69TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 636

ARCHIE EGGLESTON

MARCH 24, 1926.—Committed to the Committee of the Whole House and ordered to be printed

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

REPORT

[To accompany H. R. 4414]

The Committee on the Public Lands, to whom was referred the bill (H. R. 4414) for the relief of Archie Eggleston, an Indian of the former Isabella Reservation, Mich., having considered the same, report it favorably to the House with the recommendation that it do pass without amendment.

The above legislation has the approval of the Secretary of the Interior, as is indicated by letter of March 19, 1926, to the chairman of this committee. The attached letter from the Secretary of the Interior explains fully the reasons for the enactment of the legislation and is herein set out in full for the information of the House, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, March 19, 1926.

Hon. N. J. SINNOTT,
Chairman Committee on the Public Lands,
House of Representatives.

MY DEAR MR. SINNOTT: Further reference is made to your communication of February 19, transmitting for report copy of H. R. 4414, entitled "A bill for the relief of Archie Eggleston, an Indian of the former Isabella Reservation, Mich."

The records of this department show that a 40-acre tract of land on the Isabella Reservation in Michigan was allotted and patented to Daniel Joseph Eggleston, pursuant to the treaty of October 18, 1864. (14 Stat. 697.) The patent to Eggleston was dated February 9, 1885. The records also show that the same tract of land was previously patented to an Indian named Naw-cum-o-quay, to whom a patent in fee was issued August 29, 1872. The patent to Naw-cum-o-quay was erroneously canceled by order of the Secretary of the Interior in 1874 and the land allotted and patented to Eggleston as above stated, but in the meantime the title to the tract had been acquired by one Allen Hart, whose title was perfected by a decree rendered in the United States District Court of Michigan in a suit initiated and prosecuted by the Government on behalf of Archie Eggleston, the son and sole heir at law of Daniel Joseph Eggleston, to whom the land was patented by the Government in 1885.

As Daniel Eggleston, deceased, was entitled to an allotment of land on the former Isabella Reservation, and as he failed to receive final title to a tract regularly allotted and patented to him, and as his son, Archie Eggleston, the sole heir to his estate, has been deprived of the use and ownership of his father's allotment, this department is favorable to the proposed legislation for his relief. It is expected that a suitable tract can be purchased in Isabella County for the sum of $2,000 or less, the amount named in the pending bill, and for the reasons herein given it is respectfully recommended that H. R. 4114 receive the favorable consideration of your committee and the Congress.

The Bureau of the Budget informed this department on March 11, 1926, that the proposed appropriation is not in conflict with the financial program of the President. The papers submitted by you are returned as requested.

Very truly yours,

HUBERT WORK.

There is also hereto attached for the information of the House the opinion of Judge Arthur J. Tuttle, of the District Court of the United States for the Eastern District of Michigan, northern division, in the case of the United States *v.* Naw-cum-o-quay et al., which contains a very complete history of the controversy:

In the District Court of the United States for the Eastern District of Michigan, Northern Division. United States of America, plaintiff, *v.* Naw-cum-o-quay, Betsy Nottway, Allen Hart, and Alice Hart, his wife, and their unknown heirs, devisees, legatees, and assigns, defendants. In Equity, No. 60

OPINION

Tuttle, district judge: In this cause the United States seeks to quiet title in it of 40 acres of land, described as follows:

"All the northeast quarter of the northwest quarter of section 31, in township 15 north of range 3 west, in the township of Devver, Isabella County, Mich."

The Government introduced proofs showing that on August 20, 1872, the above-mentioned 40 acres was patented by the Government to Naw-cum-o-quay, an Indian woman, in attempted compliance with the terms of the treaty between the United States and the Chippewa Tribe of August 2, 1855, and also in compliance with the terms of the treaty between the same parties of October 18, 1864, which treaty provided among other things that in consideration of the said Indians giving up their claims to lands in the State of Michigan, the United States Government would reserve and set apart to the said Chippewa Indians all of the unsold lands within six specified townships in Isabella County, and the United States would give to each single person over 21 years of age a tract of 40 acres of said land.

