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Amending Indian Appropriation Act, 1892.

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AMENDING INDIAN APPROPRIATION ACT, 1892.

APRIL 1, 1896.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany H. R. 3124.]

The Committee on the Public Lands, having had under consideration House bill 3124, report the same back with a favorable recommendation, with the following amendment:

Strike out all after the word "repealed," in line 11, page 2, of said bill.

The purpose of this amendment is to do away with the requirement providing that all moneys heretofore paid under and in conformity with the provisions of existing law shall be refunded to the person entitled thereto.

As thus amended, your committee recommend that the bill do pass.

The proposed bill is in line with the principle established by the passage of the Oklahoma bill, which principle was indorsed by the Committee on the Public Lands of the House in their report on H. R. 3948, to which reference is hereby made, and the same is made a part of this report. In the letter of the Commissioner of the General Land Office to the Secretary of the Interior, under date of January 21, 1896, the following language is used relative to the lands affected by this bill.

The Crow lands in Montana subject to disposal under section 34 of the act of March 3, 1891 (26 Stat. L., 1043), provides that each homestead settler shall, before receiving a patent, pay \$1.50 per acre for the land settled upon.

The act of April 11, 1882 (22 Stat. L., 42), ratified a treaty with the Crow Indians whereby they ceded for a consideration of \$30,000 annually for twenty-five years a tract estimated to contain 1,553,390 acres. The act of July 10, 1882 (22 Stat. L., 157), ratified a treaty with the Crow Indians whereby they ceded a right of way and grounds for station purposes for the use of the Northern Pacific Railway Company, estimated to embrace 5,650 acres, for a consideration of \$25,000. The act of March 3, 1891 (26 Stat. L., 1039), ratified a treaty with the Crow Indians whereby they ceded a tract estimated to contain 1,208,960 acres in consideration of the sum of \$946,000.

Owing to the low prices received by the producers of grain and stock, who are occupants and bona fide settlers of these lands, it is impossible for them to meet the payments due the Government under existing law, and in view of the fact that it is the policy of the Government not to derive revenue from the sales of its public lands, but to furnish free homes to the people and thereby increase the wealth of the nation at large, the committee recommend the passage of this bill.

House Report No. 147, Fifty-fourth Congress, first session.

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

REPORT:

[To accompany H. R. 3948.]

The Committee on the Public Lands having had under consideration House bill 3948 report the same back with a favorable recommendation, with the following amendments:

Insert in line 3, after the word "that," the words "so much of," and strike out the word "requiring" in the same line, and insert the words "as require" in lieu thereof.

Also amend by adding, after line 14, the following words:

Provided further, That this act shall not apply to reservations where the proceeds of the sales or homestead or other entries thereof are under existing treaties required to be paid over to the Indians, or held in trust, or paid into the Treasury for their benefit.

Thus amended, your committee recommend that the bill do pass.

The proposed bill does not involve any new and untried principle of legislation, but is only a return to the homestead law in its original form and purpose.

It will be proper to review briefly in this connection the history of the homestead act, which, after some years of discussion, finally became a part of the laws and marked a new epoch in the country's history when it finally became a law, May 27, 1862.

In 1852 the Free Soil Democracy, in their platform at Pittsburg, declared the public lands to be a "sacred trust," and that they "should be granted in limited quantities free of cost to landless settlers."

In 1852 and until its final passage Hon. Galusha A. Grow, now again a Member of this House, appeared as the champion of this great change in the land policy of the nation. A bill was lost January 20, 1859, in the House, by a vote of 91 to 95.

On February 1, 1859, a homestead bill passed the House by a vote of 120 to 76. February 17, 1859, it was taken up in the Senate by a vote of 26 to 23.

Mr. Slidell antagonized the bill in the Senate and called up the bill for the purchase of Cuba in its stead.

The proposal to open free homes to the landless on the public domain gave way to a proposition to strengthen slavery by the purchase of more territory already fully occupied with slave labor. On a previous motion to postpone the consideration of the homestead bill the vote stood 28 to 28, and Vice-President Breckinridge gave the casting vote against the bill.

The bill was lost, but the agitation in its favor largely influenced subsequent political events.

March 6, 1860, Mr. Lovejoy, of Illinois, reported the Grow homestead bill favorably. March 12, 1860, it passed the House by a vote of 115 to 65.

In the Senate Mr. Andrew Johnson, of Tennessee, reported a substitute requiring homestead settlers to buy their land at 25 cents an acre at the end of five years' settlement. Senator Ben Wade moved to amend by substituting the House bill. The motion was lost by a vote of 31 to 26. May 10, 1860, the Senate passed Senator Johnson's substitute by a vote of 44 to 8.

The House refused to concur and a conference was ordered and the conference committee, after twelve meetings, accepted the Senate substitute. As expressed by Mr. Grow, it was "a half loaf."

The conference report was adopted by a vote of 115 to 51 in the House, and 36 to 2 in the Senate. Mr. Colfax stated that the proposed cost of 25 cents an acre to the homesteader was equal to the average cost of the land to the Government.

