

CONFEDERATED OTOE AND MISSOURIA INDIAN RESERVATION.

APRIL 4, 1894.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany H. R. 5426.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 5426) entitled "A bill to amend an act entitled 'An act to provide for the sale of the remainder of the reservation of the Confederated Otoe and Missouria Indians in the States of Nebraska and Kansas, and for other purposes,' approved March 3, 1881," having had the same under consideration, report it back with the recommendation that the same be passed with the following amendment, viz:

In lines 15 and 16, section 1, strike out the words: "reported on the Commissioner's schedule aforesaid as having been improved by," and inserting in lieu thereof the following words: "shown upon the duplicate of the Commissioner's schedule aforesaid, on file in the General Land Office, as having been improved by and reserved for."

This bill originated with the Department of the Interior, and was submitted to Congress with the full statement of the facts, which make its passage desirable in the Fifty-second Congress. (Senate Ex. Doc., No. 93, Fifty-second Congress, first session.) It has been favorably recommended by the Senate Committee on Indian Affairs.

The history of this case is very fully and explicitly set out in the following letters from the Department of the Interior:

DEPARTMENT OF THE INTERIOR,
Washington, May 4, 1892.

SIR: I have the honor to transmit herewith a draft of a bill, submitted by the Commissioner of Indian Affairs, to amend an act entitled "An act to provide for the sale of the remainder of the reservation of the confederated Otoe and Missouria Indians, in the States of Nebraska and Kansas, and for other purposes," approved March 3, 1881.

I also transmit herewith copy of a communication of 19th ultimo, from the Commissioner of Indian Affairs, setting forth the necessity for said legislation.

As these Indians have been in occupation of the lands sought to be allotted to them since 1876, I am of opinion that the alienation provision should be limited to ten years, and I have so noted it in the bill.

The matter is presented with request for the favorable consideration of Congress.

Very respectfully,

GEO. CHANDLER,
Acting Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 19, 1892.

SIR: I am in receipt of a letter, dated March 21, 1892, from Mary J. Barnes, Barnes-ton, Nebr., stating that she is a duly recognized member of the Otoe and Missouria tribe of Indians, and that she applies for allotments of land for herself and each of three sons under the act of Congress providing for the allotment of lands in severality to the members of the different tribes of Indians in the United States; that the land for which application is made is embraced within the original reservation of the Otoe and Missouria tribe of Indians, situated in Nebraska and Kansas, and is described as follows:

For herself, Mary J. Barnes, the east half of the northeast quarter of sec. 36, T. 1 N., R. 7 E, and the west half of the northwest quarter of sec. 31, T. 1 N., R. 8 E.; for her son, F. H. Barnes, the northeast quarter of sec. 24, T. 1 N., R. 7 E.; for her son, William D. Barnes, the southeast quarter of sec. 19, T. 1 N., R. 8 W.; and to her son, Emmett F. Barnes, the east half of the northeast quarter of sec. 2 and the west half of the northwest quarter of sec. 1, T. 1 S., R. 7 E.

Mrs. Barnes further states that the land requested for herself has been her home residence for twenty-five years and is in a high state of cultivation, having valuable improvements; that the several tracts requested for her sons have been the permanent homes of themselves and families for a number of years, and are each in a good state of cultivation and well improved; that the above described tracts were all withheld by order of the Secretary of the Interior from the sale of the Otoe and Missouria Reservation lands sold under the act of 1881; that none of the tracts of land heretofore mentioned have ever, since said general sale nor before, been sold and they have always been in applicant's possession by occupation.

By telephonic message of the 2d instant Senator Paddock stated that these applicants are his neighbors and friends and asked immediate action in the matter. In view of the fact that the rights or claims of other Indians of this class may be affected by the action hereinafter recommended, a brief history of the case is submitted for your information, as follows:

By the treaty of March 15, 1854, the confederated tribes of Otoe and Missouria Indians ceded to the United States all their country west of the Missouri River, excepting a strip of land on the waters of the Big Blue River, 10 miles in width and bounded as described in article 1 of said treaty; in consideration of which the United States agreed to pay said Indians certain sums of money as set forth in article 4 thereof.

Article 6 of said treaty provided that—

"The President may, from time to time, * * * cause the whole of the lands herein reserved or appropriated, west of the Big Blue River, to be surveyed off into lots, and assign to such Indian or Indians of such confederate tribes as are willing to avail of the privilege, and who will locate on the same as a permanent home. If a single person over 21 years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section, and to each family exceeding ten in number, one quarter section for every additional five members. * * * And the President may, * * * after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, under the restrictions specified in said article."

