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Sale of Kickapoo Lands

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IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1882.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 469.]

The Committee on Indian Affairs, to whom was referred the bill (S. 469) to provide for the sale of certain Kickapoo Indian lands, report that the bill was referred to the Commissioner of Indian Affairs for such information as he might have upon the subject.

The committee have received in response the following letter:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 13, 1882.

The honorable the SECRETARY OF THE INTERIOR:

SIR: I have the honor to transmit herewith printed copy of Senate bill No. 469 entitled "A bill to provide for the sale of certain Kickapoo Indian lands" in the State of Kansas, submitted to this office for its views thereon the 22d ultimo, by Hon. B. Harrison, United States Senate, with a request for information relative to said lands.

In reply I have to state that the lands referred to in said bill were reserved for certain purposes by the amended eleventh article of the treaty made June 28, 1862, by and between the United States and the Kickapoo tribe of Indians in Kansas (13 Stat., 623), which also provides for the sale or other disposition of said lands, and is in the following words, to wit:

"There shall be reserved six hundred and forty acres of land to be selected by the chiefs of said tribe of Kickapoos as a site for a saw and grist mill, three hundred and twenty acres where the mission-house now is, and one hundred and sixty acres where the house built for the agency now is, which, with the improvements thereupon, shall be disposed of when the objects for which they have been reserved shall have been accomplished in such a manner and for such purposes as may be provided by law."

Said lands are in Jackson, Brown, and Atchison Counties in said State, and as surveyed are described in the records of this office as follows, viz:

(1.) The south $\frac{1}{4}$ of section 4, township 5, range 16 north, $\frac{1}{4}$ of section 9, township 5, range 16, in Jackson County, being the 640 acres reserved for mill sites.

(2.) The south $\frac{1}{4}$ of section 33, township 4, range 17, in Brown County, being the 320 acres reserved for mission purposes.

(3.) Lots 5, 6, and 6, section 3, township 5, range 17, and lot 6, section 15, township 5, range 17, in Atchison County (reserved for agency purposes).

(1.) Relative to the land reserved for mill-site purposes, United States Indian Agent H. C. Linn, in answer to office letter of the 5th ultimo, makes report, under date of the 28th ultimo (copy herewith), in which he states that he visited said land, and finds that J. D. Stanley has inclosed it with a wire fence; that he (Stanley) does not reside upon said land, though there is an unoccupied board shanty, 10 by 12 feet in dimensions, thereon; that said fence and shanty are all the improvements upon said land. Said agent also states that said land is worth from \$8 to \$12 per acre; that in estimating the value thereof he does not rely simply upon his own judgment, but takes into consideration the prices paid by the owners of adjacent farms, who paid \$10.50 per acre when all the land in that neighborhood was uncultivated prairie.

Your attention is invited to the inclosed copies of reports, relative (among others) to this tract, made by said Agent Linn, April 9, and May 18 last, in which it appears that said Stanley was well aware at the time he was engaged in making improvements

thereon, that said land was reserved as "Indian land," and not subject to homestead entry or pre-emption; that many other white men were encouraged by the unlawful acts of said Stanley to trespass upon lands allotted to Kickapoo Indians.

(2.) The tract of 320 acres known as the "mission land" has been the subject of much correspondence in connection with a claim of the Presbyterian Board of Foreign Missions, to the right of purchase of the same, founded upon a certain contract, made in 1856 with the then Commissioner of Indian Affairs. I have caused to be made an examination of the facts and circumstances relative to said claim, and am satisfied that said board has no right to the purchase of said land, other than that possessed by any individual who may desire to purchase the same when it shall be disposed of in such manner "as may be provided by law."

There are no buildings on this tract belonging either to the government or to the Indians; it is surrounded by well-cultivated farms, and is fully worth \$10 per acre. I am advised that none of the parties mentioned in said bill have valuable improvements, or reside upon said tract.

(3.) Relative to the lands reserved for agency purposes, it is stated by Agent Linn, in his report of the 28th ultimo, before mentioned, that they are surrounded by finely-cultivated farms, and are worth from \$8 to \$12 per acre; that said lands are not inclosed, improved, or occupied.

It will be seen from the foregoing that the statement made in the fourth (last) clause of the preamble to said bill (to the effect that the parties mentioned in said bill entered and made valuable improvements on said lands, *believing the same to be public lands open to homestead entry and pre-emption*) is not warranted by the facts, as none of the parties named in connection with said lands reside upon them, and none of them have made improvements thereon, except said Stanley, who was fully aware at the time he did so that said land was still "Indian land," and not subject to homestead or other entry.

The illegal act of said Stanley in entering upon said land should not insure to him the right to purchase the same to the exclusion of the rights of law-abiding citizens of said State, who have long been desirous of purchasing portions thereof.

I am utterly averse to establishing the precedent that an unlawful and unwarranted entry upon and improvement of lands reserved for the benefit of Indians confers upon the trespasser the exclusive right to purchase the same.