Mr. Colfax and Mr. Windom announced that this bill was only the first onward step in the line of a new policy. But on June 23, 1860, James Buchanan, President of the United States, vetoed the bill and it failed to pass over his veto, the vote in the Senate being 28 yeas and 18 nays, 8 votes less than a two-thirds majority.

Mr. Buchanan declared the bill to be unconstitutional. He said that 25 cents an acre was a mere nominal price, and that it was equivalent to giving the land away. He declared that Congress had no power to grant free homes on the public domain, or to grant land for use in the education of the people.

The land he said was like money in the Treasury, and was a sacred fund that could only be disposed of by being sold for cash or for land warrants. The Louisiana purchase was paid for out of the National Treasury and Congress had no more power to give it away than they would have had to give the money away that had been paid to Napoleon for its purchase. The proceeds of land sales he looked upon as a source of revenue long to be enjoyed by the nation.

He did not recognize the benefits that might result to the people at large by the transfer of an uninhabited wilderness into a populous and prosperous commonwealth.

The benefits to the old States by the addition of new taxpayers to the population did not seem to be appreciated by the President. The President did not realize that in this new homestead policy lay a germ of national growth of untold value, in which the old States would share the wealth to be added by the new members of the national confederation.

The idea that an uninhabited public domain was a sacred trust which should be kept as a solitude until it could be sold for cash seems to have fully entered the mind of the Executive.

He was willing and desirous of paying \$100,000,000 out of the funds in the Treasury for the purchase of Cuba, which would add new power to the cause of slavery, and he might well understand that a different result would follow the building up of new States in the West under a system of free homes.

The bill was lost, and the war of 1861 soon followed. The friends of the homestead law did not despair.

When Hannibal was besieging Rome his camp near the city was sold at public sale in the forum, and in the darkest hours of 1861 and 1862 the homestead bill was considered almost within the sound of hostile guns.

Mr. Aldrich introduced the bill July 8, 1861, and it was referred to the Committee on Agriculture.

December 4, 1861, Mr. Lovejoy reported it favorably.

It was again referred to the Committee on Public Lands.

On February 28, 1862, it passed the House by a vote of 107 to 16.

March 25, 1862, Senator Harlan reported it favorably in the Senate, with amendments, and it passed as amended May 5, 1862, by a vote of 33 to 7.

The two Houses agreed upon a conference, and on May 27, 1862, after the details were finally agreed upon, Mr. Lincoln added another chapter to the great history of his life by approving the bill.

From that time until the present the general policy of the homestead law has been accepted without question. Occasional amendments and modifications have been made, but the bill in its substance has been unchanged.

On June 8, 1872, the soldiers and sailors were accorded the privilege of deducting the time of their service in the Army or Navy from the five years necessary to acquire their patents.

These homes were exempt from execution against all prior debts, and the unfortunate debtor was given another opportunity to regain a home in the new lands of the far West.

Substantially all the lands embraced in the area subject to homesteads has at some time been purchased from France, Mexico, Spain, or the Indians. The only difference was that some portions cost more than others.

The purchase from France in 1803 cost $3\frac{3}{4}$ cents per acre. The purchase from Spain in 1819 cost 17.1 cents per acre. The purchase from Mexico in 1848 cost $4\frac{1}{2}$ cents per acre. The Gadsden purchase in 1853 cost 34.3 cents per acre. The purchase from Texas in 1850 cost 25.17 cents per acre. Alaska, bought in 1867, cost 1.19 cents per acre.

The State cessions from Georgia cost 10.10 cents per acre.

The entire public domain up to 1880 had cost \$88,157,389.98, or 4.7 cents per acre.

Up to 1880 the Government had sold or disposed of land to the amount in value of \$200,702,849.11. This included extensive grants to the new States for school and other purposes. The average amount realized per acre, including these grants for public purposes, was $36\frac{2}{5}$ cents.

After charging up all the expenses of surveys, Indians, cost of administration, etc., the Government, on June 30, 1880, lacked \$121,346,746.85 of having been fully reimbursed; its total outlays up to that time being \$322,049,595.96.

The total actual cost, after adding those expenses, was $17\frac{2}{5}$ cents per acre.

The splendid States and Territories of Michigan, Wisconsin, Minnesota, Iowa, Missouri, Florida, Alabama, Mississippi, Louisiana, Arkansas, North Dakota, South Dakota, Nebraska, Kansas, Montana, Wyoming, Colorado, Utah, Idaho, Washington, Oregon, Nevada, California, Oklahoma, Indian Territory, New Mexico, and Arizona have thus been added to the Union at a cost of but little over \$120,000,000.

