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## Article Title: The Barnes Family of Barneston

Full Citation: Berlin B Chapman, "The Barnes Family of Barneston," *Nebraska History* 47 (1966); 57 – 83.

URL of article: [http://www.nebraskahistory.org/publish/publicat/history/full-text/NH1966Barnes\\_Family.pdf](http://www.nebraskahistory.org/publish/publicat/history/full-text/NH1966Barnes_Family.pdf)

Date: 4/20/2011

Article Summary: The family formed by the marriage of Mary Jane Drips Benoist to Francis Marion Barnes on November 16, 1856 settled on the Nemaha Half-Breed Reservation in 1859, receiving allotments numbered 321 and 322, a total of 633 acres in present-day Richardson County. About 1870 the Barnes family located at the Oto Agency at present Barneston. The Barnes family had an important role in the history of the Oto and Missouri Tribe.

### Cataloging Information:

Names: Mary Jane Drips Benoist, Francis Marion Barnes, Andrew Drips, Mary Drips, Julia Dent, Leonard A Benoist, Joseph L Sharp, Andrew Drips, Charles Drips, Jane Benoist, Leonard A Benoist, Katherine Mulkey, William Drips, Thomas Ryan, Albert L Green, Medicine Horse, Buffalo Chief, Missouri Chief, Pipe Stem, Little Pipe, Wahnegake, Joseph Powell, Battiste Barnaby, Battiste Deroir, Gertrude Barnes, Katherine Barnes, William Douglas Barnes, Charles Grant Barnes, Emmett Francis Barnes, Frederick Hall Barnes, Jesse W Griest, Barclay White, U S Grant, Edward P Smith, Zachariah Chandler, Grant Foreman, John McNeil, W J P DeLesdernier, Samuel J Kirkwood, L E Woodin, Hiram Price, John A Baldwin, Henry M Teller, Frank D Hobbs, William D Ashby, Nathan Kirk Griggs, Samuel Wymore, Jonathan Sharp, Daniel Freeman, Noah C McFarland, Horace L Ewing, C M Murdock, L E Wheeler, Hiram W Parker, Charles H VanWyck, Algernon S Paddock, Emmett F Barnes, Frederick H Barnes, William M Barnes, Batiste Devorin, Edward Devorin, Charles A Dripps, John Muska-ga-ha, Otoe Sam, Arkeheta [Stay by it], William Burgess, Robias Castor, Hoke Smith, Province McCormick, D M Browning, E A Hitchcock, Edmund H Hinshaw, Katie B Warren Dickey, Charles F Larabee, Francis E Leupp, Richard Whitehorse, John F Lacey, Dennis T Flynn, Kenneth Black, Norman Holmes, H Rex Lee, William H Flanery

Place Names: Otoe County, Nebraska; Big Nemaha; Little Nemaha; Platte River; Big Blue; Beatrice; Richardson County, Nebraska; Barneston, Nebraska; Indian Territory

Keywords: Oto; Nemaha Half-Breed Reservation; Missouri Fur Company; American Fur Company; half-breed tract; Office of Indian Affairs; Interior Department; "wild party," "coyote band," Sac; Fox; "Quaker band," General Land Office; Paddock Bill; *Barneston Star*; Oto Boarding School; Indian Claims Commission Act of 1946; "forced" patents

Photographs / Images: Francis M Barnes, Mary Drips Barnes, Oto Agency buildings, Arkeheta [Stay by It]

## THE BARNES FAMILY OF BARNESTON

BY BERLIN B. CHAPMAN

THE Oto gave the name "Nebraska" to both the river and state, and the name of Otoe County is a reminder of their history.<sup>1</sup> In a treaty of 1830 the Oto ceded lands that formed the Nemaha Half-Breed Reservation, between the mouth of the Big Nemaha and that of the Little Nemaha.<sup>2</sup> In 1833 they ceded to the United States a strip of land between these rivers, and extending 25 miles west of present Lincoln. Lands between this strip and the Platte River, they ceded in a treaty in 1854. At that time the Oto

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<sup>1</sup> The author made an extensive study of the Oto and Missouri Tribe, under grants from the Social Science Research Council of New York City, and the Research Foundation of Oklahoma State University. This article is a segment of the study.

About 1800 the chief part of the Missouri aligned themselves with the Oto. From the Oto Village on the Platte, Henry L. Ellsworth wrote on September 23, 1833, that "the Otoes and Missourias are here called Otoes." In this article the term Oto will be understood to include the Missouri unless otherwise specified.

<sup>2</sup> Berlin B. Chapman, "The Nemaha Half-Breed Reservation," *Nebraska History*, vol. 38 (March, 1957), pp. 1-23.

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ceded all their country west of the Missouri River "excepting" a rectangular tract of 162,000 acres on the Big Blue River, south of Beatrice, and extending into Kansas. By 1882 the Oto had disposed of this reservation and located in Indian Territory on a reservation which has since been their home.

In the course of this transition, no family of Oto has been more influential on tribal history and on the history of Nebraska, than the Barnes family. Barneston perpetuates their memory.

The family was formed by the marriage of Mary Jane Drips Benoist to Francis Marion Barnes on November 16, 1856.<sup>3</sup> She was born at Bellevue in present Nebraska, November 15, 1829. Her parents were Andrew and Mary Drips. Drips was a white man born in Westmoreland County, Pennsylvania, in 1789. He was a member of the Missouri Fur Company, and was later employed by the American Fur Company. In 1842 he was appointed agent for tribes of Upper Missouri, and held the office four years.

When Mary Jane Drips was three years old her father took her to St. Louis, and she was "raised on Gravois by Grand Father Wells." One of her schoolmates was Julia Dent, later Mrs. U. S. Grant. Mary Jane Drips married one Benoist, and they had a son, Leonard A. Benoist. Leonard died at about the age of 22, and little is known of his father.

Barnes was born in Baltimore, Maryland, May 1, 1832. He attended the St. Louis city schools, and for a time was a ship carpenter.

Joseph L. Sharp on February 24, 1857, reported a list of half-breeds and mixed bloods, concerning allotment of lands on the Nemaha Half-Breed Reservation. On the list,

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<sup>3</sup> Affidavits of Francis M. Barnes and Mary J. Barnes, May, 1880, NA, Int. Dept., Appt. Div., box 212, file 437 in Papers of Agent Jesse W. Grist; *Portrait and Biographical Album of Gage County, Nebraska* (1888), p. 760. The name Drips was sometimes misspelled, or altered to Dripps. See also Morton and Watkins, *Illustrated History of Nebraska*, vol. 1, 582-584.

with ages given, are the following children of Andrew Drips, by an Oto mother: Charles, 31; Jane Benoist, 27, a widow with son, Leonard A. Benoist, age 7; Katherine Mulkey, 24; William, 22.<sup>4</sup>

The Barnes family settled on the reservation in 1859. "Jane Benoist" and Leonard received allotments numbered 321 and 322 respectively, or a total of 633 acres, in the northeast corner of present Richardson County. Patents were issued to them on September 10, 1860. "Jane Benoist" received 320 acres which she disposed of in tracts of 40 acres each, in eight separate sales between 1861 and 1886. Records in the office of the register of deeds in Falls City show that all transfers were made from F. M. Barnes and his wife, Jane Benoist Barnes.

