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Letter from the Secretary of the Interior, in response to Senate resolution of December 20, 1887, relative to the ejection of persons from lands purchased of certain Indians in Kansas.

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LETTER

FROM

THE SECRETARY OF THE INTERIOR,

IN RESPONSE

To Senate resolution of December 20, 1887, relative to the ejection of persons from lands purchased of certain Indians in Kansas.

JANUARY 30, 1888.—Ordered to be printed and referred to the Committee on Indian Affairs.

DEPARTMENT OF THE INTERIOR,
Washington, January 26, 1888.

SIR: I have the honor to acknowledge the receipt by this Department on the 21st day of December last, some weeks previously to my entrance upon the duties of Secretary therein, of a resolution of the Senate adopted upon the 20th of December, 1887, of which the following is a copy:

Resolved, That the Secretary of the Interior be directed to inform the Senate whether any person or persons are being ejected at the instance of his Department, or otherwise to his knowledge, from lands purchased of the Chippewa and Muncie Indians in Kansas, and if so, what state of law or facts justify such action; and also whether the interests of said Indians would not be promoted by their removal from the State of Kansas to the Indian Territory.

In response to the inquiries contained, I transmit a communication, under date of the 21st instant, of the Commissioner of Indian Affairs, to whom it was referred to report the facts required to properly meet the inquiry. This report shows that no person or persons are being ejected at the instance of this Department or otherwise, to the knowledge of the Commissioner of Indian Affairs, from lands purchased of the Chippewa and Muncie Indians of Kansas. At the same time, it gives an account of the requirement of the Department for the removal of one Johnson, and afterwards of some other white men, from the reservation in the year 1885, and of the action taken thereon, which was the latest of the kind by the Department, and also furnishes in the treaty and laws referred to the justification of the action taken.

Regarding the second branch of the inquiry, whether removal of these Indians to the Indian Territory would promote their interests, his communication shows that these Indians hold their lands in severalty, with a power of disposition between themselves, as a result of which the allotted lands now belong to a limited number of the most provident and industrious; that their title can only be divested, with justice, with their consent to sell, and by their grant. It will be further observed in respect to this, also, that the general allotment act of the last Congress, in the sixth section (24 Stats., p. 390), has declared these In-

dians to be citizens of the United States, and entitled to all the rights, privileges, and immunities of such citizens. It should challenge serious consideration whether citizens and landed proprietors should be regarded as removable, or their persons disposable by, or in pursuance of, legislation proceeding upon no theory of misconduct in such persons.

The Commissioner reports that these people have not, in general, been hitherto averse to removal, and have indicated a desire for incorporation with the Cherokees; and he is of opinion that if means can be devised whereby homes can be given to them in the Indian Territory, where each can have a separate holding without power of alienation, removal would prove to their best interests; but he advises against their incorporation with the Cherokees.

I submit his communication without the expression of any opinion of my own in addition, not, at the present time, feeling sufficiently advised, and regarding the resolution as seeking rather the opinion of those who have been hitherto in charge of the Indian service.

I have the honor to be, very respectfully,

WM. F. VILAS,
Secretary.

The PRESIDENT PRO TEMPORE OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 21, 1888.

SIR: I have the honor to acknowledge the receipt, by your reference, for an early report, of a Senate resolution of December 20, 1887—

That the Secretary of the Interior be directed to inform the Senate whether any person or persons are being ejected, at the instance of his Department, or otherwise to his knowledge, from lands purchased of the Chippewa and Muncie Indians in Kansas; and if so, what state of law or facts justify such action, and also whether the interests of said Indians would be promoted by their removal from the State of Kansas to the Indian Territory.

In compliance with said resolution and your direction in the premises, I have the honor to report that I have no knowledge of any person or persons now being ejected from lands purchased of the aforesaid Indians in Kansas, at the instance of this Department, or otherwise.

