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Letter of the Secretary of the Interior, in regard to the issuing of patents for certain lands of the Stockbridge Indians and the valuation and sale of their reservation

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LETTER
OF THE
SECRETARY OF THE INTERIOR,

IN REGARD TO

The issuing of patents for certain lands of the Stockbridge Indians and the valuation and sale of their reservation.

MAY 12, 1864.—Submitted and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 10, 1864.

SIR: I have the honor to acknowledge the receipt of your letter of the 28th ultimo, enclosing a memorial of the legislature of the State of Wisconsin, respecting the issuing of patents for certain lands of the Stockbridge Indians, and the valuation and sale of their reservation, and asking for such information as this department possessed in relation to the subject, and my opinion thereon.

Your letter and the memorial were referred to the Commissioner of Indian Affairs on the 30th ultimo for a report. I transmit herewith the report of the Commissioner, dated the 7th instant, together with a communication from the Indian Office, dated March 23, 1860, and a copy of the reply of the Secretary of the Interior, dated April 2, 1860, having reference to the subject of the Stockbridge Indian lands.

In view of the action heretofore taken in the premises, and the statements contained in the report from the Indian Office, dated the 7th instant, I am of the opinion that the plan already adopted for the settlement of the questions raised concerning the lands referred to can be carried out by the department without any legislation by Congress on the subject.

You are respectfully requested to cause the communications of the Commissioner of Indian Affairs of March 23, 1860, and May 7, 1864, to be returned to this department.

Very respectfully, your obedient servant,

J. P. USHER,
Secretary.

Hon. J. R. DOOLITTLE,
Chairman Committee on Indian Affairs, U. S. Senate.

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, March 23, 1860.

SIR: By the 13th article of the Stockbridge and Munsee treaty of February 5, 1856, it was provided that "the Secretary of the Interior, if deemed by him expedient and proper, may examine into the sales made by the Stockbridge Indians, to whom lots of land were allotted in conformity to the act of Congress entitled 'An act for the relief of the Stockbridge tribe of Indians in the Territory of Wisconsin,' approved March third, one thousand eight hundred and forty-three, and if it shall be found that any of the said sales have been improperly made, or that a proper consideration has not been paid, the same may be disapproved or set aside. By the direction of the said Secretary, patents to such lots of land shall be issued to such persons as shall be found to be entitled to the same."

In accordance with this provision of the treaty, on the 10th of November, 1856, Amos Layman, esq., was appointed, with the approbation of your predecessor, a special agent to investigate the titles to lots in the town of Stockbridge, Wisconsin, and upon the presentation of his final report it was found that he had neglected to preserve and return to the department the testimony upon which his opinions were predicated; hence it was deemed necessary to re-investigate the subject, and with your approbation the matter was submitted to Agent Bonesteel on the 30th of April, 1858, with instructions to take testimony in each case. His final report was received here the 22d of December last, and upon an examination of the evidence I have deemed it proper to prepare a synopsis of the testimony presented in each case, with appropriate remarks indicating the conclusions to which I have arrived from a careful examination thereof, and I herewith transmit the same, marked A, for your consideration and such action as you may think proper.

With a view to facilitate the examination I have caused separate lists to be prepared, indicating the action which, in my opinion, should be taken in the premises, and I respectfully submit the same herewith.

List marked B contains the names of certain parties in whose favor patents should be issued for lots or parts of lots in the town of Stockbridge, Wisconsin, under the provisions of the 4th article of the Stockbridge treaty of November 24, 1848, as described in the schedule appended to said treaty.

List marked C contains descriptions of the lots or parts of lots to be patented to certain parties under the 16th article of the treaty with the Stockbridges and Munsees of the 5th of February, 1856.

List marked D contains descriptions of lots or parts of lots which certain parties are entitled to purchase at the minimum value of \$1 25 per acre under the 14th article of the treaty of February 5, 1856, as designated in a schedule appended to the 16th article thereof.

List marked E contains descriptions of lots or part of lots which are claimed by certain parties by purchase from the Indians to whom they were allotted, and in regard to which alleged sales the testimony is not deemed satisfactory. Respecting this class of cases I would state that, in view of the complicated character of the alleged titles, the difficulty of determining the competency and credibility of the witnesses, the trouble and expense incident to a re-investigation, the improbability of procuring better evidence than that which has been presented, the great length of time which has been consumed, and the further delay which would be occasioned by a re-investigation, I would respectfully recommend that patents should issue in each case to the original allottee, if living, or, if dead, to his or her heirs, leaving the question of title to be determined by the proper courts. By the adoption of this course of action all questions respecting the legality of conveyance and payment of consideration can be most satisfactorily determined by the courts having power to impeach incredible witnesses, and they

can best judge of the fairness or unfairness of the entire transaction, and I cannot perceive that any injustice can be practiced by carrying out this view, as it evidently harmonizes with the provisions of the 13th article of the treaty of 1856.