In view of the facts stated herein, I am of the opinion that said lands should be appraised and sold to the highest bidder for cash, in tracts of not more than one hundred and sixty acres to any one person, and for that purpose I have had prepared, and respectfully submit herewith, a draft of a bill, and respectfully recommend that it be transmitted to Senator Harrison, with the request that the same be substituted for Senate bill No. 469, under consideration, which is herewith inclosed.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

The committee have also been furnished with copies of two letters of H. C. Linn, the Indian agent referred to in the communication of the Commissioner of Indian Affairs, which are as follows:

UNITED STATES INDIAN SERVICE,
Pottawatomie Agency, January 28, 1882.

Hon. H. PRICE,
Commissioner of Indian Affairs, Washington, D. C.:

SIR: Acknowledging the receipt of your letter, dated January 5, 1882, marked "L, 22298, 1881," inclosing "Senate bill No. 469, providing for the sale to parties mentioned therein of the tracts of land reserved for mill-site, mission, and agency purposes by the terms of the Kickapoo treaty of June 28, 1862," and directing me to ascertain and inform the Indian Bureau the value per acre of said tracts of land.

In reply, I have to inform you that I have visited the tracts named, and find that the mill site is inclosed by a three-barbed-wire fence; there is a board shanty 10 by 12 feet in dimensions, worth about twenty dollars, standing on the premises but not occupied by any person. The land embraced in the mill site is worth from \$8 to \$12 per acre. Responsible persons living on adjoining tracts inform me that they paid the railroad company \$10 per acre therefor when raw prairie; the mill-site is still claimed by J. D. Stanley.

Lots 5, 6, and 7, section 3, town. 5, range 17, Atchison County, reserved for agency purposes, are located about one-fourth of a mile from Kennekuk, which is a village of not sufficient importance to affect the price of lands lying contiguous to it. The land is neither inclosed nor occupied, the persons formerly occupying the different tracts having removed therefrom upon my order to do so, which was made in accordance with instructions from the Indian Office.

These tracts are surrounded by finely cultivated farms, upon which excellent im-

provements have been made, and, in my judgment, could be sold from \$8 to \$12 per acre.

I notified all the parties squatting upon Kickapoo lands to vacate them, and caused it to be generally known that such lands were not subject to homestead or entry, and in settling upon them persons made themselves liable to the penalty imposed by section 2118 "United States Revised Statutes, Indian Affairs."

Returned herewith, as directed in your letter, please find Senate bill 469.

Very respectfully,

H. C. LINN,
U. S. Indian Agent.

UNITED STATES INDIAN SERVICE,
Pottawatomie Agency, May 18, 1881.

Hon. H. PRICE,

Commissioner Indian Affairs, Washington, D. C. :

SIR: Referring to my letter, dated March 26th last, stating "that white citizens of Brown and Jackson Counties, Kansas, had taken possession of certain tracts of lands allotted to Kickapoo Indians, under provisions of their treaty concluded June 26, 1862, and a section of land reserved in said treaty as a mill site for the Kickapoo Indians," I have now to report that I have succeeded in notifying the persons occupying the tracts allotted to individuals of the Kickapoo Indians to vacate them, which they have promised to do speedily.

Joseph D. Stanley, occupying the mill site containing 640 acres of land, of whom I wrote to you under date of the 9th ultimo, has inclosed the entire tract, and is now herding a large number of cattle thereon, for which, I am informed, he is to receive \$2 per head for the season.

While I believe all the parties occupying allotments made to individual Indians will vacate them, I am convinced that Mr. Stanley is determined to hold the mill site; in fact I have been reliably informed that he boasts of being sustained by superior legal talent and prominent citizens of Hiawatha, Brown County, Kansas.

I think it likely that Mr. Stanley is in a great measure responsible for other parties squatting on Kickapoo lands; he has not only violated section 2118, United States Revised Statutes, by settling upon Indian lands, but also section 2117, by herding on such land without consent of the Indians a large number of cattle.

The penalty for the violation of the last-named section is \$1 per head for all stock driven on the land.

If the stock now being herded by Mr. Stanley could be taken possession of by a United States marshal at once, and legal proceedings instituted to eject him from the land, the action would have a wholesome effect upon persons who have been emboldened by Mr. Stanley's seeming success in seizing and holding Indian lands.

The penalty of \$1 per head for herding cattle on Indian land, without consent of the Indians, in violation of section 2117, can certainly be collected, and I would recommend that they be seized with this view, before or at the time that notice of a suit for ejectment may be served.

It is important that action should be taken in his case immediately, as his undisturbed possession of the land encourages other persons in similar violations of law and may lead to more serious results.

The witnesses in the case of Mr. Stanley named in my letter of the 9th ultimo, reside on the Kickapoo Reserve, and contiguous to it, in Brown County, Kansas; I will inform the United States district attorney just where they can be found.

In cases of violation of section 2117, United States Revised Statutes, on the reserves in this agency, will I be permitted to apply directly to the United States attorney, or must the information first be forwarded to the Office of Indian Affairs? In the latter case cattle may be herded several months before action can be taken.

Very respectfully,

H. C. LINN,
United States Indian Agent.

The committee recommend the passage of a substitute for the pending bill by way of amendment, which was prepared by the Commissioner of Indian Affairs, and is herewith submitted.