In December, 1884, complaint was made by one Julia A. Davis, a member of said band of Indians, that one C. P. Johnson, a white man, and not a member of the tribe, was then in unlawful possession and control of certain tracts of land, viz, southwest quarter of southeast quarter, and southeast quarter of southwest quarter of section 13, township 17, range 18 east, 80 acres, in the Chippewa and Muncie Indian Reservation, located in Franklin County, Kans., which had been allotted to her as a member of the United Bands of Swan Creek and Black River Chippewas and Muncie, or Christian, Indians, under the treaty of July 16, 1859 (12 Stat. L., p. 1105), wherefore she requested that said Johnson, with his relatives, be ejected and removed from the possession and control of said land, and that it be promptly restored to her exclusive use and control.

The then United States Indian agent, I. W. Patrick, was notified January 30, 1885, thereof, and of the provisions of that treaty, to the effect that certificates of allotments should be issued by the Commissioner of Indian Affairs for the tracts assigned thereunder, specifying the names of the individuals to whom they were assigned respectively.

that the lands were for the exclusive use and benefit of themselves, their heirs and descendants, and that said tracts should not be alienated in fee, leased, or otherwise disposed of, except to the United States, or to members of said band of Indians, under such rules and regulations as might be prescribed by the Secretary of the Interior.

As no sale appeared to have been made of these tracts the title and ownership of this land still vested in the said Julia A. Davis, and the agent was accordingly instructed to make a careful investigation of the facts set forth in said complaint, and, if found to be as stated, to warn the offending and trespassing party in possession to at once vacate and surrender the same and every part thereof to the rightful owner, with the assurance to him that if he should not so vacate and surrender he would be forcibly removed, if necessary, by the military, as provided for in sections 2118, 2119, and 2150 of the Revised Statutes.

Agent Patrick, in pursuance of these instructions, made the investigation, and submitted his report on the 16th of March, 1885, showing that Mr. Johnson was in possession of said tracts of land under and by virtue of a lease to him from said Julia A. Davis, dated February 28, 1883, to run for a period of ten years from March 1, 1883, but suggesting that he be permitted to continue in possession for the term of his lease.

On the 14th of May following, this office, after considering this report, further instructed Agent Patrick that there was but one issue to the matter under the treaty and that was for Mr. Johnson to vacate and surrender the premises to the legal owner, allowing him, of course, a reasonable length of time in which to remove any improvements that he might have placed thereon which properly belonged to him. He was further instructed as follows:

I infer from the concluding sentence of your report that there are various other parties, white men, not members of the tribe, who are occupying and controlling lands upon this reservation which were allotted to members of the tribe. If this be so, as in the case of Johnson, it is in plain and positive violation of the provision of the treaty, whether it be under cover of leases, contracts, or otherwise, and the parties so violating must be removed from the lands, allowing them only a reasonable time within which to remove their improvements.

No doubt this will be a hardship in some cases and may result in some loss, but the provisions of the treaty are positive and must be observed and carried out.

On the 28th of May, 1885, Agent Patrick issued an order, by reason of these instructions, directing that *all white* persons then residing on said reservation, except such as might have intermarried with members of the tribe or were employed as missionaries or teachers among them, should quit and remove therefrom on or before 31st July, 1885, with the privilege to said parties of removing therefrom any and all improvements thereon owned by them; and the 3d of June, 1885, he was informed that his order was approved by this office.

On the 8th of June the agent forwarded a petition, dated June 2, 1885, bearing the signatures of Ignatius Caleb, Edward McCoonse, and William H. Kilbuck, as councilmen, and four others as members, of said bands of Indians, requesting and urging that the order of the 28th of May, for the removal of white persons, be rescinded or so modified that it should require removal only when particular charges of a serious nature could be brought against the parties, urging that in their opinion it would be impossible at that time to keep the reserve clear of whites without the presence of troops; for even should all those then quietly living among them remove, others of a more reckless character would find their way in the reservation, so that instead of the peaceable and generally industrious people then among them, they would be tormented

by a class of people that would prove very much of an annoyance to them.

