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In the Senate of the United States. Letter from the Secretary of the Interior, in response to the Senate resolution of August 4, 1894, transmitting copies of correspondence respecting the claim or right of Minnesota to sections 16 and 36 as school lands in cases where such sections are or have been in any Indian or military reservation, or in any unceded lands, etc.

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53D CONGRESS, 2d Session. } SENATE. { Ex. Doc. No. 174.

IN THE SENATE OF THE UNITED STATES.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

IN RESPONSE TO

The Senate resolution of August 4, 1894, transmitting copies of correspondence respecting the claim or right of Minnesota to sections 16 and 36 as school lands in cases where such sections are or have been in any Indian or military reservation, or in any unceded lands, etc.

AUGUST 13, 1894.—Referred to the Committee on Public Lands and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, August 13, 1894.

SIR: I have the honor to acknowledge receipt of Senate resolution of August 4, 1894, and the inclosures therein referred to.

Said resolution is as follows:

Resolved, That the Secretary of the Interior be directed to transmit to the Senate copies of all correspondence between such Department (or any office thereof) and the officers of the Territory or State of Minnesota, or any delegate from such Territory, or Senator or Representative of such State, respecting the claim or rights of Minnesota to the sections sixteen and thirty-six as school lands in cases where such sections are or have been situated in any Indian or military reservation or in any unceded lands. Also copies of all rulings or decisions by such Department, or by any officer thereof, touching said rights or claims of Minnesota.

The Secretary of the Interior is also directed to inform the Senate "how many acres (and in what sections and townships) have been examined and appraised as to the pine timber existing thereon, under the provisions of the act approved January four, eighteen hundred and eighty-nine, and other legislation on that subject. Also to inform the Senate by stating what Government subdivisions have thus been examined and appraised, and by stating the quantity of pine reported to be on each of such subdivisions."

In answer to the above resolution, I transmit herewith a report from the Commissioner of the General Land Office, to whom said resolution was referred, which contains all the information asked for that is at present available.

I concur in the views of the Commissioner, as set forth in his report.

Very respectfully,

HOKE SMITH,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 10, 1894.

SIR: I have the honor to acknowledge the receipt, by your reference for a report in duplicate of the Senate Resolution, dated August 4, 1894, asking for certain information in regard to lands in the State of Minnesota.

Referring to that portion of the resolution requiring that copies be furnished by this Department—

Of all correspondence between such Department (or any office thereof) and the officers of the Territory or State of Minnesota, or any delegate from such Territory, or Senator or Representative of such State, respecting the claim or rights of Minnesota to the sections sixteen and thirty-six, as school lands, in cases where such sections are or have been situate in any Indian or military reservation, or in any unceded lands. Also, copies of all rulings or decisions by such Department or by any officer thereof, touching said rights or claims of Minnesota.

I would state that to furnish copies of all correspondence relating to the right or claim of Minnesota to sections 16 and 36 within Indian or military reservations in said State would necessitate an examination of the records and files of this office from the time the Territorial government was established to the present time, a labor I should say of sixty or ninety days, inasmuch as no record of the correspondence had other than that afforded by the volumes of letter records has been kept.

As to whether the amount of correspondence upon this subject be much or little, I am unable to say, and it is the ascertainment of this fact that would require an examination, page by page, of all the letter records from the establishment of the Territorial government to the present time.

If, notwithstanding the fact stated, it shall still be insisted that copies of the correspondence be furnished, an effort will be made to comply therewith within the shortest time possible, considering the magnitude of the work, but it is earnestly hoped that this burden will not be laid upon this office, already overloaded with work.

I inclose herewith copies of such communications as I have been able to find by reference to the index of letters sent, bearing upon the question at issue, which cover the existing law and office regulations, viz, copy of letter from the Commissioner of the General Land Office to the honorable Secretary of the Interior, dated August 15, 1862, with inclosures relating to former decisions, treaties, etc.; copy of letter from this office to Charles McIlrath, land commissioner, Minnesota, dated December 19, 1870, all of which are respectfully submitted.

