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MIAMI INDIANS, AND THE RIGHTS OF SETTLERS ON THEIR
LANDS.

LETTER

FROM THE

SECRETARY OF THE INTERIOR,

RELATIVE TO

*The condition of the Miami Indians, and the rights of certain settlers upon
the lands of said Indians.*

FEBRUARY 11, 1873.—Referred to the Committee on Indian Affairs and ordered to be
printed.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 8, 1873.

SIR: I have the honor to transmit herewith a copy of a communication from Enoch Hoag, superintendent of Indian affairs for the central superintendency, dated Lawrence, Kansas, December 7, 1872, in regard to the condition of the Miami Indians, and the rights of certain settlers upon the lands of those Indians, and the necessity of some legislation for the purpose of protecting the interests of the Indians, and, at the same time, do justice to the settlers.

The subject requires the immediate attention of Congress, for, without legislative action, it is impossible to remove the difficulties and embarrassments that now exist or to do justice to the Indians and settlers. I invite special attention to the conclusions at which the superintendent arrives, viz, that the Miami Indians be settled at once in the Indian Territory, confederated, according to the desires of both tribes, with the Peorias; that the money due them, under former treaties, be paid, and that they be reimbursed for lands fraudulently taken by the act of 1858, to which reference is made in his letter.

Concurring in the general views of the superintendent, and in his recommendation for a final settlement of these difficulties, I beg to express the earnest desire that this subject may receive the immediate attention of the House of Representatives, through its Committee on Indian Affairs, to which committee, if it be proper, I beg to suggest that this letter, with Mr. Hoag's communication, be referred.

Very respectfully, your obedient servant,

C. DELANO,
Secretary.

The Hon. SPEAKER of the House of Representatives.

OFFICE OF INDIAN AFFAIRS,
CENTRAL SUPERINTENDENCY,
Lawrence, Kansas, Twelfthmonth 7th, 1872.

Hon. C. DELANO,

Secretary of the Interior, Washington, District of Columbia :

Referring to a letter from this office to the honorable Commissioner, of Secondmonth 10th last, submitting report of negotiations, under instructions from the Department for the transfer of lands of certain Miami Indians to settlers thereon for a consideration mutually agreed upon by the parties in interest, (see Department letter August 5, 1871, and papers connected therewith, to which I call especial attention,) and also referring to personal interview between the honorable Secretary and myself on the 10th of October last on the cars *en route* to Washington, I desire to say, this office has labored long, earnestly, and impartially for the interests of this people, and, as will be observed by reference to letter of Fifthmonth 5th, 1871, succeeded in obtaining a proposition from the Indians acceptable to the settlers, by which the former might receive from the latter an approximate value for their lands. This proposition was indorsed, with certain modifications, and returned by Acting Commissioner Clum, with instructions, under direction of the honorable Secretary of the Interior, to complete the negotiations (see Department letter above referred to) subject to ratification by Congress. In accordance with said instructions, this office labored in good faith, and perfected arrangements with a majority of the settlers; and could the congressional aid, referred to in Commissioner's letter, have been realized to confirm the negotiations, and in accordance with recommendations from this office could they have been allowed, in accordance with the oft-expressed desires of both the tribes in interest, to remove to and become incorporated with the Peorias, Weas, &c., this perplexing question would have ceased to trouble the Department, and the Indians referred to would have been comfortably settled in the Indian Territory.

These people, having their all at stake, dependent solely upon the legislation of Congress, knowing full well that designing men were at work, in and out of Washington, to secure their few remaining lands, for a mere moiety, to rob them of the greater portion of their annuities, naturally desired to be heard in the premises, and asked and asked permission to visit Washington for that purpose about one year ago.

In reply, this office was requested to inform them "that it is not deemed necessary at this time to visit this city, (Washington,) and that their interests will be attended to by this office," (see Commissioner's letter January 15, 1872.) Apprehending that advantage would be taken of their absence by the parties referred to, to misrepresent them, they repeated the request all the time, urging, as an ultimate object, their consolidation with the Peorias. This office, in view of the importance of their affairs pending before Congress, indorsed there quest, (see letter Secondmonth 3, 1872.)