Persons of Oto descent who took allotments on the Nemaha Half-Breed Reservation, henceforth were not in any manner recognized by the tribe as having any rights whatever under the treaty of 1830 or under subsequent treaties. An allottee who thus received a patent for a tract of land thereby canceled the voluntary obligation assumed by the Oto as a tribe in behalf of their half-breeds. It was consistently held by the Interior Department that such allottees had no legal claims to enrollment for the purpose of receiving or drawing tribal annuities of any character whatever. Acting Secretary Thomas Ryan said: "Having received the benefit of the lands devoted to and set apart for their use, the obligation of their brethren and the government, being thus discharged, then ended."<sup>5</sup>

About 1870 the Barnes family located at the Oto Agency at present Barneston. On July 31, 1871, Agent Albert L. Green warned against persons of 1/4 or 1/8 Indian

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<sup>4</sup> Sharp to Com. J. W. Denver, April 24, 1857, NA (National Archives), OIA (Office of Indian Affairs), Great Nemaha S 323-1857. For a general account, see Sharp to Com. George W. Manypenny, Feb. 24, 1857, *ibid.*, S 279-1857. Included in this account is a list Sharp made of the half-breeds. The Oto extend from pages 19-26. Also there are a few dozen affidavits by claimants.

<sup>5</sup> Ryan to Com. Ind. Aff., Sept. 29, 1898, NA, OIA, Special Case 95, L. 44252-1898; Manypenny to Supt. A. Cumming, March 15, 1855, NA, OIA, *Letter Book*, vol. 51, p. 82.

blood who had drawn land on the "half-breed tract," gaining admission to tribal rights and defrauding the Oto. However, he characterized "Barnes as an honest, intelligent white man whose wife is a recognized member of the tribe. He has built a comfortable house and opened a farm and is esteemed by the Indians."

Superintendent Samuel M. Janney recommended that Barnes "be allowed to stay." In a reply on August 18, Acting Commissioner H. R. Clum referred to Indian women fully recognized as members of the tribe and intermarried with white men, and said that "their husbands may be allowed to settle and remain upon the tribal reservation when authorized so to do by the formal consent of the duly constituted chiefs or authorities of the tribe."

A certificate dated September 11 states: "This is to certify that we the undersigned Chiefs of the Otoe and Missouri tribe of Indians, acting on behalf of the tribe, do recognize Mary Jane Barnes, wife of Francis M. Barnes, to be a member of our tribe, and entitled to all rights and privileges usually pertaining to members thereof. And we hereby formally consent and allow her husband to settle and remain upon our tribal reservation."<sup>6</sup> The certificate bears the names of the following chiefs: Medicine Horse, Buffalo Chief, Missouri Chief, Pipe Stem, Little Pipe, Wahnegake, Joseph Powell, Battiste Barnaby, Battiste Deroir. Green witnessed the signing, and stated that the certificate was an assurance to Mrs. Barnes that her "marriage" had not invalidated her rights as a member of the tribe.

For many years Mrs. Barnes operated a traders store at Barneston. Barnes engaged in farming, stockraising, and mercantile business. Children born to them were Ger-

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<sup>6</sup> The certificate is in NA, OIA, Sp. Case 95, L. 11715-1892. The tribe had extensive authority in admitting and retaining half-breeds as tribal members. This included the right to permit them to share in annuities; Com. W. P. Dole to Supt. H. B. Branch, May 19, 1863, NA, OIA, *Letter Book*, vol. 70, pp. 448-449. Tradition has it that Barnes sometimes benevolently supplied meat to needy and sick Oto.

trude (who died in childhood), Katherine, William Douglas, Charles Grant, Emmett Francis, and Frederick Hall.

Mrs. Barnes on January 25, 1875, stated in a letter to Mrs. U. S. Grant that she understood the President could "make us a title to our land" at Barneston. She said the family had worked hard in establishing a good farm and comfortable home, and that they did not want to go south with the tribe if their place were reserved to them.<sup>7</sup> Rumor had it that President Grant ordered the issuance of a patent in accordance with Mrs. Barnes' request, but that the order was filed in the "land office" and was not complied with.

The eastern portion of the reservation had been surveyed. Agent Jesse W. Griest thought the time probably had arrived when allotments as provided in the treaty of 1854 should be made to some of the more industrious Indians.<sup>8</sup> Superintendent Barclay White recommended that measures be taken early to issue certificates of allotment to such Indians as desired them, giving forty acres to single persons over eighteen years of age, and eighty acres to heads of families.

Mary J. Barnes asked that allotments be made to tribal members willing to take and improve them. She wrote:

There are many of the politicians of Nebraska who seem very determined to have some emolument whereby the Otoes may be dispossessed of there [sic] present home and remove from the state and I am told that in order to effect this they have made many unfare [sic] and unjust representations about the tribe being dissatisfied and wanting to move. In fact I have seen some such statements in public print that have not the shadow of truth to sustain them.

The Indians are better satisfied than they have been for many years and have made more improvements in the last two or three years than ever before and still want to go on improving homes if they can have any assurance that they will be benefited by so doing, but under a continued unsettlement it is discouraging for us to do anything. I have built

<sup>7</sup> M. J. Barnes to Mrs. U. S. Grant, NA, OIA, Sp. Case 95, Otoe B 155-1875. See also Mrs. Barnes to Agt. L. E. Woodin, June 9, 1881, *ibid.*, L. 10258-1881.

<sup>8</sup> Griest to Supt. Barclay White, Sept. 1, 1875, *Ind. Aff.*, 1875, pp. 319-320; White to Com. E. P. Smith, Sept. 21, 1875, *ibid.*, p. 313.



a good house and made improvements at a cost of three thousand dollars on a portion of land but have no personal right to it more than a common interest with the tribe. Others are similarly situated.<sup>9</sup>

Commissioner Edward P. Smith did not deem it for the interest of the tribe to carry into effect at that time the stipulations for allotment under the act of 1854 for the reason that the quantity of land for each Indian family was too great and would lead to waste by lands lying unoccupied, and would prevent such neighborhood residence as would allow the attendance of children at school.<sup>10</sup> Smith objected to the facility made in the act for "the alienation of the landed property at the end of two years." He recommended that without reference to the act of 1854 the Office of Indian Affairs be authorized under the general relation existing between the Interior Department and the Indians as wards of the government to assign to each Indian family prepared to enter upon agricultural life, a tract not exceeding 80 acres—"except in cases where individual heads of families have already improved amount of land exceeding 40 acres [sic], in such family may be allotted 160 acres." Secretary Zachariah Chandler approved the recommendation on December 15, 1875.<sup>11</sup>

Griest was instructed to assign to each head of a family or single person over twenty-one years of age, belonging to the Oto and Missouri tribe, either 80 or 160 acres, depending on evidence of their industry and thrift.<sup>12</sup> On August 23, 1876, Griest recommended that a certificate of allotment be issued to Mary J. Barnes for 160 acres where the family resided. A week earlier Congress had passed an act providing for the dissolution of the western part of the reservation. The Office of Indian Affairs guarded the

<sup>9</sup> Letter of Mary J. Barnes to Com. Ind. Aff. (received Dec. 9, 1875), NA, OIA, Sp. Case 95, Otoe B 1889-1875; I 1625-1875.

