46TH CONGRESS, 3d Session. } SENATE. { REPORT No. 816.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1881.—Ordered to be printed.

Mr. DAVIS, of Illinois, from the Committee on Private Land Claims, submitted the following

REPORT:

(To accompany bill S. 398.)

The Committee on Private Land Claims, to whom was referred Senate bill No. 398, entitled "A bill to restore to William G. Langford the possession of a tract of land in Idaho Territory," have had the same under consideration, and beg leave to report:

The bill provides that—

The possession of a tract of land, containing 640 acres, situate on Clearwater River and Lapwai Creek, in Nez Percés County, in the Territory of Idaho, known as the Lapwai Mission claim, now in possession of the United States Indian agency at that place, and for which William G. Langford recovered judgment in the district court of the first judicial district of Idaho Territory, in and for the county of Nez Percés, on the 9th day of October, 1869, in an action of ejectment, in which the said William G. Langford was plaintiff and Robert Newell, United States Indian agent, was defendant, and from which said Langford has been expelled, or of which he has been prevented from taking possession by the military forces of the United States or by the Indian agency aforesaid, be restored, with the improvements thereon, to the said William G. Langford, his heirs or assigns, as his own property, from the date of the deed from the American Board of Foreign Missions to said Laugford of said land.

A printed memorial of Mr. Langford, presented at some former period to Congress, a report of the Judiciary Committee of the House of Representatives of May 23, 1878, a report of the Committee on Indian Affairs to that body, of December 3, 1874, have been laid before the committee. Certain papers are attached to the memorial; but beyond them and the reports to which we have referred no evidence, documentary or otherwise, has been submitted for consideration.

It appears from the papers thus submitted that a license or permit was obtained from the proper department for Mr. Spalding and Dr. Whitman to reside in the Indian country among the Flathead and Nez Percés Indians. The permit is as follows:

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
March 2, 1836.

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

Very respectfully, your humble servant,

ELBERT HERRING.

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

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 Percés Indians.

Approving the design of the 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 attention and aid as will facilitate the accomplishment of their objects, and protection should circumstances require it.

Given under my hand and the seal of the War De partment this first day of March, 1836.

[SEAL OF WAR DEPT.] LEW. CASS.

These gentlemen shortly thereafter left their homes under the patronage of that board and repaired to the lands mentioned in the bill. Buildings were then erected, and these missionaries faithfully and zealously labored in instructing the Indians in the arts of civilization and the truths of the Christian religion.

Dr. Whitman was murdered in 1847, at a missionary station, 150 miles distant therefrom, and shortly thereafter the mission upon the lands in question was abandoned. Mr. Spalding and those associated with him in his noble work were constrained by the state of things then existing to relinquish it. They arrived at Fort Vancouver in the early part of January, 1848. No missionary station has been established there since.

The memorialist claims that the title to the lands vested in the American Board of Com missioners for Foreign Missions, under the act of August, 1848, by virtu e of the proviso attached to the first section thereof which is in these words:

Provided, also, That the title to the land, not exceeding six hundred and forty acres, *now occupied* as missionary stations am ong the Indian tribes in said Territory, and the improvements thereon, be con firmed and established in the several religious societies to which said missionary station s respectively belong.

It is obvious, however, that this act h as no bearing upon the case, for it is expressly confined to such lands only as were at the date thereof occupied as missionary stations. The act of March 2, 1853, provides:

That the title to the land, not ex ceeding 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,* together with the improvements thereon, be, and the same is hereby, confirmed and established to the several religious societies to which said missionary stations respectively belong.

This act established the Territorial government for the Territory of Washington, within the then limits of which these lands are situated.

It will be perceived that the provision is much broader in its terms than is the preceding act, and that covers the lands which may have been occupied as a missionary station prior to its passage.

Whether the term "religious societies" in that act applies exclusively to some branch of the church under whose auspices the stations were maintained, or the word "land" comprehends that to which the Indian title has not been exting uished, or whether the lands themselves were ever occupied as a missionary station within the purview of the law, are questions whi ch the committee do not deem it necessary to discuss. These lands are within an Indian reservation, and the United States have, by treaty with the Nez Percés of June 11, 1855, and June 9, 1863, agreed to reserve a tract of lan d, with specific boundaries, "for the sole use and occupation" of that trib e. These treaties will be found in the Statutes at Large (vol. 12, p. 957, and vol. 14, p. 647). The treaty of August 13, 1868, expressly st ipulates that the lands reserved by the treaty of June 9, 1863, which are not required for military purposes, or agencies, or other buildings, shall be allotted to the Indians, &c.

