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Report of the Secretary of War, in compliance with a resolution of the Senate, of February 10, 1855, calling for correspondence relative to the military reservation at Fort Leavenworth.

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REPORT
OF
THE SECRETARY OF WAR,

IN COMPLIANCE WITH

A resolution of the Senate, of February 10, 1855, calling for correspondence relative to the military reservation at Fort Leavenworth.

FEBRUARY 14, 1855.—Read, referred to the Committee on Military Affairs, and ordered to be printed.

WAR DEPARTMENT,
Washington, February 13, 1855.

SIR: I have the honor to transmit the accompanying papers, in compliance with a resolution of the Senate of the 10th instant, requesting the Secretary of War "to communicate to the Senate, copies of the correspondence between the Secretaries of the War and the Interior Departments, respecting a claim advanced by the Commissioner of Indian Affairs to the military reservation at Fort Leavenworth; together with the result of his investigation of the alleged interference of certain army officers, named in a recent report of the Commissioner of Indian Affairs, with the rights of the Delaware Indians."

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

Hon. J. D. BRIGHT,
President pro tem. of the Senate.

DEPARTMENT OF THE INTERIOR,
Washington, October 11, 1854.

SIR: I have received a letter from Colonel Manypenny, the Commissioner of Indian Affairs, dated Fort Leavenworth, September 26, from which I extract for your information, and such action as you may deem proper, as follows:

"The Delawares are much disturbed in mind because the whites are beginning to settle on their land, and claim that it is subject to pre-emption, (the question submitted to, and decided by, the Attorney General.) The principal claims are made adjacent to, and within a few miles of, the military reserve at this point; and I regret to say to

you that Major Ogden, of the quartermaster's department, and Major Maclin, of the pay department, have been the principal and main instigators to this lawless course of proceeding.

"If all I learn be true—and I have the best reasons to believe the reports—these gentlemen have been guilty of conduct for which they ought to be cashiered, and discharged from the service.

"They were the prime movers in projecting the new town site of Leavenworth, some two and a half miles below the fort, and in the Delaware tract, and have enlisted with them some thirty other persons. After making this move in violation of the treaty, they are and have been urging settlers to make claims adjacent to the military reserve, and for miles distant on the Delaware land, hoping thus to make force to aid them.

"They have now an advertisement out to sell lots at this town on the 9th October; and to induce persons to buy, the story is rife that government has made a special grant of 320 acres for the town, and that therefore there can be no difficulty about title.

"The soldiers were employed to help build their pre-emption shanties, cut the brush, &c.; and government tents used at the time.

"All the employés of any influence in the quartermaster's and pay departments are interested in the matter; and where an innocent squatter, not of their kind, has attempted to make a claim near their land, they have drove him off by threats of the military.

"Now will this state of things be tolerated? But for their example, I am satisfied no squatter would have located on the Delaware land."

He urgently requests that steps be taken by the War Department with a view "to remove all the people from this town site (Leavenworth,) and that all the principal evidences of claims on the Delaware land near the reserve be demolished;" and says that "Captain Hunt can do it without difficulty," and that "it will cure everything."

"The government," he continues, "owes it to itself to do this at once—and it surely owes it to the Delaware Indians—and it can be done without the sacrifice of life or limb." He says "the commanding officer has had a surveyor at work, reducing the limit of the reservation; and I saw this morning a plat of the old reserve with the contemplated reduction marked on it. This reduction leaves a strip of land between the Indian land and the diminished reserve, and this strip, even before the survey, had placed upon it the necessary monuments, according to squatter law, to enable the military men here and their friends to have each a pre-emption claim of land worth from \$10 to \$30 per acre, valued here, under the excitement of the times, at \$50 per acre. This diminution of the reserve is said to be made in pursuance of orders from the War Department.

"The surveyor told me the commandant was going to send on the plat of the reduced survey to headquarters for approval. Whether he meant to St. Louis or to Washington, I do not know. I do hope the thing will be disapproved; and if the reserve is reduced in size, that the land left out of it may be sold under the law of 1843."

In conclusion, he reiterates his recommendation for the removal, by the War Department, "of the squatters from the Delaware lands, and especially those on the town site of Leavenworth and adjacent to the

reserve," and says, "the balance will follow." He also states that "neither the commandant of the post, nor Majors Ogden or Maclin, are here at present."

I am, sir, very respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

Hon. JEFF. DAVIS,
Secretary of War.

WAR DEPARTMENT,
Washington, October 14, 1854.

SIR: I have to acknowledge the receipt of your letter of the 11th instant, communicating extracts from a report of the Commissioner of Indian Affairs, respecting pre-emption claims made by certain army officers, and by others at their instigation, upon the lands of the Delaware Indians near Fort Leavenworth, and upon a portion of the reservation at that post, which the department intends to relinquish.

Orders have been given to obtain from the commanding officer at Fort Leavenworth a full report of all the facts in this case; and when it is received, a further communication will be made to you upon the subject. In the mean time I send herewith a copy of the map of the reduced reserve, from which you will perceive that the southern boundary is the same throughout its whole extent as that of the old reserve, and that the portion of the land excluded from the reservation cannot have been selected for a town site, being remote from the river, and in rear of the present reservation.

Very respectfully, your obedient servant,

JEFFERSON DAVIS,
Secretary of War.

Hon. R. McCLELLAND,
Secretary of the Interior.

The map above referred to accompanies another letter of this date, with field-notes of the survey, and the order of the President making the reservation.

Please furnish this department a map showing the lines of the Delaware and Kickapoo lands, contiguous to the reserve, with a reference to the treaties establishing the boundary thereof.

DEPARTMENT OF THE INTERIOR,
Washington, November 14, 1854.

SIR: I have the honor to forward to you herewith, a communication of the 9th instant, from the Commissioner of Indian Affairs, transmitting several maps, in compliance with the request contained in your letter of the 14th ultimo. I forbear expressing any opinion as to Mr. McCoy's acts.

I am, sir, very respectfully, your obedient servant,

R. McCLELLAND, *Secretary*

Hon. JEFFERSON DAVIS,
Secretary of War.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, November 9, 1854.

SIR : In compliance with the request of the Secretary of War, contained in his letter to you of the 14th ultimo, to furnish the War Department with "a map showing the lines of the Delaware and Kickapoo lands contiguous to the reserve, (at Fort Leavenworth,) with references to the treaties establishing the boundaries thereof," and which was referred to this office for the information desired, I have the honor herewith to transmit to you a copy of an original map now on file in this office, of the Delaware, Kickapoo, and other adjacent Indian lands, as surveyed and platted by Isaac McCoy, who was the government surveyor for the special duty of making surveys of the tracts assigned to the different Indian tribes.

By the supplementary article to the Delaware treaty, concluded at St. Mary's, in the State of Ohio, on the 3d of October, 1818, partially concluded at Council Camp, on the James fork of White river, in the State of Missouri, on the 24th of September, 1829, and finally concluded at Council Camp, in the forks of the Kansas and Missouri rivers, on the 19th October, 1829, (U. S. Statutes at Large, vol. 7, pages 327-8,) the cession to the Delaware Indians by the United States is described as "the country in the fork of the Kansas and Missouri rivers, extending up the Kansas river to the Kansas (Indians') line, and up the Missouri river to Camp Leavenworth, and thence by a line drawn westwardly, leaving a space ten miles wide north of the Kansas boundary line for an outlet." And the United States guaranteed to the Delawares the quiet and peaceable possession and undisturbed enjoyment of the same, against the claims and assaults of all and every other people whatsoever, as their permanent home.

By the supplemental article to the treaty with the Kickapoo Indians of the 24th of October, 1832, concluded at Fort Leavenworth the 26th day of November, 1832, it is "agreed that the boundary lines of the lands assigned to the Kickapoos shall begin on the Delaware line, where said line crosses the left branch of Salt creek, thence down said creek to the Missouri river, thence up the Missouri river thirty miles when measured on a straight line, thence westwardly to a point twenty miles from the Delaware line, so as to include in the lands assigned the Kickapoos at least twelve hundred square miles." (U. S. Statutes at Large, vol. 7, page 394.)

The resolution of the Senate of the United States ratifying the supplemental article to the Delaware treaty, contains the following proviso: "*Provided*, That the President of the United States, with all convenient despatch, employ a surveyor, at the usual rate of compensation for like services, to run the lines of the country by the foregoing treaty granted to the said Delaware nation of Indians, to establish certain and notorious land-marks accurately and permanently to distinguish the boundaries of the said granted country, and of the said outlet reserved in this treaty; that the said surveyor run the lines and fix and establish the boundaries of the said granted country, and the said outlet, in the presence of an agent to be designated by the Delaware nation; and that it shall be the duty of the said surveyor to report to the President of the United States his proceedings in the

premises, together with a map or draught of the said granted country and the said outlet; and that when the President shall be satisfied that the said proceedings had been concurred in, and approved of, by the agent of the said Delaware nation, he shall also approve of the same by his signature and seal of office, and cause one copy of the same to be affiled among the archives of the government, and one copy to be delivered to the agent of the Delaware nation, for the use of the said nation, and which shall be thereafter binding and conclusive upon the respective parties to the foregoing treaty."