The census of 1890 showed these States to have wealth, real and personal, in the following amounts:

Michigan.....	\$2, 095, 016, 272	Florida	\$389, 489, 388
Wisconsin.....	1, 833, 308, 523	Montana	453, 135, 209
Minnesota.....	1, 695, 831, 927	Wyoming	169, 773, 710
Iowa.....	2, 287, 348, 333	Colorado	1, 145, 712, 267
Missouri.....	2, 397, 902, 945	New Mexico.....	231, 459, 897
North Dakota.....	337, 006, 506	Arizona.....	188, 880, 976
South Dakota.....	425, 141, 299	Utah.....	349, 411, 234
Nebraska.....	1, 275, 685, 514	Nevada.....	180, 323, 668
Kansas.....	1, 799, 343, 501	Idaho.....	207, 896, 591
Alabama.....	622, 773, 504	Washington.....	760, 698, 726
Mississippi.....	454, 242, 688	Oregon.....	590, 396, 194
Louisiana.....	495, 306, 597	California.....	2, 533, 733, 627
Oklahoma.....	48, 285, 124		
Arkansas.....	455, 147, 422		
Indian Territory.....	159, 765, 462		
		Total.....	23, 583, 339, 104

The policy that has aided so greatly to these results should not be abandoned.

But some exceptions have recently been made in this beneficent policy. The Indian title has been extinguished by treaties in some instances and the land opened up to homestead settlement with a requirement that the settler should improve the land and reside upon it and in all respects comply with the homestead laws for the full term of five years, and then he should buy it from the Government at a fixed price.

The lands thus offered were attractive to the prospective settler. Every difficulty thrown around the entry upon a new reservation led to an increased public estimate of its value, and thousands of settlers have taken up their homes in these new purchases only to find them less desirable and less valuable than many of the tracts that had been previously taken under the homestead law free of all charge. A period of drought has supervened, bringing much loss to the old and well-settled portions of the country, and falling with especial hardship upon the pioneer who has located his right to purchase a homestead near the border line of the permanently arid belt.

There is no reason that the homestead settlers in Kansas, Nebraska, and other States should obtain their lands free of cost which does not apply with equal or greater force to those of the Dakotas and Oklahoma. The only grounds upon which the discrimination against these settlers is based is the fact that the lands cost the Government more than those previously opened to homestead settlement. But this is only a question of degree and not of principle.

The Gadsden purchase in Arizona cost $34\frac{3}{10}$ cents an acre, while the rich and well-watered prairies of Iowa cost but $3\frac{3}{8}$ cents per acre.

The Government purchases and extinguishes the Indian title to the end that a new State, peopled with American citizens, may take the place of the wild inhabitants. The cost of extinguishing this aboriginal title is not an obligation to be levied upon the new settlers of the same region, but is for the mutual and general benefit of the whole country. Costly Indian wars opened the older portions of the country to the plow of the pioneer. The expenses of these wars were not apportioned at so much an acre upon the land. Nor should the cost of extinguishing the Indian title by peaceable means become a mortgage upon the farm of the settler who civilizes and builds up the new State in the wilds of the continent.

We believe that the homestead law should be extended to these reservations and that the settlers of Oklahoma, South Dakota, and other

Western States should all be put upon the same footing, and that the policy of the administration of the public lands should be again adopted in its entirety, and that the public domain should be devoted to the purpose of furnishing free homes to a free people.

H. R. 292, introduced by Mr. Flynn, of Oklahoma, is limited in its effect to that Territory alone.

It was referred to the Secretary of the Interior, and he has made his report adversely to the bill, inclosing also the communication of the Commissioner of the General Land Office to the same effect.

The objections to the bill are clearly and strongly stated by these officials and we incorporate them into this report so that the House may be in possession of the different views taken of the proposed legislation.

DEPARTMENT OF THE INTERIOR,
Washington, January 20, 1896.

SIR: I have the honor to hand you herewith the report of the Commissioner of the General Land Office, dated the 16th instant, on H. R. No. 292, entitled "A bill providing for free homesteads on the public lands in Oklahoma Territory."

The bill, which is quoted in full in the Commissioner's report, provides in effect that all homestead settlers within the Territory of Oklahoma, upon making final proof on the tract entered by them and showing the period of residence thereon required by existing law, shall acquire title to said tract by simply paying the usual and customary fees required in such cases, without the payment of the price per acre required for said land by existing law.

For the information of Congress I desire to submit the following:

Statement showing approximate loss to the United States if homestead settlers on Indian and abandoned military reservations are relieved from paying for said lands at rates now fixed by law upon a showing of five years' residence.

Reservation.	Area ceded, exclusive of allotted and reserved.	Price to be paid by settlers.	Amount that will be received from settlers under existing law.
	<i>Acres.</i>		
Cherokee Outlet, Oklahoma.....	732, 280	\$2. 50	\$1, 830, 700
	1, 822, 240	1. 50	2, 733, 360
	2, 806, 350	1. 00	2, 806, 350
Pawnee, Oklahoma.....	169, 720	2. 50	423, 300
Tonkawa, Oklahoma.....	68, 950	2. 50	172, 375
Sac and Fox, Oklahoma.....	364, 536	1. 25	455, 670
Iowa, Oklahoma.....	207, 028	1. 25	258, 785
Pottawatomie, Oklahoma.....	256, 896	1. 50	385, 344
Cheyenne and Arapahoe, Oklahoma.....	3, 500, 562	1. 50	5, 250, 843
Kickapoo, Oklahoma.....	85, 000	1. 50	127, 500
Wichita, Oklahoma.....	401, 388	1. 25	614, 235
Total in Oklahoma.....			*15, 058, 462

* Loss to United States if settlers are relieved from payment.