List marked F contains descriptions of the lots or parts of lots ceded to the United States by the treaty of 1848, and which are subject to sale under the provisions of the 14th article of the subsequent treaty of February 5, 1856.

List marked G contains descriptions of lots or parts of lots in regard to which no testimony has been taken, and consequently they are held as belonging to the United States, and subject to sale under the 14th article of the treaty of 1856.

I also enclose herewith all the evidence presented to this office by Agent Bonesteel, together with the map indicating the lots referred to, and have the honor to request that, when you have determined as to what action shall be taken in regard to the subject, you will return the papers with such instructions as you may deem appropriate.

Very respectfully, your obedient servant,

A. B. GREENWOOD,
Commissioner.

Hon. J. THOMPSON,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
April 2, 1860.

SIR: Herewith are returned the descriptive lists and other papers, which accompanied your report of the 23d ultimo, respecting the investigation of the titles to lots in the town of Stockbridge, made under the provision of the 13th article of the treaty of February 5, 1856, with the Stockbridges and Munsees, of Wisconsin.

I have examined the lists and synopsis, and concur generally in the suggestions of your report. You are, therefore, authorized to take the necessary steps for carrying them into effect.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. A. B. GREENWOOD,
Commissioner of Indian Affairs.

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, May 7, 1864.

SIR: I have the honor to acknowledge the receipt, by reference from you, of the communication of the Hon. James R. Doolittle, enclosing a memorial of the legislature of Wisconsin to Congress, in relation to the issuing of patents for certain lands of the Stockbridge Indians, and the valuation and sale of their reservation, and asking such information on the subject as may be in the possession of the department, and also the opinion of the department thereon.

I have to say, in answer, that a report was made by this office to the Secretary of the Interior on the 23d of March, 1860, intended to cover the whole subject of the Stockbridge Indian lands, and looking to a final settlement of the difficulties growing out of the action had under the different treaties and acts of Congress, which had caused some conflict in claims to said lands. The Secretary concurred in the suggestions made in that report, and directed this office to take the necessary steps to carry them into effect. That has since been the basis of the action of this office in relation thereto.

For your information as to the suggestions and recommendations made, I would respectfully refer you to said report.

It will be perceived from that report that the subject has been investigated at different times by special agents appointed by the department for that purpose. The last report on the subject was made by Agent Bonesteel, December 22, 1859, after which time a careful examination of the whole subject was made by this office, a synopsis of the evidence in each case was made out, the claimants classified, and the action deemed by this office proper to be taken in each class of cases indicated.

The result was, that 251 claims were approved, and the General Land Office was requested to issue patents for the same to the parties indicated. Of these, 215 patents have been issued, and the balance would have been but for alleged defect in description of land, the failure of agent to furnish the area, and, in a few cases, a conflict. For these various reasons, the issuance of patents for the remaining 36 claims, which had been approved, was temporarily suspended until the alleged defects should be supplied, which this office will make effort to do.

There was a list of six persons found to be entitled to pre-emption under the 14th article of the treaty of February 5, 1856. The requisite proof in these cases has not been furnished to the department by the persons entitled, or they, too, would have received patents.

I fail to see, therefore, at this stage of the proceeding, that any new legislation is demanded to settle the long-continued and vexed question. The cases referred to in the memorial, where patents are withheld, are those alluded to above, in which there is a temporary suspension to obtain pertinent descriptions, &c., of the land to be patented, or where there has been a failure to furnish the necessary proof of pre-emption by those entitled.

Thus much in reference to the first and second paragraphs of the memorial.

As to the balance of the memorial referring to a class of persons who had settled upon the reservation and made improvements thereon, and who ask Congress to authorize the sale of said lands at \$1 25 per acre, or such other reasonable sum as they may think just, and claiming consideration from the fact that they have spent their own money upon the land, making it valuable, &c., &c., it is deemed a sufficient answer that, aside from the fact that they were there without authority of law, the provision made in the 14th article of the treaty of 1856, for the sale of these lands, fixes the minimum price at \$10 and \$5 per acre, respectively, for the classes named, and is considered by this office very favorable to the purchaser, requiring no change. From information received by this office, regarded as reliable, it is understood that these lands are of a superior quality, and many of them under fine cultivation, and are worth, and will command, \$25 per acre.

Considering all the circumstances attending the subject, the many years it was before the department without reaching any satisfactory settlement, the present position of affairs pertaining to it, the progress already made, and the prospect of bringing it to a final conclusion, it is believed that any new mode for the settlement of these difficulties, adopted at this time, would lead to greater confusion, and that all that is required is to carry out to final completion the plan submitted by this office, and approved by the Secretary, in the report above alluded to.

Very respectfully, your obedient servant,

W. P. DOLE, *Commissioner.*

Hon. J. P. USHER, *Secretary.*