<sup>10</sup> Smith to Sec. Int., Dec. 9, 1875, NA, OIA, *Rept. Book*, vol. 27, pp. 192-194; also in *ibid.*, *L. Letter Book*, vol. 37, pp. 438-441.

<sup>11</sup> Chandler to Com. Ind. Aff., NA, Int. Dept., Ind. Div., *Record of Letters Sent*, vol. 15, p. 21.

<sup>12</sup> Smith to Griest, Dec. 23, 1875, NA, OIA, *L. Letter Book*, vol. 38, pp. 94-97.

rights of tribal members who had made selections of land and placed valuable improvements thereon.<sup>13</sup>

The act providing for the dissolution of the western part of the reservation stated that the lands should be appraised by three commissioners, one of whom should be designated by the Oto in open council, and the other two by the Secretary of the Interior. The Oto named F. M. Barnes as an appraiser, and the lands were appraised accordingly.

Since 1854 wave after wave of migration came from the east so that white men settled all around the little Oto reserve on the Big Blue River. In 1877, Mary J. Barnes wrote that "the politicians and leading men in the state are endeavoring in every way to have the tribe removed to the Ind. Ter."<sup>14</sup> Throughout the seventies the settlers in Nebraska and Kansas used their political influence and other means to secure the lands of the reserve for themselves. The printed annual reports of the local Indian agents, and the Oto files in the National Archives show how intrusive the whites were on the timber and other property of the Oto, how a continual agitation was kept up for the removal of the Indians, and how the speculative element of the frontiersmen finally entered triumphantly on the lands. Dr. Grant Foreman well summed up the matter when he said that white people "made the lives of the Indians so wretched that they were anxious to escape to the Indian Territory."

As white pressure increased on the Oto, they divided into two factions. The "wild party" or "coyote band" insisted on removing to the Indian Territory, and some of them without permission of the government migrated to the Sac and Fox agency there. The "Quaker band" adhered

<sup>13</sup> Com. T. J. Morgan to Sec. Int., April 19, 1892, *H. Reports*, 53 Cong. 2 sess., ii(3270), no. 661, pp. 2-4; Com. Hiram Price to John J. Ingalls, July 22, 1881, NA, OIA, *L. Letter Book*, vol. 84, pp. 124-128.

<sup>14</sup> Mary J. Barnes to President R. B. Hayes, April 9, 1877, NA, OIA, Sp. Case 95, Nebr. P. 133-1877.



to the advice of Agent Griest and other Quaker officials who doubted if removal to the Indian Territory would solve permanently the difficulties, and only belatedly decided to go there.

Congress by an act of March 3, 1881, provided that with the consent of the Oto and Missouri tribes, expressed in open council, the Secretary of the Interior was authorized to cause to be surveyed and sold the remainder of the reservation of said Indians lying in Nebraska and Kansas. On May 4, Inspector John McNeil held an open council with the Oto and Missouri in which they voted unanimously to accept the conditions of the act of Congress and to remove to the Indian Territory as soon as arrangements could be made.<sup>15</sup> It appears that the voting was done by eighty-nine heads of families, representing the entire Indian population of the Oto and Missouri. It was carefully explained to the Indians that the act of acceptance as well as their choice to move was entirely of their own volition, and that the government had no desire to influence them in their choice. The Indians chose F. M. Barnes to act on their part as appraiser in determining the value of the lands of the reservation.

In conference on May 18 in the Indian Territory the Oto and Missouri wanted to sell their Nebraska lands for cash, and inquired how long it would be before they would be paid for the 120,000 acres, nearly all of which had been sold under the act of 1876. A spokesman for the Indians said: "I suppose it will be right, and that the Great Father will do what is right for us. We hope you will help us sell. It looks slow when we don't see the money."<sup>16</sup> The council named W. J. P. DeLesdernier as appraiser in behalf of the tribe. He was a government employee and declined. "The

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<sup>15</sup> McNeil to Sec. Int., May 4, 1881, NA, OIA, Sp. Case 95, L. 10007-1881. The report was made at the Oto Agency in Nebraska. McNeil's notes of the council are in *ibid.*, L. 7768-1881.

<sup>16</sup> Minutes of the council are dated June 3, 1881, and are in NA, OIA, Sp. Case 95, L. 10939-1881. The minutes state that the council was held May 18. The resolution is dated May 19, and is in *ibid.*, L. 9271-1881.

majority as well as the best disposed of the tribe" then named F. M. Barnes as appraiser.<sup>17</sup> A bitter feeling and jealousy existed between the chiefs and headmen of the Oto and Missouri in Indian Territory and those of the portion of the tribe in Nebraska and Kansas.

The northern portion of the tribe, or "Quaker band," on June 2 approved the selection of a reservation of 129,000 acres in Indian Territory, fifteen miles north of present Stillwater, Oklahoma. In a sketch of his life, Francis M. Barnes wrote in 1905: "Was delegated to go to the Indian Territory in 1880, to purchase a home for the Otoes who moved to that place after I selected and purchased six townships of land for them."<sup>18</sup> Secretary Samuel J. Kirkwood by an executive order of June 25, 1881, assigned the lands for the use and occupation of the Oto and Missouri. By October 24 all these Indians (excluding the portion of the tribe at the Sac and Fox agency in the Indian Territory) were in their new home, except the family of Francis M. Barnes and a few other persons in the present vicinity of Barneston, who by reason of valuable improvements made by them were permitted to remain on the old reservation.

McNeil said that Barnes had one of the best improved farms in Nebraska, "a model farm."<sup>19</sup> On it were "fruit, shade, and ornamental trees, a most comfortable house—in fact an elegant home." Agent L. E. Woodin said Barnes had "120 acres fenced on three sides, 4 acres of young orchard, not bearing, house containing 8 rooms, well furnished; good barn 52 x 37 feet, cribs, stockyards and sheds."<sup>20</sup>

For several years Mrs. Barnes had been wanting the tract of land occupied by the family allotted to her. She

<sup>17</sup> McNeil to Sec. Int., May 28, 1881, *ibid.*, L. 9271-1881.

<sup>18</sup> A copy of the sketch by Barnes is in possession of the family of Harold L. Barnes, Ponca City, Oklahoma.

<sup>19</sup> McNeil to Kirkwood, May 7, 1881, NA, OIA, Sp. Case 95, L-8034-1881; NA, OIA, Authority no. 2938-1881.

<sup>20</sup> Woodin to Com. Ind. Aff., June 8, 1881, NA, OIA, Sp. Case 95, L. 9995-1881.

said improvements on it were made at a cost of \$5,000 "without any assistance from the Government."<sup>21</sup> Commissioner Hiram Price prepared a bill providing that any tribal member who had made valuable improvements on a tract of land and who should elect to remain on the land might receive a patent for 160 acres to include the improvements.<sup>22</sup> Congress did not provide for allotments until more than a decade later.