(a) It is not practicable without an extended search of the records to give the amount already paid by homestead settlers for these lands, as the moneys received therefor are not kept separate from the sales of other lands.

As these lands have not been open to settlement for five years very few have been able to make final proof thereon, and it is doubtful if many of them have availed themselves of the privilege of commutation. It is certain that the amount already paid by the settlers is so small as to form a very small proportion to the amount still due.

(b) The proceeds from the sales of these lands are to be deposited in the Treasury to the credit of the Indians to recompense them for the cession of the lands. If homestead settlers are relieved from paying for them, the Government will be obliged to make appropriations to recompense the Indians, unless the treaty stipulations are to be entirely ignored.

(c) These lands are subject to disposal under other than the homestead laws. It can not be determined what amount is likely to be embraced in other than homestead

entries, but the larger portion of these reservations will undoubtedly be entered under the homestead law, and therefore affected by the proposed legislation.

(d) It has been necessary to estimate the area embraced in abandoned military reservations affected by the act, as some of them and parts of others are unsurveyed, and also to estimate the appraised price to be paid per acre, as the appraisements of them have not yet been made. It is believed, however, that the figures given are a very close approximation.

(e) This amount will be reduced by just so much as is received from settlers who commute their homestead entries. It is most probable that where settlers have the option of obtaining the land free by five years' residence very few of them will pay for the land in order to obtain title three or four years earlier.

I have, therefore, to recommend that the bill do not pass.

Very respectfully,

HOKE SMITH, *Secretary.*

HON. JOHN F. LACEY,

Chairman Committee on the Public Lands, House of Representatives.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 16, 1896.

SIR: I have had the honor to receive by reference from the Department, under date of January 9, 1896, for report in duplicate and return of papers, H. R. bill No. 292, "Providing for free homesteads on the public lands in Oklahoma Territory," which was referred to the Department January 7, 1896, by Hon. John F. Lacey, chairman of the Committee on the Public Lands of the House of Representatives, with a request that you make any suggestions you may desire to make in regard thereto to aid the committee in its consideration.

The bill provides:

"That all settlers under the homestead laws of the United States upon the public lands acquired by treaty or agreement from the various Indian tribes in the Territory of Oklahoma, who have or who shall hereafter reside upon the tract, entered in good faith, for the period required by existing law, shall be entitled to a patent for the land so entered upon the payment to the local land officers of the usual and customary fees; and no other or further charge of any kind whatsoever shall be required from such settler to entitle him to a patent for the land covered by his entry: *Provided*, That the right to commute any such entry and pay for said lands, in the option of any such settler and in the time and at the prices now fixed by existing laws, shall remain in full force and effect.

"SEC. 2. That all acts or parts of acts inconsistent with the terms and provisions of this act are hereby repealed."

I have the honor to report that it appears to be the purpose of the bill to release parties who may make what is known as final proof on homestead entries in Oklahoma from the requirement of also paying for the lands embraced in the entry.

The lands that will be affected by the provisions of the bill, if it become a law, are as follows:

Sac and Fox and Iowa lands, subject to disposal under section 7 of the act of February 13, 1891 (26 Stat. L., 759), which provides that each homestead settler before receiving a patent shall pay \$1.25 per acre for the land taken by him.

Absentee Shawnee, Pottawatomie, and Cheyenne and Arapahoe lands, subject to disposal under section 16 of the act of March 3, 1891 (26 Stat. L., 1026), which provides that each homestead settler shall pay \$1.50 per acre for the land taken by him.

Kickapoo lands, subject to disposal under section 3 of the act of March 3, 1893 (27 Stat. L., 563), which requires each homestead settler to pay \$1.50 per acre for the land settled upon.

Cherokee Outlet lands, subject to disposal under section 10 of the act of March 3, 1893 (27 Stat. L., 640), which requires each settler before receiving a patent to pay the sum of \$2.50 per acre for any land east of 97½° west longitude, \$1.50 per acre for any land between 97½° and 98½° west longitude, and \$1 per acre for any land west of 98½° west longitude, and interest upon the amount so to be paid for said land from the date of entry to the date of final payment at the rate of 4 per cent per annum.

Tonkawa and Pawnee lands subject to disposal under section 13 of the act of March 3, 1893 (27 Stat. L., 644), which provides that each settler shall pay \$2.50 per acre for the land taken by him, and interest upon the amount to be paid from the date of entry to the date of final payment at the rate of 4 per cent per annum.

