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Sale of lands by Certain Indians. Letter from the Secretary of the Interior, transmitting a copy of a communication from the Commissioner of Indian Affairs relating to sale of lands by certain Pottawatomie, Pawnee, Peoria, and Miami Indians.

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SALE OF LANDS BY CERTAIN INDIANS.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

A COPY OF A COMMUNICATION FROM THE COMMISSIONER OF INDIAN AFFAIRS RELATING TO SALE OF LANDS BY CERTAIN POTTAWATOMIE, PAWNEE, PEORIA, AND MIAMI INDIANS.

JANUARY 18, 1899.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 17, 1899.

SIR: I have the honor to transmit herewith a copy of a communication of the 13th ultimo from the Commissioner of Indian Affairs, inviting attention to the necessity for additional legislation respecting the sale of lands by members of the Citizen Band of Pottawatomie Indians and by the Absentee Shawnee Indians, to whom lands in Oklahoma Territory have been allotted under the acts of May 23, 1872 (17 Stat. L., 159), and of February 8, 1887 (24 Stat. L., 388), so as to enable his office and the Department to carry out the provisions of the act of August 15, 1894 (20 Stat. L., 295), authorizing these Indians to sell and convey these lands.

The Commissioner also asks that similar relief be granted the Peorias and Miamis, of the Quapaw Agency, Ind. T., so far as to enable the heirs of deceased allottees in certain cases to dispose of such lands.

This matter has been considered by the Department and by the honorable assistant attorney-general for this Department.

The assistant attorney-general has prepared a draft of an item embodying the suggestions of the Indian Office which meets with my approval, and the same is herewith transmitted, with recommendation that it be inserted in the Indian bill now pending in the Senate.

Very respectfully,

C. N. BLISS, *Secretary.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 13, 1898.

SIR: I have the honor to invite your attention to the necessity for additional legislation respecting the sale of lands by members of the Citizen Band of Pottawatomie Indians and by the Absentee Shawnee Indians to whom lands in Oklahoma Territory have been allotted under the acts of May 23, 1872 (17 Stat. L., p. 159), and of February 8, 1887 (24 Stat. L., p. 388), to enable this office and the Department to carry out the provisions of the act of August 15, 1894 (28 Stat. L., p. 295), authorizing these Indians to sell and convey their lands.

Under the aforesaid act of 1894 "any member of the Citizen Band of Pottawatomie Indians and of the Absentee Shawnee Indians of Oklahoma to whom a trust patent has been issued under the provision of the act approved February eighth, eighteen hundred and eighty-seven (Twenty-fourth Statutes, three hundred and eighty-eight), and being over twenty-one years of age, may sell and convey any portion of the land covered by such patent in excess of eighty acres, the deed of conveyance to be subject to approval by the Secretary of the Interior under such rules and regulations as he may prescribe; and that any Citizen Pottawatomie not residing upon his allotment, but being a legal resident of another State or Territory, may in like manner sell and convey all the land covered by said patent, and that upon the approval of such deed by the Secretary of the Interior the title to the land thereby conveyed shall vest in the grantee therein named."

It has been held that, under a strict construction of the provisions of this act, allottees could sell only their own allotted lands and not those inherited by them, although the Department has approved deeds from adult heirs conveying such inherited lands. Several cases have been, and some are still, before this office where adult heirs have conveyed or wish to convey their share of such inherited lands, but this office had held, in its action upon the sale of land by Indians, that it would not approve deeds that did not convey the interest of all the heirs in and to said lands, as such action was believed to be the best method to protect the interest of those heirs who had not joined in the conveyance of such land. In some instances the unrepresented heirs were minors.

The Department having concurred in the opinion of the Assistant Attorney-General rendered June 8, 1887, that the aforesaid act of 1894 did not authorize minors, by guardians duly appointed by the proper court, to sell said minors' interest in land patented under the general allotment act of 1887, this office has since been compelled to take unfavorable action on all deeds for land in Oklahoma Territory where minors held an interest therein. Some legislation is necessary to protect adult heirs and to authorize them to dispose of their interest in such inherited lands, and not have such rights hampered by reason of minor heirs not being able to dispose of their interests in same land. There are but two ways known to this office by which the difficulty in such cases can be overcome, viz, by partition of the land of the decedent allottees, or by authorizing guardians, duly appointed by the proper probate court and duly qualified, to sell and convey said minor share of inherited lands in all cases where there is an adult heir, and in no other instance.