On the 3d of June, 1830, instructions were issued from this office to the Rev. Isaac McCoy, the surveyor appointed to perform the duty provided for in the resolution of the Senate. Mr. McCoy was informed that the "Secretary of War, by the authority of the President of the United States, refers the execution of this duty to you, [him.] No detailed instructions are necessary, since these are ample in the treaty, and the resolution of the Senate which accompanies it. You will be governed by these, and in every particular."

I am unable to find in this office any report, or copy thereof, of the surveyor, of his proceedings, with a map or draught of the same, *approved by the agent of the Delawares, with the signature and seal of office of the President, as provided for in the Senate resolution.* If such an instrument be in existence, it is, perhaps, in the State Department.

There is, however, on file in this office a paper endorsed "Copy—Isaac McCoy's Report of Survey of Delaware Lands." This paper is without date, is addressed to "Hon. John H. Eaton, Secretary of War," and signed "Isaac McCoy, surveyor, &c.," and is identified in the introductory paragraph as being his report under the appointment of June 3, 1830. He says—"Sir: It was July 19th that I actually entered upon the discharge of the trust which you had been pleased to confide to me on the 3d of June."

The report speaks of several Indian tracts; and in the body of it Mr. McCoy observes that "Captain John Quick, the agent chosen by them (the Delawares) to attend the surveying of their lands, is an aged and respectable man, and second chief of the tribe. The Delawares, anxious to move into their new country before the commencement of cold weather, and needing his assistance in removing, had instructed him not to remain with our party until the work was completed, but to return to them so soon as he had followed around their lands designed for *settlement*. In consequence of this, I was *unable* to keep him with me until the completion of the survey. His certificate, witnessed by the commanding officer and sundry others at Cantonment Leavenworth, and by the Delaware and Shawnee interpreters, and the accompanying certificate of Major Campbell, the sub—though, on this occasion, acting agent—for the Delawares, will, I doubt not, be entirely satisfactory.

"It is worthy of notice, that in going from the Shawnee agency to Cantonment Leavenworth, we necessarily crossed over the eastern end of the entire tract assigned to the Delawares. In passing thence to the Kansas agency, we necessarily recrossed these lands diagonally. When we reached the place of our beginning on the Kansas line, we had travelled over their country the whole distance, from east to west;

and in doing this, we had varied our course so as twice to cross their lands from north to south. Captain Quick was then conducted along their eastern [western line] to its northern extremity, and shown the commencement of each line of their outlet. Thence he proceeded along their northern boundary to Cantonment Leavenworth. By these means, and by his occasional hunting excursions, he obtained an extensive view of their country, and a thorough knowledge of its locality and character." And further on in the report Mr. McCoy says: "In the treaty with the Delawares of September 24, 1829, no provision was made for a military reserve at Cantonment Leavenworth. It has been thought desirable that a tract of six miles on the Missouri river, and four miles back, should be secured for this object. *Accordingly, the survey about the garrison has been made with a view to such a reservation, as will be seen by a reference to the plate.* In this arrangement the Delaware chief—to whom the whole was fully explained on the ground—has cordially acquiesced."

I have been thus particular on this subject, because in the investigation of it I have come to the conclusion that all that portion of what is known as the military reserve at Fort Leavenworth, lying south of a direct line drawn from Cantonment [Fort] Leavenworth, to a point ten miles north of the northeast corner of the old Kansas line, belongs to the Delaware Indians; and that Mr. McCoy was not authorized by his instructions—the treaty and the resolution of the Senate—to set apart or appropriate any portion of it to military purposes, and that all that he did do, therefore, in the way of running the lines marked on map thus: "S. 8° W. 4 miles;" and thus: "N. 3° West 3 miles," are void and of no effect.

The report of the surveyor—who was at the time an officer of the government—is conclusive. I think that no specific appropriation of land for a military reserve had ever been made at camp or Cantonment Leavenworth at the date of the supplemental treaty. If a reserve had been set apart, the records of the War Department ought to demonstrate the fact. And even if an appropriation had been made by metes and bounds before that time, it was competent for the treaty-making power to dispose of the land, or any part thereof, to the Delaware Indians. The treaty describes the boundaries thus: "Up the Kansas river to the Kansas line, and up the Missouri river to Camp Leavenworth, and thence by a line drawn westwardly, leaving a space ten miles wide north of the Kansas boundary line for an outlet." "To Camp Leavenworth," and not to the southeast corner of a military reserve at Fort Leavenworth. And again: thence by a line (and not by a succession of zig-zag lines) drawn westwardly. Whence? From Camp Leavenworth, and not from the southeast corner of a military reserve at Camp Leavenworth. The surveyor states that no provision had been made for a reserve by the treaty; but, it being desirable, he made the surveys about the garrison with a view to a reservation to extend six miles on the Missouri river, and four miles back.

I repeat, the surveyor was not authorized to set off a reservation of land; and, although the Delaware Indians may have assented to the use and occupation of a portion of the land of his tribe by the military department, he had no authority, by the terms of the resolution under

which his appointment arose, or from his nation, as far as we know, to make such a grant. It does not appear that any consideration passed, and all that can be claimed from the act of the Indian, in my opinion, is, that he was willing to accommodate his father with the occupancy of a piece of the land for the use of his soldiers.

But there is in this office the original draught of a paper alluded to in the instructions to the surveyor as Sketch No. 1, a copy of which I also send you. It was drawn by the then Secretary of War, Hon. John H. Eaton. It shows conclusively the views of the War Department at the time, and proves that there was then no military reservation at Camp Leavenworth; and shows that the head of the War Department instructed the surveyor to make (as the treaty required) a direct line from Cantonment or Camp Leavenworth, to the "point ten miles above, north of the northeast corner of the Kansas reservation." (I use his language.)

The very limited information in the possession of the government at that day, did not enable the Secretary of War to understand the relative courses of the Missouri and Kansas rivers, or the relative position of the camp and the Kansas corner; but the line is there—a *direct* line, and not one of zig-zag form—and any other lines made by the surveyor were in violation of his instructions.

It is admitted that the United States has been in the occupancy of the land a sufficient period of time to acquire title by possession, but it is not for a moment to be supposed that a great government would avail itself of such a defence in such a case. And I submit that it could not do so successfully, the case being similar to that of a guardian occupying the lands of the ward.

The treaty of May 6, 1854, between the United States and the said Delaware Indians, does not regard these acts of Mr. McCoy, or the possession of the land by the military department, as vesting any title in it to the United States; but, on the contrary thereof, the Delawares in the first article cede the precise country described in the supplementary article to the treaty of October 3, 1818, to the United States; and in the second article, the United States agree to have the said ceded country (except the outlet) surveyed as soon as it can be conveniently done, and thereafter offered for sale, &c.; and in the third article it is agreed that the United States will pay the Indians the proceeds of the sales of the country provided to be surveyed by the second article.

In behalf of the Delaware Indians, therefore, I claim that all the land lying south of a direct line drawn from Fort Leavenworth (see Cantonment Leavenworth on the map) to a point ten miles north of the northeast corner of the old Kansas reservation, and which has been heretofore for many years in the possession and occupancy of the military department and called their reserve, and over which that department has exercised jurisdiction and on which they have made improvements, belongs to the Delaware tract, and is a part of the same which has been ceded by the Indians to the United States for their benefit.

I submit this view of the case to the consideration of the honorable Secretary of the Interior and honorable Secretary of War, and have to

ask, if any doubts be entertained, that the opinion of the Attorney General be taken in the case.

If I be sustained in the view I have taken, I would then, as the guardian of the interests of the Delaware Indians, respectfully request that the War Department yield the possession of the land designated, and that it be immediately surveyed and put into market at public sale as the treaty provides. The land is now considered exceedingly valuable, and if put into market early, it could, in my opinion, be sold for more money than it would likely bring in years to come, if a sale be long deferred; and I am the more induced to make the request, because, in my opinion, there is now no further necessity, as far as the Indian service is concerned, for the continuance of a military post at that point—the new post up the Kansas, if well sustained, being ample for the preservation of peace among the tribes in that quarter. Besides, it is due to the truth to say, that recently, in my opinion, the influence of the fort has been used to encourage lawless conduct; and the point to which the adjacent tribes once looked for protection, now encourages, and some of its officers participate in, acts of the most unjust character towards the Indians—acts which, if submitted to by the government, or if the government remain passive much longer, must despoil the Delaware Indians of the rights and interests to which they are entitled by the treaty of May 6, 1854.

As I heretofore informed you, the Secretary of War has misunderstood the points made in my unofficial letter to you from Fort Leavenworth. I did not intend to say that the new town site was on the land intended to be excluded by the contraction of the old reserve. The site alluded to by me is between the mouth of Three-mile creek and the southern line of the reserve. I have caused it to be marked down on a copy of the "map of the reduced reserve," alluded to in the letter of the Secretary of War, and have to express my regret that it was not placed on the original of the same, as that and the plat of the new city were both in the quartermaster's office at Leavenworth when I was there, the same surveyor having surveyed and platted the town, and was then at work just completing the map of a reduced reserve also.

