

SARAH McDONALD.

FEBRUARY 24, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MUTCHLER, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 3622.]

*The Committee on the Public Lands, to whom was referred the bill (H. R. 3622) for the relief of Sarah McDonald, have carefully considered the same, and submit the following report:*

During the third session of the Forty-sixth Congress, Mr. Senator Davis, of Illinois, from the Committee on Private Land Claims, submitted a report to the Senate on Senate bill No. 1429, for the relief of Mrs. McDonald, and your committee adopt his statement of the case, as it appears in his said report, and which is as follows:

Sundry papers have been laid before the committee, among them being a communication from the Secretary of the Interior, inclosing a report to him from the Commissioner of the General Land Office, touching the subject-matter of the bill.

It appears that Alexander McDonald, of whom said Sarah is the widow and sole heir, purchased from the Leavenworth, Lawrence and Galveston Railroad Company certain land in the State of Kansas, known and described as follows: Northwest quarter of section 11 and section 13, in township 29 south, of range 18 east, paying therefor \$4,770.75, and that he purchased from the Missouri, Kansas and Texas Railway Company other land in that State, known and described as lots Nos. 1 and 2, paying therefor \$135.50, and that the companies conveyed to him by deed in fee the land purchased of them, respectively.

The companies claimed title to the lands as follows: Congress by an act approved March 3, 1863 (12 Statutes at Large, 772), granted to Kansas lands in alternate sections to aid in the construction of certain railroads in that State. The latter, by her statute of February 9, 1864, accepted the grant, and designated the Leavenworth, Lawrence and Galveston Railroad Company to construct one of the projected roads, and receive the land grant upon the prescribed terms and conditions.

The governor of the State certified to the Secretary of the Interior, September 21, 1871, that the company had filed a map and constructed and equipped the road as required by the grant. Certified lists, which by statute (10 *id.*, 346) have the force and effect of a patent, were, with the approval of the Secretary of the Interior, made out by the Commissioner of the General Land Office for the alternate sections of land within the designated limits of the road, on the certificate of the governor, under date of September 21, 1871, that the road had been constructed and equipped as required by Congress. The governor, April 7, 1872, and March 21, 1873, conveyed the lands so certified to the railroad company.

The route of the road passed through the Osage Reservation, which the Secretary of the Interior decided, January 16, 1872, was not excluded from the operation of the grant. The latter, therefore, as it was construed and executed by the Land Department, embraced all the lands of the reservation which are situate within certain specified limits on each side of the road, and, as we have seen, the company was furnished with the customary evidence of title to them. It then sold and conveyed to McDonald the section first above mentioned, situated within the reservation.

The United States subsequently filed a bill to establish its title to the lands within

the reservation which were certified to the governor of Kansas, and by him conveyed to the company. The latter was made a party defendant.

The Supreme Court, the case coming before it on appeal, decided that the grant did not embrace any part of those lands. The decree of the court of original jurisdiction enjoining the defendant from setting up any right or claim to them was affirmed. (*Leavenworth, Lawrence and Galveston Railroad Company vs. United States*, 2 Otto, 733.)

The same remarks are applicable to the grant to the Missouri, Kansas and Texas Railway Company by the act of Congress of July 25, 1866. (14 Statutes at Large, 289.)

The Supreme Court, in 2 Otto, 760, again declared that the grant did not include any lands within the reservation. Lots Nos. 1 and 2, which McDonald purchased, are within it. The company's conveyance to him pass no title. McDonald was not a party to those suits, and is not thereby bound; but inasmuch as the decrees were rendered by the court of last resort, and the action of the Land Department in certifying the lands in question was pronounced to be without authority of law and ineffectual to pass any right whatever to the company, an attempt by his widow to maintain her title against the United States, or a party lawfully claiming under them, by a valid patent would be idle and unavailing. The only question, therefore, for determination is whether Mrs. McDonald is entitled to relief, and, if so, whether it should be such as this bill provides.

McDonald, no doubt, acted in the full conviction that the company had a good title. The conviction was founded upon the action of that department of the government which is intrusted with the supervision and control of the public domain and the execution of the laws respecting it. He paid full value for the lands, entered upon and improved them, surrounded most of them with a hedge, and appropriated the remainder for grazing purposes.

Under such circumstances, a purchaser in good faith, or his heir, presents a case which is entitled to the most favorable consideration, especially as his grantor is unable to respond in damages.

Precedents for the action of Congress can be found in our legislation. We need only refer to a recent and conspicuous instance. Congress by an act approved March 3, 1866 (12 Statutes at Large, 808), granted the right of pre-emption to certain purchasers on the "Socol Ranch," in the State of California. That tract, covering about eighteen square leagues, was occupied by parties claiming under General Vallejo, to whom a grant was made by officers of the Mexican Government. The grant was pronounced by the Supreme Court, at the December term, 1861, to be void. Congress immediately passed the act authorizing parties who had purchased from him in good faith to enter their land at the minimum price. By virtue of the act of Congress of March 3, 1851 (9 *id.*, 633), the land became on the final rejection of the claim a part of the public domain; but the right of such purchasers who complied with the requirements of the act of Congress and remained in possession were held by the Supreme Court superior to that set up by parties who had intruded upon such possession and claimed a preference right to purchase under the general pre-emption laws.

Congress, by the act of August 11, 1876 (19 *id.*, 127), provided for the sale of the Osage ceded lands to actual settlers. It conferred upon those whose title is derived from either of the railroad companies, before February 25, 1874, and where the consideration money or a part thereof was paid, and who have made in good faith valuable and lasting improvements, the right to purchase the lands not exceeding 160 acres, to include their improvements. Their right to purchase is coupled with certain conditions upon which it is not material that the committee should dwell. Their right attaches from the date of payment to the railroad companies. It is limited, it will be perceived, to 160 acres.

The committee are of the opinion that the claim of Mrs. McDonald for relief is a meritorious one, and that inasmuch as her right to obtain title and possession of her deceased husband's real estate is restricted to 160 acres, and as it is probable that other persons have settled upon and acquired a right to some of the lands included in the McDonald purchase, under the provisions of the act of Congress, she should be allowed scrip for other public lands, equal in quantity to that of which her husband was deprived. They therefore recommend the passage of the bill.