Wichita lands, which when opened to settlement, will be subject to disposal under the act of March 2, 1895 (28 Stat. L., 897), which requires each homestead entry-

8 FREE HOMES ON LANDS PURCHASED FROM INDIAN TRIBES.

man to pay \$1.25 per acre for the land entered at the time of submitting his final proof. This act further provides that the money received from the sales of Wichita lands shall be deposited in the Treasury subject to the judgment of the Court of Claims in a suit authorized to be brought by the Wichita Indians against the United States for the purpose of determining the amount, if any, which they are entitled to receive for the relinquishment of their lands.

The lands referred to constitute the greater part of Oklahoma Territory, all of the lands in which, that are now open to homestead entry, having been acquired by treaty with various Indian tribes, except what is known as the "Public Land Strip," now embraced in Beaver County.

Without endeavoring to state the exact amount paid by the United States to the Indians for the relinquishment of all their rights to said lands, it is found by reference to the acts of March 1, 1889 (25 Stat. L., 759); March 2, 1889 (25 Stat. L., 1001); February 13, 1891 (26 Stat. L., 758); March 3, 1891 (26 Stat. L., 1021 and 1025); March 3, 1893 (27 Stat. L., 562), and March 3, 1893 (27 Stat. L., 640-644), that the Government has paid or agreed to pay to the Indians over \$18,000,000 for such cessions, and doubtless, other cessions made at earlier dates were also in consideration of payments of varying sums of money.

In providing for the disposal of these lands, Congress evidently intended to reimburse the United States for the money so expended, when it departed from the usual custom and required a payment for the land even when the settler showed five years residence upon the land. This legislation is not peculiar to lands in Oklahoma Territory, but similar provisions are made in regard to other lands, where the Government has paid a valuable consideration in obtaining the cession thereof by the Indians, as for instance, in the case of the Sioux and Lake Traverse lands in North and South Dakota, the Crow lands in Montana, the Siletz lands in Oregon, and the Nez Perce lands in Idaho.

This course appears to be just and equitable, for it would not be proper to burden the people of the whole country in order that land might be acquired for the purpose of giving free homes to a very small proportion of them.

The settlers upon these lands understood that the law required them to pay for the land settled upon, and many parties doubtless were debarred from entering into competition with the parties who entered these lands because they were unwilling or unable to make the required payment.

The Government probably entered into its engagements with the Indians, by which the Indian title to these lands was extinguished, simply because it expected to receive again from the settlers the money paid therefor, and such payment appears to be the foundation of the whole transaction between the settlers and the Government.

It should be observed, also, that if the Court of Claims should decide that the Wichita Indians shall be paid for the relinquishment of their lands, it may be necessary for Congress to make an appropriation to satisfy such judgment if the bill becomes a law.

For the reasons stated, I am compelled to withhold my approval from the bill which, with accompanying letter, is herewith returned.

Very respectfully,

S. W. LAMOREUX, *Commissioner*.

THE SECRETARY OF THE INTERIOR.

The objection made to H. R. 292 that it would include military reservations, does not apply to H. R. 3948, the general bill. It only applies to lands obtained by purchase or treaty from the Indians.

The arguments of the Secretary and Commissioner against the bill are substantially the same as those urged by Mr. Buchanan in his veto message in 1860. The figures given, however, might prove misleading. The Secretary has computed all the lands in Oklahoma and estimated them at the maximum selling prices, thus indicating that the Government would lose the sum of \$15,058,462 by the passage of a bill of this character as applied to Oklahoma alone.

This makes no allowance for lands which have already been commuted and probable commutations in the future, and also takes no account of any waste and worthless land that the Government will not be able to sell. It will be observed in the letter of the Secretary that this land is all estimated at from \$1.25 to \$2.50 an acre, the maximum prices for public, agricultural, or grazing lands. But the existing law requires the purchaser to comply with all the requirements of the

homestead law without any of its benefits. After living upon it and reclaiming it to cultivation he must in the end pay for it at the full price.

The situation of these people also appeals to the generosity of the nation. Since the enactment of the laws opening these reservations to settlement a period of almost continuous drought has prevailed. In the lands bordering on the arid belt a marked falling off of population has occurred, and the settler has found it hard enough to support himself and family without making provision for the purchase of his home at the end of five years' residence.

We think these settlers should be accorded the generous and liberal provisions of the original homestead law.

The nation can well afford in times of peace to deal as liberally with its pioneers as it did in the dark days when the original law was enacted, in May, 1862.

The bill as amended by the committee would read as follows:

A BILL to provide for free homes on lands purchased from the Indian tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of all acts or parts of acts as require payment to the United States therefor from persons who have acquired or may hereafter acquire homesteads upon the public lands included in the limits of any grant obtained by treaty or purchase from the various tribes of Indians are hereby repealed, and the settlers entitled to the benefits of the homestead laws upon such lands shall only be required to pay the usual and customary fees required from homestead settlers upon other public lands: *Provided,* That the right to commute any such entry and pay for said lands at the option of any such settler and in the time and at the prices now fixed by existing laws shall remain in full force and effect: *Provided further,* That this act shall not apply to any lands where the proceeds of the sales or homestead or other entries thereof are under existing treaties required to be paid over to the Indians or held in trust or paid into the Treasury for their benefit.

