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Letter from the Secretary of the Interior, transmitting, in response to Senate resolution of January 26, 1882, a communication from the Commissioner of Indian Affairs, of the 9th instant, relating to the amount of indebtedness by the Kansas tribe of Indians to individuals represented by certificates issued by any officer of the government, &c

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LETTER
FROM THE
SECRETARY OF THE INTERIOR,
TRANSMITTING,

In response to Senate resolution of January 26, 1882, a communication from the Commissioner of Indian Affairs, of the 9th instant, relating to the amount of indebtedness by the Kansas tribe of Indians to individuals represented by certificates issued by any officer of the government, &c.

MARCH 14, 1882.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, March 13, 1882.

SIR: In reply to Senate resolution of the 26th January last, "that the Secretary of the Interior be directed to inform the Senate of the amount of indebtedness by the Kansas tribe of Indians to individuals represented by certificates issued by any officer of the government, the status of said indebtedness, whether legal or equitable, or both, what, if any, assets of said tribe the government holds, and what legislation, if any, is necessary in order that said indebtedness may be paid, and the financial relations of said tribe to the government, growing out of the sale of its reservation in the State of Kansas, may be speedily and finally settled," I have the honor to transmit herewith a communication, dated 9th instant, from the Commissioner of Indian Affairs.

Very respectfully,

S. J. KIRKWOOD,
Secretary.

The PRESIDENT *pro tempore* of the Senate.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 9, 1882.

The honorable the SECRETARY OF THE INTERIOR:

SIR: In reply to the questions presented in your memorandum, handed to me on the 15th ultimo, I have the honor to state relative to the Kansas Indian scrip, so called, that there were three classes of said scrip issued, and for the purposes here stated, viz:

First class, issued to R. S. Stevens, for improvements made by him for the benefit of the Kansas Indians, under the fourth article of the treaty of October 5, 1859 (12 Stat., p. 1111).

Second class, issued for improvements made by settlers on the Kansas Indian Diminished Reserve, under the first article of the treaty of March 13, 1862 (12 Stat., p. 1221), with reference to the fourth article of the treaty of October 5, 1859.

Third class, issued for indebtedness of the Indians to traders and others, under the fifth article of the treaty of October 5, 1859, and the first article of the treaty of 1862.

Having more lands than were necessary for their occupation, the Kansas tribe of Indians, by treaty concluded October 5, 1859 (12 Stat., p. 1111), agreed to sell all that part of their reservation in Kansas not embraced in a certain portion thereof stipulated to be retained for assignment in severalty to the members of the tribe; the object being, as stated in the fourth article of the treaty aforesaid, to procure the means of comfortably establishing themselves upon the lands to be assigned to them in severalty, by building them houses and by furnishing them with agricultural implements, stock animals, and other necessary aid and facilities for commencing agricultural pursuits under favorable circumstances.

The same article provided for the sale, also, at the discretion of the Secretary of the Interior, in the same manner as the other lands therein directed to be disposed of, of any surplus that might remain of that portion of the reservation stipulated to be retained, after assigning to all the members of the tribe their proportion in severalty, the proceeds of the sale to be expended for the benefit of the Indians.

I find that during the year 1861 certain contracts were entered into for the construction of houses and other improvements on the Kaw lands, for the use of the Indians, under the foregoing treaty stipulations, out of which arose, in settlement therefor, the aforesaid scrip of the first class, known as "Stevens scrip." It may be well to state here that there was really *no law* for the issuance of this scrip. The treaty of 1859 merely directed a portion of the Kaw Indian lands to be sold, the proceeds thereof to be applied in improving the condition of the Indians in such manner as the Secretary of the Interior might deem proper.

Nevertheless, the scrip was issued, and has ever been regarded as forming a part of the proper liabilities of the tribe.

There were two issues of this scrip, as follows:

August 22, 1862	\$70,633 45
November 20, 1862	16,000 00
Total	86,633 45

Over-payment to scrip-ee on settlement of his account, \$1,214.60.

