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Miami Indian lands in Kansas

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MIAMI INDIAN LANDS IN KANSAS.

JANUARY 18, 1882.—Referred to the House Calendar and ordered to be printed.

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

REPORT:

[To accompany bill H. R. 404.]

The Committee on Indian Affairs, having had under consideration the bill (H. R. 404) to provide for the sale of the lands of the Miami Indians, in Kansas, submit the following report, together with letter from the Commissioner of Indian Affairs, bearing date January 11, 1882, transmitting report of the Commissioner of Indian Affairs of date March 12, 1879, giving a full history of the case as presented in the provisions of this bill:

The passage of this bill is respectfully requested by the honorable Secretary of the Interior, by the citizens who desire to purchase the lands and who have homes thereon, and also by the Indians owning the lands, with a unanimous voice. During the session of the Forty-sixth Congress a delegation of the Miami Indians, residents of the Indian Territory and owners of the lands in question, came to Washington, and, before the Committee on Indian Affairs, urged the passage of a bill of like character then pending before Congress for the sale of the lands in question at their appraised value as provided for in this bill.

There seems, therefore, to be no opposition to the measure on the part of any persons interested, the appraisement made being entirely satisfactory to all parties.

Your committee therefore recommend the passage of the bill, with the amendment that where the word "heir-at-law" occurs, it shall be made to read *heirs-at-law*.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 11, 1882.

SIR: I have the honor to acknowledge the receipt of your letter of the 7th instant inclosing H. R. 404, being "A bill to provide for the sale of the lands of the Miami Indians, in Kansas," and requesting to be furnished with such information and suggestions as this bureau may be able to supply.

In reply I have to state that the bill referred to is identical in its provisions and form to a draft of a bill prepared in this office and submitted to the department, with a full report of all the facts bearing upon the subject-matter of the same, on the 12th day of March, 1879.

I inclose herewith a copy of that report, with the remark that this office entertains the same views in respect of the sale of these lands at the present moment as are therein set out, and would, therefore, renew its recommendation for favorable action in the premises.

A slight amendment is called for in line 8 of the first section; it should read *heirs-at-law* instead of "heir-at-law."

I return herewith the bill, and will add, in conclusion, that I think, with the slight change referred to, it should be passed.

Very respectfully,

H. PRICE,
Commissioner.

Hon. D. C. HASKELL,
Chairman Committee on Indian Affairs
House of Representatives.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 12, 1879.

SIR: Settlers who are occupying Miami Indian lands in Kansas, under the act of May 3, 1873 (17 Stat., 631), having presented memorials to Congress praying for a reappraisal of said lands, claiming that the appraisal made in conformity with the aforesaid act is too high, I have the honor to submit herewith a draft of a bill providing for the sale of said lands, and in connection therewith I desire to call attention to the following facts bearing upon the equities of the several parties in interest:

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 five hundred thousand acres, excepting and reserving therefrom seventy thousand acres for their future homes, and also a section of six hundred and forty acres for school purposes. Out of the seventy thousand acres reserved an allotment of two hundred 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 3d section of the Indian appropriation act of 1858 (11 Stat., 332), 60,023.85 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 10,608.13 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:

First, 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 one hundred and sixty acres, or less.

Second, that each *bona fide* settler on said lands at the date of the passage of said 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 appraisal to purchase the land so occupied by him, in tracts of not more than one hundred and sixty 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 appraisal, the right of such settler to purchase as aforesaid 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 sections, 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."

Third, 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, "be declared by said court 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 eighty settlers upon this tract, occupying 8,114.93 acres, leaving unallotted and unoccupied 2,493.20 acres.

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 this office.

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 day of October, 1876.

I am informally advised by the General Land Office that, of the eighty settlers reported as occupying portions of these lands, only thirty-two have made full, and four have made partial payment for the lands occupied by them.

Of the 2,493.20 acres of unallotted and unoccupied lands under the immediate jurisdiction of this 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.

The time limited for payment in these cases 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 directly injured, provided the lands are now sold at the appraised value.

Under these very liberal provisions, as before stated, thirty-two settlers have made full payment for the land claimed by them, and four have made partial payments. Forty-four of these settlers have failed to meet the requirements of the law under which they claim.

The report of the appraisers 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. It is urged, I am aware, that a large depreciation in the value of lands has taken place since the date of appraisement. Admitting such to be the fact, I can see no good reason therein for a new appraisement. 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 my judgment, 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.

Individual whites purchasing from each other are held to the contract price, however great the depreciation in value subsequent to purchase and prior to final payment, and I can see no reason why an exception to the rule should be made, especially in the execution of a trust, as against the Indians.

Furthermore, the Miami Indians are not pressing the sale of these lands at the present time, but are, so far as this office 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.

I inclose herewith copies in duplicate of the aforesaid bill and of this report, and have the honor to recommend that the same be transmitted to the two houses of Congress at the coming session, with a recommendation for favorable action thereon.

Very respectfully, your obedient servant,

E. A. HAYT,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

