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Report of the Secretary of the Interior,
communicating, in compliance with a resolution of
the Senate of the 17th instant, information
respecting the title of the United States to certain
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REPORT

OF

THE SECRETARY OF THE INTERIOR,

COMMUNICATING,

In compliance with a resolution of the Senate of the 17th instant, information respecting the title of the United States to certain land in Kansas set apart to the New York Indians.

DECEMBER 30, 1856.—Read, ordered to lie on the table and be printed.

DEPARTMENT OF THE INTERIOR,
Washington, December 26, 1856.

SIR: In answer to a resolution of the Senate of the 17th instant, I have the honor to communicate herewith, for its information, a copy of a report of the Commissioner of Indian Affairs, dated the 22d instant, being a "statement of the condition of the title of the United States to all that portion of the Territory of Kansas designated as being set apart and assigned to the New York Indians, and the nature of the authority by which said tract has been so assigned."

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

R. McCLELLAND,
Secretary.

Hon. J. D. BRIGHT,
President of the United States Senate.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, December 23, 1856.

SIR: In reply to a resolution of the Senate of the United States, adopted on the 17th instant, in the following words:

"Resolved, That the Secretary of the Interior be requested to communicate for the information of the Senate, a statement of the condition of the title of the United States to all that portion of the Territory of Kansas designated as being set apart and assigned to the New York Indians, and the nature of the authority by which said tract has been so assigned;" which was referred by you to this office on the 18th instant, I have the honor to state:

That by article second of the treaty with the New York Indians concluded at Buffalo creek, in the State of New York, on the 15th day of January, 1838, the tract of land referred to in said resolution, described as follows, "beginning on the west line of the State of Missouri, at the northeast corner of the Cherokee tract, and running thence north along the west line of the State of Missouri twenty-seven miles to the southerly line of the Miami lands; thence west so far as shall be necessary, by running a line at right angles and parallel to the west line aforesaid to the Osage lands, and thence easterly along the Osage and Cherokee lands aforesaid to the place of beginning, to include one million eight hundred and twenty-four thousand acres of land, being three hundred and twenty acres for each soul of said Indians, as their numbers are at present computed," was set apart by the United States as a permanent home for all the New York Indians then residing in the State of New York, or in Wisconsin, or elsewhere in the United States who had no permanent homes.—(Vide treaty published by authority, Statutes at Large, volume 7, page 550.)

It was further provided by the said 2d article of said treaty, that the Indians should have and hold the said land in fee simple, by patent from the President of the United States, issued in conformity with the provisions of the third section of the act entitled, "An act to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi," approved May 28, 1830, (Statutes at Large, vol. 4, p. 411,) with full power and authority to divide the same among the different tribes, nations or bands composing the said New York Indians, in severalty, with the right to sell and convey to and from each other, under such laws and regulations as might be adopted by the respective tribes, acting by themselves, or by a general council of the New York Indians, acting for all the tribes collectively.

By the 3d article of said treaty, it was further provided, that such of the tribes of the New York Indians, as should not accept and agree to remove to the country so set apart for their new homes within five years, or such other times as the President might, from time to time appoint, should forfeit all interest in the lands so set apart to the United States.

The consideration for the grant of the above mentioned tract was the relinquishment to the United States by the New York Indians of all their right to, and interest in, a certain tract of land at Green Bay, Wisconsin, secured to them by the Menomonee treaty of 1831, containing about five hundred thousand acres, including all the improvements of the New York Indians on the west side of Fox river.—(Statutes at Large, vol. 7, p. 343.)

The aforesaid treaty having been amended by the Senate was ratified by that body on the 11th day of June, 1838, and the amendments being assented to by the Indians the same was, by the President's proclamation of April 4th, 1840, to take effect from that day.

No general removal of the New York Indians, or of any separate tribe of them, has ever taken place under the foregoing provisions of said treaty; but in the year 1846, about 200 of their number were collected through the instrumentality of a Dr. Abraham Hogeboom (but

without the authority of the government) and departed for their western home.

Many of this band died shortly after their arrival at their reserve in Kansas. Some of them returned to New York, and the remainder still continue on and near the lands assigned them by the said treaty.

