

University of Oklahoma College of Law

University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

4-12-1870

Sale of Indian Lands in Kansas

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indigenous, Indian, and Aboriginal Law Commons](#)

Recommended Citation

S. Rep. No. 99, 41st Cong., 2nd Sess. (1870)

This Senate Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact Law-LibraryDigitalCommons@ou.edu.

IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1870.—Ordered to be printed.

Mr. DAVIS, from the Committee on Indian Affairs, made the following

REPORT.

[To accompany joint resolution S. R. No. 173.]

The Committee on Indian Affairs, to whom was referred the petition of certain citizens of Johnson County, State of Kansas, being the civil officers thereof, and also the petition of the Black Bob Indians of the Shawnee Tribe, report:

That the said memorial represents that the lands known as the Black Bob reserve in this county are very unequal in quality and value, so much so as to preclude the possibility of an equal division in severalty; and further, that the Indians are deriving no benefit from the sale of their lands, but squander the money they receive in drunken frolics, and are led to commit murder and other crimes, and reduce themselves to vagabondage and ruin.

The petition of the Black Bob Indians, signed by fifty-seven of them, male and female, represents "that an attempt has been made to force our people to break up their tribal organization, by persuading a portion of our people to take patents and divide their lands in severalty; and we would further represent to you that we are totally and entirely opposed to this scheme for the following reasons: First. The land is so unequal in quality and value as to render a just and equitable division in severalty impossible. Secondly. That the band is (since the war) largely composed of women and children, who are incompetent to manage their own affairs, and therefore can derive no benefit from the sale of their lands. Thirdly. It is not of our choice to divide our lands, but is an alternative urged on us by speculators, who care nothing for our people, only so far as they can use us for selfish purposes. Fourthly. That when the Indian gets money he spends it for whisky, squanders his means, and brings ruin on himself and family.

"In view of these facts we ask your honorable body to make such arrangements as shall give us a new home, and a sale of our lands in common, and an equitable distribution of the proceeds thereof to our benefit, and thus preserve us from distress and ruin."

These papers constitute a very strong remonstrance against the sale of lands in severalty belonging to this part of the Shawnee tribe by individual members of it. Are such sales authorized by treaty or by law of Congress?

The treaty with the Shawnee Indians, of 1854, has this provision: "All Shawnees residing east of said parallel line shall be entitled to, out of this residue of said two hundred thousand acres—if a single person, two hundred acres, and if the head of family, a quantity equal to two hundred acres for each member of his family," &c.

The treaty then proceeds to provide for the manner in which the lands may be selected by Indians competent to make selections, and how lands may be assigned to those incompetent to select for themselves, to be *held* by them in severalty.

Article — of said treaty is in this language: "Congress may hereafter provide for the issuing, to such of the Shawnees as may make separate selections, patents for the same, with such guards and restrictions as may seem advisable for their protection therein."

This treaty authorized and provided for the severance of the possession of their lands among individuals and families of their tribe, but it neither provided for nor authorized any severance of title; nor does it provide for, authorize, or contemplate any sale in severalty, by individual Indians, either of the title or possession of lands selected by or assigned to them. It does contemplate and authorize the passage of laws thereafter by Congress for issuing patents to "such Shawnees as may make separate selections," but requires laws that might be passed for that purpose to have such guards and restrictions as would protect the Indians. Has Congress passed any law authorizing patents to issue to those Shawnee Indians who had made separate selections of lands—patents for them?

An appropriation bill, passed in 1859, contains this section: "*And be it further enacted*, That in all cases where, by the terms of any *Indian treaty* in Kansas Territory, said Indians are entitled to separate selections of land, and to a *patent* therefor, under guards, restrictions, or conditions for their benefit, the Secretary is hereby authorized to cause patents therefor to issue to such Indian or Indians, and their heirs upon such conditions and limitations as may be prescribed by said Secretary," &c.

This section does not authorize the issuing of patents to the Black Bob Indians for separate selections of land by them, for several reasons. It is of such questionable policy—justice toward the Indians—that it ought to receive a literal and strict construction, and as it only authorizes patents to issue "in cases where, by the terms of any *Indian treaty in Kansas Territory*, the Indians are entitled to separate selections of land, and to a patent therefor," that such a patent can be issued. Now, there is no "Indian treaty in Kansas Territory," and such language is sheer nonsense, and does not authorize patents to be issued for lands selected by the Black Bob Indians. But waiving this objection wholly, there are two others, both of which are substantial and conclusive.

1. That act of Congress authorizes patents to issue only in cases where, "by the terms of any *Indian treaty*," the Indian is entitled to both a "separate selection of land, and to a patent therefor;" the Black Bob treaty does not come up to this requisition, because it not only does not entitle the Indian to a patent for the land, but in very unequivocal language withholds it.

2. The treaty provides that the act of Congress, which may authorize the issuing of such patents, should have such guards and restrictions as would be advisable to protect the Indian patentees in their lands. This was a power, a confidence, which the treaty required Congress, in its open halls of legislation, to execute; and it had no authority to delegate its exercise to the discretion of the Secretary of the Interior, in the privacy of his official chamber. If Congress, in its law, had interposed guards and restrictions, as in other similar cases, for the protection of Indians, it would have prohibited the sale of these selected lands by the Indians, or have restricted the sales to Indians of their own tribe; such sales to white men ought never to be authorized by treaties or laws, be-

cause of the injustice and fraud which they would bring upon the Indians, and violate the just and settled policy of the United States of protecting them in their rights against the wrongs of white men, and in the maintenance of their tribal organizations, which sales in severalty tend to break up.

Your committee believe it would be just and wise for the United States to purchase the lands of the Black Bob Indians, in Kansas, for a fair price; to apply the proceeds for their civilization and permanent benefit; to remove them from Kansas, with their own consent, and unite them with that portion of the Shawnee tribe which has migrated to the southwestern Indian country.

The white men who have contracted to purchase their lands in violation, or without the authority, of law, were wrong-doers, both to the Indians and to their own government; and, instead of receiving indemnity and indulgence, ought to be visited with reprobation and punishment.

Your committee report also a joint resolution, and recommend its passage.