

7-12-1894

Winnebago Indians in Minnesota

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Recommended Citation

S. Rep. No. 529, 53rd Cong., 2nd Sess. (1894)

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IN THE SENATE OF THE UNITED STATES.

JULY 12, 1894.—Ordered to be printed.

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

REPORT:

[To accompany S. 2153.]

The Committee on Indian Affairs, to whom was referred the bill (S. 2153) for the relief of certain Winnebago Indians in Minnesota, have had the same under consideration, and report it back and recommend its passage.

The original draft of this bill was sent to your committee by the Secretary of the Interior with the request that the same receive its favorable consideration. Accompanying the letter of the Secretary was a report of the Commissioner of Indian Affairs, giving in detail the facts in the case which prompted the request of the Secretary, and these letters are attached as a part of this report.

DEPARTMENT OF THE INTERIOR,
Washington, June 19, 1894.

SIR: I have the honor to transmit herewith copy of a communication of 15th instant, from the Commissioner of Indian Affairs, in reply to a letter from Mr. W. R. Geddes, of Mankato, Minn., referred by Hon. J. T. McCleary, House of Representatives, respecting the status of certain land in Minnesota allotted to Madame or Mary White, a Winnebago Indian, for which a patent was issued March 26, 1878, in her name, *without the right of alienation*, as provided in the act of Congress approved February 21, 1863 (12 Stats., 658), and section 9 of the act of July 15, 1870 (16 Stats., 361), and requesting that the Indian Office prepare a bill covering the relief sought.

The Commissioner, in his report, sets out the facts relative to this matter and recommends that Congress be requested to so modify the acts of 1863, 1870, and 1872 as to permit the removal of the restriction "without the right of alienation," so far as to allow the right of alienation with the consent of the Secretary of the Interior to any conveyance or alienation of said land as now required of the Shawnees and certain Chippewas, and he has, therefore, submitted a draft of a bill for the relief of all Winnebago Indians found to be resident in Minnesota, as reported by Walter T. Burr July 9 1873.

The matter is respectfully submitted for the consideration of your committee.

Very respectfully,

HOKE SMITH,
Secretary.

The CHAIRMAN COMMITTEE ON INDIAN AFFAIRS,
U. S. Senate.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, June 15, 1894.

SIR: I am in receipt, by reference from the Hon. J. T. McClary, of a letter addressed to him from W. R. Geddes, of Mankato, Minn., dated May 7, 1894, inclosing copy of correspondence had with this office respecting the status of certain land in Minnesota allotted to Madame or Mary White, a Winnebago Indian, for which a patent was issued March 26, 1878, in her name, *without the rights of alienation*, as provided in the act of Congress approved February 21, 1863 (12 Stats., p. 658), and section 9 of the act of July 15, 1870 (16 Stats., p. 361), and asking that this office prepare a bill covering the relief sought.

By the first article of the Winnebago treaty of April 15, 1859 (12 Stats., p. 110), no provision was made for the issue of a patent to the several members of the tribe to whom lands in severalty should be allotted, but certificates were to be issued by the Commissioner of Indian Affairs, with the stipulation that said tracts should not be alienated in fee, leased, or otherwise disposed of, except to the United States or to other members of the tribe.

By the fourth section of the aforesaid act of 1863 for the removal of the Winnebago Indians and for the sale of their reservation in Minnesota it was made the duty of the Secretary of the Interior to allot to those Winnebago Indians who had cultivated and improved their lands 80 acres of land, which, when so allotted, should be vested in said Indian and his heirs, *without the right of alienation, which should be evidenced by patent.*

By the ninth section of the Indian appropriation act approved July 15, 1870 (16 Stats., p. 361), the Secretary of the Interior was directed to cause to be investigated and to determine the claims of those Winnebago Indians then lawfully residing in Minnesota, and to issue patents, *without the right of alienation*, to those of them whom he should find to be entitled thereto for the lands theretofore allotted to them in severalty, or which might have been designated by them for allotment under the provisions of the treaty of 1859, ratified March 16, 1861, or of the aforesaid act of 1863, and which had not been sold or disposed of by the United States. In case they had been sold, then they were to have lands designated by them for allotment as aforesaid out of any unsold lands within the limits of the original Winnebago Reservation in Minnesota, and if it were found to be impracticable to make such allotments within the limits of said reservation on good agricultural lands, then to be made on any public land subject to private entry within the State of Minnesota.

By the tenth section of said act of 1870 provision was made for such Indians as desired to become citizens of the United States to be naturalized and to receive patents in fee simple for their allotted lands.

By the Indian appropriation act of May 29, 1872 (17 Stats., p. 185), it was declared to be the intention and meaning of said ninth and tenth sections of the act of July 15, 1870, aforesaid, to authorize and direct the Secretary of the Interior to *cause to be patented* to each and every Winnebago Indian lawfully resident in the State of Minnesota at the date of said act, *in accordance with the conditions of said two sections*, an allotment of land who had not heretofore received the same in quantity as provided in the treaty of 1859.

