IN THE SENATE OF THE UNITED STATES.

LETTER

FROM

THE ACTING SECRETARY OF THE INTERIOR.

RELATIVE TO

The proposed sale of lands of the Otoe and Missouria Indians.

MAY 5, 1892.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, May 4, 1892.

SIR: I have the honor to transmit herewith a draft of a bill, submitted by the Commissioner of Indian Affairs, to amend an act entitled "An act to provide for the sale of the remainder of the reservation of the confederated Otoe and Missouria Indians, in the States of Nebraska and Kansas, and for other purposes," approved March 3, 1881.

I also transmit herewith copy of a communication of 19th ultimo, from the Commissioner of Indian Affairs, setting forth the necessity for said legislation.

As these Indians have been in occupation of the lands sought to be allotted to them since 1876, I am of opinion that the alienation provision should be limited to ten years, and I have so noted it in the bill.

The matter is presented with request for the favorable consideration of Congress.

Very respectfully,

GEO. CHANDLER,
Acting Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 19, 1892.

SIR: I am in receipt of a letter, dated March 21, 1892, from Mary J. Barnes, Barneston, Nebr., stating that she is a duly recognized member of the Otoe and Missouria tribe of Indians, and that she applies for allotments of land for herself and each of three sons, under the act of Congress providing for the allotment of lands in severalty to the members of the different tribes of Indians in the United States; that the

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land for which application is made is embraced within the original reservation of the Otoe and Missouria tribe of Indians, situated in Nebraska and Kansas, and is described as follows:

For herself, Mary J. Barnes, the east half of the northeast quarter of sec. 36, T. 1 N., R. 7 E., and the west half of the northwest quarter of sec. 31, T. 1 N., R. 8 E.; for her son F. H. Barnes, the northeast quarter of sec. 24, T. 1 N., R. 7 E.; for her son William D. Barnes, the southeast quarter of sec. 19, T. 1 N., R. 8 W.; and to her son Emmett F. Barnes, the east half of the northeast quarter of sec. 2 and the west half of the northwest quarter of sec. 1, T. 1 S., R. 7 E.

Mrs. Barnes further states that the land requested for herself has been her home residence for twenty-five years and is in a high state of cultivation, having valuable improvements; that the several tracts requested for her sons have been the permanent homes of themselves and families for a number of years, and are each in a good state of cultivation and well improved; that the above-described tracts were all withheld by order of the Secretary of the Interior from the sale of the Otoe and Missouria reservation lands sold under the act of 1881; that none of the tracts of land heretofore mentioned have ever, since said general sale nor before, been sold, and they have always been in applicant's possession by occupation.

By telephonic message of the 2d instant Senator Paddock stated that these applicants are his neighbors and friends and asked immediate action in the matter. In view of the fact that the rights or claims of other Indians of this class may be affected by the action hereinafter recommended, a brief history of the case is submitted for your information, as follows:

By the treaty of March 15, 1854, the confederated tribes of Otoe and Missouria Indians ceded to the United States all their country west of the Missouri River, excepting a strip of land on the waters of the Big Blue River, 10 miles in width and bounded as described in article 1 of said treaty; in consideration of which the United States agreed to pay said Indians certain sums of money as set forth in article 4 thereof.

Article 6 of said treaty provided that—

> The President may, from time to time, * * * cause the whole of the lands herein reserved or appropriated west of the Big Blue River to be surveyed off into lots, and assign to such Indian or Indians of such confederate tribes as are willing to avail of the privilege, and who will locate on the same as a permanent home. If a single person over 21 years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section, and to each family exceeding ten in number, one quarter section for every additional five members. * * * And the President may, * * * after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, under the restrictions specified in said article.

By office letter to the Department dated December 9, 1875, upon the application of Mary J. Barnes, received on the same date, it was recommended for reasons stated that, without reference to article 6 of the treaty aforesaid, this office be authorized, under the general relation existing between the Department and the Indians as wards of the Government, to direct the agent of the Otoes to assign to each Indian family prepared to enter upon agricultural life a tract of land not exceeding 80 acres, to be included in each case within the established lines of survey, except in cases where individual heads of families have already improved a quantity of land exceeding 40 acres such family may be allotted 160 acres.