In regard to the second paragraph of the Senate resolution calling for information as to—

How many acres (and in what sections and townships) have been examined and appraised, as to the pine timber existing thereon, under the provisions of the act approved January 14, 1889, and other legislation on that subject. Also to inform the Senate by stating what Government subdivisions have thus been examined and appraised, and by stating the quantity of pine reported to be on each of such subdivisions.

I have to state that the Chippewa Indian reservations in the State of Minnesota affected by the act of January 14, 1889 (25 Stat., 642), are twelve in number, and are designated as follows: Boise Fort, Cass Lake, Deer Creek, Fond du Lac, Grand Portage, Leech Lake, Mille Lac, Red Lake, Vermillion Lake, White Earth, White Oak Point, and Lake Winnebagoshish.

The act provides for the cession of portions of the Red Lake and White Earth reservations, and of all of the remaining ten reservations,

except such tracts as are needed to make allotments to the Indians who elect to remain upon their respective reservations. As the allotments to the Indians have not yet been completed, it is not known at the present time how much of the ten reservations or what tracts therein will become subject to disposal under said act, and therefore no examinations, as provided in the act, can yet be begun thereon.

The act provides for the examination of the ceded lands by examiners to be appointed by the Secretary of the Interior, who shall report the quantity of standing or growing pine timber found on each legal subdivision, or if none is found upon any particular subdivision, to report that fact, after which the lands upon which pine timber is found are to appraised by this office, said appraisal to be subject to approval by the Department.

The ceded lands of the White Earth Reservation are comprised in 4 townships, containing an aggregate area of 89,318.11 acres. The examination of said lands was begun in September, 1891, and completed in March, 1892. Judging from the result of the reexamination of lands in the Red Lake Reservation, hereinafter referred to, it may be found upon investigation that the estimates of the pine timber upon said lands in the 4 townships submitted by the examiners are unreliable, and, if so, a reexamination of these lands will be necessary.

The ceded lands of the Red Lake Reservation embrace 180 townships and parts of townships, of which 88 townships and parts of townships have been surveyed, comprising an area of 1,210,543.97 acres. The portion unsurveyed is estimated to contain 1,728,000 acres.

The examination of these lands was begun in March, 1892. In May, 1893, the corps of examiners was reorganized, and up to that time 433,860.79 acres had been examined, and the estimates submitted show 204,428,000 feet of pine timber as having been found thereon.

At the time of the reorganization a portion of the area previously examined was reexamined, and it was found that the estimates submitted by the former corps of examiners were unreliable; the timber near the logging streams having been largely underestimated, while the timber distant from the logging streams was proportionately overestimated. It was therefore found necessary to set aside said estimates and to reexamine the entire area theretofore examined. The present corps of examiners began the reexamination in May, 1893, and is now engaged in that work. From reports received, the latest being dated June 16, 1894, it appears that 65,454.79 acres have been reexamined, on which there were found 89,701,000 feet of pine timber.

Before the present corps of examiners began the reexamination they examined 609,068.12 acres not theretofore examined, of which reports have been received for 201,238.55 acres, the estimates showing 28,962,000 feet of timber as having been found thereon.

It will be seen from the foregoing that it took the former corps of examiners six months to examine the four townships, embracing 89,318.11 acres, and fourteen months to examine 433,860.79 acres on the Red Lake Reservation. The present corps of examiners were one year examining 609,068.12 acres on the Red Lake Reservation.

There remain about 1,895,615 acres to examine upon the Red Lake Reservation in addition to the reexamination, which will probably be completed during the present calendar year. No reliable estimate can be made of the time that will be required to complete the examination of the ceded lands of the Red Lake Reservation, as the speed with which the work can be done depends upon whether the lands are heavily timbered, sparsely timbered, or barren of timber. If the rate

of progress by the present corps of examiners is maintained, however, it will take about three and one-half years to complete the examination.

