51ST CONGRESS, 1st Session. | SENATE. | REPORT No. 1393.

IN THE SENATE OF THE UNITED STATES.

JUNE 20, 1890.—Ordered to be printed.

Mr. PLATT, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany S. 497.]

The Committee on Indian Affairs, to whom was referred Senate bill No. 497, to provide for the sale of certain New York Indian lands in Kansas, having considered the same, report as follows:

As early as the year 1810 the New York Indians of the Six Nations and the St. Regis tribe sent a memorial to the President of the United States inquiring whether the Government would consent to their leaving their homes and removing to the West; and whether, in case they could procure a home there by gift or by purchase, the United States would accept their title to the lands that might be obtained there to the extent that it accept the title of those Indians from whom they might obtain lands.

Afterwards the New York Indians claimed to have purchased from the Menomonee and Winnebago Indians certain lands near Green Bay, Wis. The Menomonees disputed the claim or title of the New York Indians; but in February, 1831, they made a treaty in which they ceded to the United States about 500,000 acres, expressed to be "for a home for the several tribes of New York Indians who may be residing on the lands at the expiration of three years." For these lands the United States paid the Menomonee Indians $20,000. None of the tribes of the Six Nations nor the St. Regis tribe, as tribes, removed to the Green Bay lands within the three years, though some individual Indians went there.

More than three years having elapsed, the New York Indians, by treaty January 15, 1838, relinquished all right and interest which they had to the Green Bay lands, except a small portion on which some of the New York Indians were then residing. And, in consideration of such cession, the United States set apart in that portion of the country which is now the State of Kansas 1,824,000 acres of land, being "320 acres for each soul of said Indians, as their numbers are at present computed," expressed to be "as a permanent home for all the New York Indians now residing in the State of New York or in Wisconsin, or elsewhere in the United States, who have no permanent homes." These lands were to be held in fee-simple by said tribes or nations of Indians by patent from the United States, and the Indians were empowered to divide said lands among the different tribes or nations of Indians in severalty.

It was also provided by the treaty that such of the tribes of the New York Indians as did not accept and agree to remove to the country set apart for them within five years, or such other time as the President

might decree, should forfeit said lands, so set apart, to the United States. No provision was made in the treaty for the allotment to individual Indians of lands in severalty; the treaty only looking to the patent of the lands in the whole to the tribes of the Six Nations and the St. Regis tribe, with authority given to the Indians to divide the lands among the different tribes.

The United States further agreed to set aside the sum of $400,000 to provide for the removal of the Indians to the lands mentioned.

None of the Indian tribes removed from New York or Wisconsin to these lands under the provisions of the treaty. But in 1846, which was one year after the expiration of the five years fixed by the treaty within which said Indian tribes were to agree to remove, one Dr. Hogoboom collected together about two hundred Indians of the New York tribes and took them to the lands referred to. Some of these died on the way, others returned to New York, and others were scattered in different localities throughout the Indian country. On the 14th of September, 1860, the Secretary of the Interior, on the recommendation of Agent Stevens, who had been sent by the General Commissioner of the Land Office to investigate, allotted to each of these thirty-two Indians a tract of 320 acres. A copy of the allotments is as follows:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
September 14, 1860.

I hereby certify that in conformity with the provisions of the treaty concluded with the New York Indians on the 15th of January, 1838, there has been assigned or allotted to Mary Ann Gray, a reservee under said treaty, the following tract of land, viz: The west half of section 36, township 23, range 24 east, in Kansas Territory, containing 320 acres; and the selection of said tract for the exclusive use and benefit of said reservee having been approved by the Secretary of the Interior, is not subject to be alienated in fee, leased, or otherwise disposed of, except to the United States.

CHARLES E. MAY,
Acting Commissioner.

It is believed that none of the lands so allotted have ever been actually occupied by the Indians since the certificates of allotment were issued to them. All of the two hundred New York Indians who actually reached the lands referred to remained upon the lands for some time, that is to say, occupied the lands generally. Conflicts arose between them and the white people, and all but the thirty-two Indians above referred to were driven from or had left the lands before these allotments were made; and although the evidence is somewhat conflicting and doubtful, it is believed that the Indians to whom allotments were made were afraid to settle on the lands allotted to them, and never, in fact, occupied these lands. It is alleged that a few of them were put in possession, but this is uncertain; and if such was the case, their possession was rather nominal than actual. Most of them, it is believed, did not attempt to occupy the lands.

