

9-21-1893

Agreement Between Certain Indians

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1894.—Ordered to be printed.

Mr. PETTIGREW presented the following

LETTER OF THE ACTING SECRETARY OF THE INTERIOR, TRANSMITTING A COMMUNICATION FROM THE COMMISSIONER OF INDIAN AFFAIRS RELATIVE TO THE RATIFICATION OF AN AGREEMENT ENTERED INTO MARCH, 1892, BETWEEN THE INDIANS OF THE ROSEBUD AGENCY AND CERTAIN INDIANS OF THE LOWER BRULÉ AGENCY, BOTH IN SOUTH DAKOTA.

DEPARTMENT OF THE INTERIOR,
Washington, September 21, 1893.

SIR: I have the honor to acknowledge the receipt of your communication of the 7th instant, inclosing, for opinion, etc., S. 139, "to ratify and confirm an agreement entered into in March, 1892, between the Indians of the Rosebud Agency and certain Indians of the Lower Brulé Agency, both in South Dakota, and for other purposes."

In reply thereto I have the honor to transmit herewith copy of a communication of the 14th instant from the Commissioner of Indian Affairs on the subject, to whom the matter was referred.

The opinion of the Commissioner is concurred in by this Department.

Very respectfully,

WM. H. SIMS,
Acting Secretary.

The CHAIRMAN OF THE COMMITTEE ON INDIAN AFFAIRS,
U. S. Senate.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., September 14, 1893.

SIR: I have the honor to acknowledge the receipt, by Department reference for report, of a communication dated September 7, 1893, from Hon. James K. Jones, chairman Senate Committee on Indian Affairs, inclosing therewith Senate bill No. 139, Fifty-third Congress, first session, "to ratify and confirm an agreement entered into March, 1892, between the Indians of the Rosebud Agency and certain Indians of the Lower Brulé Agency, both in South Dakota, and for other purposes," and requesting the opinion of the Department in the matter.

In reply I have the honor to state that the agreement which this bill proposes to ratify and confirm is an agreement made in March, 1892, by and between the Rosebud Agency Indians and a portion

(majority) of the Lower Brulé Indians, in South Dakota, under authority contained in a clause in the Indian appropriation act approved March 3, 1891 (26 Stats., 1009, 1010), whereby the Rosebud Indians agreed to allow those of the Lower Brulé Indians who desired to do so to settle upon their (the Rosebud) reservation, with all rights and privileges of the Rosebud Indians, on condition that the Lower Brulé Indians should cede to the Rosebud Indians all their right, title, and interest in and to any lands to which they would be entitled on their own reservation, the Indians so transferred not to share in the proceeds of the sale of any lands so ceded by the Lower Brulé Indians, and which agreement was submitted to the Lower Brulé Indians for their acceptance or rejection by the agent of the Crow Creek and Lower Brulé Agency and Special Allotting Agent McKean, under instructions from this office dated April 22, 1892.

The agreement or proposition of the Rosebud Indians was as follows:

The Indians of the Rosebud Agency, S. Dak., represented by their delegates, agree to accept such of the Lower Brulé Indians as may desire to come on to their (the Rosebud) reservation, to become incorporated with the Rosebud Indians and entitled to all the rights and privileges of Rosebud Indians, on condition that

The Lower Brulé Indians cede to the Rosebud Indians all their right, title, and interest in any lands to which they may be entitled on their own reserve and agree that no part of the proceeds of such lands, if sold, is to accrue to them, but to be wholly for the Rosebud Indians, their heirs and assigns.

This proposition, if not accepted before June 30, 1892, to be null and void.

In submitting the foregoing proposition to the Lower Brulé Indians for their acceptance or rejection, the said agents were advised that the agreement in order to be binding must be accepted and signed by at least three-fourths of all the adult male Indians occupying or interested in the Lower Brulé Reservation; that all the male Indians of the age of 18 years or upwards should be allowed to vote upon the question; that they should hold a council at the earliest practicable date subsequent to April 22, to which all the male Indians 18 years of age and upwards should be invited; that the utmost care should be taken to have everything that passed between them and the Indians properly and carefully interpreted; that the agreement should be carefully read and explained, and that every Indian entitled to vote should have the privilege of expressing individually his opinion and wish in regard to the acceptance of the agreement.