It appears that all of the above—the "Stevens scrip," so called—is outstanding. It has been held that said scrip is not receivable in payment for Kansas trust lands.

In regard to the scrip of the second class:

Attention is invited to the amended fourth article of the treaty of 1859, above quoted, and to the first article of the treaty of 1862, as amended, which provides that the treaty of 1859, and the amendment thereto, "be further amended, so as to provide that a fair and reasonable value of the improvements made by persons who settled on the diminished reserve of said Kansas Indians between the second day of December, A. D. 1856, and the fifth day of October, A. D. 1859, shall be ascertained by the Secretary of the Interior, and certificates of indebtedness by said tribe shall be issued by him to each of such persons for amount equal to appraisement of his or her improvements, as aforesaid

(not exceeding in the aggregate the sum of fifteen thousand dollars), and that like certificates shall be issued to the class of persons who settled on said diminished reservation prior to the second day of December, A. D. 1856, for the amounts of their respective claims, as provided for and ascertained under the provisions of the amendments of said treaty (not exceeding in the aggregate the sum of \$14,421)."

The clauses in the above article inclosed in parentheses were inserted by the Senate when the treaty was ratified on the 6th of February, 1863. The Indians assented to the amendments on the 26th of February, 1863.

(Lines 14 and 22, mentioned in the amendments (12 Stats., 1223), refer to the number of the lines in the original treaty, and the amounts are properly inserted above.)

It appears from former reports of this office that certificates of this class (class 2), amounting in the aggregate to \$42,901.03, were issued by this office, the amount allowed by law being \$29,421.

An examination of the files and records made about two years ago failed to discover any decision of the department, or any reference to one, approving settlers' claims for the amount above stated (\$42,901.03), or any stubs or other original records of the scrip issued. The appraisalment of these claims appears to have been first submitted to the department on the 29th July, 1862.

The Secretary disapproved the appraisalment, and in returning the same to this office stated that the report of appraisalment did not disclose that there was a single person whose improvements had been appraised who could claim under the treaty. Accordingly other appraisalments were made and submitted to the department on February 26 and June 13, 1863, and the Secretary, on August 4, 1863, allowed \$12,617.14 to settlers for improvements made by them on the Kansas Diminished Reserve prior to December 2, 1856, and \$14,887.58 on claims for improvements made prior to October 5, 1859, being a total of \$27,504.72. If any further decision upon claims of this class was made, it has been mislaid and cannot be found.

In a report to the department dated May 3, 1880, it was stated that if the accounts of the trust-fund clerk, as they appear in the annual reports of this bureau (1865 to 1875), are correctly stated, an over-issue of scrip of this class was made, amounting to \$13,479.82. I am convinced, however, that his accounts are not correctly stated there, and therefore it is very doubtful if any such over issue was made. It cannot be positively denied, however, that there was an over-issue, but it will be impossible to arrive at the truth until the scrip itself shall have been called in and examined.

Scrip of third class.

The first article of the treaty of 1862, as amended (with reference to the fifth article of 1859), provides "that like *certificates be issued* to the owners of the same for the amount of claims which have been examined and approved by the agent and superintendent, and revised and confirmed by the Secretary of the Interior, under the provisions of the fifth article of said treaty (not exceeding in the aggregate the sum of thirty-six thousand three hundred and ninety-four dollars and forty-seven cents), and that all such certificates shall be receivable as cash to the amount for which they may be issued in payment for lands purchased or entered on that part of the first assigned reservation outside of said diminished reservation."

(Line 29, mentioned in the amendments (12 Stat. 1223), refers to the number of the line in the original treaty, and amount is properly inserted above.)

The claims arising under the foregoing provisions of the treaty of 1862, with reference to the treaty of 1859, having been presented to this office, Superintendent Branch was instructed, under date of April 26, 1862, to investigate the same, which was accordingly done, and the result thereof was transmitted by this office to the department on the 25th of July, 1862. The Secretary approved the claims, and certificates were issued on the 29th of August, 1862, for \$36,846.12. This amount is taken from the stubs of scrip issued, and it does not agree with the statement in office report to the department under date of January 22, 1863, the amount of Kaw indebtedness of this class being therein stated at \$36,394.07.