On this copy of the map of the reduced reserve, I have also caused the westerly line designated in the treaty to be extended from Salt creek to the Missouri river, in red, so that at a glance it may be seen what portion of the improvements fall to the Delaware Indians, if the claim before made be sustained; and have the honor to transmit said copy herewith also.

Very respectfully, your obedient servant,
GEO. W. MANYPENNY,
Commissioner.

Hon. R. McCLELLAND,
Secretary of the Interior.

DEPARTMENT OF WAR,
Office Indian Affairs, June 30, 1830.

DEAR SIR: The conditional ratification of a supplementary treaty with the Delaware Indians, by the United States Senate, requires that certain surveys shall be made. The conditions are stated in the accompanying copy of a resolution of the Senate, and the lines to be run are defined in the first paragraph of the treaty aforesaid, and illustrated by a sketch which accompanies this, No. 1.

The Secretary of War, by the authority of the President of the United States, refers the execution of this trust to you. No detailed instructions are necessary, since these are ample in the treaty and the resolution of the Senate which accompanies it. You will be governed by them, and in every particular. To aid you with a better view of the country contiguous to that which is to be surveyed and marked by you, I enclose a copy (No. 2) of Mr. Langham's survey of the Kansas reservation.

I am directed by the Secretary of War to say that your compensation will be at the rate of five dollars a day, for the time that you may be actually engaged in the execution of this trust; that you will be aided by an assistant surveyor to be chosen by yourself, whose compensation will be at the rate of three dollars a day whilst actually engaged, and by a corporal's guard which will be detailed to report to you from Cantonment Leavenworth. This guard will perform the duties of axe-men, &c., and marking of the lines, and in aiding in the transportation of your supplies from place to place.

You will obtain of the Delawares a designation of their agent for which the resolution of the Senate provides, whose support will be allowed him, or a daily compensation equivalent to it.

You will be careful in all things to conform to the provisions of the resolutions of the Senate, in obtaining the certificate of the agent who may be appointed by the Delawares, and in transmitting the map of the surveys, &c., to the President of the United States, for his approval and signature, &c. You will be particular in making up your accounts; and these will embrace your own pay, at the rates mentioned, and your assistant's, and the number of days the guard may be with you, as to each man an extra allowance over the pay of the army will be made, at the rate of 15 cents a day. The voucher will be your own certificate that the whole is correct as stated.

You will engage in fulfilling this trust with as little delay as possible.

I have, &c., &c.,

THOS L. MCKENNEY.

Reverend ISAAC MCCOY.

You are at liberty to engage as assistants trusty persons to act as chain-carriers, packers, &c., &c., the whole number not to exceed five or six, and their entire compensation not to exceed in all one hundred dollars a month. Far as practicable you will furnish a description of the country through which you pass, its soil, productions, animal, vegetable, and mineral, and general face of it—also a description of the inhabitants as to general size, civilization, habits, &c.

JOHN H. EATON.

WAR DEPARTMENT,

Washington, January 27, 1855.

SIR: An examination, which I have just found opportunity to make, into the claim presented by the Commissioner of Indian Affairs in his communication of the 9th November, enclosed in yours of the 14th, has satisfied me that the Delaware Indians have no right whatever to any portion of the military reservation at Fort Leavenworth.

"Cantonment Leavenworth" was a military post some years before the Delawares had, by treaty, a home assigned to them in the adjacent country; and it does not appear from the terms of the treaty, or from the instructions given at the time by the Secretary of War, to have been the intention of the government to remove that military establishment to make way for the Indians, or to curtail it or dispossess it of such contiguous lands as had been used or were necessary for the military purposes of the garrison. Now, the "camp or cantonment," as its designation imports, was not an enclosed military work, but a collection of temporary buildings for troops, disposed without absolute regularity, and with such considerable intervals, that some of them pertaining to the quartermaster's and subsistence departments are understood to have been at least two miles from the flag-staff. If the Delaware line had been run, therefore, in the way you claim, it would not only have cut off the most important and essential portion of the land pertaining to the post, but many of its buildings also, which would have been an advance of the Indian boundary not "to" (as the treaty required) but *through* Cantonment Leavenworth.

It is evident the government did not then contemplate, under the treaty, such a result or such a boundary as is now advocated by the Commissioner of Indian Affairs, and it appears the Delawares did not, as they seem then to have acquiesced in the survey made by McCoy of the reservation, and to have continued to do so for nearly twenty-five years.

If the Commissioner be correct, however, in the position that McCoy transcended his authority, and that his survey, therefore, in 1830 was illegal and void, this conclusion will not at all aid the claim of the Delawares to any portion of the military reservation.

On the contrary, it would in that case have more extended limits, and the boundary of the Delaware lands would, under the rule established by the decisions of the Supreme Court, be removed to a distance of three miles in all directions from the flag-staff—this being considered the point from which distances affecting the limits of the military post would be measured. (See opinion of Attorney General Butler, May 6, 1836; Ex. Doc. vol. 7, part 1, page 1037-8, and case quoted by him.)

With regard to the opinion advanced by the Commissioner as to the expediency of abandoning Fort Leavenworth, as no longer necessary for the Indian service in that quarter, I will merely observe that the post is maintained for other and more important purposes, of which he is not deemed the proper judge.

His remark that "the influence of the fort has been used to encourage lawless conduct," may be met by the reply, that his previous allegations of official misconduct on the part of the officers there, have

not, so far as I have been informed, been sustained by any proofs, while they have been indignantly denied and repelled by the parties accused.

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

Hon. R. McCLELLAND,
Secretary of the Interior.

WAR DEPARTMENT,

November 21, 1854.

SIR: I transmit herewith for your perusal and consideration, the answers of Majors Maclin and Ogden, and Captain Hunt, to the charges of the Commissioner of Indian Affairs, that they were concerned in trespasses on the lands of the Delaware Indians.

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

The PRESIDENT.

DEPARTMENT OF THE INTERIOR,

Washington, December 26, 1854.

SIR: I am informed by the Commissioner of Indian Affairs, in a letter dated the 23d instant, that he has learned that the complaints or charges made by him against certain officers in the army, stationed at Fort Leavenworth, have been denied, and that he desires copies of the denials, &c.; and, in his behalf, I have the honor to request copies of the reports the War Department has received in relation to this subject, so far as it may be done consistently.

I am, sir, very respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

Hon. JEFF'N DAVIS,
Secretary of War.

WAR DEPARTMENT,

Washington, December 27, 1854.

SIR: I have the honor to acknowledge your letter of yesterday, asking for copies of the reports received at this department in relation to the accusations made by the Commissioner of Indian Affairs against officers of the army stationed at Fort Leavenworth, Missouri, and to reply that the answers of those officers to the allegations of the Commissioner of Indian Affairs were some time since submitted to the President, and it was my purpose, as soon as they were returned to me, to furnish you copies of them. They have not yet been

received. As soon as they have been, your request will be promptly complied with.

I am, sir, very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

HON. R. McCLELLAND,
Secretary of the Interior.

WAR DEPARTMENT,
Washington, January 15, 1855.

SIR: Referring to my letter of the 14th October last, in answer to yours of the 11th of same month, communicating extracts from a report of the Commissioner of Indian Affairs respecting pre-emption claims made by certain officers of the army on the lands of the Delaware Indians, near Fort Leavenworth, you will find that orders had been given to obtain from the commanding officer at Fort Lavenworth a report of the facts of the case. I enclose a copy of the letter of the Adjutant General to him to that effect.

On the 20th November a communication was received from Major M. S. Howe, second dragoons, commanding Fort Leavenworth, transmitting the replies of Paymaster S. Maclin, Brevet Major E. A. Ogden, and Captain F. E. Hunt, fourth artillery, to the charges of the Commissioner.

These replies were at once submitted to the President, as you were informed in my letter of the 27th December, in answer to yours of the 26th, asking, in behalf of the Commissioner, for copies of them.

They have only this morning been returned by the President, and I herewith transmit copies of them.

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

HON. R. McCLELLAND,
Secretary of the Interior.

ADJUTANT GENERAL'S OFFICE,
Washington, October 16, 1854.

SIR: I enclose a communication from the Secretary of the Interior of the 11th instant, in relation to trespasses on the lands of the Delaware Indians in the neighborhood of Fort Leavenworth; to the conduct of Major Maclin, paymaster, and Brevet Major Ogden, assistant quartermaster, in connexion with these trespasses; the employment of soldiers; the use of public property, (tents,) &c., &c.; and to the removal of intruders from the Indian lands.

The Secretary of War directs that you report to this office the facts of this case as early as practicable.

Very respectfully, your obedient servant,

S. COOPER,
Adjutant General.

Captain F. E. HUNT,
*Fourth Artillery, Commanding Fort Leavenworth,
Kansas Territory.*

FORT LEAVENWORTH,
November 4, 1854.

