THE STRUGGLE FOR THE HALF-BREED TRACT.

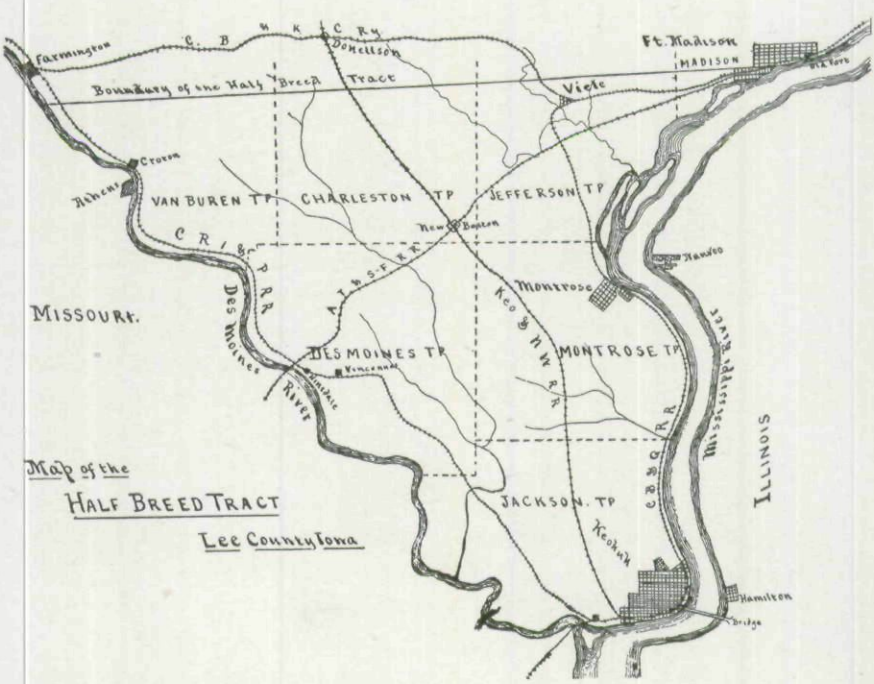
BY B. L. WICK.

The late Judge George G. Wright, in his lectures, frequently urged his students to make a study of the legal questions growing out of the half-breed lands, which occupied the attention of the courts for many years during the early days. It was due to this venerable jurist's suggestion that the writer became interested in this subject.

In order that the reader may fully understand the true situation, it will be necessary to go back and cite the early treaties which were made with the Indians, as these have a certain bearing on the questions involved.

On November 3, 1804, five Indian chiefs of the Fox and Sac nation, entered into a treaty at St. Louis, whereby they sold to the United States, fifty-one million acres of land lying between the Illinois, the Fox and the Mississippi rivers, in the then territory of Illinois. William H. Harrison, then governor of the territory of Indiana, acted on behalf of the government. The consideration paid for this vast stretch of country, was protection on part of the government, and goods delivered to the amount of $2,234.50, with an annuity, paid in goods, of $600.00 to the Sacs, and $400.00 to the Foxes, forever. It was further provided that, as long as the government held the lands, "the Indians belonging to the said tribes shall enjoy the privilege of living and hunting upon them". The tribes always maintained that the chiefs had no power or authority to make such a treaty, as they had been sent to St. Louis to obtain the release of an Indian who had been imprisoned for the killing of a white man, and consequently were not empowered to relinquish the title to any lands which the tribes held or occupied.

This treaty was made at the time that the government took possession of the Louisiana purchase at St. Louis.



MAP OF THE HALF-BREED TRACT.

It shows the extreme southern limit of the State of Iowa, with adjacent portions of Illinois and Missouri. Compiled from original sources by Mr. C. S. Byrkit, late Deputy Secretary of State.

Black Hawk was present, but he and his followers failed in any way to recognize the American government.

The Indians never accepted this treaty as binding upon themselves as tribes, still the United States, in every subsequent treaty, forced the Sacs and Foxes to re-affirm the treaty of 1804. In the treaty of September 13, 1815, entered into with the Sacs, the treaty of 1804 was re-affirmed, and the same was done in the separate treaty entered into with the Foxes on the following day.