The Secretary of the Interior and the Commissioner of the General Land Office have also made a special report as to H. R. 3948, which for the information of the House we set out in full as follows:

DEPARTMENT OF THE INTERIOR,
Washington, January 27, 1896.

SIR: I have the honor to hand you herewith a report from the Commissioner of the General Land Office, dated the 21st instant, on H. R. 3948 "To provide for free homesteads on lands purchased from the Indian tribes."

As an expression of my views on legislation of this character, I respectfully refer you to my report on House bills 292 and 2645, which are of a character similar to this. For the reasons therein expressed and those set forth in the report of the Commissioner, herewith transmitted, I recommend that this bill do not pass.

Very respectfully,

HOKE SMITH, *Secretary.*

Hon. JOHN F. LACEY,
Chairman Committee on the Public Lands, House of Representatives.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 21, 1896.

SIR: I have had the honor to receive by reference from the Department under date of January 17, 1896, for report in duplicate and return of papers, H. R. bill No. 3948, "To provide for free homes on lands purchased from the Indian tribes," which was referred to the Department by Hon. John F. Lacey, chairman of the Committee on the Public Lands of the House of Representatives, with a request that you make any suggestions you may desire to make in regard thereto to aid the committee in its consideration.

The bill provides: "That all acts or parts of acts requiring payment to the United States therefor from persons who have acquired or may hereafter acquire homesteads

upon the public lands included in the limits of any grant obtained by treaty or purchase from the various tribes of Indians are hereby repealed, and the settlers entitled to the benefits of the homestead laws upon such lands shall only be required to pay the usual and customary fees required from homestead settlers upon other public lands: *Provided*, That the right to commute any such entry and pay for said lands at the option of any such settler and in the time and at the prices now fixed by existing laws shall remain in full force and effect."

I have the honor to report that it appears to be the purpose of the bill to release parties who may make what is known as final proof, under sections 2291 and 2305, United States Revised Statutes, on homestead entries embracing lands acquired from the Indians by treaty or purchase, from the requirement of also paying for the lands embraced in the entry.

Large tracts of land have been acquired through purchase from the Indians, for some of which the Government has already paid the Indians, and for the price of others of which the Government is responsible. Laws were enacted opening these lands to settlement under the homestead law, which laws provided for the payment therefor by the entrymen of sums, specified in the various laws, corresponding to the amount paid therefor by the Government to the Indians, or for the payment of which to them the Government bound itself by its treaties or agreements with the Indians.

The amounts resulting from such payments were required either to be deposited to the credit of the Indians or to reimburse the Government for payments made to the Indians.

The lands that will be affected by the provisions of the bill if it becomes a law are as follows:

Sac and Fox and Iowa lands, Oklahoma, subject to disposal under section 7 of the act of February 13, 1891 (26 Stat. L., 759), which provides that each homestead settler before receiving a patent shall pay \$1.25 per acre for the land taken by him.

Absentee Shawnee, Pottawatomie, and Cheyenne and Arapahoe lands, Oklahoma, subject to disposal under section 16 of the act of March 3, 1891 (26 Stat. L., 1026), which provides that each homestead settler shall pay \$1.50 per acre for the land taken by him.

Kickapoo lands, Oklahoma, subject to disposal under section 3 of the act of March 3, 1893 (27 Stat. L., 563), which requires each homestead settler to pay \$1.50 per acre for the land settled upon.

Cherokee Outlet lands, Oklahoma, subject to disposal under section 10 of the act of March 3, 1893 (27 Stat. L., 640), which requires each settler before receiving a patent to pay the sum of \$2.50 per acre for any land east of $97\frac{1}{2}^{\circ}$ west longitude, \$1.50 per acre for any land between $97\frac{1}{2}^{\circ}$ and $98\frac{1}{2}^{\circ}$ west longitude, and \$1 per acre for any land west of $98\frac{1}{2}^{\circ}$ west longitude, and interest upon the amount so to be paid for said land from the date of entry to the date of final payment at the rate of 4 per cent per annum.

Tonkawa and Pawnee lands, Oklahoma, subject to disposal under section 13 of the act of March 3, 1893 (27 Stat. L., 644), which provides that each settler shall pay \$2.50 per acre for the land taken by him, and interest upon the amount to be paid from the date of entry to the date of final payment at the rate of 4 per cent per annum.

Wichita lands, Oklahoma, which, when opened to settlement, will be subject to disposal under the act of March 2, 1895 (28 Stat. L., 897), which requires each homestead entryman to pay \$1.25 per acre for the land entered at the time of submitting his final proof. This act further provides that the money received from the sales of Wichita lands shall be deposited in the Treasury, subject to the judgment of the Court of Claims, in a suit authorized to be brought by the Wichita Indians against the United States for the purpose of determining the amount, if any, which they are entitled to receive for the relinquishment of their lands.