By office letter to the Department dated December 9, 1875, upon the application of Mary J. Barnes, received on the same date, it was recommended, for reasons stated, that, without reference to article 6 of the treaty aforesaid, this office be authorized, under the general relation existing between the Department and the Indians as wards of the Government, to direct the agent of the Otoes to assign to each Indian family prepared to enter upon agricultural life a tract of land not exceeding 80 acres, to be included in each case within the established lines of survey, except in cases where individual heads of families have already improved a quantity of land exceeding 40 acres such family may be allotted 160 acres.

By Department letter of December 15, 1875, the foregoing recommendation was approved and authority granted to carry the same into effect.

By office letter dated December 23, 1875, U. S. Indian Agent J. W. Griest, Otoe Agency, was instructed to assign to each head of a family or single person over the age of 21 years, belonging to the Otoe and Missouria tribes, who shall manifest a desire to enter upon and pursue an agricultural life, a quantity of land within the limits of their reservation set apart by the treaty of 1854 aforesaid, equal to 80 acres in extent, to be governed in each instance by the established lines of the public surveys. In cases, however, where the head of the family has already given evidence of industry and thrift by having in cultivation more than 40 acres, such head of a family will be assigned a quantity of land equal in extent to 160 acres.

By letter dated August 23, 1876, U. S. Indian Agent J. W. Griest requested a certificate of allotment to Mary J. Barnes, a member of the tribe with five minor children, for the west half of the northwest quarter of section 36, township 1, range 7 east, containing 160 acres, the same being fenced and improved with good dwelling house and 85 acres broken and in cultivation.

The act of August 15, 1876 (19 Stats., 208), provided that, with the consent of the Otoe and Missouri tribes of Indians, the Secretary of the Interior is authorized to cause to be surveyed and appraised the reservation of said Indians lying in the States of Kansas and Nebraska, and to offer 120,000 acres from the western side of the same for sale, through the U. S. land office at Beatrice, Nebr., for cash to actual settlers only, in tracts not exceeding 160 acres to each purchaser, the proceeds of said sale to be placed to the credit of said Indians in the Treasury of the United States.

The consent of said Indians was given December 23, 1876.

The act of March 3, 1881 (21 Stats., 380), provided that, with the consent of the Otoe and Missouri tribes of Indians, the Secretary of the Interior is authorized to cause to be surveyed and sold the remainder of the reservation of said Indians lying in the States of Kansas and Nebraska; that the proceeds of the sale of said lands shall be placed to the credit of said Indians in the Treasury of the United States and bear interest at the rate of 5 per centum per annum; and that the Secretary of the Interior may, with the consent of the Indians, secure other reservation lands upon which to locate said Indians, cause their removal thereto, and expend such sum as may be necessary for their comfort and advancement in civilization.

The consent of said Indians was given May 4, 1881.

It will be observed that by the acts of 1876 and 1881 aforesaid the Otoe and Missouri tribes of Indians agreed to the sale of all their lands and made no provisions for allotments to those members of the tribe who had elected to remain under the provisions of the treaty of 1854.

By office letter dated December 20, 1881, attention was invited to the fact that the act of March 3, 1881, failed to provide any protection for those members of the tribe who had, in good faith, made selection and location of lands on their reservation, placed valuable improvements thereon, and desired to remain in the enjoyment of them. With said letter a draft of a bill providing for such amendment of said act as the necessities of the case seemed to demand was submitted.

A bill intended to meet the foregoing passed the Senate March 21, 1882, but failed to become a law.

By letter dated April 14, 1883, this office transmitted the report of the commissioners appointed to appraise the Otoe and Missouri lands in Nebraska and Kansas, under the act approved March 3, 1881, entitled "An act to provide for the sale of the remainder of the reservation of the confederated Otoe and Missouri tribes of Indians in the States of Nebraska and Kansas, and for other purposes" (21 Stats., 380), and the act (sundry civil) approved August 7, 1882 (22 Stats., 328), submitting schedules of appraisement, separately describing the tracts appraised, and the valuation of each tract as determined by them. It was recommended in said letter that said appraisement be approved and that the Commissioner of the General Land Office be directed to proceed with the sale in accordance with the provisions of existing law, *withholding, however, from entry and sale the subdivisinal tracts upon which improvements are found belonging to Indians, as reported by the appraisers in their schedule of appraisement.*

By letter dated April 17, 1883, the Department returned to this office the original appraisement of the commissioners and also transmitted copy of letter of same date to the Commissioner of the General Land Office, approving said appraisement and directing that the subdivisinal tracts upon which improvements are found belonging to Indians, as reported by the appraisers in their schedule of appraisement, be reserved from sale and that the other lands be sold in accordance with the law.

