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Calendar No. 399.

62D CONGRESS, }
2d Session. }

SENATE.

} REPORT
No. 459.

SALE AND DISPOSITION OF LANDS IN OMAHA INDIAN RESERVATION IN NEBRASKA.

MARCH 8, 1912.—Ordered to be printed.

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

R E P O R T .

[To accompany S. 5060.]

The Committee on Indian Affairs, to which was referred the bill (S. 5060) to provide for the disposal of the unallotted lands on the Omaha Indian Reservation in the State of Nebraska, having had the same under consideration, beg leave to report that the bill do pass with the following amendments:

Page 2, line 15, strike out the word "seven" and insert in lieu thereof the word "ten."

Page 3, line 23, after the word "act" insert the following:

And after reimbursing the general trust fund of the tribe for any assessment paid therefrom for protecting the unallotted tribal lands from overflow.

Page 4, line 3, strike out the word "one" and insert in lieu thereof the word "three."

Page 4, line 6, after the word "be," strike out the remainder of said line and all of lines 7 to 15, inclusive, and insert in lieu thereof the following:

Expended for the benefit of said Indians when and in such manner as in the opinion of the Secretary of the Interior shall be to their best interests, and pending such expenditure by the said Secretary the sums due the respective Indians shall be placed to the credit of the said Indians in the Treasury of the United States and shall bear interest at the rate of five per centum per annum; but in the event of the death of any such Indian while there remains in the Treasury to his credit any part of the sum so deposited the said sum shall be paid at once to his heirs, who shall be determined by the Secretary of the Interior, in accordance with the laws of descent in force in the State of Nebraska, and the action of the Secretary of the Interior in determining the legal heirs of any deceased Indian, as provided herein, shall in all respects be conclusive and final.

Your committee submits and makes a part of this report two letters from the Department of the Interior on the subject of the proposed legislation.

DEPARTMENT OF THE INTERIOR,
Washington, February 14, 1912.

Hon. ROBERT J. GAMBLE,

Chairman Committee on Indian Affairs, United States Senate.

SIR: I have the honor to acknowledge the receipt, by your reference of February 6, 1912, for consideration and report, of a copy of Senate bill 5060, Sixty-second Congress, second session, providing for the sale of the tribal lands of the Omaha Indian Reservation in Nebraska.

This department on January 28, 1910, submitted to the Congress drafts of a bill authorizing the sale of the Omaha tribal lands, and in its letters accompanying said drafts set forth fully the facts relating thereto. See House Document No. 630, Sixty-first Congress, second session.

The Indians have expressed a desire to have 10 acres set aside for a tribal cemetery. It is respectfully recommended, therefore, that the word "seven" in section 2, line 15, page 2, be stricken out and the word "ten" be inserted in lieu thereof.

The word "one" in section 4, line 3, page 4, should be stricken out and the word "three" inserted in lieu thereof.

The act of February 18, 1909 (35 Stat. L., 628), authorized the payment of any assessments which may be made by any drainage district in the State of Nebraska on the tribal lands of the Omaha and Winnebago Indians, to protect such lands from overflow, from the tribal funds remaining to the credit of these Indians.

The estimated cost of drainage to protect the tribal lands of the Omaha Tribe is approximately \$600. The lands subject to overflow will be greatly enhanced in value by the drainage provided for in the act of February 18, 1909, supra, and it is but just that the cost of draining these tribal lands should be paid from the proceeds derived from their sale. It is believed that provision should be made in the bill for reimbursing the tribal funds for the cost of draining the lands to be sold from the proceeds of the sale. This can be done by inserting after the word "act" in section 4, line 23, page 3, the following:

"And after reimbursing the general trust fund of the tribe for any assessment paid therefrom for protecting the unallotted tribal lands from overflow."

Section 4 of the bill provides that the proceeds derived from the sale of the tribal lands shall be deposited in the Treasury of the United States to the individual credit of the unallotted children living at the date of the passage of the act, to draw interest at the rate of 5 per cent per annum, each Indian to be paid his share with accrued interest when he reaches the age of 25 years.

The department is of the opinion that authority should be given the Secretary of the Interior to expend the share of individual Indians prior to the time they reach the age of 25 years, when, in his opinion, it will be to their advantage. It is not deemed advisable to have money deposited in the Treasury to the credit of these individual Indians which can not be used to provide for their education or to relieve sickness and distress.

