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Treaty with Cherokee Nation.

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TREATY WITH CHEROKEE NATION.

MARCH 7, 1870.—Referred to the Committee on the Judiciary and ordered to be printed.

Mr. VOORHEES introduced the following

RESOLUTION.

Whereas the 10th article of the treaty of July 19, 1866, between the United States and the Cherokee Nation of Indians, stipulates in these words :

Every Cherokee and freed person, resident in the Cherokee Nation, shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying a tax thereon, which is now or may be levied by the United States on the quantity sold outside of the Indian Territory ;

and whereas Elias C. Boudinot, a "Cherokee resident in the Cherokee Nation," confiding in the faith of the government, did, subsequent to the date of said treaty, manufacture and sell tobacco in the Cherokee Nation "without restraint;" and whereas it is not charged by any party that the said Boudinot ever sold any "manufactured products" "outside of the Indian Territory" without paying the tax thereon levied by the United States ; and whereas, on the 20th of July, 1868, "An act imposing taxes on distilled spirits and tobacco, and for other purposes," was passed, the 107th section of which reads as follows :

And be it further enacted, That the internal revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars, shall be held and construed to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same shall be within a collection district or not ;

and whereas the said Boudinot, after the passage of said act of July 20, 1868, referred the question of his right to manufacture and sell his manufactured products *within* the Indian Territory without paying tax thereon to the United States to Mr. Rollins, at that time Commissioner of Internal Revenue ; and whereas, on the 23d day of February, 1869, in response to such reference, Mr. Rollins decided, that "notwithstanding the language of said section, the tax could not be collected upon tobacco manufactured in the Indian country so long as it remained in said country ; but upon its being brought within any collection district of the United States it would be liable to seizure and forfeiture unless it should be properly stamped, thus indicating that the tax imposed by law had been paid ;" and whereas, after the Hon. Columbus Delano succeeded Mr. Rollins as Commissioner of Internal Revenue, the said Boudinot submitted the same questions to Mr. Delano, citing the 107th section of the act of July 20, 1868, and the 10th article of the Cherokee treaty of 1866 ; and whereas Commissiner Delano referred the questions submitted to his legal adviser, to which the following opinion was given :

In the matter of taxes on tobacco produced in the territory of the Cherokee Nation.

SIR: I have examined the argument of Colonel Elias C. Boudinot, a citizen of the

Cherokee Nation, against the collection within its territory of taxes upon tobacco manufactured there, and have the honor to make the following reply:

The question, whether section 107 of the act of 20th July, 1868, intended that the revenue laws relating to tobacco and spirits produced in "the Indian country" should be extended *into* that country and there enforced, was submitted to me by yourself about the twelfth day of August last. I had the honor to advise you, that without any reference to existing treaties, it was apparent on the face of the statute itself that Congress did not intend to apply the revenue laws to the Indian country itself, but to the *articles* produced there, and that the application could be made only to such part of these manufactures as might be carried thence into the States or Territories of the United States. The action of your office was afterward taken in accordance with this advice, and instructions to that effect were sent, as I was informed, to the revenue officers of Kansas, Missouri, and Texas.

Very respectfully,

CHARLES P. JAMES,
Counsellor-at-Law.

Hon. COLUMBUS DELANO,
Commissioner of Internal Revenue;

and whereas Commissioner Delano wrote the following letter:

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, October 21, 1869.

GENTLEMEN: This office does not propose to apply, *within* the territories of the Cherokee Nation, the revenue laws relating to tobacco and spirits produced there, but holds that section 107 of the act of 20th July, 1868, applies to the articles themselves, and will be enforced when those articles are carried into the States or Territories of the United States for sale. The grounds of this determination, and the instructions given to the revenue officers, are more fully explained by the accompanying memorandum of opinion by Judge James, to whom the question was originally referred.

Very respectfully,

C. DELANO, *Commissioner.*

Messrs. PIKE & JOHNSON, *Counsellors-at-Law.*

all of which opinion of Judge James and letter of Commissioner Delano were authorized to be sent, and were sent to the said Boudinot as the final settlement of the question; and whereas but a few days after the date of the Commissioner's decision he authorized and instructed the supervisor of internal revenue for the district of Arkansas to seize the tobacco factory of the said Boudinot in the Cherokee Nation; and whereas, in pursuance to such instructions, the property of the said Boudinot, in the Indian country, *was* seized, and he arrested as a felon, without notice of any change in the opinion of the Commissioner, and for no other offense than pursuing a legitimate business specially authorized by treaty and the repeated decisions of the revenue department; and whereas the said Boudinot has applied to have the merits of his case referred to the Attorney General for his decision, and the Secretary of the Treasury has refused to submit the questions involved to the Attorney General; and whereas the said Boudinot has not given bail, but is still at large courting arrest in vain, that he may obtain a decision from the courts: Therefore,

Resolved by the House of Representatives of the United States of America, That the Committee of the Judiciary be and is hereby instructed to inquire into the foregoing statements of fact and provide for the proper enforcement of the stipulations of the treaty with the Cherokee Nation, and for the protection of the individual rights herein involved, and that they be authorized to report at any time by bill or otherwise.