

Oct. 21, 1976, see section 701 of Pub. L. 94-579, title VII, Oct. 21, 1976, 90 Stat. 2786, set out as a note under section 1701 of Title 43, Public Lands.

§ 338. Repealed. May 29, 1928, ch. 901, § 1(64), 45 Stat. 991

Section, act Apr. 4, 1910, ch. 140, § 1, 36 Stat. 270, required Secretary of the Interior to submit to Congress a cost account of survey and allotment work.

§ 339. Tribes excepted from certain provisions

The provisions of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in Oklahoma, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by Executive order.

(Feb. 8, 1887, ch. 119, § 8, 24 Stat. 391.)

REFERENCES IN TEXT

This act, referred to in text, is act Feb. 8, 1887, ch. 119, 24 Stat. 388, as amended, and is popularly known as the Indian General Allotment Act. For classification of this act to the Code, see Short Title note set out under section 331 of this title and Tables.

SACS AND FOXES; MISSOURI INDIANS

No allotment of lands was to be made or annuities of money to be paid to any of the Sacs and Foxes of the Missouri Indians who were not enrolled as members of the tribe on Jan. 1, 1890, by a proviso annexed to act Feb. 28, 1891, ch. 383, § 5, 26 Stat. 796.

§ 340. Extension of certain provisions

The provisions of the Act of February 8, 1887, are declared to extend to and are made applicable to the Confederated Wea, Peoria, Kaskaskia, and Piankeshaw tribes of Indians, and the Western Miami tribe of Indians, located in the northeastern part of the former Indian Territory and to their reservation, in the same manner and to the same extent as if said tribes had not been excepted from the provisions of said act, except as to section 349 of this title, and as otherwise hereinafter provided.

(Mar. 2, 1889, ch. 422, § 1, 25 Stat. 1013.)

REFERENCES IN TEXT

Act of February 8, 1887, referred to in text, was in the original "chapter One hundred and Nineteen of the acts of eighteen hundred and eighty seven, entitled 'An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes,'"". The Act appears in 24 Stat. 388, and is popularly known as the Indian General Allotment Act. For classification of this Act to the Code, see Short Title note set out under section 331 of this title and Tables.

§ 341. Power to grant rights-of-way not affected

Nothing in this act shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation.

(Feb. 8, 1887, ch. 119, § 10, 24 Stat. 391.)

REFERENCES IN TEXT

This act, referred to in text, is act Feb. 8, 1887, ch. 119, 24 Stat. 388, as amended, and is popularly known as the Indian General Allotment Act. For classification of this act to the Code, see Short Title note set out under section 331 of this title and Tables.

§ 342. Removal of Southern Utes to new reservation

Nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe.

(Feb. 8, 1887, ch. 119, § 11, 24 Stat. 391.)

REFERENCES IN TEXT

This act, referred to in text, is act Feb. 8, 1887, ch. 119, 24 Stat. 388, as amended, and is popularly known as the Indian General Allotment Act. For classification of this act to the Code, see Short Title note set out under section 331 of this title and Tables.

§ 343. Correction of errors in allotments and patents

In all cases where it shall appear that a double allotment of land has been wrongfully or erroneously made by the Secretary of the Interior to any Indian by an assumed name or otherwise, or where a mistake has been made in the description of the land inserted in any patent, said Secretary is authorized and directed, during the time that the United States may hold the title to the land in trust for any such Indian, and for which a conditional patent may have been issued, to rectify and correct such mistakes and cancel any patent which may have been thus erroneously and wrongfully issued whenever in his opinion the same ought to be canceled for error in the issue thereof, and if possession of the original patent cannot be obtained, such cancellation shall be effective if made upon the records of the Bureau of Land Management; and no proclamation shall be necessary to open to settlement the lands to which such an erroneous allotment patent has been canceled, provided such lands would otherwise be subject to entry: *And provided*, That such lands shall not be open to settlement for sixty days after such cancellation: *And further provided*, That no conditional patent that has been or that may be executed in favor of any Indian allottee, excepting in cases hereinbefore authorized, and excepting in cases where the conditional patent is relinquished by the patentee or his heirs to take another allotment, shall be subject to cancellation without authority of Congress.

(Jan. 26, 1895, ch. 50, 28 Stat. 641; Apr. 23, 1904, ch. 1489, 33 Stat. 297; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

"Bureau of Land Management" substituted in text for "General Land Office" on authority of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5.

§ 344. Cancellation of allotment of unsuitable land

If any Indian of a tribe whose surplus lands have been ceded or opened to disposal has received an allotment embracing lands unsuitable for allotment purposes, such allotment may be canceled and other unappropriated, unoccupied, and unreserved land of equal area, within the ceded portions of the reservation upon which such Indian belongs, allotted to him upon the same terms and with the same restrictions as the original allotment, and lands described in any such canceled allotment shall be disposed of as other ceded lands of such reservation. This provision shall not apply to the lands formerly comprising Indian Territory. The Secretary of the Interior is authorized to prescribe rules and regulations to carry this law into effect.

(Mar. 3, 1909, ch. 263, 35 Stat. 784.)

§ 344a. Repealed. Act Nov. 24, 1942, ch. 640, § 4, 56 Stat. 1022

Section, act June 25, 1910, ch. 431, § 12, 36 Stat. 858, authorized Secretary of the Interior to investigate the allotment in the name of a deceased Indian and to recommend to Congress the cancellation of such Indian's patent if he died without heirs.

§ 345. Actions for allotments

All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands now held by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: *Provided*, That the right of appeal shall be allowed to either party as in other cases.

(Aug. 15, 1894, ch. 290, § 1, 28 Stat. 305; Feb. 6, 1901, ch. 217, § 1, 31 Stat. 760; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

REPEAL OF SECTION AS TO OSAGE INDIANS

Act June 28, 1906, ch. 3572, § 1, 34 Stat. 540, provided in part that: "the provisions of the Act of Congress of August fifteenth, eighteen hundred and ninety-four, Twenty-eighth Statutes

at Large, page three hundred and five [this section], granting persons of Indian blood who have been denied allotments the right to appeal to the courts, are hereby repealed as far as the same relate to the Osage Indians; and the tribal lands and tribal funds of said tribe shall be equally divided among the members of said tribe as hereinafter provided."

CODIFICATION

Act Mar. 3, 1911, conferred the powers and duties of the former circuit courts upon the district courts.

§ 346. Proceedings in actions for allotments

The plaintiff shall cause a copy of his petition filed under section 345 of this title, to be served upon the United States attorney in the district wherein suit is brought, and shall mail a copy of same, by registered letter, to the Attorney General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the United States attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file a plea, answer, or demurrer on the part of the Government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises: *Provided*, That should the United States attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court.

(Feb. 6, 1901, ch. 217, § 2, 31 Stat. 760; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

CHANGE OF NAME

"United States attorney" substituted in text for "district attorney of the United States" on authority of act June 25, 1948. See section 541 of Title 28, Judiciary and Judicial Procedure.

§ 347. Limitations of actions for lands patented in severalty under treaties

In all actions brought in any State court or United States court by any patentee, his heirs, grantees, or any person claiming under such patentee, for the possession or rents or profits of lands patented in severalty to the members of any tribe of Indians under any treaty between it and the United States of America, where a deed has been approved by the Secretary of the Interior to the land sought to be recovered, the statutes of limitations of the States in which said land is situate shall be held to apply, and it shall be a complete defense to such action that the same has not been brought within the time prescribed by the statutes of said State the same as if such action had been brought for the recovery of land patented to others than members of any tribe of Indians.

(May 31, 1902, ch. 946, § 1, 32 Stat. 284.)