The lands acquired from the Sioux Indians in Dakota and the Ponca Indians in Nebraska by the cession of the Indian title thereto were made subject to homestead entry by the act of March 2, 1889 (25 Stat. L., 888), which act provided for the payment for said lands by the settlers, in addition to the fees provided by law, the sums therein specified. The moneys received from the settlers are to be deposited in the United States Treasury and applied to reimburse the Government for all necessary expenditures contemplated and provided for by said act, and to create a permanent fund for the Indians.

The lands acquired from the Sisseton and Wahpeton Indians in North and South Dakota (known as the Lake Traverse lands) were by the act of March 3, 1891 (26 Stat. L., 1039) made subject to homestead entry, the settlers thereon being required to pay therefor at the rate of \$2.50 per acre.

The agricultural lands ceded by the Chippewa Indians in the State of Minnesota, under the provisions of the act of January 14, 1889 (25 Stat. L., 642), are, by section 6 of said act, made subject to disposal under the homestead law, and each settler is

required, before receiving patent, to pay \$1.25 per acre for the land taken by him. The money is to be deposited in the Treasury for the benefit of the Indians as a recompense for the cession of their surplus lands.

The Yankton lands in South Dakota subject to disposal under the act of August 15, 1894 (28 Stat. L., pages 314 to 319), which provides that each homestead settler shall pay \$3.75 per acre before receiving a certificate of entry.

The Fort Berthold lands in North Dakota, subject to disposal under section 25 of the act of March 3, 1891 (26 Stat. L., 1035), which requires each homestead settler to pay \$1.50 per acre before receiving a final certificate.

The Cœur d'Alene lands in Idaho, subject to disposal under section 22 of the act of March 3, 1891 (26 Stat. L., 1031), which provides that each homestead settler shall pay \$1.50 per acre for the land taken by him before receiving a patent.

The Nez Perce lands in Idaho, subject to disposal under section 16 of the act of August 15, 1894 (28 Stat. L., pp. 326 to 332), which provides that each settler on said lands shall pay \$3.75 per acre for the lands settled upon before receiving a certificate of entry.

The Colville lands in Washington, subject to disposal under the act of July 1, 1892 (27 Stat. L., 62), which requires each homestead settler to pay \$1.50 per acre before receiving a final certificate for the land covered by his entry.

The Crow lands in Montana, subject to disposal under section 34 of the act of March 3, 1891 (26 Stat. L., 1043), which provides that each homestead settler shall, before receiving a patent, pay \$1.50 per acre for the land settled upon.

The Siletz lands in Oregon, subject to disposal under section 15 of the act of August 15, 1894 (28 Stat. L., 326), which provides that each homestead settler shall pay \$1.50 per acre for the land settled upon.

Without endeavoring to state the exact amount paid or agreed to be paid by the United States to the Indians for the relinquishment of all their rights to said lands, which would require an extended examination of the statutes, it is found by reference to the statutes to which I have referred as governing the disposal of said lands that, in the aggregate, over \$21,000,000 has been paid or agreed to be paid.

This amount should be increased by the moneys agreed to be paid for earlier cessions, especially for lands in Oklahoma Territory, where cessions were required from more than one tribe of Indians for the same lands, as, for instance, in the case of the Muscogee or Creek and Seminole cessions, obtained at an expense of over \$4,000,000 (see acts of March 1 and 2, 1889, 25 Stat. L., 759 and 1004), where subsequently the Cheyenne and Arapahoe, Pottawatomic, Absentee Shawnee, Sac and Fox, Iowa, and Kickapoo tribes of Indians received valuable considerations amounting to over \$2,000,000 for portions of the same lands so ceded. This amount of \$21,000,000 does not embrace any compensation for the Great Sioux lands in North and South Dakota and Nebraska, for the Chippewa lands in Minnesota, for the Colville lands in Washington, or for the Wichita lands in Oklahoma, as the Government has not agreed to pay the Indians any fixed amount for these lands.

As regards the two former the Indians are to receive the proceeds from the disposal of the lands, estimated to amount in the two reservations to nearly \$9,000,000, and as to the two latter the proceeds are to be deposited in the United States Treasury subject to future determination as to whether the Indians shall receive the whole or any part thereof. If the bill under consideration becomes a law it will be necessary for Congress to make other provision for the Sioux and Chippewa Indians, and possibly for the Colville and Wichita Indians, to recompense them for the loss of the proceeds arising from the disposal of the lands ceded by them.

In providing for the disposal of these lands Congress evidently intended to reimburse the United States for the money so expended when it departed from the usual custom, and required a payment for the land even when the settler showed five years residence upon the land. This course appears to be just and equitable, for it would not be proper to burden the people of the whole country in order that land might be acquired for the purpose of giving free homes to a very small proportion of them.

In order to show clearly the effect of the proposed legislation, the following table has been prepared:

12 FREE HOMES ON LANDS PURCHASED FROM INDIAN TRIBES.

Statement showing approximate loss to the United States if homestead settlers on Indian reservations who make final proof on their entries are released from paying for said lands at rates now fixed by law.

