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Joint memorial of the Legislature of Kansas, relative to the title of the Osage ceded lands in Kansas

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OSAGE CEDED LANDS IN KANSAS.

JOINT MEMORIAL

OF

THE LEGISLATURE OF KANSAS,

RELATIVE TO

The title of the Osage ceded lands in Kansas.

FEBRUARY 2, 1874.—Referred to the Committee on the Judiciary and ordered to be printed, to accompany bill H. R. 1724.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled :

The memorials of the legislature of the State of Kansas respectfully represent that, by the first article of the treaty of the United States with the Great and Little tribes of Osage Indians, dated the 29th day of December, 1865, and proclaimed the 21st day of January, 1867, there was ceded to the United States a tract of land about fifty miles north and south, and thirty miles east and west, in the State of Kansas. That by the act of Congress of March 3, 1863, there were granted to the State of Kansas, for the purpose of aiding in the construction of a railroad from Leavenworth, by the way of Lawrence, to the south line of the State of Kansas, alternate sections for ten miles on each side of the road from Leavenworth to the southern line of the State, with a right to select from odd sections, for indemnity, land within twenty miles of the line of said road. That by the act of Congress of July 26, 1866, a similar grant was made for the purpose of aiding the Union Pacific Railroad Company, Southern Branch, to construct a road down the Neosho Valley and into the Indian country; the first-named of which grants is now claimed by the Leavenworth, Lawrence and Galveston Railroad Company, and the second, by the Missouri, Kansas and Texas Railroad Company, which last-named company has the right to select, for indemnity, lands, the even sections within twenty miles of the line of its road. That each of the above acts reserves from the operation of said grants all lands heretofore reserved to the United States by any act of Congress, or by any other manner, by competent authority, for the purpose of aiding in any object of internal improvement or other purpose whatever. That said lands were an Indian reservation, and so continued until the proclamation of the Osage treaty in January, A. D. 1867, which was long after the Leavenworth, Lawrence and Galveston Railroad grant, and

some time after the grant now claimed by the Missouri, Kansas and Texas Railroad; that it is claimed by the settlers on said land that, at the times of said grants, the said Osage ceded lands were an Indian reserve, and that it was not included in either of said grants, but, on the contrary, expressly excepted therefrom. It is also claimed by the settlers, and the claim is sustained by the treaty, "that, by the express provisions of the first article of the said treaty, it is provided that said lands shall be surveyed and sold, under the Secretary of the Interior, on the most advantageous terms, for *cash*, as public lands are surveyed and sold under existing laws; but no pre-emption claim or homestead settlement shall be recognized; and after re-imbursing the United States the cost of said survey and *sale*, and the said sum of three hundred thousand dollars placed to the credit of said Indians, the remaining proceeds of sale shall be placed in the Treasury of the United States to the credit of the civilization fund, to be used, under the direction of the Secretary of the Interior, for the education and civilization of Indian tribes residing within the limits of the United States."

Your memorialists would further represent that the Commissioner of the General Land-Office has decided, on two occasions, that said railroads had no land-grant in or through the Osage ceded lands, except the right of way, and a contrary opinion has been given by one of the Secretaries of the Interior; that by a joint resolution of the Senate and House of Representatives of the United States of America, dated the 10th day of April, A. D. 1869, the said tract of land, known as the Osage ceded lands, including both odd and even sections, is thrown open to pre-emption settlement for the term of two years from the date of said joint resolution; that a great number of persons have settled on said Osage ceded lands under the above-named joint resolution, and have made large and valuable improvements on said lands, and many of them have pre-empted and paid for their respective tracts, and received certificates of purchase in the usual form from the register of the local land-office; and others, who settled on said land under said joint resolution, and made valuable improvements thereon, were unable to pay for their said lands within the two years that said joint resolution was in force; and another class of settlers went on said land in good faith, and have made valuable improvements thereon, under the belief that the same would be sold as other lands of the United States are sold, on the most advantageous terms for cash, as expressly provided by the first article of said treaty with said Indians, and that the proceeds arising from such sale would be applied as in said treaty expressly provided. That the Secretary of the Interior of the United States has canceled a large portion of the pre-emption entries aforesaid, made under said joint resolution, on the sole ground that said railroad grants included the Osage ceded lands; and has granted patents to said railroads, or to the State of Kansas for the use of said railroads, for a large portion of said Osage ceded lands. That the same reason that induced the Secretary of the Interior to cancel the pre-emption entries under said joint resolution that have been acted on, will cause the cancellation of the remaining pre-emption entries not yet acted on, when reached in the order of business. Your memorialists would further represent that the right of said railroads to any grant of land (except the right of way) through the Osage ceded lands is controverted by the settlers as well as others, and the claim of said roads seems to be in conflict with the provisions of said treaty, above recited, and with the provisos contained in each of said grants, as well as with the said joint resolution of the 10th of April, A. D. 1869; and as said land-grant to said roads through said Osage ceded lands has been