As under existing law no portion of the pine lands made subject to disposal by said act of January 14, 1889, can be offered for sale until the examination of all of said lands is completed, no appraisal of any of the lands has yet been made. In view of this fact, and further because a report of the number of feet of pine found upon each legal subdivision that has been examined would necessitate the transcription of the greater portion of 45 books of 72 large pages each, which would take at least a month, and also in consideration of the probable early adjournment of Congress, it has been deemed advisable to submit this general report of the condition of the work, rather than to delay for the time stated the submission of a report which would necessarily even then be wanting in the matter of appraisals.

This office deems it of the greatest importance that there be additional legislation which will permit the disposal of said lands as rapidly as the examination and appraisal of a sufficient area is completed. Forest fires frequently pass through and over the lands in question destroying large quantities of valuable timber, and no unnecessary delay shouldbe allowed to prevent the disposal of the timbered lands as early as practicable. No good reason can be urged to justify the delay in disposing of any of said lands until the examination of all of them is completed.

The Senate resolution is herewith returned, and the copies of letters mentioned herein inclosed.

Very respectfully,

EDW. A. BOWERS,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., December 19, 1870.

SIR: I have received and considered your communication of the 9th instant relative to the rights of the State of Minnesota to equivalents for the sixteenth and thirty-sixth sections formerly within the limits of the Lake Pepin, Winnebago, and Sioux Indian reservations and disposed of by the Government.

In reply I state that the Territorial act of March 3, 1849, directs the *reservation* for school purposes of the sixteenth and thirty-sixth sections in *every township of lands* in said Territory, this constituted a reservation only of the lands but no conveyed *grant* to the Territory; but the organic act for the State, approved February 26, 1857, grants the sixteenth and thirty-sixth sections in every township of public lands in said State of Minnesota for school purposes and provides that where either of said sections or any part thereof has been sold or otherwise disposed of other lands equivalent thereto shall be granted to said State for the use of schools.

This grant, then, is only of the sixteenth and thirty-sixth sections, or, where disposed of, equivalents therefor, of the public lands of said State. To determine, then, the extent of said grant it must first be ascertained what were public lands in Minnesota subject to the grant, and in this I am sustained by the opinion of the Attorney-General of March 31, 1836, wherein, in regard to that part of Alabama occupied by the Choctaws, he stated that the United States were incapable of making any grant thereof except subject to the Indians' right of occupancy; therefore the proposition to grant the sixteenth section must be regarded as subject to the implied condition that the United States should be able so to extinguish the Indian title as to enable them to execute the engagement according to its terms.

Now, if the Indian title to the reservation named by you were so extinguished at the date of the organic act as to become public lands, then the State would be entitled to the sixteenth and thirty-sixth sections thereof, or, if subsequently disposed of by the Government, to equivalents therefor. Upon examination of the several treaties bearing upon these reserves I find, in the case of the Lake Pepin Reservation, that the same is relinquished to the United States under act of July 17, 1854, and were

directed to be sold as other public lands, with proviso for the location of scrip issued to the Indians on any of the lands.

The lands in this reserve were public at the date of the organic act and the State thereby obtained a beneficial interest in the sixteenth and thirty-sixth sections. Since, however, the same were disposed of by the Government, the State is entitled to equivalent therefor. This principle is fully set forth in a communication to the governor dated April 10, 1862, wherein whilst rejecting the claim of the State to the sixteenth and thirty-sixth sections in this reserve, we admit her right to other lands in lieu thereof.

With reference to the Sioux reservations on Minnesota River, these lands were obtained from the Indians by direct purchase under treaties of July 23, 1851, and June 23, 1852, and then became public lands, and no subsequent reserve was established until the treaty of June 19, 1858, when they were again reserved for the Indians. The State had, however, then obtained an interest in the sixteenth and thirty-sixth sections, the land being public lands, but could not exercise that interest during the Indian occupancy, but here again the United States, by the act of March 3, 1863, directed the disposal of the lands for the benefit of the Indians. The State of Minnesota, therefore, is in this case also entitled to equivalents for such sections sold.