COLONEL: Your letter of date 10th October, addressed to Captain F. E. Hunt, 4th artillery, commanding officer at this post, with its enclosed, a copy of a letter from the Hon. R. McClelland, Secretary of the Interior, to the Hon. Jefferson Davis, Secretary of War, of date October 11, 1854, was handed me on the 31st ultimo. As I have been but a short time at the post, I know nothing in relation to the accusation of the Commissioner of Indian Affairs, except that on the day of sale mentioned by the Commissioner I saw that one house, two huts, one saw-mill, and some tents, had been erected on the site of what was called "Leavenworth," some two or three miles below the garrison, on the same bank of the river. I have since that time traversed the new boundary line (of that portion of the military reserve on the west side of the river) as pointed out to me by Captain Hunt, who also pointed out the corners of the old reserve (on same side of the river.) I found on the old reserve, and outside the new line, several evidences of settlements, some of which I saw on the 2d of July last. I did not suppose that it was intended the commanding officer should take testimony in the case; therefore, I thought justice required that I should give the accused parties the opportunity to meet the accusation in its present form, in the same manner it was alleged, viz: by a written communication; I therefore directed the post adjutant to furnish Major Maclin, Brevet Major Ogden, and Captain Hunt, each, with a copy of your letter; also a copy of the copy from the Hon. Secretary of the Interior to the Hon. Secretary of War, and directed those gentlemen to furnish me, as soon as practicable, with all the facts in the case within their knowledge.

I have now the honor to enclose their communications, marked A, B, and C.

I am, sir, very respectfully, your obedient servant,

M. S. HOWE,
Major 2d Dragoons, Commanding Post,

Col. SAMUEL COOPER,
Adjutant General U. S. Army, Washington, D. C.

FORT LEAVENWORTH, K. T.,

October 31, 1854.

SIR: Your communication of to-day enclosing a communication from the Adjutant General of the army, of the date of the 16th of October, enclosing a communication from Hon. R. McClelland, Secretary of the Interior, to Hon. Jefferson Davis, Secretary of War, which communication is principally a copy of a letter from Colonel Manypenny, Commissioner of Indian Affairs, dated at Fort Leavenworth September 26, has been received, and, in obedience to the order of the commanding officer, I reply to it; restricting myself to certain parts, which attack particularly my official capacity as commanding officer of this post, leaving to Majors Maclin and Ogden the duty of replying to the attacks made on them, which, I have no doubt, they will do to the perfect satisfaction of the Secretary of War. Colonel Manypenny states, in writing of the acts of Majors Maclin and Ogden, in connexion with the town tract of 320 acres, that "the soldiers were employed to help build their pre-emption shanties, cut the brush, &c." This charge I pronounce unequivocally false and without foundation, for I was in command at the time, was responsible for the men, and know they were not so employed.

As the commanding officer of this post at that time, I was the only person who could use the military to drive off any one from their claims, and I know I never drove any one off or threatened them with the military. As regards the "urgent request that steps be taken by the War Department with a view" "to remove all the people from this town site," (Leavenworth,) and that "all the principal evidences of claims on the Delaware land near the reserve be demolished," and says that "Captain Hunt can do it without difficulty," and that "it will cure everything," I have only to say, that I presume some three thousand persons have made claims upon the Delaware lands. Whether they are protected by law or not, I, of course, am not the person to decide; but if ordered by proper authority to undertake to remove them, I certainly should use my best endeavors to do so, although I, for one, believe that blood would flow in the attempt, and that freely, notwithstanding the opinion of the Commissioner of Indian Affairs that "it can be done without the sacrifice of life or limb." As regards the limits of the military reserve, I am not aware that the Commissioner of Indian Affairs has any supervision over it, and, in my opinion, no man who is himself pure would make the charge Mr. Manypenny has made against me, that "this reduction leaves a strip of land between the Indian land and the diminished reserve, and this even before the survey had placed upon it the necessary monuments according to squatter law, to enable the military men here and their friends to have each a pre-emption claim of land worth from \$10 to \$30 per acre," "valued, under the excitement of the times, at \$50 per acre," unless he had evidence convincing and beyond doubt. I pronounce this charge false, and dare any man to the proof.

The commanding officer and Secretary of War have the information necessary for understanding the survey of the reserve. The locations were made long before any person at this post knew where the

bounds of the reserve were, and on the strip which I supposed, from the best information I could get, was entirely without the reserve. There are twenty-two of these locations, many of them made before I came in command; and instead of being my friends, I only knew three by sight prior to their making their locations. I have made no location myself, neither have I any lot or part with any one that has, either directly or indirectly.

With respect to the statement, that "neither the commandant of the post or Major Ogden or Maclin are here at present"—that is, when the Commissioner of Indian Affairs passed—if it is intended merely as stating a fact, it is true; but if intended to cast censure, as would appear from the tone of the letter—to imply that we were neglecting our duty, this charge also is false. Major Ogden was absent on duty at Fort Riley, Major Maclin on thirty days' leave granted by General Clarke, and I on seven days' leave on a visit in the Indian country, to Fort Riley, which visit the regulations of the army require me to make, in order that I may become acquainted with the country about my post; and as I have only had twenty-seven days' leave, including this one, since 1846, (my service since that time having been in Mexico, Texas, and this Indian country,) I think you will perceive my duty has not been neglected.

I am, sir, very respectfully, your obedient servant,

F. E. HUNT, *Captain 4th Artillery.*

Lieutenant E. McK. HUDSON,

Post Adjutant, Fort Leavenworth.

FORT LEAVENWORTH, KANSAS TERRITORY,

November 1, 1854.

SIR: I had the honor last night of receiving, through the post adjutant, your note, enclosing the letter of the Secretary of the Interior to the Secretary of War, directing me to give you all the information in my power relating to the matters referred to.

Colonel Manypenny, Commissioner of Indian Affairs, charges—1st, That I was one of the "prime movers in projecting the new town site of Leavenworth, some two and a half miles below the fort, and in the Delaware tract, and have enlisted with me thirty other persons."

The above is a misrepresentation. Some thirty persons, residing in this Territory, and in the State of Missouri, associated themselves together for the purpose of making a town. Two of the company previously located, under the squatter regulations, one hundred and sixty acres each, lying on the Missouri river, upon which they placed the town of Leavenworth. I was not aware such a project was on hand; some time after this, however, I was notified that I had been voted in as one of the association at one of their previous meetings, and requested to attend their next. This was without my solicitation or knowledge; the charge, consequently, that *I was one of the "prime movers,"* has no foundation in fact. I ask, therefore, that the charge, under the above statement of facts, be assigned such a disreputable position as all just-minded persons will say it is entitled to.

Second charge of the Commissioner: That I have been "engaging settlers to make claims adjacent to the military reserve, and for miles distant on the Delaware lands, hoping thus to make force to aid me."

I have not at any time induced individuals to settle on the Delaware lands; the settlers are, with a few exceptions, strangers to me, and I did not care where they settled—whether on the Delaware lands or not. I declare, therefore, that I have not engaged settlers to make claims on the Delaware lands.

What position shall be assigned the above charge? It cannot be insisted on that it should have a more honorable position than its predecessor; they have the same origin, the same object, and are entitled to equal credit.

Third charge of the Commissioner: That, in order to induce persons to purchase lots, I had circulated the story that "the government had made a special grant of 320 acres for the town, and that, therefore, there could be no difficulty about titles."

It was believed that the general law of 1844, in relation to town sites, would apply to this as well as to other Territories; but that a special law had been passed for the benefit of the town of Leavenworth. No one ever entertained any such idea. I never heard of it before seeing it in Manypenny's letter to the Secretary of the Interior. That I had circulated the story for the purpose of inducing persons to purchase lots is destitute of truth, and by making the charge the Commissioner has forfeited the character for veracity he may have previously sustained.

Fourth charge of the Commissioner: That "soldiers were employed to help build my pre-emption shanties, cut the brush, &c., &c., and government tents used at the time."

I am at a loss how to characterize this charge. I have not now, nor ever had, a pre-emption shanty in either of the Territories of Kansas or Nebraska. I have never used, in this or any other part of the United States, soldiers for private purposes; I have no power to use the troops for the purpose charged. But as this is more properly a charge against the commander of the post, (Captain Hunt,) and who is fully able to protect his own honor, I deem it unnecessary to examine the charge further; only to add, that if the Commissioner had been as studious in learning the workings of the military system of his country as he seems to have been in framing groundless charges, he might, perhaps, have been of some service to his government.

Fifth charge of the Commissioner: That "all the employés of any influence in the Quartermaster and Pay departments are interested in the matter."

I beg to state a fact the Commissioner seems ignorant of: that there is only one employé in the Pay department in this district, (my clerk,) who has not now, never had, and never sought to have, one particle of interest in either of the Territories of Kansas or Nebraska. Allow me to ask, sir, what ought to be done with charges of this character, and with the individual who dare make them against a person he never saw, and does not know? He has violated a great moral principle every person ought to hold sacred.

To cap the arrogance of the Commissioner, he recommends not only that I be cashiered and dismissed the service, but that Major E. A. Ogden be cashiered and dismissed the service, who doubtless has rendered more efficient and valuable service to his country every year, for the last twenty, than the Commissioner has during the whole course of his existence.