In a later treaty with the Sacs of Fox river, made at St. Louis, May 13, 1816, by William Clark, Auguste Chouteau and Ninian Edwards, commissioners on behalf of the government, and twenty-two chiefs and head men of the Indian nation, the treaty of 1804 was again re-affirmed. This treaty Black Hawk also signed, or "touched the goose quill," as he expressed it. It is apparent that the treaty of 1804 gave the commissioners much trouble, and hence it was sought to mention its provisions in every subsequent treaty entered into by the various government representatives.

Later, another treaty was made in Washington, D. C., between the United States and the Sac and Fox nations. William Clark was the commissioner and ten duly appointed and qualified Indian chiefs and head men represented the Indian tribes. This treaty was executed on August 4, 1824, and ratified on January 18, 1825. By its provisions the Indians disposed of all their right and title to the northern portion of the state of Missouri from the river to the western borders of that state. By this treaty 119,000 acres of land were reserved to the half-breeds of the Sac and Fox nations; this land is described as lying between the Des Moines and the Mississippi rivers, and south of a line drawn from a point one mile below Farmington, east to the Mississippi river, touching the town of Ft. Madison, and including the town of Keokuk, and all of the lands lying between said line and the junction of the rivers.

The title to this land was the same as other Indian titles,

the United States retaining a reversionary interest in the land and depriving the holders thereof of the right to sell or dispose of it. A half-breed by the name of Morgan, is said to have been the person who made such an eloquent plea for his people, that he won over the government officials to reserve this valuable tract of land for the use of the people of his color.

It is a much mooted question who secured for the half-breeds this immense tract of valuable land. Captain James W. Campbell, son of Isaac R. Campbell, who, as a boy, came to Iowa in 1830, in a public speech made in 1875, claimed that the honor belonged to Maurice Blondeau, a jolly Frenchman, who had for years prior to the enactment of the treaty, been a sort of mediator for the Indians with the government officials. He was a brother-in-law of Andrew Santamont, who had a step-son by the name of Frank Labessa, the best interpreter among the Sacs and Foxes in early days.

The American Fur Company had posts on both sides of the Mississippi river during the first quarter of the last century. The agents had Indian wives, and brought up large families; hunters and trappers came also and located along the rivers and put up log huts and brought their squaws and reared families. The same might be said of many of the soldiers who moved about from one place to another protecting the early settlers during the Indian wars. Thus in a few years there sprang up a mixed population among the Indians on the borders. Some adopted the blanket, and took up the wandering lives of the Indians, while others, too proud to reside in the wigwam, tried to make a place for themselves and their children among the white settlers now related to them by ties of kinship.

Julien Dubuque had an Indian wife, and so had many of his French Canadians. The second white settler in Iowa, Chevalier Marais, in the year 1812 married the daughter of the chief of the Ioway Indians. Dr. Samuel C. Muir, a native of Scotland, and a surgeon in the United States army,

was stationed at Ft. Edwards, now Warsaw, Illinois. He had taken to wife a Fox maiden, and when the government later issued an order for all officers in the army to abandon their Indian wives, the Doctor resigned his office, saying, as he held up to public view his infant daughter, "May God forbid that a son of Caledonia should ever desert his child or disown his clan." He died in Keokuk in 1832, from cholera, survived by a widow and five children. The property was wasted in litigation, and this "brave and faithful wife, left friendless and penniless," at last returned with her children to her own people on the upper Missouri.

At Farmers' Point, which was founded in 1831, there were a number of white settlers who had Indian wives. Antoine Le Claire, one of the founders of Davenport, took for his wife, the granddaughter of a Sac chief, and he, himself, was the son of a granddaughter of a Pottawattamie chieftain. John Conelly, J. Forsyth, James Thorn, J. Tolman, employees of the American Fur Company, all had Indian wives. Lemoleise, a French trader, who lived near the place called Sandusky, in Lee county, had an Indian wife. Henry J. Carbell married a Winnebago maiden, and even the daughter of Black Hawk, who all his life was an enemy of the whites, was engaged to a merchant of Ft. Madison, but the engagement was broken off.

