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Delegate from Alaska

47TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT 560, Part 2.

DELEGATE FROM ALASKA.

MARCH 10, 1882.—Referred to the Committee on Territorie and ordered to be printed.

Mr. W. G. THOMPSON, from the Committee on Elections, submitted the following as the

VIEWS OF THE MINORITY:

It is manifest that a general misconception prevails as to the character of the country, and of the people now asking representation, in the person of this applicant. The removal of this misconception was first necessary in order to a just consideration of the case, and that has been fully effected through the evidence taken by the subcommittee, namely, the testimony of officers of the Navy and Coast Survey, of high standing and unquestionable credit, in no way interested in the Territory pecuniarily, or in any possible result of the legislation asked, and who have lately visited the section under consideration in the line of their official duty. Their testimony all concurs as to the population and resources of the country, and is supported by that of Rev. Sheldon Jackson, superintendent of Presbyterian Home Missions, who is well acquainted with it, and by the official reports of the Treasury and Navy Departments lately laid before Congress.

We leave out of consideration the immense expanse of the territory west of Mount Saint Elias, with its seal fisheries yielding over $300,000 annually to the government, and its hardly less valuable sea-otter trade, that, through neglect of legislation, yields nothing, the inhabitants of which are not shown to need, and do not ask legislation, and come directly to the section applying for recognition.

This we find to be the strip of mainland and contiguous islands lying between the 54th and 61st parallels of north latitude, and the 130th and 141st meridians, within the concavity of the North Pacific shore, and the eddy of the warm current that tempers its climate. It is 700 miles at its nearest point from the northwest corner of our country, and has no identity of interest with the western part of the territory, from which it is separated by 300 miles of rugged coast. It has an area greater than that of many of our most important States, larger than Scotland or Ireland, which countries it resembles. It has four valuable resources. Its timber alone is estimated as worth the entire cost of Alaska; its fur trade is highly profitable, its fisheries inexhaustible, and its mineral wealth unquestionable. It can sustain a large population by its own natural productions, and is, in short, a country of an assured future importance.

The civilized population of this section is shown to be about 1,500 (1,350 at the lowest estimate), and steadily increasing, chiefly of the hardy, energetic class of settlers. The Indians number about 7,000 and are intelligent, industrious, tractable, very anxious for our laws and education, and rapidly civilizing under their present missionary teach-

ings. They have been profitably employed in our Navy and make excellent seamen.

The section thus described comes now before us, under the following promise of article 3 of the treaty by which the territory was ceded to the United States, March 30, 1867:

> The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years. But if they should prefer to remain in the ceded territory, they, with the exception of the uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. (Statutes at Large, vol. xv, page 542.)

But the 4th of July, 1881, saw no act of fulfillment of this pledge, and on that anniversary the men of a large mining settlement stood, with folded arms, above the rich veins of ore, eager to develop them, but lacking all the forms of law essential to that end. Not only so, but lacking also every accessory safeguard of citizenship; the constitutional guarantees of speedy trial and the *habeas corpus* denied them; their property unprotected, their personal liberties held at the arbitrary will of armed military power, their struggling trade and commerce taxed, but no voice allowed to assert their rights before the government, or defend them from the misrepresentation under which they were, and still are, suffering. In this condition, though unlearned in political lore, they seem to have realized their lawful claims, and to have been inspired to adopt a means of relief under the circumstances legal, and under all circumstances authoritative. They met together and called a convention of the whole people of the district. These people responded with alacrity and enthusiasm, and chose their delegates, who met on the day appointed, adopted a memorial setting forth their claims, and ordered an election for a person to present it to this House, and ask admission therein, by virtue of the proceedings, as their lawful delegate in the Forty-seventh Congress. The original papers filed, exhibiting the whole movement from beginning to final result, show conclusively the perfect good faith in purpose and fairness in performance of the work. The details of election insured a fair vote and an honest return, as fully as an enabling act of Congress could have done; the body of the people exercising their choice constituted the recognized primal and fundamental authoritative source of all our law, and there can be no question that the petitioner has been duly "elected," and is their *de facto* representative and delegate. And now we are to consider whether we should give their action the sanction necessary to make it legal and valid, which it is perfectly within our power and authority to do. Upon this we hold:

1. That it must be admitted the memorialists are (and were at the time of their action) justly entitled to all such "rights, advantages, and immunities of citizens of the United States" as are essential to them, and that the honor and faith of the government demand their accordance without delay. Says Vattel (book 2, ch. 12, sec. 196): "A promise carries a real right to require the thing promised, and the breach of it is as evidently an act of injustice as to rob a man of his property. Hence treaties should be inviolably kept." So far, then, our duty, having this matter now thus brought to our attention, is plain.