Prior to those allotments, in April, 1858, the Secretary of the Interior held that those of the New York Indians who had not removed to the lands had forfeited their title thereto; and in December, 1860, the lands were opened by executive proclamation to settlers. It will be seen that the allotments made to the thirty-two Indians were prior to the proclamation opening the lands to settlers. The Indians not occupying the lands so allotted them, they were "squatted" upon by settlers, who have occupied and improved them to the present time.

By an act approved February 19, 1873, Congress authorized actual settlers then residing on said allotted lands to enter and purchase the same in tracts not exceeding 160 acres at an appraised value of not less than $3.75 per acre. Appraisers were appointed under the act, who ap-

praised the lands at an average value of $4.90 per acre; and they found that none of said Indians were living on the lands at the date of said act, but that all the lands were occupied by actual settlers.

Eight tracts of 160 acres each were sold under the provisions of the statute before referred to to settlers, who paid a varying sum from $4.50 to $6 per acre. The lands not sold under the act are still occupied by settlers or are in the hands of purchasers who bought from original settlers.

It is not known that any of the lands are now occupied by any of the persons who originally settled upon them.

The allotments referred to were undoubtedly issued by the Commissioner of Indian Affairs upon the supposition that he had authority to allot these lands to individual Indians under the treaty of 1838. But an examination of that treaty does not disclose such authority, and the Indians obtained no title to the alloted lands in fee-simple.

On the other hand, it is not pretended that the settlers upon these lands obtained or now have any Government title thereto. The statement of the case then is this: The Indians or their heirs, under the act of the Bureau of Indian Affairs, seem to have obtained some equitable rights to said lands, but never to have contributed to their improvement. The settlers have acquired no legal right to the lands, but have cultivated and improved them, and enhanced their value thereby above the general appreciation in value of lands in that locality.

The claims of the Indians and settlers to said lands have been a fruitful source of controversy, and the plan of settling that controversy proposed by the bill under consideration meets the approval of your committee. The only question here seems to be as to what amount should be paid by the settlers to the Indians or for their benefit by the persons now in occupation of the lands.

In a report made by the Committee on Indian Affairs of the House of Representatives in the first session of the Forty-seventh Congress, it is stated that an agreement had been reached four years previously between the Indians and the settlers for a conclusion of the whole controversy by the payment on the part of the settlers of the uniform price of $2.50 per acre.

The bill reported by the committee at that time provided for a payment of $3 per acre.

In the Forty-ninth Congress a bill was introduced to the House Committee on Indian Affairs giving the settlers the right to purchase the lands in question within one year after the passage of the act at $1.25 per acre.

In the Fiftieth Congress a bill was introduced to provide for the payment of $1.25 per acre. Upon the recommendation of the committee it was amended so as to provide for the payment of $2.50 per acre, and as thus amended the bill passed the House. It was reported to the Senate, and the Senate concurred in the passage of the bill; but it was vetoed by President Cleveland upon the ground that $2.50 per acre was not a fair and equitable sum to be paid to the Indians. The message of the President recommended a re-appraisement of the lands and a conveyance to the settlers at the sum at which they should be appraised; or, in case of a failure on the part of the settlers to pay for the same, that the lands should be sold at public auction.

Official letters of Mr. Schurz, formerly Secretary of the Interior, of Mr. Hayt, formerly Commissioner of Indian Affairs, and of the present Commissioner of Indian Affairs, are attached to this report, and give a more detailed history of the case.

It should be remarked that it is believed that very few of the Indians, to whom allotments were made are now living, and that whatever payments are made will be made to their heirs, who are scattered throughout the country.

Though the Indians did not acquire a title to the lands allotted in fee-simple, it seems to your committee that the Government, by its conduct, is bound to protect them in their equitable rights to the same.

