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**Benjamin F. Poteet**

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S. Rep. No. 532, 53rd Cong., 2nd Sess. (1894)

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IN THE SENATE OF THE UNITED STATES.

JULY 13, 1894.—Ordered to be printed.

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

REPORT:

[To accompany H. R. 6969.]

The Committee on Public Lands, to whom was referred the bill (H. R. 6969) for the relief of Benjamin F. Poteet (also spelled Poteat), have carefully examined the same and submit the following report thereon:

An examination of the case shows that on September 15, 1882, one Peter Bolan entered a piece of land in Nebraska belonging to the Sac and Fox lands, containing 40 acres, at \$6 an acre, and made the first payment thereon of \$80, the purchase being made under an installment plan as authorized by an act approved March 3, 1881.

Peter Bolan assigned and transferred to the claimant, Benjamin F. Poteet, the land embraced in this purchase, who, on October 31, 1891, attempted to pay the balance due on the land. It appears, however, that instead of paying the other installments with interest, according to the terms of the entry, he paid to the receiver at the Lincoln land office the full purchase money of the land, amounting with interest to \$371.05. Whether the first payment was forgotten or overlooked, or whether the receiver refused to allow it, the record does not disclose. The proof of the payment is, however, clear, as the receipts show. They read as follows:

[Sac and Fox Indian Reservation. Act of March 3, 1881. R. and R. No. 3243. Receiver's office at Lincoln, Nebr. F. C. No. 1329.]

OCTOBER 31, 1891.

Rec'd of Peter Bolan, by Benjamin Poteet, of Richardson County, Nebraska, the sum of two hundred and forty dollars, principal, and one hundred and thirty-one dollars and five cents, interest, being the 2d, 3d, and 4th installments for the southwest  $\frac{1}{4}$  of northeast quarter of section No. thirty, (30), in township No. one (1) north of range No. seventeen (17) E., containing forty acres, at \$6.00 per acre.

\$371.<sup>05</sup>/<sub>100</sub>

JOS. LEETER,  
Receiver.

SAC AND FOX RESERVATION,  
RECEIVER'S OFFICE AT BEATRICE, NEBR., *September 15, 1882.*

Rec'd from Peter Bolan, of Richardson County, State of Nebraska, the sum of eighty dollars, being the first installment under third section of act of Congress, August 15, 1876, for the southwest  $\frac{1}{4}$  of northeast quarter of section 30, at \$6 per acre, in township No. 1 N., of range No. 17 east, containing forty acres.

\$80.

W. H. SOMERS,  
Receiver.

It is manifest that by the terms of the purchase only \$160 and interest, instead of \$240 and interest, was due, and that the Government should have collected two-thirds only of the amount received. The excess belonged to the purchaser and not to the Government; it amounts to \$123.68, which is substantially the sum stated in the bill, and it is just that it be returned to him. The amount is corrected so that it may be exactly stated.

The following letter from the Commissioner of the General Land Office shows that there is no provision of law allowing the return of money erroneously collected under such circumstances:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,  
Washington, D. C., December 27, 1893.

SIR: In answer to your verbal inquiry of to-day relative to the entry of Peter Bolan for the SW.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ , sec. 30, T. 1 N., R. 17 E., 40 acres, Sac and Fox lands, entered at Lincoln, Nebr., I have the honor to advise you that after an examination of the records I find that on September 15, 1882, Peter Bolan made first payment on said land of \$80, being at the rate of \$6 per acre.

On October 31, 1891, the second, third, and fourth payments were made, amounting to \$371.05. Said amount also included \$131.05 interest.

The proper price for the land should have been only \$240, whereas the local officers required the party to pay \$320, being \$80 in excess of the proper price.

Although the party has overpaid \$80 on the entry, it is not in the power of this office to refund the amount overpaid, as the power of repayment by the honorable Secretary of the Interior is limited and defined by statute.

Section 2362 of the Revised Statutes provides that—

“The Secretary of the Interior is authorized, upon proof being made to his satisfaction that any tract of land has been erroneously sold by the United States, so that from any cause the sale can not be confirmed, to repay to the purchaser, or to his legal representatives or assignees, the sum of money which was paid therefor out of any money in the Treasury not otherwise appropriated.”

The act of June 16, 1880 (21 Stats., 287), makes further provision for repayment in certain cases. Section 2 provides that “in all cases where homestead or timber-culture or desert-land entries or other entries of public lands have been heretofore or shall hereafter be canceled for conflict, or where from any cause the entry has been erroneously allowed and can not be confirmed,” the amount of purchase money, fees, and commissions may be refunded.

The sections above referred to is the only law authorizing a repayment, and as Mr. Bolan's entry does not come within the provisions of either section an application for the return of said \$80 could not receive favorable consideration.

Very respectfully,

S. W. LAMOREUX,  
Commissioner.

Hon. W. J. BRYAN,  
House of Representatives, Washington, D. C.

The Commissioner admits the overpayment and his letter is conclusive as to the facts of the case. The claimant is entitled to relief, and it is a case which justifies and calls for the interposition of the Congress. But it seems that the excess was not covered into the Treasury, but was placed to the credit of the Sac and Fox Indians, and the reimbursement should come from funds belonging to them. To carry out the views of the committee the following amendments are recommended:

In line 5 strike out “seventy-five” and insert “sixty-eight.”

In line 6 strike out “not otherwise appropriated” and insert “to the credit of the Sac and Fox Indians.”

And when thus amended it is recommended that the bill do pass.