They were also directed to have prepared a complete and accurate (separate) list of all persons who desire and elect to remove to and settle upon the Rosebud Reservation under the aforesaid agreement; that this list should be made up of the signatures of the Indians themselves, in order that it might not only show who are to be transferred to the Rosebud Reservation, but that such removal and election were their own voluntary acts, and that the whole matter must be closed before June 30, 1892.

It was required that the consent of three-fourths of all the adult male Indians occupying or interested in the Lower Brulé Reservation should be obtained, for the reason that article 12 of the treaty concluded with the different tribes of Sioux Indians April 29, 1868 (15 Stats., 639), provides that no treaty for the cession of any portion or part of the reservation therein described which may be held in common, shall be of any validity or force as against the said Indians unless executed and signed by at least three-fourths of all the adult male Indians occupying or interested in the same, said provision being continued in force by the Sioux act of March 2, 1889 (25 Stats., 888).

On June 27, 1892, this office transmitted to the Department, for its information, the joint report of the agent of the Crow Creek and Lower Brulé Agency and Special Allotting Agent McKean, showing that the Lower Brulé Indians, having had the matter submitted to them, failed to give their consent to the proposition made by the Rosebud Indians by a three-fourths vote as required.

The agents reported that although great effort was made by those of the Indians who desired to secure the acceptance of the Rosebud agreement by a three-fourths vote of the Lower Brulés and every opportunity afforded them for so doing, they were unable to obtain the required three-fourths, the vote standing 163 out of a total of 291 male adults on the census rolls, or 55 less than the number required (218½). Counting 4 others, whose names were not on the census rolls, and who claimed the right to vote, and 1 reported on the census rolls, as "transferred," the number voting for acceptance was 168, or 50 less than three-fourths, and by counting alleged absentees, supposed to be favorable to acceptance, the vote was still 31 less than the required three-fourths.

In presenting this matter to the Department on June 27, 1892, attention was invited—

First. To the law authorizing the Secretary of the Interior "by negotiation * * * to make such an arrangement with the Indians drawing rations on the Rosebud Reservation as will be satisfactory to them, by which those of the Lower Brulé Indians who desire to do so may take lands in severalty upon the Rosebud Reservation south of White River" (26 Stats., 1009).

Second. To the Rosebud agreement, as above set forth.

Third. To the fact that a majority of the Lower Brulé Indians had expressed in writing a desire to settle with the Rosebud Indians on the conditions specified by the latter in the aforesaid agreement.

The Department was asked whether it would authorize these Lower Brulé Indians to accept the conditions of the Rosebud agreement and to transfer their undivided pro rata share of the Lower Brulé Reservation to the Rosebud Indians, and whether it considered this to be a satisfactory arrangement of this matter.

The office explained that the arrangement proposed should receive the sanction of three-fourths of all the male adults of the Lower Brulés, in order that it might be surely on the safe side of this transaction, involving a quasi-cession of land, or at least a transfer of land from one part of the Sioux people to another; the said three-fourths vote being not secured, but, as explained, a very decided majority being in favor of the proposed agreement.

A decision was asked of the Department upon the question whether it would require a vote of three-fourths of the male adults of the Lower Brulé Reservation to make valid the transfer of the land from the Lower Brulés to the Rosebud Indians, or whether a majority vote of the Lower Brulé Indians would be regarded as sufficient.

On June 29, 1892, the Department decided that the proposed cession of land to the Rosebud Indians could not be made by the Lower Brulés except by a three-fourths vote of the male adults.

Under date of July 1, 1892, Special Allotting Agent McKean and the U. S. Indian agent of the Crow Creek and Lower Brulé Agency were instructed, in effect, that inasmuch as the Lower Brulé Indians had failed to give their consent to the agreement by a three-fourths vote, their action must be held to be a rejection on their part of the proposed agreement submitted by the Rosebud Indians, and that the Rosebud

agreement must be regarded as null and void. Similar instructions were given July 2, 1892, to Agent Wright.

In a communication to the Department of August 10, 1892, this office invited attention to the matter of the failure of the Lower Brulé Indians to accept by a three-fourths vote the proposition of the Rosebud Indians of March, 1892, above referred to, and transmitted for its information copy of office letter of August 9, 1892, to Agent Wright, of the Rosebud Agency, directing him to endeavor to obtain the formal consent of the Rosebud Indians, provided he could be reasonably satisfied that they would give their consent in the manner suggested by him.