It is undoubtedly true that if the lands had remained unsettled to this time they would have been worth more than $2.50 per acre, but considering all the equities of the case, and the long controversy that has existed in relation to these lands, and the fact that at one time an agreement was reached between the Indians and the settlers for the purchase of the lands at $2.50 per acre, and the improbability that any other solution of the case is practicable, the committee have, upon the whole, concluded to recommend the passage of the bill with an amendment as follows: Strike out, in lines 15 and 16, the words "one dollar and twenty-five" and insert in lieu thereof the words two dollars and fifty.

APPENDIX A.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 6, 1878.

SIR: I have the honor to acknowledge the receipt of your letter of the 8th January last, transmitting, for the consideration of the Department, bill H. R. 1177, entitled "A bill for the sale of certain New York Indian lands in Kansas."

The first section of the bill in question enacts that "Those persons, being heads of families or single persons over twenty-one years of age, who have made settlement and improvement upon, and are bona fide claimants of and occupants of, either in person or by tenant, the lands in Kansas which were allotted to certain New York Indians, and for which certificates of allotment, dated the 14th day of September, 1860, for 320 acres of land each, were issued to 32 of said Indians, shall be, and hereby are, authorized and permitted to enter and purchase, at the proper land office, said lands so occupied by them, in tracts not exceeding 160 acres, according to the Government surveys, on paying therefor in lawful money of the United States at the rate of $2.50 per acre; and patents shall issue therefor as in other cases."

By article 2 of the treaty of January 15, 1838, with the New York Indians (7 Stat., 550), the United States agreed to set aside for the New York Indians, then residing in the State of New York, or in Wisconsin, or elsewhere in the United States, who have no permanent homes, a tract of land situated directly west of the State of Missouri, containing 1,824,000 acres; being 320 acres for each soul of said Indians, as their numbers are at present computed. Said lands were to be patented in fee simple to the tribes or bands by patent from the President of the United States in conformity with the provisions of the third section of the act of May 28, 1830 (4 Stat., 411).

The United States further agreed to set aside the sum of $400,000 as a fund to provide for the removal of the New York Indians to the lands mentioned; which agreement was never fulfilled.

As early, however, as 1842, members of certain tribes in the State of New York and elsewhere, who thought themselves entitled to the lands under the provisions of the treaty, removed to the country west of the State of Missouri and settled therein; and from time to time others followed them, until a considerable number of Indians, as will be seen from census lists on file in the Indian Bureau, were found to be occupying these lands.

From death and the hostility of the settlers who were drawn in that direction by the fertility of the soil and other advantages, all of the Indians gradually relinquished their selections, until of the Indians who had removed thither from the State of New York only 32 remained in 1860.

The lands had been surveyed in the meanwhile, and under the instructions of the Department of the Interior a commission was appointed to determine certain points in relation to the allotments of lands to such Indians as might be entitled to the same under the treaty prior to giving, to such as might be found entitled thereto, evidences

of their right to occupancy which should secure to them the tracts upon which they were living, and be such identification thereof as would settle dispute in the future if under subsequent legislation perfect title should be provided, the treaty not granting the right to issue patents to individual Indians.

In accordance with the request of the Commissioner of Indian Affairs, based upon the report of the commissioners, the Department approved of the selections of the 32 Indians in question, and, on the 14th of September following, certificates of allotment were issued to each of said reservees.

In 1858 petitions from settlers in Kansas were presented to the Department asking that the lands be opened to settlement, and in December, 1860, the lands known as the New York Indian lands in Kansas, excepting those allotted, were accordingly opened to settlement.

But a short time elapsed, however, before troubles between the settlers and the Indians were of constant occurrence, and in 1873, when the act of February 19, 1873 (17 Stat., 466) was passed the commissioners appointed thereunder to appraise the lands of the 32 New York Indians stated in their report that none of the allottees were to be found upon the lands. The files of the Indian office show abundant proof that they did not voluntarially relinquish their occupation.

Be this question as it may, the act of February 19, 1873, fully recognized the right of the Indians or of their heirs to the proceeds of the lands; and applications are now before the Department, which, when perfected, will call, by legal representation, for nearly all of the proceeds of the allotments of lands in question.