It is very evident that without some relief by Congress there will arise cases when there would be no period of time within the twenty-five years' trust period when one or more of the heirs of such deceased reservee would not be a minor, and, as a result, such land under such

decision could never be sold or conveyed. On the 29th of January last this office submitted the matter to the Department, with a draft of an "item" to be inserted in the Indian appropriation bill, so as to relieve this office in its administration of the question of conveyances of land, authorizing minor heirs by legal guardians to join adult heirs in the conveyance of their inherited lands.

In cases where all heirs are minors this office does not believe conveyances should, if made, be approved; and in the legislation herein recommended it is specially stipulated that it shall apply only in cases where there are adult as well as minor heirs.

In the annual report of this office for the current year your attention is invited to my recommendation requesting legislation allowing those members of the Pottawatomie tribe of Indians who took allotments in severalty under the act of May 23, 1872 (17 Stat. L., p. 159), the same privilege of selling any portion of their land in excess of 80 acres as was accorded those Pottawatomie Indians who took land under the general allotment act of February 8, 1887 (24 Stat. L., p. 388).

The act of 1872 provides that the lands allotted thereunder shall be alienable in fee, or leased or otherwise disposed of only to the United States or to persons of Indian blood lawfully residing within said Territory with permission of the President and under such regulations as the Secretary of the Interior may prescribe.

This restriction of sale to persons of Indian blood appears in many of the older treaties with the Indians, the evident purpose being to keep up an Indian community without any white encroachments therein. When the act of 1872 was enacted, it was the general policy of the Government to prohibit the intrusion of white settlement in the Indian Territory, and at that time such a restriction was right and proper; but since then white persons have been permitted to enter what was once the Indian Territory, who have settled among these Indians indiscriminately until such a restriction is no longer protective, but obstructive, and, in my opinion, there is no reason why all allottees under the act of 1872 should not be permitted to sell their land to whomsoever will pay the highest remuneration.

Furthermore, there is another provision as to conveyances under this act, requiring the "permission of the President" to such conveyances. I think the President should be relieved of such a duty. He has enough of important state affairs to occupy his time and attention without being burdened with minor details such as the approval of Indian deeds.

I have therefore prepared the draft of an "item" to be inserted in the Indian appropriation bill now being prepared by the House Appropriation Committee amendatory of the acts of August 15, 1894, and of May 23, 1872, with the recommendation and request that it be submitted to the House Committee on Indian Affairs with your favorable indorsement, which I am pleased to note has been referred to in your annual report to the President for the current year, page 65.

Similar relief should be granted to the Peorias and Miamis in the Quapaw Agency, so far as to enable the heirs of deceased allottees in certain cases to dispose of such lands. I have added a proviso to that effect in the draft of "item" here submitted.

Very respectfully, your obedient servant,

A. C. TONNER,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, January 13, 1899.

SIR: By letter of December 13, 1898, the Commissioner of Indian Affairs expressed the opinion that additional legislation is needed respecting the sale of lands by members of the Citizen Band of Pottawatomie Indians and by the Absentee Shawnee Indians, and submitted the draft of an item to be incorporated in the Indian appropriation bill to meet such necessity. The matter has been submitted to me for "an opinion as to whether or not existing law authorizes conveyances by the Indians and approval of the deeds by the Secretary in the several cases specified by the Commissioner of Indian Affairs, and whether the legislation recommended by the Commissioner is necessary for the purposes desired, and, if so, for the draft of an amendment in proper form to be incorporated in the Indian appropriation bill."

By the act of May 23, 1872 (17 Stat. L., 159), the Secretary of the Interior was directed to make allotments to the members of the Citizen Band of Pottawatomie Indians and to Absentee Shawnee Indians residing upon the tract in the Indian Territory set apart for these Indians. No provision was made for patents, but it was directed that certificates of allotment should be issued and that the lands thus allotted "should be alienable in fee or leased or otherwise disposed of only to the United States or to persons of Indian blood lawfully residing within said Territory with permission of the President and under such regulations as the Secretary of the Interior shall prescribe."

Some allotments were made under the provisions of this act, and a few of the tracts thus allotted are still held by the original allottees or their heirs, while others have, with the permission of the President, been alienated to persons of Indian blood.