From existing conditions, as regards the mixture of races in this part of Iowa at the time, it would seem that what the friends of the half-breeds so eloquently contended for, before the treaty was signed, was just and sensible, and had matters gone as they had hoped, we might to-day have had a settlement in southeastern Iowa of thrifty, law-abiding people, as proud of their Indian blood as was John Randolph of Roanoke.

During the year 1833, a meeting of half-breed Indians was held at Farmers' Trading Post, to prepare a petition to Congress requesting the passage of an act authorizing the half-breeds to sell and dispose of the land holdings granted

them by the treaty of 1824. Congress it seems, on June 30, 1834, passed an act, whereby the government relinquished to the half-breeds, as a class, the reversionary interests it held, together with power to convey. (4 Stat. at Large, p. 740.) It was due to the mistake or the carelessness of this act by Congress, that the half-breeds became possessed of a fee simple title which caused the trouble.

Many questions arose in the construction of this statute. One of the first raised by the courts was, who are the half-breeds for whom this tract is intended? It is not questioned but that it was intended to be for the use of the whites of the Sac and Fox nations, who did not wear a blanket, and who were not entitled to annuities conferred upon the Indians of those tribes. It was further contended that the half-breeds preferred the annuities as many had decided to reside among the Indians; all agreed that they would be willing to accept the lands and annuities both. Soon the half-breed tract became one of the most active real estate localities in the west. It is stated on good authority that one Indian trader at Agency, now Agency City, purchased claims worth several thousand dollars, for a horse, a pony, a saddle, or a barrel of whiskey. Keokuk, as chief of the tribe, would attach his signature to the paper, to the effect that a certain person was a half-breed, and related by blood to the Sac and Fox nation. The person was easily influenced to partake of whiskey, and would then dispose of his title for a pony to some land-shark. So many transactions of this kind went on, that all these land contracts became known in law, as "blanket claims."

We must not, however, imagine that all this fraud was carried on by the whites alone. The Indians, on the other hand, soon discovered how they could take advantage of the situation, and soon those of mixed blood would get some Indian to swear that they were of Sac and Fox blood, and would dispose of land to which they held no title whatever. There were no boundary lines, no proper surveys, and as a

result conflicts arose which effected the titles for years afterwards. The main difficulty seems to have been that the right to sell was not given to individual Indians, but to the half-breeds as a class.

The act of Congress was silent as to the method to be used in dividing the land, and soon full-blooded and half-breed Indians sold land without regard to any legal rights. Often the same tract would be sold to several persons. Whites had located on this land as squatters, believing that as soon as it was thrown open to settlement, they would come in as original settlers, hoping that title was still in the United States. Thus there might be on the same land, half-breeds, Indians, speculators and squatters, all claiming title to the land through some pretext or other.

A number of companies were organized to deal in half-breed lands, the most important being the New York Land Company, and the St. Louis Land Company, the latter company being finally absorbed by the former. Henry S. Austin, an attorney of New York, located at Montrose in 1837, and with Dr. Isaac Galland as agent, looked after the interests of the New York Company.

The territorial legislature of Wisconsin on January 16, 1838, passed an act requiring all persons claiming land under the half-breed tract to file their respective claims with the clerk of the District Court of Lee county, within one year, showing the nature of the title upon which they relied. The same act provided that Edward Johnston, Thomas S. Wilson and David Brigham were appointed commissioners to take testimony as to the titles claimed by the respective parties at a per diem salary of $6.00.

Lands not thus disposed of were to be sold and the proceeds to be divided among such half-breeds as could properly establish their claims and had not otherwise been fully paid in lands. The two commissioners, Wilson and Johnston, began in the spring of 1838, and sat for two years hearing the claims of the half-breeds. It seems that their

labors were displeasing to the people or to the parties dealing in half-breed titles. A considerable pressure was brought to bear upon Col. William Patterson and Hawkins Taylor, who were members of the territorial legislature, and at the First Legislative Assembly, 1838-39, a repealing law was passed which legislated the commissioners out of office. At the same session a law was enacted to partition this land, and as soon as the new law took effect, a suit for partition was brought by parties in St. Louis, and after nearly a year's litigation, an agreement was entered into by the contending parties, and still other questions of law were left for the court to decide.