By the act of February 19, 1873, provision was made for the benefit of certain settlers upon and occupants of certain Indian lands in Kansas, permitting such settlers to enter and purchase at the proper land office said lands so occupied by them, in tracts not exceeding one hundred and sixty acres, according to the Government surveys, on paying therefor in lawful money of the United States *the appraised value of said lands repectively*, to be ascertained by three disinterested and competent appraisers, to be appointed by the Secretary of the Interior, who shall examine in person each tract and report under oath its value *exclusive of all improvements;* and patents shall issue therefor as in other cases, but no sale shall be made under this act for less than $3.75 per acre.

All entries under this act were required to be made within two years from the promulgation of the necessary regulations for the sale of the lands. This act was amended by the act of June 23, 1874 (18 Stat., 273), extending the time in which payments for said land were to have been made.

Some of the parties, settlers upon these lands, have paid in full, and upon all of the lands valuable improvements have been made. Some of those who have paid for their lands occupied those assessed at the highest valuation. No reason is given why in all these years, from 1860 up to the present time, those who are delinquent have failed under the favorable terms of occupancy to make the payments required under the obligation willingly assumed by them.

The 32 Indians in question, each having located, by certificate of allotment, the particular quantity of land which they were severally entitled to receive under treaty stipulations, were, through no fault or negligence on their part, subsequently ousted from the possession of such lands by the encroachment of the settlers.

In this view of the case, and in view of the fact that treaty stipulations and legal enactments have secured to such of these allottees or their heirs as may now be living the benefits of the proceeds of these lands, and applications are now on file before the Indian Office for nearly all the proceeds of the claims covered by the 32 allotments, I am not prepared to entertain the proposition contained in the bill presented, or to recommend to Congress, after consideration of the liberality already extended by the Government to these settlers, any action looking toward a reduction of the sum which seems so justly due to the Indians.

The true test of the value of the lands in question would be their price in open market at a cash sale, and it is believed that if they were so offered the question of payment would be speedily settled.

I am, however, disinclined to advocate any measure which would seem to bear harshly upon the settlers, and have therefore concluded to recommend further time for payment, with the distinct understanding, on the part of those in possession of the lands, that payment on the terms fixed must be promptly made to avoid forfeiture.

Very respectfully,

C. SCHURZ,
Secretary.

Hon. D. C. HASKELL,
House of Representatives.

APPENDIX B.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 29, 1878.

SIR: I am in receipt, by reference from the House Committee on Public Lands, of bill H. R. 1178, providing for the sale of certain New York Indian lands in Kansas, and requesting the views of this office on the same.

I am also in receipt, by your reference for report, of a letter from the Hon. D. C. Haskell, dated January 18, 1878, inclosing a copy of the same bill, and requesting the views of this office thereon.

In connection therewith I have the honor to report that, by the second article of the treaty of January 15, 1838, with the New York Indians (7 Stat., 550), the United States agreed to set aside for the New York Indians then residing in Wisconsin and New York a certain tract of land, west of Missouri, containing 320 acres for each of said Indians, to be held in fee simple, by patent from the President, in conformity with the provisions of the third article of the act of May 28, 1830 (4 Stat., 411), the proviso to which declares that "such lands shall revert to the United States if the Indians become extinct or abandon the same." The treaty vested the Indians with full power and authority to divide said lands, in severalty, among the different tribes and bands, and to sell and convey the same among each other, under such regulations as they might adopt. Indians not accepting and agreeing to remove within five years, or such other time as the President may from time to time appoint, to "forfeit all interest" in "lands so set apart to the United States."

Under these provisions 32 New York Indians removed to and remained in the territory now embraced in the State of Kansas prior to June 16, 1860, at which time the honorable Secretary of the Interior approved to them selections of 320 acres each, for which, on the 14th of September, 1860, certificates of allotment were issued to each of said reservees, the certificates specifying that the selections were for the exclusive use and benefit of the reservees, and were not subjected to be "alienated in fee, leased, or otherwise disposed of, except to the United States."