Other allotments were made to these Indians under the act of February 8, 1887 (24 Stat. L., 388), commonly known as the "General allotment act," which provided for the issuance of patents to the allottees, declaring that the United States would hold the land thus allotted for the period of twenty-five years in trust for the allottees, and declared that any conveyance of such land made during said trust period should be absolutely null and void. The inhibition against alienation was modified as to the Citizen Pottawatomie and Absentee Shawnee Indians by a provision of the act of August 16, 1894 (28 Stat. L., 286-295), which reads as follows:

Provided, That any member of the Citizen Band of Pottawatomie Indians, and of the Absentee Shawnee Indians of Oklahoma, to whom a trust patent has been issued under the provisions of the act approved February eighth, eighteen hundred and eighty-seven (twenty-fourth Statutes, three hundred and eighty-eight), and being over twenty-one years of age, may sell and convey any portion of the land covered by such patent in excess of eighty acres, the deed of conveyance to be subject to approval by the Secretary of the Interior under such rules and regulations as he may provide, and that any Citizen Pottawatomie not residing upon his allotment, but being a legal resident of another State or Territory, may in like manner sell and convey all the land covered by said patent, and upon approval of such deed by the Secretary of the Interior the title to the land thereby conveyed shall vest in the grantee therein named.

As shown by an opinion of June 8, 1897, I believe that the authority given by this act to make sales during the prohibited period fixed by the act of 1887 is confined to adult Indians and does not include sales made by or on behalf of minors. Further legislation seems necessary to authorize the sale of these lands when held by adult and minor heirs as tenants in common, as stated by the Commissioner.

The act of 1872 contained no provision for the issuance of patent and

fixed no time at which the inhibition against alienation should terminate. If those holding under that act are to be allowed to sell their land or any part of it except to Indians, further legislation is necessary. There would seem to be no good reason for permitting those who receive allotments under the act of 1887 to sell a part of their lands and refuse the same privilege to those who took their allotments under the act of 1872. The rule should, as said in your annual report for the year ending June 30, 1898 (p. 65), be made uniform.

The Peoria and Miami Indians of the Quapaw Agency, Indian Territory, were allowed to sell a part of their lands by a provision of the act of June 7, 1897 (30 Stats., 72), which reads as follows:

That the adult allottees of land in the Peoria and Miami Indian Reservation in the Quapaw Agency, Indian Territory, who have each received allotments of two hundred acres or more, may sell one hundred acres thereof, under such rules and regulations as the Secretary of the Interior may prescribe.

This law does not provide for the sale by heirs of allottees.

Further legislation seems necessary if it is desired to extend the privilege of sale to the classes mentioned by the Commissioner of Indian Affairs.

I have accordingly prepared and herewith submit a draft of an item embodying the suggestion of the Indian Office, which, if inserted in the Indian appropriation bill, would meet the existing necessity for further legislation.

The papers referred to me are herewith returned.

Very respectfully,

WILLIS VAN DEVANTER,
Assistant Attorney-General.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, *January 13, 1899.*

Approved.

C. N. BLISS, *Secretary.*

ITEM FOR THE INDIAN APPROPRIATION BILL.

That the proviso to the Act approved August fifteenth, eighteen hundred and ninety-four, permitting the sale of allotted lands by members of the Citizen Band of Pottawatomie Indians and of the Absentee Shawnee Indians of Oklahoma, is hereby extended so as to permit the adult heirs of a deceased allottee to sell and convey the lands inherited from such decedent, and if there be both adult and minor owners of such inherited lands then such minors may join in a sale thereof by a guardian, duly appointed by the proper court, upon such an order of such court made upon petition filed by such guardian, all conveyances made under this provision to be subject to the approval of the Secretary of the Interior, and any Citizen Pottawatomie not residing upon his allotment, but being an actual resident of another State or Territory, may in like manner sell and convey all the land allotted to him. That said proviso of the Act approved August fifteenth, eighteen hundred and ninety-four, as herein enlarged, is hereby extended to those members of the Citizen Band of Pottawatomie Indians and the Absentee Shawnee Indians who were given allotments under the Act approved the twenty-third day of May, eighteen hundred and seventy-two, and to their heirs, and any purchasers of Indian blood, of lands sold under the provisions of the Act last named, or their heirs, who may own other allotted lands under any Act of Congress, may sell all the lands so owned by them in excess of eighteen acres, the restrictions against sales by allottees under the Act last named to others than the United States or persons of Indian blood being hereby removed, and all such conveyances shall hereafter be subject to the approval of the Secretary of the Interior. That the provisions hereof as to the sale of inherited lands by heirs of deceased allottees of the Citizen Band of Pottawatomie Indians and Absentee Shawnee Indians are hereby extended and made applicable to the heirs of allottees of the Peoria and Miami Indians who were authorized by the Act approved June seventh, eighteen hundred and ninety-seven, to sell a portion of their lands.