The same act also provided that the commissioners should bring suit against the land for their services, thus depriving of their lands the half-breeds, who had had no part in making the selection, or of approving the method devised to settle affairs. Suits were accordingly brought, and the entire tract of land, consisting of 119,000 acres, was sold to Hugh T. Reid, an attorney, for the sum of $5,773.32. The sheriff executed a deed to Reid for the lands thus sold, and he became, and has held to this day the record for having been the largest land owner within our borders.

The Legislature had enacted a law that any tenants in common, on lands which they were in possession of, might bring suits in partition. Under this law, a large number of suits were brought in Lee county, by claimants and their grantees, for partition of the half-breed tracts among the respective owners. Judgments were rendered for plaintiffs, and a commission was appointed dividing the lands into one hundred and one shares. The actual squatters were not silent, and remained active, as they had spent considerable money in improvements, and some had actually obtained "straw titles" to these lands.

The Legislature of 1839 passed an act for the benefit of the white settlers. The act provided that any person who had color of title, and had settled upon the land, and had

made improvements thereon, before being dispossessed of such lands, should be paid full value for such improvements. The Legislature of 1840 passed a supplemental act authorizing any settler on the half-breed tract, who had some color of title to the same, to select not more than one section, and hold such land till the title was finally settled. A receipt paid for taxes should be evidence of title to enable the person to hold such land. The next session followed this up by passing a law that the white settler was to have a lien on the land for improvements which he had made. During the session of 1848 another act was passed permitting the defendant in an action of ejectment to raise the question of fraud in procuring title by the plaintiff, whatever the nature of title might be, and the allegation of fraud should be investigated by the judge. (See Chap. 4, Sess. 1839-40.)

Now a long fight began in the courts, and it was not now a fight over the rights of the half-breeds, as these unfortunate people, for the most part, had disposed of all their holdings, for a mere song, to the powerful land companies, or their agents. The Legislature, by its various acts, had tried to protect the actual white settlers against the claims of the speculators, who were seeking to get possession of these lands, which had become the most valuable in the territory.

At the January term, 1846, of the Supreme Court, the case entitled "Joseph Webster, plaintiff in error, vs. Hugh T. Reid, defendant in error," was decided by the court, composed of Charles Mason, Joseph Williams and Thomas S. Wilson. This case involved the title to one hundred and sixty acres of land, and the court held that Reid, who had previously purchased the 119,000 acres for less than six thousand dollars, was the owner in fee simple of this land.

In 1841, Johnston & Reid, as attorneys for the St. Louis claimants of the half-breed lands, filed a petition in the United States Court for a decree of partition. Francis Scott Key, author of the "Star Spangled Banner," who was

then an attorney for the New York Land Company, also holding forty-one shares in these lands, drew up the decree, by which the half-breed tract of land was divided into one hundred and one shares, and arranged that each claimant should draw his portion by lot, and that he should abide the result whatever it might be. This decree was signed May 8, 1841, and for more than ten years litigation continued. By agreement, a plat was filed of record October 6, 1841. According to that plat, titles to half-breed lands are now held.

The Court held as follows: "That the act of Congress of 1834, vested the right and title in the half-breed Indians, all the right the United States had, with power to the half-breeds to transfer their portions by sale, descent or devise, according to the laws of the State of Missouri." Neither the treaty nor the act of Congress mentioned the names of persons who could take under the law, and it was for this reason that the territorial legislature, on January 18, 1838, with a view to ascertain who were the real owners, appointed the commission to pass upon the titles and to set aside these lands in severalty.

The grounds upon which Webster rested his case were as follows:

1. That he was a purchaser in good faith of the land from Na-mau-tau-pus, a half-breed Indian of the Sacs and Foxes, and that other Indians had so testified and made oath.