By Commissioner's letter in answer thereto, "February 4," it will be seen they are again promised "their interests will be attended to by this office," and they are again refused permission to visit Washington. Now for the first time the honorable Commissioner informs this office that if they desire to join the Peorias at all they must do so as individuals, after having been citizenized against their will, and, but for their persistency, without their knowledge. And this because the twenty-sixth article of the omnibus treaty of 1867 limits the time for their consoli-

dation to two years, while it was always understood by them and by this office that congressional aid must be had to enable them to dispose of their property and effect said consolidation, and for this very reason, with others, they asked to be represented in Washington.

The necessity of first passing a bill to citizenize these Indians against their will, to force them (if they join at all) to join the Peorias as individuals, losing their identity as Miamies, is hardly apparent. But they are informed that a "bill is already before Congress, which meets the approval of the Department," and this bill dissolves their relations as Miamies.

The Miami chiefs hardly recognize this approval of the Department as attending to their interest as promised.

It may be assumed that they, as ignorant Indians, are not cognizant of their own wants, and that their interests might be faithfully attended to, even in opposition to their wishes; but if they have not the capacity to judge for themselves, it would seem hardly consistent, in such a condition, to force upon them citizenship.

Again, it will be observed, that the mutual arrangements between themselves and the settlers heretofore referred to, provide for the payment of the original appraisement value of their lands in 1860, and 7½ per cent. per annum added to date of sale, or from 80 to 90 per cent. advance instead of twenty per cent. as provided in the bill (Shanks's bill) before Congress, which they are informed has the approval of the Department, and through which they expected the promised Department aid.

It may reasonably be asked by what moral or even legal right is it presumed to legislate for these Indians, involving in such legislation the vested rights of the tribe, without their knowledge or consent?

I can find no such authority, except it be contained in the eleventh article of the treaty of 1854, and a careful reading of said article convinces me clearly that Congress can only make such provisions by law, as experience shall prove to be necessary, to advance the interests of said Indians, and surely it will not be claimed by the advocates of the bill in question, which reduces the price to be paid for their lands to two-thirds the amount actually agreed upon between themselves and the purchasers, and upon which contract a cash payment has already been made, that such a law is necessary to advance the interests of the tribe.

The question naturally arises, in the perusal of the bill, who constitute the Miami tribe of Indians and to whom do their lands in Kansas belong? I find in the last clause of the sixth article of the treaty of 1838 the following words, to wit:

Nor shall any person or persons other than the members of said tribe, who may, by sufferance, live on the land of, or intermarry in said tribe, have any right to the land, or any interest in the annuities of said tribe, until such person or persons shall have been by general council adopted into their tribe.

By article 10 of the same treaty, the United States stipulated "to possess the Miami tribe of Indians of, and guarantee to them forever, a country west of the Mississippi River, to remove to and settle," &c., (not to remain in Indiana and receive their proportionate share,) "and when the said tribe shall have emigrated, the United States shall protect the said tribe," &c., &c.

By the treaty of 1840, which appears to have been finally adopted, with amendments, May 15, 1841, the location and boundaries of the lands set apart for the Miami tribe, west of the Mississippi, were defined, and it was therein stipulated that they should remove thereto within five years. The tract of land thus set apart for their occupancy was estimated to contain five hundred thousand acres.

It also appears from the treaties referred to, that the consideration for the lands ceded to the United States, by virtue of said treaties, was stipulated to be paid to said tribe in money, and in no case was the tract of land set apart for their future homes referred to as even part consideration for the land ceded to the Government east of the Mississippi.

On the contrary, it appears to have been promised them wholly in consideration of occupancy, in the language of the treaty, "to remove to and settle on." I apprehend it will not be claimed by the advocates of the bill, that any portion of the so-called Miami lands of Kansas would be recognized as the property of the tribe if they had not removed to and settled upon them. This was the only condition imposed upon them as the price of the inheritance; the Miamies of Kansas paid the price, and in equity, at least, are entitled to the proceeds of the same.

By the treaty of 1854, it is observed that certain chiefs, "Big Legs" and others, residing in Kansas, and representing the Miami Indians of Kansas, were recognized by the Government as delegates representing the Miami tribe of Indians, and treated with as such, while the five Indians, resident of the State of Indiana, were not so recognized in the preamble, but were required by the Senate amendment to article 4 to "take the opinion of their people, on their return home, and advise the Department without delay;" and appended to the Senate amendments appears the following article, to wit:

The Miami Indians, of Indiana, being now represented in Washington by a fully authorized deputation, and having requested the foregoing amendments, the same are binding on them, &c.