At the time of entering into the treaty of January 15, 1838, the Seneca nation, preparatory to removing to their new home, sold and conveyed four reservations belonging to them, situate in the western part of the State of New York, known as the "Buffalo Creek Reservation," the "Cattaraugus Reservation," the "Allegany Reservation," and the "Towanda Reservation," with the assent of the United States, to Thomas L. Ogden and Joseph Fellows, for the consideration of two hundred and two thousand dollars.

Difficulties having subsequently arisen between the Seneca Indians and the said purchasers relative to the sale of said reservations, and the rights of the respective parties therein, for the purpose of settling and compromising the same, on the 20th of May, 1842, at Buffalo creek, in the State of New York, another treaty was negotiated between the United States and the said Seneca Indians, whereby, after reciting the previous treaty of 1838, and the former sale to Ogden and Fellows of said reservations in New York, it was by the 1st article provided, that the said Indians should have the right to possess and enjoy the said Allegany and Cattaraugus reserves, with the same right and title in all things as they had and possessed therein before the said sale to Ogden and Fellows, "saving and reserving to the said Thomas Ludlow Ogden and Joseph Fellows, the right of pre-emption, and all other, the rights and title which they then had or held in or to the said tracts of land."

In further reference to these two tracts, the 6th article of said treaty provided as follows:

"It is hereby agreed, and declared to be the understanding and intent of the parties hereto, that such of the said Seneca nation as shall remove from the State of New York under the provisions of any treaty made, or to be made, between the United States and the said Indians, shall be entitled, in proportion to their relative numbers, to the funds of the Seneca nation; and that the interest and income of such their share and proportion of the said funds, including the consideration money to be paid to the said nation in pursuance of this indenture, and of all annuities belonging to the said nation, shall be paid to the said Indians so removing at their new homes; and whenever the said tracts, called the Allegany and Cattaraugus reservations, or any part thereof, shall be sold and conveyed by the Indians remaining in the State of New York, the Indians so removing shall be entitled to share in the proceeds of said sales in the like proportion," &c.

By the second subdivision of the concluding article of this treaty the United States consent and agree that any number of the said nation who shall remove from the State of New York under the provisions of the said treaty, proclaimed on the 4th of April, 1840, shall be entitled, in proportion to their relative numbers, to all the benefits thereof.

The said treaty of the 20th of May, 1842, was proclaimed and took effect on the 26th of August of the same year.—(See Statutes at Large, volume 7, page 586.)

Having thus become repossessed of a part of their lands in the State of New York, with the unlimited right to remain thereon, no measures to effect the removal of these Indians to the west of the Mississippi, by themselves or the government, have been taken, except by the company which left with Dr. Hogeboom, hereinbefore mentioned; neither do any of the tribes manifest any desire or present intention to emigrate.

Such of them as did thus remove are undoubtedly entitled to have secured to them all the benefits provided by the said treaties, both in land and money, in proportion to their numbers; and the department has endeavored to have the whole of the reservation in Kansas maintained, and, as far as practicable, guarded against the encroachments of white settlers, until it should be determined, either by further legislation or by treaty, what rights, if any, therein remain to such of the New York Indians as have not removed from that State, and in what manner the interests of those who have emigrated shall be secured or definitely established.

This statement seems to answer the inquiries contained in the resolution of the Senate, and it is not deemed necessary or pertinent to express any opinion as to the present or future rights of these Indians still remaining in New York to avail themselves of the provisions of the said treaties as regards emigration when they shall have finally disposed of their lands in that State, that is to say, of the Allegany and Cattaraugus reservations.

The present prosperous and contented condition of these tribes induces me to believe that they will not soon or voluntarily seek to change their residence, even if the right to do so should be conceded under the treaties above mentioned; and the large quantity of land that is now withheld from settlement awaiting the determination of their rights in this respect would seem to demand further legislation upon the subject.

Very respectfully, your obedient servant,

GEO. W. MANYPENNY,
Commissioner.

Hon. R. McCLELLAND,
Secretary of the Interior.