2. That he had resided on these lands and made improvements thereon.

3. That no notice had been personally served upon the defendant, Webster.

4. That plaintiff had been one of the attorneys in the case, that the sale had never in fact taken place, and that the return of the sheriff was false.

Another question raised in the case was, the meaning of Indian titles. The court held that the half-breeds held the land in common, and could not dispose of it without the

consent of the United States, but that the later act conferred this fee simple title and hence the act of 1834 conferred the right to sell and dispose of land on certain conditions.

Another question decided was, that although a legislature could not by law destroy vested rights, it did have a legal right to create and augment them. The case is reported in Morris, page 467. Another case was brought by Reid against Wright, which was decided at the May term, 1849, adversely to Reid. The court at that time was composed of John F. Kinney, George Greene and Joseph Williams.

Judge Kinney wrote the opinion, holding, "That it is the right and duty of the judicial power in the state, to declare all acts of the legislature made in violation of the constitution, to be void, and that the legislature of Wisconsin territory, could not curtail rights conferred, nor confer rights withheld by the ordinance of 1787." . . . "That in an action of right, the plaintiff must recover upon the strength of his own title, and must show a valid subsisting title in himself, and that no interest can accrue from a void judgment." (See Reid vs. Wright, 2 G. Greene, page 15.)

The former case was appealed to the Supreme Court of the United States, and before that body decided the case, it is worthy of notice, that the State Supreme Court of Iowa arrived at the same conclusion, holding that the bona-fide settler and purchaser from the half-breed had title, and that the various acts of the legislature of both territories were void and repugnant to the ordinance of 1787.

At the December, 1850, term of the Supreme Court of the United States, that learned body handed down the long-looked for decision, reversing the territorial court, and deciding adversely to the purchaser of the land by sheriff sale to Hugh T. Reid. This was the blow which put an end to the strife which had waged long and bitterly for many years. The lawyers for the various land companies, quit-claimed for a reasonable consideration, all interests in these lands, and the matter was thus settled once for all.

The opinion was written by Justice John McLean (1787-1861), one of the most noted lawyers of his day and a profound judge, who held in the Dred Scott decision seven years later, "that slavery has its origin in force, not in right, nor in general law to which it is opposed." A few of the many points decided in the case are as follows:

"Where a judgment was rendered by the Supreme Court of the territory, and the record was certified by the Supreme Court of the state, after its admission into the Union, and the subject matter is within the jurisdiction of the Court, it will take jurisdiction of the case.

"Where the legislature directed that suits might be instituted against the owners of half-breed lands lying in Lee county, and notice thereof being served through newspapers and judgments were recovered on suits so instituted, such judgments are nullities.

"The court holds that where there is no personal service of notice on individuals, nor attachment or other proceedings against the land in question, there can be no valid judgment.

"The law provided that the court could decide without the intervention of a jury matters of fact. The court held that this was inconsistent with the provisions of the constitution of the United States, and with the ordinance of 1787, and if the law was void, the judgments under it equally so.

"It further held that the purchaser should have been allowed to show by evidence, the title upon which he relied; and he should have been allowed to show that the judgment relied upon by Reid had not been obtained in conformity with the law." (See Webster vs. Reid, U. S. Reports 52, Howard, book 11, p. 437.)

Part of the land involved in the half-breed purchase had once before been under consideration by this court in 1839. This was on the Honori title, over the town site of Montrose. Honori had purchased a tract of land in 1799 from the Spanish government, and in 1805 sold his contract to one J. Robedoux. He died and Auguste Chouteau was appointed

executor. He sold it to Thos. F. Reddick, the same year. After the half-breeds disposed of their lands, the various claimants brought partition suits to invalidate the title of the Reddick heirs, and this remains the oldest title to lands in Iowa.

From 1837 to 1850, emigration from the Scandinavian countries had begun in earnest, and as early as 1838-39, a settlement had been made, at what is known as Sugar Creek, in Lee county, Iowa.