In pursuance of this last legislation the Secretary of the Interior appointed in May, 1873, Walter T. Burr, a commissioner to make the contemplated investigation and to make the allotment of land to such Winnebago Indians as should be found to be lawfully resident in the State of Minnesota at the time specified.

Mr. Burr, under instructions issued from this office May 14, 1873, which were approved by the Department, made a report July 8, 1873, of his investigation, which was submitted to the Secretary of the Interior July 19, 1873, and was approved by Acting Secretary B. R. Cowen July 23, 1873. With that report Mr. Burr submitted a list of all persons, numbering 52, who presented their claims to him in person or by representation, showing his findings in each case; 44 of which claims he admitted, 2, however, being in doubt, but favorably recommended, viz, Mary and Jane Thompson, and 8 he rejected.

There were 2 other persons whom he did not see, and whose cases were not considered by him, Zoe Ossin, who was reported to have been in Minneapolis, and James Shellaber, said to have been in the penitentiary.

Of the foregoing 44 admitted claimants, he made 3 classes, viz:

Class 1.—Those who were found to be lawfully resident in Minnesota and held allotments under the treaty of 1859 and were entitled to patents under the ninth and tenth sections of the act of 1870, 7 in number. Patents in fee have been issued to 5 of this class, leaving 2, viz: Ellen Thompson, to whom was allotted the E. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of sec. 9, T. 107, R. 25, 80 acres, and "Chapman," a male, to whom was allotted the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of sec. 31, T. 108, R. 25, 40 acres, to whom no patents have ever issued for said described lands.

Class 2.—Those who were found to be lawfully resident in Minnesota, but who

held no allotments under the treaty of 1859, the same having been sold by the United States, and for whom allotments were made under the act of 1870, and were entitled to receive patents for the allotments set opposite their names, consisting of 7 persons. Patents in fee were issued to each of this class except Peter Harrison, a single person, who was an original allottee but his allotment had been sold by the United States and he was subsequently allotted, under act of 1870, the SW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of sec. 11, T. 54, R. 11, 40 acres.

Class 3.—Those who were found to be lawfully resident in Minnesota, or the heirs of such who were of age at the time and never had allotments under the treaty of 1859 but were entitled under the act of 1870 and explanatory act of 1872, and entitled to patents for the allotment of lands described opposite their respective names. Patents in fee have been issued to only 20 of this class, and 1 to Mary or Madame White and her heirs, without the right of alienation, for the E. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of sec. 8, T. 107, R. 35, 80 acres. For the remaining 9 persons no patents of any kind have ever been issued in their favor, making 13 cases in all, viz:

5. Chapman, on list No. 1. An original allottee, the head of a family; living on his allotment; the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of sec. 31, T. 108 N., R. 25 W., 40 acres. This land appears upon the tract books of the General Land Office as respected for him.

7. Ellen Thompson, on list No. 1. An original allottee, the head of a family, living on her allotment; the E. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of sec. 9, T. 107 N., R. 2 W., 80 acres. This land appears upon the tract books of the General Land Office as respected for her. She is now deceased, but has 2 daughters, both naturalized, living, and married.

14. Peter Harrison, on list No. 2. An original allottee; single person; allotment sold by United States; new allotment the SW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ sec. 11, T. 54, R. 11 W., 40 acres. The tract books of the General Land Office represent this land as taken by railroad.

21. Alexander Landrosh, on list No. 3. A single person, without an allotment; was assigned the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of sec. 12, T. 107, R. 24 W., 40 acres. The tract books of the General Land Office represent this land as taken since Burr's report.

25. William St. Cyr, on list No. 3. A single person, had no allotment; was assigned or allotted the SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, sec. 35, T. 107, R. 24 W., 40 acres. The tract books of the General Land Office show that this tract was taken by other parties in 1864.

26. Paul P. Manaige, on list No. 3, the head of a family, had no allotment; was assigned to the E. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of sec. 13, T. 54, R. 10 W., 80 acres. The tract books of the General Land Office show a part of this tract has been sold.

27. John Otter, on list No. 3, a single person, had no allotment; was assigned the NW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of sec. 15, T. 54, R. 9 W., 40 acres. Noted on the tract books of the General Land Office as "rejected."

30. Henry C. White, on list No. 3, a single person, had no allotment; was assigned the SW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of sec. 26, T. 54, R. 11 W., 40 acres. The tract books of the General Land Office show that this land has been taken by other parties on scrip location.

32. Julia Aldrich, on list No. 3, the head of a family, had no allotment; was assigned the N. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of sec. 15, T. 54, R. 10 W., 80 acres. The tract books of the General Land Office show that this land has since been sold on a cash entry.

33. Peter Waggoner, on list No. 3, a single person, had no allotment; was assigned the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of sec. 14, T. 106, R. 25 W., 40 acres. There appears to be no claim against this land on the tract books of the General Land Office.

37. Henry R. Grignon, on list No. 3, a single person, had no allotment; was assigned the SE. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of sec. 11, T. 54, R. 11, 40 acres. Noted on the tract books of the General Land Office as "rejected."

40. Oscar F. Waggoner, on list No. 3, a single person, had no allotment; was assigned the NE. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of sec. 11, T. 54, R. 11, 40 acres. There appears to be claim against this land on the tract books of the General Land Office.