In the case of the Winnebago Reservation, however, it must be stated that this reserve was agreed upon and made by the treaty of February 29, 1855, and was given to said Indians for other lands ceded by them and for a permanent home, and so remained until the act February 21, 1863, providing for their removal and the sale of the lands for their benefit. Here, then, is a case wherein the lands were not public at the date of the organic act, consequently Minnesota obtained no interest whatever to the sixteenth and thirty-sixth sections therein and is entitled to no equivalents therefor.

You will thus observe that whilst recognizing the right of the State to other lands in lieu of the sixteenth and thirty-sixth sections in the Lake Pepin and Sioux reservations, we fail to find any foundation for the claim of the State to equivalents for such sections of the Winnebago reserve.

I am, sir, very respectfully,

JOS. S. WILSON,
Commissioner.

CHAS. MCILRATH, Esq.,
Land Commissioner Minnesota, Washington, D. C.

GENERAL LAND OFFICE, *August 15, 1862.*

SIR: I have the honor to submit herewith, on an appeal by Hon. G. E. Cole, attorney-general of Minnesota, the papers in the case of the claim of said State to the sixteenth and thirty-sixth sections for school purposes, lying within the limits of the Lake Pepin Reservation.

Under date of the 13th February last, Governor Ramsey addressed a letter to this office (per copy annexed marked A) requesting the vacating certain Sioux Half Breed scrip locations, on sections 16 and 36 in said reserve, claiming the same as school lands, under the act of February 26, 1857; also that the State might be notified of any subsequent locations, so that he might appear and contest; and he also claimed that the act of July 17, 1854, was a relinquishment of the Indian title to those lands.

By letter of the 10th April last (per copy annexed marked B) we decided that the land was *not* public land, within the meaning of the act of 1857, making the grant for school purposes, and therefore the scrip locations could not be canceled, and that notice was unnecessary, the State having no rights therein. I also referred him to a decision in an analogous case, by Attorney-General Butler, in 1836, in the case of Alabama and Mississippi, wherein he decided that it was not a present grant.

Mr. Cole, on behalf of the State, addressed a letter to this office dated 8th ultimo (per copy annexed marked C), claiming (1) that these lands were purchased by act of July 17, 1854, the Indians in lieu thereof receiving scrip, which conferred a right to acquire the title to lands, both within and without the limits of said reservation; (2) that the act of May 19, 1858, granting preemption rights therein, repelled the inference that scripholders had any vested rights, as the act of 1854, authorizing their survey and sale, and the act of 1858, declared that they should be subject to the operation of the land laws; and (3) to establish it as a present grant, he referred to certain decisions of the Department and of the courts.

This tract of land was reserved by the ninth article of the Indian treaty at Prairie du Chien of July 15, 1830, (Stat. 7, p. 330) for the half-breeds or mixed bloods of the Dakota or Sioux nation of Indians, "they holding by the same title and in the same manner that other Indian titles are held."

Congress subsequently, by act of July 17, 1854, (vol. 10, p. 304) authorized the

President to exchange with the half-breeds for this tract, and to cause to be issued to them certificates or scrip for the amount of land to which each individual would have been entitled in case of a division of the grant or reservation pro rata among them, which certificates or scrip *might be located upon any of the lands within said reservation* not then occupied by actual or bona fide settlers of the half-breeds, or such other persons as had gone into said Territory by authority of law.

It was further provided that this scrip could be located upon any other unoccupied land subject to preemption or private sale, surveyed or unsurveyed. Under this act this office issued the circular of instructions to registers and receivers of March 21, 1857 (copy herewith marked D), notifying them—

(1) That "the scrip may be located by the half-breeds, upon any land within the reserve, upon which, at the date of the act of July 17, 1854, he was an actual bona fide settler."

(2) Upon any land within said reservation, "which at the date of said act was not so occupied by a half-breed or any other person who may have gone into said reservation by authority of law." The act of May 19, 1858 (vol. 11, p. 292), throws this tract of land open to preemption settlement, but at the same time declares that no tract settled or improved by a half-breed should be subject to any other disposition than location by this scrip, nor should its provisions extend to any lands which had been located prior to its passage with scrip, with the consent of the settlers thereon.