In conclusion, I will remark, that my happiness does not depend upon the success or failure of the town of Leavenworth; but the idea of turning out of house and home, in the midst of cold weather, without any other arrangements for their protection and comfort, several thousand families, is shocking to humanity, inconsistent with the action of the government for many years, and I do not entertain the thought that the Secretary of War will yield to any such recommendation.

I hope, sir, you will urge the Secretary of War to require Commissioner Manypenny to make his charges good against me, or give up a position he has shown himself unworthy to hold.

I have the honor to be, sir, your obedient servant,

SACKFIELD MACLIN,

Paymaster U. S. Army.

Major M. S. HOWE, U. S. A.,

Commanding Fort Leavenworth, Kansas Territory.

ASSISTANT QUARTERMASTER'S OFFICE,
Fort Leavenworth, November 3, 1854.

SIR: The Commissioner of Indian Affairs, on occasion of his last visit, prepared for his duties in the Delaware country by a protracted and close communion with those religious and official friends, south of the Kansas, whose aid, last winter, in manufacturing treaties, resulted in so much mutual benefit.

Under the potential influence of these gentlemen, who are so bitterly opposed to any arrangement that will defeat speculation in Delaware lands, the Commissioner visited the Indians only to repeat the exhortations of his agent to them against a change of treaty; and came to this post breathing threatenings and slaughter against the settlers, denouncing even the officers who sympathised with them in their trouble, as "guilty of conduct for which they ought to be cashiered."

During his brief stay here, he spent much of his time, as I understand, with persons whose animosities or whose interests rendered them likely to give the most perverted representations respecting the parties concerned in the town of Leavenworth. Under such influences, and with such "reliable information," the Commissioner wrote the scandalous libel upon Major Maclin, Captain Hunt, and myself; for a copy of which, through the commanding officer, we are indebted, not to the manly courtesy of the Commissioner, but to the justice of the Secretary of War.

The malice of one or two personal enemies, with an activity truly wonderful, has, for a year or two past, given me ample experience in being traduced; but this communication of Mr. Manypenny's excels

them all in outrage, and deserves, for a reply, nothing but the shortest and most opprobrious of epithets. And the writer who thus pens, in secret, base calumnies against officers long tried and trusted in the public service, has, more than any other official, complained, in the public prints, of being slandered; and certainly—so far as popular impressions go—has, more than any other, pressing occasion to crave a charitable judgment.

Mr Manypenny's charges may be summed up thus:

That Major Maclin and I were "the prime movers in projecting the town of Leavenworth, upon Delaware lands, having enlisted with us thirty others;" that we have "urged settlers to make claims for miles distant, hoping to make force to aid us;" that we are the "principal instigators in the lawless course of the settlers;" that "soldiers were employed to build our pre-emption shanties, cut brush, &c.;" that to "induce the purchase of lots in the town of Leavenworth, we had given out that the government had made a grant of the site," &c.

And the Commissioner, animated by a special hostility against the *opposition town*, earnestly asks that it may be demolished; "which," he adds, with singular frankness, "*would cure everything.*" Sealed bids, on which the Commissioner has hitherto so much relied, he begins to fear, will not be a sufficient remedy for the difficulties in the way of land speculations, and so houses must be demolished, and hundreds of families be turned out of doors at the approach of winter, and the coveted domain be kept, by bayonets, two years tenantless, until auction sales shall effectually "cure everything."

It is from no respect to the Commissioner that I force myself to notice his charges in detail. They are so utterly destitute of the smallest admixture of truth, that I can do little less than meet them with a flat and unwaived contradiction.

I say, then, 1st, that Major Maclin and I were not the projectors of the town of Leavenworth, and had nothing to do with originating the association for that purpose. We have not urged persons to settle on the ceded Delaware lands, and had no reason for doing so. The town of Leavenworth, in which, in common with two hundred others, we now own a small and subordinate interest, was started, and fifteen hundred claims made on the ceded lands, two months before the Delaware treaty was published here, and three months before the appearance of the Attorney General's opinion upon the pre-emption law of the 22d July.

2d. I can say for myself, (and it is unnecessary for me to include Major Maclin,) that I have never been—here or elsewhere—an "instigator of lawless proceedings." The settlers on the ceded Delaware lands—numerous as they are, and indignant at the extraordinary and unexpected terms of the treaty—are naturally inclined to think of some united effort for securing themselves from ruin. They will bear me witness, that I have earnestly advised against all combinations for resistance, and the avoidance of all lawless proceedings. I have heartily sympathised with them, I admit; for I know most of them as respectable citizens, who mind their own business, and do not slander their neighbors; who made their claims in good faith, confidently expecting the usual benefits of the pre-emption law; and, having embarked their

all in their new establishment, would be utterly ruined if the measure the Commissioner proposed *could be executed*.

3d. Neither I, nor any other person connected with the town of Leavenworth, ever employed their soldiers to build pre-emption houses, cut brush, &c. For the preparation of the town site, citizens were hired at high wages, and provisions, tools, and tents purchased at an aggregate expense, as I understand, of three thousand dollars.

4th. It is equally untrue that Major Maclin or I ever sought to induce the purchase of lots, at a public sale in Leavenworth, by the deceptive statement that a grant had been made of the site from the government.

Since, then, the charges of this guardian of the "poor Indian" seem to be so utterly baseless, it is natural to ask what *could* have led him into a position where three responsible men point the finger at him as a *wilful* calumniator! Was it "his sympathy for the poor Delaware?"

Sir, in my opinion, "the poor Delawares," for whom all this virtuous indignation is assumed, are a combination of insatiable speculators and land-sharks, who are just now very much afraid of losing their prey, and my undisguised sentiments on that subject have, I presume, given me the honor of such a malignant notice from the Commissioner.

Hoping the gentleman will now turn from the army to his own department, where he can have ample employment in regulating abuses, I submit my acknowledgments of his attentions to me for the inspection of the proper authority, and remain,

Very respectfully, your obedient servant,

E. A. OGDEN,

Assistant Quartermaster.

Lieut. E. McK. HUDSON,
*4th Regiment Artillery, and Adjutant,
Fort Leavenworth.*

WAR DEPARTMENT,
Washington, January 18, 1855.

SIR: I have carefully considered the papers which you referred to me respecting the entry of certain persons with a view to settlement upon the lands recently ceded by the Delaware Indians. They consist of reports from the Department of the Interior, enclosing communications from the Indian Office, in which the entry of these settlers upon these lands is complained of as a trespass in violation of the treaties with the Indians, and a petition from some of the settlers in vindication of their conduct, and praying that, if the course they have pursued, preparatory to purchasing and settling upon these lands, be not lawful, a new treaty be made with the Indians which will open the lands to settlement.

This subject has been heretofore brought before this department, on the suggestion of the Commissioner of Indian Affairs, that military force might be needed to remove the settlers, as provided by the act of March 3, 1807, which is in the 16th article of the treaty extended to the lands thereby ceded, as far as its provisions are applicable.

On referring to the provisions applicable to the case, they seem simply to declare forfeited all claim, title, or interest, which persons occupying, or marking out, or making settlements upon any portions of such lands, may have in such lands, and to empower the President to direct their removal therefrom by the marshal, aided, if necessary, by the military force.

The act does not forbid the entry of persons upon the public lands, or attach any penalty thereto beyond the forfeiture of any title they may have to said lands; nor does it render it obligatory on the President to order the removal of such persons; the propriety of so doing is left to his discretion; and, in fact, the whole purpose of the provisions respecting the removal of settlers is to confer upon the President the power to clear the public lands of every class of occupants except those holding under titles granted or conferred by the United States.

There is in the act no provision which would oblige the President at once to exercise such power, and clear the public lands of settlers. The power is discretionary, and a consideration of the purpose for which it was granted is necessary to determine the cases in which it should be exercised. That purpose I judge, from the terms of the act, the circumstances of the country at the time of its passage, and the action under it, to have been principally, if not exclusively, to protect the public lands from a class of settlers who, claiming by title vested prior to the cession to the government, or by other adverse title, and having possession, would be in a position advantageously to contest the title of the government, and force a resort to actions of ejectment, attended with trials by juries drawn from the neighborhood, and with other circumstances, rendering the proceedings dilatory and uncertain in their results. Some remedy more speedy and certain than innumerable trials of this kind was obviously necessary to protect the rights of the United States, and it was furnished in the act of 1807; but I have no idea that it was ever intended to require, or even to authorize the indiscriminate removal of all settlers from the public lands—men whose very presence upon the land, and still more their labors, daily add to its value, and who, while interfering with no purpose of the government, acknowledge its title, and stand ready to purchase whenever it is ready to sell. Such settlers, so far from being the object of prosecution, have uniformly been favored by the government, and Congress has never failed to follow them with pre-emption laws, securing to them the narrow limits of their unauthorized settlements—not as a weak concession to men acting in defiance of law, but as a measure of justice to those who, conscious of meditating no injury to the public property, and no violation of the spirit of the statutes, yet place themselves at the mercy of the government in expending their toil upon its domain.

Such I believe to be the application of the act of 1807 to all the unsurveyed public lands of the United States; and I am unable to perceive any legal distinction between a trespass upon these lands and the lands ceded by the Delawares, which would require the act of 1807 to be applied to the latter in a sense which it would not receive in regard to the former.