Additional claims were reported to the department by this office on 12th January, 1863, and one of said claims, amounting to \$2,986.50, was allowed on the 14th of February, 1863, and certificates of indebtedness therefor were issued by this office on the 20th of the same month.

The total amount of scrip issued of this class is \$39,832.62 (amount allowed by law \$36,394.47). It was stated in office report to the department of May 3, 1880, to which reference is made on page 6 of this report, that certificates of that class were issued in excess of law amounting to \$3,438.50, and that certificates for \$2,986.50 of this amount were issued after the Senate ratified the treaty and inserted the amendment limiting the amount of scrip to be issued, and it may be added that all of said scrip was issued prior to the proclamation of the treaty authorizing its issuance.

As the amount of scrip of this class issued (\$39,832.62) is taken from the stubs of the scrip certificates, it is quite evident that there was an over issue of this class (class 3). The calling in of the scrip will determine the truth *exactly*.

In this connection I have the honor to invite your attention to an opinion of the honorable Attorney-General of August 18, 1881, in reply to department letter of June 11, 1881, asking for an opinion as to the excessive issue of these certificates of indebtedness, as follows:

(The 1st and 2d classes referred to in the Attorney-General's opinion correspond with the 2d and 3d classes, *respectively*, in this report, and no reference is had therein to the class denominated 1st class in this report—the so-called Stevens scrip.)

The treaty was proclaimed March 16, 1863, and any authority conferred by its provisions upon the officers of the government to issue certificates of indebtedness must be considered as conferred upon that date, and not before. The negotiation of the treaty by the agent of the Indian Bureau could certainly confer no such authority. The insertion by the Senate of amendments in the treaty thus negotiated could certainly confer no such authority, for those amendments required the assent of the Indians; and it is entirely clear that the earliest date at which certificates of indebtedness could be lawfully issued was the date of the proclamation already mentioned.

The certificates were of two classes. Those of the first class were to be issued to persons who have settled and improved lands within the reservation to an amount not exceeding in the aggregate \$29,421. Those of the second class were to be issued to persons having claims against the Indians, to an amount not exceeding in the aggregate \$36,394.47. There is not the slightest ambiguity either as to the date when the power to issue the certificates in question was conferred, or as to the character and extent of the authority itself. After the ratification of the treaty, and not before, certificates might lawfully be issued; and the certificates of each class might lawfully aggregate, but could not exceed, the respective amounts designated in the treaty itself.

As a matter of fact, however, certificates of the second class have issued not only before the proclamation of the treaty, but even before the amendments inserted by the Senate had received the assent of the Indians; and not only to the entire amount allowed by such amendments, but considerably in excess thereof. As there was no authority to issue them on the part of anybody, when they were issued, I am obliged to advise you that they were absolutely null and void; and as I am unable to dis-

cover any subsequent action which acknowledges or ratifies them, they continue so to be.

No certificates of the first class were issued until after the proclamation of the treaty, March 16, 1863; but after that date such certificates were issued to the amount of \$42,901.03, being an excess of \$13,480.03 over the amount limited by the treaty. As there was not even a pretense of authority for the issue of the certificates representing such excess, and as I can discover no subsequent action acknowledging or ratifying them, they also are null and void.

You inform me, however, that a practical difficulty may arise in distinguishing between the certificates so issued and those issued within the limitation prescribed by the treaty; and that difficulty is probably increased by the following provision in the treaty itself:

"That all such certificates shall be receivable as cash to the amount for which they may be issued in payments for lands purchased or entered on that part of the first assigned reservation outside of said diminished reservation."

Under this provision certificates issued in settlement of claims of the first class, to the amount of \$27,533.48, have been actually redeemed in lands, leaving outstanding certificates of this class to the amount of \$15,367.55.