The said schedule of appraisement shows improvements by said Indians as follows:

"Edward Devoin.—The SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of sec. 31, T. 2 N., R. 8, containing 36.10 acres, 3.90 acres being deducted for right of way of the Republican Valley Railroad.

"Wm. M. Barnes.—The S. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of sec. 19, T. 1 N., R. 8, containing 80 acres.

"Otoe Sam.—The NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of sec. 20, T. 1 N., R. 8, containing 40 acres.

"Charles A. Drippps.—The S. $\frac{1}{2}$ of the NE. $\frac{1}{4}$ of sec. 21, T. 1 N., R. 8, containing 80 acres.

"Mary J. Barnes.—The W. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of sec. 31, T. 1 N., R. 8, 79.62 acres.

"Fred Barnes.—The NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of sec. 24, T. 1 N., R. 7, containing 34.37 acres, 5.63 acres being deducted for right of way for Oregon and Republican Valley Railway.

"John Mus-ka-ga-ha.—The SE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of sec. 24, T. 1 N., R. 7, containing 6.63 acres, 3.37 acres being deducted for right of way for Oregon and Republican Valley Railway.

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"*Batiste Devorin*.—The NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of sec. 25, T. 1 N., R. 7, containing 37.44 acres, 2.56 acres being deducted for right of way for Oregon and Republican Valley Railway.

"*Mary J. Barnes*.—The E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of sec. 36, T. 1 N., R. 7, containing 80 acres.

"*Emmett Barnes*.—The NW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of sec. 1, T. 1 S., R. 7, containing 40 acres."

Upon this showing it would appear that good faith and justice entitles Mrs. Mary J. Barnes, the applicant in this case, to a formal allotment of the land applied for by her, and which said land is the same as that reported by the appraisers as improved and occupied by her. She can not get a patent for this land under the existing laws relating to the Otoe and Missouri Indians nor under the general allotment act.

I have, therefore, the honor to submit herewith a draft of a bill providing for such amendment of the act of 1881 as the necessities of the case seem to demand.

Attention is invited to the fact that the applicants for these allotments have apparently been in possession of the lands applied for since the date of the act authorizing their sale (1881), and as they are public lands the occupants have been presumably exempt from taxation during this period. I therefore doubt the wisdom of recommending that these lands be allotted, with the usual restrictions as to alienation and taxation, for twenty-five years, and have accordingly left blank in said draft of bill the period of time for which such restriction should be incorporated in the patent.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., February 24, 1894.

SIR: I have the honor to acknowledge the receipt, by reference from the Department, and for report, of a communication dated January 23, 1894, from the Senate Committee on Indian Affairs, inclosing for your opinion S. 1467 of the present session of Congress, entitled "A bill to amend an act entitled 'An act to provide for the sale of the remainder of the reservation of the confederated Otoe and Missouri Indians in the States of Nebraska and Kansas, and for other purposes,' approved March 3, 1881." (21 Stats., 380.)

Said bill provides "that if any member of the said confederated tribes residing at the date of the act of March 3, 1881, and whose names appear upon the schedule of appraisals made by the commissioners appointed under the provisions of the said act approved by the Secretary of the Interior April 17, 1883, upon any of the lands authorized to be sold by said act shall make application for allotments of land, the Secretary of the Interior shall cause a patent to issue to such person or his heirs who may be residing upon said lands at the date of this act for the subdivisonal tract or tracts of lands not exceeding 160 acres of land to any one person reported on the Commissioner's schedule aforesaid as having been improved by such person: *Provided*, That the lands acquired by any Indian under the provisions of this act shall not be subject to alienation, lease, or incumbrance either by voluntary conveyance by the grantee or his heirs, or by the judgment, order, or decree of any court, or subject to taxation of any character, but shall remain inalienable and not subject to taxation, lien, or incumbrance for the period of ten years, which restriction shall be incorporated in the patent."

The Commissioner of Indian Affairs, in a letter dated February 14, 1894 (which I have by your reference, transmitting H. R. 5426, Fifty-third Congress, second session), asks that both bills, which are identical in terms, be amended as follows, viz:

"In lines 15 and 16, section 1, strike out the words 'reported on the Commissioner's schedule aforesaid as having been improved by,' and insert in lieu thereof the words 'shown upon the duplicate of the Commissioner's schedule aforesaid on file in the General Land Office as having been improved by and reserved for.'"

