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Ira Smith.

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IRA SMITH.

FEBRUARY 20, 1899.—Referred to the Committee on Appropriations and ordered to be printed.

Mr. PETTIGREW presented the following

**LETTER FROM THE SECRETARY OF THE INTERIOR, REGARDING
ADDITIONAL PAYMENT REQUIRED OF IRA SMITH FOR COM-
MUTING SIOUX LANDS, SOUTH DAKOTA.**

DEPARTMENT OF THE INTERIOR,
Washington, February 8, 1899.

SIR: I have the honor to acknowledge the receipt of your letter of the 28th ultimo wherein you refer to the homestead entry of Ira Smith for lands in South Dakota, on which he has paid \$1.25 per acre, under section 21, act of March 3, 1889 (25 Stat., 888), and of whom a further payment of an additional \$1.25 per acre is required which he is unable to make.

In answer to your request for the status of the case I inclose herewith for your information a copy of the report on your letter by the Commissioner of the General Land Office, under date of the 7th instant, giving the desired information.

The land covered by Smith's entry, and on which he has submitted commutation proof, is a tract of ceded Sioux Indian land, and it will be observed that section 6 of the act of March 3, 1891 (26 Stat., 1095), which extends the commutation provision of section 2301, Revised Statutes, to these lands, does "not relieve said settlers from any payments now required by law."

Very respectfully,

C. N. BLISS,
Secretary.

Hon. R. F. PETTIGREW, *Senate.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 7, 1899.

SIR: I have the honor to acknowledge the receipt, by your reference of the 31st ultimo, for report in duplicate and return of papers, of a letter from Hon. R. F. Pettigrew, dated January 28, 1899, as follows:

It appears that Ira Smith, of Hawarden, Iowa, took a homestead entry on the southeast quarter of section 22, township 105 north, range 69 west, fifth principal

meridian, on March 9, 1892. He now desires his patent, and says that \$1.25 is demanded of him in addition to his present payment. He tells me he can not make any further payment, and that he has paid already \$1.25 per acre and thinks he should pay no more. I wish you would write me the status of this case. It seems to me he is entitled to his patent, and if not I want to know why not.

In reply I have the honor to advise you that the records of this office show that Ira Smith made homestead entry No. 634 at Chamberlain, S. Dak., on March 9, 1892, for the land above described, which is a part of the ceded Sioux Indian Reservation; that he submitted commutation proof thereon, and by letter C of July 1, 1895, was granted an extension of time for one year to make the payments required by law, and that on June 6, 1896, he paid the price fixed by section 21, act of March 2, 1889 (25 Stat., 888), namely, \$1.25 per acre, whereupon cash certificate No. 354 issued for the land the same day.

Section 21 of said act provided for the restoration to the public domain of lands in the Sioux Indian Reservation "to actual settlers only under the provisions of the homestead law (except section 2301 thereof)," and made a provision for the payment for said lands according to the period they had been subject to disposal.

Section 6 of the act of March 3, 1891 (26 Stat., 1095), amended section 2301, Revised Statutes, and provided that "the provisions of this section shall apply to lands on the ceded portions of the Sioux Reservation, by act approved March 2, 1889, in South Dakota, but shall not relieve such settlers from any payments now required by law."

Under date of May 13, 1896 (22 L. D., 550), the Department, having under consideration the matter of commutation of homestead entries for Sioux lands under the provisions of said section 6, act of March 3, 1891, decided that—

This provision clearly recognizes the trust character of the payments originally required of entrymen of Sioux lands, and means that when such entrymen shall elect they may commute after the time named by paying the minimum price for the land in addition to the payments required under the act of 1889.

In view of said decision the local officers were instructed by letter C of June 21, 1896, to discontinue the practice of allowing parties to commute their entries upon payment only of the price for the land fixed by section 21 of said act of March 2, 1889, and to require such parties to pay in addition to such payments the minimum price for the land, which is \$1.25 per acre.

Ira Smith did not, in addition to the payment required by said section 21, pay the minimum price for the land for commuting his said entry, and also furnish an affidavit showing whether or not he had alienated the land up to the date of said cash certificate. Therefore, by letter C of January 10, 1899, the local officers at Chamberlain, S. Dak., were directed to advise him and any other known party in interest that he was allowed sixty days from notice to make the required payment of \$1.25 per acre, and to furnish the nonalienation affidavit mentioned above, or to appeal, or in view of the fact that at the time said payment was made the Department had not rendered its decision that said settlers on Sioux lands who commuted their entries would be required to make an additional payment of \$1.25 per acre for the privilege of commutation, if he is now able he may make supplemental proof without readvertisement, showing compliance with the law for the period of five years.

It is held by this office that the law in regard to the commutation of entries for Sioux lands has been unchanged ever since said entry was made; that the law required Smith to pay the price fixed by said act

of March 2, 1889, as well as the price provided by amended section 2301, Revised Statutes, and that the fact that a different construction was formerly put upon the law does not give the party the privilege of commuting his entry at a different rate than that fixed by law.

On June 13, 1898, in the case of Randall McDonnall (27 L. D., 72) the Department affirmed the action of this office requiring the additional payment of \$1.25 per acre for the privilege of commuting a homestead entry for Sioux lands.

By letter of January 23, 1899, Mr. Smith has filed an appeal from said decision of this office of January 10, 1899.

Senator Pettigrew's letter is herewith returned.

Very respectfully,

BINGER HERMANN, *Commissioner*.

The SECRETARY OF THE INTERIOR.