Now the treaty-making power of the Government did recognize a delegation of Indiana Miamies as fully competent to negotiate with the Government, and with the Western Miamies in all matters involving a common tribal interest, and by that treaty the common funds of the tribe were divided, in a manner satisfactory to both Eastern and Western Miamis; a portion of their reserve in Kansas was ceded to the United States, but no portion of the proceeds was even claimed by the Indiana Miamies, for the very good reason they had no interest in it, and if any evidence is wanted to confirm this view of the case, the treaty itself seems to furnish just that kind of evidence. The second article thereof states that each individual, or head of family, of the Miami tribe, "now residing on said lands," (surely not those residing in Indiana, who never saw them,) "shall select, if a single person, two hundred acres, and if the head of a family, a quantity equal to two hundred acres for each member of the family," &c., "and if, by reason of absence, or otherwise, any single person or head of family, entitled to land, as aforesaid, shall fail to make his or her selection within the period prescribed, the chiefs of the tribe shall proceed to select the lands for those in default." Further on, in the same article, appears the following language, to wit:

Provided, That if any single person, or head of family entitled to land, shall have been overlooked or wrongfully excluded, and shall make the fact appear to the satisfaction of the chiefs, such person or family may, with the approbation of the Commissioner of Indian Affairs, receive their quantity, &c.

Now to whom do these provisions apply? Can they, by any language used in said article or treaty, be made to apply to others than those for whom the article was expressly inserted? The provision bears its own unmistakable evidence: "those now residing on said lands," "who by absence or otherwise have failed to make their selections," or, "who have been overlooked or wrongfully excluded;" and in either case a specific remedy is therein provided, through the chiefs in both cases, but requiring the approbation of the Commissioner of Indian Affairs in the

latter. But the proposed bill at this time seeks to incorporate into the tribe, before dissolving its tribal organization, for the apparent purpose, and no other, of receiving a share of the funds to be divided at its dissolution, a class of people claiming some Miami blood, but who to this day have never been recognized as Miamies, either by the tribe in Kansas or by those residing in Indiana, who, it is certain, have never joined the tribe in Kansas, and until now have claimed no benefits from their annuities. They are residents of Indiana, and for whom if they ever had any rights, (which is by no means admitted by the chiefs and council,) the treaty of 1854 made provision, (second article, and also Senate amendments,) "the Miami Indians of Indiana being now represented in Washington, by a fully authorized deputation," &c. If the Senate was imposed upon at the time of making the treaty, it was in consequence of the failure of the "fully authorized deputation" from Indiana to report their numbers.

The tribe in Kansas acted in good faith, and cannot in any moral or legal sense be made to suffer, by a failure of the treaty to provide for all of the Indiana Miamies. Ordinarily the chiefs of a tribe are presumed to know who are entitled to tribal membership and who are not, and their decisions in council are regarded as final and conclusive; hence the reference of this matter to them by the second article was very properly made, and in this case seems to me especially binding on account of its reference as aforesaid.

But the advocates of the present bill claim another provision of the same treaty of 1854, applicable to this case, and from which they claim authority to entail these residents of Indiana upon the Miami tribe in Kansas by legislation, and without the consent of the tribe, to wit:

ART. 11. The object of this instrument being to advance the interests of said Indians, it is agreed, if it prove insufficient, from causes which cannot now be foreseen, to effect these ends, that the President may, by and with the advice and consent of the Senate, adopt such policy in the management of their affairs as, in his judgment, may be most beneficial to them, or Congress may hereafter make such provision by law as experience shall prove to be necessary.

Now it seems clearly to have been the intent of this article to confer upon Congress the power to legislate upon such matters only as were not reached by the treaty itself from causes unforeseen, and then only in their interest and to their advantage; from the wording of the article it cannot be so construed as to confer any power to legislate detrimentally to their interests.