Reservation.	Area ceded, exclusive of allotted and reserved.	Price to be paid by settlers.	Amount that will be received from settlers under existing law.	Amount now paid.	Loss to United States if settlers are released from payment.
	<i>Acres.</i>				
Cherokee Outlet, Oklahoma.....	732, 280	\$2. 50	\$1, 830, 700	-----	-----
	1, 822, 240	1. 50	2, 733, 360	-----	-----
	2, 806, 350	1. 00	2, 806, 350	-----	-----
Pawnee, Oklahoma.....	169, 320	2. 50	423, 300	-----	-----
Tonkawa, Oklahoma.....	68, 950	2. 50	172, 375	-----	-----
Sac and Fox, Oklahoma.....	364, 536	1. 25	455, 670	-----	-----
Iowa, Oklahoma.....	207, 028	1. 25	258, 785	-----	-----
Pottawatomie, Oklahoma.....	256, 896	1. 50	385, 344	-----	-----
Cheyenne and Arapahoe, Oklahoma.....	3, 500, 562	1. 50	5, 250, 843	-----	-----
Kickapoo, Oklahoma.....	85, 000	1. 50	127, 500	-----	-----
Witchita, Oklahoma.....	491, 388	1. 25	614, 235	-----	-----
Total in Oklahoma.....			15, 058, 462	(a)	\$15, 058, 462
Chippewa, Minnesota <i>b</i>	3, 322, 936	1. 25	4, 153, 670	None.	4, 153, 670
Great Sioux, North Dakota, South Dakota, and Nebraska <i>b</i>	554, 864	1. 25	693, 580	-----	-----
	177, 048	. 75	132, 786	-----	-----
	7, 819, 026	. 50	3, 909, 513	-----	-----
			4, 735, 879	\$87, 682	4, 648, 197
Lake Traverse, North Dakota and South Dakota.....	573, 882	2. 50	1, 434, 705	(a)	1, 434, 705
Yankton, South Dakota.....	151, 692	3. 75	568, 845	(a)	568, 845
Fort Berthold, North Dakota.....	1, 838, 720	1. 50	2, 758, 080	None.	2, 758, 080
Cœur d'Alene, Idaho <i>c</i>	174, 690	1. 50	262, 035	None.	262, 035
Nes Perce, Idaho <i>c</i>	500, 556	3. 75	1, 877, 085	None.	1, 877, 085
Colville, Washington <i>c</i>	1, 416, 668	1. 50	2, 125, 002	None.	2, 125, 002
Crow, Montana.....	1, 700, 000	1. 50	2, 550, 000	600	2, 549, 400
Siletz, Oregon.....	177, 000	1. 50	265, 500	903	264, 597
Total					<i>d</i> 35, 760, 078

a It is not practicable without an extended search of the records to give the amount already paid by homestead settlers for these lands as the moneys received therefor are not kept separate from the sales of other lands. As these lands have not been open to settlement for five years, very few have been able to make final proof thereon, and it is doubtful if many have availed themselves of the privilege of commutation. It is certain that the amount already paid by the settlers is so small as to form a very small proportion to the amount still due.

b The proceeds from the sales of these lands are to be deposited in the Treasury to the credit of the Indians to recompense them for the cession of the lands. If homestead settlers are released from paying for them, the Government will be obliged to make appropriations to recompense the Indians, unless the treaty stipulations are to be entirely ignored.

c These lands are subject to disposal under other laws as well as the homestead laws. It can not be determined what amount is likely to be embraced in other than homestead entries, but the larger portion of these reservations will undoubtedly be entered under the homestead law and therefore affected by the proposed legislation.

d This amount will be reduced by just so much as is received from settlers who commute their homestead entries. It is most probable that where settlers have the option of obtaining the land free by five years' residence, very few of them will pay for the land in order to obtain title three or four years earlier.

The settlers upon these lands understood that the law required them to pay for the land settled upon, and many parties doubtless were debarred from entering into competition with the parties who entered these lands because they were unwilling or unable to make the required payment.

The Government probably entered into its engagements with the Indians by which the Indian title to these lands was extinguished simply because it expected to receive again from the settlers the money paid therefor, and such payment appears to be the foundation of the whole transaction between the settlers and the Government.

For the reasons given, I am of the opinion that the proposed legislation is inadvisable and therefore that the bill should not become a law.

I deem it proper to state that reports have been made to the Department by this office on bills of a purport similar to that under consideration, as follows;

H. R. bill No. 8331, upon which report was made January 28, 1895.

H. R. bill No. 2645, upon which report was made January 16, 1896.

H. R. bill No. 292, upon which report was made January 16, 1896.

The bill and accompanying letter are herewith returned.

Very respectfully,

S. W. LAMOREUX, *Commissioner*.

The SECRETARY OF THE INTERIOR.

An amendment, it will be observed, is proposed by the committee to H. R. 3948 so that the bill will not apply to lands where the Government practically acts as a trustee for the sale of the lands for the Indians.

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