Two months before the Oto and Missouri left for the Indian Territory, Mrs. Barnes reported that "the whites are already establishing claimes [sic] on my possession."<sup>23</sup> On September 6, Francis M. Barnes offered his services for the prevention of squatters locating on the reservation<sup>24</sup> Immediately after the removal of the Indians, certain unauthorized persons entered on the reservation, cut and stacked hay. Barnes reported on October 10 that nine squatters left the reservation on his request. Four days later he assumed charge of agency property in accordance with the direction of the Office of Indian Affairs. Until the early part of 1883 he was the agent "in charge of Otoe Reservation."<sup>25</sup> He had the protection and care of the public property there for grazing and farming purposes. In consideration of his services he could graze not to exceed one hundred of his cattle on the lands and could farm and cut hay. He was directed to turn over to the Oto and Missouri agent one-third of his profits accruing from the use of the ground.

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<sup>21</sup> In regard to allotments, Commissioner Price said that the lands added to the original reserve by the supplemental treaty of 1854 were not in the same condition precisely as the lands embraced in the original reserve. He directed Woodin to report the names of Oto who had made improvements on the land and desired to retain it; Price to Woodin, May 17, 1881, NA, OIA, *L. Letter Book*, vol. 80, pp. 425-430.

<sup>22</sup> Price to Sec. Int., Dec. 20, 1881, *S. Ex Docs.*, 47 Cong. 1 sess., ii (1887), no. 56, p. 2.

<sup>23</sup> Mary J. Barnes to Com. Ind. Aff., Aug. 3, 1881, NA, OIA, Sp. Case 95, L. 14080-1881.

<sup>24</sup> Barnes to Price, Sept. 6, 1881, *ibid.*, L. 16087-1881.

<sup>25</sup> Price to Barnes, March 9, 1883, NA, OIA, *L. Letter Book*, vol. 109, pp. 47-50; Act. Sec. A. Bell to Com. Ind. Aff., April 8, 1882, NA, OIA, Sp. Case 95, Authority no. 3954.

During his stewardship this Maryland-born squaw man encountered many of his race eager to locate with him on the reservation. The Office of Indian Affairs said that the lands were still in a state of reservation as much so as when the Indians were in occupation, and that it would be manifestly unjust to discriminate in favor of any white persons who desired to occupy certain described tracts.<sup>26</sup> To the settlers, eager to establish homes, it seemed an unnecessary hardship to be kept off the lands after the Indians had left for Indian Territory.

The removal of the tribe to Indian Territory was the signal for many persons to locate on the reserve, construct rude houses and stables, or move into vacant buildings recently occupied by Indian families. The Office of Indian Affairs on October 25, 1881, instructed Barnes to notify intruders to remove forthwith from the reservation, and to assure them that if they failed to do so, a military force would be sent to compel obedience. On December 11, Lieutenant John A. Baldwin came with ten men to aid Barnes in ejecting trespassers.<sup>27</sup> One Lawson, having been repeatedly ordered by Barnes to leave the reservation, had located on the right of way of a branch of the Union Pacific Railway Company in an unsuccessful effort to avoid ejection.

Some of the intruders had their wives and children with them. Baldwin destroyed the crude houses, stables, hay and other property of the intruders. On December 31 he wrote: "No hardships have been inflicted on any persons, and particular care has been exercised that no property to which a valid claim existed was destroyed. At the

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<sup>26</sup> Act. Com. E. S. Stevens to Sec. Int., Oct. 31, 1881, NA, OIA, *L. Letter Book*, vol. 87, pp. 147-150. Many of the prospective settlers were like C. S. Huffington who had never owned a farm but had served in the "Union Armie" three years, and wanted to secure "a Claim Eather" by actual settlement or purchase; Huffington to Sec. Int., Jan. 18, 1881, NA, OIA, Sp. Case 95, L. 1305-1881.

<sup>27</sup> Baldwin to Adj. Gen., Dept. Platte, Dec. 31, 1881, NA, 146 AGO 1882 in Consolidation File 6413 AGO 1881. In regard to the miserable, even pitiful condition of some of the families of the settlers, see same to same, Dec. 18, 1881, 6830 AGO 1881.

same time there now exists no excuse for any persons removed, or others to come on this reservation again until it is duly opened for settlement."

Barnes wanted a posse for about sixty days to prohibit parties from stealing timber; and others from returning to the reservation.<sup>28</sup> Provision was made for the retention of a small military guard on the reservation as long as their services were required to keep away intruders, especially "wood thieves."

Secretary Henry M. Teller appointed three appraisers, including Barnes. They appraised each 40-acre tract of the reservation at the "present cash value," exclusive of improvements thereon. Improvements were appraised separately. On May 31, 1883, *The Omaha Daily Herald* said: "In all our broad domain there is no fairer land than this beautiful territory recently occupied by the Otoe Indians."

The lands were advertised, and by June 4 they had been sold at public auction to the highest bidder on deferred payments. Barnes said that the lands "sold high." It appears that of the 348 bidders to whom land was struck off at the sale, only 152 made the proof of payment in the three-months period required by law. There remained 22,812 acres on which the right to purchase had been forfeited.<sup>29</sup>

These lands were sold at public auction in December. Charges were made that by a conspiracy or combination the prices of the lands were in many instances privately and corruptly reduced so that the government was defrauded of \$10,000 to \$20,000. The General Land Office sent Frank D. Hobbs to make a thorough investigation. His reports show the existence of a combination, its purpose, by whom organized, place where meetings were held and

<sup>28</sup> Baldwin to Com. Ind. Aff., Dec. 24, 1881, NA, OIA, Sp. Case 95, L. 22612-1881; Robert T. Lincoln to Sec. Int., March 30, 1882, NA, *War Office Letter Book*, vol. 95, pp. 368-369.

<sup>29</sup> Teller to Com. Gen. Land Office, Oct. 12, 1883, NA, Int. Dept., Lands and R. R. Div., *Letter Book*, vol. 42, pp. 224-225.

the plan adopted.<sup>30</sup> Names prominent in the report are Nathan Kirk Griggs, a rising attorney at Beatrice; Attorney William H. Ashby and Samuel Wymore, Wymore. Jonathan Sharp and Daniel Freeman said they were members of the combination. Griggs purchased a quarter section at Barneston at the sale in May, 1883. It had been appraised from six to seven dollars an acre, he paid \$14.32 an acre, and received title to the land on December 28, 1885. On December 13, 1883, Ashby purchased a quarter section adjoining Griggs. Land Ashby acquired had been appraised from six to ten dollars an acre, he bid \$11.75 an acre, and completed payment on June 19, 1901.

The object of the combination was to control the public sale, to defeat its purpose, prevent the land from being sold to the highest bidder, and secure the sales to the members of the combination at a lower price. Members were not to bid against each other, but if an outside party bid upon a tract, the price should be run up until he was forced out. The understanding was that the successful bidder should fail to take the land at the price bid when it could be purchased at a reoffering for a less sum. Members of the combination wore blue ribbons at the sale as a distinguishing badge.