The act of 1854 makes no limit to the time when the scrip could be located in the reservation, but expressly declares it may be located upon any of the lands to which there should be no adverse rights of half-breeds, settlers, or persons who had gone into said reservation by authority of law. It is not contended by the State that she acquired any right to the sixteenth and thirty-sixth sections under the reservation of 1849, and the grant of 1857 for school purposes being of a subsequent date to the act of 1854, the State could acquire no rights as against scrip locations to lands of this reserve.

Hereto annexed you will find a schedule of the several cases cited by Mr. Attorney-General Cole in support of the claim set up by Minnesota, and also a schedule of the quantity of land in the sixteenth and thirty-sixth sections within the Sioux half-breed reserve in Minnesota, and how the same has been disposed of. All of which is respectfully submitted for your consideration and decision thereof.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

Hon. CALEB B. SMITH,
Secretary of the Interior.

SCHEDULE 1.

In reference to the decisions in cases referred to by Mr. Attorney General, in his letter dated July 8, 1862, I would state:

(1) That the decision in Lester, page 494, was where a claim was made to a part of a sixteenth section, in Michigan, under an act of Congress passed in 1847, being of a date subsequent to that making the grant to the State for school purposes, viz, 1836, while in this case the grant to the State is of the later date, Cooper *v.* Roberts (18 How., p. 173), is a decision of the Supreme Court, under the above acts sustaining the grants to the State.

(2) The case of Ham *v.* The State of Missouri (18 How., p. 126) referred to was where the plaintiff claimed to have title from the Spanish governor to a part of a school section, with other lands, but which claim was rejected by the board of commissioners in 1811, afterwards by act of 1820, the sixteenth section were granted to the State for school purposes. By act of 1828, Congress confirmed this claim, but with the proviso that the confirmation they made should extend only to a relinquishment of the United States title. The court held the State title to be valid.

(3) The case cited in 2 Wheaton (p. 196) is to show that this case, as in that case, was a future grant. In this connection it is only necessary to refer to the resolution of March 3, 1857 (vol. 11, p. 254), recognizing preemption claims, on sections 16 and 36, in Minnesota, where the same had been settled upon and improved prior to the survey, although the same lands had been previously, by act 1849, reserved for school purposes, and had also been granted to her prior to that date, viz, February 26, 1857.

(4) The case of Gen. Green's heirs was where North Carolina made a specific grant of so many acres out of a particular tract of land, while here the grant is for certain sections, but when otherwise disposed of other lands are granted. There is no parallel between the cases.

SCHEDULE 2.

Showing the quantity of land in sixteenth and thirty-sixth, sections within the Sioux Half-Breed Reserve, in Minnesota, and how the same has been disposed of:

	Acres.
Quantity of land in the reserve	17,877.78
Quantity located with script and patented	9,982.35
Quantity located with script and not patented	2,485.31
Quantity located with warrants and patented	1,430.05
Quantity located with warrants and not patented	160.00
Quantity now vacant	3,820.07
	17,877.78

Copy of letters referred to in letter to Hon. C. B. Smith, Secretary of Interior.

LETTER A.

STATE OF MINNESOTA, EXECUTIVE OFFICE,
St. Paul, February 15, 1862.

SIR: I am informed by a communication from the county attorney of Wabasha County, in this State, that large quantities of half-breed scrip have been located upon sections 16 and 36 included within the limits of the Sioux Half-Breed Reservation. I am not advised of the rule governing the Department in cases of this character, but had supposed that upon the extinguishment of the Indian title, the same rule would obtain as in other cases, and that the claims of the State to such sections would be recognized as valid.

By an act approved July 17, 1854, provision was made by Congress for the survey of the half-breed tract, and the relinquishment of the title of those persons of mixed blood interested in said reservation.

