary stations, prior to the passage of the act establishing the territorial government of Oregon, with the improvements thereon, be, and the same is hereby, confirmed to the several religious societies to which said missionary stations severally belong.

This language is certainly broad enough to cover the land in question; and it is so peculiarly applicable to, and so descriptive of, its then condition, that we are led to the conviction that Congress meant to describe this land once occupied as a missionary station, but then vacant for good and then well-understood cause.

We can come to no other conclusion than that, under these laws and upon these facts, the missionary society, or those claiming under them, have a title to these lands against the United States, who now holds them out by force, and right to full possession of land and improvements.

No citizen can plead a better title than this—a grant by legislative enactment. The United States cannot well repudiate it.

It has already sufficiently appeared that it was not until 1859 that it became safe for Mr. Spalding to re-occupy the mission; that, always ready himself to take the risk of returning, and always desiring so to do,

up to that time he had been prevented by public proclamation, made special as to him by being personally served upon him; and that as soon as Cain got possession in that year, Spalding appeared and asked to be allowed to go to his old home and duty, but was refused.

That he might then safely have returned to his old home and his ever-faithful Nez Percés, may be inferred from the following letters descriptive of what did occur when he was allowed afterward to go among them as a teacher :

Lewiston, February 22, 1865.

SIR: I was United States Indian agent in charge of the Nez Percé Nation, Idaho Territory, when the Rev. H. H. Spalding, who had been appointed superintendent of instruction for Nez Percé Indians by Superintendent Hale, arrived at the Lapwai agency in the fall of 1862. At the time of his arrival a great part of the tribe was collected at the agency, and I must say they seemed highly delighted at seeing Mr. Spalding again. They seemed much pleased at the idea of having a school started among them, and of having a minister who could preach to them in their own language.

Every Sabbath the Indians in great numbers attended Mr. Spalding's preaching, and I was greatly astonished at the orderly and dignified deportment of the congregation. Although Mr. Spalding had been absent from the tribe many years, yet they retained all the forms of worship that he had taught them. Many of them have prayers night and morning in their lodges. The Nez Percés have always maintained friendly relations with the Americans. This is, no doubt, in a great measure to be attributed to the influence and teachings of Mr. Spalding. In my opinion, Mr. Spalding, by his own personal labors, has accomplished more good in this tribe than all the money expended by Government has been able to effect. Not having any suitable school-house, I permitted Mr. Spalding to open his school in my office shortly after his arrival, and from that time till he was compelled to discontinue the school from severe sickness, the office was crowded not only with children, but with old men and women, some compelled to use glasses to assist their sight. Some of the old men would remain till bed-time, engaged in transcribing into their language portions of Scripture translated by Mr. Spalding. The desire I have to correct any false impression that may have gone abroad with regard to the reception of Mr. Spalding by the tribe on his return to the Lapwai in the fall of 1862, is the only apology I will offer you for troubling you with this communication.

I remain, very respectfully, your obedient servant,

J. W. ANDERSON.

S. H. ATKINS, D. D.

[From The Pacific, San Francisco, California, February 6, 1864.]

On Sunday last I had the pleasure of attending church at this place. The services were conducted in the Nez Percé language by the Rev. H. H. Spalding, who came to this people, with his heroic wife, in 1836.

The governor of the Territory was present, and all the Federal officers and nearly all the county officers, with most of the citizens of Lewiston. The large court-room was crowded to its utmost capacity. The scene was deeply solemn and interesting; the breathless silence, the earnest, devout attention of that great Indian congregation (even the small child) to the words of their much-loved pastor; the spirit, the sweet melody of their singing, the readiness with which they turned to hymns and chapters, and read with Mr. Spalding the Sabbath lessons from their Testaments, which Mr. Spalding had translated and printed twenty years before; the earnest, pathetic voice of the native Christians whom Mr. Spalding called upon to pray—all, all, deeply and solemnly impressed that large congregation of white spectators even to tears. It would be better to-day, a thousand times over, if Government would do away with its policy that is so inefficiently carried out, and only lend its aid to a few such men as Mr. Spalding, whose whole heart is in the business, who has but one desire, and that to civilize and christianize these Indians. To-day shows what can be done when the heart is right.