Inasmuch as the provisions of this article are general and not specific in their character, and only intended to reach cases unforeseen and unprovided for, it must be apparent that they cannot apply to the case of the residents of Indiana, seeking through counsel to be incorporated into the tribe, who, even if they had rights, must have been overlooked, in which case they would have a specific remedy in article 2, already referred to. If not overlooked they must have been considered in the adoption of the Senate amendment to the treaty, wherein it limits the number to receive annuities, &c., with those residing in Indiana, to the corrected list of three hundred and two persons, in which case the next claim of the amendments made a full exemption from the burden, so far as the Miamies west of the Mississippi were and are concerned, in the following words: "But these amendments are in no way to affect or impair the stipulations in said treaty contained as to the Miamies west of the Mississippi," &c. Again, it can hardly be considered "to advance the interests of said Indians," to provide by law for the incorporation into their tribe, against their consent and contrary to the long-established usage of the Government toward Indian tribes, aliens

and strangers numerically sufficient to absorb at least one-half their resources.

As heretofore stated, by the treaty of 1854, at the conclusion of which, in the language of the Senate amendment, "the Miami Indians of Indiana being now represented in Washington by a fully authorized deputation," &c., all the funds of the tribe were divided, and the equitable portion of those residing in Indiana was set apart for them; so with the tribe in Kansas; but no claim was advanced by the former for any portion of the proceeds of the sale of the surplus lands in Kansas, that property being conceded by the Indiana Miamies and by the Government as belonging exclusively to the tribe in Kansas. The provisions of this treaty are clear, and appear to have been understood by all the parties thereto; but it must be remarked that while the "fully authorized deputation" from Indiana was present, and requested the Senate amendments to the same, the delegates from the tribe in Kansas were not present at the adoption of said amendments, and were not consulted herein. The following language appears in the same, to wit:

But these amendments are in no way to affect or impair the stipulations in said treaty contained as to the Miamies west of the Mississippi.

* It is a noticeable fact that while the treaty itself provided for the equitable division of the funds of the tribe between the Indiana and Western Miamies, the amendments (at the adoption of which the former were present, and not the latter) contained a provision that—

No persons other than those embraced in the corrected list agreed upon by the Miamies of Indiana, in the presence of the Commissioner of Indian Affairs, in June, 1854, comprising three hundred and two names as Miami Indians of Indiana, and the increase of the families of the persons embraced in said corrected list, shall be recipients of the payments, annuities, commutation moneys, and interest hereby stipulated to be paid to the Miami Indians of Indiana, unless other persons shall be added to said list by the consent of the said Miami Indians of Indiana, obtained in council according to the custom of the Miami tribe of Indians.

Now, if this proviso means anything, it evidently means to establish the fact that the three hundred and two persons contained in the corrected list referred to were all that were left east of the Mississippi entitled to receive any of the annuities or claim any of the benefits of tribal relationship with the Miami tribe of Indians. It undoubtedly intended to settle the question of all other claimants then and thereafter, and in that settlement it pronounced them bogus.

Without this proviso no one, I apprehend, could be found even making the attempt to fasten these residents of Indiana upon the tribe in Kansas; for surely, if they belonged with the Miamies anywhere, there could have been no dispute as to which branch they naturally belonged, and hence the delegates from Indiana requested the amendment; and the Senate, aware of the illegality of adopting the same in the absence of the Kansas Miamies, appended thereto the following, to wit:

But these amendments are in no way to affect or impair the stipulations in said treaty contained as to the Miamies west of the Mississippi, &c.

The act of Congress of June 12, 1858, is offered as a precedent upon which it is proposed to pass the present bill.

This act appears to have been found as an attachment to a general supplemental appropriation bill for the Indian Department for that year, and provided that such persons of Miami blood as had been excluded from the annuities of the tribe since their removal, &c., should receive their proportion of annuities and be entered upon the pay-roll, &c. It also provides lands for each of said persons out of the common reserve in Kansas, &c., which, in the language of the treaty heretofore referred

to, was given to the Miami tribe "to remove to and settle on." (See treaty 1838.)

From the provisions hereinbefore set forth, it seems clear to me that the act of 1858 was in direct violation of the treaties of 1838, 1840, and 1854, and hence entitled to no force as a precedent. It was passed without the knowledge or consent of the tribe, and only submitted to because they had not the power to resist it. It was passed in the interest of speculators in these lands, who have made enough from the proceeds to support them to the present day, and who now appear before the Department and Congress to obtain a further share in the distribution of the remaining assets of the tribe.