In dealing with the certificates of this class it has occurred to me that it will be possible to distinguish between the certificates lawfully issued and those issued without authority by their respective dates; that is, beginning with the date of the treaty, all certificates of this class thereafter issued would be lawful and valid to the amount limited by the treaty itself, to wit, \$29,421. Certificates issued after that limit had been reached would be unlawful and invalid. If, however, as has probably happened, you discover that a portion of the certificates already redeemed in lands were issued after the limit prescribed in the treaty had been reached, and that a portion of those now outstanding were issued before that limit was reached, such fact would not alter the character of the certificates themselves; and it would still be your duty to recognize as lawful and valid such certificates of the first class as had been issued within the limitation mentioned.

In reaching these conclusions I have not been unmindful of the hardship, real or apparent, which may be inflicted upon the present holders of the unredeemed bonds. If, however, the hardship is real, relief will doubtless be afforded by the legislative department of the government; and it would be dangerous to the last degree, and subversive of all the settled principles of law applicable in such cases, to protect even innocent holders for value of such certificates from loss by holding that an executive department of the government may create obligations binding upon the government in advance of any authority conferred upon it to do so, or in disregard of plainly expressed limitations upon the extent of such authority.

I am constrained, therefore, to advise you that you are not at liberty to accept, in payment of the lands mentioned in your letter, any certificate of the first class issued after the limitation upon the amount of such certificates prescribed in the treaty had been reached, nor any certificate of the second class issued in advance of the ratification and proclamation of the treaty, to wit, March 16, 1863.

On the 28th January, 1881, Hon. D. C. Haskell, of the House of Representatives, addressed a letter to the department relative to the obligations of the Kansas Indians represented by the scrip certificates now the subject of consideration, in which, after commenting upon the long and unjust delay in the adjustment of these claims, and the hardships resulting therefrom to the holders thereof, he said:

It is my desire to ask Congress, by bill or otherwise, to buy or take the lands of the Kansas Indians, at the present appraised value, to discharge the debt obligations of the tribe, if the appraised value of the lands will aggregate a sufficient sum; if not, then the just proportionate share of the debts that the sum realized from the sale of the lands will permit, and to discharge the debts of the tribe at once, the government reimbursing itself from the proceeds of the lands as fast as sold to actual settlers, and as now provided for by law.

Mr. Haskell's letter having been referred to this office for report, on February 26, following, report was submitted to the department, in which the obligations of the tribe were set out *approximately*, as well as the origin and history of said obligations, the manner in which they were to be met, the steps that have been taken to dispose of the lands held in trust by the government and the so-called "diminished reserve."

The indebtedness of the Indians to the government was stated in detail as follows, save that the sum of \$563.75 is here added to the amount

given in said report as the "amount advanced by the government from contingent fund for advertising, &c., in 1871," which is a proper and necessary correction.

Amount advanced by the government [contingent fund] for advertising in 1871.....	\$8,214 25
Amount appropriated for said Indians by act of May 13, 1872 (reimbursable), (vol. 17, p. 132, Stats.).....	\$10,000 00
Less amount carried to surplus fund.....	7,800 00
Leaving.....	2,200 00
By act of February 14, 1873, vol. 17, p. 461, (reimbursable).....	25,000 00
By act of June 22, 1874, vol. 18, p. 140, (reimbursable).....	25,000 00
By act of June 22, 1874, vol. 18, p. 140, (reimbursable).....	26,363 59
By act of June 22, 1874, vol. 18, p. 173, (reimbursable).....	40,000 00
By act March 3, 1875, vol. 18, p. 447, (reimbursable).....	20,000 00
Total.....	146,777 84
Of the five last mentioned appropriations there was left unexpended, and carried to the surplus fund.....	17,150 14
Leaving a total advanced of.....	129,627 70

The sums advanced by the government to the Indians from time to time, as above shown, the same being for advertising in connection with the sale of their lands, for their proper care and subsistence, for agricultural implements and pay of employes, for the erection of agency buildings and a mill on their new reservation in Indian Territory, and in payment for expenses incurred in the appraisal and sale of their diminished reserve in Kansas, must be refunded to the government from the sale of their lands before any of the obligations of the tribe represented by scrip certificates can be paid in cash.