By act of February 28, 1857, sections 16 and 36, *in every township in the State*, were granted to the State. It would seem, therefore, that the lands of the character upon which inchoate claims had not attached prior to that act passed to the State. I have, therefore, to inquire whether any, and, if any, what rule has been established by your Department with reference to Indian lands, as affected by the grant to the State for school purposes, and to request that locations of scrip unsustained by settlements prior to the grant to the State may be vacated, and that in further applications the State may be regarded as an adverse claimant, and may be notified of such application in season to appear and contest.

I am, very respectfully, your obedient servant,

ALEX. RAMSEY.

Hon. J. W. EDMUNDS,
Commissioner General Land Office, Washington, D. C.

LETTER B.

GENERAL LAND OFFICE, *April 10, 1862.*

SIR: Your letter of the 13th February last, requesting the vacating of the scrip locations on sections 16 and 36 within the Sioux Half-Breed Reserve, and that hereafter the State may have notice of all such locations for the purpose of contesting the same under the grant to Minnesota of February 26, 1857, for schools, has been received. In reply I have to state that by the ninth article of the treaty with certain Indian tribes at Prairie du Chien on the 15th July, 1830 (Stat. at L., vol. 7, p. 330), this tract of country was reserved for the half-breed or mixed bloods of the Dakotah or Sioux nation of Indians, "they holding by the same title and in the same manner that other Indian titles are held."

By the subsequent act of Congress, approved July 17, 1854 (vol. 10, p. 304), the President was authorized to *exchange* with them for this tract of land, which was set apart and granted for their use and benefit by said article, and was authorized to cause to be issued to said persons certificates, or scrip, for the amount of land to which each individual would be entitled in case of a division of said grant or reservation, pro rata, among the claimants, which said certificates or scrip *may be located upon any of the lands within said reservation* not now occupied by actual and bona fide settlers of the half breed, or such other persons as have gone into said Territory by authority of law. It was further provided that this scrip could be located upon

any other unoccupied lands subject to preemption or private sale, surveyed or unsurveyed.

Subsequently, the act of May 19, 1858 (vol. 11, p. 292), was passed, throwing this tract of land open to preemption settlement, but declaring that no tract settled or improved by a half breed should be subject to any other disposition than location by this scrip, nor should its provisions extend to any lands which had been located *prior to its passage* with half-breed scrip with the consent of the settlers thereon.

The grant to Minnesota for school, act February 26, 1857 (vol. 11, p. 167), was as follows: "That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections or any part thereof has been sold or otherwise disposed of, other lands equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools." This, with other grants to the State, were to be submitted to the people for ratification. They were accepted by the convention which formed the State constitution, August 29, 1857, and the same was ratified by the people at an election held October 13, 1857. By the treaty of 1830, this tract was to be held in common by the half breeds, and the act of 1854 only changed its conditions by dividing the land among them in *severalty*, and further providing that the scrip might be located elsewhere on other public lands.

The act of 1858, granting preemption rights therein does not in any way interfere with or prohibit the location of this Indian scrip on any lands within the reserve, and as the grant to the State for school purposes only granted the sixteenth and thirty-sixth sections of the public lands of the United States to Minnesota, she acquired no rights to the sixteenth and thirty-sixth sections within the limits of this tract, it being held by this office as reserved. As a case analagous to this, I should refer you to the decision of Attorney-General Butler, of March 31, 1836, in reference to the claim of Alabama and Mississippi to the sixteenth section of the Choctaw lands in these States; that in the case of Alabama, where the words of the grant are the same as to Minnesota, he decided that the words of the grant did not amount to a present grant; on the contrary, the engagement was executory, and no particular time was specified for its fulfillment, and that, as no *exception was contained in the treaty of the sixteenth section*, it would be an infraction of the treaty to prevent the Indians from locating on those lands. As between the Indians and the United States, the treaty itself is the only measure of their respective rights, and no restrictions, not found in the instrument, could be imposed on the right of locating the reservations secured by it.

The sixteenth section, if claimed by an Indian reserve under the treaty would have been disposed of within the meaning of the original proposition, in which case it is expressly provided that other equivalent and contiguous lands are to be granted.

