THE OTOE RESERVE.

The Bill Providing for the Sale of the Remainder of the Land Discussed in the Senate.

Messrs. Saunders, Van Wyck, Teller, Dawes and Cockrill Engage in a Spat.

Congressional Record, March 22d.

Mr. Saunders—The Senator from Massachusetts [Mr. Dawes] has arrived in the chamber, and I should like to proceed now with the bill I referred to before.

The President pro tempore—The senator from Nebraska asks the senate to proceed to the consideration of the bill (S. No. 930) to amend an act 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," approved March 3, 1881. The bill has been considered as in Committee of the Whole, and the amendments of the Committee on Indian Affairs have been adopted. If there be no objection the bill is before the senate as in Committee of the Whole again.

Mr. Dawes—One of the committee's amendments was to strike out a section. Was that adopted?

The President pro tempore—It was adopted.

Mr. Saunders—One section has not been adopted, I think, that is the fourth section. * * * * I am willing by general consent that another vote may be taken on that amendment.

The President pro tempore—Then the consideration of the vote may be regarded as had and the section restored. The Chair will put the question on reconsidering the vote agreeing to the amendment striking out the fourth section.

The reconsideration was agreed to

The President pro tempore—Now the question is on the amendment striking out the section.

Mr. Saunders—Now let the Secretary read that section.

The Acting Secretary read section 4, as follows:

SEC. 4. That if any member of the said confederated tribes residing at the date of the aforesaid act of March 3, 1881, upon any of the lands authorized to be sold by said act, and who has made valuable improvements thereon, shall elect to remain on the lands now occupied by him or her, the Secretary of the Interior shall cause a patent to issue to the person so electing for one hundred and sixty acres of land, to include his or her improvements: Provided, That the lands acquired by any Indian under the provisions of this section 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 —— years, which restriction shall be incorporated in the patent.

The President pro tempore—The question is on the amendment of the Committee on Indian Affairs to strike out the section just read.

Mr. Saunders—The reasons that were given for striking out this section may be readily stated.

First, there was some little doubt in the mind of the committee as to what power and right Congress had to control taxes in a State on lands that the United States had disposed of and turned over to the State.

Secondly, what had more potency with me than anything else was the fact that these Indians were gone, that there is only one full-blooded Indian on this reservation, and that is a woman married to a white man, and she is the only person who can avail herself of the privileges of this purchase. If my friend from Massachusetts insists upon it I will allow the amendment to fall and the section to stand as it was.

I am assured by the very best authority that she is the only Indian in that reservation, of that tribe, or within two hundred or three hundred miles of there, or that ever expects to be near there; and the question with me was whether we ought to legislate for this white man, for it is virtually for him, the right to his wife to have the property there for twenty-five years without any taxation or any power to collect any debts or anything from the party, because it is not to be subject to alienation, or taxation, or judgment, or decree of court, so that he would have for twenty-five years a right there that we do not give to the white people. If the senate sees fit to vote down this amendment and allow that right I shall have no objection whatever.

Mr. Dawes—I do not know that it is worth while to take up the time of the senate as the senator consents to have the section remain. There are very good reasons for the section remaining, in my opinion.

Mr. Van Wyck—Will the senator from Massachusetts be kind enough to explain the reasons? This section ignores the constitution and laws of the state of Nebraska, and I should like the senator to give some reason why the senate should do that thing.

Mr. Dawes—Mr. President, the land belonged to the United States, and the United States have granted it in the second instance to these Indians. The United States now propose to remove these Indians to the Indian Territory. They have promised them heretofore that, if they desired it, they might have allotted to each one of them one hundred and sixty acres of this land. And now some of them want to go, nevertheless, to the Indian Territory to join their brethren there. The senators from Nebraska think they all want to go, and I have no doubt they honestly think they all want to go.

Mr. Saunders—The senator will allow me to say they have already gone.

Mr. Dawes—The senator from Nebraska says they have already gone.

Mr. Van Wyck—We know it.

Mr. Dawes—If they have gone, this section will have no operation at all. If they have gone, it seems to me eminently proper that those who desire to stay, having had the enacting promise of congress that they might stay, under these circumstances should not be deprived of that right. Then what would be their condition? They would be allotted land in severalty and in fee; but an Indian allotted land in severalty and in fee without restriction as to alienation or taxation would be served with the chaff without the substance, and would be worse off than if he had not been deluded with the idea that he got something. It would go for a gallon of whisky before three days passed after this bill became a law. Therefore some restriction upon his right to alienate the land should be affixed. It has been affixed as to all other tribes and all other reservations.

There is another restriction, and that is as to taxation. That is precisely the same and in precisely the same words as is applied to all the reservations that have been parceled out by allotment in all the new states, Iowa, Kansas, and Nebraska, hitherto, and is a reservation in some form I do not know exactly what, or a right on the part of the general government reserved when the states were admitted into the Union. It is an adopted principle which has been applied in all of these states. I do not know why at this particular point and in reference to these particular Indians there should be an exception. That is my opposition to the striking out of this section.