The expenses incurred in the reappraisal, under the act of July 5, 1876, have been paid out of the proceeds of the sale of lands through the Indian Office with the exception of a few items for services and advertising, aggregating perhaps \$5,000.

The exact amount cannot now be determined for the reason that the claimants who hold accounts for advertising claim commercial rates, whereas the office can only allow rates as authorized by sections 853 and 854, Revised Statutes.

The other items, being for services rendered by the commissioners who appraised the lands, have been suspended by the accounting officers of the Treasury, until said commissioners (two of whom were Indian agents) shall have settled their accounts with the government as Indian agents.

Add the balance due as above, for expenses of reappraisal, \$5,000, to the amount of indebtedness before stated (\$129,627.70), and the indebtedness to the government would appear to be (approximately) \$134,627.70.

As before stated, the above sum must be refunded to the government before the *scrip certificates* can be paid.

The money assets of the tribe arising from the sale of their lands under acts of May 8, 1872, June 23, 1874, and March 16, 1880, are nearly sufficient at the present moment to satisfy the before-stated obligations to the government, being, as shown upon the books of this office, \$123,151.84, leaving (approximately) \$11,475.86 yet to be refunded and paid.

It appearing that it will be impossible to state with positive accuracy the amount of scrip outstanding, of the several classes, owing to the incomplete data at hand, and the seemingly faulty statements heretofore made, the statement is respectfully submitted that there are outstand-

ing certificates amounting in the aggregate (including overissues), in round numbers, to about \$120,000, of which \$86,633.45 belongs to the class known as "Stevens scrip" (1st class).

All of these certificates specify that they are to draw interest at the rate of 6 per centum per annum, but the department has decided (May 30, 1880) that the *face* of the 2*d* and 3*d* classes only can be received *in payment for lands*. I do not find that any decision has been had in regard to the payment of interest on the Stevens scrip (1st class).

If it should be held that the payment of interest on these certificates cannot be allowed, then it would appear that the entire outstanding indebtedness of the Indians is, as has already been shown, approximately as follows:

To the government.....	\$134,627 70
To holders of scrip.....	120,000 00
Total	254,627 70

(If it should be decided that interest is allowable, of course the scrip indebtedness will be largely increased.)

To meet these obligations, they have, as appears upon the books of this office, in cash, 123,151.84.

Beside this they have lands yet unsold in Kansas that are being disposed of as rapidly as possible.

Originally they had 255,854.49 acres, including the diminished reserve, established by article 1, treaty of 1859.

By the appraisal authorized by the act of July 5, 1876 (19 Stat., p. 74), it was found that there were remaining at the date of said appraisal 137,808.13 acres of *trust lands*, and 78,570.34 acres of the *diminished reserve*. The former was appraised at a total value of \$217,408.75, and the latter at a total value of \$115,122.46, making a grand total of 216,378.47 acres, valued at \$332,531.21.

The value of settlers' improvements appraised at the same time amounts in the aggregate to \$105,662, which added to the appraised value of the lands makes a total value of land and improvements amounting to \$438,193.21.

(The improvements are, under the law, sold *with the lands* for the benefit of the Indians.)

The above amount will be considerably increased by interest received on deferred payments as by law provided.

It would appear from the foregoing that the lands when all sold will yield, if sold at the appraised value, a larger sum than is required to meet the entire obligations of the tribe, which have been found to be as before stated, approximately, \$254,627.70 (interest on scrip certificates not added). Should interest be paid on the scrip certificates, requiring, say \$150,000, then the amount of the indebtedness would reach the sum of \$404,627.70, which amount is still below the appraised value of their lands and improvements as he herein stated [\$438,193,21].