It therefore follows, (1) That this office can not recognize the governor's caveat against the Indian scrip location on sections 16 and 36, as no right is admitted to vest in the State, under the school grant, within the limits of said reserve. (2) And, consequently, Minnesota not being legally a party to any question connected with said location, within said limits, notice to her authorities of any pending question in the premises is unnecessary.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

His Excellency the GOVERNOR OF THE STATE OF MINNESOTA.

LETTER "C."

STATE OF MINNESOTA, ATTORNEY-GENERAL'S OFFICE,
St. Paul, July 8, 1862.

SIR: Your communication of April 11, 1862, declining to recognize the rights of the State, in school lands, upon the Lake Pepin Reservation, has been referred to me by the commissioner of the State land office. I desire to appeal, on behalf of the State, from that decision to the Secretary of the Interior. It is not denied, had the rights of persons of mixed blood remained as originally fixed by the treaty of 1830, the school sections within the reservation at the time of the passage of the act of February 26, 1857, granting school lands to the State, would have been regarded as disposed of, within the meaning of that act. It appears, however, that by the act of July 17, 1854, these lands were exchanged by the Government, and the half-breed owners thereof were required to execute a full and complete relinquishment of all their right, title, and interest in such lands, to the United States, they receiving in lieu thereof certain floating warrants or scrip which conferred a

right to acquire the title to certain lands both within and without the limits of the reservation.

The language of that act and the subsequent one of May 19, 1858, repels the inference that the holders of the scrip retained any vested rights in these lands; had they done so, it would not have been competent for Congress to have deprived them of these rights by allowing preemptions on such lands. On the other hand, the scrip-owner simply acquired the right to locate it upon any lands to which other parties had not acquired rights prior to such location. Section 3 of the act of July 17 authorized the President "to cause such lands to be surveyed and exposed to public sale," and that of May 19, 1858, declares that "they shall be subject to the operation of the laws regulating the sale and disposition of the public lands," among which is that reserving for school purposes and prohibiting the sale of sections 16 and 36. The act of March 3, 1849, and that of February 26, 1857, reserved and granted to the State sections 16 and 36, the latter with the proviso excluding lands otherwise disposed of.

It is submitted that those lands upon which half-breed settlements had been made, or scrip located prior to that time, were alone disposed of. All lands not so situated were at the absolute disposal of the Government, and, if so, passed by the grant of February 26. That this position is correct is shown by the fact that Congress did during the subsequent year, by the act of May, 1858, exercise this right of disposal. If they could grant lands not settled upon by half-breeds by preemption in 1858, they could convey the same class of lands to the State in 1857. If disposed of as against the State, they were equally so as against preemptors. But it is said that the act of February 26, and its acceptance by the State, did not operate as a present grant, and I am referred to the opinion of Attorney-General Butler. This doctrine is at variance with that held by the Department and the Supreme Court. (See opinion of the Secretary of the Interior, September 10, 1851, p. 494, Lester's Land Laws, Rutherford *v.* Green's heirs, 2d Wheaton, 196; Cooper *v.* Roberts, 18 How., 173; Ham *v.* State of Missouri, 18 How., 126.) As no patent ever issues for school sections (9 How., 174) it is difficult to see when the title vests in the State if not upon acceptance of the grant.

The distinction between this case and that cited by you, as it seems to me, is that there the question arose under the treaty itself, while here the act of July 17, 1854, is substituted for it, and the half-breed owners have relinquished their rights in the specific lands and accepted scrip. Had their rights remained as fixed by the treaty the lands might well have been regarded as disposed of, but if that had been so Congress would have also been guilty of a violation of its provisions by allowing preemptions thereon.

I am, very respectfully, your obedient servant,

G. E. COLE,
Attorney-General.

Hon. J. M. EDMUNDS,
Commissioner of the General Land Office.

(Copy of letter D, referred to in letter to Secretary of Interior; see printed circular, relating to location of half-breed scrip, Dacota and Sioux, of March 21, 1857.)