2. That where a party has a vested title to the present enjoyment of any right or privilege, or "advantage," and is deprived of it by accident, circumstance, or the fault of the obligated party, a strict compliance with the forms of law will not be exacted, but such means as may be adopted in good faith, and carried out fairly, and without detriment to

others, to the sole end of the acquisition of the remitted right, will always be ratified by the authorized power. An original convention is one of the most authoritative of such means, and was the only one here within reach that could have had any semblance of authority. Even "the acts of a revolutionary convention may, by formal ratification or the simple acquiescence of the proper authority, become legal and valid." (Jamieson on the Const'l Con., p. 176.) This was accepted in the cases of California, Oregon, and West Virginia, and in others, as justifying the construction of States, and this principle, with the others upon which this case rests, has been frequently recognized by the House. See White's case, 1 Clarke & Hall, 85; Fearing's, Id., 127; Hoge's, Id., 135; Randolph & Jenning's, Id., 240; Sibley's, 1 Bartlett, 102; Segar's, Id., 415; and especially Flanders & Hahn, Id., 438. To deny this is practically to contend that the party refusing a right may perpetuate his wrong, by merely withholding the formal means of redress. This is not equity nor is it law.

3. That, admitting these premises, it only remains to consider whether representation is one of the "rights, advantages, and immunities" due these people, under the government's obligation in fact, by the terms of the treaty, or by the general right of citizenship, under the spirit of our law, or by any other obligation arising from the necessities of the case. If, in any sense, it is due to this people, or essential to them, then their right to acquire it in the manner adopted and enjoy it in the person applying must be conceded.

We hold that this right is due them by virtue of any and all the above-stated claims.

1. The treaty is an absolute and unconditional pledge of *all* the "rights," &c., without regard to their number or condition. "The construction of treaty obligations should be liberal, and they should be kept with the most scrupulous good faith; and, if ambiguous anywhere, the party obligated should submit to the construction most unfavorable to him." (*Kent on Int'l Law*, 391.)

2. This privilege is in harmony with the genius and spirit of our institutions; it was the germ of our national independence, the vital principle on which our republic was founded; it has grown in strength with our growth, and spread with our enlarging freedom; it has always been the especial care of our legislation, and this House has never failed, as the cited cases will show, to recognize and secure it, in whatever phase it has presented itself, where it could be accorded to any portion of population, however small, without danger to the rights of others. In Sibley's case the entire population accorded this right was only 4,000. Dakota was endowed with a full Territorial government with a white population of only 2,576. Nevada had but few more. In fact this right has assumed, from the uniformity of its observance, the force of established law, and this construction of it is sanctioned by the very letter of our statutes. (*See Revised Statutes, sec.* 1862.) Indeed, it prevails everywhere within the limits of our domain, except in the territory under consideration.

3. The necessity of this right is shown by the fact of the misconception we have referred to, and is intensified by the remoteness of the section, and the evident misrepresentation of its condition somewhere. It is significant that, with the obligation upon us, and with the claims of this people shown by numerous reports, official and in the two houses of Congress, and a knowledge of them recognized by the presentation of twenty-five bills, providing various forms of relief, within the time of our ownership, *not a single one of them has ever passed either house!*

Representation is more especially necessary now, and in this Congress, because the condition of the section requires immediately such legislation as may conduce to the development of industries calling for protection, and rights essential to their growth. Its interests cannot be properly understood or advanced without an authorized representative. To be competent for such a charge one must thoroughly understand the wants of his people, and no member of this House has the time to acquaint himself with the needs of another district than his own, so that he could fairly and fully represent it. Still less can the care of a district be safely intrusted to the collective House. There is but one way to begin to discharge the obligation of the government to this people, and that is to accord them, at once, the privilege here claimed, as one of those which were pledged them by treaty and are due them of right, and that one which they show to be primarily essential for the proper presentation of their claims to such others as may be required. Certainly, had they had this privilege before, the plain guarantees of the Constitution would not so long have been withheld from them, and if there is a doubt as to their abstract title to it, and yet its possession is essential to the procurement of any *admitted* right, then must it too be conceded, according to the well-known maxims of law and equity.