From an informal statement received from the General Land Office, it appears that 164,168.59 acres of the Kansas Indian lands have been sold under said appraisal up to and including January of the present year, as follows:

Of trust lands.....	25,907 10
Of diminished reserve	138,261 49
Total (acres).....	164,168 59

As there were but 80,409.06 acres in the diminished reserve originally, the statement of sales in respect of the lands embraced in diminished

reserve, is unaccountable, unless it shall appear that under the act of July 5, 1876 (19 Stat., p. 74), and March 16, 1880 (21 Stats., 68), certain of said lands have been *resold* as is provided in case of default of payment in the beforementioned acts.

I am further advised that it will be impossible to determine the exact area sold of the original diminished reserve, without calling for a statement from the local land officers.

Reference has herein been made to office reports to the department of May 3, 1880, and February 26, 1881. The former contains a more detailed history of the scrip in question than is given in this report, and in the latter, the suggestion presented by Mr. Haskell, the purport of which is that the government assume the liabilities of the tribe, reimbursing itself from the sale of their lands, was submitted and concurred in.

In view of the evident hardship to holders of said scrip, resulting from the long delay in the settlement thereof, and the urgent appeals that have been made, and are constantly being received, for some manner of settlement, it is respectfully submitted whether it would not be advisable to ask Congress for authority to enable the department to adjust the whole matter in the manner proposed by Mr. Haskell.

Further: The Attorney-General has decided, as has been seen, that the whole mass of the scrip certificates of class 3 (referred to as class 2, in his decision), are null and void, for the reason that they were issued prior to the proclamation of the treaty (March 16, 1863), and that all of class 2 (referred to by Attorney-General as class 1), issued in excess of the amount authorized by law, are also null and void.

It is possible that some of the scrip of the 2d class was issued prior to the proclamation of the treaty also, for, in the report of the trust-fund clerk for 1865 (see annual report of this office for that year, p. 554), it is stated that certificates aggregating \$42,901.63 (2d class) were issued *February 20*, and August 5, 1863.

The above is an additional reason, and perhaps a more important one, for an appeal to Congress.

If legislation could be had legalizing the entire outstanding indebtedness represented by these scrip certificates, and an appropriation made, sufficient to cover such indebtedness, the certificates could be called in, examined, and paid, the government reimbursing itself from the sale of the lands now being disposed of as fast as possible, under the direction of the General Land Office. As has been already stated in effect, the proceeds from such sales, at the appraised value, would be more than sufficient to reimburse the government in the manner suggested, and even if such were not the case, the government having contracted the debts for the Indians, in the view of this office, should take upon itself the duty of attending to their prompt payment—now delayed beyond all reasonable warrant.

It is deemed proper to state, before closing this report, that at the time of the partial destruction by fire of the "Patent-Office" building in 1877, the records and papers of this office became much scattered, and while a great deal of time and labor have been spent in collecting and rearranging the same, it is discovered from time to time that papers of more or less importance are missing from their proper files, or from the mass of records of which they had before formed a part.

Not infrequently missing papers are found in unexpected and out of the way places and returned to their proper files.

Since the preparation of this report was begun, the examination now in progress has disclosed the existence of certain stubs of the scrip certificates of class 2, heretofore supposed to have been lost. At the same

time, certain records belonging to the General Land Office were found jumbled together with missing papers belonging to this office, which discovery goes to show the general confusion that resulted from the accident of 1877 before referred to.

Possibly all the missing records appertaining to the scrip in question may be found. The search will be continued, and if any records of value are found bearing upon the subject-matter of said scrip, the information will be transmitted forthwith to the department.

The newly-discovered stubs represent certificates of *class 2*, numbered from 1 to 292 inclusive (omitting No. 30, which is not found, and adding an odd number, No. 257 $\frac{1}{2}$), aggregating \$27,978.67.

Very respectfully,

H. PRICE,
Commissioner.

S. Ex. 136—2