Noah C. McFarland, Commissioner of the General Land Office, was convinced of the existence of an unlawful combination, but he found less evidence that bids were privately and corruptly reduced. He said: "The principal difficulty met with by the Inspector in obtaining testimony was the fear that the sales would be invalidated. In many cases the bidding may have been, and probably was, regular and bona fide, and yet it would be very difficult to separate such sales from those that were influenced by acts of the combination. It would be necessary in case of such attempt

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<sup>30</sup> Hobbs's reports are dated March 27, 29, and 30, 1884. They are summarized in the letter of Com. Noah C. McFarland to Teller, July 22, 1884, NA, Int. Dept., 4453 Lands and R. R. Div. 1884. See also "Description and Valuation" table in *S. Ex. Docs.*, 50 Cong. 1 sess., (2513), no. 131, pp. 3, 6; and BLM (Bureau of Land Management), *Nebr. Tract Book*, vol. 67, p. 205.



to order hearings in each instance, and great expense would be involved. If evidence of combination generally should be received as sufficient to annul the sale, all the entries would be affected, and many innocent persons might suffer. In view of this fact, and as the lands were sold at apparently good prices, and have presumably passed into actual possession and occupation, I do not think the ends of substantial justice would be served by a disapproval of the sale and a wholesale cancellation of the entries." McFarland thought that "so flagrant violation of law" should be investigated by a federal grand jury, and the Interior Department referred it to the Attorney General.<sup>31</sup>

An 80-acre tract at Barneston may be considered in illustrating the fluctuation in land values. On July 24, 1883, Mary J. Barnes wrote to the Commissioner of Indian Affairs stating that she had been required to bid \$118 an acre for the tract, containing no improvements, and asking that the matter be adjusted so that she would need to pay only the appraised value of \$8 an acre, or no greater amount than that paid by her white friends.<sup>32</sup> She wanted the tract in order to be as near as she could to the Oto agency grounds "where a town will certainly grow up," and where she could better educate her children. She said that adjoining lands had sold for about \$20 an acre, and suggested that certain herders, who disliked her husband, had run up the price of the land she bought.

Commissioner Price replied that at the sale Mrs. Barnes "stood on equal ground" with other purchasers, and that she already had received the fullest protection of the Department of the Interior in withholding from sale lands her family had under cultivation.<sup>33</sup> Mrs. Barnes defaulted

<sup>31</sup> Act. Sec. M. L. Joslyn to Att. Gen., Aug. 11, 1884, NA, Int. Dept., Lands and R. R. Div., *Letter Book*, vol. 46, pp. 342-343; S. F. Phillips to G. M. Lambertson, Aug. 23, 1884, NA, Justice Dept., *Instruction Book Q*, p. 143.

<sup>32</sup> The letter is in NA, OIA, Sp. Case 95, L. 13571-1883. See also the "Description and Valuation" table in *S. Ex. Docs.*, *loc. cit.*, p. 10. The tract comprised the N $\frac{1}{2}$  of the SW $\frac{1}{4}$ , Sec. 18, T. 1 N., R. 8 E.

<sup>33</sup> Price to Mary J. Barnes, July 28, 1883, NA, OIA, L. *Letter Book*, vol. 115, pp. 241-244.

on her purchase, and at the resale on December 12, Horace L. Ewing bought the entire quarter section for \$57.31 per acre, and completed payment on April 15, 1884.<sup>34</sup> He platted all but 49 acres of the tract as Barneston, and on May 17 the plat was filed in the office of the Register of Deeds in Beatrice. On July 18 Ewing sold practically all the land, including the 49 acres, to the Barneston Town Company, of which he and Francis M. Barnes were members.<sup>35</sup> The town was named for Barnes.

In the United States district court for the district of Nebraska a grand jury on December 3, 1884, returned an indictment against Barnes "for agreeing with others, not to bid" at the public land sale in December, 1883.<sup>36</sup> He was charged with paying C. M. Murdock the sum of \$100 and also promising him three town lots in Barneston if he would not bid on the quarter section Ewing purchased. A capias was issued for Barnes. On November 11, 1885, a jury, without leaving their seats, returned a verdict finding him guilty as charged. His fine was \$300, and costs of \$65.10.

The report of the General Land Office concerning the flagrant violation of law led to the indictment on December 4, 1884, of Griggs, Ashby, L. E. Wheeler who as auctioneer called the sale, and Hiram W. Parker, register of the Beatrice land office. The indictment was based on the evidence of 33 witnesses whose names are endorsed thereon. The story of how these indictments were cleared, including the role of prominent persons like Senators Charles H. Van

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<sup>34</sup> BLM, *Nebr. Tract Book*, vol. 68, p. 30. Ewing's "Settlement Proof" and other papers are in NA, GLO, Valentine, Otoe and Missouri Lands, C. E. 1184.

<sup>35</sup> Other members of the company were H. R. W. Hartwig, St. Joseph, Missouri; I. N. Speer, Hiawatha, Kansas; and John Ellis, Charles O. Bates, Alfred Hazlett, Beatrice, Nebraska; H. J. Dobbs, *History of Gage County, Nebr.*, p. 275.

<sup>36</sup> Papers concerning the indictment and conviction are in *S. Documents*, 55 Cong. 2 sess., x(3599), pp. 10-12. The law specified a fine of not more than \$1,000 or imprisonment of not more than two years, or both; *Revised Statutes, 1878*, Sec. 2373. The indictment mentioned "force and arms," and gave the date of the violation as December 15, three days after Ewing bought the land.

Wyck and Algernon S. Paddock of Nebraska, although interesting, does not concern the Barnes family.

The schedule of appraisement made under the act of 1881 showed improvements belonging to nine Indians. The tracts containing these improvements were withheld from sale by order of the Secretary of the Interior on May 24, 1883. The Indians were Mary J. Barnes and her sons, Emmett F., Frederick H., and William M. [D.]; Batiste Devorin, Edward Devoin, Charles A. Dripps, John Mus-kaga-ha, and Otoe Sam. To protect these persons the Interior Department in 1892 transmitted to Congress the draft of a bill which became law on May 30, 1894.<sup>87</sup>

The act provided that if any member of the Oto and Missouri tribes residing March 3, 1881 ("and whose names appear upon the schedule of appraisements"), upon the lands of the reservation should make application for allotments of land, the Secretary of the Interior should cause a patent to issue to such person or his heirs who might be residing upon said lands on May 30, 1894. No allottee should receive more than 160 acres, and could receive only lands which the schedule showed he had improved. Lands allotted should not be taxed, alienated or otherwise encumbered for a period of ten years.

Some allotments were made accordingly. A tract of 160 acres just south of Barneston was allotted to Mary J. Barnes, and her three sons above named received allotments.