By the Delaware treaty their lands have been absolutely ceded to the United States, and are to be sold as other public lands are sold, but the net proceeds are to be held for the use of the Indians. "The legal title, domain, and jurisdiction, are in the United States;" and all the provisions of the public land system are expressly made applicable to them, with exception of the grant of pre-emption rights which the Attorney General has decided do not attach to settlements on their land. But this exception does not affect the question. If it was meritorious, or at least permissible, to trespass upon unsurveyed lands, and to improve them with expectation of being enabled to purchase at a fixed price, why should it not be so to improve them with the chance of purchasing at auction prices? and this, I believe, constitutes the only difference between settling on lands to which pre-emption laws apply, and those to which those laws do not apply.

I am clearly, therefore, of opinion that, so far as is shown by reports placed in my hands, the persons who have entered upon the Delaware lands have not thereby committed a violation of the treaty; and while the President undoubtedly has power to remove them, no sufficient reason has yet been shown for the exercise of the power. On the contrary, I am satisfied that, while the act in question fully protects the interest of the Indians, and secures from controversy the title of the lands, the settlement now making upon them will greatly enhance their value.

But the pecuniary interest of the Indians is not the sole consideration which should determine the action of the Executive in this case. It is a matter of notoriety—and as familiar to the Indians, probably, as to the whites—that the object of this government was "the speedy settlement of the country;" and that, in so many words, is one of the declared objects of the power vested in the United States by the said article of the treaty for the sale of their lands. The exploration of the country by intended settlers, the selection of lands, the marking out of their locations, and the commencement of improvements, all conduce to this object; and unless they threaten, in some way not yet stated, the interest of the Delawares, I see no reason for arresting their progress. Should it, however, be shown that these proceedings on the part of the settlers conflict with the interests of the Indians, I would recommend that the latter be provided for by a supplemental act, as contemplated in the 15th section of the treaty, or by a new treaty, rather than that the settlement of the country be arrested, the settlers who have gone thither be exposed to loss, amounting in most cases to ruin, and the military force brought into conflict with peaceful citizens, albeit they may be trespassers upon the public lands held for sale, but not offered, because not surveyed.

It may be proper to remark that the foregoing considerations do not apply to the lands ceded by the Ioways and the Weas and Kaskaskias, as in treaties with these tribes it is stipulated that no settlements shall be made upon their lands before survey. No special reason appears for this provision in the treaty with the Ioways, but it is necessary to the fulfilment of the treaty with the Kaskaskias and Weas, as they have the right to select lands for themselves after the

survey; and no settlement can be permitted before their selection shall have been made.

Very respectfully, your obedient servant,
 JEFF'N DAVIS,
Secretary of War.

The PRESIDENT OF THE UNITED STATES.

DEPARTMENT OF THE INTERIOR,
Washington, January 30, 1855.

SIR: I transmit you herewith a copy of a communication from the Commissioner of Indian Affairs, dated the 20th instant, on the subject of your letter of the 15th, addressed to this department, in relation to alleged trespasses on the lands of the Delaware Indians in the neighborhood of Fort Leavenworth.

I have the honor to be, very respectfully, your obedient servant,
 R. McCLELLAND,
Secretary.

Hon. JEFF'N DAVIS,
Secretary of War.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, January 20, 1855.

SIR: I have the honor to acknowledge the receipt of the letter of the Secretary of War, addressed to you on the 15th, with its enclosures; all which were referred to me from your office on the 16th instant.

The letter of the Secretary of War covers a copy of an order from the Adjutant General of the army, dated Washington, October 16, 1854, addressed to "Captain F. E. Hunt, fourth artillery, commanding Fort Leavenworth, Kansas Territory," the report of Major M. S. Howe, dated November 4, 1854, on whom the duty assigned by the Adjutant General to Captain Hunt devolved, with copies of communications from Captain Hunt and Majors Maclin and Ogden, dated respectively the 31st October, 1st and 3d November, 1854.

The duty which the Adjutant General devolved on the commanding officer at the post, in compliance with the order of the Secretary of War, was to report all the facts "in relation to trespassers on the lands of the Delaware Indians, in the neighborhood of Fort Leavenworth, to the conduct of Major Maclin, paymaster, and Brevet Major Ogden, assistant quartermaster, in connexion with these trespasses, the employment of soldiers, the use of public property, (tents,) &c., &c., and to the removal of intruders from the Indian lands." The Adjutant General accompanies his order with a copy of a communication from the Secretary of the Interior to the Secretary of War, of the date of October 11, 1854, to the contents of which he does not specifically allude; but which, it is understood, contains extracts of a letter from me to the Secretary of the Interior, dated at Fort Leavenworth, on the 26th September, 1854, having express reference to the subject-matter of the trespasses

on the Delaware lands, and the participation of Majors Maclin and Ogden in those lawless proceedings.

Since the receipt at Washington of the "replies" of Captain Hunt and Majors Maclin and Ogden, the superintendent of Indian affairs at St. Louis had occasion to visit Kansas Territory and Fort Leavenworth; and, had they been in my possession, notwithstanding their insufficiency as a full report of all the facts in the case, I would have availed myself of the occasion of his visit there to ascertain whether any of the charges made by me in my letter of the 26th September last were unfounded; and if so, it would have been my pleasure, as well as duty, to make the proper correction. But from the character of these "replies," and their evasion of known facts, I shall want other testimony before I am prepared to change or vary any statement made by me, even though based on "reports."

I do not perceive that the parties to whom this investigation and report were intrusted have attempted, in the least particular, to carry out the order addressed to them.

The Secretary of War, in his letter to you of the 14th of October last, recognised the obligation and duty resting on his department in the premises, and he will doubtless, in the end, see that these are fully met, when it will be shown whether I was justified in addressing you fully as I did on the occasion referred to or not.

I gave the "reports" of the country, and said I had the best reasons to believe them.

On the morning of the day that I wrote that letter, I saw in the back room of the quartermaster's office, at the fort, the unfinished map or plat of the town of Leavenworth in the hands of the surveyor, John C. McCoy, esq., who had finished the survey of the town lots, and was completing the map or plat of the same, to have it ready for the sale of the 9th and 10th of October. He also had upon the same table, in the same room, the map or plat of the reduction of the military reserve, made by him "in conformity with the instructions of the Secretary of War," which last named map or plat is now, I presume, in the War Office. This plat of the survey of the reduced military reserve was made "under the direction of Captain F. E. Hunt, 4th artillery;" and while, under his "direction," the town of Weston, on the opposite side of the river, in Missouri, and the adjacent islands in the river, were placed on the plat, the new town of Leavenworth, laid out adjoining the reserve, and on the Delaware land, was, I cannot doubt, intentionally omitted. On the same morning I observed on the door of the large stone warehouse at the fort a printed handbill, signed by Major Maclin, Amos Rees, and Lorenzo D. Bird, "trustees," headed "*Town of Leavenworth.—Great sale of lots.*" The advertisement said, "There will be a great sale of lots at this new and promising town, adjoining Fort Leavenworth, on Monday, the 9th day of October, 1854." It spoke in glowing terms of the surrounding country, of the prospects of this city in embryo, and promised the greatest liberality in the sales to those who first try their fortune in "the great city of the West." And purchasers were assured that the "proceeds of sale, after paying all expenses incurred by the association, to be deposited in St. Louis until title is assured, through us or otherwise, to the purchaser, and in

default of which the money to be refunded." This handbill was dated the 22d September, 1854. I also saw another advertisement signed by Major Maclin and his two colleagues, "trustees," informing the public that the sale would continue two days, and that the steamers Polar Star and Clara would be at the town landing, for the purpose of accommodating persons attending the sale, and that the money derived from the sale would be deposited at St. Louis, with good security, until a perfect title was insured from the United States. I also saw the card of "F. Hawn" in a Weston, Missouri, paper of the 14th of September, headed "*Delaware squatters, beware of the military,*" in which he stated, that on the Saturday previous, Major Maclin had ordered him not to continue building on his claim on Three Mile creek, as his house would be torn down; that the Major afterwards threatened to put one of his workmen in the guard-house; and that his house was afterwards torn down by this officer's orders, "in the presence of Major Ogden," &c. Copies of each of these papers are now in this office, and they, with what I observed in the quartermaster's office, and the statements made to me in the country, were, I think, of such a character as to warrant my statement, that I had the best reason to believe the truth of the "reports;" and in the discharge of my duty I could not have done less than to call your attention to the condition of things at Fort Leavenworth, as I did in my letter of the 26th of September.

I have not now, and shall not hereafter have, cause to regret that I warned the government, from the very headquarters of these lawless proceedings, of the acts of Major Maclin and Major Ogden, and of the absolute necessity for at once adopting efficient measures for executing the treaty stipulations and protecting the rights of the Delaware Indians.

I respectfully call your attention to the "replies" of these officers, who evince in them, in my judgment, little regard for duty and great facility in the use of epithets.