Further, this "advantage" being necessary at this time, and in this House, and being a question of high privilege and of "election," should be decided by the Committee on Privileges and Elections, irrespective of any possible action of any other committee with reference to proposed legislation for the District. It is fair to presume that the existing prejudice will result in opposition to any adequate measure of relief that may be proposed, and to meet that, and to protect the interests of his people and secure their just claims, their Delegate should be admitted. See McDowell's opinion, sustained by the House in White's case.

The legal and equitable conclusions of our position may be further stated in another form, as follows:

1. Representation is one of certain rights and advantages to which this people are entitled and were entitled at the time of their action.

2. Having the vested title to the present enjoyment of this right, they were debarred its possession through the failure of the party obligated to its accordance to furnish the means whereby they might attain it.

3. Being so wrongfully debarred of an essential, a guarantied, and an inherent right, by the fault of the authority that should have extended it, they set about its acquisition through the exercise of means recognized as authoritative under similar circumstances.

4. Under such a condition of fact it is the duty of this House to ratify their act, and make it legal and valid to the end desired.

5. Not only is this duty plain, but the honor and good faith of our government is involved in this recognition. And it is further shown to be advisable on the mere ground of expediency.

To the reasons appealing for such action we hear but one objection that has even the semblance of ground—the want of precedent. Were this strictly true it should have but little weight, since we are here to make precedents, and to judge every case before us on its own circumstances, and do the equity that they demand regardless of mere legal forms, the defects of which we supply and correct as justice or necessity require. But it is not true. The cases cited are all precedents, if not exactly in circumstance, at least in principle. Every admission of a Territory has furnished a precedent, and the perfect power and authority of this House over the whole subject is established beyond ques-

tion. If there were ever any doubt of it the decision in White's case silenced that doubt forever. (*See opinions of Smith, Dayton, Giles, Dexter, McDowell, and Madison*, 1 *Hall and Clarke*, 85 *et seq.*) It has been asserted in all the cited cases since, and even the decisions apparently adverse in fact affirmed it. There was a "controlling reason" in Smith's case (1 *Bartlett*, 107) against seating the applicant which does not exist here, and there was, besides, an express provision of the treaty with Mexico, reserving all rights in the Territory affected at the pleasure of Congress, whereas here is an absolute and unconditional promise. And even with those strong objections a change of six votes would have seated the applicant. Here equity, expediency, and inviolable obligation all concur to create a duty from which this Congress ought not to shrink, of immediate recognition of this claim. We add, as an appendix to this report, the memorial referred to, which strongly sets forth the grounds supporting our conclusions, and has not yet been printed by order of the House or Senate.

Finally, if any doubt exists, as to the legal effect or construction of any principle involved in this case, or as to the duty of the House, under the circumstances, the honor and faith of the government require that it should be solved in favor of the memorialists. The discredit should not remain of denying them any privilege that they really need, any right of which the possession may be essential. A recompense is due them, promptly and fully, for years of neglect and deprivation of rights, and should be generously accorded. And "it will be far wiser and safer to err in favor of representation than against it"—if there is, indeed, any doubt of their title to it.

We therefore report the following resolution, and ask its adoption:

Resolved, That M. D. Ball be admitted to a seat in the Forty-seventh Congress, as a duly elected Delegate from the Territory of Alaska, with all the rights and privileges of Delegates from other Territories of the United States.

WM. G. THOMPSON.
JOHN PAUL.
S. H. MILLER.
GIBSON ATHERTON.
G. W. JONES.

APPENDIX.

Memorial of the people of Southeastern Alaska to the President and Congress of the United States.—Adopted in general convention, August 16, 1881.

The residents of the Territory of Alaska find themselves at this day in an anomalous and most remarkable situation.

The supreme power of the proprietary government, of which the Territory became the property fourteen years ago, has failed through all that time to prescribe any rule of action or civil code by which their rights might be determined or protected; and through all its broad limits there exists nowhere any authority before which they can lawfully arraign the perpetrator of wrong or demand the vindication of right.