This action was based upon a telegram from Agent Wright indicating that the leading Indians of the Rosebud Agency were then in favor of admitting the Lower Brulés upon the Rosebud Reservation *without any land consideration whatsoever*, subject to the consent of three-fourths of the Rosebud Indians and the approval of the Department. Subsequently, at the earnest solicitation of Agent Wright, Special Agent E. B. Reynolds was ordered to the Rosebud Agency for the purpose of laying this new proposition before the Indians and ascertaining whether three-fourths of the male adults occupying or interested in the Rosebud Reservation would give their formal consent to the transfer of the Lower Brulés upon the new terms proposed.

On October 22, 1892, this office informed the Department that it was in receipt of a telegram from Special Agent Reynolds indicating a positive failure to secure the consent of the Rosebud Indians to the transfer of the Lower Brulés under the new proposition, and recommended that the action of the Rosebud Indians, as reported by the special agent, be regarded as final, and that the Indians of both agencies be informed accordingly.

The Department replied on October 24, 1892, that it concurred in the recommendation of this office; that the action of the Rosebud Indians, as reported by the special agent, be regarded as final, and directed that the Indians of both agencies be so informed, and that Special Agent Reynolds be instructed to proceed no further in the matter.

The Indians, through their proper agents, were notified that the ruling of the Department, dated October 24, 1892, to the effect that the action of the Rosebud Indians in refusing to consent to the transfer of the Lower Brulés would be regarded as final.

On March 28 and April 8 last this office received information from said Agent Reynolds to the effect that those of the Lower Brulés who desired to remove to the Rosebud Reservation hoped and expected that the ruling of the Department last referred to would be modified, changed, or overruled by the new administration, and that a new proposition would be submitted to the Rosebuds for their acceptance, providing for the removal of the Lower Brulés to the Rosebud Reservation.

This matter having been presented to the Department April 15 last, the following telegram, dated April 19, 1893, was sent to Agent Reynolds by the Department:

Inform Lower Brulé Indians that negotiations for their removal to Rosebud have been settled, and that the matter will not be reopened.

A second telegram was sent by the Department April 28, 1893, to Agents Reynolds and Dixon and McKean, as follows:

The Department adheres rigidly to its determination stated in telegram of 19th instant to Reynolds. Inform the Lower Brulés in most positive terms that negotiations for their removal to Rosebud have been definitely settled, and that matter will not be reopened by the Department.

I think that this whole matter has been thus set forth fully and clearly, and the question now to be determined is whether the bill under consideration should or should not become a law; that is, whether the so-called Rosebud agreement should be ratified and confirmed and carried into effect.

Two important questions are presented in the consideration of the bill:

First. Whether the cession or exchange of lands by the Lower Brulé Indians, as contemplated by the said agreement, should be regarded as a cession in the meaning of the twelfth article of the treaty of 1868, which provides, as above stated, that no treaty for the cession of any portion of the reservation established thereunder which may be held in common shall be of any validity or force as against the Indians unless executed and signed by at least three-fourths of all the male adult Indians occupying or interested in the same.

Second. Whether, having submitted the Rosebud agreement to the Lower Brulé Indians in the manner indicated, that is, with the understanding that the consent of three-fourths of the male adults would be required to make the same binding upon the Lower Brulés and all parties interested (the Rosebud Indians and the Lower Brulé Indians), having since been officially notified that by reason of the failure of the Lower Brulés to accept and consent to the agreement by a three-fourths vote the same would be regarded as of noneffect and void, it would now be fair and just to the Indians concerned to declare, by legislative enactment, that the said agreement shall be binding upon the parties thereto, or rather upon the two tribes, without consulting or referring the matter to them.

As the provision contained in said article 12 pertaining to the cession of lands is continued in force by section 19 of the Sioux act approved March 2, 1889, above mentioned, any cession, arrangement, transfer, sale, or exchange of lands under the provision of the clause contained in said act of March 3, 1891, by the Lower Brulés as a tribe, would, it seems, have to be made in accordance with the aforesaid article 12.