Agent Patrick was advised, on the 17th of June following, that the parties (the annual report of 1885 gives the number as sixty), as well as the Indians themselves, were fully aware of the provision and prohibition of the treaty, and yet they went upon the lands in violation and utter disregard of it; that the petitioners admitted that they had done wrong in leasing their lands to the whites, and thus permitting and encouraging them to come among them in express violation of the terms of the treaty, which were positive, and therefore mandatory in the premises upon this Department, and must be observed and faithfully carried out; that the Government possessed abundant power to have all its just and proper orders enforced, and would see that they were enforced, not only in regard to the then intruders and their allies, but also in regard to any others who might attempt to succeed them, by United States troops, if need be, so that the petitioners and those whom they claimed to represent need have no concern or uneasiness upon that point.

He was further instructed that—

If the Indians are to remain the wards of the Government, they must be required to observe the provisions and spirit of the treaties made by and for them; and it is high time that, as a general thing at least, these Indians should themselves be engaged in cultivating and otherwise improving their lands, rather than to be farming them out to others, as they have been doing to their own detriment in more respect than one.

You will please notify the petitioners and all others concerned of this decision, and see that the said order is strictly and faithfully observed in all cases covered thereby.

On the 31st of October, 1885, a petition was presented (signed by seventy persons), claiming to be the appeal of citizens residing on the Munsee or Christian Reservation without authority of law, for an extension of time from the 10th of December (the time having been extended by Agent Patrick from July 31, 1885), until the 1st of March, 1886, within which to remove, etc., for the reason that it would require that time to gather their crops and remove their effects and improvements. Agent Patrick, on the 16th of November, was furnished a copy of this petition, with the information that the limit of time fixed by him first as the 31st of July, and afterwards extended to December 10, 1885, was, in the opinion of this office, ample for them to remove all their effects and improvements as specified in the order of May 28, 1885, and that the force of their appeal for another extension of time to *gather crops* from lands which they must have known they held in unlawful possession and which they had no right to occupy or cultivate was not apparent. Seeing that the office was determined to carry out in good faith the terms of the treaty, and enforce the order of removal, the intruders felt that discretion was the better part of valor and vacated.

Agent Patrick, in his monthly report, dated February 8, 1886, reported:

All the whites intruding upon reservation have left, though several are living but a short distance from the line, and are yet a source of trouble.

The foregoing comprises the latest action taken by this office in the ejectionment of any persons from the Chippewa and Munsee Reserve. That action was taken because the provisions of the treaty of 1859 demanded it, and the authority therefor was found in the Revised Statutes, sections 2118, 2119, and 2150. It is believed that the reservation has remained free from all intrusion ever since said removal; at least no complaint of the return of those removed has been made to this office,

or of others succeeding them in such intrusion, and Special Agent **Heth**, under date of the 31st of October last, reported the reservation clear of all white persons.

The question contained in the second inquiry, as to "whether the interests of said Indians would be promoted by their removal from the State of Kansas to the Indian Territory," is a very difficult one to answer.

As before seen, these Indians, under authority contained in their treaty, have the power to transfer the land assigned them in severalty, one to another. Under this provision and the rules prescribed by the Department, but little of the land remains in the possession of the 104 original allottees. (Special Agent **Heth** reports only 27 as holding original allotments.)

Twenty of these transfers, by the allottees or their representatives, have received the approval of the Secretary of the Interior, but there are many more that have been made which, through ignorance or carelessness of the Indians, have never been submitted for Department action, or, having been submitted, were too irregular or defective to receive approval. A few of the more provident and industrious have become the purchasers of these tracts, and in a few years, if there is no relief, will become the sole owners of the whole reserve, as they are already large holders of said allotments. Other changes have arisen by reason of the death of some of the original allottees, and further complications are arising by reason of the death of the descendants of said allottees, so that in several instances it would be difficult now to determine who are all the heirs and how much of the allotment (40 acres) each heir is entitled to.

In view of this condition of things I do not see how it is possible to dispose of the lands of these Indians so as to benefit the tribe in common. Individual ownership and vested rights for valuable considerations would seem to make such a step impracticable. If the lands are sold at all, the proceeds must go to the present individual legal owners.