42. Madame or Mary White, heirs of, on list No. 3. Had an allotment, head of a family, and died after July 15, 1870. Patent issued March 26, 1878, without the right of alienation, to her and her heirs.

The applications of Alexander Landrosh, William St. Cyr, Paul P. Manaige, John Otter, Henry White, Peter Waggoner, and Oscar Waggoner for the issue of fee-simple patents for their respective lands were submitted to the Secretary of the Interior on the 20th of March, 1874, for his decision and direction in the premises. These applications were made upon the ground that their names were recited in the naturalization papers of their parents, Louis Landrosh, Mitchel St. Cyr, Peter Manaige, Jane Waggoner, Baptiste Lassallieur, and Mary Andrews, and they being minors were made citizens of the United States and thereby entitled to patents in fee for their lands. Secretary Delano, in his decision of March 23, 1874, held that the naturalization of an Indian who is the head of a family does not confer the rights of citizenship upon his children or members of his family, as it does in the case of an alien being a free white person who becomes a citizen under the naturalization laws; that in these cases the law provided that the *Indians*, in addition to

the proof required under the naturalization laws, shall also make proof of their intelligence and civilization and their ability to support themselves and families, whereupon they shall be declared citizens of the United States.

The inference, therefore, he held was that it was not the intention of the law to admit to the rights of citizenship any persons of *Indian* blood who had not established the possession of qualifications which it prescribed. The applications made in behalf of these Indians were therefore rejected. Among the cases of those submitted was that of one Martha (?) or Madame White, to whom a certificate of naturalization had been granted, who had one child, Eliza, 12 years old, who had died since her naturalization in 1870; he (Secretary Delano) held that a patent for her land might issue in her name under the act referred to, viz, that of May 20, 1836 (5 Stats., p. 31).

This decision respecting the 7 applications made, in my opinion, affected only those parties so far as to the issue of fee-simple patents under the tenth section of the act of 1870. It did not debar them from their right to a patent under the ninth section of the act of 1870. If the Martha or Madame White here referred to is the same person as the Winnebago in whose behalf Mr. Geddes has been in correspondence with this office, was she not entitled to a patent in fee, and did not the General Land Office err in issuing a patent to her without the right of alienation?

Be this as it may, I am of the opinion that Congress did not, either by the act of 1863 or that of 1870, intend to make such an entailment upon the land allotted to these Winnebago Indians who did not become naturalized by the issue of a patent therefor, *without the right of alienation*, but that the intention was that the class of Winnebago Indians who were not sufficiently advanced to secure a patent in fee under the tenth section of the act of 1870 might have patents issued to them, without the right of alienation, except with the consent of the Secretary of the Interior. Under the treaty of 1859, where certificates only were authorized to be issued, the lands could be conveyed to the United States or to members of the tribe, but under the ninth section of the act of 1870 they could not convey to any one.

Such is the condition at this time of the land of Madame or Mary White, viz, the E. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of sec. 8, T. 107, R. 25, Blue Earth County, Minn., which has now passed by descent to one child and several grandchildren. It is not susceptible of division into such parts as to give to each his or her legal portion, but must be held in common under the patent so long as said patent is outstanding and uncanceled, or the act authorizing such a restriction is not modified or repealed. The 12 remaining allottees reported by Mr. Burr and herein mentioned are all that are entitled in Minnesota, under the act of 1872, to an allotment of land in Minnesota, who have not received patents.

If these Minnesota Winnebago Indians to whom no patents have issued should never become naturalized and otherwise qualified to entitle them to patents in fee under the tenth section of the act of 1870, the only title they could possibly obtain to their land under present legislation is that provided in the ninth section of said act, which is a patent without the right of alienation. In some of these cases the parties would have to select other lands than those allotted to them, as the lands have since been disposed of; but there is ample legislation in the act of 1872 to authorize the allotting of other lands for such as may be found to have been sold.

In view of the foregoing statement of facts I have the honor to recommend that Congress be requested to so modify the acts of 1863, 1870, and 1872 as to permit the removal of the restriction "without the right of alienation" so far as to allow the right of alienation, with the consent of the Secretary of the Interior, to any conveyance or alienation of said land as now required of the Shawnees and certain Chippewas.

I think a modification rather than an entire removal of the restrictions the more advisable, for, if the Indians sought to be benefited are sufficiently intelligent to take care of themselves and to attend to their own business as white men, they could then become naturalized, and be entitled to obtain patents in fee without further legislation, and as there are not more than 13 cases in Minnesota that can be affected by the provisions of the act of 1863, and of the ninth section of the act of 1870, as to the right of alienation, I respectfully suggest that the latter form be recommended to Congress.

As requested by the Hon. Mr. McCleary, I submit herewith the draft of a bill for the relief of all Winnebago Indians found to be residents in Minnesota, as reported by Walter T. Burr July 9, 1873. The papers submitted by Mr. McCleary are herewith respectfully returned.

Very respectfully, your obedient servant,

FRANK C. ARMSTRONG,
Acting Commissioner.

THE SECRETARY OF THE INTERIOR.