By an act approved February 19, 1873 (17 Stat., 466), Congress authorized such actual settlers as were then residing thereon to enter and purchase said lands in tracts of not exceeding 160 acres, at an appraised value of not less than $3.75 per acre, to be ascertained, under the direction of the Secretary of the Interior, by three appraisers appointed to value the same, the funds arising from the sale to be paid into the Treasury of the United States, in trust for such of said New York Indians or their heirs as might, within five years, establish their identity; and in absence of such proof within the time specified, the proceeds of the sales to become a part of the public moneys of the United States: "*Provided*, That any Indian to whom any of said certificates was issued, and who is now occupying the land allotted thereby, shall be entitled to receive a patent therefor."

All entries under this act were required to be made within two years from the promulgation of the necessary regulations for the sale of the lands.

This act was amended by the act of June 23, 1874 (18 Stats., 273), so as to allow the payments to be made in two annual installments, the first payments to be made on or before the 30th day of September, 1875, and the remainder within one year thereafter, with interest at 6 per centum per annum.

The commissioners appointed under the act of 1873 to appraise the lands reported on the 26th of July, 1873, that none of the 32 New York Indians were living on the lands at that time or at the date of the act, but that all of said lands were then occupied by actual settlers, whose names were given in the report opposite the description of the tract on which they had respectively made settlement. The lands were valued by the appraisers at an average of $4.9076 per acre, and their report was approved by the Department September 30, 1873.

Instructions were issued by the Secretary, under the same date, directing that the lands should be sold under the instructions of the General Land Office by the district land officers, who were directed to notify the settlers entitled to purchase by published advertisement of a general character in a newspaper published in the vicinity of the land that payment would be required within two years.

In pursuance of these instructions, as it appears from a letter of the honorable Commissioner of the General Land Office, dated July 3, 1877, the following sales have been made:

First. From N. ½ section 26, 23 S., 25 E., allotted to Joseph Johndroe, there has been sold, at $5 per acre, cash, to Benjamin Brown, the NE. ¼ of said section; consideration, $800.

Second. From N. ½ section 27, 23 S., 25 E., allotted to Margaret Johndroe, there has been sold, at $5 per acre, cash, to Nathaniel Oates, the S. ½ NE. ¼; consideration, $400.

Third. From the S. ½ of said section 27, allotted to Michael Gray, there has been

sold, at $4.50 per acre, cash, to Nathaniel Oates, the N. ½ of SE. ¼; consideration, $360.

Fourth. From W. ½ section 4, 24 S., 25 E., allotted to James Scrimpsher, there has been sold, at $4.75 per acre, cash, to S. McEwing, the N. ½ of SW. ¼; consideration, $380.

Fifth. From N. ½ section 27, 23 S., 25 E., allotted to Margaret Johndroe, there has been sold, at $5 per acre, cash, to William M. Beckford, the N. ½ NE. ¼, and at $4.50 per acre, to the same party, the N. ½ SW. ¼ of said section; consideration, $760.

Sixth. From the same allotment, there has been sold, at $4.50 per acre, and paid in full, in two installments, with $10.77 interest, to John Barrett, the S. ½ NW. ¼; consideration, including interest, $370.77.

Seventh. From the W. fractional ½, sec. 2, 24 S., 25 E., allotted to Joseph Fox, there has been sold, at $5 per acre, and paid in full, in two installments, with $23.80 interest, to Joanna Glendenning, the NW. fractional ¼, containing 156.76 acres; consideration, with interest, $822.60.

Eighth. And from the E. fractional ½ sec. 6, 24 S., 25 E., allotted to Mary Predome, there has been sold, at $6 per acre, to Levi T. Call, the W. ½ of SE. ¼ of said section, amounting to $480, one-half of which was paid at date of purchase, September 29, 1875, and the balance with interest is still due and unpaid.

There has, therefore, out of an aggregate of 10,215.63 acres, valued at $50,850,05, been sold 879.76 acres for the sum of $3,858.80; leaving unsold 9,335.87 acres, valued at $46,991.25, or an average of $5.02½ per acre, which aggregate amount would, according to the terms of the act of February 19, 1873, if not claimed by the allottees or their heirs, inure to the United States at the end of five years, which have expired.

The bill under consideration proposes to reduce the aggregate value of the unsold lands over one-half, or to $23,339.68, and if the lands are not sold, at the diminished rate of $2.50 per acre, within one year, that patents shall issue in the names of the original allottees for the balance unsold.