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<sup>87</sup> 28 *Statutes*, 84. Senator Charles F. Manderson and Representative Eugene J. Hainer of Nebraska sponsored Senate Bill 4167 which resulted in this legislation; *Cong. Record*, May 23, 1894, pp. 5167-5168. See also "The Proposed Sale of Lands of the Otoe and Missouri Indians," *S. Ex. Docs.*, 52 Cong. 1 sess., vi(2901), no. 93; Mary J. Barnes and F. M. Barnes to Com. T. J. Morgan, March 21, 1892, NA, OIA, Sp. case 95, L. 11715-1892. Under the act of May 30, 1894, a tract of 160 acres was allotted to the heirs of Charles A. Dripps.

To avoid confusion of names, it should be noted that the wife of Charles G. Barnes was Mary Jane Barnes, and that she received allotment no. 370 on the Oto reservation in Indian Territory.



Francis M. Barnes



*Mary Drips Barnes.*

Mary Drips Barnes





Oto Agency buildings with earth lodges in the background.





Arkeheta (Stay by It), Oto chief at the time of the signing of the Treaty of 1854.

One son, Charles Grant (commonly called Grant) Barnes removed with the tribe to the reservation in Indian Territory in 1881. He became dissatisfied and returned to the old reservation. Francis M. Barnes in 1883 tried to get a tract of land there allotted to Grant. The Office of Indian Affairs said that Grant had never cultivated or otherwise improved the tract, and hence was not entitled to receive it. His improvements were not on the schedule of appraisement. The aim of the Interior Department was to protect those who by their own enterprise and energy had taken lands in severalty and made valuable improvements thereon.

William Burgess removed to the reservation in the Indian Territory in 1881. Allotments were made there a decade later. Burgess said that a "bunch" of half-breeds came from Nebraska and Kansas and got their allotments and went back. He said that Grant was the only one of them to stay with the tribe.

Mrs. Katie B. Warren, daughter of Mary J. Barnes, went to the reservation in Indian Territory, but "being in delicate health" she returned to Nebraska on June 18, 1884. In October, 1891, she went to the reservation to take her allotment, and there discovered that her name had been dropped from the tribal roll without her knowledge or consent. She subsequently was restored to the roll, took her allotment of land, and in November 1891, received her payment of tribal funds. She returned to Nebraska and continued to reside there, receiving her monies.

She had missed about \$200 in per capita payments for the period, 1884-1891. She made application for her shares of all annuities, grazing funds and other funds paid to the Oto and Missouri during said period. The Office of Indian Affairs on April 8, 1893, said that because of her absence and failure to appear for enrollment her claim for payment of shares during such absence could not be allowed. On July 26 the office reversed its position and said it was the policy of the government to induce Indians to sever their tribal connections and associations and to seek a livelihood

for themselves, in a civilized way, away from their reservations.

In accordance with the recommendation of the Office of Indian Affairs, the Interior Department directed that the local agent make a supplemental roll showing the payments to which Mrs. Warren was entitled, in order that same might be made. The Oto and Missouri had a trust fund of \$618,394.24 derived from the sales of their lands, the 5 percent interest of which was annually paid to the Indians, and it was this fund from which Mrs. Warren was paid for the period, 1884-1891. It had been the uniform practice of the Office of Indian Affairs to disallow claims for goods and merchandise which Indians had failed to receive by being absent from their reservations, it being required in all cases that they must actually be present at the distribution of such goods to receive them. On March 22, 1894, Commissioner D. M. Browning directed that the names of Mary J. Barnes, W. D. Barnes, E. F. Barnes, and F. H. Barnes be placed on the tribal rolls, and back annuities allowed to them.<sup>38</sup>

In April, 1894, Jim Arkekeker [Arkeketa] reported that all the Oto protested against members of the Barnes family drawing tribal money. Commissioner Browning directed his attention to the act of March 3, 1875, and to certain letters in the Interior Department concerning the policy of the government on the subject.

A patent was issued to Mary J. Barnes on August 14, 1894, for land allotted to her. A few months later she inquired if there were some legal way whereby she could alienate the land without regard to the ten-year period stated in the act of May 30 of that year. The Office of Indian Affairs replied that it would not object to a bill removing the restriction, if it were introduced in Congress.

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<sup>38</sup> Act. Com. F. C. Armstrong to Sec. Int., July 26, 1893, NA, OIA, *L. Letter Book*, vol. 262, pp. 327-332; Armstrong to Agt. D. J. M. Wood, Aug. 3, 1893, *ibid.*, pp. 469-470; Browning to Agt. J. P. Woolsey, March 22, 1894, NA, OIA, *Accounts Letter Book*, vol. 148, p. 336.

The land was farmed by the Barnes family for many years. Records in the office of the Register of Deeds in Beatrice show that they retained it until 1952, when it was sold to Joe and Mary Lammerding.

It has been explained that the Oto lands in the vicinity of Barneston were sold to actual settlers on deferred payments, in accordance with the provisions of the act of March 3, 1881. The purchasers or possessors of the lands formed an organization which deferred forced payments for 17 years, and for a long time kept rebates within the range of possibility. This is a clear example of land debts in politics. Congressmen were elected and candidates were defeated on the land issue. The role of the Barnes family in the matter may be stated briefly.

By the act of March 3, 1893, the Secretary of the Interior was authorized and directed to revise and adjust on principles of equity the sales of these lands, and in his discretion, the consent of the Indians having first been obtained, in such manner and under such regulations as the Secretary should prescribe and approve, to allow to the purchasers rebates of the amounts paid or agreed to be paid by them, such rebate in no case to exceed the price for which said tracts were severally sold in excess of the appraised value. This was known as the "Paddock Bill."

The Interior Department directed that two disinterested persons be selected, one by the settlers and one by the Indians to serve on a commission. The settlers chose Tobias Castor of Lincoln, and the Oto chose Francis M. Barnes. Hoke Smith, Secretary of the Interior, appointed Province McCormick, an Indian Inspector, to complete the commission.<sup>39</sup> The commission should first ask the Indians if they would "consent to any rebate whatever," the amount of such rebate, if any, to be determined by the Interior Department subsequently.

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<sup>39</sup> The commissions, signed by Smith, are in NA, Int. Dept., Appt. Div., *Departmental Appointments*, vol. 3, pp. 91-93.

The commission met the tribe at the Oto Agency in Oklahoma Territory on January 3, 1895, and after the selection of interpreters the matter was fully explained to the Indians. The commission "in a very few minutes" learned that the Oto would not consent to any rebate whatever. They adopted a resolution to that effect.

Secretary Smith took the resolution at face value. On July 18 he issued an order granting persons in default ninety days in which to make payment of principal and interest, or have their entries canceled. The reaction of the settlers appeared in the *Barneston Star*. A notice said:

We are requested by the Committee to announce to the settlers that the committee are not asleep by any means and that they are doing everything in their power to aid the settlers. The committee feel sure that a year of extension will be granted and they are assured by their advisors that the best possible thing is to stand as one man and none pay out until all pay. The committee feel sure that if it should be necessary to borrow money on the land, that it can secure it in ten days notice and at reasonable rate of interest, above all wait for the committee to move and rest easy until they do move.

