

and no subsequent act of the United States could divest that fee; *i. e.*, the United States could not afterwards convey by patent to another.

So in the Kansas case. When the act of admission was passed the right to the five per centum vested, and no subsequent act of the Government could defeat that right. The United States could not get rid of paying the five per centum by agreeing to make a specific application of the purchase-money in some other way.

Again, the Supreme Court, in *United States vs. Cook*, says, with reference to the last-named class of titles, that the fee is in the United States, subject only to the right of occupancy. The possession, when abandoned by the Indian occupants, attaches itself to the fee without further grant. (19 Wall., 591.)

The First Comptroller of the Treasury, in his decision of May 6th, 1880, relative to this five per cent. account, said:

"The grant of the five per centum having been made it could not afterwards be revoked. The right of the State became by the grant a vested right, which Congress could not recall. By treaties made after the admission of the State with the several tribes who occupied these lands it was stipulated that the net proceeds of the sales of all but one of the reservations, *viz.*, the Kansas trust, should be invested by the United States for the benefit of the respective tribes. Without doubt, these treaties, together with subsequent acts of Congress, passed to carry out their provisions, entitle these tribes to a sum equal to these net proceeds; but they did not destroy the antecedent right of the State of Kansas to the five per cent. which had been granted when the United States, holding the fee in said lands, had capacity to make the grant, and made it without provision for any subsequent limitation."

This, I submit, is conclusive in favor of the claim of the State of Kansas now pending before the Honorable Secretary.

The case of *Wilcox vs. Jackson* (10 Peters, 498) has been referred to as bearing upon the present case, but, as will be observed by reference to the decision in *Beecher vs.*