The settlers early bought lands and obtained what was known in those days as "straw titles" and "blanket claims," which were declared worthless, so that a number of them lost every dollar invested. The misfortunes of their countrymen discouraged others in the settlements in Illinois and farther east, and hence the influx of Scandinavians later, began in the northeastern part of the State, and as a result the northern half of the State has a large Scandinavian population. There is no question but that if the first settlement had prospered, the Scandinavian settlements would have been found in the southern half of the State, and would have extended into the state of Missouri, for as a rule, people migrate by latitude, not by longitude.

Although "blanket claims" and "straw titles" prevented the first Scandinavians from getting a foothold in eastern Iowa, the chaotic condition of titles resulted in producing a lot of able lawyers in southern and eastern Iowa.

H. T. Reid was an able attorney, and represented the St. Louis Land Company. Edward Johnston became a United States attorney and later judge. H. S. Austin removed to Chicago, and Dan F. Miller, Sr., practiced law for more than fifty years in Iowa, and was one of the well-known men in the State, being a partner of Judge James M. Love, who was judge of the federal court for many years. Hawkins Taylor, the sheriff, became a noted politician and held the further honor of having arrested Hyram Smith, a brother of Joseph Smith, the Mormon prophet, in the early days of the

Nauvoo settlement. Of the many judges who participated in one way or another, may be mentioned Charles Mason, a New Yorker by birth, the classmate of Jefferson Davis and Leonidas Polk at West Point. He came to Iowa in 1836. John F. Kinney was also a New Yorker, and came to Ft. Madison in 1844, and after a residence of three years, was appointed judge on the Supreme bench. Joseph Williams was also a man of note, and a profound judge. George Greene was an Englishman of much learning, the author of the early reports, and a sound judge. Thomas S. Wilson came to Iowa in 1836 and two years later was appointed on the Supreme bench by Martin Van Buren. When the territory became a state, he was again appointed to fill a vacancy.

Although many of the descendants of the half-breeds can still be found in various walks of life, scattered over the State, most of them gradually wandered to the west to be with their own people, with whom they had much in common, and where perhaps they could more easily obtain a scanty living. On account of "the laws' delay," by the time the final decision came, the half-breeds thought little and cared less about the outcome. They were placed in much the same situation as the man who had entered into a contract for a contingent fee with his lawyers, and when asked about the outcome replied, "You see it is this way, if I win, I don't get anything, if I lose, my lawyers don't get anything." The lands were largely in the hands of speculators, and so this ideal home, which had been in the possession of their ancestors for centuries, slipped away for a mere song, and the social scheme of Morgan and his co-laborers, became only a vague dream of what "might have been."

It is not safe to speculate. But what might not have been the possibilities, if the title to this vast stretch of country had remained in the government for the use of the half-breeds and their descendants. If the government had erected, on the banks of the great river, manual training

schools and Indian experimental stations, conducted along practical lines, might we not from these people far removed from Indian tribes, have obtained our interpreters, practical farmers, teachers, doctors, missionaries and Indian agents, who, on account of training, environment and race instincts, might have been able to cope with our Indian problems in a more practical manner than has been thus far possible.

CEDAR RAPIDS, IOWA.

WILD DEER BROWSING IN IOWA.—George A. Lincoln, state fish and game warden, has received a letter from Council Bluffs, the contents of which were quite a surprise to him, and which will be a great surprise to the people of the State. It states that there is a drove of twenty-five deer running at large in that county, and that they are doing so much damage that the farmers are threatening to kill them. He has been asked for advice in regard to the matter, and is puzzling to know what action to take, although he sees no way of getting around the law, which provides especially that no deer shall be killed.

Mr. Lincoln is at an utter loss to account for the presence of deer in the State, although he is of the opinion that they must have escaped from some game preserve. During his incumbency of the office of state fish and game warden there have been four deer killed, and in each instance the hunter has been fined for so doing. These animals stray into the State occasionally from Minnesota, or from some game preserve, but it was not supposed there was any such number in existence as is reported from Pottawattamie county.—*Webster City Freeman-Tribune, January 26, 1905.*

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