Captain Hunt admits that twenty-two claims were made on the land excluded from the military reserve, by his reduction of the same; but denies that his friends made any of them. I did not say that they did; and, indeed, I made no charges against this officer. Neither the Secretary of War nor the Adjutant General thought so, as is very apparent from the letter of the latter to the commanding officer, requiring a report of the facts in the case. Indeed, when I returned to Washington, I stated, in a conversation with the Secretary of War, that Captain Hunt was not implicated, as far as I knew. The indignation manifested on his part was, therefore, gratuitous. But, if he knew there were twenty-two claims there, could he not state the names of the claimants, and then others could judge whether any of them were army officers or their friends? As Captain Hunt has volunteered to defend himself against charges I never made, I now state that I am led to believe that he has, from his own admissions now in the possession of this office, much of the responsibility of the unlawful attempts to settle the Delaware trust lands resting upon him.

On the 17th of July last, Messrs. Stringfellow, Miller, McHolland, and Gillispie, a committee appointed by a meeting of the citizens of Platte county, Missouri, and others, wrote a letter to Captain Hunt, accompa-

nied by certain resolutions of the meeting, in which they expressly state that the general impression was, that no person would be permitted to occupy any portion of the Delaware lands, and asking information from him. The meeting seems to have been called because of certain "reports" that some of the army officers, employés, &c., about the fort, were engaged in getting up this town, the site of which the Missourians thought was on the military reserve. Captain Hunt, in reply, admits that a town "has been or is about being laid out, by persons in Weston and *two officers of the army stationed here*, near the mouth and north of Three-Mile creek, which is off the reserve and on Delaware land. You will perceive from my instructions I cannot interfere." When the Missourians received Captain Hunt's reply, the same committee issued a card, headed "*Delaware lands open to settlement*," in which they say: "We have the pleasure of laying before the people the gratifying intelligence that the officer in command at Fort Leavenworth does not feel it to be his duty to prevent settlements upon the Delaware lands. And we feel *authorized to urge* the immediate occupation of all those lands, except the small strip on Kansas river intended for the permanent occupation of those Indians. * * * * *

We annex a correspondence with Captain Hunt, containing the orders of General Clark, and take pleasure in saying that he *will give all information on which every [person] may rely*." The instructions of General Clark do not prohibit Captain Hunt from interfering; and I submit to you that herein is a grave matter, and here is the beginning of this lawless conduct, and at this point it is due that the most thorough investigation should be had. That there were early designs on this country, looking to its unlawful occupation, there cannot be the least doubt; and I am unable to believe that Captain Hunt gave the proper construction to his orders when he stated that he could not interfere in such a case as that presented to him. Under the law organizing Kansas Territory, there was abundance of land for emigrants to occupy and settle on, without attempting to intrude on the Indian trust lands or reservations.

Captain Hunt states in his reply that he is not the proper person to decide whether the persons who have made claims on the Delaware lands are protected by law or not; and yet it seems from the card of the Missouri committee, that he kindly undertook to give them such reliable information in the month of July, as induced some three thousand persons to make claims there!

In relation to the reply of Major Maclin, I have only to say, that the activity displayed by him in causing Hawn's house to be torn down, getting up handbills, chartering boats, &c., to promote the interests of the new town, are hardly consistent with his ignorance of the initiatory and unlawful proceedings connected with that speculation. If he had favored us with the date of the meeting at which he says he was "voted in" to the association, it might have been of some service in enabling others to judge of his true character and connexion therewith.

With regard to Major Ogden's reply, I have only to remark, that if ever an opportunity is presented, I believe I shall be able to make it appear that he was one of the original and prime movers in getting up this town, in pressing it forward, and in urging and encouraging settle-

ments on the Delaware lands; and that from the position he has occupied, as a large disburser of public moneys among the people, his opinions and action have had a most pernicious influence.

He became the defender of the projected city from the assaults of the Missouri meeting before referred to, and closed a long communication for the press in this behalf thus: "If the persons interested in this scheme are violating any public or private right, they will deservedly lose the money they are freely investing in the enterprise. If proceeding, on the contrary, according to law and precedent, they improve their claims, secure their possessory right, and pursue, as I am very sure they will, a fair and liberal course in the disposition of their town property, all generous persons will heartily wish them success." In his published defence of the enterprise, he attempts to explain why this new town was permitted to have a start or beginning, on what the Missourians supposed to be the military reserve. He states that they had no definite knowledge of the military limits; that their boundary was fixed by a kind of tradition, and that while it was an Indian country it was not material; but that since the organization of the Territory, "and especially since the Delawares, by a change in their policy, have invited settlements upon their ceded lands, (which will soon probably become subject to pre-emption,) this southern boundary of the military reserve has become an object of great interest. A Virginia gentleman, who commenced researches upon this subject some months since in Washington, succeeded in discovering the original plat and field-notes of the survey of the Delaware boundary, and, aided by the Delawares, readily found the landmarks of the initial point, on the Missouri river, nearly a mile north of Three-Mile creek. Marking out and recording a claim upon this discovery of his, according to the rules established by the settlers generally, his example was soon followed by others, who made claims in the vicinity, both north and south of the creek in question. As other squatters have done, they soon met for the purpose of adjusting their limits peaceably, and, in the absence of law and civil government, formed an association for mutual protection and the preservation of order."

Such is the manner in which this officer wrote and published on the 20th of July last, in "reply" to the arraignment of the Missouri meeting; and yet, in the face of all this, he has had the assurance to write one of the extraordinary "replies" which the Secretary of War transmitted to you. Such contradictory statements as these two "replies" present, in relation to the same subject, leave no room for surprise that the individual who is the author of both should enter into an unlawful enterprise to appropriate the property of others to his own use.

His statement in relation to the discovery by the Virginia gentleman, of "the original plat and field-notes of the Delaware boundary," while it connects him with a very early knowledge of the enterprise, may be construed to involve the official integrity of myself and the gentlemen in the Indian Office. If such paper was obtained here, it was a surreptitious act, and I desire to know the author of it.

I may add that this same officer (Major Ogden) attended a meeting of "squatters" at Leavenworth, on the 29th of September, was on the committee on resolutions, and was appointed chairman of a committee

to prepare a memorial to the President of the United States, for a modification of the Delaware treaty; and on the day of the sale of the lots at Leavenworth, made a speech, and assured the people that if the title was then imperfect, it would eventually be made good and confirmed by the government.

Two of these officers, who were placed at this important post to protect the rights of the Indians and preserve peace on the frontier, it will be observed, admit themselves to have participated in proceedings which, in the opinion of the Attorney General, are unlawful; and one of them (Major Ogden) has the assurance to speak of the "*unexpected and extraordinary terms of the treaty.*" Now this modest assurance is known to you to be a direct attack upon yourself and all the officers of the government who took an interest in that treaty; for the "*extraordinary terms*" were not only acquiesced in by, but were inserted under the express sanction of, the President and yourself. And the bill introduced at the last session of Congress, by the Hon. Mr. Orr, chairman of the Indian committee of the House of Representatives, contained the same principle, and was endorsed, as I am informed, by the unanimous judgment of that committee.

Major Ogden commences his before-mentioned reply in the following words: "The Commissioner of Indian Affairs, on occasion of his last visit, prepared for his duties in the Delaware country by a protracted and close communion with those religious and official friends south of the Kansas, whose aid last winter in manufacturing treaties resulted in so much mutual benefit." I shall never regard it as a grave charge, that religious people are my associates in Kansas or any other place. The insinuation in all its parts is as untrue as it is unmanly; and if Major Ogden will make any charge of collusion on my part, in a form so specific that I can meet it, or allege any act I have ever done, inconsistent with a faithful and disinterested discharge of my duties to the government and the Indian tribes, I will prove such charge or allegation false.

In conclusion, I have to remark, that if military officers or others, on the frontier and in the Indian country, are permitted to organize themselves into courts to review the laws and treaties of the government, and the opinions of the Attorney General in relation thereto, and excite rebellion against them, it will be in vain for this department to attempt to exercise any salutary control over those important interests which, by the laws of the land, are especially committed to its charge.

I respectfully request that this communication may be laid before the President for his consideration.

Very respectfully, your obedient servant,

GEO. W. MANYPENNY,

Commissioner.

Hon. R. McCLELLAND,
Secretary of the Interior.

WAR DEPARTMENT,

Washington, February 3, 1855.

SIR: I have received your letter of the 30th of January, enclosing a copy of a letter to you from the Commissioner of Indian Affairs, dated the 20th ultimo, relating to the charges brought by him against certain officers of the army at Fort Leavenworth.

After a careful examination of the original charges, the answers of the officers thereto, and this elaborate rejoinder by the Commissioner, I do not see that he shows probable cause to justify him in bringing the charges.

Sufficient evidence will, I think, appear to you, of the intemperate spirit of the charges, in a single sentence of the Commissioner's last paper. The three accused officers had, in obedience to the requisition of this department, returned answers to the charges of the Commissioner. Copies of these answers were transmitted to you, and communicated to him. Although these answers are in the main sufficiently distinct and pointed, the Commissioner treats them as a mere evasion and refusal to answer, and declares that he does "not perceive that the parties, &c., have attempted in the least degree to carry out the order addressed to them."

But I have now to ask your attention particularly to the charges of the Commissioner, the answers of the officers, and his rejoinder.