denied by high official authority of the Federal Government, and the districts courts of the State of Kansas have decided that said railroads have no land-grant through said lands, (except the right of way,) and as a different opinion has been expressed by the Secretary of the Interior, it would seem to be eminently proper that the question of a grant or no grant should be submitted to the decision of the appropriate Federal court, with the view of taking the case to the Supreme Court of the United States, and obtaining the decision of that great tribunal, in which all parties interested, as well as Congress and the Federal authorities, would acquiesce. Any decision made by a court inferior to this would not be satisfactory either to the parties or to Congress. The object of this judicial proceeding is to have all the patents issued to or for the use of said railroads for any portion of the Osage ceded lands declared either null and void or legal and valid. This would settle forever the title to this large tract of country, occupied at this time by a population of about thirty-six thousand persons, and would enable every one who desired to do so to obtain a good title; would prevent endless and ruinous litigation, and remove the only obstacle to the rapid improvement and development of one of the most fertile and productive portions of the State of Kansas. The settlers on said lands, as well as the citizens of the State of Kansas, desire that legal proceedings be commenced at an early day in the Federal courts, with the view of a permanent judicial settlement of this question. That, as patents have been issued by the Executive branch of the Government for a large portion of those lands, and have been delivered to said railroads, there is no other way to set aside and annul said patents, as your memorialists are advised, but by legal proceedings in the name of the United States against said railroads. That to set aside a patent is a judicial act, and requires the action of a judicial tribunal.

Your memorialists have prepared a bill, which is hereto attached, marked A, which they would most respectfully ask your honorable body to pass into a law. They believe this bill, if enacted into a law, will meet all the demands of the case. That it will do no wrong to any one. That all parties interested in the controversy will have a day in court, and an opportunity to be heard in their own behalf. That the great question of title will be forever settled by a tribunal in which all have confidence, and the peace and harmony of the community secured. Therefore,

Resolved by the legislature of the State of Kansas, That the honorable the Senate and House of Representatives of the United States of America in Congress assembled be, and they are hereby, most respectfully requested to pass a law at as early a day as practicable, authorizing the attorneys for the settlers on the Osage ceded lands, in the State of Kansas, to use the name of the United States in any legal proceeding to be instituted by them to test the validity of a railroad grant to either of the above railroads, through the Osage ceded lands in the State of Kansas, and to set aside patents issued for said lands, to or for the use of said roads.

Be it further resolved, That our Senators be, and hereby are, instructed and our Representatives requested to use their best exertions to procure the passage of a law for the speedy and final settlement of the title to the Osage ceded lands in the State of Kansas.

Resolved, That the secretary of state, State of Kansas, be, and hereby is, requested to transmit a copy of the foregoing preamble and resolutions to the President of the Senate of the United States, and to the Speaker of the House of Representatives, with a request that the same

be laid before the honorable body over which they respectively preside, and that the secretary of state be further requested to transmit to each member of Congress from the State of Kansas a like copy of said preamble and resolutions.

A BILL to authorize legal proceedings in the courts of the United States to determine the status of the title of the Osage ceded lands in Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any attorney or attorneys who may be selected and duly appointed by the settlers on what is known as the Osage ceded lands, in the State of Kansas, are hereby authorized to institute proper legal proceedings, in the name of the United States, in the circuit court of the United States for the district of Kansas, for the purpose of having the question judicially determined, whether the Leavenworth, Lawrence and Galveston Railroad Company, and the Missouri, Kansas and Texas Railroad Company, or either of them, have any land-grant (except the right of way) in or through said Osage ceded lands, and to have judicially determined the validity of any patents issued by the United States for any of said Osage ceded lands to said railroads or either of them, or for the use of said roads or either of them. And in case the decision of the circuit court should be in favor of the validity of said railroad-claim, or in favor of the validity of said patents issued by the United States as aforesaid, then and in that case the said attorneys for said settlers shall have the right to appeal said cause to the Supreme Court of the United States; and it shall be the duty of the Supreme Court, in case of appeal by either party, to hear and determine said case at as early a day as practicable, without regard to the place occupied by said case on the docket of said court: *Provided,* That upon instituting such legal proceedings in said circuit court, the settlers on said Osage ceded lands shall give security for the payment of all costs that may accrue in said case, or on appeal, to be approved of by the clerk of the said circuit court of the United States: *And provided further,* That in no case shall the United States be liable for any attorneys' fees in said case.

I do hereby certify that the above and foregoing concurrent resolution No. 3, was adopted by the senate on the 15th January, 1874.

TOM. H. CAVANAUGH,

Secretary.

Concurred in by the house January 19, 1874.

A. R. BANKS,

Chief Clerk.

I, W. H. Smallwood, secretary of state of the State of Kansas, do hereby certify that the foregoing is a true and correct copy of the original senate concurrent resolution, as the same appears on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed the great seal of state. Done at Topeka, Kansas, this 21st day of January, A. D. 1874.

[SEAL.]

W. H. SMALLWOOD,

Secretary of State.