Again, the six reservations of the Sioux Indians as at present existing were established and defined by agreement with the Indians under the said Sioux act, the provisions of which were accepted and consented to by the different bands of the Sioux Nation and the consent of three-fourths of all the male adults was required to make it binding; that is, six separate reservations were created out of the original Great Sioux Reservation in which the entire Sioux Nation of Indians had a common interest, and the respective bands thereof transferred and conveyed their right, title, and interest in and to each other separate reservation, such transfer being made as indicated by a three-fourths vote. This being the case, it certainly seemed desirable, if not absolutely necessary, to obtain the consent of three-fourths of the Lower Brulé adult males to make valid exchange or other disposition of any of their lands to the Rosebud Indians.

Hence this course was pursued in submitting the Rosebud agreement to the Lower Brulés.

In connection with this subject, I have the honor to invite your attention to the majority and minority reports of the Senate Committee on Indian Affairs upon Senate bill No. 3392 (Calendar No. 1326, Fifty-second Congress, second session, Senate report, No. 1275), "To ratify and confirm an agreement entered into March, 1892, between the Indians of the Rosebud Agency and certain Indians of the Lower Brulé Agency, both in South Dakota, and for other purposes."

It will be observed from the minority report that Senator Jones, of Arkansas, was of the opinion that the effort made to hold that the three-fourths vote necessary to alienate lands only applies when the alienation to the United States is contemplated, and not when alienation to other Indians is proposed as violent, unreasonable, and unjust; that those who negotiated the treaty of 1868 on the part of the Government as well as on the part of the Indians, knowing that the Indians were uneducated and unaccustomed to the transaction of business, were credulous, and liable to be overreached, and imposed upon and constantly exposed to the danger of being made homeless unless they were protected by the Government and, to guard them against the improvidence of their nature, put this restriction upon the power of alienation, that the evil against which the Indians were to be guarded was that of parting with their lands; that there could, manifestly, be no difference to the Indians whether they were made homeless by the United States or by other Indians; that this provision was to guard them against their own improvidence and not against the U. S. Government, and that this new and violent construction of the treaty of 1868 which has never, during the period of twenty-five years of its existence, been thought of or suggested until this matter began, seems from certain reports, to have originated with persons other than the Indians, and, possibly, with persons who desire such action taken for their own advantage in disregard of the real interests of the Indians.

As to the second question, whether it would be just to the Lower Brulé Indians to make this change without the consent of three-fourths of their male adults, I have to say that I am unwilling to sanction any act which would be justly chargeable with a lack of good faith on the part of the United States in dealing with these people. The agreement was submitted to the Lower Brulés with the understanding that it should receive a three-fourths vote to be made valid and effective. It failed to receive such vote, and all the parties in interest have been so notified.

This office and the Department have declared the agreement to be null and void, for the reason that it was not accepted by the Lower Brulés before June 30, 1893, according to the stipulations thereof.

Both the Rosebuds and the Lower Brulés have been led to believe that the proposition, or so-called agreement, is null and void, and that the question of transfer of certain Lower Brulés to Rosebud would not be further entertained. This being the case, I may ask in what light would the Indians now view the ratification of the said agreement as proposed by the bill under consideration? Would they not regard it as unjust and unfair dealing with them upon the part of the Government and in violation of existing treaty stipulations?

Further allotments of lands in severalty are now being made to the Lower Brulés within their reservation; surveys have been made for that purpose; the work of allotments is progressing nicely; the Indians are quiet, and many of them are anxiously selecting lands for allotment and improvement. Some of the Lower Brulés who had gone to Rosebud and some who were located on the Sioux ceded lands have returned to their (the Lower Brulé) reservation and expressed a willingness and even anxiety to take allotments thereon.

To again raise the question of transferring certain of the Lower Brulés to Rosebud would disturb and demoralize the Indians, impede the work of allotments, and cause further trouble to the Government.

In view of all the facts involved in this question I am constrained

to the opinion that it would be unwise, unjust, and unsatisfactory to the Indians to enact the bill under consideration into a law.

The papers in the case are herewith returned and copy of this report is inclosed.

Very respectfully, your obedient servant,

D. M. BROWNING,
Commissioner.

The SECRETARY OF THE INTERIOR.

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