Examine the records of the counties in which said lands are located, and the large share of this valuable domain wrongfully and fraudulently taken from the Miami tribe, shown to have passed through and still remaining in the hands of these self-constituted agents and lobbyists of said bogus Miamies, residents of Indiana, and the secret of their extreme interest in the passage of this bill will be revealed.

Another feature of the proposed bill, equally fatal to the interest of the Miami tribe, is contained in the following extract, to wit:

Provided, That no portion of said consolidated fund shall be paid to any members of said tribe, or person of Miami blood or descent, who has drawn annuities or money, or received allotments of land, from any other tribe or tribes of Indians, at any time since the removal of the Miami tribe of Indians to Kansas.

Now, it is well understood by this office and the Indian Bureau that an agreement was made between the Miami Indians and the Peorias, by which the two tribes were to be consolidated, under the name of Confederated Peorias and Miamies; that said tribes have knocked at the door of Congress for years, begging for a ratification of this agreement; that the Miamies were impelled to this course in part by their natural attachment to the Peorias, and of necessity because of the settlement of their lands in Kansas by white people, in violation of treaty, and from whose encroachments the Government afforded them no protection.

In anticipation of the early ratification of this agreement by Congress, a portion of said tribe did actually go to the Peorias, not supposing that by so doing (with the full knowledge of this office and the Indian Bureau) they were in any danger of losing their own rights in their own tribe, even though through the kindness of the Peorias they may have been allowed to draw annuities in advance of the proposed consolidation.

But the interest of these self-constituted lobbyists and agents of the bogus Miamies is perceptible in this as well as other provisions of the proposed bill. The more real Miamies they can exclude from participation in the assets of the tribe, and the more bogus Miamies they can include, the greater of course is their share of the spoils. They have secured the assistance of the former chief of said tribe to work in their interests, and he, of course, is provided means to visit Washington to aid in procuring the passage of the bill, and he is bitter in his complaints at the sum taken from the tribal funds by an almost unanimous vote of the tribe to pay the expenses of the delegates visiting Washington last winter to look after the interests of their people, and but for whom, undoubtedly, the obnoxious bill in question would have become a law.

The Miami matters still being in the hands of the conference committee, as the agent of the lobbyists, and former chief referred to, were preparing again to go to Washington, at the opening of Congress, the present chiefs, uneasy at the probable result of their affairs, still pend-

ing, without a representation, on behalf of the tribe, appealed to this office for permission for a duly authorized delegation of the tribe to visit Washington during the present session of Congress. This office indorsed said request, and transmitted the same to the honorable Commissioner, on the 9th ultimo, for approval. The honorable Commissioner replied, under date of November 26, "that it is not deemed necessary that a delegation of said Indians should visit this city (Washington) for the purpose indicated," &c. If it is not deemed necessary that a delegation should visit Washington for the purpose indicated, their interests should be attended to, and to insure attention some person or persons should be authorized to represent them fully cognizant of all the facts.

They are deeply interested in the legislation of the present Congress. Justice demands that their rights and their interests be protected; their treaties demand it; the present humane policy of the Government toward the Indians demands it, and I would be derelict in my duty toward the tribe if I did not, in their behalf, ask it. Expediency requires it. One of the most effectual means that I have found of reaching the wild tribes of the plains is through the semi-civilized. Deal justly with the latter at all times, acknowledge their rights, and cheerfully grant them, take no advantage by unfriendly legislation, recognize no professional leeches or designing white men as their agents, and through them the Government can always rely for aid in managing the former. In a word, rid the central superintendency of the class of men referred to, and the agents and superintendent, with the encouragement of the Department, can have a reasonable assurance of successful management of the Indians. To this end I recommend (and earnestly ask the aid of the honorable Secretary) to settle the Miami Indians at once in the Indian Territory, confederated, according to the desires of both tribes, with the Peorias. Give them the money due them from former treaties and the sale of their lands, and, if need be, reimburse them for lands fraudulently taken by the act of 1858, before alluded to. This will enable them to join the Peorias on terms of equality, and the vexed question of the Miamies will be effectually and justly settled; and the confederated tribe will be able to render valuable aid in the civilization of their wild brethren of the plains.

All of which is respectfully submitted.

Very respectfully,

ENOCH HOAG,
Superintendent Indian Affairs.