With these provisions of the bill I am not inclined to concur, for the following reasons:

Under the treaty of 1838 the New York Indians were entitled to 1,824,000 acres of land in Kansas, and a removal fund of $400,000, which the United States never provided. Notwithstanding the failure of the United States in this regard, portions of the Indians removed to Kansas subsequent to the treaty, with a view of making that country their permanent home, but on account of their rapid depletion in number from sickness a majority afterward returned to New York.

By decision of April 19, 1858 the honorable Secretary of the Interior held that those of the New York Indians who had not removed had hereby forfeited their title to the reserve, and that the same should be opened to settlement; but in the execution of said decision, and prior to the proclamation of December, 1860 opening the lands to settlement, the allotments under consideration were made to the 32 Indians who were then in Kansas, and certificates were issued to them therefor.

It follows, therefore, that an equitable interest in fee in the lands vested in these Indians, by virtue of the grant contained in the treaty, at the date of their removal and long prior to the settlement of Kansas, although the evidence of the title did not issue until 1860.

They accordingly assumed the condition of legal ownership, by *purchase*, over the lands subsequently allotted to them, at an early day, and are entitled to the benefits of any appreciation of value arising from the settlement and improvement of the country.

This doctrine is, I am aware, in opposition to a somewhat prevalent opinion as to the right of the Indians. It has been urged in similar cases that as the Indians have not improved their lands they are not entitled to the advance in value incident to the settlement of the country. The purchase of wild lands, and holding of the same to await the improvement of the country, has been one of the most popular and safe, as well as the most remunerative methods of investment known, and I can see no grounds upon which Indians taking an equitable title in fee should be deprived of the benefits never denied to white purchasers of public lands, bought and held for speculative purposes only.

Informal claims have been filed in this office by the original allottees, or their heirs, covering nearly all the proceeds arising from the sale of these lands when sold.

There is no evidence on file in this office, aside from the letters of Mr. Haskell, showing that it is the desire of these Indians that the lands should be sold at a reduced price.

The lands are in Bourbon County, one of the richest and most fertile counties in the State. They are within a few miles of Fort Scott, and near the line of the Missouri, Kansas and Texas Railroad—the Missouri River, Fort Scott and Gulf Railroad running nearly through the center of the body of lands, which lie in close proximity to the corner of townships 23 and 24 in ranges 24 and 25 east. The records of the General Land Office show that there is scarcely a vacant forty-acre tract of land in or near the townships named. With these facts in view, it is safe to assume that the

several tracts were, in 1873, worth the full amount at which they were appraised, and that in view of the rapid development of the country, and the present price of uncultivated lands in that vicinity, there has, at least, been no depreciation in their value.

The settlers have been in possession of these lands for years, to the exclusion of the Indians, and have had every advantage and opportunity to pay for the lands from the products of the same.

The title of the Indians is, under treaty stipulations, similar to those with the Shawnee, Miami, and other Indians in Kansas, whose lands have been held by the Supreme Court of the United States (5 Wall., 837) to be excluded from the jurisdiction of the State, and *not subject to taxation*, and it is fairly presumable that the settlers have availed themselves of the benefit arising under this decision.

For these and other reasons which might be urged, I can not recommend the passage of the bill in its present form. It is, however, very desirable that adequate legislation be had insuring the sale of these lands and the final settlement of all questions in connection therewith.

I have, therefore, to recommend that the bill be amended as follows: Strike out all after the word "office" in the twelfth line, and insert, in lieu thereof, the following:

"At any time within one year from the passage of this act said lands so occupied by them in tracts not exceeding one hundred and sixty acres, according to the Government surveys, at not less than the appraised value of the said tracts as heretofore ascertained by the Secretary of the Interior, in accordance with the provisions of the act of February nineteenth, one thousand eight hundred and seventy-three, entitled 'An act to provide for the sale of certain New York Indian lands in Kansas,' payment to be made in three annual installments, one-third at date of entry, one-third at the end of one year from date of entry, and the balance in two years from date of entry, with interest on said amounts, respectively, from date of entry, at six per centum per annum; and the moneys arising from such sales shall be paid into the Treasury of the United States in trust for, and to be paid to said Indians, respectively, to whom said certificates were issued, or to their heirs, upon satisfactory proof of their identity to the Secretary of the Interior, at any time within three years from the passage of this act; and in case such proof is not made within the time specified, then the proceeds of such sale, or so much thereof as shall not have been paid under the provisions of this act, shall become a part of the public moneys of the United States.