Although the loose style of the charges makes it difficult to specify the precise point of some of them, and although others of them are general charges without specifications of fact, yet the following may be taken to cover and express all that is material in them.

After some general statements to the effect that the Delaware Indians had been disturbed in mind by whites settling on their lands, and setting up pre-emption claims to them—that the principal claims were near Fort Leavenworth, and Major Ogden, quartermaster, and Maclin, paymaster, had been "the principal and main instigators to this lawless course of proceedings," and that if the reports he had heard and believed were true, those officers deserved to be cashiered, the Commissioner makes his specifications as follows:

1. That they were the prime movers in projecting the new town, two and a half miles from the fort, on the Delaware tract, and had enlisted with them some thirty other persons.

To this Major Maclin answers: That some thirty persons, residing in Kansas and Missouri, associated to make a town—that two of them had previously located, under the squatter regulations, 160 acres each, on which they placed their site for a town. He then had no knowledge of the project. Some time afterwards he was, without his knowledge or solicitation, elected a member of the company.

Major Ogden's answer is: "That we were not the projectors of the town, and had nothing to do with originating the association; that they now, in common with 200 others, own a small interest in it."

2d charge: That after making this move in violation of the treaty, they had urged settlers to make claims adjacent to the military reserve, and for miles distant in the Delaware lands; hoping thus to have force to aid them.

Major Maclin's answer is: That he never induced any one to settle on the Delaware lands; that the settlers were, with few exceptions, strangers to him, and he did not care where they settled—whether on the Delaware lands or not.

Major Ogden's answer is: That he never urged persons to settle on Delaware lands, and had no reason to do it; that 1,500 claims had been made on the ceded lands two months before the treaty was published, and three months before the appearance of the Attorney General's opinion on the pre-emption law; that the settlers had made their claims in good faith; that they were greatly disappointed at the terms of the treaty; and that he had sympathised with them, but had advised against all combinations for resistance.

3d charge: That they have an advertisement out to sell lots; and to induce purchasers to buy, the story is rife that government has made a special grant of 320 acres for the town—and therefore there can be no difficulty about title. The meaning of this appears to be, that these officers were authors of the false report.

Major Maclin answers: That it was believed the general law of 1844 would apply in this case. He had never heard of any report about a special law for this town, and it is wholly untrue that he had ever put out such a story to deceive purchasers.

Major Ogden answers: That it is untrue that he ever made use of the deceptive statement as alleged.

4th charge: That soldiers were employed to build their pre-emption shanties, to cut brush; and government tents were used.

Major Ogden answers: That neither he, nor any person connected with the town, ever employed soldiers to build huts or cut brush; that the preparation of the town site was by hired citizens at a cost, as he understood, of \$3,000.

Major Maclin answers: That he never had a pre-emption shanty; that he never employed soldiers, and had no power to do so; that the charge is properly a charge against the commanding officer.

Captain Hunt, the commanding officer, answers: "This charge I pronounce is unequivocally false, and without foundation. I was in command—was responsible for the men, and know they were not so employed."

5th charge: All the employés of any influence in the quartermaster and pay departments are interested in the matter; and when an innocent squatter not of their kind has attempted to make a claim near their land, they have driven him off by threats of the military.

Major Maclin answers: That the only employé of the pay department in the district is his clerk, who never had, and never sought to have, any interest in the Territories of Nebraska or Kansas.

Captain Hunt answers: That he, as commanding officer, was the only person who could use the military to drive off any one; that he never did it or threatened it.

Major Ogden, in his answer, has not specially noticed this point in the Commissioner's charge about the employés of his department.

6th charge: The commanding officer has had a surveyor at work reducing the limits of the reservation. The reduction leaves a strip of land between the Indian land and the diminished reserve; and this strip,

even before the survey, had placed on it the necessary monuments, according to squatter law, to enable the military men here and their friends to have a pre-emption claim of land valued from \$10 to \$30 per acre. This diminution of the reserve is said to be under orders from the War Department—hopes the thing will be disapproved.

Commanding officer answers: "I pronounce the charge false: the locations were made before any person at this post knew where the bounds of the reserve were, and on the strip which I supposed, from the best information I could get, was entirely without the reserve. There are twenty-two of these locations, many of them made before I came in command; and instead of being my friends, I only knew three of them by sight, prior to their making their locations. I have made no location myself, neither have I any lot or part with any one who has, either directly or indirectly."

In regard to the imputations against the commanding officer in this particular matter, I desire it may be observed that the Commissioner was aware that the act of that officer was in pursuance of the orders of the War Department. Yet he makes it the ground of a gross charge against that officer, imputing it to him as an act done in the furtherance of a corrupt scheme, and undertakes confidently to disapprove an order of the department in a matter of which the department was the proper judge.

The only other matter in regard to these officers which the Commissioner has reported to you in his original complaint against them, and which you have brought to my attention, is conveyed in his statement that "neither the commandant of the post, or Major Ogden or Maclin, are here present." This appears to be presented as a charge against them of an improper absence from their duties. It must have so impressed itself on your mind, as you extract it from his letter to communicate it to me. The commanding officer, as the proper officer to account for all neglects of duty in his command, answers the charge as follows:

"If intended merely as stating a fact, it is true. If intended to cast censure, to imply that we have neglected our duty, it is false. Major Ogden was absent on duty at Fort Riley, Major Maclin on thirty days' leave granted by General Clark, and I on a seven days' leave on a visit in the Indian country to Fort Riley, in accordance with army regulations, &c.;" the application of which he explains in the case.

I only refer to this point to show the temper of the Commissioner towards these officers, and his desire to impute blame to them without cause, and to report proper and innocent facts as matters of accusation against them.

You will perceive that the essential charges against these officers, of which the military authority would take cognizance as military offences, are fully met in their replies. They each and all deny any employment of soldiers—any military or official interference whatever in the transactions he arraigns. He offers no proof—he pretends to no personal knowledge—he expressly rests his accusations on rumor.

On a careful examination of the report of the Commissioner to you of the 20th ultimo, after he had examined the replies of the several officers to his charges, I am compelled to say to you, I do not perceive

in it any evidence of a desire to do justice to these officers, whose official and personal integrity he had so violently assailed; on the contrary, he sets out a declaration to the effect that they have neither made nor attempted a defence, and declines "*to change or vary any statement made by him, even though based on reports.*"

In regard to Captain Hunt, he denies that he made any charge against him. I consider that he brought charges, either direct or by necessary implication, against Captain Hunt, as the commanding officer of the post, imputing to him the grossest offences in point of morals, honor, and official duty. As, however, according to his views, Captain Hunt has "*volunteered to defend himself,*" he now states he is led to believe "*that Captain H. has much of the responsibility of the unlawful attempts to settle the Delaware trust lands.*"

The foundation of this charge, besides the provocation in Captain Hunt's volunteer defence of himself, seems to be that Captain Hunt, being addressed by persons who were engaged in settling on these lands, answered that he had no authority in the matter, and made known his instructions from General Clark, positively forbidding his interference. The Commissioner is pleased to see in this proper answer a connivance with the squatters, and a responsibility for their proceedings. I have to say that the instructions which govern the military at frontier posts, and in what concerns our Indian relations and the frontier settlements of our people, are framed according to my views of duty and policy; and I cannot consent that their refusal to assume powers not belonging to their commissions, or otherwise specially intrusted to them, and to employ the soldiers without authority, against the settlers, shall be imputed as a corrupt collusion with violators of law.

The Commissioner, in his report of the 20th ultimo, refuses to retract his former charges against the officers, in connexion with the reduction of the military reservation and the misapplication of public means to private purposes, and the employment of the military force to effect or aid an unlawful seizure of public lands; but instead of adducing testimony to sustain his allegations on these points, he attempts to change the issue, by reiterating and enforcing his accusation, that they have been engaged with other speculators and squatters in effecting the settlement of the lands ceded by the Delaware Indians, and establishing a town site and selling town lots.

This department does not attempt to advise or control in the private and pecuniary affairs of officers; to prohibit or permit investments in public or private lands. All that the department requires of them in this regard is, that attention to their private business shall not lead to neglect of their public duties; that no officer shall ever furnish any species or amount whatever of supplies to government; and that no disbursing officer shall engage in commerce in any article which can make a part of army supplies. As to the right of Majors Ogden and Maclin to acquire an interest in the town lots near Fort Leavenworth, or in pre-emption claims on public lands, it is clearly a matter beyond the official authority of this department. They have, in such cases, the ordinary rights of citizens—no more or less.

The Commissioner urges, with warmth, the removal, by military force, of settlers on the Delaware cession. I have communicated to the President my views, at length, on this subject. A copy of my letter to the President is herewith enclosed to you. The removal, it has been represented to me, could not probably be effected without bloodshed. The Executive is the judge of the propriety of such an extreme measure; and if found to be proper, the order would be addressed to the civil authority—the military having no connexion with the matter, unless and until called upon to aid the civil officers in the execution of the law.

Very respectfully, your obedient servant,

JEFF'N DAVIS,

Secretary of War.

HON. R. McCLELLAND,

Secretary of the Interior.