

University of Oklahoma College of Law

University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

3-21-1872

Pottawatomie Indians. Letter from the Secretary of the Interior, relative to the condition of certain Indians known as Pottawatomies

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indigenous, Indian, and Aboriginal Law Commons](#)

Recommended Citation

H.R. Exec. Doc. No. 203, 42nd Cong., 2nd Sess. (1872)

This House Executive Document is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact Law-LibraryDigitalCommons@ou.edu.

POTTAWATOMIE INDIANS.

L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

RELATIVE TO

The condition of certain Indians known as Pottawatomies.

MARCH 21, 1872.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 15, 1872.

SIR: I deem it my duty to call the attention of Congress to the condition of certain Indians known as Pottawatomies. Reference to the treaty stipulations between the Government and these Indians will be necessary to a proper understanding of the questions which I desire to submit.

By the first article of the treaty of November 15, 1861, between the United States and the Pottawatomie tribe of Indians, (Statutes at Large, volume 12, page 1192,) they agreed with the United States that the Commissioner of Indian Affairs should cause the whole of their then reservation, consisting of 576,000 acres, which they had acquired by the fourth article of the treaty of July 23, 1846, to be surveyed as public lands are surveyed.

By the second article of said treaty, an agent of the United States for said tribe was to take a census of all its members, classify them in separate lists, showing the names, ages, and numbers of those desiring lands in severalty and of those desiring lands in common. Each adult Pottawatomie was to choose for himself, and each head of a family for the minor children, and the agent for orphans and persons of unsound mind. There was to be assigned, under the direction of the Commissioner of Indian Affairs, to each chief signing the treaty, one section; to each head-man, one-half section; to each head of a family, one-quarter section, and to each other person, eighty acres of land, to be selected according to the legal subdivision of survey; after which, certificates were to issue by the Commissioner of Indian Affairs for the tracts so assigned in severalty, specifying the names of the individuals respectively, and such tracts were set apart for the perpetual and exclusive use and benefit of such assignees and their heirs; these tracts to

be exempt from levy, taxation, or sale, and to be alienable in fee, leased, or otherwise disposed of only to the United States, or to persons then being members of the Pottawatomie tribe and of Indian blood, with the permission of the President; the receipt of such certificates to be deemed a relinquishment by the party to all right to any portion of the lands assigned to others in severalty or in common.

The fourth article provides that those members of said tribe desiring to hold their lands in common shall have set apart an undivided quantity, sufficient to allow one section to each chief, one-half section to each head-man, one hundred and sixty acres to each head of a family, and eighty acres of land to each other person; and said land shall be held, by that portion of the tribe for whom it is set apart, by the same tenure as the whole reservation has been held by all of said tribe under the treaty of 1846.

The third section of the said treaty provides that when the President of the United States shall have become satisfied that adults, being males and heads of families, who may be allottees in severalty under the provisions of the treaty, are sufficiently intelligent to control their own affairs, he may cause the lands severally held by them to be conveyed by patent in fee simple, with power of alienation, and may cause to be paid, in cash or bonds, their proportion of the cash value of the credits of the tribe, principal and interest, held in trust by the United States; also, that they may receive their portion of the proceeds of the sale of the lands under the provisions of the treaty.

And such patents being issued, and such payments ordered to be made by the President, such competent persons shall cease to be members of said tribe and shall become citizens of the United States, and thereafter the land so patented to them shall be subject to levy, taxation and sale, in like manner with the property of other citizens.

Before this could be done, such persons were required to appear in open court, in the district court of the United States for the district of Kansas, and make the same proof and take the same oath of allegiance as is provided by law for the naturalization of aliens; making proof, also, to the satisfaction of the court, that they were sufficiently intelligent and prudent to control their affairs, and that they had adopted the habits of civilized life, and had been able to support themselves for at least five years.

The fifth article of the aforesaid treaty provides for the sale of the remainder of their lands, first alluded to, not required to satisfy the allotments in severalty and in common, before referred to. Any further reference to the provisions of this treaty is not deemed necessary to the understanding of the questions which will be here presented.

By the first article of the treaty concluded between the United States and the Pottawatomie Nation, March 29, 1866, (Statutes at Large, vol. 14, p. 763,) the beneficial provisions in behalf of the prudent and intelligent members of said tribe, contained in the third article of the treaty first referred to, were extended to all adult persons of said tribe, without distinction of sex, whether heads of families or otherwise.

The third treaty between these parties was concluded February 27, 1867, (see Statutes at Large, vol. 15, p. 531,) the first section of which contemplated the location of the Pottawatomies, if satisfactory to them and if approved by the Secretary of the Interior, upon such tract of land, not to exceed thirty miles square, as shall be set apart as a reservation for the exclusive use and occupancy of that tribe, to be selected in the Indian country, "and upon the survey of its lines and boundaries and ascertaining of its area, and payment to the United States for the same, as hereinafter mentioned and set forth, the said tract shall be patented to the Pottawatomie Nation."