On August 19, Grant Barnes sent a copy of the newspaper to Commissioner D. M. Browning, a strong advocate of forcing the settlers, either to pay for the lands or to relinquish them. The notice afforded Browning the bombshell he needed.<sup>40</sup> The following statement illustrates his comment:

The said clipping was from a 'settlers' newspaper and my recollection is that it virtually acknowledges the ability to pay, but that resistance is counseled in the hope that further 'relief' may be had from the next Congress. Whatever may be the facts and merits, or demerits of the case, I cannot understand how these settlers can so misconstrue the purpose and intent of the said Act of March 3, 1893, as to justify themselves in asking further delay in enforcing payment.

Thanks to the assistance of congressional delegations from Nebraska and Kansas, the settlers were able to defer for four years, foreclosure on the lands. And when matters

<sup>40</sup> Browning to Sec. Int., Sept. 27, 1895, NA, OIA, *L. Letter Book*, vol. 315, p. 195; same to same Oct. 19, 1895, *ibid.*, vol. 316, pp. 485-490.

came to a climax in the agreement of November 20, 1899, made at the Oto Agency, the Oto sent a telegram to Francis M. Barnes to come to council. Barnes had kept in contact with the land issue, and on May 15, 1896, the Interior Department had sent a telegram requesting him and C. M. Warren to come to Washington.

When the Oto located in Indian Territory in 1881, they established the Oto Boarding School. It was supported by tribal funds, and was kept in operation until 1919. On September 10, 1902, fire destroyed the building. The tribal council requested Congress to provide for the expenditure of \$30,000 from tribal funds to rebuild in good, substantial manner the school, dormitory, laundry, and other necessary buildings, and to complete the waterworks and sewer system. W. D. Barnes, E. F. Barnes, and F. H. Barnes, tribal members residing at Barneston, heartily endorsed the request. A brick schoolhouse was erected, and ushered in the golden era at the Oto Agency, which grew to include 22 buildings.

An act of Congress on April 21, 1904, authorized and directed the Secretary of the Interior, under such rules and regulations as he might prescribe, to pay per capita to the Oto and Missouri Tribe all funds then to their credit in the United States Treasury or such part of such funds as he might deem necessary for their best interests, and any other funds that might thereafter be received for their credit. The Oto sent a petition to Congress in an unsuccessful effort to prevent passage of this provision of the act. Trust funds in the Treasury amounted to about \$690,000 and were drawing interest at five percent per annum. E. A. Hitchcock, Secretary of the Interior, approved payment of half the trust fund, or \$333,201.74, to tribal members.

At Barneston were 14 members of the Barnes family who wanted to be paid their full share of the funds, and on January 16, 1906, Fred H. Barnes wrote to Representative Edmund H. Hinshaw of Nebraska suggesting legisla-



tion to that effect.<sup>41</sup> Hinshaw urged full payment for the family. He said they were fully civilized, took good care of their property, and that he saw no reason why they should not be paid the money due them. The 14 persons had not participated in the issues of teams, lumber, machinery, cattle, etc., which had been made to the tribe from time to time. They paid taxes in Nebraska for the support of the county schools, and therefore did not desire to contribute to the payment of the expenses of the tribal school as contemplated in the act of March 3, 1903.

Fred H. Barnes submitted to the Office of Indian Affairs a request concerning his mother, Mary Jane Drips Benoist Barnes, and thirteen of her descendants. These included Katie B. Warren Dickey, and the following members of the Barnes family: W. D., Dorance, Marion M., Frederick H., Helen, F. H., Harold, E. F., Madeline, Warren C., Valentine, Howard.

A share of the tribal fund was worth \$1,897.78, and the 14 shares had a total value of \$26,568.92. The Department of the Interior directed that this amount be deducted from the sum of \$333,201.74, and paid to the 14 persons named; and that the remainder, or \$306,632.82, be paid to the remaining 346 persons on the roll.<sup>42</sup> This amounted to \$886.22 per capita. Acting Commissioner Charles F. Larrabee directed that before members of the Barnes family received their full shares they should "be required to sign a receipt in full relinquishing all rights to any further participation in the Trust Fund of the Otoe and Missouri Tribe now standing to the credit of the tribe in the Treasury." On September 6-8 the 14 members of the Barnes family received their full shares and signed receipts accordingly.

<sup>41</sup> Com. Francis E. Leupp to Hinshaw, Feb. 2, 1906, NA, OIA, *F. Letter Book*, vol. 902, pp. 189-191; same to same, Feb. 23, 1906, *ibid.*, vol. 903, pp. 391-392; Barnes to Hinshaw Feb. 8, 1906, NA, OIA, F. 13732-1906. There is a biographical sketch of Fred H. Barnes in Hugh J. Dobbs, *History of Gage County, Nebr.*, pp. 1003-1005.

<sup>42</sup> Larrabee to Sec. Int., June 30, 1906, NA, OIA, *A. Letter Book*, vol. 550, pp. 28-30; Larrabee to Supt. Otoe Indian School, July 13, 1906, *ibid.*, pp. 360-361; *Ind. Aff.*, 1906, p. 318.

It should be emphasized that these members of the family received their full share of the tribal trust fund of about \$690,000 then in the Treasury. The receipts they signed were officially construed as not excluding them from participation in other tribal property, as was assumed by some members of the tribe who had read those receipts. This assumption may have been based on a statement of Commissioner Francis E. Leupp that he would recommend the family "be allowed to receive their full share of the tribal funds and thereafter all their interests in the tribe are to cease."

A gentle but consistent rumble on the Oto reservation began when Chief Richard Whitehorse and other leading men of the tribe on January 22, 1907, addressed a petition to the Commissioner of Indian Affairs stating that it was their wish to bar from the acquisition of tribal moneys all parties who had drawn their trust funds and also those who had received patents in fee simple for their lands. The petition said: "We have no objection to any member of this tribe who is fit to care for himself and family leaving the tribe if he sees fit to do so, but we think it but right that he not only relinquish his further right to the tribal fund but to all other tribal rights as well." Larrabee explained that when an Indian obtained "a patent in fee for his allotment, it has no bearing whatever upon his tribal rights, and if he be paid his part of any funds belonging to the tribe, this can have no effect except to release his claim against the tribal funds."

The Oto and Missouri Tribe had long-standing claims against the government for taking their lands in Nebraska and in western Iowa for less than their value at the time of cession. The Oto were wards of the government and could sell their lands only to the government or with the consent of the government. The Indian Claims Commission Act of 1946 brought tribal claims into open court.

One claim concerned the agreement of November 20, 1899, by which the Oto had accepted a reduction of about \$168,785 in funds due them for lands in the vicinity of

Barneston, sold by the government to settlers in 1883.<sup>43</sup> Congressional acts usually specified the traditional procedure of requiring agreements with the government to be made in open council. This provision is conspicuously absent in the "Paddock Bill" of March 3, 1893, and Inspector James McLaughlin took advantage of the omission in securing the agreement of 1899.

