49TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 4179.

NEW YORK INDIAN LANDS IN KANSAS.

MARCH 3, 1887.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany bill H. R. 730.]

The Committee on Indian Affairs, having had under consideration bill H. R. 730, submits the following report:

The lands in question are situated in Bourbon County, Kansas, and are occupied by white settlers, and have been so occupied for more than twenty years, and were embraced within the 1,824,000 acres provided by the second article of the treaty of 1838, as a permanent home for the Six Nations of New York Indians, subject to the condition contained in the third article of the treaty, which reads as follows (7 Statutes at Large, p. 552):

ARTICLE 3. It is further agreed that such of the tribes of the New York Indians as do not accept and agree to remove to the country set apart for their new homes within five years, or such other time as the President may, from time to time, appoint, shall forfeit all interest in the lands so set apart, to the United States.

This treaty was proclaimed on the 4th of April, 1840, and, as the President has never at any time extended the period provided by the third article of the treaty for the acceptance by the tribes of its terms, and for their removal upon the lands, the rights of these tribes to do so expired in April, 1845, and there has not been at any time since any effort made by these tribes to avail themselves of the terms of this treaty. Consequently the lands were treated as public lands prior to, and ever since, the year 1860, as we are officially informed by the Commissioner of the General Land Office in his report to the Secretary of the Interior for the year 1878, pages 141 and 142.

In 1856 Commissioner of Indian Affairs Mannypenny, in an official communication made to the Senate, informed that body that no authoritative measures had up to that date been taken by the Indians to move West (see Senate Executive Document No. 13, Thirty-fourth Congress, third session, pages 2 and 3), nor had "any separate tribe" undertaken to move under the provisions of the treaty.

But in 1846, a year after the expiration of the five years fixed by the third article of the treaty within which the tribes were to move, one Dr. Hogeboom—but without authority of the Government (see Senate Executive Document No. 13, Thirty-fourth Congress, pages 2 and 3)—collected together about two hundred New York Indians and took them to Kansas. Many of these people died on their way, or after their arrival West, or returned to New York, and a few remained.

Inasmuch, therefore, as it appears that no effort was made on the part of the Indians to comply with the third article of the treaty of 1838, it is evident to your committee that they never acquired either a legal or an equitable title to these lands, nor any interest therein, possessory or otherwise.

But the Commissioner of the General Land Office, in 1859, sent Agent Stevens to Kansas to investigate the condition of such of the New York Indians as he might find there, and report who of them, if any, had acquired any interest in these lands, and he reported in favor of making allotments of 320 acres each to thirty-two Indians, giving their names and submitting the evidence upon which he based his recommendation.

From an examination of this evidence it does not appear to your committee that any of these Indians ever selected or settled upon or improved any particular or designated tracts of these lands, and yet certain tracts of 320 acres each out of this vast body of 1,824,000 acres were allotted to 32 of these Indians, as recommended by Agent Stevens. In order to see the character of the title attempted to be given to these Indians, and the authority therefor, as contemplated by the Acting Commissioner of Indian Affairs, your committee present herewith a copy of the instrument:

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. MIX,
Acting Commissioner.

As authority for granting these allotments the Acting Commissioner appears to have relied upon the provisions of the treaty of 1838, and yet the only conveyance authorized by that treaty is, in the language of the treaty itself, "by patent from the President of the United States," and the right and obligation to convey to the individual Indian in severalty is reserved to the Indian nations themselves, as the following language of the treaty abundantly shows:

To have and to hold the same in fee simple to the said tribes or nations of Indians, with full power and authority in said Indians to divide said lands among the different tribes, nations, or bands in severalty, with the right to sell and convey to and from each other, under such laws and regulations as may be adopted by the respective tribes acting by themselves, or by a general council of said New York Indians acting for all the tribes collectively.

From this it is evident to your committee that no authority of law existed for the issuance of these thirty-two individual certificates or allotment of September 14, 1860, and as no one of the Indian tribes or nations has signified any disposition, either within the limit of five years or at any other time, to avail itself of the terms of the third article of the treaty, no interest has ever at any time been acquired by them in the grant contemplated for their benefit under the first article of the treaty.

The only means of conferring title to any portion of these lands upon an individual Indian was through tribal or national authority, and as there is, no pretense that any of the Indian tribes ever acquired any title therein, no authority has ever existed competent to convey an interest

in severalty to a single one of these allottees, and consequently they have no shadow of a title or interest in or to these lands, either in equity or in law. And it is proper to note that the interest attempted to be conveyed by these certificates of allotment is simply a life interest, all of which must revert to the United States upon the death of the allottee by the very terms of the instrument itself.

Your committee is not unmindful that the charge of cruelty and persecution toward these Indians has been made, by which it said they were driven from these lands by white men in 1858 and prior thereto; but it is found, upon looking into the testimony taken by Agent Stevens, that of these allottees in 1859, when the investigation was had, nineteen of them were then under twenty-one years of age, and sixteen of them ranged in years from three to sixteen; that only six of them moved to Kansas in 1846 under the auspices of the Hogeboom enterprise, and that only two of the whole thirty-two were twenty-one years of age in 1845. It seems, therefore, incredible to your committee that children could have had such possession of public lands as to be the subjects of such persecution. But the evidence taken, which consists of a large number of affidavits, is exceedingly indefinite as to who perpetrated these alleged outrages, and also upon whom they were inflicted, and there is not the slightest evidence that any of these allottees were the sufferers from such violence or that they were ever threatened, and no one of the allottees has testified to any such acts or threats as personal to himself. Nor is there any evidence connecting the present settlers upon these lands, nor their grantors, with any of these acts of violence; and only two of these allottees appear at any time to have had any connection with the tracts allotted, and they are shown to have left the vicinity voluntarily and without compulsion or threats of any kind.

Your committee has not lost sight of the act of February 19, 1873, under which these tracts were appraised at from $3.75 to $10 per acre, and their sale forbidden at any less rates; but there appears no reason why the settlers upon the tracts in question should be deprived of the benefits accruing to all other settlers upon this vast tract of land (equal in area to one-third of the whole State of Massachusetts), and thus be compelled to pay from three to eight times the price paid by their more fortunate neighbors who by chance settled upon the lands adjoining, to which the claims of these Indians, if they had any, were equally applicable. For it should be remembered that from 1860 to the present time, a period of twenty-seven years, the title to these lands has been unsettled, thus depriving the settlers of that security so essential to prosperity, and without which improvements are impossible, as capital invariably shuns investments in unsettled titles.

Your committee therefore recommends the passage of the bill as amended in section 2, line 2, giving the settlers the right to purchase the lands in question within one year of its approval at $1.25 per acre.