

2-17-1880

## On the Case of Dr. Appel

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## IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1880.—Ordered to be printed.

Mr. WALKER, from the Committee on Public Lands, submitted the following

## REPORT:

[To accompany bill H. R. 2326.]

*The Committee on Public Lands, to whom was referred the bill (H. R. 2326) for the relief of settlers upon the Osage trust and diminished reserve lands in Kansas, and for other purposes, have had the same under consideration, and submit the following report :*

These lands formerly belonged to the Osage Indians, and under treaty stipulations between the United States and that tribe the sale of the lands and the disposition of the funds arising from the proceeds of such sale were mutually agreed upon. By joint resolution of April 10, 1869, the lands were opened to sale to actual settlers at one dollar and twenty-five cents an acre. By act of May 9, 1872, the general principles of the pre-emption laws were applied to these lands, though they were to be sold only to cash purchasers, with certain conditions as to time of payment, which were still farther modified by act of June 23, 1874, which provided against any farther extension of time and prescribed that deferred payments under previous laws should draw interest at the rate of 5 per cent. per annum.

A very considerable proportion of the persons who have made settlements upon these lands have failed to comply with the terms as to payment. They have been signally unfortunate. Many invested all the means at their command to put their farms under partial cultivation and to furnish the necessary improvements. Others effected loans for these purposes. Before they were able to realize from their investments the entire section of country within which these lands are included was devastated by the grasshopper scourge, which literally ate out their substance. This, with subsequent losses from an unusually dry season and the pressure of indebtedness, has made it quite impossible for these people, or the greater part of them, to meet their obligations to the government.

This bill provides for their relief by permitting payment for the lands to be made in equal annual installments, with 5 per cent. interest on deferred payments, and secures the government, as the representative of the Indians, against loss by default by subjecting the claims of settlers to forfeiture and the lands to sale at public auction in case of failure to meet any one of the payments. This, while a substantial relief to the settlers, will prove just to the Indians, for it insures certain payment for the lands and the consequent enlargement of their fund, while by extending the same principle of payment by installments to the lands un-

settled upon, their sale will be promoted to the mutual advantage of the State and of the Indian tribe.

No advantage would result to the government or to the Indians by enforcing forfeiture against the settlers, under existing law, while the hardships to the unfortunate settlers would be very great. They would be deprived of the benefit of all the improvements placed upon their lands. Nor would this and the forced abandonment of their homes be all; as their settlement was made under the limitations and requirements of the pre-emption law, they would be prohibited from filing upon any other class of public lands. The committee do not believe that anything would be gained by such severity, while, under the terms of the pending bill, the substantial purpose of the treaty and the original legislation will be carried out.

The bill also provides that the lands shall be taxable after the payment of the first installment, though it is expressly provided that no sale for taxes shall deprive the United States of any part of the purchase-price of the lands. This feature is deemed just to the State, which would otherwise be deprived of any revenue from a very large proportion of an extensive community for a series of years, while the local burdens would fall upon the comparatively few who have received titles to their lands.

This bill was introduced at the last session, and was drawn under the direction of the Commissioner of the General Land Office. It has also passed the House of Representatives. The committee believe that it will be a measure of humanity to the settlers and of substantial justice to the government and the Indians, and they therefore recommend its passage.

A letter of the Commissioner of the General Land Office, of date April 10, 1878, to the Secretary of the Interior, and by that official transmitted to the House of Representatives, is hereto attached.

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DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., April 10, 1878.*

SIR: I have the honor to report as follows upon House bill No. 3275, "for the relief of actual settlers upon the Osage Indian trust and diminished reserve lands in the State of Kansas, and for other purposes," referred by the department on the 7th ultimo with letter of Hon. Thomas Ryan dated the 4th ultimo.

The lands in question are those designated by the second and sixteenth articles of the treaty of September 20, 1865, volume xiv United States Statutes, and by those articles the stipulations respecting their sale and the disposition of the proceeds are expressed.

By joint resolution of April 10, 1869, the trust lands were opened to sale at \$1.25 per acre to actual settlers, and the twelfth section of the act of July 15, 1870, authorized the continued disposal of both the trust and diminished reserve lands under the provisions therein prescribed, and by act of March 3, 1871, the town-site laws were extended over them. (See Statutes, vol. xvi, pp. 55, 362, and 557.)

By act of May 9, 1872 (Statutes, vol. xxii, p. 90), incorporated in section 2283 of the Revised Statutes, the lands have been brought under the general provisions of the pre-emption law, but only to be sold to cash purchasers, and upon prescribed limitations as to time of payment, which limitations were still further modified by act of June 23, 1874 (Statutes, vol. xviii, p. 283), so as to bar any further extension of time, and to require interest at the rate of 5 per centum per annum upon all deferred payments under the previous laws.

It is now proposed to relieve the settlers by allowing payment in equal installments under the terms of the bill, and to provide against default by subjecting the claims to forfeiture and the lands to unconditional sale at public auction after due notice and the lapse of the prescribed periods of time.

The evident purpose is to carry into effect the treaty obligations with the Indians, and at the same time to secure a productive settlement of the country with an increase

of the revenues of the State by taxation, as well as the resources of the general government, by the added improvements and accumulations consequent upon such settlement.

The bill as introduced not being, in my judgment, sufficiently explicit in its detail to effect the objects intended, I have, with some care, drafted a substitute, which I herewith submit, and which I respectfully suggest will more fully express the necessary provisions.

With reference to section 2 of the bill (section 5 of the substitute) respecting the right of the State to tax the lands, and aiding a purchaser at tax sale in case of default on the part of the settler to pay the purchase-price and take his patent, I have to remark that I do not consider the matter of any importance in its relation to the public land system or as requiring from me any opinion touching its merits. It is for Congress to say whether or not it will aid the enforcement of State legislation and interpose the patent of the United States as a bar to the equities of redemption provided for parties liable to taxation for local or State purposes.

The provisions of the bill, as drawn by me, will only give the party paying the tax, after complete default by the settler, the right to take the lands in preference to a purchaser at the public sale on the day of offering, and cannot, therefore, by any possibility defeat any claim of such settler, or bar any privilege except the mere common right to bid against all the world for the lands which he has had ample opportunity, even after advertisement, of fully securing. In this view of the matter I have, therefore, to say that while I have no recommendations to offer, I see no objection to the incorporation of the section as it stands in the substitute.

It will be apparent by a reference to lines 6, 7, 8, 9, and 10 of section 2 in the original bill, that their import would be to limit the power of the State to provide her own remedies for the enforcement of her laws, and I have consequently amended the phraseology of the contest, and omitted a clause embraced in those lines which does not command my favorable judgment.

With the foregoing suggestions and exceptions, looking at the whole scope of the bill, I am of the opinion that the enactment of the substitute submitted, either with or without the incorporation of section 5, will work advantageously to the United States as well as to the Indians, and may with propriety be consummated.

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

J. A. WILLIAMSON,  
*Commissioner.*

Hon. C. SCHURZ,  
*Secretary of the Interior.*

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