It is respectfully recommended, therefore, that section 4 be further amended by striking out all that part thereof after the word "be" in line 6, page 4, and inserting in lieu thereof the following:

"Expended for the benefit of said Indians when and in such manner as in the opinion of the Secretary of the Interior shall be to their best interests, and pending such expenditure by the said Secretary the sums due the respective Indians shall be placed to the credit of said Indians in the Treasury of the United States, and shall bear interest at the rate of five per centum per annum, but in the event of the death of any such Indian while there remains in the Treasury to his credit any part of the sum so deposited the said sum shall be paid at once to his heirs, who shall be determined by the Secretary of the Interior, in accordance with the laws of descent in force in the State of Nebraska, and the action of the Secretary of the Interior in determining the legal heirs of any deceased Indian, as provided herein, shall in all respects be conclusive and final."

If amended as suggested herein, this department will be glad to see the enactment of Senate bill 5060, Sixty-second Congress, second session.

Respectfully,

SAMUEL ADAMS,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, February 8, 1909.

SIR: By direction of the President, I inclose a draft of a bill, the enactment of which into law at this session of Congress I consider extremely urgent, for reasons which I shall set out. The proposed measure provides for the disposal of all the unallotted land on the Omaha Indian Reservation in the State of Nebraska.

Allotments on the Omaha Indian Reservation were originally made in accordance with the provisions of the act of August 7, 1882 (22 Stat. L., 341). Allotments under this act to 954 members of the tribe were approved by the department on July 11, 1884, and the trust period for such allotments will expire on July 10, 1909.

Section 8 of the same act provided that the residue of lands, after all allotments had been made " * * * shall be patented to the said Omaha Tribe of Indians, which patent shall be of the legal effect and declare that the United States does and will hold the land thus patented for the period of twenty-five years in trust for the sole use and benefit of the said Omaha Tribe of Indians, and that at the expiration of said period the United States will convey the same by patent to said Omaha Tribe of Indians in fee discharged of said trust and free of all charge or encumbrance whatsoever."

For reasons which the present administration of the department and of the Indian Office is unable to supply, no patent to the tribal lands was issued in accordance with the direction of the section quoted. It is easy to conceive, however, that a court of law might hold that the act was mandatory, and required the issuance of a trust patent for the tribal lands, and that, since this ought to have been done, a constructive trust period went into effect with regard to the tribal lands from the date of the completion of allotments in severalty on July 11, 1884, and would therefore expire on July 10, 1909.

In view of this possible and very probable interpretation of the act of August 7, 1882, that a constructive trust period is now in effect, which will expire on July 10, 1909, it is manifest:

1. That if no provision be made to meet the condition it needs only conflicting interests in the disposition of the unallotted lands to bring about much expensive and vexatious litigation and serious embarrassment to the administration of the affairs of these Indians.

2. That any legislation designed to meet the emergency, if such exists, must be passed at this session of Congress in order to be of any avail.

There are conflicting interests in the disposition of this unallotted land, which arose from the following conditions:

Section 8 of the act of August 7, 1882, *supra*, provided that, from the residue of lands to be patented to the tribe in common, allotments should be made and patented to each Omaha child born prior to the expiration of the time during which it was provided that the tribal lands should be held in trust (i. e., prior to July 10, 1909, on the constructive hypothesis herein outlined), the individual patents to override the patent to the tribe in common, and the lands so patented to the children to be segregated from the tribal lands. It is worthy of note also that the trust period on the proposed allotments to children was to expire, under the terms of this section, simultaneously with the expiration of the trust period on the tribal lands.

No allotments to children have been made under this section. The only allotments made from the residue of lands after the allotments of 1884 were made under the terms of the act of March 3, 1893, (27 Stat. L., 612, 630) which was amendatory in that it gave larger areas to children allotted under the former act, and provided for allotments to all women and children in being on March 3, 1893. The later act, however, did not repeal the former, so that there can be no doubt but that the children born since March 3, 1893, have been born into a right to an allotment of 40 acres each under the provision of the act of August 7, 1882, *supra*, so long as any is left of the tribal land.

The difficulty in carrying out the intent of this act at this time arises from the fact that there are now living 520 children of the tribe who, having been born since March 3, 1893, have received no allotments, and there is only about 4,500 acres of unallotted land, so that only 112 allotments of 40 acres each could be made to the 112 eldest unallotted children, leaving 408 children for whom no provision would be made. The prospect of such a disposition has aroused intense opposition among the parents of the 408 children who would thus receive nothing. Moreover, the unallotted land varies greatly in character and value, so that it was impossible equitably to divide it.

To pass a measure providing for the equal distribution of the tribal lands among all the living children would be open to serious objection, because this would give each child only about 8.6 acres, of unequal value—a quantity too small to be either cultivated or leased to advantage.