The Supreme Court of the United States, in Leavenworth, Lawrence and Galveston Railroad Company *vs.* United States (2 Otto, p. 733), decided that a grant of "land" in every alternate section covers only such land whereto a complete title was vested in the United States at the date of the grant. Whether that decision is applicable to the lands in question, is a matter into which the committee refrain from entering.

The grant under the act of March 2, 1853, could not, all will admit, displace the Indian title, which the United States, by reason of its obligations to the Indians, and by the most solemn treaty stipulations, is bound to maintain.

The United States has been in possession of the lands in question for the special use of an Indian agency within the Indian reservation. They are appropriated to that specific purpose and none other, and large sums of money have been expended in providing the requisite buildings and improvements to enable the government to discharge the trust it had assumed to that tribe of Indians. That possession has been held for more than twenty years. Langford claims that he recovered it in an action of ejectment brought, not by him, but by the American Board of Commissioners of Foreign Missions, in the court of the first judicial district of Idaho Territory. The judgment was rendered October 9, 1869, and he alleges that he was subsequently dispossessed by the military authorities of the United States, and the property surrendered to the Indian agent.

It seems that Mr. Langford was the attorney of the board in that suit. The fact so appears on the twenty-first page of his memorial, and the action was brought against James O'Neill.

There was a demurrer to the complaint, which was overruled. One ground of demurrer was that the land was without the jurisdiction of the court. The parties agreed to continue the cause until the following term. No answer was filed, and the memorial states that "proper substitution of parties having been made on the 9th day of October, 1869, on motion of plaintiff a judgment for restoration of the premises was entered in the usual form." It would seem that the substitution consisted in making Newell a defendant, whether with or without process does not appear, and by putting the name of the attorney as plaintiff in lieu of the client, whose right of recovery must have been asserted as inuring at the time of the commencement of the suit.

We are bound to infer that this extraordinary proceeding was considered by the court to be sanctioned by the law of Idaho. Langford took a conveyance, if he has one, when the property, by his own showing, was in the adverse possession of the United States. At that time the Board of Commissioners had, at most, nothing but a mere right of action, which, at common law, was not assignable. Upon general principles, his deed is void.

At what precise time he acquired his pretended title to the lands in question does not appear. This memorial avers that he is entitled to payment for the just value of their use, since 1860, which is $5,000 per annum, and a restoration of them; their value being, as he states, $65,000.

The United States has, as already remarked, been in possession of this property, using it for the purposes of an Indian agency, and expending thereon large sums of money. It is within an Indian reservation in which a white man, who is not an officer of the government, has no right to reside.

The suit in question was brought against an officer charged with

duties in the Indian service requiring his presence on the lands. He had no interest, right, claim, or title to them. The suit was in effect against the United States. It is obvious that such a suit cannot be rightfully maintained, and we have the express sanction of a recent decision of the Supreme Court to that effect. The United States is not, without its consent, expressed by act of Congress, subject to suit. In a limited class of cases, defined by statute, a party may maintain his action in the Court of Claims, but in no others is a court vested with jurisdiction to entertain a suit against the government.

In Carr *vs.* United States (8 Otto, 433), the question is fully and elaborately considered, and the broad doctrine announced that the United States is not estopped by proceedings against its tenants or officers. Without the consent of Congress, declared by statute, no direct proceedings will lie at the suit of an individual against the United States or its property. The court further holds that, as the United States can only hold possession of its property by means of its agents, to allow its dispossession by suit would enable parties always to compel it to litigate its rights; and, furthermore, that when the pleadings or the proof in any pending suit show that its possession is assailed, the jurisdiction of the court ought to cease. The only exceptions which the court makes are where in admiralty cases property may be in judicial possession, without violating that of the government, or where the latter seeks judicial aid to establish or reclaim its rights.

It may, therefore, be regarded as a fundamental maxim in American jurisprudence that the United States cannot be subjected to suit in any such a case as that under consideration, unless Congress has, by positive enactment, given its consent thereto, and that no court, either State or Federal, has authority to oust the government, or its tenants and officers, from real property, whereof it is in possession.

The judgment in the ejectment suit was therefore a nullity, and the sheriff who ejected the officers from the lands a trespasser, for whose wrongful act the judgment and process of the Territorial court afford no justification whatever.

The United States has always resorted to force whenever the use of it was necessary to eject trespassers from the public lands or an Indian reservation. Langford was, in the opinion of the committee, rightfully expelled from the Indian agency, into which he had unwarrantably intruded.

The United States are in the possession of the lands, the position of the parties being the same as it was before the suit was instituted; and there is nothing in the case which requires, or in the opinion of the committee justifies the action for which the bill provides.

The committee recommend the indefinite postponement of the bill.

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