This amendment is made with a view to cover, beyond all question, the reserve recommended by the Indian Office, under date of May 22, 1883, and approved by the Department May 24, 1883, to certain members of said confederated tribes.

The tracts reserved are as follows, namely:

For Charles A. Dripps: The N. $\frac{1}{2}$ of the NE. $\frac{1}{4}$ of Sec. 31, T. 1 N., R. 8 E.; making, with the tract originally reserved, 160 acres.

For William M. Barnes: The N. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of Sec. 19, T. 1 N., R. 8 E.; making, with the tract originally reserved, 160 acres.

For Emmet Barnes: The NW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of Sec. 1 (or lot 4), the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ (or lot 1), and the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of Sec. 2, T. 1 S., R. 7 E.; making, with the tract originally reserved, 158.07 acres.

For Frederick Barnes: The W. $\frac{1}{2}$ of NE. $\frac{1}{4}$, and the SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of Sec. 24, T. 1 N., R. 7 E.; making, with the tract originally reserved, 151.34 acres.

As the records and files of this office show the aforesaid reservations to be intact, the recommendation of the Commissioner of Indian Affairs is hereby concurred in; and I see no objection to the bill when amended as above indicated.

The copy of S. 1467 and other papers referred are herewith returned.

I am, sir, very respectfully, your obedient servant,

S. W. LAMOREUX,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, January 31, 1894.

SIR: I am in receipt, by your reference for report, of a communication dated January 23, 1894, from the Senate Committee on Indian Affairs, inclosing for the opinion of the Department S. 1467, entitled "A bill to amend an act entitled 'An act to provide for the sale of the remainder of the reservation of the Confederated Otoe and Missouria Indians in the States of Nebraska and Kansas, and for other purposes,' approved March 3, 1881" (21 Stats., 380).

The bill provides that "if any member of the said confederated tribes residing, at the date of the act of March 3, 1881 (and whose names appear upon the schedule of appraisals, made by the commissioners appointed under the provisions of the said act, approved by the Secretary of the Interior April 17, 1883), upon any of the lands authorized to be sold by said act shall make application for allotments of land, the Secretary of the Interior shall cause a patent to issue to such person, or his heirs who may be residing upon said lands at the date of this act, for the subdivisional tract or tracts of lands, not exceeding 160 acres of land to any one person reported, on the commissioners' schedule aforesaid as having been improved by such person: *Provided*, That the lands acquired by any Indian under the provisions of this act shall not be subject to alienation, lease, or incumbrance either by voluntary conveyance by the grantee or his heirs or by the judgment, order, or decree of any court, or subject to taxation of any character, but shall remain inalienable and not subject to taxation, lien, or incumbrance for the period of ten years, which restriction shall be incorporated in the patent."

The bill under consideration follows literally the draft submitted with office report of April 19, 1892, on the claims of said Indians, except that the word "ten" is inserted in the blank which was left for the purpose to indicate the number of years for which the lands to be allotted shall be exempt from taxation and alienation. This limitation of ten years instead of the usual twenty-five years is a very proper one under the circumstances, as shown in office report aforesaid, and the bill is, therefore, respectfully returned with the approval of this office.

The papers referred by you are herewith returned, together with a copy of said office report of April 19, 1892, for the information of the committee.

Very respectfully, your obedient servant,

D. M. BROWNING,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, February 27, 1894.

SIR: I have the honor to acknowledge the receipt of your communication of the 23d ultimo, and accompanying S. 1467, "A bill to amend an act entitled 'An act to provide for the sale of the remainder of the reservation of the Confederated Otoe and Missouria Indians in the States of Nebraska and Kansas, and for other purposes,' approved March 3, 1881."

In response thereto, I transmit herewith copy of a communication of 31st ultimo from the Commissioner of Indian Affairs and also a copy of a communication of 14th instant from said officer on H. R. 5426, which is identical in terms to S. 1467, in which recommendation is made that the bill be amended so as to avoid any future question respecting the quantity of land that shall be patented under said bill should it become a law.

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I also transmit a copy of a communication of the 24th instant from the Commissioner of the General Land Office, to whom the bill was referred, in which recommendation is made for the passage of the bill if amended as suggested by the Commissioner of Indian Affairs.

Very respectfully,

WM. H. SIMS,
Acting Secretary.

The CHAIRMAN COMMITTEE ON INDIAN AFFAIRS,
U. S. Senate.

It will be observed the amendment recommended by the committee originates with the Department and is made with a view to cover beyond all question the reserve recommended by the Indian Office and approved by the Department of the Interior. The measure is clearly meritorious and free from objection, and should be passed.

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