

it had become absolute. In *Langdeau v. Hanes*, 21 Wall. 530, the court uses the following language:

"A legislative confirmation of a claim to land is a recognition of the validity of such claim, and operates as effectively as a grant or quitclaim from the government. \* \* \* If the claim be to land with defined boundaries, or capable of identification, the legislative confirmation perfects the title to the particular tract, and a subsequent patent is only documentary evidence of that title."

The supreme court of Kansas has decided that a conveyance by the heir of a Pottawatomie Indian allottee, under a treaty similar to the Kickapoo treaty, and an act of congress for the settlement of their estates, August, 1868, was valid, although made before the patent was issued. And this decision was made on the act of 1868, which did not provide in terms, as does the act of 1886, that a patent should issue on the death of the allottee. *Oliver v. Forbes*, 17 Kan. 124. I can see nothing in the language or purpose of the act of 1886 to warrant the construction claimed for it by counsel for defendants, that the heir takes the land with the same restrictions and limitations on the right of disposing of it as existed against the allottee in his life-time. The patent is absolute and unconditional,—a fee-simple. The whole title of the government passes to the allottee and his heirs for all purposes, and without restriction. Counsel for plaintiffs has called my attention to several other cases, both in the federal and state courts, sustaining the views herein expressed, but it is not necessary to cite further authority. The plaintiffs are entitled to their decree.

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BROYLES *et al.* v. BUCK, Clerk.<sup>1</sup>

(*Circuit Court, N. D. Georgia.* December 29, 1888.)

**1. COSTS—IN FEDERAL COURT—ATTORNEY'S FEE FOR DEPOSITIONS.**

Under section 824, Rev. St. U. S., the prevailing party is entitled to collect for his attorney a fee of \$2.50 for the deposition of each witness "taken and admitted in evidence," to be taxed as costs, especially where the witnesses are examined and answer separately.

**2. SAME.**

Such fees are allowed to the party as compensation for his attorney's services in and about the depositions, and are to be taxed in addition to the fees of commissioners to take the testimony.

**3. SAME—COLLECTION.**

The attorney's costs, like those of the clerk and marshal, are to be collected in the name of the prevailing party.

Rule on Clerk to Tax Costs.

*Malcolm Johnston*, for movants.

*Bacon & Rutherford* and *P. L. Mynatt*, for railway company.

<sup>1</sup>Reported by Will Haight, Esq., of the Atlanta bar.

NEWMAN, J. This is a rule against the clerk in the case of the *East Tennessee, Virginia & Georgia Railroad Company v. Watters*. The question presented is whether, under section 824, Rev. St. U. S., the clerk, in taxing costs for attorney's fees, in favor of the prevailing party to a suit should tax \$2.50 for the deposition taken and admitted in evidence of each witness, where the testimony of more than one witness is returned to court in one inclosure. The attorneys for Watters, the prevailing party, say that the testimony of each witness is "a deposition" in the meaning of the statute, especially where, as in this case, the testimony of each witness is taken separately. This view seems to be correct. It is difficult to see how any other interpretation can be given the language, "for each deposition taken," etc.

It is suggested by counsel for the railway company that the expense to it of having the commissions executed, and taking the testimony, should be deducted from the sum to be taxed as attorney's fees for depositions. As I understand this statute, the fee of \$2.50 "for each deposition taken and admitted in evidence in a cause" goes to the prevailing party for his attorney, and the expense of commissioners to take the testimony has no connection with it.

This rule was brought by Watters' attorneys, but, it being conceded on the hearing that properly it should have been brought in the name of Watters, the defendant in the case, it was allowed to proceed informally, nevertheless, to determine the question made. It is ordered, therefore, that the clerk tax in the bill of costs in this case \$2.50 for the depositions of each witness taken and admitted in evidence.

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### UNITED STATES *v.* BADINELLI *et al.*

(Circuit Court, W. D. Tennessee. December 20, 1883.)

#### 1. ELECTIONS AND VOTERS—OFFENSES AGAINST ELECTION LAWS—COUNTING THE VOTE.

The United States Revised Statutes, § 5515, punishes officers of election for some violation only of their duty as prescribed by law, and not for a violation of any duty imposed by a mere moral sense of fairness and justice in counting the votes. If, therefore, they undertake to count the ballots in a manner not authorized by law, no duty as to that counting is imposed for a violation of which they may be punished under the federal statute. The offense punishable, in such a case, is the counting of the votes in the unlawful manner, no matter how fairly done.

#### 2. SAME—PLACE OF COUNTING—EXCLUSION OF ELECTORS.

The Tennessee Code requires a free, open, and public counting of the vote at the place where the vote is polled, and nowhere else. It does not provide for a count in a private room, to which the ballot-box has been taken; protected by policemen from the intrusion of all not admitted by the election officers. It is therefore no violation of a duty punishable by the federal statute to exclude an elector from such an unlawful counting, whether he be entitled to be present at a public and lawful counting at the polling place or not; but the indictment should have charged the offense of violating their