ALEX. SMITH,

Judge First Judicial District, Territory of Idaho.

Mr. A. J. Cain, in his deposition above mentioned, makes the following statement :

I located the agency buildings upon the land, and made use of the old log building for agency purposes for the benefit of the Government, being authorized so to do by the superintendent of Indian affairs of Oregon and Washington at that time. This mission claim was so occupied by me in 1860.

The possession so taken by Cain in 1860, in behalf of the United States, has ever since been maintained against the will of the owners and without compensation. All peaceful means to get possession of said land by the lawful owners, have been resorted to without avail. That nothing might be wanting, on their part, to protect their title and establish their rights under it, the American Board of Commissioners for Foreign Missions, on the 17th day of February, 1868, brought their action for possession of the land now in question against James O'Neil, the United States Indian agent, then holding possession of the same as such public officer, which action was returnable into, and duly entered in, the district court of the first judicial district of the Territory of Idaho, in which district and Territory said land lies.

In defense of that action, Mr. W. A. George, United States district attorney for that district, appeared and filed a demurrer to the jurisdiction of the court. That demurrer was duly and fully argued and heard before the court at the April term, 1868, Mr. George appearing for the defendant of record. The demurrer was overruled, and the defendant was given until October 7, 1869, within which to file an answer to the bill of complaint.

No answer was ever filed, and on the 20th day of December, 1871, W. G. Langford, the party who had succeeded by purchase to said land, and who had been substituted as plaintiff in said proceedings, took judgment.

No appeal was taken, which may be taken as a confession that there was no defense on the merits, and it is a confession by the United States, because the suit was really defended by the United States, and we think it will be found, on inquiry, that the cost of that defense was paid from the Treasury of the United States.

The owners of the land have reason to complain that no appeal was taken to the Supreme Court, for it is reasonable to suppose that had the Supreme Court affirmed the judgment of the district court, no United States officer of any grade, civil or military, would have held the owners out longer. As it is, the plaintiff has a judgment of the district court, upon which he is entitled to execution against one Newell, the defendant in that suit by substitution, he being successor of James O'Neil as Indian agent; but said Newell is no longer Indian agent or in possession. Another trespasser, clothed with the authority of the United States as Indian agent, has succeeded to possession, and, under instructions of his superiors, refuses to recognize the rights of the owners.

It is conceded that this mission claim has become of great value to the United States as an Indian agency, and that large sums of money have been expended by the Government in erecting suitable buildings for that purpose upon it, and that it has become an absolute necessity that the Government should keep possession of it. It is also a fact that by treaty the United States, since the title in said society became absolute, has assigned to the Indians as a reservation all the surrounding country, and made no exception of this land.

The United States must have this land. It has become necessary for public use, and private interests must yield.

But how it shall take it, is the question involved.

There can be no doubt that the persons who have the missionary society's title have a valuable interest in the land.

It will not be thought just, we apprehend, that the present relation be longer maintained.

It is not reputable that when, for the first time in twelve years, the missionary society could again have opened its school and church, and sent

its missionaries back to their charge, the Government should step in, and, disregarding not only the great and meritorious service of these faithful missionaries, rendered to the country not less than to the Indians, but the rights of property secured by the Constitution itself, and holding possession by force, at the same time provide no tribunal of justice to which the party injured may appeal against his oppressor.

It will be forever impossible for the owner or owners of this land, the United States resisting, to obtain or enjoy possession.

The only remedy is for the United States to extinguish the title to said land, whatever the same may be, which the said society or those claiming under it may have, by purchase, if possible, upon terms fair to both parties; and, if not possible, that the title in the present owner or owners be extinguished by law upon payment of the full value of the same, to be ascertained in some competent tribunal.

The bill herewith reported as a substitute for House bill No. 226 aims to provide modes by which said title may pass to the United States. It provides: 1st. For a purchase, if practicable, or, 2dly, it sends the owner or owners of said title to the courts of Idaho, and leaves all questions of the nature and extent of the title and interest to the court, and the question of the value of that title and interest to be tried by a jury of the vicinity.

The committee have confidence that, while the bill will secure the rights of the owner or owners of the land, it sufficiently guards the public interests; and they therefore recommend its passage.