On January 28, 1948, the Indian Claims Commission conducted hearings in the Council House on the site of the former Oto Agency. More than a hundred tribal members attended. The tribal patriarch was Emmett F. Barnes, age 82, son of Francis M. Barnes. He described conditions leading to the agreement of 1899, and said, "There was lots of politics in it."<sup>44</sup> He added:

I think it was all unfair. You see the instructions were that this proposition had to be adopted and the consent of the Indians had to be gained in open council. That was the instructions. They saw they couldn't get it over as long as my father had anything to do with it, or me. We could keep the Indians from signing and from giving their consent, so they adopted these other means. McLaughlin was an old hand. He knew how to handle Indians. He knew just what to do. He came down here and went around to their houses and got their signatures that way.

When the agreement of 1899 came before Congress, Representative John F. Lacey of Iowa declared that the land of defaulting settlers should be "sold to others who will pay for it." Delegate Dennis T. Flynn of Oklahoma Territory pointed to the fact that this had not been done. Nor could it be done, Flynn said, for the Nebraska delegation in Congress, with the votes they would be able to command, had power enough to defeat any kind of a settlement.<sup>45</sup>

<sup>43</sup> Com. W. A. Jones to Sec. Int., Nov. 2, 1901, *S. Documents*, 57 Cong. 1 sess., viii(4226), no. 63, pp. 2-3. In 1901 the Oto and Missouri fund in the Treasury totaled more than \$760,000.

The Court of Claims observed that at the time of the execution of the agreement of 1899, the purchasers were in default to the extent of \$288,583.08; *Otoe and Missouria Tribe of Indians v. United States*, 131 C. Cls. 593 (1955).

<sup>44</sup> Ind. Cl. Com., *Trans. of Proceedings*, Jan. 28, 1948, pp. 289-299; Minutes of the Otoe Tribal Council Meeting, Jan. 28, 1948, NA, OIA, 63620-1939- Pawnee-054.

<sup>45</sup> *Cong. Record*, March 28, 1900, pp. 3427-3434.

Flynn said that Lacey knew "we can not pass this bill through here with a Department recommendation in favor of it on any other kind of a basis." "If we hang up this settlement," Flynn said, it was uncertain whether the Indians "will ever get the money." The agreement was accepted by Congress on April 4, 1900.

The Indian Claims Commission made no award concerning the agreement of 1899, but on December 11, 1953, it awarded the Oto the sum of \$1,156,034.35 as additional compensation for Nebraska lands acquired under the treaties of 1833 and 1854.<sup>48</sup>

In slicing this melon, the old rumble of the rights of the Barnes family became more audible. The Oto council on August 4, 1956, adopted a resolution requesting that payment be made in accordance with a tribal rule that persons born since March 14, 1938, of less than one-fourth Oto blood, were not qualified for listing on the tribal roll. This position was reversed in a tribal assembly on June 8, 1957. On May 9, 1958, Congress passed an act providing that the roll for payment should contain the names of all Oto allottees on the reservation in Oklahoma, who were living on the date of the act, and the descendants of such allottees who were living on that date. The roll lists 1,987 persons, entitled to a per capita payment of \$581.40. On the roll the name of Barnes appears 15 times.

In tribal council on May 23, 1959, the topic arose as to whether the descendants of Mary Jane Drips Benoist Barnes should share in the payment. It seemed that none of the council had known until recently that before this woman married Francis M. Barnes, she had taken an allotment on the Nemaha Half-Breed Reservation. The fact concerning allotment was brought to light by the Barnes family in establishing their genealogy.

Kenneth Black, member of the council, in the most

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<sup>48</sup> *Otoe and Missouri Tribe of Indians v. United States*, 2 Ind. Cl. Com. 335.

dramatic speech of the day voiced the final challenge. He said:

It was not the custom of my people to keep written records, and it was never necessary for one to prove that he was an Oto. All this was a matter of common knowledge, carried by tradition from one generation to another. Are the Barnes family Oto entitled to share in tribal funds? Norman Holmes, Area Enrollment Officer, on this question said that the government would require proof by written records—not hearsay. From my youth I have always heard from the older tribal members that the Barnes family are *white people*, and not Oto. It is my duty to protect the tribal funds of my people. On this point I emphatically say that when Mrs. Barnes, in the name of Jane Benoist, took an allotment on the Nemaha Half-Breed Reservation, she thereby severed herself and all of her descendants from our tribe. That reservation was established to get the half-breeds out of tribe.

Associate Commissioner H. Rex Lee reviewed the history of the Barnes family in a letter of June 11, 1959.<sup>47</sup> He said that although the records “do not clearly establish that the members of the Barnes family are of Otoe and Missouri blood by descent, they do establish that their ancestors were accorded all the rights and privileges of membership in the Otoe Tribe.” Lee said there was “no alternative” but to find the members of the family eligible for enrollment to share in the distribution of the funds. He found no information to justify a departure from a ruling made on January 16, 1956, by William H. Flanery, Associate Solicitor on Indian Affairs. The ruling stated that tribal rolls should be prepared without distinction as to how the ancestors acquired tribal membership, but that rolls should include any bona fide member of the tribe whose ancestors would have been accepted as such under Indian law.

On June 9, 1964, Congress appropriated the sum of \$1,750,000 as additional compensation to the Oto and Missouri Tribe, for lands in western Iowa ceded in 1854. The Interior Department observed that in payment for Nebraska lands, were “a large number of persons who were not entitled to enrollment” with the tribe. The department

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<sup>47</sup> Bureau of Indian Affairs, Otoe 3201-59; the ruling of January 16, 1956, is in *ibid.*, M-36328.

endorsed House Bill 10674, providing that payment for Iowa lands be made "for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior."<sup>48</sup> The dominant tendency in the tribe seems to restrict payment to persons one-fourth Oto blood.

In conclusion it can be said that the Barnes family had an important role in the history of the Oto and Missouri Tribe, and in the history of lands in Nebraska, ceded by the tribe to the United States. For a third of a century the tribe looked to Francis M. Barnes as an adviser in business matters, but did not always appreciate the fact that tribal property accrued to his family. In the family were capable businessmen, often informally consulted by members of the tribe. These men also knew how to exercise their tribal rights. They seem to have had little, if any, service as tribal officials. It is not strange that in the time of "forced patents" in 1917, some members of the Barnes family received them. The family were good citizens.

Mary Jane Drips Benoist Barnes was intelligent, and cultured for the era in which she lived. She was an accomplished musician. On the tribal roll in 1933 were listed 43 of her descendants. At the age of 90, she was honored as being the oldest living person born in Nebraska. According to family records, Francis M. Barnes died on August 18, 1916; and Mrs. Barnes died on March 11, 1920. It is fitting that Barneston, where they lived prosperous and useful lives, should be their last resting place.

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<sup>48</sup> At press time the bill is pending in Congress. See act of June 9, 1964, 78 *Statutes*, 213; *Otoe and Missouria Tribe of Indians v. United States*, 13 Ind. Cl. Com. 272 (1964); *Cong. Record*, Aug. 13, 1965, p. 19668; *H. Reports*, 89 Cong. 2 sess., no. 1280; Court of Claims, Appeal no. 8-64.