"SEC. 2. That any lands not entered by such settlers at the expiration of one year from the passage of this act shall be offered at public sale, in the usual manner, at not less than the appraised value, notice of said sale to be given by public advertisement of not less than thirty days; and any tract or tracts not then sold, together with such tracts as have heretofore been or may hereafter be entered, and wherein default has been made in the payment of any portion of the purchase money, or the interest thereon, as herein or heretofore provided, shall thereafter be subject to private entry at the appraised value of said tracts."

I inclose herewith a schedule showing the names of the thirty-two allottees named in this report, the description of the lands allotted to each, with the names of the settlers claiming the lands placed opposite the tract claimed by them.

The bill referred by the House committee, together with the letter of Mr. Haskell, with inclosure, is herewith respectfully returned.

I have the honor to be, very respectfully, your obedient servant,

E. A. HAYT,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

APPENDIX C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 20, 1889.

SIR: I have the honor to acknowledge the receipt by Department reference for report, of a communication from Hon. H. L. Dawes, chairman of the Senate Committee on Indian Affairs, dated December 12, 1889, referring for examination and report Senate bill No. 497, "To provide for the sale of certain New York Indian lands in Kansas."

The first section of the bill authorizes and permits those persons, being heads of families or single persons over twenty-one years of age, who have made settlement and improvement upon, and are bona fide claimants and occupants of, either in person or by tenant, the lands in Kansas which were allotted to certain New York Indians, and for which certificates of allotment, dated September 14, 1860, were issued to thirty-two of said Indians, to enter and purchase at the proper land office, within one year from the passage of the act, said lands so occupied by them, in tracts not ex-

ceeding 160 acres, at $1.25 per acre, payment to be made in cash at time of purchase; the moneys arising from such sales to be paid into the Treasury of the United States, in trust for and to be paid to said Indians, respectively, to whom said certificates were issued, or their heirs.

The second section provides that any lands not entered by such settlers at the expiration of twelve months from the passage of the act, shall be offered at public sale in the usual manner, at not less than $3 per acre, and that any tract not then sold shall thereafter be subject to private entry at $3 per acre.

The third section repeals all acts and parts of acts inconsistent with said act.

The history of the attempted removal of the New York Indians to Kansas, and the allotment of lands to thirty-two of the number who actually removed to that Territory, is fully set out in office reports dated March 29, 1878, and April 6, 1878, respectively, printed in H. R. Report No. 449, Forty-seventh Congress, first session.

The act of February 19, 1873 (17 Stats., 466), authorized the appraisement and sale (at the appraised value) of these allotted lands, to persons who had made settlement thereon, no sale to be made for less than $3.75 per acre.

The lands were appraised at an average price of $4.91 per acre. The aggregate quantity of land allotted to the thirty-two Indians was 10,215.68 acres, the total value of which, under the appraisement, was $50,850.05.

Under the act of February 19, 1873, 879.76 acres were sold for the sum of $4,098.80 ($240 being unpaid), leaving undisposed of and subject to disposition under the pending bill 9,335.87 acres, at $46,991.25, an average of $5.02 per acre.

At the first session of the Forty-seventh Congress a majority of the House Committee on Indian Affairs recommended the passage of a bill authorizing the sale of the remainder of the lands at the uniform rate of $3 per acre, while a minority of the committee was in favor of adhering to the appraised value, as ascertained under the act of 1873.

The bill did not become a law.

During the Forty-eighth Congress a bill was introduced in the House of Representatives authorizing the sale of these lands at not less than $3 per acre in three installments.

In reporting upon this bill, February 23, 1884, Commissioner Price stated that while he concurred in the views theretofore expressed by this office as to the value of the lands, he was willing they should be disposed of at the average price of those previously sold ($4.54 per acre), as an inducement to have the long-vexed question settled.