It would seem wiser to provide legislation designed to carry out the spirit of the act of August 7, 1882, the neglect to comply with the letter of it being a matter not susceptible of explanation at this time. The value in the open market of the tribal lands is variously estimated at \$100,000 to \$200,000. At the lower figure the sale of the lands and an equal distribution of the funds so arising among all the children would give each child about \$190. The oldest child who could become a beneficiary under such a plan would be about 15 years of age when title passed to him for his share

of \$190. If this sum were placed to his credit in the Treasury at 5 per cent interest per annum until he was 25 years of age, the amount then due him would be \$285. The younger the child at the date of the passage and approval of such act the greater the sum which would be his on reaching the age of 25 years.

Such is the purport of the accompanying bill, which is believed not only to furnish the best solution of the problem, but to meet the wishes of the majority of the tribe as expressed in open council, and in communications to the Indian Office. The bill contains certain reservations essential to the welfare of the tribe; provides for an Indian town near the present agency, which is a cherished dream of the Omahas; and gives the Nebraska Historical Society the old Presbyterian mission, which it is their desire to preserve as a landmark; and I strongly urge its enactment into law, and again call your attention to the fact that it is necessary that such an enactment be had at this session if at all.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

AN ACT To provide for the disposal of the unallotted land on the Omaha Indian Reservation in the State of Nebraska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, authorized to cause to be surveyed, if necessary, and appraised, in manner hereinafter set forth, in tracts of forty acres each; and, after such survey and appraisement, to sell and convey, in quantities not to exceed one hundred and sixty acres to any one purchaser, all the unallotted lands on the Omaha Indian Reservation in the State of Nebraska, except such tracts as are hereinafter specifically reserved: *Provided*, That the said land shall be sold to the highest bidder under such regulations as the Secretary of the Interior may prescribe, but no part of said land shall be sold at less than the appraised value thereof: *And provided further*, That prior to such appraisement and sale, any member of the Omaha Tribe whose allotment is subject to erosion by the Missouri River shall be permitted to relinquish such allotment and select lieu lands of equal area from the unallotted lands, the lands so relinquished to become a part of the unallotted tribal lands and subject to appraisement and sale under the terms of this act.

SEC. 2. That the Secretary of the Interior is hereby directed to reserve from sale under the terms of this act the following tracts of land, for the purposes designated: Forty-nine acres of the land now used for agency purposes, to be reserved for agency and school purposes for so long as the need therefor exists; seven acres, to be selected by the tribe, for use as a tribal cemetery; ten acres of the land now reserved for the use of the Presbyterian Church, to be selected by the officials of said church, for the use of the church so long as needed for religious or educational purposes; two acres of the land on which is standing what is known as the old Presbyterian mission building, and the Secretary of the Interior is hereby authorized to cause a patent in fee simple to issue therefor in the name of the State Historical Society of Nebraska: *Provided*, That, of the land now reserved for agency purposes, the Secretary of the Interior is directed to reserve and set aside for town-site purposes one hundred and sixty-four acres, other than the forty-nine acres hereinbefore reserved, and shall cause the same to be surveyed and platted into town lots, streets, alleys, and parks, the lots to be appraised and sold under the terms of this act, but no bid shall be received therefor except from members of the tribe, and the streets, alleys, and parks are hereby dedicated to the public use.

SEC. 3. That the appraisement directed by this act shall be made by three competent commissioners to be appointed by the Secretary of the Interior, after the completion of the surveys herein directed and authorized, one of whom shall be a resident citizen of the State of Nebraska, one an employee of the Indian Bureau, and one holding tribal relations with the Omaha Indians, said commission to be paid a salary of not to exceed five dollars per day each while actually employed in the inspection and appraisal of said land, such appraisement to be completed within such a period after the date of the organization of said commission as the Secretary of the Interior shall designate.

SEC. 4. That the proceeds of such sale, after paying all the expenses incident to and necessary for carrying out the provisions of this act, shall be divided pro rata among the children of the Omaha Tribe living on the date of the passage and approval of this act who have not received allotments of land under the acts of August seventh, eighteen hundred and eighty-two (Twenty-second United States Statutes at Large,

page one hundred and forty-one), and March third, eighteen hundred and ninety-three (Twenty-third United States Statutes at Large, page six hundred and thirty), and shall be placed to the credit of said Indians in the Treasury of the United States, and shall bear interest at the rate of five per cent per annum, until such time as the individual Indians shall have reached the age of twenty-five years, when the share to the credit of each Indian, with accrued interest, shall be paid to him upon application therefor through the Secretary of the Interior; but in the event of the death of such Indian prior to reaching the age of twenty-five years, his share shall be paid at once to his heirs under the laws of descent in force in the State of Nebraska.

SEC. 5. That for the purpose of carrying out the provisions of this act there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of three thousand dollars, or so much thereof as may be necessary, to be reimbursable out of the funds arising from the sale of said lands.

SEC. 6. All acts and parts of acts not consistent with the provisions of this act are hereby repealed.



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