These people, however, have not hitherto been averse to removal. In fact they have on various occasions taken the initiative in that direction. Their desire has been to effect an arrangement for incorporation with the Cherokees under the fifteenth article of the Cherokee treaty of 1866 (14 Stat., p. 803), or to settle in some other portion of the Indian Territory.

As the case now stands, many of these Indians have no ownership in land within their reservation and no means of acquiring it except by purchase from the present owners. If some means can be devised whereby a home can be given to these Indians in the Indian Territory, where each can have a separate holding without power of alienation, I believe it would be to their best interest to adopt such means. I am not in favor of their incorporation with the Cherokees, if the latter were willing, after the experiences of the Shawnees and Delawares since their incorporation with the Cherokees. No good would result to them from such incorporation, but, on the contrary, interminable conflict and turmoil.

In addition to this objection, it is now the settled policy of the Government to carry out the plan of an allotment of land in severalty and individual holding, as indicated in the general allotment act (24 Stats., p. 388), as the best means of civilizing the Indian and bringing him to self-support. This can not be done in the event of the incorporation of these Indians with the Cherokees, as the provisions of the severalty act do not apply to the five civilized tribes.

The best and most practicable plan, in my opinion, for the settlement of these Indians would be to set apart for their use sufficient land in the Oklahoma country, to assign to each individual the quantity prescribed in the general allotment act, or purchase for them a home either in the Cherokee country, west of the Arkansas River (Cherokee Outlet), under the provisions of the sixteenth article of the Cherokee treaty of 1866 (14 Stats., p. 804), or from the Quapaw Indians in Indian Territory.

These Indians now have to their credit in the Treasury of the United States drawing interest at 5 per centum per annum, in lieu of investment, the sum of \$42,560.36. This fund, with appropriate legislation, in the event of removal to Indian Territory, could be used in aiding them to open up improvements and cultivate their farms, purchase stock, agricultural implements, etc. It would not be sufficient to purchase land in the Cherokee Outlet or Quapaw Reserve and at the same time aid them in improving their farms, etc.; so that in the event of their removal there additional funds would have to be supplied by Congress. Land in the Oklahoma country can be set apart for their use without cost to them or to the Government.

It may be proper to state here that these Indians are made citizens of the United States by virtue of the provisions of the sixth section of the general allotment act, their lands in Kansas having been previously assigned to them in severalty.

Whatever legislation is had looking to the removal of these Indians, the restrictions in the treaty limiting alienation to members of the tribe or to the United States should be removed and they invested with full power to dispose of their lands in Kansas; subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe.

The Senate resolution is returned herewith, accompanied by a copy of this report.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

IN RESPONSE TO

Senate resolution of January 18, 1888, relative to the claims of certain parties for cattle stolen by the Osage Indians in 1886.

FEBRUARY 6, 1888.—Ordered to be printed and referred to the Committee on Indian Affairs.

DEPARTMENT OF THE INTERIOR,
Washington, February 2, 1888.

SIR: I have the honor to acknowledge receipt of Senate resolution dated 18th ultimo, in words as follows:

Resolved, That the Secretary of the Interior be directed to report to the Senate all papers, information, and action thereon by the Interior Department relating to the claims of Thomas S. Brooks & Co., and of Evans, Nichols & Co., for and on account of cattle stolen from said parties by the Osage Indians on or about the month of September, 1886.

I response thereto I transmit copy of communication dated 1st instant from the Commissioner of Indian Affairs, and accompanying papers, giving such information relative to the claims as the records of his office show, wherein it is stated that the papers in question were transmitted to the Department March 11, 1886, at the request of Hon. J. H. Murphy, to be forwarded to the chairman House Committee on Claims, and have not been returned to his office.

I also inclose a copy of Department letter of March 12, 1886, to chairman Committee on Claims, House of Representatives, transmitting the papers to that committee.

The records of the Department furnish no further information on the subject.

I have the honor to be, very respectfully,

WM. F. VILAS,
Secretary.

The PRESIDENT PRO TEMPORE OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., February 1, 1888.

SIR: I have the honor to acknowledge receipt, by your reference of the 19th instant, of Senate resolution of the 18th instant, directing a report "to the Senate of all papers, information, and action by this