The second article of this treaty provides that if a new reservation is selected from the Creeks, Seminoles, or Choctaws, the price to be paid shall not exceed the cost of the same to the Government, and the sum to be paid by the tribe for said reservation shall be taken from the amount to be paid by the Leavenworth, Pawnee and Western Railroad Company for the lands sold to them under the treaty of 1861, which amount is the common property of the tribe.

The third article of this treaty provides that after such reservation shall have been selected, it shall never be included in the jurisdiction of any State or Territory, unless an Indian territory shall be organized, as provided for in certain treaties made in 1866 with the Choctaws and other tribes occupying the Indian country; in which case, or in case of the organization of a legislative council for the regulation of matters affecting the relations of the tribes to each other, the Pottawatomies resident thereon shall have the right to representation, according to their numbers, on equal terms with other tribes.

The fourth article provides that a registry shall be made, under the direction of the agent and business committee of the tribe, within two years after the ratification of the treaty, "which shall show the names of all members of the tribe who declare their desire to remove to the new reservation, and of all who desire to remain and become citizens of the United States; and after the filing of such registry in the office of the Commissioner of Indian Affairs, all existing restrictions shall be removed from the sale and alienation of lands by adults who shall have declared their intention to remove to the new reservation." There are other provisions in this treaty bearing upon this subject, but they are not deemed of sufficient importance to require a reference thereto, except as follows: Article second, before referred to, was amended before the ratification of the treaty so as to provide that "in case the new reservation shall be selected from the lands purchased by the Government from the Creeks, Seminoles, or Choctaws, the price to be paid for the said reservation shall not exceed the cost of the same to the Government of the United States, and the sum to be paid by the tribe for said reservation shall be taken from the amount which may be received for the lands which were offered for sale to the Leavenworth, Pawnee and Western Railroad Company, under the treaty dated November 15, 1861, which amount shall be the common property of the tribe, except the *Prairie Band*, who shall have no interest in said reservation, to be purchased as aforesaid, but in lieu thereof shall receive their *pro-rata* share of the proceeds of the sale of said lands in money as the same may be received."

A careful examination of the treaties referred to in this communication has brought my mind to the conclusion that they were intended to provide for all the Pottawatomies the rights of naturalization and citizenship; that it was not expected, however, that each and every one of said Pottawatomies would avail himself of this right, and that, in order to provide for those who did not become citizens, the Secretary of the Interior was authorized to set apart as a reservation for their exclusive use and occupancy, as a "*tribe*," a tract of land, not exceeding thirty miles square, in the Indian country, and that upon payment therefor "*a patent should issue to the Pottawatomie Nation.*"

I am informed by the Commissioner of Indian Affairs that all the Pottawatomies have become citizens of the United States. It would, therefore, seem that there is now no Pottawatomie "*Nation*" in existence, nor any "*tribe*" of said nation, except what is called the *Prairie Band* in the amendment to the second article of the treaty of February 27,

1867, and this band, by the express words of the amendment, have no interest in said reservation.

The expectations of the contracting parties, at the date of the treaty, have not been realized. The Pottawatomies are now all citizens; the nation is extinct, and no patent can be issued to the nation, as such, according to the text and unequivocal meaning of the treaty of 1867. A tract of land thirty miles square in the Indian country has been surveyed, and many of the Pottawatomies, now citizens, have removed to it and are now residing thereon. It has not been paid for because it has never been conveyed by patent, as contemplated by the treaty, and I am of opinion that, under existing circumstances, the Secretary of the Interior has no power to cause this tract to be conveyed to the Pottawatomies. It certainly cannot be conveyed "*to the nation,*" because there is no nation. It cannot be conveyed to individual members of what was once the nation, nor to a trustee for the benefit of the nation, for want of authority of law.

In consequence of these difficulties it seems to me that there is necessity for further legislation, in order that justice may be done to the Pottawatomies who have removed to this land.

I have the honor, therefore, to recommend such legislation as will secure to the Pottawatomies a portion of the tract of land before referred to equal to eighty acres for each individual, and, as these Indians have become citizens, and hence possess the right of alienation, I suggest that the legislation be so guarded as to secure this land to the Pottawatomies so long as they remain together as an organized body, and no longer; and that it be not accompanied with any provision which will permit them, or any of them, to alienate their title; and that they may be permitted to hold the land in severalty or in common, as they may elect.

Very respectfully, your obedient servant,

C. DELANO,
Secretary.

Hon. JAMES G. BLAINE,
Speaker House of Representatives.