I have no doubt the senators from Nebraska are honest in their belief that all of the Indians have gone, and if the fact proves that they have all the section will have no operation; but if it should turn out, as has been the case in reference to a great many other Indians, that we have been mistaken about it and that there are a considerable number of these Indians who desire to take their land in severalty and enjoy their homes and become citizens of Nebraska and absorbed into the general population of that state, it seems to me wise to put upon them the same restrictions, and no others, as have been put upon all bills of allotment. The senator from Oregon (Mr. Slater) a few days ago got a bill through for the same purpose as to the Umatilla Indians, with the same provision exactly, and I do not see why it should be excepted from this bill at this time. It was a discussion about the question of taxation which caused a majority of the committee to think it just as well (acting upon the belief of the senators from Nebraska that there were no Indians there) to strike out the section; but I think it ought to be retained.

Mr. Saunders We know in relation to this matter what the facts are, and of course we are not trying to deceive the senate in relation to these Indians. This bill is simply an amendment to an act that was passed over a year ago for the same purchasing these lands and removing the Indians into the Indian territory. That act was found defective, and this bill was prepared mainly at the department of of the interior to cover the defects in that. As I said, I care but little about this matter, but in order to perfect the section if it should be adopted I move to fill the blank in line 15 with the word "twenty-five;" so that it will read:

And not subject to taxation, lein, or incumbrance for the period of twenty-five years.

The President pro tem—Is there objection to filling the blank with "twenty-five" as proposed? The chair hears none, and the blank is so filled. Now the question is on the amendment striking out the section.

Mr. Saunders—I leave it to the senate to say whether the section shall be stricken out or not.

Mr. Teller—The senator from Nebraska complains that the land is exempt from taxation. Two years ago the senator was a member of the committee on Indian affairs as he now is, and he reported a bill to locate the Ute Indians in Colorado on several million acres of land; and he not only reported in favor of exempting the land from taxation, but of exempting likewise all the personal property those Indians might ever acquire. The land should not be sold for twenty-five years, and during all that time it should pay no taxes. That was the bill he then favored. He defended that on the floor of the senate; he voted for that bill; and now when the application is made to Nebraska, it is a very astonishing and singular provision! I hope that he will take the medicine that he dealt out to Colorado without making a very wry face.

Mr. Saunders—I only want to say that was applicable to a division of the lands in severalty to the Indians which cost them nothing; but this is a tract of land that is to be sold for not less than $2 50 per acre. It is entirely a different thing. The land is to be sold and the money to be deposited to the credit of the Indians by the interior department.

Mr. Dawes—This does not apply to that to be sold, but to that still occupied by the Indians.

Mr. Saunders—Therefore it does not apply at all to the bill that the senator from Colorado alludes to or the principle as I understand that was involved in that bill. It provided for dividing the lands up in severalty among the Indians. I only yield this matter because I know it will affect no person except one, and I do not care, so far as I am concerned, whether he is affected or not.

Mr. Cockrell—Mr. President, on the 3d of March, 1881, a law was passed which is now proposed to be amended by this bill, and I find that this bill which is now before the senate originated in the interior department, was prepared by the commissioner of Indian affairs, transmitted to the secretary of the interior, from him to the president, and by the President to congress. I simply desire, in order to show the necessity for the retention of this clause of the bill, to read what the commissioner of Indian affair said on the 20th day of December, 1881. This is addressed to the secretary of the interior:

SIR:—Referring to department letter of December 10, 1881, in the matter of the sale of the Otoe and Missouria reservation in Nebraska and Kansas, under the act of March 3 last, I have the honor to transmit herewith a draft of a bill providing for such amendment of the act referred to as the necessities of the case seem to demand.

No provision is made in said act for expenses incident thereto, nor for the appraisement and sale of the valuable improvements upon the said reservation belonging to the government or to members of the confederated tribes who desire to remove with their tribe to their new home in the Indian Territory. Neither is there any proper protection provided for such as having in good faith made selection and location of lands on their reservation, and placed valuable improvements thereon, desire to remain in the enjoyment of them.

That is what the commissioner of Indian affairs says, and he certainly ought to know something about where these Indians are. I hope the amendment will not prevail.

The President pro tem—The question is on the amendment to strike from the bill the fourth section.

The amendment was rejected.

Mr. Van Wyck—I have an amendment to propose, which is probably more important now since this section has been retained in the bill, because if a portion of this Indian tribe remain there it is very proper that the educational schools should remain, and I have drawn this amendment, which was suggested by my predecessor, Mr. Paddock, who resides in the neighborhood of this tribe and knows as to the condition of these buildings. At his suggestion I have drawn this amendment, which I have submitted to the chairman and the committee on Indian affairs, and it meets their approbation. At the end of section 2 I propose to add:

Provided also, That the school house erected on said reservation for the use and benefit of said confederated tribes, together with such of the agency buildings as may be required for such purpose, and the tract of land on which they are situated, not exceeding three hundred and twenty acres in extent, with the consent of said Indians, given in open council, shall be reserved and set apart by the United States for an agricultural school, which is hereby authorized to be there established, for the education of Indian youths of the reservation tribe in agricultural and the other useful sciences and arts, and for such buildings as any missionary society may erect for religious and educational purposes, under such rules and regulations as to the management of the same as the Secretary of the Interior, with the approval of the President, may prescribe.