Thereafter, George I. Betts, United States Indian agent, informed the Secretary of the Interior that said Naw-cum-o-quay had received another allotment of 40 acres under another name, to wit, Mary Way-me-quance, and the Secretary of the Interior caused to be written on the said patent the following: "Canceled by order of the Secretary of the Interior, dated November 21, 1874," and on December 1, 1874, the Secretary of the Interior wrote the following to the Commissioner of Indian Affairs:

The COMMISSIONER OF INDIAN AFFAIRS:

In accordance with the recommendation contained in your report of the 20th ultimo, transmitting 48 patents for land, issued to Chippewas of Saginaw, Swan Creek, and Back River, said patents, with a copy of Indian Office report, were on the 21st ultimo sent to the Commissioner of the General Land Office for cancellation, with a request that due notice of said action be given for the information of the Indian Office.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Thereafter, and also in attempted compliance with said treaties, and on February 9, 1865, the United States issued another patent to the same property to one Daniel Jsoeph Eggleston, an Indian. This patent contained the stipulation "that the land shall never be sold or alienated to any person or persons whomsoever, without the consent of the Secretary of the Interior for the time being."

The proofs showed that Daniel Joseph Egleston, the second patentee, went on the property, erected thereon a small house and a shed, and during a period of approximately seven years used the said lands. In the meantime, however, the original patentee, Naw-cum-o-quay, had transferred her interest on June 7, 1888, to one Pen-de-gay and John C. Lynch, and on, to wit, July 25, 1892, the successors in title to said Naw-cum-o-quay secured a judgment of restitution of the property mentioned before a circuit court commissioner of Isabella County, and ejected the said Daniel Joseph Egleston from the premises, and further, Allen Hart, the successor in title to said Naw-cum-o-quay, purchased a tax deed to said property from the Isabella county treasurer on December 14, 1892. The said Allen Hart then secured in himself all the claims outstanding from the purchasers of the interest of Naw-cum-o-quay, the original patentee, and either himself, or by his lessees, has been in continued open notorious and adverse possession of these premises since 1902.

Daniel Joseph Egleston died in approximately 1905 without having regained the said premises, but in 1918 Archie Egleston, the sole heir of Daniel Joseph Egleston, presented his claim before the superintendent of the Indian school in Mount Pleasant, and the Government instituted an investigation, as a result of which the suit at bar was filed on November 22, 1924, in an endeavor on the part of the Government to settle the title to the above-mentioned premises. The proofs introduced at the hearing showed that the said Naw-cum-o-quay also went by the name of Mary Way-me-quance, but it was ascertained by the court that there was another woman, a member of the same tribe, who went by the name of Mary Way-me-quance, and upon investigation it was found that she had also received an allotment from the Government.

For this reason this court finds that there is not sufficient proof to sustain the Government's allegation that the first patent to this property, viz, that to Naw-cum-o-quay, was invalid on the ground that the patentee had already received a prior allotment. On the contrary, this court finds that only one allotment was made to the said Naw-cum-o-quay and that such allotment was valid and that no reason in fact ever existed for canceling the patent issued in 1872 to Naw-cum-o-quay.

Further, this court finds that the order of cancellation of the Secretary of the Interior, dated November 21, 1874, was inoperative and invalid, inasmuch as the issuance of the patent by the executive officers of the Government had placed the fee in the patentee, and in analogy with the case of the delivery of the deed, a cancellation thereof could only be effected through a judicial proceeding.

This court can not refrain from suggesting the importance to the executive department of the Government of taking the necessary steps to place the ward of the Government, viz, Archie Egleston, in the same position where he would have been had the patent to his father been valid. The proofs in this case sufficiently indicate that Archie's father was entitled, at the time of his allotment of the land in question, to a tract of land of 40 acres under the treaties hereinbefore mentioned. They further show that the Government of the United States, in apparent compliance with the said treaties with the Indians, sought to give the father of said Archie Egleston the land to which he was entitled and this attempt has failed.

This court therefore recommends that, in view of the trust relation between the Government and its wards, the Indians, and in view of the treaties mentioned herein, a proper allotment of land be made by the Government to said Archie Eggleston, as heir of Daniel J. Egleston, deceased.

A decree will issue quieting the title to the property involved in this suit in Allen Hart.

ARTHUR J. TUTTLE,
United States District Judge.

BAY CITY, MICH., *October 29, 1925.*

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