By Department letter of December 15, 1875, the foregoing recom-

mendation was approved and authority granted to carry the same into effect.

By office letter dated December 23, 1875, United States Indian Agent J. W. Griest, Otoe Agency, was instructed to assign to each head of a family or single person over the age of 21 years, belonging to the Otoe and Missouria tribes, who shall manifest a desire to enter upon and pursue an agricultural life, a quantity of land within the limits of their reservation set apart by the treaty of 1854 aforesaid equal to 80 acres in extent, to be governed in each instance by the established lines of the public surveys. In cases, however, where the head of the family has already given evidence of industry and thrift by having in cultivation more than 40 acres, such head of a family will be assigned a quantity of land equal in extent to 160 acres.

By letter dated August 23, 1876, United States Indian Agent J. W. Griest requested a certificate of allotment to Mary J. Barnes, a member of the tribe with 5 minor children, for the west half of the northwest quarter of section 36, township 1, range 7 east, containing 160 acres, the same being fenced and improved with good dwelling house and 85 acres broken and in cultivation.

The act of August 15, 1876 (19 Stats., 208), provided that, with the consent of the Otoe and Missouria tribes of Indians, the Secretary of the Interior is authorized to cause to be surveyed and appraised the reservation of said Indians lying in the States of Kansas and Nebraska, and to offer 120,000 acres from the western side of the same for sale, through the United States land office at Beatrice, Nebr., for cash to actual settlers only in tracts not exceeding 160 acres to each purchaser, the proceeds of said sale to be placed to the credit of said Indians in the Treasury of the United States.

The consent of said Indians was given December 23, 1876.

The act of March 3, 1881 (21 Stats., 380), provided that, with the consent of the Otoe and Missouria tribes of Indians, the Secretary of the Interior is authorized to cause to be surveyed and sold the remainder of the reservation of said Indians lying in the States of Kansas and Nebraska; that the proceeds of the sale of said lands shall be placed to the credit of said Indians in the Treasury of the United States and bear interest at the rate of 5 per centum per annum; and that the Secretary of the Interior may, with the consent of the Indians, secure other reservation lands upon which to locate said Indians, cause their removal thereto, and expend such sum as may be necessary for their comfort and advancement in civilization.

The consent of said Indians was given May 4, 1881.

It will be observed that by the acts of 1876 and 1881 aforesaid, the Otoe and Missouria tribes of Indians agreed to the sale of all their lands and made no provisions for allotments to those members of the tribe who had elected to remain under the provisions of the treaty of 1854.

By office letter dated December 20, 1881, attention was invited to the fact that the act of March 3, 1881, failed to provide any protection for those members of the tribe who had, in good faith, made selection and location of lands on their reservation, placed valuable improvements thereon, and desired to remain in the enjoyment of them. With said letter a draft of a bill providing for such amendment of said act as the necessities of the case seemed to demand was submitted.

A bill intended to meet the foregoing passed the Senate March 21, 1882, but failed to become a law.

By letter dated April 14, 1883, this office transmitted the report of

the Commissioners appointed to appraise the Otoe and Missouria lands in Nebraska and Kansas, under the act approved March 3, 1881, entitled "An act to provide for the sale of the remainder of the reservation of the confederated Otoe and Missouria tribes of Indians in the States of Nebraska and Kansas, and for other purposes" (21 Stats., 380), and the act (sundry civil) approved August 7, 1882 (22 Stats., 328), submitting schedules of appraisement, separately describing the tracts appraised, and the valuation of each tract as determined by them. It was recommended in said letter that said appraisement be approved and that the Commissioner of the General Land Office be directed to proceed with the sale in accordance with the provisions of existing law *withholding, however, from entry and sale the subdivisional tracts upon which improvements are found belonging to Indians as reported by the appraisers in their schedule of appraisement.*

By letter dated April 17, 1883, the Department returned to this office the original appraisement of the Commissioners and also transmitted copy of letter of same date to the Commissioner of the General Land Office, approving said appraisement, and directing that the subdivisional tracts upon which improvements are found belonging to Indians, as reported by the appraisers in their schedule of appraisement, be reserved from sale and that the other lands be sold in accordance with the law.