That meets with the approbation of the Committee on Indian Affairs.

Mr. Teller—It the senators are not mistaken when they say that there are no Indians at this reservation, this is all wrong. We do not want to establish an Indian school at a point where there are no Indians; and this land will be tied up. I think the amendment had better be rejected. It is putting on to a small bill a very large subject. There is a bill already here, prepared by the senator from Massachusetts, that looks to a general system of Indian education, and this will perhaps interfere with it.

Mr. Van Wyck—The chairman of the Committee on Indian Affairs does not think this will interfere with it by any means. If the senator from Missouri is correct and the commissioner of Indian affairs is correct, that it is necessary to preserve and protect homes for those Indians of these confederated tribes who may remain there, in violation of the constitution and laws of the state in which they live, if the commissioner of Indian affairs so thinks and the senate concurs with him in opinion that that should be done——

Mr. Cockrell—Will my good friend from Nebraska please tell us how this bill violates the constitution and laws of the state of Nebraska?

Mr. Van Wyck—That constitution provides that all property within the state shall be alike subject to taxation.

Mr. Teller—That does not apply to Indian lands.

Mr. Van Wyck—This land passes from out of the hands of the general government; and do you mean to say that the government of the United States in giving patents either to Indians or others when the lands are sold can prevent the state taxing them? The very moment you break up the tribal relation when you put the land of this Indian tribe in the market and sell it, and when you pledge yourselves to the Indians for the amount realized and the payment of interest on it, then this becomes land in severalty; and whether you sell it and issue patents, or the Indian retains his right in severalty (which is the same as a patent from the United States,) that moment, whether it goes to an Indian in full blood or a half-breed or a white trader who marries a half-breed or a full blood, that very moment he becomes the owner in severalty, the same as you or I if we take a patent from the United States. But when you undertake to do that you are met by the constitution and laws of the State of Nebraska, which provide that all property in the state shall be equale taxed, and hence it is that I made the suggestion I did. The senator from Missouri falls back on the letter of the commissioner of Indian affairs, who states that the right of the Indians should be reserved to make homes there, homes in severalty, to assimilate with the population, and to be exempt from taxation.

Now, it is a matter of but little moment. I have done this at the suggestion of my predecessor. I have introduced this amendment which provides that the buildings which have been used for school purposes may be continued to be used for school purposes in the future. If it should be that we are correct and the commissioner is wrong, and the senate is wrong, if the Indians all go, then as a matter of course these buildings will be subject to the control of congress. If it should be, on the other hand, that these Indians have gone and choose to come back and avail themselves of the benefits which congress gives them, they may come back and be a portion of the people of Nebraska, and have all the protection which Nebraska and its laws can give them and still be exempt from the burdens of taxation. If the Indians of these confederated tribes in their new home choose to come back and avail themselves of the benefits which congress gives them in this bill, then we think it competent and proper that congress should extend to them the advantages of schools in the school-building erected there for them, and they should have the benefits of the education which my friend, the chairman of the committee, is so anxious should be given to other Indians, and missionary societies who desire to avail hemselves of their benefits should be allowed this opportunity. You must adopt one theory or the other. If they are gone, or come back, let them reap the rewards of this provision which the bounty of congress chooses to give them.

Mr. Cockrell—I hope my good friend from Nebraska did not understand me as expressing my opinion about whether the Indians were there or not. I simply read what the commissioner of Indian affairs said. I do not know whether the Indians are there or not.

Mr. McDill—I should like to ask the sentor from Nebraska a question. I feel puzzled on this amendment how to vote. I understand there is only one Indian woman there, and she is married to a white man. It seems to me that the proposition to set apart so much for her education is extremely liberal. I want to ask the senator from Nebraska if he does not think he is calling for a good deal when he proposes to have an agricultural school and a chapel and a lot of ground of three hundred and twenty acres set apart for the benefit of this one woman?

Mr. Van Wyck—I think it is a good deal; but it is no more than we have already done by the vote just taken. We have given them land in severalty. How many of them will turn up under the shield of relationship to this trader I do not know: but you have given them at the expense of the State of Nebraska a good deal to-day, and now all I ask by this amendment is to give them something that you have a right to give them. These buildings belong to them, and the land belongs to them. Now, give them something you possess; do not give them what does not belong to you, but give them what you have a right to give them. You have given them what does not belong to you, and you have given to them a part of the laws and the constitution of the State of Nebraska; now give them what you have got; give them a little land and school house, for that belongs to you to give. You have violated the laws and constitution of Nebraska for the squaw of an Indian trader. Now, you violate no law and no rule of generosity to the Indians by giving them what you have a right to give them. Then there is no harm done. If they stay and enjoy it, all well; if they are enticed back and enjoy it, all well; if they do not, it belongs where it is left, under the protection of your secretary of the interior and the president of the United States.

The President pro tempore—The question is on the amendment proposed by the senator from Nebraska (Mr. Van Wyck)

The amendment was agreed to—ayes 35, noes not counted.

The bill was reported to the senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

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