

12-20-1881

## Sale of Miami Lands

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IN THE SENATE OF THE UNITED STATES.

DECEMBER 20, 1881.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 328.]

*The Committee on Indian Affairs, to which was referred the bill (S. 328) to provide for the sale of the lands of the Miami Indians in Kansas, has had the same under consideration and submit the following report:*

By the first article of the Miami treaty of June 5, 1854 (10 Stat., 1093), the Miami Indians ceded to the United States all their lands in Kansas, estimated at 500,000 acres, excepting and reserving therefrom 70,000 acres for their future homes, and also a section of 640 acres for school purposes.

Out of the 70,000 acres reserved, an allotment of 200 acres in severalty was to be made to each individual of the tribe, for which patents were to be issued, and the chiefs were then to select the balance in compact form adjacent to the individual selections, the same to be held in common by the tribe until such time "as the chiefs and a majority of the tribe shall request it to be sold by the President," and the proceeds paid to the tribe. The chiefs were also to select the school section.

Under these provisions and the third section of the Indian appropriation act of 1853 (11 Stat., 332), 60,026 $\frac{25}{100}$  acres of land were selected by 300 allottees at various times prior to September, 1869, and patents have issued for the same, leaving a remainder, which was selected by the chiefs as provided in the treaty, and including the school section of 10,608 $\frac{1}{10}$  acres.

By the act of March 3, 1873 (17 Stat., 631), entitled "an act to abolish the tribal relations of the Miami Indians, and for other purposes," it was provided:

1. That the lands of the Miamis in Kansas, held in common, and including the school section, be appraised with the improvements made thereon by the United States and the Indians, by three disinterested persons, appointed by the Secretary of the Interior, in legal subdivisions of 160 acres or less.

2. That each *bona fide* settler on said lands at the date of the passage of this act, being a citizen of the United States, and having valuable improvements thereon, shall be entitled at any time within one year from the return of said appraisement to purchase the land so occupied by him in tracts of not more than 160 acres, at the appraised value, under such rules and regulations as the Secretary of the Interior might prescribe; "and on failure to make payment within one year from date of said approval of appraisement the right of such settler to purchase as afore-

said shall cease, and it shall be the duty of the Secretary of the Interior to sell the same, either at public sale or on sealed bids, for cash, to the highest bidder, at not less than the appraised value nor less than one dollar and twenty-five cents per acre, after due notice by public advertisement; and all lands referred to in this and the foregoing section, not so occupied and improved by settlers at the date of the approval of this act, shall be appraised by said appraisers, including all improvements thereon of every character, and sold by direction of the Secretary of the Interior to the highest bidder, for cash, after due advertisement, either at public sale or on sealed bids, at not less than the appraised value nor less than one dollar and twenty-five cents per acre, as aforesaid, in quantities not exceeding one hundred and sixty acres."

3. That if any adult member of said tribe shall desire to become a citizen of the United States, he or she may, upon the presentation of certain proof to the satisfaction of the circuit court of the United States for the State of Kansas, and taking the oath of allegiance to "be a citizen of the United States, which shall be entered of record, and a certificate thereof given to said party."

Under this latter provision thirty-three of the Miamis elected to become citizens, and are entitled to their distributive share of the funds arising from the sale of the lands in question. It appears from the report of the appraisers under the act of 1873, which report was approved by the Secretary of the Interior October 30, 1873, that there were 80 settlers upon this tract, occupying 8,114.93 acres, which was appraised at an average of \$4.80 per acre, leaving unallotted and unoccupied 2,493.20 acres, at an average appraised value of \$4.63 per acre.

That portion of the tract occupied by settlers was placed under the jurisdiction of the General Land Office, and the remainder under the jurisdiction of the Office of Indian Affairs.

By subsequent act, approved June 23, 1874 (18 Stat., 273), the settlers on Miami Indian lands, named in the act of 1873, were permitted to make payment in three annual installments, the last of which expired on the 30th of October, 1876.

Your committee is informed that of the eighty settlers reported as occupying portions of these lands only thirty-two have made full, and four have made a partial payment for the lands occupied by them.

Of the 2,493.20 acres of unallotted and unoccupied lands under the immediate jurisdiction of the Indian Office, only 165.28 acres were sold on sealed bids when the land was offered in February, 1874, in accordance with the concluding paragraph of the second section of the act of 1873.

These settlers who were permitted by the act of 1873, afterwards amended in 1874, to make payment for the lands occupied by them, but have failed to comply with the terms of said act, have forfeited all their right and claim to said lands, with the improvements upon the same.

The United States holds the legal title to these lands, but the equitable title in fee is in the Indians, and the United States has no interest except that of a trustee, and is in conscience bound to protect the interests of the party for whom the trust was originally created.

The lands at the date of appraisement were undoubtedly worth the full value placed upon them by the appraisers, and if they could then, under the act, have been sold to the highest bidder, for cash, would have brought the full amount at which they were appraised. Congress, however, with a view to the settlement of the country, and the advantage of the parties who had, without color of right, settled upon and improved the lands, provided that they should be sold to the parties

then living thereon, but at the appraised value, such settler to forfeit all claims if payment was not made in one year; which limitation for payment was extended by the act of 1874, so as to allow payment to be made in three annual installments.

This amendment was entirely in the interest of the settlers, but as interest on the delayed payments was required, the Indians, whose wishes were not consulted, were not injured, provided the lands are now sold at the appraised value.

As before stated, four of these settlers have made but partial payments, and forty-four have failed to meet the requirements of the law under which they claim.

In 1878 said settlers presented memorials to Congress praying for a reappraisal of said lands, claiming that the appraisal made in conformity to the act of May 3, 1873, is too high, and urging that a large depreciation in the value of the lands had taken place since the date of appraisal.

The report of the appraiser shows that the settlers were on the lands prior to the date of the act of March 3, 1873, and had valuable improvements thereon at that time; they have had the use of the property since that date without paying either rent or interest, or purchase-money; they have not even been called upon to pay taxes on the lands, which are, by express decision of the Supreme Court of the United States (5 Wall., 737), exempt from taxation under the laws of the State.

Admitting, therefore, the possible fact of such depreciation, your committee can see no good reason for a new appraisal. The fact that the settlers were on the lands at the date of the act withdrew them from sale; and as they have occupied and received the advantages of the same since that time, they should, in the judgment of your committee, be held to complete the purchase or forfeit, under the act, and submit to a resale of the lands, with their improvements, at the appraised value.

Furthermore, the Miami Indians are not pressing the sale of these lands at the present time, but are, so your committee is advised, content to await their sale at the appraised value thereof, and the United States cannot, in equity, take any steps looking to a diminution of the price of the land without first obtaining their consent.

Your committee would therefore recommend that the bill do pass.