The said schedule of appraisement shows improvements by said Indians as follows:

Edward Devoin.—The SE. ¼ of the NE. ¼ of Sec. 31, T. 2 N., R. 8, containing 36.10 acres, 3.90 acres being deducted for right of way of the Republican Valley Railroad.

Wm. M. Barnes.—The S. ½ of the SE. ¼ of Sec. 19, T. 1 N., R. 8, containing 80 acres.

Otoe Sam.—The NW. ¼ of the SW. ¼ of Sec. 20, T. 1 N., R. 8, containing 40 acres.

Charles A. Dripps.—The S. ½ of the NE. ¼ of Sec. 21, T. 1 N., R. 8, containing 80 acres.

Mary J. Barnes.—The W. ½ of the NW. ¼ of Sec. 31, T. 1 N., R. 8, 79.62 acres.

Fred Barnes.—The NE. ¼ of the NE. ¼ of Sec. 24, T. 1 N., R. 7, containing 34.37 acres, 5.63 acres being deducted for right of way for Oregon and Republican Valley Railway.

John Mus-ka-ga-ha.—The SE. ¼ of the SE. ¼ of Sec. 24, T. 1 N., R. 7, containing 36.63 acres, 3.37 acres being deducted for right of way for Oregon and Republican Valley Railway.

Batiste Devorin.—The NE. ¼ of the NE. ¼ of Sec. 25, T. 1 N., R. 7, containing 37.44 acres, 2.56 acres being deducted for right of way for Oregon and Republican Valley Railway.

Mary J. Barnes.—The E. ½ of NE. ¼ of Sec. 36, T. 1 N., R. 7, containing 80 acres.

Emmett Barnes.—The NW. ¼ of the NW. ¼ of Sec. 1, T. 1 S., R. 7, containing 40 acres.

Upon this showing it would appear that good faith and justice entitles Mrs. Mary J. Barnes, the applicant in this case, to a formal allotment of the land applied for by her, and which said land is the same as that reported by the appraisers as improved and occupied by her. She can not get a patent for this land under the existing laws relating to the Otoe and Missouria Indians nor under the general allotment act.

I have, therefore, the honor to submit herewith a draft of a bill providing for such amendment of the act of 1881 as the necessities of the case seem to demand.

Attention is invited to the fact that the applicants for these allotments have apparently been in possession of the lands applied for since the date of the act authorizing their sale (1881), and as they are public lands the occupants have been presumably exempt from taxation during this period. I, therefore, doubt the wisdom of recommending that these lands be allotted, with the usual restrictions as to alienation and

taxation, for twenty-five years, and have accordingly left blank in said draft of bill the period of time for which such restriction should be incorporated in the patent.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

A BILL to amend an act entitled "An act to provide for the sale of the remainder of the reservation of the Confederated Otoe and Missouria Indians in the States of Nebraska and Kansas, and for other purposes," approved March third, eighteen hundred and eighty-one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any member of the said confederated tribes residing at the date of the aforesaid act of March third, eighteen hundred and eighty-one, and whose names appear upon the schedule of appraisement made by the commissioners appointed under the provisions of the act aforesaid, and approved by the Secretary of the Interior April seventeen, eighteen hundred and eighty-three, upon any of the lands authorized to be sold by said act, shall make application for allotments of land, the Secretary of the Interior shall cause a patent to issue to such person or his or her heirs who may be residing upon said lands at the date hereof, for the subdivisional tract or tracts of land (not exceeding one hundred and sixty acres of land to any one person), reported on the commissioners' schedule aforesaid as having been improved by such person; *Provided*, That the lands acquired by any Indian under the provisions of this act shall not be subject to alienation, lease, or incumbrance, either by voluntary conveyance by the grantee or his heirs, or by the judgment, order, or decree of any court, or subject to taxation of any character, but shall remain inalienable and not subject to taxation, lien, or incumbrance for the period of ten years, which restriction shall be incorporated in the patent.

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