They are, therefore, reduced to that state of society in which their natural rights must be asserted through their own spontaneous act, taking shape in such social compact and declaration as their conditon requires, and demanding the recognition of that authority to which they may rightfully appeal for the sanction of their action and the relief of their extremity.

We, therefore, the people of Southeastern Alaska, in general convention assembled, by and through our elected delegates, do most respectfully, but firmly, present to the President and Congress of the United States the following facts:

First. Upon the acquisition of this territory from Russia the Government of the

United States guaranteed to such of its inhabitants as chose to remain in it, except the uncivilized tribes, the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and protection in their liberty, property, and religion. In this it has signally failed. There are no courts of record by which title to property may be established or conflicting claims adjudicated, or estates administered, or naturalization and other privileges acquired, or debts collected, or the commercial advantages of laws secured. And persons accused of crimes and misdemeanors are subject to the arbitrary will of a military or naval commander—thrown into prison and kept there for months without trial, or punished by imprisonment upon simple accusation and without the verdict of a jury—all in plain violation of the Constitution of the United States.

Second. The Indians of the Alexandrian Archipelago, of whom there are about 6,000, have a great respect for any form of law executed by legal authority, and were civil government once established, there would be no necessity for the retention of an armed vessel here, the expense of which is much greater than that of such a government need be; but without such law and the means of its prompt execution, it will be necessary to continue an armed force in these waters.

Third. The recent discoveries of rich deposits of the more precious metals in Southeastern Alaska will undoubtedly prove sources of great wealth, and are already attracting immigration. Without the extension of the land laws, so as to place lands in the market, and the laws to perfect titles and protect capital, development must be greatly retarded. Another great resource of this section is the timber, which also needs the sanction of law for its development. Only recently a company desiring to carry on this industry on a large scale has been driven from Alaskan to British soil by reason of this want.

Fourth. Besides these there are two other resources—the fur trade, which in this section is dependent on the native tribes; and the fisheries, capable of yielding immense wealth, but also needing law for their fostering and development.

We do declare that by reason of these facts there exists a present and urgent necessity for a civil government for that portion of Alaska which embraces the mineral and timber belt of the Territory, which, to be efficient for the full discharge of the obligation assumed in the treaty of cession, and the full enjoyment of American citizenship therein, should be complete.

We do further declare that for the want of such government this section of Alaska has been for fourteen years a useless piece of territory to the United States, while with its development its civilization and value would be rapidly advanced. We therefore respectfuly, but most earnestly, insist that some such form of government be immediately provided for and extended over it.

And to this end, and as the primary necessity in order to the proper understanding and relief of our wants, we respectfully demand the accrediting of the Delegate to be elected under proceedings now to be inaugurated, as the legal and and true representative of this people, and ask that he be accepted as such in and by the popular House of Congress.

We hold it to be undeniable that such representation is one of the assured privileges of citizenship. It is especially necessary here in order to prevent the *mis*representation which obstructs the enjoyment of our other rights. It is accorded us by the letter of our general laws, and is of the essence of American liberty and institutions.

If it be objected that there has been no enabling act to authorize such an election, we reply that the failure of Congress to prescribe the manner in which we may acquire possession of an admitted right should not be held to invalidate our effort to possess it, made in compliance with the spirit of the law, in good faith, and by the best means at our disposal. This would be to take advantage of a wrong in order to perpetuate it, and to deny not only a chartered privilege, but also the natural right of the people, in the absence of the forms of law, to establish their will by original assertion.

Wherefore we pray that the full form of our petition may be granted, and our Delegate received as the legal representative of this Territory in the Forty-seventh Congress of the United States, and permitted to advocate the legislation we so much need.

Done in convention this 16th day of August, 1881, at the town of Harrisburg, Alaska.

W. B. ROBERTSON, JR.,
President.

S. HALL YOUNG, *Secretary.*

J. D. SAGEMILLER.
T. A. WILLSON.
JOHN DIX.
HENRY BORIEN.
R. D. CRITTENDEN.
W. J. STEPHENS.
EDMUND BEAN.
GEORGE NOWELL.
M. P. BERRY.
HENRY ZACHERT,
H. E. CUTTER.
M. D. BALL.
W. M. BENNETT.