In a report upon a bill similar to the one under consideration, dated February 4, 1886, Commissioner Atkins said:

"It may be remarked, without entering upon a discussion of the matter, that the rights of these thirty-two allottees, whether legal or equitable it matters not, were recognized by Congress in the act of February 19, 1873, and that the allotted lands, having never been offered for sale or entry (except by said act), were not subject to settlement, so that settlers thereon could obtain any vested rights as against the United States, by which they are held in trust for the benefit of the allottees. These settlers have had the use and occupation of the lands for more than twenty-five years without even the payment of taxes."

He concurred in the view of Commissioner Price, and recommended that the bill be amended so as to fix the price at $4.54 per acre.

At the first session of the Fiftieth Congress a bill providing for the sale of these lands at $2.50 per acre passed both Houses of Congress.

In reporting upon the enrolled bill, April 28, 1888, Commissioner Atkins said:

"Various efforts have heretofore been made to secure the passage of an act authorizing the sale of these lands at prices ranging from $1.25 to $3 per acre, but this office has invariably opposed any legislation looking to the disposition at a less price per acre than that realized from the previous sales—$4.54.

"If the act in question were still pending in either House of Congress I should still adhere to the position heretofore taken, but these Indians have for nearly thirty years been deprived of any use of these lands, and have been unable to obtain any compensation therefor.

"It now seems probable that they must accept $2.50 per acre for lands occupied without shadow of title for these many years (the settlers having paid no taxes thereon) or wait possibly thirty years longer, with no prospect of their receiving a more equitable compensation.

"In this view of the case it will doubtless be to the interest of these Indians to accept what they can get."

May 7, 1888, the President returned the bill, without his approval, to the House of Representatives.

The message (see Congressional Record, volume 19, Fiftieth Congress, first session, page 3796) contains a succinct statement of the method used by the white settlers to obtain possession of these lands, gathered from contemporaneous documents.

The President expressed himself upon the merits of the case as follows:

"But whatever the effect of a compliance with the provisions of this bill would be upon the title of the settlers to these lands, I can see no fairness or justice in permitting them to enter and purchase such lands at a sum much less than their appraised value in 1873, and for hardly one-half the price paid by their neighbors under the law passed in that year.

The occupancy upon these lands of the settlers seeking relief and of their grantors is based upon wrong, violence, and oppression.

A continuation of the wrongful exclusion of these Indians from their lands should not inure to the benefit of the wrong-doers. * * * While it might not result in exact justice or precisely rectify the wrongs committed, it may well be that in existing circumstances the interests of the allottees or their heirs demand an adjustment of the kind now proposed. But their lands certainly are worth much more than they were in 1873; and the settlers, if they are not subjected to a reappraisement, should at least pay the price at which the lands were appraised in that year."

These lands were assigned for the exclusive use and benefit of the individual Indians in September, 1860, nearly thirty years ago.

They were prevented from ever occupying or using them through the violence and lawlessness of the whites, who drove them out and usurped their homes.

Whatever may be the equities of such of the present occupants as have succeeded the original settlers, the fact remains that the Indians for whom the land was set aside have derived no benefit therefrom.

The Government professed to give them a home. In fact it has given them nothing but a promise. This promise should at last be fulfilled, and the land restored to them or its equivalent paid in money.

In any point of view the value of the land thirty years ago can not be regarded as a fair measure of its value to-day. The settlers have had the use of it for that time and the Indians have been kept out of its usufruct for the same time.

If 6 per cent. interest be added to the minimum price of public lands, it would make the value $3.50 per acre next September. This interest the Indians have lost and the settlers saved.

I see no reason to modify the views heretofore repeatedly expressed by this office, and accordingly have the honor to recommend that the bill be amended by striking out the words "one dollar and twenty-five," in lines 15 and 16, section 1, and inserting the words "four dollars and fifty-four" in lieu thereof; and by striking out the word "three," in line 4, section 2, and inserting the word "four" in lieu thereof; and inserting the words "and fifty-four cents" after the word "dollars," in the same line; and line 7 in said section to be amended in the same manner.

I return Senator Dawes's letter.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.